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The Big Picture: Legislative Impact Assessment

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Recently, the Chairman of Rajya Sabha advocated the idea of **Legislative Impact Assessment**. He called for **informed law-making process** in the country by bringing out **social, economic, environmental, and institutional impacts** of legislative proposals which will help in **realizing the stated objectives of various laws**.

He also stressed on the need of Parliamentary reforms in the form of **15 point charter**.

What is Legislative Impact Assessment?

The **study of the impact** of a law (being made and enforced) on the society over a period of time is known as Legislative Impact Assessment (LIA).

Legislative Impact Assessment

LIA is a **method of estimating** the likely impacts of legislative proposals and government policies, before and after they are adopted and enacted, and comparing them with different policy designs to determine which policy produces the best result.

Essential elements of LIA

Following are the essential elements or parts of the LIA:

- Identification of the policy problem
- Identification of potential legislative/policy options
- Comparative analysis of potential legislative/policy options with each other
- Stakeholder consultation
- Selection of the preferred legislative/policy option
- Impact analysis of the preferred option
- Identification of impact mitigation measures required (if any)
- Cost-benefit analysis of the preferred option
- Reporting

Need for LIA

- **Quick decision-making** raises the questions regarding implementation of the law, associated costs and most importantly, the negative impacts that the laws may have.
One such example is the **Biological Diversity Act, 2002**, which aims to protect India's biological resources. However, the inherent contradictions between some of its provisions have caused significant barriers to conservation, use and development of biodiversity, thus undermining the fundamental purpose of the Act.
- Hence, it is essential that laws are analysed in detail before their enactment, as the country cannot afford to make expensive or irreversible mistakes with already limited resources.

Aspects of the Legislative Impact Assessment

- **Pre-Enactment Assessment:**

- There is a wider **role of Parliament as an institution of law-making** which involves thorough analysis by the Parliament before enacting any law. This includes

- **Pre-legislative thought** or the wider consultations and detailed discussions with the experts before making the law,
- **Making** of the Draft Bill,
- Proposing and **discussing** the bills in the Houses,
- **Detailed scrutiny** by each House and the respective Parliamentary Committees, and
- The **final enactment** of the law.

- In India, there is proper **pre-legislative principle** that is followed before making any law. Any bill is proposed by the government based on either of the two needs: either the society demands it, or the government feels that a particular law must be enacted.

For example- the recently proposed amendments in the **RTI Act**, or the **Unlawful Activities (Prevention) Act**- were laid down before the Parliament by the government realising the changing needs of the society. This involved the pre-enactment assessment by relying on inputs from security agencies or the concerned stakeholders.

- **Post-Enactment Assessment:**

- The responsibility of Parliament after a law is made is not over. For instance, the **Motor Vehicles Bill, 2019** proposed to ensure road safety of people and timely help to accident victims. Now, whether this intended objectives and needs of the law are achieved or not, needs to be looked at, by the Parliament. This is known as the **Post Enactment Assessment**.
- There is another responsibility of Parliament to **hold government accountable**. In cases of the operational delegated legislation, the laws created by the executive must come back to the Parliament and be assessed thoroughly.

Note: Delegated legislation is referred to as secondary legislation. It is made by a person or body other than Parliament. Parliament, through an Act, can permit another person or body to make such legislation.

- Parliament creates the broader framework of a particular law and gives the authority for legislation to other persons or bodies to provide more details to the passed Act.
- This offers **several merits** as it allows specifics to be modified at local levels with greater responsiveness to situations. However, **several concerns** such as over-abundance of regulation, lack of scrutiny before the enactment of rules or laws by the delegated bodies, etc. may remain unmitigated.

Challenges to Legislative Impact Assessment

- **Lack of Institutionalized Societal Study**- Currently, no such institutionalized study is conducted to analyse the impact of the legislations being made on the society.

The institutionalised study of impact of legislation can be a good start. For instance, setting up of a **special task force** by the Ministry of Finance under the **company's law** which involves the experts and concerned stakeholders from the relevant fields.
- **Bureaucratic Hurdles**- Sometimes, the hasty passage of laws by the bureaucracy creates various hurdles in the effective implementation of that law. For instance:
 - In the **Goods and Services Tax (GST)** passed in **2017**, there were several lacunae which were resolved over a period of time by passing subsequent rules and legislations. The **Parliamentary Committee on Commerce** was formed to look at the issues associated with GST import and exports.
 - Similarly the **Insolvency & Bankruptcy Code** (2016) suffered from untimely redressal of bankruptcy cases leading to huge burden of pending cases. To address the working of IBC, the **Committee on Finance** was recently formed by the Parliament.
 - Hence, there is a **need of regular scrutiny** to tackle such challenges and LIA can help in achieving it.
- **Evolving Society and Policy Trailing Technology**- In India, the intent of the legislature is great but the implementation of the law suffers from certain drawbacks. Parliament is reflective of the society, hence it needs to evolve the laws having **social and economic impact** with time. The **legislations related to technology** also frequently demand changes in the law. For example:
 - The **Data Protection Bill, 2018** is expected to have profound implications on the e-commerce (if passed), which was not thought of 15 years back. This will address the current needs of the society, but with time the current need will eventually change, demanding a change in the law.
 - Likewise, as society evolved, the **Foreign Exchange Regulation Act (FERA), 1973** became **Foreign Exchange Management Act (FEMA), 1999**.
 - Therefore, there is a need to address this **legislation mismatch with the changing pace of societal needs**, which can be effectively done by the LIA.

Implementing Legislative Impact Assessment

- **Sunset Law:** The ending period of a law can be made mandatory in the draft legislations with the help of **sunset clause**.
 - It states that the **law will come to an end after a particular date**, until re-enacted/extended by the legislature after review. Such an analysis helps to evaluate the performance of the legislation against the underlying objectives, and accordingly suggest optimal course correction.
 - In the absence of these clauses, legislations are rarely reviewed, leading to an overabundance of redundant, outdated and under-performing laws.
- **Institutionalized Mechanism:** LIA can also be carried out by a legislator or any private/public consulting entity appointed by the legislator or by a parliamentary committee or any private/public consulting entity. Hence, this can be done in three ways:
 - **By strengthening Parliamentary Committees-** Empowering the Parliamentary Standing Committees to look at the required changes after a particular time period could better reflect and address the changing societal needs.
 - **Bodies outside the Parliament:** The kind of **post-mortem impact assessment** by the **Comptroller and Auditor-General of India (CAG)**, similar assessments by different official bodies could lead to better scrutiny and appropriate use of resources.
 - **Enforcing a mechanism** in case of **delegated legislation** that no changes would be proposed after a particular time period (for say 3-5 years). This is to ensure that a particular law stabilizes after that defined period. Hence a **clause in the law itself can be mentioned** defining the ending date of the law.
- **Civil Society Activism:** External **professional bodies** can be recruited for this purpose to propose timely changes into the law. It may be carried out by a Civil Society Organisation (CSO) or Non Governmental Organisation (NGO) or private entity.

For instance, agencies performing different types of audits like social and economic audit could be appointed to perform the Legislative Impact Assessment.

Note: The *Forum for Law, Environment, Development and Governance (FLEDGE- a not-for-profit Trust under the Indian Trusts Act (1882))* has been working on the option for developing a LIA framework to help mitigate some of the challenges faced in the law-making process and their implementation in India.

Way Forward

- Undertaking an Impact Assessment on legislation provides analysis of the **potential effects and effectiveness of a legislative proposal** before its enactment. It could have the **following benefits**: improve the **quality** of legislation; increase the **productivity** of legislature; improve **governance**; help make **informed choices**; identify potential **effective alternatives**, and reduce **redundant legislation**.
- Existing mechanisms of post enactment assessment in India are already in place like
 - In the **Social Impact Assessment** under the **Land Acquisition Law** there is proper mechanism to carry out social impact of the project.
 - Similarly, the **Environmental Impact Assessment** is done for big manufacturing mines and plants before approving them for the set up.
 - On similar lines, LIA can be made mandatory for improving the implementation and achieving the intended objectives of the laws.
- Besides providing an overview of the needs for realising the objectives of the legislation, the LIA can be a tool to act as a checklist for **necessary support systems** to implement the legislations.
- It is the **accountability and responsibility** of the Parliament to ensure the effectiveness of the passed legislation.
- On the sidelines of **Australian** practise where an institution outside the Parliament specifically performs the post enactment assessment of the passed law, similar institutions can be established in India.