

THE IMPERATIVE OF IMPACT ASSESSMENT

Relevant for: Indian Polity & Constitution | Topic: Parliament - structure, functioning, conduct of business, powers & privileges and issues arising out of these

Legislation and policies in the country are often passed with inadequate scrutiny and assessment. Increasingly, the 'rush towards law' results in policies and legal frameworks that are mostly reactive and seek to offer quick-fix solutions to complex problems. As a result, both law-makers and citizens are frequently blindsided by the unanticipated impact of these moves and the laws often run aground on issues of implementation.

Ultimately, the time and effort it takes to undo and resolve the issues caused by such hasty law-making can compound the problem that the law was intended to resolve, making the entire exercise of 'fixing' the issue futile. One only has to look at the recent *Aadhaar* judgment to realise that laws create facts on the ground that are neither easy nor inexpensive to reverse, if at all it is even possible to do so.

This gives rise to a question: what is the function of law in a society? There are good reasons to believe that at a minimum, legislation seeks to create a framework that helps coordinate certain governance processes or to resolve certain identified problems. It also articulates a standard of morality and an ethical approach that a society and government deems appropriate.

However, law-making in India is still largely conducted in silos which ensures that there is little consciousness of how these might potentially impact, either directly or indirectly, aspects of the economy, ecology, development and society in ways that might be wholly unintended by their framers.

This lack of consciousness stems from multiple causes, including the nature of political economy in India, the lack of a formal assessment structure for these laws and rules and the increasing complexity of law-making in today's diverse and interconnected societies.

Take for example, the legal framework that aims to protect our biological resources — the Biological Diversity Act, 2002 (BDA). In addition to the fact that awareness of the BDA's provisions is extremely limited among the judiciary and the executive, the provisions of the act are so contradictory that conservation, use and development action have almost come to a standstill.

The idea of legislative impact assessments is slowly getting traction around the world, since there is widespread acceptance of the idea that laws and rules need to be comprehensively analysed prior to their enactment so as to minimise such negative externalities, or at the very least, to identify them.

Given the current scenario, we believe that the need of the hour is an impact assessment that focuses on policy and legal frameworks *before* they are passed. Countries like Kenya and Finland have mechanisms in place for the assessment of regulatory and legislative proposals as an essential part of their legislative process.

Based on our current research suggesting the need for a policy and legislative impact assessment (PLIA) framework for India, we strongly feel that such a framework be submitted and released to the public along with every proposed Bill. At a minimum, a framework would (a) identify the policy problem, its root cause and the need for action; (b) benchmark it against available alternatives; (c) conduct stakeholder meetings and identify potential impact; and d)

pre-empt possible conflicts by identifying and planning for the mitigation of any and all negative effects of taking such an action. Currently we have drafted a PLIA framework that is being discussed and debated by experts and public for further use and adoption more formally by the executive.

There are, of course important caveats. A PLIA should be a fundamentally iterative process that seeks to methodically apply a framework that assesses policies and laws at a granular level before they are put into place. Moreover, we should be wary of the manner in which the costs and benefits of proposed legislation and policies are identified — for example, laws have persistently sought to undervalue ecosystem services as well as indigenous peoples' rights.

We believe that establishing and following a PLIA framework in both letter and spirit would allow us to identify optimal law and policy changes and ensure that preferred options are those that are economically feasible, operationally viable, and socially acceptable, among several other considerations. Above all, such a framework would promote transparent and democratic law-making in the country and allow citizens to understand and debate trade-offs created by such laws even before they are formalised.

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