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## **ROLE OF PRIOR CONSULTATIONS AND DELIBERATIONS IN THE LAW-MAKING PROCESS**

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Harnirmal Singh, Jindal Global Law School, O.P Jindal Global University

### **Pre – legislative consultation process**

After being denied compensation for labour accomplished during a famine, “a group of government employees in Rajasthan created the Mazdoor Kisan Shakti Sangathan (MKSS) in 1990 and launched a movement demanding government transparency<sup>1</sup>”. This was the start of a protracted fight to have the Right to Information established. With the help of several social activists, the campaign has gained traction. The “National Campaign for People's Right to Information” (NCPRI) was established in 1996 in response to the media coverage of the issue. A proposal was presented by the NCPRI in consultation with the Press Council of India. This laid the groundwork for enacting a Right to Information Act. The Freedom of Information bill was introduced in the House of Representatives in 2002 and in August 2004 following various revisions. The RTI Act was enacted in 2005 as a result of the Bill. The Right to Information Act, 2005 is an example of a successful pre-legislative procedure that strengthens the democratic process.

“Pre-legislative consultation process means discussions with stakeholders, policy experts, and civil society before drafting an intended policy into bill or an act<sup>2</sup>”. The pre-legislative consultation process provides the legislature with critical information about the interests, issues, and types of reforms, desired by the specific group for whom the policy is being developed. Pre-legislative consulting serves as a reality check and a firsthand look at the problem. In addition, soliciting feedback and recommendations from the group for whom the policy is being developed provides for more openness<sup>3</sup>.

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<sup>1</sup> Jain,D.(2019) Law-Making by and for the People: A Case for Pre-legislative Processes in India. Statute Law Review, 2020, Vol. 41, No. 2, 189–206

<sup>2</sup> Yadav,h.(2021) Mandating pre-legislative consultation and deliberation: Paving the way for deliberative democracy.NLUJ Law Review

<sup>3</sup> Jain,D.(2019) Law-Making by and for the People: A Case for Pre-legislative Processes in India. Statute Law Review, 2020, Vol. 41, No. 2, 189–206

Most legislations in India didn't go through this process. For instances, both the bill, "The Transgender persons (protection of rights) bill, 2019" or the "The farmers Produce Trade and Commerce (Promotion and Facilitation) Bill, 2020", were drafted without much consultation with the stakeholders, and faced widespread criticism from the social activists from around the world. As a result of these bill, public have suffered at large.

### **Consultation and deliberation**

Pre-legislative consultation in India is restricted to soliciting opinions and comments from people before drafting a legislation; it doesn't obligate the government to consider the feedback obtained. This implies that the government have the power to reject any or all proposals received during the consultation process without deal with any repercussions. Deliberation, on the other hand, necessitates that the legislature considers the proposals obtained during the pre-legislative consultation process.

Deliberation imposes on the drafters, the responsibility of carefully considering the proposals offered by stakeholders throughout the consultation process. If specific proposals are rejected, appropriate justifications must be presented for the process to be transparent to the public<sup>4</sup>.

The importance of deliberation can be seen in the Transgender (Protection of Rights) bill 2019. The government failed to meet the needs of transgender persons at several stages throughout the preparation of the Transgender Rights Bills by failing to consider their proposals. This demonstrates the importance of the pre-legislative process in providing significant and substantive contents to legislation.

### **Criticism**

Critics believe that having a consultation and deliberation process will be financially costly and result in wasteful draining of the government's funds. But, when the legislature ignored most of the recommendations, like they did in the "Transgender Persons (Protection of Rights) Bill", 2019 and approved it in parliament, the transgender community and civil rights organisations erupted in protest. The police used physical force to put an end to all the protests. This further

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<sup>4</sup> Yadav,h.(2021) Mandating pre-legislative consultation and deliberation: Paving the way for deliberative democracy.NLUJ Law Review

marginalised the community and instilled scepticism in the legislative process. These losses seem more than financial loss because they result in political instability.

Some also criticize this process by arguing that this process is time-consuming. My counterpoint to this argument is that the process may be time-consuming, but it results in effective and comprehensive lawmaking. The involvement of many organizations, stakeholders, and specialists provides a wealth of information about the problem under consideration. In India, where laws are frequently badly worded and cause unneeded confusion, such effective and comprehensive formulation of laws is desperately needed.

### **Conclusion**

India has a “Pre-Legislative Consultation Policy” in place, but it is weak and inconsistently applied. When the legislature rejects ideas from various organizations, the PLCP does not hold them accountable. It specifies a 30-day period during which the government must seek mandatory consultation, however, this is rarely implemented. From June 2014 to May 2019, 89 per cent of bills proposed in parliament had either no or insufficient consultation.

India may learn a lot from South Africa's experience with pre-legislative consultation and deliberation. Before proposing laws into parliament in South Africa, the legislature is required by law to engage in “pre-legislative consultation and deliberation”. The South African judiciary knocked down a statute in “Doctors for Life International v. Speaker of the National Assembly and Ors<sup>5</sup>”, because the legislature failed to ensure public input throughout the development of the bill<sup>6</sup>.

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<sup>5</sup> 2006 (12) BCLR 1399 (CC)

<sup>6</sup> Yadav,h.(2021) Mandating pre-legislative consultation and deliberation: Paving the way for deliberative democracy.NLUJ Law Review