

Public Engagement with the Legislative Process

Background Note for the Conference on Effective Legislatures

In a representative democracy, elected representatives make laws on behalf of citizens. Citizens' ability to participate in the legislative process is fundamental to democracy.¹ Public participation with the legislative process results in better laws and fewer amendments.¹ Both transparency and accessibility of the legislative process are required for effective public participation. Democratic governments provide for public engagement in lawmaking through consultations. The public may engage in different stages of the legislative process. In this note we discuss the access individuals and stakeholders have to the process of law making.

Public participation with the legislative process may take place over three stages; (i) the pre-legislative stage when the proposed law is in draft form prior to its introduction in Parliament; (ii) the legislative stage which begins from the time the Bill is introduced and ends once it is passed; and (iii) the post-legislative stage begins when the Bill is enacted.

Mechanisms for public engagement with legislative process in India

Pre-legislative scrutiny

Legislation may be initiated by stakeholders or from within the government. Some Bills, such as the Right to Information Bill (now an Act) and the Jan Lok Pal Bill, were drafted by civil society groups.

Public participation regarding draft Bills is not statutorily mandated. The government has taken steps to increase public engagement. In some cases the government has invited stakeholders to consultations on proposed Bills. For instance the Department of Information Technology had invited experts for consultations on the draft Electronic Service Delivery Bill, 2011. The Ministry of Finance had held regional consultations over the draft direct tax code.

Ministries at times publish draft Bills in the public domain. However, Ministries did not publish some draft Bills like the Public Interest Disclosure Bill, 2010 and the Judicial Standards Accountability Bill, 2010. Once draft Bills are published time is allotted to submit of comments. Table 1 is an indicative list of the time allotted to submit comments on some recent draft Bills.

Table 1: Days allotted for submissions on draft Bills

Draft Bills published in 2009, 2010 and 2011	Days
Model Panchayat and Gram Swaraj Bill, 2009	21
A Model Real Estate (Regulation of Development) Bill, 2009	45
Legal Practitioners Bill, 2010	30
Mines and Minerals (Development and Regulation) Bill, 2010	26
4 th Mines & Minerals (Development & Regulation) Bill, 2010	7
Citizens Right to Grievance Redress Bill, 2011	21
Real Estate (Regulation & Development) Bill, 2011	30
Port Regulatory Authority Bill, 2011	39
The National Sports (Development) Bill, 2011	30
Second National Sports (Development) Bill, 2011	15
Land Acquisition and Resettlement & Rehabilitation Bill, 2011	30

Sources: Press Information Bureau of India, PRS.

Subordinate legislation: Once Bills are enacted, they may require Rules to enable their implementation. The General Clauses Act, 1897 provides a process of publication of draft Rules when the principal Act requires such publication.² Under the Act, the notifying authority is required to take into consideration suggestions received from the public.

Legislative scrutiny

Public participation during legislative scrutiny may be conducted through Parliamentary Committees. Prior to 1993, Bills were occasionally referred to ad-hoc Joint or Select Parliamentary Committees. Since then Department Related Standing Committees (DRSC) have been established to scrutinise Bills. There are 24 DRSCs that cover all ministries of the central government. Once a Bill is introduced in Parliament, it may be referred to a DRSC. Some Bills that were not referred to the DRSC include Special Economic Zones Bill, 2005 and the National Intelligence Agency Bill, 2008.

Committees publish notices seeking suggestions within a specified timeframe. In most cases, a period of 15 days is provided to send comments.

The level of public engagement with standing committees varies with different Bills. For instance, in relation to the Companies Bill, 2009 that sought to repeal the existing statute, the DRSC on Finance received 101 written missions and heard 12 oral submissions. Public comments were not invited and consultations were not held at this stage over the

Right to Free and Compulsory Education Bill, 2009. Chart 1 depicts the average number of written and oral submissions received per Bill by the DRSCs in the 15th Lok Sabha.

Subordinate legislation: Rules and Regulations are tabled before Parliament after they are notified by the executive. Once tabled, the Committee on Subordinate Legislation may evaluate them for conformity with the Constitution and the parent Act.

Both Houses have a Committee on Subordinate Legislation. The Committees are empowered to take submissions.

Based on data collected by PRS from the Lok Sabha Bulletin, 1515 subordinate legislations were laid before the Lok Sabha between 2008 and 2010. Of these, 44 were considered by the Committee. Public engagement with the Committees is depicted in Table 2.

Post-legislative Scrutiny

Scrutiny of current laws is not mandatory in India. However, mechanisms exist for undertaking review of laws. Various Commissions, such as the Law Commission, conduct review of legislation.

Since its establishment in 1956, the Law Commission has submitted 236 reports. The Commission identifies laws that require amendments or repeal. In preparing its review of laws the Commission circulates its draft analysis amongst the public and invites comments. It also organizes seminars and workshops in different parts of the country to elicit opinion on proposed strategies. In 2011 the Commission released a questionnaire on its website for the public to send comments on 498A of the Indian Penal Code, 1860.

In March 2011 the Ministry of Finance constituted the Financial Sector Legislative Reforms Commission for a review of Indian financial laws. The Commission is also empowered to take evidence.³

The National Human Rights Commission was established to review legal safeguards to human rights. It holds consultations with NGOs and experts on human rights issues.

The Second Administrative Reforms Commission was established to revamp the public administration system. The Commission reviewed several laws and consulted various stakeholders in preparing its reports, such as its reports on Right to Information, 2006 and Public Order, 2007.

The DRSCs may also examine the efficacy of laws. For example, in November 2011, the DRSC on Human Resource Development invited public comments on the implementation of the Right to Free and Compulsory Education Act, 2009.

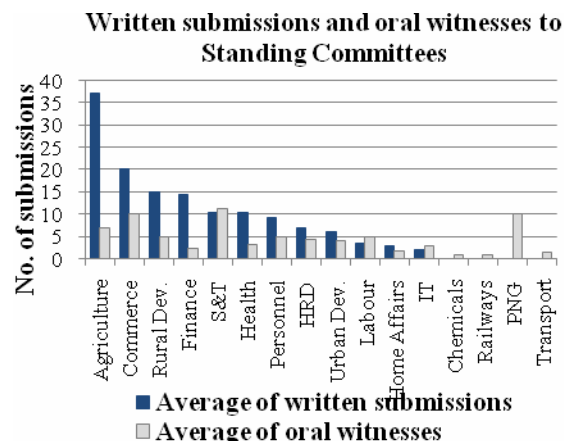
Recommendations by the National Commission to Review the Working of the Constitution

Some recommendations for increasing public participation in the legislative process were made by the National Commission to Review the Working of the Constitution in its Report in 2002.

The Commission suggested that draft Bills should be subjected to thorough and rigorous examination by experts and laymen alike. The proposed legislations should be circulated for public discussion among professional bodies, business organisations, trade unions, academics and other interested persons.

It also recommended that all Bills should be referred to DRSCs for consideration and scrutiny after public opinion has been sought over the Bill. It was of the opinion that DRSCs may schedule public hearings, if necessary.

Chart 1: Average number of written and oral submissions received per Bill by DRSC in 15th LS



Source: Standing Committee Reports 2009 to 2011

Table 2: Details of work done by Committee on Subordinate Legislation

House	Number of Legislations	Oral witnesses	Written submissions
15 th Lok Sabha	17	0	0
14 th Lok Sabha	70	1	0
Rajya Sabha*	64	32	19

* May 2004-June 2011; Sources: Annual Report on Committee on Subordinate Legislation, Rajya Sabha and Lok Sabha

International Comparison

In several democracies, various measures have been taken to establish a participatory legislative process. A comparison of means and level of public engagement with legislative process is provided in the tables below.

Table 3: International comparison of public engagement in the pre-legislative process

Public Participation at the pre-legislative stage						
Parameter	United Kingdom	United States	Australia	Canada	South Africa	India
Consultations over draft Bills	Select committees hold consultations. Ministerial events over Approach Papers are held.	Members introducing Bills may hold consultations.	Draft Bills, policy documents and approach papers are published.	Rarely. Draft Bills are published only with prior approval of the Cabinet.	Draft Bills are published for comments. Constitutional amendments are published for comments 30 days prior to introduction.	Draft Bills and Rules are published and comments sought. There is no mandatory requirement.
Public participation at the legislative stage						
Mandatory reference of Bills to Committees	Yes. Public Bill Committees or Select Committees.	Yes.	No. Bills may be referred to the Committee.	No. But most Bills are referred to Committees.	No. Means of public participation may vary.	No. The Speaker decides.
Mandatory consultation with public	No. Public Bills Committees are empowered to take comments.	Yes. Written submissions are compulsorily sought.	No. Committees are empowered to take comments.	No. But Committees are empowered to hold consultations.	Constitutional provisions require consultation.	No. Committees are empowered to take comments.
Regional consultations	May hold study visits and take oral evidence across UK.	No restriction imposed on Committees.	Workshops held. In preliminary stage and, after report finalisation.	Within and outside Canada. House's permission required.	Parliamentary Democracy Offices collect public comments for Committees.	Rare.
Notice inviting feedback	Radio, newspapers, website.	Daily digests of Congressional records and notices to stakeholders.	Newspapers.	Website.	Newspapers and Parliamentary Democracy Offices.	Newspapers, internet and radio.
Committee's power to summon persons	Yes.	Committees may issue subpoenas.	Yes.	Yes.	Constitutionally provided.	Yes.
Public meetings of Committees	Telecast and webcast.	Yes, with exceptions.	Yes. Attended by media.	Yes with exceptions.	Constitutionally required.	Usually sittings are in private.
Public availability of Submissions before Committee	Made available within a few days.	Are available for inspection once table.	Transcripts of depositions are published.	Edited transcript published in 10 days.	Evidence received is forwarded to Speaker of House.	Only evidence tabled in Parliament is made available.
Power of Committee to amend the Bill	Not binding.	Not binding.	Not binding.	Not binding.	Not binding.	Not binding.
Government response to committee report	Mandatory in case of deviation from recommendations.	The government has no direct role in legislative process.	Government has to respond to Reports within six months.	Yes usually.	Not mandatory.	No.
Publication of committee reports	Yes.	Yes.	Yes.	Yes.	Yes.	Yes.

Public Participation at the post-legislative stage

Parameter	United Kingdom	United States	Australia	Canada	South Africa	India
Compulsory post legislative scrutiny	Yes. Within three to five years.	Legislative Oversight Committees review laws on a continuous basis.	Most laws have to be reviewed in 3 years and expire after 10 years.	Most statutes have sunset and review clauses.	No. Occasionally for gender and disability laws. Absence of consultation invalidates law.	No. Special commissions may be appointed to conduct review.
Public participation in post legislative stage	Public assessment taken into account. Select committees take comments.	Committees are empowered to conduct public hearings.	Australian Law Reform Commission is empowered to take evidence.	Parliamentary Committees take comments.	Parliamentary Democracy Offices may be approached.	Commissions take account of submissions made to Ministry and other research conducted.

Sources: Report on Pre-legislative scrutiny 2010, Modernization Committee, House of Commons, United Kingdom; Report on Parliament and the Legislative Process, House of Lords, United Kingdom; Legislation Series, House of Commons, United Kingdom; Approach Paper on Post-legislative Scrutiny, 2008 House of Commons, United Kingdom; US How Laws are Made, House of Representatives, 2007; Guide to Sunset Process, 2009, Sunset Advisory Commission, Texas; Guide to procedures, fourth edition, House of Representatives, Australia; Parliament liaison office website, Australia; Fact Sheet, Senate of Canada; Constitution of South Africa, 1996; Independent Panel for assessment of Parliament, South Africa; Rules of Procedure of Rajya Sabha and Lok Sabha; Terms of reference, Law Commission of India; PRS.

1. First report, Modernisation of the House of Commons Committee, 2006.
2. Section 23, General Clauses Act, 1897.
3. Resolution No. 18/1/2011-RE dated March 24, 2011, Ministry of Finance, Government of India.

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