



Engaging with Policy Makers

Ideas on contributing to the law making process

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PRS LEGISLATIVE RESEARCH



Right to Information Act, 2005

The campaign for the right to information was started by a group of workers in a village in Rajasthan when they were not paid by the government for work done during a famine. They formed a citizen group, ***Mazdoor Kisan Shakti Sangathan (MKSS)***. This group was supported by several social activists and the press, and led to the formation of the ***National Campaign for People's Right to Information (NCPRI)*** in 1996.

The NCPRI and Press Council of India formulated an initial draft of a right to information law in 1996. The government introduced the Freedom of Information Bill in 2002.

In August 2004, the NCPRI suggested a set of amendments to the Freedom of Information Act, 2002. The National Advisory Council (NAC) endorsed many of these proposals, and the government introduced the Right to Information Bill in December 2004. The law was enacted in 2005.

The RTI Act is an example of how citizens groups can significantly affect government policy. This Primer explains the process by which a citizen group can participate and become actively involved in the process of lawmaking. A number of cases have been used to demonstrate the various ways in which civil society groups have been able to engage with the legislative process.

Who makes laws?

In India, the lawmaking bodies are Parliament at the central level and Legislative Assemblies and Councils at the state level. Parliament consists of two Houses: the Lok Sabha, or "House of the People," and the Rajya Sabha, or "Council of States."

How is a law made?

The process of enacting a new law can be broadly divided into four steps:

Step 1: The need for a new law, or an amendment to an existing piece of legislation, is identified. This may be done either by the government or by citizen groups who can raise public awareness regarding the need for the law.

Sometimes individual Members of Parliament (MPs) can introduce Bills in Parliament, known as private member Bills, as ways to highlight the need for a law. While such Bills are almost never passed into law, they can provide a framework or a context within which the government can introduce its own legislation on the same issue.

Step 2: The concerned ministry drafts a text of the proposed law, which is called a 'Bill'. The Bill is circulated to other relevant ministries for inputs. Comments from the public on the proposed draft may also be invited. The draft is revised to incorporate such inputs and is then vetted by the Law Ministry. It is then presented to the Cabinet for approval.

Step 3: After the Cabinet approves the Bill, it is introduced in Parliament. Under the Indian political system, Parliament is the central legislative (or law making) body. Every Bill goes through three Readings in both Houses before it becomes an Act.

- During the *First Reading* the Bill is introduced. The introduction of a Bill may be opposed and the matter may be put to a vote in the House. In August 2009, the Law Minister withdrew the motion to introduce the Judges (Disclosure of Assets and Liabilities) Bill as many MPs were opposed to the Bill, on grounds that it violated the Constitution.
- After a Bill has been introduced, the Presiding Officer of the concerned House (Speaker in case of the Lok Sabha, Chairman in case of Rajya Sabha) may refer the Bill to the concerned Departmentally Related Standing Committee for examination. The Standing Committee

considers the broad objectives and the specific clauses of the Bill referred to it and may invite public comments on a Bill.

- On rare occasions, Bills which come under the ambit of a number of different ministries, may be referred to a Joint Committee.
- The Committee then submits its recommendations in the form of a report to Parliament.
- In the *Second Reading (Consideration)*, the Bill is scrutinized thoroughly. Each clause of the Bill is discussed and may be accepted, amended or rejected.
- During the *Third Reading (Passing)*, the House votes on the redrafted Bill.

If the Bill is passed in one House, it is then sent to the other House, where it goes through the second and third readings.

During the second reading, the government, or any MP, may introduce amendments to the Bill, some of which may be based on recommendations of the Standing Committee. However, the government is not bound to accept the Committee's recommendations.

Step 4: After both Houses of Parliament pass a Bill, it is presented to the President for assent. She has the right to seek information and clarification about the Bill, and may return it to Parliament for reconsideration. (This may be done only once. If both Houses pass the Bill again, the President has to assent.)

Step 5: After the President gives assent, the Bill is notified as an Act. Subsequently, the Bill is brought into force and rules and regulations to implement the Act are framed by the concerned ministry, and tabled in Parliament. In some cases, if the provisions in the Bill permit, the ministry may bring the Act into force over a period of time rather than all at once. For instance, various sections of the Food Safety and Standards Act, 2006 were brought into force in three different stages between August, 2006 and August, 2008. A number of sections of the Act have not yet been brought into force as of date.

Is the above process always followed?

This process is almost always followed. However some Bills may not be referred to a Standing Committee. Bills such as the SEZ Bill, 2005 and the National Investigation Agency Bill, 2008 were not sent to a Standing Committee.

How is public participation possible during the process of lawmaking?

Step 1: *The role which can be played by citizen groups before and while the Bill is being drafted.*

The case of the Right to Information Act cited on Page 1 is an example of citizen groups coming forward to participate in legislative the process of lawmaking. Beginning with a movement started by a group of citizens, the law eventually became operational in October 2005.

Step 2: *When the government asks for public feedback on a Bill*

Even before a Bill has been drafted, the relevant ministry might choose to advertise and seek inputs from experts and citizens. This, though, is a rare occurrence.

A New Police Act

The current Police Act dates back to 1861. The government felt the need to update this Act. The Ministry of Home Affairs had invited suggestions from individuals and citizen groups which may be incorporated into a new Bill.



In some cases, the concerned ministry drafts a new legislation and seeks public feedback before sending it for Cabinet approval.

Draft Protection of Women against Sexual Harassment at Workplace Bill, 2007

The Ministry of Women and Child Development had prepared a Bill intended to provide for the protection of women against sexual harassment in the workplace. The ministry had put up a draft of the Bill on its website and had invited comments.

Step 3: Engaging with Standing Committees.

After a Bill has been introduced, it is usually referred to the concerned Standing Committee which invites various stakeholders and experts for their suggestions.

This provides another opportunity for civil society and the public to get involved in legislation. Fifteen witnesses deposed before the Standing Committee on Rural Development while it was preparing the report on the National Rural Employment Guarantee Bill. All Standing Committee meetings are closed door sessions which are not open to the general public or the media. Citizens groups can approach the relevant Committee to ask to be allowed to depose before it.

The Scheduled Tribes (Recognition of Forest Rights) Bill, 2005

The Bill sought to recognise the rights of forest dwellers to land occupied by them. The Bill was referred to a joint committee of Parliament, since it involved issues relevant to a number of ministries such as tribal affairs and environment. The committee received 109 written submissions from organisations and individuals. In addition, 44 witnesses deposed before it.

The Food Safety and Standards Bill, 2005

The Food Safety and Standards Bill, 2005 seeks to consolidate several laws governing the food sector and establish a single reference point for all matters relating to food safety and standards. The Standing Committee heard the views of a number of stakeholders including citizen groups such as VOICE, New Delhi, and Gandhi Peace Foundation, Kottayam.

The Maintenance and Welfare of Parents and Senior Citizens Bill, 2007

The Maintenance and Welfare of Parents and Senior Citizens Bill, 2007 seeks to make it a legal obligation for children and heirs to provide maintenance to senior citizens.

The Standing Committee had received written submissions and oral testimony from several groups as it discussed the Bill between May and July, 2007. Such groups included the All India Senior Citizens Confederation, the Senior Citizens Service Forum and Age Care India, etc. The Standing Committee submitted its report in August 2007. The Bill was finally passed and enacted into law in December, 2007.

The government is not bound to accept the recommendations made by the Standing Committee. In the case of the Food Safety and Standards Act, 2006, the government did not accept any of the Committee's recommendations.

Even after the Standing Committee has finalised its recommendations, there is scope to reach out to Members of Parliament and political parties. There are a number of instances in which political parties – allies in the ruling coalition or the opposition parties – have been able to prevent a Bill from being passed in Parliament or by forcing the government to make amendments to the Bill before being passed.

The Pension Fund Regulatory and Development Authority Bill, 2005

The Pension Fund Regulatory and Development Authority (PFRDA) Bill was introduced in Lok Sabha in March 2005. The Bill proposes a framework for the development and regulation of pension funds in India in order to promote old age income security. The Standing Committee presented its report in July 2005. The Committee was in agreement with most of the provisions of the Bill. However, the Bill was criticized by a number of trade unions and the Left Parties.

Following the opposition to the Bill, the government deferred the discussion and vote on the Bill. Subsequently, the PFRDA Bill lapsed with the dissolution of the 14th Lok Sabha.

Step 4: *After the Bill is passed by both the Houses and goes to the President.*

In some rare cases, the President may ask Parliament to reconsider a Bill.

The Parliament (Prevention of Disqualification) Bill, 2006

Article 102 of the Constitution prohibits MPs from holding any office of profit, except that of a Minister or any office specifically exempted. The Parliament (Prevention of Disqualification) Act, 1959 lists offices which are exempted.

In 2006, several petitions were filed with the Election Commission that a number of MPs were holding offices of profit. The government introduced a Bill in May 2006 exempting a number of posts (including those held by some sitting MPs) from the definition of office of profit. The Bill was passed by both Houses and sent to the President for his assent.

The President returned the Bill, seeking clarification on a number of issues, and asked Parliament to reconsider it. Parliament passed the Bill again without any changes, following which the President gave his assent. However, a Joint Parliamentary Committee was set up to go into the issues relating to the holding of offices of profit by MPs.

Step 5: *After the President of India has assented to a Bill and it is notified as an Act.*

After an Act is passed by Parliament, it can still be challenged in the courts on grounds that it violates the provisions of the Constitution of India.

The AIIMS (Amendment) Act, 2007

In 2007, Parliament passed the AIIMS (Amendment) Act, 2007, which provided for the retirement of the director of AIIMS at the age of 65.

The Act was challenged in the Supreme Court by the then director of AIIMS, P. Venugopal on grounds that the Act was discriminatory and was introduced specifically to superannuate him.

The Supreme Court upheld this petition and struck down the Act. It also ordered the reinstatement of Dr. Venugopal as director of the institution.

Step 6: *When the rules and regulations to the Act are being drafted.*

The government may ask the public for comments and suggestions before framing rules and regulations under the Act.

The Food Safety and Standards Act, 2006

The Food Safety and Standards Authority of India has been set up under the Food Safety and Standards Act, 2006 to regulate safety and hygiene standards for different foods.

The regulator recently called for public comments on guidelines drafted by it. The guidelines were put up by the regulator on its website.



During the process of drafting and the Bill being considered in Parliament, a variety of stakeholders may be involved. The final Act is usually a compromise between competing interests. Despite this, there is every reason for concerned citizens and groups to make every effort possible to engage with the process and ensure that they are able to make their voices heard.

About PRS Legislative Research

PRS Legislative Research is an independent research initiative that aims to strengthen the legislative debate by making it better informed, more transparent and participatory. PRS regularly produces easy-to-understand Legislative Briefs on Bills pending in Parliament, which is sent to all 790 Members of Parliament, 700 journalists and over 1000 NGOs.

PRS aims to increase public engagement on issues of national importance through collaborative activities. PRS has been reaching out to the citizen sector and the media to enable greater interaction with the legislative system. The PRS team frequently provides journalists with analysis related to Parliament and legislation.

The work of PRS is freely available in the public domain. PRS Primers provide valuable insights on various legislative procedures and institutions, identifying points of engagement with each. PRS closely tracks the legislative business of Parliament and the Parliamentary activities of individual MPs.

Activities:

Legislative Brief: Crisp, 4-6 page jargon-free analysis on the implications of upcoming Bills. These Briefs are sent to all MPs, NGOs across the country, journalists and other stakeholders.

Backgrounder: Easy-to-use background research to assist MPs in their preparation for debates on issues of national importance.

Bill Summary: One-page snapshot of the main features of a Bill.

Session Alert: Heads-up on likely legislative business in a forthcoming session of Parliament.

Session Wrap: Synopsis of all the legislative business transacted in a Parliament session.

Public Engagement Series: A forum for interaction between experts and citizens on current legislation.

Journalist Workshops: Workshops for journalists at the state and district level which focus on the information sources available to them, when they research stories on their legislators.

www.prsindia.org

The PRS website is a useful resource for citizens groups looking to engage with the policy process.

Understanding Parliament and the Legislative Process

We produce primers which introduce you to the policy process. How is policy formulated? What are the checks and balances on the process? How does Parliament work? How do critical institutions (such as the CAG or the Planning Commission) function? How does government budgeting work? Most importantly, how can citizens groups engage and participate in each step of this process?

Tracking Legislation

PRS produces short, easy-to-understand analyses of Bills pending in Parliament. These Briefs highlight various key issues related to the Bill. PRS has also produced short summaries of all bills and standing committee reports. Key documents related to each bill, such as government policy notes and Parliamentary Standing Committee reports are also available.

Tracking Parliament

Before each session, we produce alerts on the legislative and other business that Parliament plans to transact. During the session itself, we provide daily updates on the list of business in Parliament. At the end of a session we produce summaries of all the business done as well as a comparison of actual business transacted with what was planned.

Our website also has:

- PRS Vital Stats: Graph-based capsules highlighting key trends and characteristics of Parliament and MPs.
- MP track: Performance of individual MPs.

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