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Understanding the Scope of Public Participation in the Policy Making Process the Transgender Persons (Protection of Rights) Act

SHAURYA MAHAJAN¹

ABSTRACT

This paper analyses the scope of public participation in the Indian law-making process. We use the Pre-legislative Consultation Policy (PLCP) as the vehicle for exploring different spaces to encourage public participation. The case study of the Transgender Persons (Protection of Rights) Act, 2019, has been specifically chosen to explore the extent to which policies like PLCP engage with complex issues like 'identity'. We take a look at the involvement of citizens in the process of policymaking in the country and analyze global best practices on public consultations for policymakers to come up with recommendations for India. Further, based on government data, we also examine the effectiveness of public consultation. The procedure was introduced in 2014, and use our analysis proposes recommendations for strengthening the same.

I. INTRODUCTION

This paper aims at analysing the scope of public participation in the Indian-law making procedures. We use the Pre-legislative Consultation Policy (PLCP) as the vehicle for exploring different spaces to encourage public participation. The case study of the Transgender Persons (Protection of Rights) Act, 2019 has been specially integrated within the paper to explore the extent to which practices like PLCP work and help deal with complex issues like 'identity' which is also demonstrated in the case study itself. We take a look at the involvement of the citizens in the process of policymaking in the country, analyzing global best practices helps us gain an understanding of how the concept of public consultations in policymaking is applied elsewhere and helps us come up with recommendations for India as well. Upon the analysis of pre-existing governmental data records, we were able to discover the effectiveness of the public consultation procedure introduced in 2014 and used our analysis to propose recommendations for the same.

¹ Author is a student at Bhavan Vidyalaya, Panchkula, India.

II. LAW MAKING PROCESS OF THE INDIAN PARLIAMENT AND ITS WORKING

The Indian law-making² takes part in the Parliament, which is the supreme legislative body of the country. It starts with a draft of the legislation, or Bill being introduced, and ends with that Bill, with amendments, being given assent by the President of the country, to make it a law.

The Members of Parliament play a significant role in the law-making process as they are primary legislators. The MPs of the Lok Sabha are elected by the citizens of each state and the MPs of the Rajya Sabha are elected by the MLAs (Members of Legislative Assembly) of each state.

Each Bill that is introduced in Parliament, is read thrice in each House before being submitted to the President for approval. The Bill is simply introduced in the first reading. The second reading consists of two phases; the first stage involves a more in-depth discussion of the bill's core principles and the referral of the bill to a Select or Joint Committee. A clause-by-clause analysis of the Bill is undertaken in even greater detail at the second reading. The third stage, which comes right before the Bill is delivered to the other House of Parliament, is the last consideration of the Bill and its new amendments that have been made after discussion. The process is repeated in the other House for their approval and amendments after the aforementioned three readings in the House of introduction. After the Bill has been accepted and amended in the second House, it can either be sent directly to the President for their approval or, if changes were made, it can be sent back to the House of introduction. The amendments will be reapproved by the House of Introduction before being forwarded to the President. Now, the President has two options: they can pocket veto the bill, which means that they are neither rejecting nor ratifying it, nor they can give assent to it, which is known as a suspensive veto.

Over the entire process of law-making, various stakeholders have contributed to the passing of the Bill. The Houses of Parliament, the President, NGOs, various ministries in the government, the media, the Cabinet, and the Ministry of Parliamentary Affairs, all play a vital role when it comes to the law-making process in India. Apart from contributing to the election of those Ministers and MPs, citizens essentially have no direct influence over how laws are made in their nation. In a representative democracy such as India, public participation in the legislative process is fundamental to democracy. This is because citizens actively participate in the creation of laws in their nation encourage transparency in government and hold the public accountable for the results of the laws they helped create. Public participation and consultation can take

² Rathore, R. (2018) *Law making in parliament - political science study material & notes, Exam Pariksha*. Available at: <https://exampariksha.com/law-making-parliament-political-science-study-material-notes/> (Accessed: December 7, 2022).

place during three stages:

1. Pre-legislative Stage

In the pre-legislative stage, the draft of the Bill is created, after the formulation of a legislative proposal, concentration with the Ministry of Justice, and approval of the Cabinet. After the approval of the Cabinet, the Bill is printed, and then it goes through Parliamentary procedure, as explained above.

2. Legislative Stage

During the legislative stage, DRSCs (Department-Related Standing Committees) are established, and these committees publish notices looking for comments. However, not all Bills are referred to DRCs. These notices are put up for around 15 days for Bills that have already been introduced in the House of Parliament.

3. Post-legislative Stage

In India, laws can't be scrutinized after they're passed, however, there are mechanisms such as the Law Commission that undertake to review the legislation. Laws that require repeals or amendments are identified by the Commission, and then its draft analysis is circulated amongst the public for comments and suggested amendments.³

This is the entire process of law creation in India. Once the Bill is approved by both the Houses of Parliament and the President, it becomes a new law in the country.

III. DEFINING PUBLIC PARTICIPATION

The process by which the interested or affected **public** is involved in planning decision-making is called public participation. Public Participation⁴ can be any process that directly engages the public in decision-making and gives full consideration to public input in making that decision. Public participation is a process, not a single event.

The **Organisation for Economic Co-operation and Development** OECD⁵ recommendation alongside other standard-setting legal instruments of the OECD conveys the belief that:

³ Public Engagement with the Legislative Process - Background Note for the Conference on Effective Legislatures, https://prsindia.org/files/parliament/discussion_papers/1370586595_Public%20Engagement%20with%20the%20Legislative%20Process.pdf.

⁴ *Public Participation Guide: Introduction to Public Participation* (no date) EPA. Environmental Protection Agency. Available at: <https://www.epa.gov/international-cooperation/public-participation-guide-introduction-public-participation> (Accessed: December 7, 2022).

⁵ *India* (no date) OECD. Available at: <https://www.oecd.org/india/> (Accessed: December 7, 2022).

- Public participation is an essential part of an inclusive and transparent policy-making process.
- The enabling legal, policy, and institutional frameworks for participation must be connected and coordinated with other elements of open government, such as ensuring access to information, the integrity of public service, and responsiveness of public sector institutions.
- Public participation is a structured approach to interacting with stakeholders at any moment of the policy cycle about any policy decisions and public service design and delivery.

As succinctly explained⁶ by Dr Subhash C Kashyap, in his book, 'Reviewing the Constitution?', in a chapter on 'Working of Parliament and Need for Reforms': "It is ordinary people who have to be enabled to feel that they are participants in the decision-making and legislative processes and that through Parliament their voice can reach the government and that it counts. Parliament must have access to public opinion and the public must have access to Parliament."

Yet, ostensibly for two reasons, public consultation doesn't figure prominently in the policy-making process – lack of political will and lack of a robust framework for undertaking consultations. And this brings us to the 'how' of public consultations.

IV. PRE-LEGISLATIVE CONSULTATION POLICY (PLCP)

(A) Overview, Implications, and Issues

Pre-legislative Consultation Policy or PLCP, formulated by the Committee of Secretaries, was introduced in the Indian Parliament in 2014 to push ministries to use public feedback and consultations to address stakeholder concerns and build a consensus before they bring a bill to Parliament for enactment. This would facilitate a smoother legislative journey and a stronger piece of legislation.

The Department/Ministry concerned should publish/place in the public domain the draft legislation for comments. The draft must remain in the public domain for a minimum of 30 days⁷.

The Bill is to be vetted by the Ministry of Law and Justice after pre-legislative and inter-

⁶ WORKING OF PARLIAMENT AND NEED FOR REFORMS, <http://legalaffairs.gov.in/sites/default/files/WORKING%20OF%20PARLIAMENT%20AND%20NEED%20FOR%20REFORMS.pdf>

⁷ Decisions taken in the meeting of the Committee of Secretaries (CoS) held on 10th January, 2014, <https://legislative.gov.in/sites/default/files/plcp.pdf>

ministerial consultations.

The summary of the pre-legislative process should also be placed before the Department Related Parliamentary Standing Committee by the Department/Ministry concerned when the proposed legislation is brought to the Parliament and is referred to the Standing Committee.

However, this policy is not binding on the ministries, which is why the majority of Bills do not undergo public consultations.

(B) What gaps does PLCP aim to address?

In the words of CJI NV Ramana, “We see legislations with a lot of gaps, [a] lot of ambiguities in making laws. There is no clarity in [the] laws. We don’t know what [is] the purpose of the laws, which is creating [a] lot of litigation, inconvenience, and loss to the government as well as inconvenience to the public.”⁸

A major aspect of the said gap can be observed in the lack of public participation in the law-making procedure, which often fails to take cognizance of the very people that the law affects. This communication gap may lead to public unrest and inconvenience. To understand through example, the three Farmers’ Acts (2020), specifically the Farmers’ Produce Trade and Commerce (Promotion and Facilitation) Act saw huge nationwide, months-long protests where the issue can be traced back to the lack of communication with the respective concerned communities. The ordinances which were signed by the President did not consult the farmers in the drafting stage. Following this, several rounds of talks had to be initiated between Farmers’ associations and the government but to no avail. These issues could have been avoided had it been for pre-legislative consultations being implemented by the book. The PLCP aims to bridge this very gap by necessitating every Bill to be open to public feedback followed by the same being put in the public domain.

In broader terms, public consultations seek efficiency, transparency, and political accountability.

(C) Some caveats in the PLCP procedure

Despite paragraph 9.2 (a) of chapter 9 of the Manual of Parliamentary Procedure mandating the implementation of PLCP by all ministries and concerning all Bills ⁹, a direct contradiction lies in paragraph 11 of the pre-legislative consultation policy which gives sufficient leeway for the

⁸ *Articles by PRS Team (2022) PRS Legislative Research*. Available at: <https://prsindia.org/articles-by-prs-team/the-faults-in-india%E2%80%99s-law-making-process> (Accessed: December 7, 2022).

⁹ Manual of Parliamentary Procedures in the Government of India, https://mpa.gov.in/sites/default/files/Manual2018_0_0.pdf.

ministry/department to eschew the PLCP on the ground that it is not desirable/feasible to do so. This loophole has resulted in the failure of the implementation of PLCP efficiently, as reflected in the following statistics: 227 of the 301 bills introduced in Parliament have been presented without any prior consultation. Of the 74 placed in the public domain for comment, at least 40 did not adhere to the 30-day deadline, which accounts for only 11% of the total Bills following the public consultation procedure.

Additionally, even the Bills that do follow the procedure are only put in the public domain in English which limits the accessibility and understanding of the Bills since less than 10% of the Indian population speaks English.¹⁰

Another issue with the implementation of the PLCP is the publishing of the Draft Bill on an online forum. In a country where 57% of the population does not have access to the internet, such a logistical issue alienates a significant population of relevant stakeholders and renders the procedure inherently faulty and biased.

Moreover, the legislative department does not maintain any database on PLCP compliance. This is in non-compliance with the policy which stipulates that the Law Ministry is required to ensure that the concerned Department/Ministry complies with the process of pre-legislative consultation.¹¹

V. OVERVIEW: TRANSGENDER PERSONS ACT RULES, 2020

A transgender person¹² is someone whose gender identity or gender expression does not match the sex they were assigned at birth. The 2011 census¹³ estimated that 488,000 Indians identified as transgender. However, their representation in media, official data, public participation, etc. is still not even close to the ideal level of participation¹⁴ due to the stigma attached to being a trans person. The country-wide census conducted in 2011 was the first to introduce a third

¹⁰Khan, F. (2019) *Although widely spoken, around 56% of Indians don't identify Hindi as their mother tongue*, News18. Available at: <https://www.news18.com/news/india/although-widely-spoken-hindi-is-not-the-mother-tongue-of-almost-6-out-of-10-indians-2308927.html> (Accessed: December 7, 2022).

¹¹ Author, B.G. (2021) *Democratising lawmaking: The tale of pre-legislative consultation policy*, MediaNama. Available at: <https://www.medianama.com/2019/08/223-democratising-lawmaking-the-tale-of-pre-legislative-consultation-policy/> (Accessed: December 7, 2022).

¹² *Frequently asked questions about transgender people* (2020) National Center for Transgender Equality. Available at: <https://transequality.org/issues/resources/frequently-asked-questions-about-transgender-people> (Accessed: December 7, 2022).

¹³ Raman, S. (2022) *Denied visibility in official data, transgender Indians can't access benefits, services*, Indiaspend. Available at: <https://www.indiaspend.com/gendercheck/denied-visibility-in-official-data-millions-of-transgender-indians-cant-access-benefits-services-754436> (Accessed: December 7, 2022).

¹⁴ *Frequently asked questions about transgender people* (2020) National Center for Transgender Equality. Available at: <https://transequality.org/issues/resources/frequently-asked-questions-about-transgender-people> (Accessed: December 7, 2022).

option to declare a person's sex titled "other". Still, most official data sources continue to collect data in binary format, excluding transgender and intersex persons. The transgender community is barely represented in the national official documents, for example, identity documents¹⁵, which is why it is so important for us to understand how their participation in the redrafting of The Transgender Persons (protection of rights) act changed the bill for the better.

(A) Introduction:

The NALSA (National Legal Services Authority) judgement passed in 2014 laid the foundation for what was then formulated into the Transgender Persons Act 2019. In 2014, The National Legal Services Authority filed a case to legally recognise persons who fall outside the category of the gender binary, including persons who identify as "third gender". The court upheld the right of all persons to self-identify their gender. Further, it enabled the right to legally identify as "third gender."¹⁶ The following judgement was attempted to be poured into the Transgender Bill 2016 which aimed at decriminalising transgender identity and ending discrimination towards them in various public landscapes. The 2016 bill remained in the parliament and was then later formed into the Transgender Persons Act 2019.

(B) Rules of the act:

The Transgender Persons (protection of rights) Bill was introduced in Lok Sabha on July 19, 2019, by the Minister for Social Justice and Empowerment, Mr Thaawarchand Gehlot, however, the rules were released in 2020. The act was notified on the 25th of September, 2020 after the rules were under public consultation for almost 30 days, between 18 April and 18 May 2020 under the Transgender persons (protection of rights) act of 2019. The rules of the Act aim to operationalise the provisions of the act, they are-

1. To protect the human rights of the community
2. Provide them with social security upon their legal inclusion into society.
3. Prohibiting discrimination against a transgender person by providing them with:
 - The right to residence
 - Education

¹⁵ *Gendering of development data in India: Beyond the binary #1* (no date). Available at: <https://cis-india.org/raw/files/brindaalakshmi-k-gendering-of-development-data-in-india-beyond-the-binary-1> (Accessed: December 7, 2022).

¹⁶ *National Legal Services Authority (NALSA) vs. Union of India - South Asian Translaw Database - third gender* (2020) *South Asian Translaw Database*. Available at: <https://translaw.clpr.org.in/case-law/nalsa-third-gender-identity/> (Accessed: December 7, 2022).

- Employment
- Healthcare and more

(C) The Transgender Persons Act: Case Study

The Transgender community has been long seen as an isolated and marginalised group in Indian society. The Transgender Persons Act Rules, 2020, aimed to address the long-ongoing gender-based discrimination in India which has caused polarisation in the community. Also, paving the future path to reconciliation. For this purpose, the NALSA ruling recognised the principle of ‘self-declaration’, sans any medical or psychological proof, as the only legal gender identification required¹⁷. The judgement was in line with the best international practices. United Nations, for instance, requires the separation of medical and legal processes of gender reassignment for transgender people, including the removal of evaluations from psychologists, physicians, or other experts. The NALSA judgement was seen in an extremely positive light, it was the first time ever in India when a judgement was passed in favour of transgender people, aimed at protecting their identity. This was seen “as a ray of hope” by the transgender community¹⁸.

VI. ANALYSIS AND THE ROLE OF PUBLIC PARTICIPATION

The Rules of the Transgender Persons Act, 2020, attempted to correct the failure of the 2019 act by incorporating perspectives and feedback through the public consultation window. The scope of public participation here actively connected the Transgender community to the mainstream which might have promoted their inclusion by opening up the draft rules for consultation.

However, the Transgender Persons Act, 2019, seemed to overturn the resounding success of the 2014 judgement. According to rule¹⁹, all transgender people have the right to a self-perceived identity. But to be recognised, one will be required to register with a government. Not only that, but the rules explicitly state that a request for a transgender identity card has to be followed up by a report from a psychologist. This suggests for the real intended outcome is counterproductive. The idea of legally recognising the Transgender identity is outweighed by

¹⁷ Jain, S. (2020) *Pride month 2020: Evaluating the transgender persons act, 2019*, ORF. Available at: <https://www.orfonline.org/expert-speak/pride-month-2020-68965/> (Accessed: December 7, 2022).

¹⁸ Panigrahi, R. (2021) *7 years post Nalsa, Trans Community won a battle but lost the war*, *The Quint*. Available at: <https://www.thequint.com/voices/blogs/nalsa-judgment-what-it-means-for-trans-people#read-more> (Accessed: December 7, 2022).

¹⁹ *Draft transgender persons (protection of rights) rules, 2020* (2022) PRS Legislative Research. Available at: <https://prsindia.org/billtrack/draft-transgender-persons-protection-of-rights-rules-2020> (Accessed: December 7, 2022).

the inclusion of a psychologist's report, this encroaches upon the right of a person to self-determine their gender. Therefore, this effort at social inclusion and ending this gender-based discrimination proves to be even more polarising for the community by taking away their basic right to self-perceiving their own identity.

In this scenario, the pre-legislative consultation policy (PLCP) is rendered of not much importance as the target group of people for whom the Act was formulated, does not feel legally understood with their implied liberation coinciding with the social stigma.

In one of our stakeholder interactions with Kanksshi Agarwal- a gender activist, policy researcher, and the founder of the 'Netri' organisation, she emphasized the role of public participation, especially in politics around identity. She mentioned that catering to the marginalised or oppressed groups and their inclusion in society is a major step in tackling these challenges that revolve around identity. This further proves that public participation is crucial in restructuring the narratives around identity and most importantly uplifting marginalised groups.

Therefore, it could be argued that the very structure of this law-making process was inherently weak since PLCP was mandated especially for the pre-legislative drafting of a law. This can be illustrated by the fact that only the draft of the rules was put up for consultation and not the act itself. The act was predetermined by the lawmakers and did not allow room for dialogue with the affected community. The implementation of these rules was dictated by the act and involving the public in the latter half discredits the policy on public participation, since there is no actual feedback on the law itself.

This flaw further caused conflict and enraged the members of the transgender community with transgender activist Grace Banu calling it "a murder of gender justice"²⁰. **This further proves that gathering public feedback is just not enough, policies like these can only come to fruition once perspectives gathered can be fully assimilated and translated into meaningful amends toward reconciliation.**

VII. IDENTITY AS A POLITICAL CHALLENGE

The 2019 act was met with severe backlash from the community and was therefore put up for public feedback amidst the chaos of the pandemic which not only weakened the severity of the challenge but also represents an ineffective use of public consultation policy. Even though the

²⁰ Pathak, S. (2019) *India just passed a trans rights bill. why are trans activists protesting it?*, NPR. NPR. Available at: <https://www.npr.org/sections/goatsandsoda/2019/12/04/784398783/india-just-passed-a-trans-rights-bill-why-are-trans-activists-protesting-it> (Accessed: December 7, 2022).

draft rules were briefly opened up for consultation, **it appears to be a fragile attempt at overcoming structural challenges and dealing with popular pressure that** comes with constituting such an act dealing with a long-subdued identity struggle.

Not only that, **the grasp on identity seems tenuous** as the rules do not acknowledge the socio-cultural reality and diversity among the transgender and intersex communities. For instance, it does not take into account gender transitioning. When asked, Mumbai-based queer activist, Chitra Mathur had to say- “I may identify as a female even before my gender transition, through hormones or surgery, is complete. According to this Act, I am only transgender after the transition is complete. I may not identify as a transgender person at all but as a female or male after my gender transition is complete. The government has not kept in mind the breadth of the community and simply clubbed everyone together under the same umbrella despite our differing needs,”²¹ This showcases that by leading the reform centrally vis-à-vis the massive population of approximately 4.8 million (census 2021) transgender people, **melt their struggles for individual identity down into homogeneity informed by stereotypes rather than public representation.**

It is apparent through the analysis of the Transgender act that the very challenge of gender identity is deeply rooted in individual identity and the various depths of cultural and communal experiences.

Therefore, hinting at a lack of systems in place to accommodate these differences and acknowledge individual liberation through this act. However little, but the scope of public participation through consultation appears futile through the implementation of the Transgender Persons Act Rules, 2020.

VIII. PRACTICE OF PUBLIC PARTICIPATION IN INDIA: RECOMMENDATIONS

As we discussed in the previous paragraph, public representation is important in tackling complex issues like that of identity but the reality of public participation is more complex than that.

Since PLCP was mandated in 2014, the trends continue to be alarming. According to the data²², only 20 out of 186 bills introduced in the Parliament underwent public consultation. Also, the rate at which bills are being referred to the parliamentary committees for consultations has been

²¹ Roy, E. (2020) *Transgender law: Centre publishes draft rules, Activists Say Law Problematic*, *The Indian Express*. Available at: <https://indianexpress.com/article/india/transgender-law-centre-publishes-draft-rules-activists-say-law-problematic/> (Accessed: December 7, 2022).

²² *PLCP track* (2022) *Our Gov.in*. Available at: <https://ourgovdotin.wordpress.com/plcp/> (Accessed: December 7, 2022).

declining from 60 percent in the 14th Lok Sabha to 27 percent in the 16th LS and just 11 percent in the current one.

These falling numbers bring into question the future sustainability of public participation in public policy in India.

This can be understood through the example of the Personal Data Protection Bill (PDP) in 2019. This can be analysed through the lens of public participation. PDP received a major backlash from various stakeholders including major IT giants, corporates, civil societies, and other individual stakeholders. The bill focused on data mirroring and localisation which was accused by people to serve only the government's/data collecting entities' interests rather than that of the citizen²³. The bill on data collection faced a lot of accusations for not inviting public feedback on such a sensitive topic that affects data safety and the internet activity of individuals. The expert committee formed to constitute the bill under the chairmanship of former Justice Srikrishna was called out for not having adequate and credible representation from civil society, citizen's groups, or independent privacy groups²⁴. On top of that, corporate stakeholders who would have to restructure their data flow architectures in order to comply with the requirements were not consulted.²⁵ The bill has gone through many iterations since then and is still pending. The special committee formed to study data privacy in India is still debating multiple concerns within the scope of the bill. From a consultation angle, it can be inferred through this case study that the need for public/ stakeholder participation is very relevant in creating laws that are well-rounded and centric on individual needs.

This evidence can help us explore these existing systems and create new systems in place. Radhika Ganesh, co-convenor of Young People For Politics, mentioned the need for "hyper localised solutions", directly translating to pre-legislative success. Local solutions hint at a transfer of power to local governments, organisations, and individuals. This can in fact benefit the law-making at a central level by overcoming the structural inefficiencies of the parliament. This is followed by recommendations on public participation -:

(Note- These recommendations pertain to the Identity Challenge of the Transgender act and

²³ Shankar, V. (2022) *Is India's Data Protection bill really protecting its people and their data?, Is India's Data Protection Bill really protecting its people and their Data? - The Hindu BusinessLine*. Available at: <https://www.thehindubusinessline.com/business-laws/is-indias-data-protection-bill-really-protecting-its-people-and-their-data/article64927751.ece> (Accessed: December 7, 2022).

²⁴ *Why the growing lack of consultation in law-making is damaging democracy* (2021) *The Indian Express*. Available at: <https://indianexpress.com/article/opinion/why-the-growing-lack-of-consultation-in-law-making-is-damaging-democracy-7352004/> (Accessed: December 7, 2022).

²⁵ *Revamping India's outdated data laws* (no date) *The Economic Times*. Available at: <https://economictimes.indiatimes.com/small-biz/policy-trends/one-of-the-last-few-countries-without-modern-data-protection-law-why-india-needs-an-urgent-revamp/articleshow/91556170.cms?from=mdr> (Accessed: December 7, 2022).

different ways to pursue public participation in that context.)

Recommendations:

(A) For civil societies/organisations

- There is a massive need for organisations and civil societies to prevent the isolation of these communities by creating advocacy around individual stories of hardship and highlighting the struggles of a community to the general public. This can be done by connecting such people to mainstream media houses including social media.
- Establishing meaningful contact with people from marginalised groups is also crucial. This will enable healthy dialogue and trust building along with exploring the intersectionality of experiences for future policymaking. This is important in the first phase of reconciliation. This can be done by making local leaders from the community itself and providing them with the necessary resources and connections to tackle their localised challenges, equipping them with the right organisations, experts and government officials is also important. This can be easier than reaching out individually and can be much more productive as it promotes trust-building and upliftment in the community itself.

(B) For the Government

- There is a need to introduce the members of these communities to educational platforms, to connect them back to society after years of polarization. The community must receive any sort of professional and non-professional help to transform their struggles and deal with the trauma. This will help them navigate the complexities of identity and issues like gender dysphoria.
- Promoting gender education in school could be one of the ways of nudging young people to participate in such issues and build a foundation for ending past struggles.

(C) Both the Government and other organisations

- Proper awareness is necessary to tackle layers of experience within the community, it is crucial people learn to actively take charge of their life and pursue leadership. Employment, leadership, and enrichment opportunities in the public and private sectors should be created for such people.

IX. GLOBAL BEST PRACTICES SURROUNDING PUBLIC CONSULTATIONS

Public consultations are often integral to the legislating framework of democracy; one such

example is South Africa, whose young constitution is also regarded as one of the most progressive.

(A) South Africa:

South Africa pursues public participation more holistically, they invite public participation as an integrated mechanism in their law-making structure itself.

The process of making a law starts with a discussion document called a Green Paper that is drafted in the Ministry or department dealing with a particular issue. This discussion document gives an idea of the general thinking that informs a particular policy. As a subsequent step, the discussion points are published in the government gazette for public feedback. This leads to the development of a more refined discussion document, a White Paper, which is a broad statement of government policy. It is drafted by the relevant department or task team and the relevant parliamentary committees may propose amendments or other proposals. After this, it is sent back to the Ministry for further discussion, input, and final decisions²⁶.

This is an example of an improved law-making system that aims at improving the scope of policymaking through implementing major structural changes. This also works in the favour of South Africa as it attempts to adopt a stable polity by establishing a consistent channel for communication.

Similarly, it can be considered in the case of India, to have systems in place that facilitate consistent dialogue among stakeholders. This can help prevent stirrups from communities, especially among marginalised groups who are isolated from society.

While South Africa has a mandatory public consultation policy, a more flexible example of public consultations can be traced to Australia.

(B) Australia:

While public consultations are not mandatory in Australia, the existing system is robust and efficient, it also levies adequate checks on the law-making procedure.

A distinctive feature in Australia's system is the 'Explanatory Statement' which is to be submitted with Legislative Instruments²⁷. The explanatory statement elaborates on whether or not stakeholders were consulted, why or why not; and in case of consultation - details about the same are to be submitted including the reason for consultation, the date, the method, individual

²⁶ *How a law is made - parliament of South Africa* (no date). Available at: <https://parliament.gov.za/how-law-made> (Accessed: December 7, 2022).

²⁷ *Federal Register of Legislation - Australian Government* (no date) *Glossary*. Available at: <https://www.legislation.gov.au/content/WhatIsIt> (Accessed: December 7, 2022).

details, and recommendations and feedback.

The Legislation Act 2003 also explicitly mentions that these details cannot be warded off with the use of vague and ambiguous statements and need detailed reasonings.²⁸

Australia's framework gives way to some important recommendations in the Indian context as it lies on neither the extreme of drastic structural changes nor the other extreme of a legislative loophole.

(C) A Successful Example From India

When talking about the global best practices, one might also want to study an existing national example as elaborated below:

Kerala's Police Bill introduced in 2011 is one of the successful examples of pre-legislative participation²⁹. The police bill 2011 aims to consolidate and amend the law relating to the establishment, regulation, powers, and duties of the Police Force in the State of Kerala and for matters connected therewith and incidental thereto³⁰. The draft bill was first put up on the Kerala police's website, inviting feedback from the people at large, a lot of early suggestions were incorporated into the draft, and people started lobbying MLAs on the contents of the draft. This bill created a surge of awareness through the combined efforts of the public and the policymakers in Kerala. In the parliament, 790 amendments were suggested to the original draft. These suggestions were evaluated and almost 240 amendments were then made to the original bill. This is a perfect example to showcase how participation can be involved in law-making, eventually enhancing the early scope of the proposition itself³¹.

Many Indian states can learn from this model by using extensive public participation. Through Kerala's Police Bill's success, we can make out that local/regional feedbacks create a less logistical and administrative burden, and can be worked out well since they concern a smaller community on issues like social security which resonate across people. Therefore, laws directly affecting a target community in their challenges to identity, security, health, poverty, etc. need to go through the pre-legislative consultation process with the members of the deemed community.

²⁸ Commonwealth Parliament, C. (2021) *Guideline on consultation, Home – Parliament of Australia*. Commonwealth Parliament; Parliament House, Canberra, ACT, 2600; https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Guidelines/consultation (Accessed: Dec 7, 2022).

²⁹ Singh, R. (2021) *India needs an institutional framework for pre-legislative consultations*, Centre for Law & Policy Research. Available at: <https://clpr.org.in/blog/india-needs-an-institutional-framework-for-pre-legislative-consultations/> (Accessed: December 7, 2022).

³⁰ <https://keralapolice.gov.in/storage/pages/custom/table/table-juypdtUu3picselajUIPVLZ76.pdf>

³¹ *Laws by the people, for the people* (2016) *Return to frontpage*. <https://www.thehindu.com/opinion/op-ed/laws-by-the-people-for-the-people/article5719578.ece> (Accessed: December 7, 2022).

In the case of India, this can be done in ways like initiating multiple public forums and increasing regional representation.

However, integrating it into the nature of law-making itself might not be extremely beneficial for a country like India. Since India has a vast multicultural, multilingual landscape, it will be challenging to adapt public participation so seamlessly at a central level, and be very logistically burdensome and ineffective too. As in this case, the benefits of public participation can be outweighed by the inefficiency and incapability to address pressing issues.

Recommendations

1. Currently, PLCP follows English as the medium of communication. In a country like India, with such linguistic diversity, this seems like systemic alienation. PLCP should be made **available in all official languages** at the national level and further **translated into regional languages** in case the legislation concerns particular states.
2. **Campaigns about public participation** seem essential at a time when the general public is not aware of their right to it and the procedure they may need to follow. A significant majority of common citizens do not know about PLCP. Their understanding of such forums is essential for them to also realize their right to comment on Bill drafts which will help keep the lawmakers accountable.
3. Only 57% of India's population has complete access to the internet. In the current case of PLCP in India, the consultation process is majorly conducted online with little to no information on the same taking place offline, this alienates a vast population, some of whom are significant stakeholders. To resolve this, print media should be used effectively and stakeholders must be given the **required platform** to put forth recommendations irrespective of their access to the internet.
4. In our talk with the founder of Young People For Politics, Radhika Ganesh mentions **'hyper-localized' solutions** as the way forward. In a country as vast as India, the application of a uniform consultation procedure might not be the most viable. To counter this problem, public consultations can instead be mandated or at least, **introduced in practice at the local government levels** to ensure that people have a say in matters of immediate effect to them.
5. The organisation of workshops and digital sessions with young people, concerning the issue of public participation, is a sure way of exponentially affecting the impact as the youth tends to be more social and vocal about these events and their opinions. This process may be highly effective in educational institutions. Moreover, it remains

undisputed that **educating the young population** of India on their rights and duties is imperative to democracy.

6. While the official PLCP document mentions that the draft legislation may *inter alia* be accompanied by a simplified version of the same and its possible implications, ministries tend not to follow it. The general public might not be able to understand the exact technicalities of the draft which is why it becomes essential to their understanding to be provided with a **simplified version of the Bill** to help them assess its implications and effects. Private organisations may also help bridge this gap by stepping in to resolve the same.
7. Based on the case study of Australia's public participation policy, a very interesting proposal in the Indian context is that of an '**explanatory statement**'. While we have noticed that PLCP and public consultations, in general, have not been the focal point of the legislating process in India, explanatory statements might just change that.

What we propose as a recommendation is, differing from the mandating of public consultations, a mandate on explanations. Besides being efficient and logistically viable, it also tackles the question of whether all Bills need to undergo public consultations at all. So, as a part of explanatory statements, the concerned ministries/departments have the authority to either undertake consultations or not, but they are accountable to the Parliament through ES. If the ministry chooses not to consider the consultation process, they need to submit a report justifying the same. On the other hand, if public consultations do take place, they should be transparent concerning the methods, date, individual details, and feedback/recommendations, in addition to how it is then used further in the concerned Bill. Moreover, the ministries/departments must be barred from giving vague and ambiguous responses like 'Relevant stakeholders were consulted' or 'Consultation was undertaken' and only detailed and reasonable explanations must be accepted.

This procedure provides flexibility and efficiency while also demanding accountability.

X. CONCLUSION

The process of Public Participation in Indian law-making is relatively new but it suggests a genuine and evolutionary course of action to internally strengthen the legislative structures.

The structure of responsible sovereignty practiced by representative democracies such as India is deeply intertwined with public opinion, feedback, and representation at large. This statement can be understood through the previously explained case study of the Transgender Persons Act,

2019.

Enabling public participation plays a big role in making sure we have enough voices to represent the diversity and severity of the cause of a nation. Not only does it help in making informed and sustainable laws but also ensures political stability in a region. Public participation is inherently linked to a government's internal legitimacy, especially in a representative democracy model like India. It prevents the concentration of power in one rigid structure and rather helps individuals gain power through directly contributing to the law-making process, hence, in turn, legitimising the government which represents the individuals in the first place.

As we further evaluated in the paper, institutionalising practices like public consultations, as in the case of PLCP, may be a far-fetched idea that can prove to be logistically burdensome and largely ineffective. However, it propagates a bigger idea, i.e., to involve the general public and aware stakeholders across the board in the aspects of legislation about matters that affect them, which reflects the core ideals of a people-centric democracy.
