WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

The opening words of the Preamble of the Constitution of India, *"We, the people of India...”* and the closing words *“…do here by adopt, enact and give to ourselves this constitution",* signifies the democratic principle that power ultimately rests in the hands of the people.

The concept of popular sovereignty is one of the basic structures of the Constitution of India. Hence people have the right to participate in all decisions on all matters. This draft pre-legislative policy draws its mandate from first from the Constitution and seeks to move in the direction of creating institutionalized space for peoples participation in the formulation of major policies and legislation in a systematic manner.

**Draft Paper on Pre Legislative Process August 2012**

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Annexure B: National Law University Delhi: Paper on “Pre – Parliamentary Processes” - An Update, Proactive Disclosure under the Right to Information Act, 2005

Annexure C: Oxford Pro Bono Publico: A Comparative Survey of Procedures for Public Participation in the Lawmaking Process- Report for the National Campaign for People’s Right to Information (NCPRI)

Annexure D: PRS Data on Legislations

Annexure E: DoPT Task Force Report on Operationalising Section 4 of the RTI Act

Annexure F: Existing Legislative Procedure

 **Acknowledgements**

The issue of peoples participation in the formulation of law and policy has been a part of the popular discourse for some time now, but has gained much more attention following the enactment of the Right to Information Act in India.

The realization that public participation in policy and legislation can deliver, was accentuated by the enactment of many Rights based legislation, and the central role given to citizens in the RTI, MGNREGA, Forest Act, and several other legislations. Some of the proverbial fear of ‘public participation’, an inheritance of the colonial system has been whittled down and a process towards an open governance system has begun. For their part activists and their constituencies began to see spaces for debate and to present their point of view. What is urgently needed is a framework for sharing information and recording people’s opinion, often beginning and strengthening the debate for making informed choices.

The Working Group on Transparency, Accountability and Governance, has been mandated from 2011 to work towards formulating a policy and framework for *citizens participation in the* *pre-legislative process* as an important pre-requisite for transparency, accountability, efficiency, and peoples participation in governance. Many people and institutions have contributed to these discussions.

The Working Group has held two consultations with judges, bureaucrats, information commissioners and a cross section of members of civil society. (Annexure A: Minutes of the Meetings). Informal consultations had been held to discuss its importance. These were later followed by formal consultations to discuss and build the architecture of the process. Indians teaching and studying law in universities in Delhi and Oxford offered to help research and prepare background and preparatory papers (Annexures B and C). Many organisations like the Parliamentary Research Service (PRS) helped with particular inputs (Annexure D), and others co-sponsored the discussions, including the Centre for the Study of Developing Societies. The National Law University, Delhi was also asked formally by the NAC to deliberate on this and have drafted a paper on how to locate this process within the Right to Information Act. (Annexure B)

Around the same time, the Department of Personnel and Training (DoPT) constituted a task force for operationalising section 4 of the RTI Act, which also considered the issue of citizens participation in policy formulation. Some of the members of the task force also took part in these discussions. The working group (TA&G) also carefully examined the report (Annexure E) and attempted to find common ground for taking these complementary efforts forward. The Task Force has prepared a very useful report, and while this working group has incorporated only the parts related to transparency and citizens’ participation in the formulation of policy and law, the whole report related to proactive disclosure under section 4 should be operationalized on a priority basis. Following the NAC decision to first locate the pre-legislative transparency and consultative process within the framework of Section 4 of the RTI Act, relevant parts of the DoPT Task Force report have been merged with the working group recommendations.

**Section 1: Basic Principles**

**1.1 Background: The need for a Pre Legislative Consultative Policy**

The need for such a policy of consultation is necessary to evolve from a representative democracy to a participatory, deliberative democracy; particularly for accountability to the people in the formulation of law and policy. However, it is not an attempt to replace the legislative Parliamentary process. There is in fact recognition that both processes have fundamental strengths, and complementary trajectories; where one process cannot replace the other. The pre legislative process therefore aims to democratize the process of law making in the country by strengthening the involvement of the citizen in the process of drafting and enacting legislation, without undermining the role of the executive or the legislature.

It is the prerogative of an elected government to announce policy initiatives as per their mandate. Those who draft bills in Ministries have a responsibility to detail and work out these policy announcements for the government and convert them into appropriate legislation where needed. This then goes through the executive, the cabinet and is introduced as a bill in parliament. (Annexure F: Existing Legislative Procedure) In India, the only opportunity that citizens have to present their views is either through the MPs or if they are called to the Standing Committees. Of the157 bills introduced in the 15th Lok Sabha (July 2009 till Budget 2012), 51 of them have not been referred to the standing committees for consideration. In 2009, only 16% of the total Parliamentary time was spent on legislative business. Further, the time a legislation is pending in parliament varies from a couple of hours to over 800 days, 27% of the total Bills passed in the year by Lok Sabha were discussed for less than 5 minutes and only five Bills passed by the Lok Sabha in 2009 were debated for more than three hours, indicating a capriciousness in what level and opportunity for discussion even members of parliament might have. (Annexure D). There are many instances when citizens have had no opportunity to provide feedback on crucial legislation affecting their lives.

It is therefore necessary to have mandatory processes within the institutional structure which will allow people to scrutinize, respond to and influence, policy and draft legislation before the formal legislative process begins. Strengthening any policy initiative before sending the Bill through the Parliamentary process will naturally strengthen the parliamentary process itself and eventually result in more robust legislation that will also be more effectively implemented because of peoples involvement at every stage.

**1.2 Placing the Pre Legislative Process within the Framework of Section 4 of the RTI Act**

Two consultations have been called by the working group on this issue. Parallel to this process mandated by the NAC, the Department of Personnel and Training (DoPT), Ministry of Personnel, Public Grievances and Pension, Government of India constituted a Task Force to “review provisions regarding suo-moto disclosure given in Section 4 of the Right to Information (RTI) Act, 2005 and to recommend measures for its better implementation and enforcement” (Annexure C: DoPT Report).The taskforce constituted a subgroup to “mandate public consultations and participation in the process preceding key policy decisions and legislations”. Since the NAC took a decision to place the pre-legislative framework within the ambit of Section 4 of the RTI Act, it is important to be able to merge the two complementary processes to the extent possible. This is reflected in the recommendations of this working group put up for consideration on the web site, and after assimilating responses and feedback, to the NAC, before it can be sent to Government as a recommendation of the NAC.

The task force has also recommended that “the Right to Information Act provides a statutory mandate for transparency of all information held by the State, subject to limited and predefined exclusions.” Section 8 of the RTI Act contains exmptions from disclosure. The final draft of the bill sent to the Cabinet is protected as a Cabinet Paper under section 8, but all deliberation on a policy before Cabinet is open to public access.

The report further states that “Section 4 mandates proactive disclosure of information most relevant to the citizen collective, and thus provides the basis for citizen participation. In fact, the Right to Information Act 2005 mandates that every public authority shall, inter alia:

[publish] “*the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof*” – Section 4(1)(b)(vii)

“*publish all relevant facts while formulating important policies or announcing the decisions which affect public*” - Section 4 (1)(c)

“*provide reasons for its administrative or quasi-judicial decisions to affected persons*” – Section 4(1)(d)

It is evident that the government must publish all relevant information, provide platforms for public consultation and provide reasons for its administrative and quasi-judicial decisions. However, it is not clear how this is to be done. Therefore, a policy and framework for consultation needs to be formulated to ensure standardization and institutionalization.”

This has also been echoed by the Recommendation of the National Commission to Review the Working of the Constitution in 2002, which stated that “For a more systematic approach to the planning of legislation, the following steps should be taken:-

(a)    Adequate time for consideration of Bills in committees and on the floor of the Houses as also to subject the drafts to thorough and rigorous examination by experts and laymen alike should be provided.
(b)    All major social and economic legislation should be circulated for public discussion by professional bodies, business organisations, trade unions, academics and other interested persons.”

Most recently the Parliamentary Standing Committee examining the Land Acquisition and Rehabilitation and Resettlement Bill 2011, stated in its report in May 2012

"..the Committee find that there was hardly any time at the disposal of the Government to seriously consider the suggestions received from the stakeholders. The Officers of Department of Land Resources were candid in their admission before the Committee that suggestions from the stakeholders were still being received. The Committee deplore the casual approach of the Government in the matter. Even though the Government took over two years in bringing the Bill again they hardly gave any time to the stakeholders, including Central Ministries and State Governments concerned to submit their views and also to consider the same… It is against this backdrop that the Committee invited suggestions from the general public, industry, farmers, NGO's, experts, Central Ministries, State Governments etc..the Committee would like that these to be seriously examined and considered.. ensure that all the finer points are considered and incorporated in the proposed new legislation.. ***The Committee also recommend that before bringing in any Bill in future, the Government should ensure wider, effective and timely consultations with all relevant and stakeholders so that all related issues are addressed adequately***."

**1.3 The Scope of the Pre Legislative Process: What ‘Affects the Public’**

The scope of the Pre Legislative process will extend to:

* New laws and amendments to laws
* New Rules and amendments to rules
* Ratification of ordinance
* National and State policies

**1.4 Basic Principles of a Pre – Legislative Process**

Given the background and definition, the **pre-legislative process should be based on three main principles:**

**Transparency:** The Right to Information Act, 2005 (RTI) provides a statutory mandate for transparency of all information held by the State subject to limited and predefined exclusions.

**Inclusiveness:** The ideal of democracy mandates processes of universal inclusion either directly or through representation. The pre-legislative process must balance both inclusiveness and practicality for meaningful citizen participation. The defined process must open democratic spaces for increased engagement over a longer time horizon.

**Equity:** Special efforts must be made to solicit and incorporate views of those groups/persons directly affected by decisions and the public at large.

* 1. **Major stages of the pre legislative process:**
1. Proactive Disclosure
2. Consultation
3. Feedback Mechanisms

**Section 2: Guidelines for Proactive Disclosure under RTI**

*In light of the requirement under Section 4(2) of the Right to Information Act the following guidelines for proactive disclosure shall be followed:*

**2.1 General Disclosure**

(1) Every public authority shall *suo motu* publish information as per section 4(1)(c) of the Act as follows:

(a) Any proposed new national and state policy or change in existing national and state policy, including any new legislation, or a change in current legislation, new rules or amendments to rules, or ratification of ordinance or financial allocation, budget, scheme or programme, as an exemplification of policy intent of the government, shall be widely disseminated from the first stage of consideration or intent.

(b) Any decision of a government department which will lead to changes in:

(i) the particulars of its organisation, functions and duties;

(ii) powers and duties of its officers and employees;

(iii) the procedure followed in the decision making process, including channels of supervision and accountability;

(iv) the norms set by it for the discharge of its functions

(v) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;

(vi) the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;

(2) The information referred to in sub-rule (1) (c) shall be published in electronic form on the website of the particular department of the public authority.

(3)The above mentioned disclosure shall be made within 15 days from the date on which the first intent to consider such a decision is recorded on file or a new policy is formulated, whichever is earlier.

*Provided that where the information concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the intended decision or new policy is formulated*.

(4) For the purposes of ensuring that the provisions of sub-rule (1), (2), and (3) are complied with, every public authority shall designate one public information officer.

(5) Every Block in the country shall have one designated Information Facilitation Centre which can be used by the public to access information on the Internet which is required to be published under these Rules. Village Resource Centres, being set up by ISRO or Rajiv Gandhi Sahayta Kendra, if already existing can also be used for the same.

(6) Where any of the information required to be made public under sub-section 1 specifically falls under the exceptions to disclosure under Sections 8 and 9 of the RTI Act, that information shall be severed as laid down in s.10 and the remaining information shall be made public .

(7) No organisation which is obligated to provide information under the Act shall be exempt unless specifically exempted under Section 24 of the Act.

(8) The information to be published under this Rule shall be in simple English/ Hindi, and the language of the State and properly classified as to what it relates to. It shall be the endeavor of the public authority to also disseminate/publish this information in the local language of the area.

**2.2 Specific Disclosure**

(1) Every public authority shall also specifically publish, in addition to the information published under Rule 1,

(a) Any policy formulated, decision taken or any proposed act on part of any authority or the government, specifically affecting any particular group of people, in terms of any benefits being conferred or altered, or rights affected thereto, through:

(i) Notices, pamphlets and posters in every *anganwadi,* primary school, and post office in every village or area consisting of such affected persons printed in the appropriate regional language(s) and English/Hindi;

(ii) Notices, pamphlets and posters on notice boards specifically demarcated for this purpose in case the *anganwadi*, primary school of post office is beyond a radius of five kilometers from the residence of such affected persons in the appropriate regional language(s) and English/Hindi.

(2) The above mentioned disclosure shall be made in the specified form within 15 days from the date on which a decision is taken or such policy is proposed, whichever is earlier.

(3) The public information officer designated under Rule 1(4) shall be responsible for publication of information under this Rule.

(4) If there is an available list of beneficiaries (e.g., NREGA muster rolls, ration list, water and power connections), reasonable effort must be made to inform the beneficiaries of any proposed changes.

**2.3 Complaints**

(1) Any application regarding non-compliance with these rules can be filed by any person with the Public Information Officer, constituted under Section 5 of the Act, of the respective public authority in the form of an application stating that such disclosure has not been validly made.

(2) The public information officer shall within 30 day of the date on which the application is received, proceed to dispose of the application, stating the action taken, or the reasons for rejection of the application.

(3) If the public information officer finds merit in the application, the PIO shall require the officer appointed or designated under rule 1(3) by the public authority to make such disclosure under the specified time period for such disclosure, from the date on which the application was made.

(4) Any person aggrieved by the order of the Public Information Officer under (2) can file a complaint to the Central Information Commissioner or the State Information Commissioner, as the case may be where it shall be treated as a complaint under section 18 of the Right to Information Act.

(5) The Central Information Commissioner or State Information Commissioner shall proceed to decide and dispose off the complaint under sub-rule (4) as per provisions of Section 18 of the RTI Act, and provide the appellant with a written decision.

(6) Complaints filed with the Information Commissions will attract the penalties prescribed u/s 20 of the RTI Act.

**Section 3: Guidelines for Proactive Disclosure, Consultations, and Feedback Mechanism**

**3.1 Proactive Disclosure**

1. It will be the responsibility of the designated person within the Public Authority, to place in the public domain, a Statement of Essential Objectives and Principles, which will serve as the first announcement of a new policy or legislation and/or a change/affect on existing legislation for forty five days, in the public domain, prior to drafting a law or policy.

2. This statement of essential objectives and principles will comprise, at least the following components:

a) A Statement of Reasons justifying the need for the concerned policy decision

b) Mode of proposed intervention adopted by the Public Authority to affect the policy decision i.e. new legislation, amendment to an existing legislation, Administrative Order, Office Memorandum etc

c) Broad Financial Implications of the proposed policy decision. The Public Authority is directed to indicate the estimated change in the financial outlay caused by the desired policy decision

d) Expectation of Impact to be caused by the policy decision on the environment, fundamental rights, and the lives and livelihood of the concerned/affected people.

3. The Public Authority is directed to ensure that the statement of essential objectives and principles are pro-actively shared with the public through the following modes:

a) Internet

b) Radio

c) TV Channels
d) Newspapers

e) Any other relevant mode

4. The intent paper and its contents must be shared through the above modes for a minimum period of 45 days.

5. The Public Authority must constitute portals to receive feedback on the statement of essential objectives and principles published by it through the following modes:

a) Post
b) Internet

**3.2 Consultation**

1. The Public Authority is directed to put up the Draft Legislation/ policy document prepared by it, on the official website for a period of 90 days.

2. The Public Authority is directed to pro-actively share the Draft Legislation and its contents through one or more of the following modes:

a) Website
b) Newspapers

c) Radio

d) Information and Facilitation Centers at the Block Level/Rajeev Gandhi Sewa Kendras

e) Gram Panchayats
f) TV spots

g) Gram Sabha meetings

h) Any other relevant mode

3. The Draft Legislation/Contents of the Draft Legislation must be shared through the above modes for a minimum period of 90 days.

4. It will be the duty of the Public Authority to ensure that the Draft Legislation and the Statement of essential objectives and principles are published in the concerned regional languages, in addition to being available in English and Hindi.

5. The concerned Public Authority is directed to ensure that copies of the Draft Legislation along with the Statement of essential objectives and principles, is made available in all its administrative units or offices at the Central, State, District and Sub District Levels, Municipalities and Panchayats, free of cost.

6. It shall be the duty of the concerned Public Authority to ensure that Draft Legislations pertaining to:

a) Use of Natural Resources
b) Change in the earning capacity of the residents of the area

c) Fundamental Rights as enshrined in Part III of the Constitution
be discussed in the Gram Sabha, through its Block Level officials, not later than 90 days from when the Draft Legislation has been published

7. The concerned Public Authority is directed to ensure that it designates officials in all its administrative units or offices at the Central, State, District and Sub District Levels, Municipalities and Panchayats, who will be responsible for ensuring the pro-active disclosure and facilitation of discussion on the Draft Legislation. The name, designation and contact details of such designated officers must be pro-actively disclosed by the Public Authority as per Section 4, of the RTI Act.

8. To facilitate informed and participatory consultations, the Public Authority is directed to prepare a list of questions pertaining to the Draft Legislation, around which it would like to solicit specific feedback/comments/suggestions on. The Public Authority should place this list of questions in the public domain, along with the Draft Legislation and the Statement of Essential Objectives and Principles for a period of 90 days.

9. Stakeholders: In principle, all citizens of India are stakeholders. However the degree of participation and mandatory dialogue will vary according to the potential impact on those who will be impacted by the legislation. If there is an available list of beneficiaries (e.g., ration list, water and power connections), reasonable effort must be made to inform people so affected of the potential impact and facilitate consultations with the same.

10. All public authorities with extensive public dealing shall put highly visible notices in areas of public dealing announcing intent to change, and the method through which citizens can obtain additional information

11. Public authorities must build capacity for dissemination of information, and take feedback (initially in the form of a template) at decentralized levels.

**3.3 Management of Feedback**

1. It shall be the duty of the concerned designated official at the Block Level to note the feedback received in the Gram Sabha on the discussion on the Statement of Essential Objectives and Principles and the Draft legislation/policy, and be made available to the Head of the Department within 15 days of the Gram Sabha.

2. The concerned Public Authority is directed to ensure that it designates officials in all its administrative units or offices at the Central, State, District and Sub District Levels, Municipalities and Panchayats, who will be responsible for receiving the feedback on the Statement of Essential Objectives and Principles and Draft Legislation/Policy, Amendment to Legislation/Policy and Ordinance submitted by the people.

3. The Public Authority is directed to ensure that the designated official at the Central, State, District and Sub District Levels, Municipalities and Panchayats, maintain a log consisting of:

 a) Name of the Person who has submitted the feedback

b) Date of submission

c) Token Number given to the person who has submitted the feedback

4. The designated officer responsible for receiving feedback at the Panchayat, Municipality, Sub District, District and State Level will be responsible for collating the feedback received by its office and submit it to the concerned official at the Center, within fifteen days of the Statement of Essential Objectives and Principles and Draft Legislation/Policy, last being placed in the public domain.

5. The designated officer responsible for receiving feedback at the Center, will be responsible for:

a) Summarizing the feedback received while placing them in suitable categories/types

b) Produce a reasoned response for each of the category of feedback received

On completion, the same shall be placed in the Department/Ministry official website.

6. The concerned Public Authority is directed to ensure that a copy of the feedback received and response of the concerned Department/Ministry is submitted to the Cabinet with the Draft Legislation/Policy, amendment to legislation/policy and ordinance.

**3.4 Nodal Department to oversee the effective implementation of the desired pre-legislative process**

1. The Department of Personnel and Training (DoPT) is designated to ensure that all Public Authorities comply with the rules and guidelines notified for the effective and efficient implementation of the pre-legislative process.

2. The DoPT will be required to set up a special Cell headed by an officer of not less than the Rank of a Joint Secretary, Designated as a Proactive Disclosure and Public Consultation Officer to oversee this process in each public authority.

3. The Proactive Disclosure and Public Consultation Officer in the DoPT will be responsible for receiving and addressing complaints from the public when the concerned Public Authority has not complied with the rules and guidelines of the pre-legislative process.

To Summarise:

1. Public authority will publish a Statement of Essential Objectives and Principles, on the basis of which it will draft a legislation or policy, in the public domain for 45 days. It will receive feedback on this document.
2. Public authority will publish Draft Policy/Legislation in the public domain for 90 days. It will facilitate consultations and receive feedback on this document.
3. Feedback received must be complied by the designated authority and submitted to the concerned officer at the Centre, upto fifteen days from the last day of the Statements of Essential Objectives and Principles and the Draft Legislation/Policy being placed in the public domain.
4. A copy of the feedback received and response of the concerned Department/Ministry is submitted to the Cabinet with the Draft Legislation/Policy