

Bill No. 337 of 2019

THE PRE-LEGISLATIVE CONSULTATION BILL, 2019

By

SHRIMATI SUPRIYA SULE, M.P.

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BILL

to provide for mandatory pre-legislative consultation mechanisms within each Ministry or Department of the Central Government, establishment of internal teams to co-ordinate such consultations and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

5 **1.** (1) This Act may be called the Pre-Legislative Consultation Act, 2019.

 (2) It shall come into force on such date, as the Central Government may, by notification in the Official Gazette, appoint.

Short title and commencement.

Definitions.	<p>2. In this Act, unless the context otherwise requires,—</p> <p>(a) "Chief Consultation Commissioner" and "Consultation Commissioner" shall mean the Chief Consultation Commissioner and the Consultation Commissioner appointed under sub-section (3) of section 12;</p> <p>(b) "Consultation Commission" means the Consultation Commission constituted under sub-section (1) of section 12;</p> <p>(c) "Consultation Officer" means the Consultation Officer designated under sub-section (1) of section 11;</p> <p>(d) "draft legislation" means a proposed draft of Bill, draft set of rules or regulations that are presently under consideration, and are required to be tabled in, or passed by the Houses of Parliament to have legal effect;</p> <p>(e) "prescribed" means prescribed by rules made under this Act;</p> <p>(f) "public comments" means communication from stakeholders or the general public, either written or online, detailing data, views, arguments and input regarding a draft legislation;</p> <p>(g) "public consultation" means the conducting of a physical meeting between the relevant department or ministry, the identified stakeholder and/or the general public to discuss and receive inputs on the draft legislation; and</p> <p>(h) "stakeholders" means such individuals or group of individuals who are likely to be affected by a draft legislation.</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p>
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CHAPTER II

PUBLISHING OF DRAFT LEGISLATIONS

Publishing of draft legislation.	<p>3. (1) Every Department or Ministry of the Central Government shall proactively publish the draft legislation on its website as to be prominently visible and easily accessible to the general public and in such other manner as may be prescribed.</p> <p>(2) Where such draft legislation affects a specific group of people, it may be documented and disseminated through print or electronic media or in such other manner, as may be considered necessary to give wider publicity so as to reach the affected people.</p>	<p>25</p>
Ministry to provide details of draft legislation.	<p>4. Every Department or Ministry concerned of the Central Government shall publish or place in public domain the draft legislation and related information, including brief justification for such legislation, essential elements of the draft legislation, its broad financial implications and an estimated assessment of the impact of such legislation on environment, fundamental rights, lives and livelihoods of the concerned and affected people.</p>	<p>30</p> <p>35</p>
Time period for draft legislation to be in public domain.	<p>5. The Details as specified under section 4 shall be kept in the public domain in such manner as may be specified by the Department or Ministry concerned for a minimum period of thirty days.</p>	
Exceptions.	<p>6. Notwithstanding anything contained in this Act, there shall be no obligation to publish draft legislation following matters:—</p> <p>(a) internal functioning of any Department or Ministry or its personnel, public property, loans, grants, benefits or contracts; and</p> <p>(b) any military, naval or foreign affairs function of the Central Government.</p>	<p>40</p>

CHAPTER III

PUBLIC COMMENTS AND CONSULTATION

Public comments.	<p>7. (1) Every Department or Ministry of the Central Government shall, in addition to placing any draft legislation in the public domain, provide forums for the relevant</p>	<p>45</p>
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stakeholders and the general public to comment on the draft legislation through submission of written data, views and arguments, with or without opportunity to present the same orally in any manner.

(2) For the purpose of inviting public comments under sub-section (1), the
5 concerned Department or Ministry shall clearly specify,—

(a) the physical address, email address or web link where public comments may be submitted;

(b) form of submission of public comment including format and word limit; and

10 (c) deadline for submission of public comment.

8. Where the concerned Department or Ministry of the Central Government provides the opportunity to the public or the stakeholders to comment on the draft legislation, the Department or Ministry shall clearly and publicly provide notice of offering such comments and where such comments are to be obtained only from a
15 specific number of stakeholders, then such stakeholders shall be served notice in person in such form as may be prescribed.

Public consultation.

(2) the notice under sub-section (1) shall include *inter alia*:—

(a) a statement of the time, place and nature of public comments;

(b) reference to the authority under which the draft legislation is proposed;

20 (c) the terms or substance of the draft legislation and a description of the subjects and issues involved; and

(d) such other details as may be prescribed.

9. The concerned Department of Ministry of the Central Government, shall, after consideration of all relevant matter presented through the public consultation and public comments, publish an output document summarizing the details of stakeholders identified, inputs received and the reasons for accepting and rejecting the suggestions received in such form as may be prescribed.

Publishing of output of public comments and consultation.

10. Notwithstanding anything contained in this Act, if the concerned Department or Ministry is of the view that it is not feasible or desirable to hold public consultations or invite public comments, it shall record its reasons in writing in such
30 form as may be prescribed.

Reasons to be recorded for not having public comments and consultation.

11. (1) Every Department and Ministry of the Central Government shall, within one hundred days of the coming into force of this Act, designate such number of officers as the Consultation Officers as may be necessary, for the fulfillment of such
35 department, or ministry's obligations as set out under this Act.

Designation of Consultation Officers.

(2) The Consultation Officers designated under sub-section (1) of each Department and Ministry shall be responsible for:—

(a) **ensuring the publication of the draft legislation in the manner set out in section 3;**

40 (b) providing the required forum for public comments;

(c) identifying key stakeholders to be consulted;

(d) **coordinating and setting up avenues for public consultations;**

(e) **generating the output document;**

(f) rendering all required assistance to the Consultation Commission; and

45 (g) fulfilling such other responsibilities as may prescribed.

CHAPTER IV

CONSULTATION COMMISSION

Constitution of
Consultation
Commission.

12. (1) the Central Government shall, by notification in the Official Gazette, constitute a body to be known as the Consultation Commission to exercise the powers conferred on, and to perform the functions assigned to it under this Act.

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(2) The Consultation Commission shall consist of—

(a) the Chief Consultation Commissioner; and

(b) such number of Consultation Commissioners, not exceeding ten as may be deemed necessary for carrying out the purposes of this Act.

(3) The Chief Consultation Commissioner and Consultation Commissioner shall be appointed by the President on the recommendation of a Committee consisting of—

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(i) the Prime Minister, who shall be the Chairperson of the Committee;

(ii) the Leader of Opposition in the House of the People or Leader of the single largest party in opposition as the case may be; and

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(iii) a Union Cabinet Minister to be nominated by the Prime Minister.

(4) The general superintendence, direction and management of the affairs of the Consultation Commission shall vest in the Chief Consultation Commissioner who shall be assisted by the Consultation Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the Central Consultation Commission autonomously without being subjected to directions by any other authority under this Act.

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(5) The Chief Consultation Commissioner and Consultation Commissioners shall be persons of eminence in Public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.

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(6) The Chief Consultation Commissioner or any Consultation Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

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(7) The headquarters of the Consultation Commission shall be at New Delhi.

Term of Chief
Consultation
Commissioner
and
Consultation
Commissioner.

13. (1) The Chief Consultation Commissioner shall hold office for a term of five years from the date on which he enters upon his office and shall not be eligible for reappointment:

Provided that no Chief Consultation Commissioner shall hold office as such after he has attained the age of Sixty-five years.

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(2) Every Consultation Commissioner shall hold office for a term of five years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such Consultation Commissioner:

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Provided that every Consultation Commissioner shall, on vacating his office under this sub-section be eligible for appointment as the Chief Consultation Commissioner in the manner specified in sub-section (3) of section 12:

Provided further that where the Consultation Commissioner is appointed as the Chief Consultation Commissioner, his term of office shall not be more than five years in aggregate as the Consultation Commissioner and the Chief Consultation Commissioner.

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(3) The Chief Consultation Commissioner or a Consultation Commissioner may, at any time, by writing under his hand addressed to the President, resign from his office:

Provided that the Chief Consultation Commissioner or a Consultation Commissioner may be removed in the manner specified under section 14.

5 (4) The salaries and allowances payable to and other terms and conditions of service of—

(a) the Chief Consultation Commissioner shall be the same as that of the Chief Information Commissioner;

10 (b) a Consultation Commissioner shall be the same as that of a Information Commissioner.

15 **(5) The Central Government shall provide the Chief Consultation Commissioner and the Consultation Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under this Act, and the salaries and allowances payable to and the terms and conditions of service of the officers and other employees appointed for the purpose of this Act shall be such as may be prescribed.**

20 **14. (1)** Subject to the provisions of sub-section (2), the Chief Consultation Commissioner or any Consultation Commissioner shall be removed from his office only by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the President, has, on inquiry, reported that the Chief Consultation Commissioner or any Consultation Commissioner, as the case may be, ought on such ground be removed.

Removal of
Chief
Consultation
Commissioner
and Consultation
Commissioner.

25 (2) Notwithstanding anything contained in sub-section (1) the President may be order remove from office the Chief Consultation Commissioner or any Consultation Commissioner if the Chief Consultation Commissioner or a Consultation Commissioner, as the case may be,—

(a) is adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of the President, involves moral turpitude; or

30 (c) engages during his term of office in any paid employment outside the duties of his office; or

(d) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body; or

35 (e) has acquired such financial or other interest as is likely to affect prejudicially his functions as the Chief Consultation Commissioner or a Consultation Commissioner.

15. The Consultation Commissioner shall,—

Functions of the
Consultation
Commission.

(a) inspect the conduct of public consultations and invitation of public comments by various Ministries and Departments;

40 (b) prescribe best standards for conducting public consultations;

(c) determine the exceptions wherein the requirements of this Act shall not apply;

(d) penalize Consultation Officers for in-effective functioning under this Act; and

45 (e) undertake such other functions as may be prescribed.

CHAPTER V

MISCELLANEOUS

- Penalty. **16.** (1) Where a Department or Ministry of the Central Government fails to—
- (a) designate officers as Consultation officers under sub-section (1) of section 11; or 5
- (b) contravenes or attempts to contravene or abets contravention of other provisions of this Act or any rules made there under by the Central Government or the Consultation Commission as the case may be;
- such concerned Department or Ministry shall be punishable with a fine which may extend upto fifty thousand rupees. 10
- Central Government to provide funds. **17. The Central Government shall, after due appropriation made by Parliament by law in this behalf, provide requisite funds for carrying out the purposes of this Act from time to time.**
- Power to remove difficulties. **18.** If any difficulty arises in giving effect to the provisions of this Act, the Central Government, may make such order or give such direction, not inconsistent with the provisions of this Act, as appears to it to be necessary or expedient for the removal of any difficulty: 15
- Provided that no order shall be made under this section after the expiry of a period of two years from the commencement of this Act.
- Power to make rules. **19.** (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act. 20
- (2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both the Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule. 25 30

STATEMENT OF OBJECTS AND REASONS

The cornerstone of a deliberative democracy is the participation of the citizens in the process of law-making. Laws, after all, are made for the public good, and the simplest way to understand what that public good is, would be to first take the opinion of the public in this regard. Building consensus through consultation can help to create a legislation is truly by the people, and of the people. A Legislation, so built, can be effective in ensuring greater compliance, given that the legislation has the mandate of the people, who have lent their voice towards the making of the law.

The purpose of introducing a Bill of this nature is to—

(a) promote community participation and inclusion in the dialogue, decision-making, and implementation of solutions to common problems or goals by contributing towards law-making processes.

(b) provide for more transparency regarding lawmaking processes; and

(c) create strong laws that account or multiple perspectives and approaches.

Pre-legislative consultation is not a novel concept, and is being practiced by legislatures and decision making bodies across the governmental and non-governmental sector, advocating for a multi-stakeholder approach towards law making. The Administrative Procedure Act in the United States, for instance, lays down provides for a procedure by way of which the public may participate in rule-making. Several Indian Government Ministries also do conduct consultations, and provide opportunities for public comment on draft legislations, before introducing the same in the Cabinet, and in Parliament. The Ministry of Law and Justice had also released a Pre-Legislative Consultation Policy (PLCP) in 2014, which is to be adhered to by every department or ministry of the Central Government before the submission of any legislative proposal to the Cabinet. The PLCP also requires a similar procedure to be followed in relation to subordinate, or delegated legislations. Like the PLCP, this Bill would be in consonance with the recommendations of the National Advisory Council, the National Commission to Review the Working of the Constitution and the practice followed in other countries. This Bill seeks to provide a degree of legislative backing to the Pre-legislative consultation policy in order to ensure better compliance as well as provide for procedures, mechanisms and penalties in relation to the conducting of consultations.

Hence this Bill.

NEW DELHI;
October 28, 2019

SUPRIYA SULE

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for publishing of draft legislation by every Department or the Ministry of the Central Government. Clause 4 provides for providing details of draft legislation by every Department or Ministry concerned in public domain. Clause 9 provides for publishing of output of public comments and consultation by the Department or Ministry concerned. Clause 11 provides for responsibility of the Consultation Officers regarding ensuring the publication of the draft legislation, coordinating and setting up avenues for public and generating the output document. Clause 12 provides for constitution of the Consultation Commission. It also provide for appointment of a Chief Consultation Commissioner and ten Consultation Commissioners. Clause 17 provides that Central Government shall provide adequate fund for carrying out the purposes of this Act. The Bill, therefore, if enacted, would involve expenditure from the Consolidated Fund of India. It is estimated that a recurring expenditure of about one hundred crore per annum would be availed from the Consolidated Fund of India.

No non-recurring expenditure is likely to be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 19 of the Bill empowers the Central Government to make rules for carrying out the purposes of the Bill. As the rules will relate to matters of detail only, the delegation of legislative power is of a normal character.

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