WWW.IJRPR.COM

International Journal of Research Publication and Reviews

Journal homepage: www.ijrpr.com ISSN 2582-7421

Political Impact in Indian Legislation

Prof. Santosh Subhash Avhad

(MA. SET. Political Science)
K. V. N. Naik College Sinnar Nashik

INTRODUCTION

Political dynamics in India play a crucial role in shaping legislation. The composition of the government, alliances, and public opinion influence policy decisions and the legislative agenda. Major political parties, their ideologies, and power dynamics impact the formulation and passage of laws in the Indian context.

Political dynamics can significantly influence Indian legislation. The composition of the government, the majority party or coalition, and prevailing ideologies all play a role in shaping the legislative agenda. Political priorities, public opinion, and the need for consensus can impact the introduction, amendment, or repeal of laws. Additionally, political considerations may affect the enforcement and implementation of legislation, reflecting the broader socio-political landscape in India.

A Case for Legislative Impact Assessment

Lawmaking in India is fraught with inadequacy of pre-legislative thought, consultation and deliberation, along with insufficient analysis of the impact of the laws. The result, thus, is that there are too many laws and negligible data on their achievements. There is a need for institutionalising a uniform framework of assessing the impact of laws both before and after their enactment.

Our legislatures pass laws that have a direct bearing on our lives. It is essential then that laws are carefully examined. Since all laws are enacted with a stated objective, assessing how the law would achieve the said objective becomes the first step in legislative scrutiny. This requires a study of the desired and intended impacts. In addition to having the desired impact, a law also bears indirect and unintended consequences. For example, on account of excessive pollution, if a law is considered that prohibits the sale and use of firecrackers, the desired impact would be reduced pollution. The indirect impact will include the unemployment of those engaged in the fireworks industry, and the snowball effect on the lives of dependents of those rendered unemployed. It will also have an administrative impact, that is, the cost of enforcing such a law in terms of monetary and human resources (Mohan J 2018).

KEYWORDS: legislation, social justice, government, culture of justification

Good legislative practices ought to include an estimation of all such possible consequences that can be anticipated before enacting a law; and also an assessment as to whether the proposed law is the best way to address the problem at hand. This necessitates study of both the capability of a law to address the problem it is proposed to remedy, and its other foreseeable effects. Currently in India, there is neither a mandatory nor a systematic process to conduct a full assessment of laws.

To inch closer to develop a “culture of justification” in our institutions, we must bring in probity in lawmaking as well. We must include a thorough exercise in impact assessment of all our legislations, including parent and subordinate legislations, and policies as well. This article examines the extent of legislative analysis in India and builds a case for institutionalising a uniform framework of assessing the impact of laws both before and after their enactment.

Desired Impact

Far from analysing the unintended impact, legislations in India often go unscrutinised in their ability to achieve even the intended impact. For example, under the Muslim Women (Protection of Rights on Marriage) Ordinance, 2019, a Muslim husband who pronounces instantaneous and irrevocable divorce upon his wife can be imprisoned for three years. If preservation of marriage is the desired goal, how will sending the husband to prison achieve that? Do we expect him to emerge as an ideal husband after a prison stint where he is scheduled to interact with hardened criminals? Have we measured the impact of this on an already overburdened criminal justice system, let alone the socio-economic upheavals it would bring to already marginalised Muslim women?

State laws are worse off. Consider the cattle slaughter prohibition laws—none take into account views of cattle rearers or farmers. There have been many reports of how stray unproductive cattle freed by their owners have destroyed crops across Uttar Pradesh, Rajasthan, Bihar, Chhattisgarh, and Maharashtra. Farmers themselves or the police have to come up with innovative ways to deal with the after-effects of these laws. Madhya Pradesh has come up with a unique tag with identification data containing the owner's name, so as to track them and penalise them (Venkataramakrishnan 2017). Police stations in the farm belt meanwhile have turned into makeshift cowsheds. The reasoning behind these cattle protection laws has been questioned repetitively, and rightly so. Is it fair to burden the individual cattle rearers with financial responsibility of conservation of unproductive cattle, and in the case of their inability to carry out this imposed "duty," penalise them?

Ancillary Impact

Almost all statutes, including the state enacted ones, rely on the police for their enforcement. The police in India remains in charge of everything, including VIP (officials/persons designated as very important) security, maintenance of law and order, investigation of offences, ensuring free and fair elections, traffic regulation, enforcement of court orders, dealing with noise pollution complaints, tackling encroachment of public spaces, vigilance of cow smuggling and cyber rumour mongering (Balachandran 2017). As per the numerical strength of what largely constitutes the enforcement machinery, on an average 150 policemen are available for over every 1,00,000 people, including the armed police force (MoHA 2017). It is then a gross understatement to say that the enforcement infrastructure, with its structural and institutional shortcomings, is overburdened. It might seem utterly obvious that the legislature should take this into account before imposing new duties of enforcement.

The electorate is concerned and content only with the passing of a substantive law, without any concern for its enforcement. We have over 350 central statutes that stipulate imprisonment for one or the other purpose. According to the latest report on prison statistics, prisons accommodate 4,33,003 prisoners in the space meant for only 3,80,876 prisoners. Does the legislature adequately consider the impact of making new criminal legislation on the prison population in India, which already exceeds 100% (at 113.7%) occupancy rate (MoHA 2016)? Has there been any budgeting for building additional prisons to hold convicts for longer under the new Criminal Law (Amendment) Act, 2018? Rather, parliamentary discussion remained limited to the demand of giving "stringent punishment."

We often agree that a law is good, but it is not being adequately enforced. However, a law that does not account for the reality of its likely enforcement is hardly a good law. The problem lies in law making first, and in its enforcement only later. Further, arbitrary enforcement often makes a law a tool for harassment instead.

Legislative Reality

A bad law may constitute good politics for the ruling political party, and thus, could direct our legislatures. Further, any analysis on a proposed policy or legislation is mostly up to the willingness of the party in power. The triple talaq bill was drafted by the Ministry of Law and Justice as a knee-jerk reaction to the Supreme Court judgment, because it fitted like a jigsaw piece in the electoral strategy of the previous government. There was no consultation on its draft form, or any reference to a legislative committee. No thought was given to the impact of the law on the economic conditions and rights of the dependents likely to be affected by imprisonment.

A careful scrutiny is required of realities of enforcing such a law, that is, increased litigation, prison population, and penal policy. Our laws however, continue to tackle problems with existing models without any evidence of their successes or failures. The designation of special courts to reduce judicial delays, for example, has become a routine way of tackling a more "situationally visible" problem. There is no deliberation on the impact of this on other cases that are not given priority. Without any proportionate increase in judicial resources, our judicial system may then seem as a game of prioritisation.

The minister of social justice and empowerment introduced the Constitution (124th Amendment) Bill, 2019 providing 10% reservation in education and employment for the economically weaker sections of the general category on 8 January 2019. It was passed the same day by the Lok Sabha and by the Rajya Sabha the very next day. By 12 January it had received the assent of the President. There was no prior publication of the bill for consultation, no research to support the bill and no reference to a parliamentary committee. Such is the lack of scrutiny that the Constitution was amended over the course of four days without any evidence in support of the amendment, committee scrutiny, expert consultation, or impact assessment.

At the stage of drafting of the law by any ministry, public and stakeholder consultation is not unheard of in India. Some central ministries put out draft legislations for public and stakeholder comments such as the recent draft Electricity (Amendment) Bill and the draft Cape Town Convention Bill. Some regulators also routinely publish their draft regulations, such as the draft Telecom Commercial Communications Customer Preference Regulation, 2018 *by the Telecom Regulatory Authority of India* (TRAI). However, such consultations are not mandatory, which means that a ministry may table a bill without public consultation. In most cases, this is what happens and drafts of legislations are unavailable until tabled in Parliament. Also, when consultation does occur, there is no uniformity in the procedure. Some drafts are published for one week, while some may be available for comments for beyond three weeks. In addition, it seems that the comments fall into some kind of a void, as no information is provided about whether they get considered at all.

At the tabling stage, both time and expertise are constraints that limit lawmaking. Parliamentary committees are effectively the only existing means against these constraints. Thus, committee scrutiny becomes the most valuable stage of lawmaking. However, it is not mandatory for all bills to be scrutinised by these committees, as the discretion to refer bills lies with the chair of the particular house of Parliament. The 16th Lok Sabha referred only

26% of all bills to parliamentary committees, much less than half from the 14th and 15th Lok Sabhas (PRS 2018). Admittedly, numbers alone do not make a statement on the quality of the deliberation. In the absence of quality-check tools, such as the discourse quality index, we can only rely on quantitative data for analysing the extent of parliamentary scrutiny.

At the post-enactment stage, there is some analysis of legislative impact. It is carried out by bodies like the Law Commission of India, standing committees of Parliament, and bodies created specifically for this purpose like the Financial Sector Legislative Reforms Commission, etc (Khaitan 2011). Again these are limited to only matters that get referred to them for analysis, which may be few and far between.

Institutionalising Assessment

Not having a thorough impact assessment framework for our legislations fails us in many ways. For instance, when concerned institutions pass orders to remedy a problem in good faith, the absence of any evidence of impact fail the well-intended efforts. For example, the Supreme Court directed the designation of special courts to counter cases of cow-related lynching, without any evidence that special courts would help reduce these instances. Also, often the politicians in power misleadingly claim that a new law or amendment will remedy a long-standing problem, without any evidence backing such claims. Drug laws and their amendments, most recently in Himachal Pradesh, are a classic example of this.

We are familiar with the environmental impact assessment (EIA) which is conducted before initiating specific development projects. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 also mandates a social impact analysis (SIA) before acquiring any land for a public purpose. When actions under legislations require an analysis of the impact, should not an even deeper level of analysis take place at the legislation enactment stage? Established procedures of regulatory impact assessment can be a guide in organising our legislative process. We could follow a series of steps encompassing comprehensive pre-legislative thought on the possible alternatives, public and stakeholder consultation, cost–benefit analysis and post-enactment achievement scrutiny of the laws.

Interestingly, in the past, there have been attempts to introduce a formal pre-legislative consultation policy. The broad document constituting this attempt also mentioned that it will be the duty of the ministry drafting the law to take into account its broad financial implications, and an estimated assessment of the impact of such legislation on the environment, fundamental rights, lives and livelihoods of the concerned/affected people, etc (MoLJ 2014). Although commendable, even this effort remained incomplete. It also did not mandate a statement on the estimated impact of the law on the state machinery, on the number of police hours, judicial delays, or increase in prison population, etc. More importantly, it ensured no accountability in case the impact is different from the predicted.

In addition, the provision for broad financial implications ensures no foresight. A financial memorandum annexed with the draft of the bill fulfils this basic requirement. This memorandum is generally a statement of expenditure likely to be charged on the “consolidated fund.” A financial memorandum in itself is inadequate for three reasons—one, it is a very limited analysis of the economic costs of a legislation as it only concerns itself with the expenditure directly incurred and does not take into account indirect expenditure on state machinery or the compliance costs; two, it is carried out by the ministry that drafts the law itself, so in a manner it is not independent, in essence, it is a demand for grant; and three, the basis or process of reaching at the particular figures of expenditure are not publically available.

Other democracies have incorporated impact assessment models that we could experiment with. A select committee of the House of Lords in the parliament of the United Kingdom (UK) examined the legislative process and recommended many levels of pre-legislative scrutiny in 2004. The UK has had legislative impact assessment since 2005 for interventions of a regulatory nature that affects the private sector, civil society organisations, and public services for parent and subordinate legislations. Finland introduced Guidelines on Impact Assessment in Legislative Drafting in 2007 after having fragmented assessment guidelines for many years. The new guidelines specifically carry the assessment of the impact on public administration. This in particular is missing in India. Even the European Union has a very comprehensive impact assessment set up (Meuwese 2008) that we could learn from.

In Conclusion

We have effectively zero evidence-based legislation. If we find ourselves amending the same laws time and again, part of the reason lies in enacting bad laws, to begin with. We have numerous examples of laws that fail to achieve their objective. Therefore, we need to incorporate in the legislative procedure, a framework of legislative impact assessment that would encompass the economic, social, environmental and administrative impact of draft legislation—starting with the problem identification, laying out the policy options, impact assessment, comparing the alternatives in the light of their impact and ending with a scheduled post-enactment appraisal.

Essentially impact assessment not only helps make better laws but also ensures higher public accountability by requiring reasonable justifications for the enactment and failures of laws. This would reduce the misuse of hastily drafted legislation for political gains and make our claims of being a participatory democracy less illusory.

Concerns regarding the internal capacity of the government are valid in this regard. It may limit the conduct of extensive impact analysis and also indicate towards the requirement of building new institutions for this purpose. However, governmental capacities are not augmented in an instant. The aim should be to build these incrementally. The pre-legislative consultation policy could perhaps work as a ground document upon which we could build a structure of impact assessment.

REFERENCE;

Balachandran, (2017): Keeping India Safe: The Dilemma of Internal Security, Noida: HarperCollins.

Khaitan,Tarunabh(2011):"Reforming the Pre-Legislative Process," Economic & Political Weekly, Vol 46, No 25, pp 27–30.

Mandelkern, Dieudonné et al (2001): "Final Report," Mandelkern Group on Better Regulation, 13 November, http://ec.europa.eu/smart-regulation/better_regulation/documents/mandelkern_report.pdf.

Meuwese, Anne C M (2008): Impact Assessment in EU Law Making, Netherlands: Kluwer Law International.

MoHA (2016): "Prison Statistics India 2016," National Crime Records Bureau, Ministry of Home Affairs, Government of India.

— (2017): "Data on Police Organisations," Bureau of Police Research and Development, Ministry of HomeAffairs, India, http://www.bprd.nic.in/WriteReadData/userfiles/file/databook2017.pdf.

MoLJ (2014): "Pre Legislative Consultation Policy," Legislative Department, Ministry of Law and Justice, Government of India, http://legislative.gov.in/documents/pre-legislative-consultation-policy.

Mohan J, Anand (2018): "On the Firecracker Trail in Delhi: From Discovery to Destruction," Indian Express, 6 November, https://indianexpress.com/article/cities/delhi/on-the-firecracker-trail-in-delhi-from-discovery-to-destruction -5435522/.

PRS (2018): "Vital Stats: Parliament Functioning in Monsoon Session 2018," PRS Legislative Research, Institute for Policy Research Studies, New Delhi, https://www.prsindia.org/policy/vital-stats/parliament-monsoon-session-2018.