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Fiscal Policy Institute
Government of Karnataka, Bengaluru



Promoting Policy Formulation at the State Level in India

-K V Raju¹ and A Ravindra¹

-K V Raju

The writer is former Economic Advisor to Chief Minister of Karnataka. He is presently working as Principal Scientist and Assistant Director, ICRISAT Development Center, International Crop Research Institute for the Semi-Arid Tropics, Patancheru, Telangana.

-A Ravindra

The writer is former Chief Secretary (Retd), Government of Karnataka. He is presently working as Chairman, Center for Sustainable Development, Bangalore

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Abstract

The process of policy formulation at the state level is critical to the success of various government programmes and schemes. The wide-ambit and criticality of the state-level development responsibilities is well-established but increasingly, states will have flexibility to use central funds for what they think is important. It is, therefore, imperative that the process of policy formulation at the state level is strengthened. Issues of public policy encompass more than one domain and involve a multiplicity of actors and considerations. Resolution of conflicts and interdepartmental coordination are important in arriving at major policy decisions.

1. Introduction

Now that the Policy Commission has been announced by the Government of India, in place of the earlier Planning Commission, the country's focus is shifting from the planning process to policy formulation. It also indicates that India strongly needs a better policy forming process, due to its multidimensional implications.

A good policy does not necessarily lead to good development, unless it is implemented in its intended spirit. It also demands professional capabilities at the implementation and monitoring levels. While policy formulation happens both at national and state levels, the actual development will occur in most development sectors at the state level to be implemented by the state agencies.

It will be interesting to watch if the action taken at the national level of converting Planning Commission to Policy Commission will become a trend setter at state level to reengineer the State Level Planning Boards to Policy Boards. Indeed, with the advent of stronger and more professional bodies in recent decades outside the government arena, which are able to marshal quick analysis and policy briefs at sectoral and macro levels, the Planning Boards are losing their sheen. Hence, many states are hiring professional agencies (e.g. Price Waterhouse Coopers, Ernst and Young, Deloitte) at a huge cost to prepare sectoral and analytical reports and Vision Documents (for example, Andhra Pradesh, Karnataka).

In this context, it would be useful to understand the process of policy formulation at the state level and its critical dimensions. To a large extent, this is also true at the national level. But the discussion here is focused on the state level scenario.

¹ Views expressed are personal.

2. Constitutional Framework

The Constitution of India provides for a federal structure of states but whether in reality, India is more federal or unitary in character, has been the subject of intense debate. According to the Constitution, India "shall be a Union of States". The constitutional expert Durga Das (1987) opines that the constitutional system of India is basically federal but with striking unitary features. The salient federal and unitary features are summarized below.

Federal features:

- **Dual Government:** There are two governments - the national or federal government and the government of each component state.
- **Distribution of Powers:** There is distribution of powers between the federal government and the states.
- **Supremacy of the Constitution:** Every power - executive, legislative or judicial - is subordinate to and controlled by the Constitution.
- **Authority of Courts:** The courts have the final power to interpret the Constitution and to nullify any action of the federal or state government which violates the provisions of the Constitution.

Unitary features:

- While the division of powers has been specified under the central and state lists, the residuary power has been vested in the Union.
- In carrying out amendments to the Constitution, the role assigned to the states is minor and in some matters, the states need not even be consulted.
- The Union exercises control over the states in various ways like appointment of Governors, certain laws passed by the state legislatures being subject to disallowance by the President and having the power to redraw the boundaries of the states.
- Officers of the All India Services (IAS, IPS, IFS) serve the union and the state governments but are appointed by and can be removed only by the union government.
- In times of emergency, the Union can exercise enormous powers including the power of legislation in respect of subjects coming under the State List. It can bring any state under President's rule if it is satisfied that there is a constitutional breakdown.

To sum up, while the Constitution of India has both federal and unitary features, there is a strong central bias in the distribution of powers.

Policy making in India, whether at central or state level, has to be guided by the above constitutional provisions. The subjects where central and state governments are competent to legislate are specified in List 1 and List 2 respectively in Schedule 7 of the Constitution while subjects where they have concurrent powers are given in List 3. Part 3 of the Constitution dealing with the 'Government of the States' details the powers and functions of the State Executive and the State Legislature.

3. Policy Making Process

Policy making may be defined as "the process by which governments translate their visions into programmes and actions to deliver 'outcomes' - desired changes in the real world" (Cabinet Office, UK, 1999). The ideal way of making a policy is to adopt the rational actor model which expects the government to act like a perfectly rational individual who always chooses the best policy in the interest of the nation. Under this model, the government would have total command over the external environment and the state machinery would faithfully implement the government policy. However, this is hardly the case in the real world. A more accepted concept is that of 'incrementalism' propounded by Lindblom, i.e., the process by which decisions are actually made in government. In practice, not all the characteristics of a problem are analyzed and not all options are explored. An incremental approach is adopted which may yield satisfactory results. According to Herbert Simon, everyone is governed by 'bounded rationality' which implies that none can gather all information and process to perfectly arrive at a rational decision.

Theoretically, policy is laid down by the political authorities, i.e., the legislature and the political arm of the executive comprising of the council of ministers and individual ministers. Laws passed by the legislature (Acts) provide the framework for detailed policy making by the executive. A policy may originate outside the law but cannot contravene any law or the Constitution. As the ministers are assisted by the bureaucracy in performing their functions, the latter plays an important role in the formulation of policy. Often, it is the Secretary to government who initiates a policy

and the final decision is taken by the Minister or the Cabinet. However, several factors and players may be involved directly or indirectly before a certain policy emerges. The policy may be influenced by players or forces inside or outside the government. Interest groups, lobbies or powerful individuals may exert influence or pressure and their views could play a major part in the shaping of policy. Examples of such pressure groups include farmers, industry and trade associations, teachers and certain sections of civil society.

In a democracy, policy making may be said to start prior to elections. During the pre-election phase, the political parties make promises which could get converted to policies during the post-election phase. Indeed, the winning party is obliged to fulfill the promises made in its election manifesto. However, a party in office is subject to several constraints and it may or may not translate all its promises into action. This is particularly so when a single party does not get a majority and a coalition government comes into being. The present government in Jammu and Kashmir is an example of the complexities of coalition politics where two political parties, with very different ideologies, have come together to form the government. Each party is forced to keep some of its major promises on the back burner and stick to a common agenda. Even a party with a clear majority is bound by the constitutional and legal requirements and limitations of funds and rules of expenditure.

4. Policy Making at State Level

The essential features of policy making are broadly the same, both at the central and state levels in India. The legislature makes laws, the executive implements the laws and the judiciary interprets them. Making policy based on laws enacted by the legislature or other considerations of development and welfare is the prerogative of the executive. Within the executive, several actors come into play in formulating a particular policy. In a department, the initiative may come from the Minister or the Secretary. In the Indian context, if the Minister devotes more attention to administrative matters, the burden of policy making falls on the Secretary. The final say, however, rests with the Minister and in some matters with the Cabinet.

The Allocation of Business Rules of each state lay down the powers and responsibilities to be exercised by different authorities at various levels. Each department is responsible for developing its own policy but it cannot always take decisions independently. Rules require a consultative process to be adopted before a final decision is taken. Matters having

financial implications need concurrence of the Finance department and those involving legal issues require opinion of the Law department. Where a major policy is to be formulated, views of various departments having a bearing on the subject would have to be obtained. For instance, while developing the industrial policy of a state, consultation with Finance department is essential if incentives are to be granted to any class of industries, Revenue department where government land is involved for setting up any industry and the Urban Development department in case the proposed policy has a bearing on the master plan of a city. A draft policy is then submitted to the Cabinet in the form of a cabinet note setting out the position of different departments and seeking orders on the points of disagreement, if any. It is for the Cabinet to reconcile different positions and approve the policy with modifications deemed necessary. The Cabinet may constitute a subcommittee to go into the details of the draft policy or a particular issue and then take a decision based on the recommendations of the latter. At times, constitution of a subcommittee becomes the route to delay, defer or avoid decision-making. Similarly, a Minister may set up a committee for fresh light to be thrown on a subject.

Although the subjects within the domain of central and state governments are clearly specified in the Constitution, the central government often tends to formulate policies on state subjects. The National Health Policy and the National Housing Policy are examples of this phenomenon. The Centrally Sponsored Schemes are another way of exercising financial control over the states. Huge amounts are allocated under schemes like MNREGA, JNNURM and Rural Health Mission which indirectly dictate policies on areas under the state domain. The recent policy pronouncement of the Prime Minister on cooperative federalism promises greater autonomy to the states. By accepting the 14th Finance Commission's report and enhancing the state's share of divisible taxes from 32 per cent to 42 per cent, the Government of India has taken a major step towards fiscal decentralization. The states now have greater freedom to design policies with more resources in their kitty.

5. Steps in the Evolution of Policy Making

Step - 1

The seeds for new set of policies and programmes are generally sown by political parties much before the election and the voting date. Each political party would like to profess and argue for a new set of governance and development measures they perceive are necessary, if they are voted to

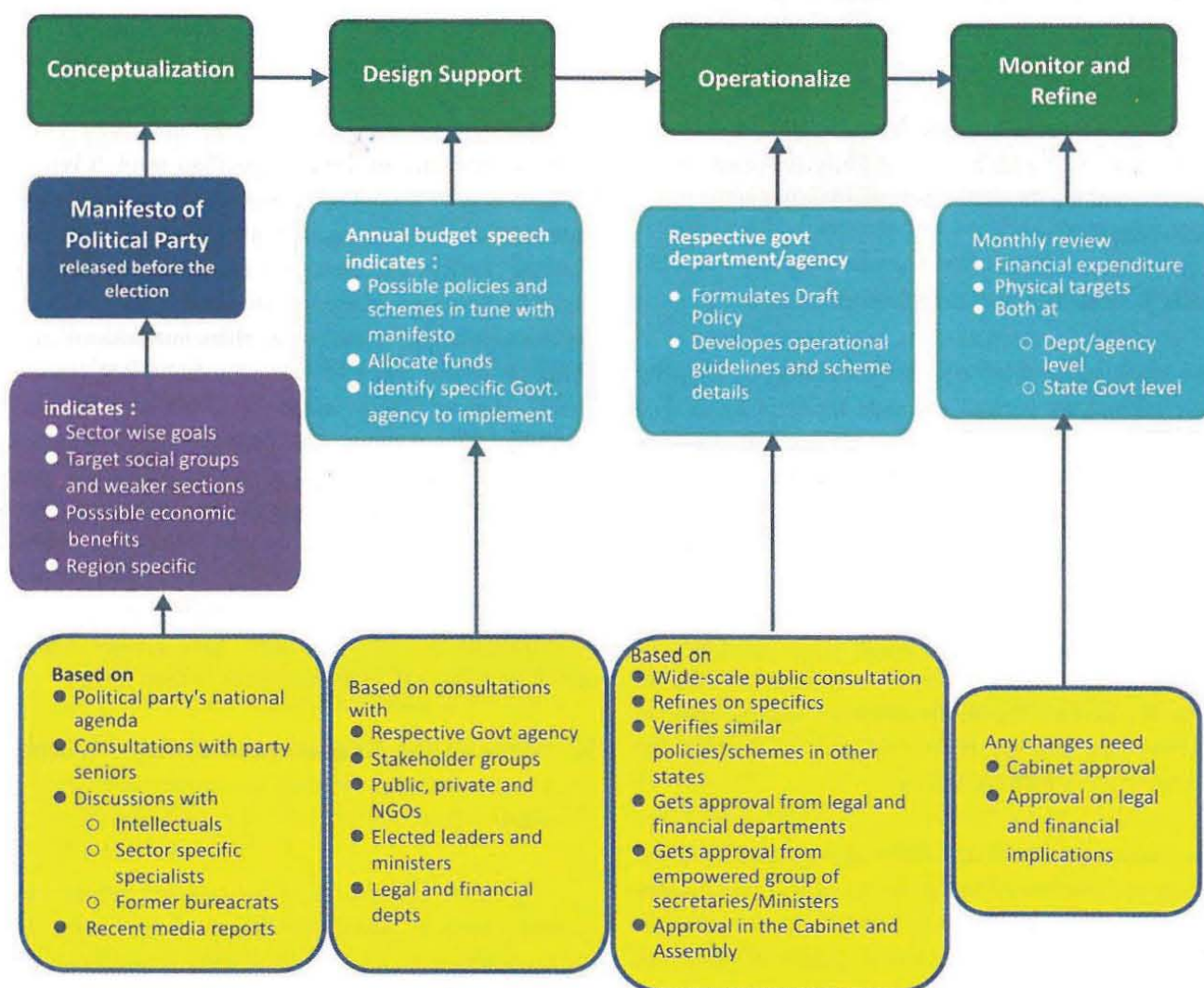
power. In a way, it is a broad set of promises; the political parties are used to promises before the voting date. The process is quite interesting.

To begin with, a political party adopts the broader framework of its national party agenda (unless, a state level party). It includes the wide scale welfare measures for the public to take the country forward both in terms of economic and social development, in tune with the national agenda. The national party prepares the manifesto at the national level with set of promises and in some cases, specific numbers. Similarly, the state-level party lists out both the general welfare measures and substantial portion of the state-level manifesto, which also focuses on state specific issues; for example, it may include regularization of the slums in

the existing entrenched/non-entrenched lands, waiving off agricultural loans, providing free power supply to irrigated pump sets, providing full costs for a girl child education, introducing or enhancing old-age pension schemes and so on.

These schemes are generally focused on specific target groups (for example, girl child, old people, farmers, minorities, landless and so on). Hence, the political parties compete with each other in pronouncing the target group specific promises both in terms of likely coverage and the quantum of assistance. These promises are generally for all sections of people. On the path of converting these promises into targeted policies, a political party considers a few definite steps as shown in Figure 1.

Figure 1. Targeted policy formulation process at state level



Some key features of this process are:

- a) The steps are in tune with the national level party manifesto.
- b) Take care of the site specific social groups and weaker sections.
- c) Both the national-level and state-level political parties constitute a group or a cell consisting of party seniors, party sympathizing intellectuals, etc for regular interactions and distilling the specific points.
- d) Consultation process with the social group representatives, trade unions, former leaders, resident welfare associations, various trade unions and industrial and trade organizations. They also get formal memorandum/request by these organizations/groups to include the requests in the party manifesto. If the party wins and forms a government, the trade organizations/groups would like to ensure that their agenda translates into actual policy/programme.

Step - 2

Assuming that a particular political party is voted to power and forms the government (either on its own majority or with other political parties), the political party/parties would like to pursue their promises made in the manifesto. Generally, these political parties will embark on their path of governance and to get a hold on their voters, they would try to fulfill (or formally announce) their promises in the first 100 days; further, they will try to conceptualize and incorporate their promises made in the manifesto into the existing process. A critical opportunity they get in the process is to convert their promises into schemes or special projects, in the earliest annual budget. This will be their first public document to set their roadmap for the rest of the year. In this annual budget speech, the Chief Minister and the Finance Minister in consultation with the respective government departments, stakeholder groups, their elected colleagues and the ministers initiate a series of consultations to discuss sector-wise/department-wise new policies. After being voted to power, each political party would like to show its fire power. Hence, they would like to energize themselves by translating most of the promises made in the manifesto into actual policies and introduce these policies /schemes in the very first annual budget.

In majority of the cases at the state level, the new party in power ensures that, at least 50 per cent of their promises made in the manifesto are introduced partially/fully into its first year of annual budget. This is considered as a winning stroke and the political party also announces that it has already achieved 60 per cent of the promises made in the manifesto. This is true with all political parties, as the authors of this paper reviewed the manifestos and annual budgets of the first year (of the new government formation), in case of Karnataka (for the last 20 years), Tamil Nadu (last 10 years), Maharashtra (10 years), Andhra Pradesh (new state, one year old by June 2015) and Telangana (new state, one year old by June 2015).

Step - 3

Once the announcements are formally introduced as part of the annual budget speech, the Chief Minister along with the party president and its executive committee would like to ensure that their ministers who head the line departments (e.g. agriculture, horticulture, industry, education, women and children, social welfare) implement them with zeal. This is accomplished through the following:

- a. The line department develops a full-fledged draft policy/scheme with all the intended beneficiaries' details with geographical spread and the coverage month-wise.
- b. Also, the line department under the leadership of the concerned minister develops guidelines to help the administrative staff both at the state and district levels.
- c. In the whole process, the government departments ensure that they follow the rules, framework and get through the Empowered Committee of the department and then approval of the Cabinet and if required, also approval of the State Assembly (both Lower House and Upper House). If the Upper House rejects owing to weakness in the proposed Bill or Scheme or due to lack of majority of the state, the ruling party issues this through an ordinance with the approval from the state governor. Later, in the next six months, the ruling party ensures its approval in the Upper House.

Step - 4

Once the policy/scheme gets operationalized, the ministry and the line department need to ensure that there is monthly review of financial expenditure and that the physical targets are met both at the state level and at the district/region

level. Since this is part of the ruling framework, it becomes part of the regular process of the government bureaucracy to monitor on a monthly basis and to review its constraints, if any, and list out the inadequacies. The state-level head of the department conducts a reviews with all Directors, Commissioners, Secretaries and Principal Secretaries to list out inadequacies in the design of the policy/programme and to identify the constraints in operationalizing it, in which case, the concerned departments will clarify and provide the course correction options.

6. SWOT Analysis

Overall, these steps of the process have their own advantages and inadequacies. The SWOT analysis (see Figure 2) of this process indicates that both internal and external factors influence this process. On one hand, good

policy making process and its effective functional design and execution needs a stable government for fixed term (e.g. Gujarat, Chhattisgarh, Madhya Pradesh). On the other hand, in spite of good policies and good intentions, owing to poor execution, the intentions may remain only on paper (e.g. Uttar Pradesh, West Bengal).

In the end, any ruling party in power always keeps the next elections in sight and continues (particularly in the last one or two years of its term) to focus on the kind of new policies and programmes that may bring them back to power and garner more voter attention. It is here that high level of subsidies, e.g. almost free electricity supply to irrigation pump sets, low priced food grains (rice and wheat), higher level of old-age pensions, farm loan waiver or defer payments are introduced with revised or new set of policies.

Figure 2. SWOT Analysis of policy formulation process at a state level



7. Policy Environment

What ought to be a particular policy and what finally emerges as a policy are not necessarily the same. Apart from the ideology of the party and the ideas of the bureaucracy, the policy environment, i.e., external factors and external players, plays a significant role in influencing the policy. Interest groups or lobbies constitute an important part of the policy environment. Such groups may be private interest groups or public interest groups. The former may represent specific interests of a particular industry or business or profession and seek benefits such as tax exemptions, concessions or subsidies. On the other hand, the latter, mainly civil society groups are expected to represent the interests of the public in general, like an environmental cause or of a community such as the tribals. The media has also emerged as a powerful force in influencing decisions of the government.

In the educational domain, for instance, in determining the policy for technical education, the policy ought to aim at creating an environment that promotes excellence and at the same time provide opportunities for students from different strata of society to acquire technical qualifications, reconciling quality and equity. There has always been a tussle between the state governments and the private professional colleges in determining the number of seats and the fee structure, including the capitation fee, by whatever name it is called. In Karnataka, the first state where engineering and medical colleges were established in the private sector, the state government brought a law to regulate their functioning, viz, the Karnataka Professional Institutions (Regulations of Admissions & Determination of Fee) Act, 2006. However, the government has been unable to implement the law on account of pressures from various quarters. Another key player in this field is the apex regulatory authority, the All India Council of Technical Education (AICTE) in case of engineering colleges and the Medical Council of India (MCI) in case of medical colleges. Unfortunately, some of the actions of these authorities responsible for regulating standards in professional courses, have been suspect in terms of their integrity and they have been accused of colluding with private managements in compromising standards.

The ongoing controversy over the language policy for primary education in Karnataka is another example of how external factors influence policy making. The policy aims at making the mother tongue the medium of instruction at the primary level compulsory. The players involved are the state government, private schools (wanting to impart education in English medium), the parents and the judiciary. It is

interesting to observe that the state government continues to insist on mother tongue as medium much against the norms of the schools and the wishes of the people (parents) and the verdict of the court. The interest group advocating the cause of the mother tongue, supposedly in public interest is the pro-Kannada litterateurs whom the government does not wish to alienate. Consequently, a large number of English medium schools continue to run without recognition, making a mockery of the law and the government.

Examples can be multiplied of how the government is subject to pressure or influence from a variety of sources. The agricultural sector continues to enjoy subsidies both from central and state governments as no political party wants to be branded anti-farmer. It is common knowledge that the central subsidy for fertilizers and the state subsidy for power have caused more harm to the economy than bestowing benefits to deserving farmers. The fact is that policy cannot be disassociated from politics and public policy cannot be separated from electoral politics. In normal circumstances, good economics or good governance is not necessarily good politics. Policies may change for the better under extreme economic compulsions as in 1991 or when prolonged bad governance jettisons a government out of power as during the elections of 2014 both at the centre and in some states.

8. Role of the Judiciary

The judiciary has been playing an important role in policy making, mainly for two reasons. First, the increasing number of legislations which need to be interpreted whenever they come up before the courts and secondly, the emergence of a more assertive judiciary, at times encroaching on the territory of the executive. The courts have also tended to intervene in the actual implementation of policies and issue directions to the executive, especially whenever the state acts arbitrarily without due regard to the law and the Constitution. The consequences of judicial intervention have been both positive and negative. In the case of mining in Karnataka, mining of iron ore was stopped in three mining districts of the state by the High Court of Karnataka following a writ petition in 2010 alleging illegal mining. When the matter went to the Supreme Court, the Forest Bench of the court directed the Centrally Empowered Committee (CEC) to delve into cases of illegal mining and report it. All mining activity in these districts came to a standstill creating an adverse impact on the economy and employment in the area. Such a development may be explained in two ways. Restraining illegal activity can be viewed positively; applying a brake on an important segment of economic activity with jobs of a large number of

workers at stake may be seen as a negative outcome. After a period of two years, when the Supreme Court allowed partial resumption of mining, it also ordered setting up of a company to undertake environment restoration work in mining ravaged districts of the state.

Where does one draw the line when it comes to the question of powers of judicial review of executive action? This issue is not peculiar to India and is common to all democratic polities where "the courts have tended to move from the byways to the highways of policy making" (Horowitz, 1977). Does issuing fiat to the government amount to assuming executive powers of the state? The Supreme Court itself has articulated the power it enjoys as well as the limits to its own power. In the 2G case, while cancelling 22 licenses, it observed: "Under the Constitution, judicial review is one of its basic features and in exercise of such judicial review, the court can certainly scrutinize and even strike down policy decisions of the executive when such decisions are unconstitutional." In another case, it noted: "Judges must know their limits and must not try to run the government.... There is broad separation of powers under the Constitution and each organ of the state i.e. the legislature, the executive and the judiciary must have respect for the others and not encroach into each other's domain" (Supreme Court:2007, Indian Law Journal). As matters stand, the courts themselves seem to be the arbiters of judicial policy making.

9. Conclusion

Issues of public policy encompass more than one domain and involve a multiplicity of actors and considerations. Resolution of conflicts and interdepartmental coordination are important in arriving at major policy decisions. In this process, the role of the Chief Secretary at the bureaucratic level and the Chief Minister at the political level becomes crucial. Ideal policy making is rare in democratic politics. Ideas and interests compete and compromises are inevitable. As Woodrow Wilson (2006) observed: "Do we not in all dealings in public life adjust views, compound differences and placate antagonisms?"

In recent decades, it has become increasingly clear that the states are equipped to deliver. There is a need to strengthen policy making at the state level and make states to compete for business and reforms, as the era of Centre-driven reforms is rapidly coming to a close. Increasingly, in tune with the 14th Finance Commission's recommendations, states will have flexibility to use central funds for what they think is important. To a large extent, the states need to implement crucial development and welfare policies and programmes. Whether it is food security, or land legislation, a manufacturing revival or even toilets for girls in schools, the states can make or mar programmes.

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