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Shaping Policies in India: Towards a New Theoretical Framework

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Shaping Policies in India: Towards a New Theoretical Framework

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Abstract

In India, the literature on policy process focuses on the formal legislative process, mostly ignoring the role of actors such as civil society, media, and the judiciary. This paper documents the journey of nine landmark laws that were passed or introduced between 1999 and 2014 from ideation to enactment with the goal of detecting patterns, if any, among these evolutions. Based on the observables from the cases, a Legislative Strategy Framework is proposed. This framework attempts to explain the time line for a law based on the interplay of strategies used by the legislative and the non-legislative actors.

Key words: India, legislative, policy process, civil society, strategy

I.   Introduction

On December 16, 2012, a young woman was brutally raped, tortured and left bleeding on a deserted road in New Delhi. On April 2, 2013, exactly 3 months and 17 days later, India enacted a law that revised the penalty for sexual offense, broadened the scope of sex crimes and brought about other far-reaching changes in its criminal codes. In those 3 months and 17 days, the country had experienced widespread protests, had constituted a committee headed by a retired judge to

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go into the matter, drafted legislation, introduced the bill, passed it through both houses of parliament and got it signed into a law.

Contrast this with the case of the Lokpal and Lokayuktas Act, where a bill was first introduced in Parliament in 1968. But it took the concerted effort of a group of activists to get a law enacted finally in 2013, more than half a century later.

The contrasting journeys of these laws beg a few questions. How do the gears of policy-making work in India? Why do time-lines for evolution of laws differ? Are there commonalities among the journey of different laws? Who influences the law makers? What strategies are used to influence them? How do policy makers engage with the non-state actors? Can a framework be developed to predict the outcome and time-line of the law-making process?

In this paper[3], we investigate these broad questions analysing the evolutionary journeys of nine landmark laws passed or introduced in the Parliament between 1999-2014. The nine laws are: Competition Act, 2002; Criminal Laws (Amendment) Act, 2013; Lokpal and Lokayuktas Act, 2013; Right to Information Act, 2005; Right to Education Act, 2009; National Food Security Act, 2013; Microfinance Institutions (Development and Regulation) Bill, 2012; Child Labour (Prohibition and Regulation) Amendment Bill, 2012; and Land Acquisition and Rehabilitation and Resettlement Act, 2013.

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[3]. **Note:** This paper summarises the findings of the research done by the authors. The full study is going to be published as a book in October 2017 by Oxford University Press. See Chakrabarti, Rajesh and Sanyal, Kaushiki (2017), *Shaping Policy in India: Alliance, Advocacy and Activism,* Oxford University Press, New Delhi, India. (https://global.oup.com/academic/product/shaping-policy-in-india-9780199475537?cc=in&lang=en&).

India has one of the highest number of laws on its statute books – there are over 3,000 laws at the central level only – some of them dating back to the British era. Each of these laws carries a larger back story about the competition, coalition building, lobbying and compromises carried out by various actors, government and non-government, to give shape to the final piece of legislation enacted by Parliament. Somewhat surprisingly, however, there is scant documentation of how these laws evolved from being an idea to their enactment.

The purpose of this study is to understand the interplay of forces that shape policy making in India, the strategies of engagement that have been successful (or not) and the representativeness of India's policy making apparatus.

Given that context specificity is an important factor in analysing policy processes, the search for a universal formula or framework to make predictions about the policy process is somewhat futile. However, the proposed Legislative Strategy Framework, based on the in-depth study of the journeys of nine landmark laws, does throw light on certain key aspects of policy making process in India such as the role of civil society actors in agenda setting, the importance of "windows of opportunity" to push through a policy change and the diversity of stakeholders involved in the policy process, including the judiciary, media and bodies such as the Comptroller and Auditor General of India, the National Advisory Council and the erstwhile Planning Commission (now NITI Aayog).

II. Methodology

This study attempts to understand the external influences on the policy process in India, not through general theories and broad processes of policy change, but by surveying and narrating

the journey of a range of laws and bills. The choice of laws and bills were limited to the last 15 years (1999-2014) in order to balance political change – both the United Progressive Alliance (UPA) and National Democratic Alliance (NDA) periods are covered – and availability of documentations, key informants and stakeholders. Each of the laws and bills chosen are what can be called landmark (defined for our purpose to mean those which were attempting to bring about significant change in the existing policy landscape) in their specific field, covering social, political, economic and environmental issues. These laws do not cover all landmark laws passed in the 15 years but are a representative sample. Also, the emphasis will be on analyzing the policy process, the politics of the process and not necessarily how these policies impact society.

This study borrows tools and concepts used in management, political science and sociology. The case study method, which is ideal for a holistic, in-depth investigation of a particular event, has been used to study the journey of the selected laws and bills. Each case study follows a similar structure and address questions about key players, strategies, use of media and the role of political institutions. For each case study, a large cross-section of stakeholders and key informants were interviewed in addition to secondary research about the facts and figures. This empirically-informed evidence about advocacy in India is useful to explore how India's policy making process fits in with different theoretical frameworks used to understand policy making in other countries. The sources of information for the case studies include published material – books, articles and newspaper reports – and, far more importantly, first person narratives of several of the key players and ring-side observers.

A word of caution is probably appropriate here. The present study has no pretensions of saying the final word on the policy process in India and only attempts a preliminary theorization. The nine very unique journeys will not, unfortunately, unanimously point to an obvious list of factors, agents and methods that predictably determine law-making. A fully fleshed out theory – if it is at all possible to create one such – will require much more research and data points.

### III.	Structure of the paper

The rest of the paper is structured in three parts. The first part reviews the existing literature on social movements and the policy making process; the second part lays out the existing theories of policy process, summarises the key findings of the larger study conducted by the authors and see the "fit" with these existing theories; and the third part attempts to sketch a broad outline of the proposed 'legislative strategy framework' that the "reality check" of the nine case studies suggest as may be a theoretical structure more suited to law-making in India.

### IV.	A Dipstick Literature Survey

World-wide, the connection between social movements and policy changes is under-theorised and under-studied (Meyer, Jenness, Ingram 2005). Social movement scholars tend to treat the policy process as a black box within the state, which movements may occasionally shake into action. On the other hand, policy scholars treat movements as undifferentiated and unitary actors who may or may not respond to disruption.

In India, too, much of the policy studies research focused on the policy objectives and the impact assessment aspect and less on the policy making process. Studies on policy making process have

been largely confined to examining the role of the state apparatus involved in policy making –

legislature, executive, political parties, bureaucracy and to some extent, the judiciary – broadly

in the area of public administration (Mathur and Bjorkman 1994; Mathur and Jayal 1997; Kapur

and Mehta 2007; Sapru 2012; Mathur 2013; Rai and Johnson 2014). The study of the role of non-

state actors in bringing about societal change or reforms - campaigns, social movements and

protest movements - have remained the subject of study in disciplines such as social history,

sociology and anthropology rather than public policy.

The literature on social movements is comparatively larger than studies on the policy process but

followed similar trajectories as scholars outside the country (Shah 2004; Kohli 2001). It includes

chronicles of major movements, theoretical frameworks to study social movements and the role

of civil society in reforming the state. There have been a few scholarly works on the methods

used to influence policy making by business groups but much fewer work has been done on other

strategies such as advocacy, petitioning, PILs and media management (Kochanek 1974; Khan

1997; Joshi 1999; Vyasulu and Vyasulu 2000; Jha 2004). Another set of literature is related to the

use of non-institutionalised legal or extra-legal collective political action which strive to influence

civil and political society for social and political change.

Since this study is taking a relatively new approach to studying the process of policy making, most

of the literature from both the disciplines of social movement and policy studies, do not directly

address the questions that this book intends to cover. We provide a select review of books that

have relevance to our interest areas – how do policies come about; who are the external forces

that influence the policy process and what strategies/tactics for influencing policy change do they use – drawing from the literature in India and in some Western democracies.

A. How do policies come about?

The importance of the public policy process has become more relevant with the emergence of modern society, technological innovation and burgeoning international transactions (Sabatier 2011). With increased political participation by larger portions of the public, government decisions assumed greater importance and legitimacy (Fischer, Miller, Sidney 2007). Political scientists, in the first half of the 20th century, analysed government in the context of its three major branches – the executive, the legislature and the judiciary (Wilson 1908). They started expanding their perspectives of government activities from the second half onwards. Some examined the informal relationship between interest group and government (Truman 1951), other focused on the interdependence between government activities and diverse forces such as political parties or public opinion (Key 1965). More recent studies contend that government is not designed to be merely responsive nor is it neutral or benign (Huntington 1996; Zakaria 2008).

Until the mid-1980s, the most influential framework for understanding the policy process — particularly among American scholars — was the "stages heuristic model." As developed by Lasswell (1956), Jones (1970), Anderson (1975), and Brewer and deLeon (1983), it divided the policy process into a series of stages—usually agenda setting, policy formulation and legitimation, implementation, and evaluation—and discussed some of the factors affecting the process in each stage. This theory also stimulated research within the specific stages – most notably agenda-setting (Schattschneider 1960, Edelman 1964, Cohen, March, and Olsen 1972, Cobb, Ross and Ross 1976, Cobb and Elder 1978, Kingdon 1984 & 1995, Nelson 1984,

Baumgartner and Jones 1993) and policy implementation. Originally developed by Lippman, the literature on agenda setting is quite vast in the US context, with scholars McCombs and Shaw (1972) developing it into a concrete concept of agenda setting.

In the late 1980s, this model was widely criticized (Nakamura 1987; Sabatier 1991; Sabatier and Jenkins-Smith 1993). Since then a number of new theoretical frameworks of policy process have been developed. These include the following:

- Institutional rational choice model (Moe 1984, Ostrom 1986 & 1990, Shepsle 1989; Ostrom, Schroeder and Wynne 1993, Dowding 1995, and Scharpf 1997).

- Multiple streams framework (Kingdon 1984, Zahariadis 1992, 1995, 2003).

- Advocacy-coalition framework (Sabatier and Jenkins-Smith 1988, 1993).

- Punctuated equilibrium theory (Baumgartener and Jones 1993).

The Indian Context

Public policy is still a nascent field in India (and most of the developing world) and the studies on the policy making process are limited to a number of case studies which interpret specific policy processes and connect them to specific theoretical frameworks (Harriss 1988, Kohli 1987, Manor 1993, Echeverri-Gent 1993, Varshney 1995, Mooij 1999, Currie 2000). Mathur (2009, 2013) and Ayyar (2013) have taken a step towards understanding India's policy making process by identifying the key actors and their roles in the process.

B. What are the external forces influencing the policy process?

The study of interest and pressure groups understood variously as issue networks, policy subsystems, and advocacy coalitions is a sub-field of studies in policy network (Berry 1997, Baumgarten and Leech 1998, Godwin, Ainsworth, Godwin 2012). Knoke, Laumann and Pappi's study of "organizational state" approach argues that "modern state–society relationships have increasingly become blurred, merging into a melange of inter-organizational influences and power relations.". Advocacy groups are more broad-based and profess to speak "in the public interest", unlike interest groups which focus on narrow sectoral interest (Moran, Rein, Goodin 2006).

As research in social movements picked up pace, it focused on the "policy payoff" of social protest mobilization. Gamson's (1975) seminal work on outcomes of social movements identified 53 "challenging groups" that attempted to exercise influence in the U.S. between 1800 and 1945, then assessed their political fate ie whether each group had received formal recognition as a legitimate actor in American politics and whether it had won some portion of its claims on policy.

In the public policy literature, the place of social movements in the policy process is recognized but occupies a relatively small place. Social movements were recognized as exogenous political factors that could affect some part of the policy process, most notably agenda setting (Baumgartner and Jones 1993; Kingdon 1984) or the construction of social problems, "target constituencies," and policy alternatives (Schneider and Ingram 1997). Rarely, however, did the analysis go beyond this or address the mechanisms by which movements affect the policy process (Meyer, Jenness, Ingram 2005). Thus, scholars of policy or social movement generally never went beyond acknowledging the importance of the other phenomenon in their subject of interest.

The Indian Context

The economic reforms introduced in India post 1991 changed the country decisively not only on the economic front but socially and politically. This change was also reflected in policy making, which was largely confined to the state apparatus till then. Increasingly, it started moving from a largely government activity to being a more inclusive, complex and dynamic process involving not only the state apparatus but civil society organizations, NGOs, corporates, 24X7 news channels, think tanks and multilateral agencies such as the UN, World Bank and IMF. What were previously indisputably roles of government were now increasingly seen as more common, generic, societal problems, which could be resolved not only by political institutions but also by other actors.

Few scholars have taken notice of this phenomenon and tried to analyse it, the most prominent among them being Mathur and Bjorkman (2009) and Mathur (2013). These scholars studied the different sources of policy making such as the Parliament, bureaucracy, planning commission, research institutes, and in more recent years, NGOs. They concluded that in recent times there is greater acceptability of policy advice from diverse sources. Vaidyanatha R.V. Ayyar (2009) complements the policy analysis literature with 'political' analysis that assesses the policy environment and provides a guide on how to proceed in order to further one's policy preference. This book uses principles of management to throw light on how ministers and civil servants can become better policy navigators by gaining a better understanding of the policy process and politics.

Other scholars and practitioners have attempted to understand the policy making process – not always in full length books but through articles and book chapters. Key among them are Kochanek (1996), Sinha (2005), Yadav (2008), Baru (2009), Madan (2009) and Saha (2015). These studies have analysed the influence of industry bodies on trade policy and the strategies used by them. Others have documented the journey of a particular law or the role of a particular group in bringing about policy change (Bose, 2010; Grant, 2012; Ramesh and Khan, 2015; Seth, 2014).

What are the strategies/tactics used for influencing policy change?

Some of the collective action strategies are discussed in Goldstone 1980; Kitschelt 1986; Gamson 1990; Chong 1992; McAdam 1996; Cress and Snow 2000; Meyer et al 2005and McCarthy and Zald 2001. Some challengers may choose strategies as matters of moral commitment or taste (Jasper 1997) or identity (Polletta 2002). Others may employ strategies that match the political situation of the time of their founding, but find themselves unable to change with political circumstances (Valocchi 1990; Cohn 1993).

The Indian Context

In India, Grover (1997) and Deo and Duncan Mcduie-Ra (2011) identified some of the tools and strategies used by social activists and organizations to achieve positive social change while Savyasaachi and Kumar (2013) examined the role of internet in grassroots mobilizations and that of civil society networks in the making of participatory democracy.

The existing literature, as shown in the preceding paragraphs, do not include any scholarly work that seeks to systematically study the policy process in India in a holistic manner. This study aims to fill this gap to some extent.

V.   Activism and Law Making: Extant Theories, Their Applicability and New Findings

In this section, we discuss the major theories of policy making and compare our nine case studies and link them with one or more of the theories, where applicable. This gives us some insight about the applicability of these theories to the Indian context.

A. Key Theories of Policy-Making Process

The existing theories of the policy making process have been developed based on evidence from Western democracies, primarily the U.S. This is a limitation we need to keep in mind while extrapolating them to Indian circumstances. It may also be worth emphasizing that theories can only be constructed through a large collection of data points and observations. Few studies have been attempted to (a) link these theories with the realities of developing countries, particularly India (Mooij and de Vos 2003); (b) develop new theories to explain the policy making process in India.

Does this mean that these theories are totally inadequate in explaining the policy making process in India? Conclusively testing the relevance of these theories to Indian policy making process requires a far larger research project than what has been attempted here. Rather, we have taken a first step towards analyzing the policy process by gathering evidence about time-line, actors, influences, triggers, strategies and role of the media for each of the laws. The case studies act as indicators of how certain policies came about and to what extent they follow the pattern of any of the processes hypothesized in the existing theories. Reality, particularly in the political sphere, rarely provides a "yes-no" verdict on broad theories but appears to follow the theorized pattern to varying degrees. Our approach here has largely been to lay down the theories as well as

chronicle the journeys of the laws for the reader to arrive at his own conclusion about how well the individual journeys align with the theories and whether the extant theories cover the critical aspects of these real-life journeys.

Key theories of the law-making process

Before we discuss the key theories, a few caveats are in order. It is fair to say that there is no general theoretical framework tying together the study of public policy. Theory-building in public policy have used two basic approaches to make sense of the complex world of public policy. The first is to simplify and make sense of that complexity *ad hoc* by simply using what works in a given situation (Sabatier 1999, 5). The second is through a scientific approach of cause and effects. Specifically, it means that underlying the highly complex world of public policy making is a set of causal relationships, much like the assumptions about utility maximization and laws of demand and supply in economics. If these causal relationships can be identified, presumably they can be linked together logically to build overarching explanations of how the field of public policy works. Thus far, generalizability has proved to be elusive given the diffuse nature of public policy.

The ad-hoc approach works better since it allows scholars to borrow from a full range of conceptual frameworks developed across the social sciences. It also lets scholars focus on the reality, as messy as it may be, rather than trying to shoe-horn conceptual frameworks on to the reality.

The theories themselves fall into three broad categories. The first might be called the *rational approach* (Laswell 1963), the second is the *incremental approach* (Lindblom 1959) and the third

is the *pluralist or participatory approach*, a compromise model that combines the two. A brief overview of these frameworks is provided below.

Stages Heuristic Model: A number of scholars developed the 'stages' model of the policy process, key among them being Laswell 1956, Easton 1965, Jones 1970, Mack 1971, Rose 1973, Jenkins 1978, Hogwood and Gunn 1984, and Dror 1989. The Stages Model as developed by Laswell and later Jones follows a linear pattern of decision making, reflecting a rationalist perspective. First a problem must come to the attention of the government. Policymakers then develop solutions to the problem, ultimately choosing the one they perceive as most appropriate. They then evaluate whether it served the purpose or not. Both attempted to model the process of policymaking.

Critiques however point out that this was at best a descriptive classification of the policy process, not a theory of public policy since a hypothesis cannot be tested against this model.

Bounded rationality and incrementalism: The basic tenet of bounded rationality, as propounded by Herbert Simon (1947, 1955), is that humans intended to be rational but are prevented from behaving in a fully rational manner by cognitive limitations. Memory, attention span, information processing capabilities all limit a person's ability to achieve complete rationality. Instead, people choose among options that are not completely optimal but are good enough for the situation. Simon labeled such behaviour as 'satisficing' which allowed policy makers to make decisions that may not be perfect but can solve the issue at hand. Charles Lindblom (1959) applied these concepts to the study of public policy making and found that policymakers "muddle through" by making small changes from existing policies. According to him, the process is best characterized by small, incremental adjustments where policy decisions are a process of "successive limited

comparisons," with each decision building off previous decisions. This model became known as "incrementalism."

Institutional Rational Choice: Some scholars argue that rules or institutions can be employed to improve the rationality of individual decision making, thereby improving the quality of policy making. Labeled Institutional Rational Choice, this approach to policy making was advanced by Elinor Ostrom (1998, 2007). Out of the IRC perspective, Ostrom and others developed an entire research agenda, known as "institutional analysis and development (IAD)" which used institutionalist theory to solve common-pool resource dilemmas (Ostrom 2011).

Subsystems Theory: In what came to be known as the Subsystems Theory, the policy process was seen as increasingly decentralized, fragmented and characterized by informal and shifting alliances. Freeman (1965) and Heclo (1977, 1978) developed this conceptual framework to explain agenda setting and policy change. Heclo's research coined two terms "issue networks" and "technopols."

Advocacy coalition framework (ACF): ACF was developed to address the questions raised by the Subsystems Theory. Its main proponent was Paul Sabatier (1988) who following Heclo, argued that advocacy coalitions represented groups with shared beliefs (technical expertise and ideology) that coordinated activity following the emergence of a particular policy on the government agenda. These coalitions consisted of legislators, interest groups, public agencies, policy researchers, journalists and other subnational actors. New coalitions are likely when there is severe dissatisfaction with existing policies. ACF is constrained by its lack of standardized methodology and some of the practical issues of data collection but remains a useful framework

for understanding the policy process and generating empirically testable hypothesis (Weible, Sabatier and McQueen 2009, 127).

Punctuated Equilibrium Framework: Baumgartner and Jones (1993, 2009) drew attention to the fact that the pace of change is not always constant or linear, in fact, there were periods of rapid and significant change, which they termed "punctuated equilibria." Significant change to a policy subsystem is likely to result in radical shift in policy and a new point of equilibrium. But what punctuates the equilibria? According to Baumgartner and Jones, the driving force for change is the issue definition – the changes to the tone of an issue can lead to changes in the attention it receives.

Multiple-streams Approach: John Kingdon (1995) also argued that the best way to understand the policy process is by examining policy image. He stated that the agenda setting process and alternative selection were best understood through the "garbage can model" as theorized by Cohen, March and Olsen (1972). In this model, ideas were jumbled together and both problems and solutions were dumped in the proverbial policymaking "garbage can." Policy entrepreneurs then learnt to select alternatives by trial and error. Kingdon revised the garbage can model to include three separate streams: problems, policies and politics. Each stream contributed to understanding why government paid attention to some problems and not to others. This came to be known as the multiple-streams approach.

B. Synopsis of the Case Studies and Key Findings

We analyzed the information gathered regarding the journey of the specified nine laws and matched the existing theories to the processes followed in the evolution of the selected laws (see

Table 1.3). As the Table shows, there is wide variation in the policy processes in India. Thus, the theories that seem to fit a case study vary. There are also cases where one theory does not explain the whole journey. Multiple theories seem applicable and in some cases none seem to be applicable. However, there are common patterns that are observable in cases.

Some Key Observations

Policy succession: Almost none of the laws and bills were written on a tabula rasa or blank slate (except perhaps microfinance); each came into being as a replacement of an existing law or policy. Thus, most policy making is actually policy succession, as observed by Hogwood and Peters (1982). The reasons for this are many. In India, the government is present in virtually every policy space so that there are relatively few completely new activities in which the government could become involved. Existing laws may themselves create conditions requiring amendments. Thus, the problem to be tackled may not be a result of no policy but problems resulting from existing policy or law.

Need for key champions: Each of these laws or bills proposed significant innovation in the system. Therefore, each had to overcome certain initial hurdles of (a) legitimacy, (b) lack of champions within the bureaucracy or the political elites, and (c) lack of information on its effectiveness. A consensus about the need for policy change had to be built from ground up before there was acceptance at the political level requiring significant amount of advocacy by civil society organizations. Thus, each of the laws and bills had significant involvement of civil society organizations and key champions within the ruling parties.

Timeline: The speed with which the policy process works can be an indicator of efficiency of the system as well as quality of the law. If policy change comes about through incremental steps, some serious lasting mistakes may be avoided. However, it may also mean that the system is not efficient enough to deal with a perceived problem in a time bound manner. As Table 1.4 indicates, the government has been responsive in some cases, especially where an external event has provided a trigger for change such as the Lokpal and Lokayuktas Act (although the pace slowed once the momentum of the India Against Corruption movement died down) and the Criminal Laws (Amendment) Act.

Table 1.4: Timelines of the Selected Laws and Bills

Act/Bill	Pre-legislative	Legislative
Competition Act	11 years	1.4 years
RTI Act	15 years	5 months
RTE Act	16 years	1 year – CA Act
		8 months – RTE Act
Child Labour Bill	25 years	Not passed. Introduction to Standing Committee Report: 1 year
Microfinance Bill	14 years	Not passed. Introduction to Standing Committee Report: 1.9 year
Food Security Act	21 years	1.9 years
Lokpal Act	3 years	2.4 years
Land Acquisition Act	17 years	2 years
Criminal Laws Act	3 months	1 month

The enactment of the RTI Act is the only exception since there was no triggering event. However, the Common Minimum Programme of UPA in 2004 promised that the Right to Information Act will be made more progressive participatory and meaningful. Also, the formation of the National

Advisory Council (NAC), a quasi-government group headed by Mrs Sonia Gandhi, gave the impetus to the process since stalwarts of the RTI movement, Aruna Roy and Jean Dreze were members of the NAC. In other cases, the legislative process, on average, takes about a year and a half to complete but the pre-legislative process can vary widely. Bills such as the Food Security Act and the Land Acquisition Act, which were also pushed by the NAC members got passed in roughly the same timelines.

Multiplicity of external actors: Each of the laws have multiple actors - institutional and non-institutional - influencing the policy process. Institutional actors include the legislators, the political parties, the judiciary, the CAG, the NAC, the Planning Commission (now NITI Aayog), the Cabinet, Group of Ministers, Law Commission, Standing Committees, independent regulatory bodies, the bureaucracy and politicians. Non-institutional actors include advocacy groups, NGOs, policy entrepreneurs multilateral agencies (World Bank, IMF, UN agencies), business lobbies (FICCI, CII, ASSOCHAM), interest groups, media, think tanks and research institutes. The goals of non-institutional actors generally include changing policy, gaining access to the policy process and changing social values. As the cases demonstrate, gaining access to the policy process requires different tactics but the system is open and porous enough to allow diverse sets of actors to gain legitimacy. For example, there were entirely different groups of non-state actors who advocated for the RTI Act as opposed to the microfinance or the child labour bill.

Among the institutional actors, the judiciary, the Comptroller and Auditor General of India (CAG) and the National Advisory Council (NAC)[1] have played an innovative role in the policy process. The judiciary through Public Interest Litigation (PILs), the CAG, by publicizing its findings in the

2G spectrum and other cases created an atmosphere ripe for anti-corruption movement and the NAC by virtue of the importance given to it by Mrs Sonia Gandhi, leader of the Congress Party.

Reactive process: Clearly, India's policy process is reactive rather than pro-active. Most of the time, the pace of the policy process got accelerated or was triggered by an external incident. The impetus for the campaigns for the RTE Act and the Food Security Act came through judicial orders.

Proximity to the capital: In terms of geographical spread, Delhi and Rajasthan seem to be the hotbed of activity in the decade and a half under study. It may be premature to make any definitive pronouncements given that the sample size is small but it is possible that proximity to Delhi is a factor for successful activism in Rajasthan.

Innovative strategies: Strategies used by non-institutional actors to influence the policy process varied between legal and illegal tactics. Legal tactics included petitions and consultations while illegal ones included strikes, marches, sit-ins and public hearings, which were however mostly peaceful. In fact, the tactics used by the India Against Corruption movement stand out as extremely effective. The use of Gandhian symbols (through the persona of Anna Hazare) and methods (fasting) combined with relentless media coverage at a time when big ticket corruption cases were being reported in alarming frequency ignited the mainly middle class public to join the protests in large numbers. The effective use of PILs was a great innovation that allowed activists to take the judicial route to get their agendas heard. Formation of networks, alliances and coalitions with many groups working in similar areas in different parts of the country became a common strategy too.

Active media: The media and in recent years social media have played very active role in the agenda-setting process in India. Newspaper articles and more importantly, the television debates help form public opinions in the country. The extensive spread of mobile phones and the popularity of social media platforms such as Facebook, Twitter and Youtube have helped people network and communicate at an unprecedented level. It has increased the level of transparency in the country but also has some negative fall-outs.

The most common framework that seems to fit India's policy process is a combination of punctuated equilibrium theory, multiple streams theory and the advocacy coalition framework – the Lokpal Act, the Criminal Laws (Amendment) Act, the RTI Act, the Land Acquisition Act, the Child Labour Bill and the Food Security Act. The incremental theory also works in some of the cases such as the Competition Act, 2002 and the first phase of the RTE Act. However, the Microfinance Bill does not fit well with any of these theories since the advocacy for the Bill has been muted and confined to a relatively small group. The Andhra Pradesh Ordinance, on the other hand, was a case of regulation by the bureaucracy to address a perceived problem. While there were media reports of farmer suicides due to coercive loan recovery practices, there were no groups actively demanding a law to govern the MFIs in Andhra Pradesh.

What can we conclude from this about India's policy process? First, the relevance of these theories to India's bare-knuckle political arena with its pushes and pulls, bargains and quid pro quos is somewhat shaky. Decisions in the political arena are influenced far more by the perception of a situation than by any rational concept of objective reality. One actor in the decisional drama may view a programme as essential for the national interest while another actor may be equally certain that it is nothing more than an example of petty bureaucrats wasting the

taxpayers' money. Add to this mix, personal egos, party dynamics and corruption. It becomes apparent how difficult it is not only to theorise but for any existing theory to be completely relevant to the realities of policy making.

Second, most of the time change happens slowly. The pace can sometimes be accelerated due to an unpremeditated incident but by and large pace of policy change is slow.

Third, the multitude of actors campaigning for a variety of causes point to the representative character of activism.

Fifth, activism in India has been by and large non-violent and peaceful (barring some cases).

Sixth, the activism that preceded the enactment of many of these laws were predominantly campaigns, which have more specific goals and a concentrated period of activity. However, some of these campaigns were part of a larger movement such as the women's movement or the environment movement in India.

Table 1.3: A Comparison of the Nine Policy Movement Case Studies along Multiple Parameters

Cases	Time-line		Key Actors	Influences/Triggers	Strategies	Geographical spread	Role of media		Probable Theoretical Framework
	Pre-legislative	**Legislative**					**Print/Television**	**Social Media**	
Competition Act, 2002	1990-2001	Aug 6 2001: 2001 Bill introduced; Aug 2002: Standing Committee Report; Dec 2002: 2001 Bill passed; 2007 and 2009: Act amended twice.	Raghavan Committee, CUTS, Amarchand Mangaldas, Finance Minister Shri Yashwant Sinha, Vinod Dhall	India's liberalisation of the economy in 1991; WTO; Chakravarthy Committee; Supreme Court	Lobbying, advocacy	Delhi, Jaipur	Use of print media.	Not used.	Incremental model of policy making. The push came from the bureaucracy mostly, with some inputs from civil society.
Right to Information Act, 2005	First phase: 1975-1990; Second phase: 1990-2002; Third phase: 2003-2010	July 2000: Introduction of FOI Bill; July 2001: Standing Committee Report; Dec 2002: Passing of Bill by both Houses of Parliament; Dec 2004: Introduction of RTI Bill; Standing Committee Report; May 2005: Bill passed by both Houses of Parliament	MKSS, NCPRI, CHRI, Parivartan, Consumer Education and Research Council, Bhrashtachar Virodhi Andolan; National Advisory Council	Corruption at local levels on government sponsored drought relief work in Rajasthan	Jan sunwais, public marches, rallies, sit-ins, mass meetings and hunger strikes. Slogans like "Our money, our accounts" and "The right to know, the right to live" used.	Rajasthan, Maharashtra, Gujarat, Himachal Pradesh, Delhi	Initially reported in local papers, it gathered momentum in mid-1990s as more corruption cases got exposed through Jan Sunwais	Not used till 2008. After 2008, it has been used to mould public opinion against the proposed amendments by some activists.	Advocacy coalition framework. The sustained advocacy campaigns organised by MKSS and later the national coalition on RTI - NCPRI - led to the enactment of the law.

Right to Education Act, 2009	First phase: 1950-1990; Second Phase: 1990-2001; Third Phase: 2002-2008	2001: 93rd Constitutional Amendment Bill introduced; 2002: CA Bill passed and Article 21A inserted in Constitution; 2005: Draft Bill circulated but not introduced; Dec 2008: RTE Bill introduced; Feb 2009: Standing Committee Report tabled; Aug 2009: RTE Bill passed in both Houses.	NAFRE, CACL, SACCS, FORCES, CRY, Pratham, MV Foundation, Eklavya, Bachpan Bachao Andolan, Vidhayak Sansad, Shramjeevi Sangathan, etc	Unnikrishnan judgement in 1992 on right to education being part of right to life	Coalition building, Shiksha Yatras and conventions to mobilise people. State level campaigns such as Bheek Morcha, Kori Pati Morcha, Voice of India campaign.	Campaigns were held all over India; especially active in Mumbai and Delhi.	Press conferences and press releases were held in the 1990s but reporting on RTE started after the 2002 constitutional amendment.	Social media used only from 2007-08.	Incremental model of policy making till 1990s. Advocacy coalition framework from 1995 to 2009.
Child Labour (Prohibition and Regulation) Amendment Bill, 2012	1950-1986: First Phase 1987-2012: Second Phase	Dec 1986: Act passed; Dec 4, 2012: Bill to amend Act introduced; Dec 2013: Standing Committee Report	Bachpan Bachao Andolan, MV Foundation, Swami Agnivesh, CACL, NCPCR	Sarva Sikhsha Abhiyan; Right to Education;	Lobbying, marches, media glare on abuses, rescuing of children workers,	All over India	Used to some extent to spread awareness	Some campaign	Advocacy coalition framework.
Microfinance Institutions (Development and Regulation) Bill, 2012	1998-2007: First Phase 2010-2012: Second Phase	March 20, 2007: Bill introduced but lapsed due to dissolution of Lok Sabha; October 2010: Andhra Pradesh Ordinance; March 2011: Ministry of Finance forms	BASIX, SKS, Sadhan, Spandana, Bandhan etc	AP Ordinance was promulgated as a reaction to alleged coercive debt recovery practices of MFIs leading to suicides. 2007 and 2012 Bills were	SHGs and JLGs to lend money to poor women.	Spread out in many parts of India but mostly concentrated in South India, especially	Insignificant	Insignificant	None of the theories fit this Bill except very broadly the advocacy coalition framework.

		committee to draft Bill; May 22, 2012: Bill introduced; Feb 2014: Standing Committee Report		drafted to regulate the MFI sector.		Andhra Pradesh			
National Food Security Act, 2013	1990-2011	Dec 22, 2011: Bill introduced; Jan 2013: Standing Committee Report; July 2013: Ordinance promulgated; September 2013: Bill passed by both Houses of Parliament	PUCL, Human Rights Law Network, NGOs involved in the Right to food campaign (National Federation of Indian Women, National Alliance of People's Movement, Jan Swasthya Abhiyan, Rashtriya Viklang Manch, Bharat Gyan Vigyan Samiti etc), academics like Amartya Sen, Jean Dreze and Ritika Khera, journalists like P.Sainath and Neelabh Mishra, NAC, judiciary, Supreme Court Commissioner's office, INGOs such as Oxfam India and UNICEF.	Starvation deaths while food grains rotted in FCI go-downs in Rajasthan.	PIL, coalition formation, signature campaigns, conventions, use of RTI to expose corruption, Jan Sunwais (public hearings), media advocacy, conferences and seminars. Collective action, sit-ins, dharnas, rallies and hunger strikes.	Started in Rajasthan and Orissa then spread in other parts of the country, especially Jharkhand, Chhattisgarh, Madhya Pradesh, Bihar and Maharashtra.	Media highlighted starvation deaths in Orissa, Jharkhand etc, reported views of academics and experts (proponents and opponents), highlighted campaigns against Planning Commission's poverty line and cash transfer.	Used from 2008-09 but not extensively.	A combination of Punctuated Equilibrium Framework and Advocacy Coalition Framework.

Lokpal and Lokayuktas Act, 2013	2010-2013	1963-2002: 8 Bills introduced (but not passed); August 2011: Lokpal Bill introduced; Dec 9, 2011: Standing Committee Report; Dec 27, 2011: Passed in Lok Sabha; Dec 29, 2011: Debated in RS but not passed; May 21, 2012: Bill referred to RS Select Committee; Nov 23, 2012: Select Committee Report tabled; Dec 2013: Bill passed in both Houses	India Against Corruption headed by Arvind Kejriwal and Anna Hazare; Baba Ramdev's group; NCPRI, celebrities such as Anupam Kher, Swami Agnivesh, Amir Khan	Corruption scandals, some of which revealed through CAG report. 2G scam, Commonwealth Game scam, Coal scam, Adarsh Housing Society; issue of black money	Fast unto death, mass mobilisation through social media and traditional media, SMS and missed call campaigns, use of RTIs to get information on large scale corruption, filing FIRs in police stations, undertaking rallies, and calling press conferences.	Mostly focussed in Delhi's Ramlila Grounds and Jantar Mantar with sporadic campaigns in Bangalore, Mumbai and other cities. Outside India there were protests in New Jersey, New York and London.	Carefully crafted media strategy by IAC led to extensive reporting on TV channels and newspapers. April: 5576 newsclips (prime time coverage 1224 clips). August: Aaj Tak and Star News devoted 97% of total news time on Anna's fast, corresponding figure for English channels, CNN-IBN and NDTV, was 87%.	Platforms like Facebook, Twitter and Youtube were used extensively to mobilise people (150 Facebook pages related to the movement). SMS and missed call campaigns and online signature campaigns were used.	Punctuated equilibrium framework and multiple stream theory.
Land Acquistion and Rehabilitation and Resettlement Act, 2013	1947-1984: First Phase; 1984 - 2007: Second Phase 2009-2011: Third Phase	1984: 1894 Act amended; Dec 6, 2007: Two Bills introduced (Land Acq and R&R); Oct 2008: Standing Committee Reports; 2009: LA Bill passed in Lok	Narmada Bachao Andolan, Bhumi Uchhed Pratirodh Comiitee, Nandigram, POSCO Pratirodh Sangram Samity and similar organizations	NBA, Nandigram, Singur, anti-Maha SEZ and anti-POSCO movements, Bhatta Parsaul	Grass root agitation, protest, political alignment	MP, West Bengal, Maharashtra, Odisha, UP (among many others)	Not used so much as a strategy but received wide and sustained coverage owing to sustained political agitation	Not used	A mix of advocacy coalition framework and Punctuated Equilibrium Theory. Issue networks such as Narmada Bachao Andolan, tribal rights groups were key for agenda setting but

		Sabha; pending in RS; Both Bills lapsed with dissolution of Lok Sabha; Sep 7, 2011: LARR Bill introduced; May 2012: Standing Committee Report; Sep 2013: Passed by both Houses							the trigger for policy change came from incidents like Singur, Nandigram and Bhatta Parsaul.
Criminal Laws (Amendment) Act, 2013	First phase: 1975-1984; Second phase: 1984-2000; Third phase: Dec 2012-March 2013	Dec 2012: Bill Introduced; Feb 3, 2013: Ordinance promulgated; March 1, 2013: Standing Committee Report; March 19, 2013: Revised Bill introduced; March 21, 2013: Passed in both Houses.	Women's organisations such as Jagori, Nirantar, Manushi, Centre for Social Research, Saheli, Majlis; university students, students unions, political parties, professionals, lawyers, physiotherapy students.	1970s: Supreme Court judgement after Mathura rape case; 2012: Brutal rape of Jyoti Singh, a 23-year old student in Delhi	Disruptive tactics such as protests, and rallies and peaceful tactics such as silent marches, candle-light vigils, protests in black, flash and freeze mobs. Also, gender sensitisation workshops; innovative research, campaigns in the media, lobbying	Nation-wide but more focussed in Delhi	Spike in reportage of rapes after the Nirbhaya case and panel discussions on television channels.	Extensive use of twitter and facebook to mobilise protestors after the Nirbhaya rape.	Punctuated equilibrium framework and multiple stream theory.

					with policy makers.				

VI.   Towards a new theory

As is evident from our case studies, the policy process does not have a specific beginning or an end, rather, it unfolds in fits and starts, with no permanent resolutions. Issues - new and old - evolve and change regularly, and at times, lose relevance. Therefore, there is a wide variation in the time-lines, the civil society groups that get involved, the level and intensity of the mobilisation, the dominant narratives and the strategies used by them. The responses from policy-makers also vary depending on many factors – who is in power, strength in the Parliament, the level of interest in a subject, the complexity of the issue, to name a few.

Proposed Legislative Strategy Framework

The study of the political process of law making does not have a central question that is the basis for all theories in the discipline. Thus, each of the existing theoretical frameworks of the political process studies different aspects of the process. Some may study the role decision-makers (bureaucrats and legislators) play in the process, while others may study the role played by advocacy/interest groups or study the way policy change takes place.

Given the range of issues and the variety of context and players covered, it is not easy to conceptualize our case studies in a common framework. In spite of the difficulties, we have made an attempt to create a framework based on the roles played by state and non-state actors in the guiding the legislative agenda of the government, thus taking the policy sub-system as an unit of analysis. Within the sub-system, the behaviours of these actors are modulated by the rules of the game imposed by the Constitution, the parliamentary system and the judiciary. The strategies employed by different stakeholders to further their respective interests, the bargaining and negotiations that take place among the constellation of actors

and the external conditions – could be a game-changing "trigger" event or changes wrought by forces of globalisation -- all come together to effect change in the legislative agendas.

Since legislative agendas of governments are set through the interaction of different stakeholders within the sub-system we develop what we term as a 'legislative strategy framework' (Table 1.5). In this framework, we categorise the actors into two broad groups: elected (legislators and bureaucrats) and non-elected (advocacy/interest groups, media, watch-dogs, think-tanks) stakeholders. Laws are created through the interaction of these two broad groups. In cases where the elected representatives may be willing to engage with non-elected stakeholders, the relationship can be categorised as cooperative, if not it would be categorised as confrontationist. The non-elected stakeholders try to exert influence on the elected stakeholders to enact a law. The means influencing vary widely but again can be categorised broadly as conflictual or collaborative. The time taken to get a law enacted can be the proxy for the impact these interactions have on the law making process.

Table 1.5: Proposed Legislative Strategy Framework

Laws/Bills	Means of activism	Willingness to engage	Time taken to influence agenda*
Competition Act	Collaborative	Cooperative	Medium
Right to Information Act	Conflictual	Cooperative	Long
Right to Education Act	Conflictual	Confrontational	Medium
Child Labour Bill	Conflictual	Confrontational	Long
Micorfinance Bill	Collaborative	Cooperative	Long
Criminal Laws Act	Conflictual (external trigger)	Cooperative	Short
Food Security Act	Conflictual	Confrontational	Long
Lokpal Act	Conflictual (external trigger)	Confrontational	Short
Land Acquisition Act	Conflictual	Cooperative	Long

*Short: Less than 10 years; Medium: 10-20; Long: More than 20 years

Within this broad framework, the degrees of conflict and collaboration (the two ends of the spectrum) can vary widely. We depict this range in a diagram using a score of 1 to 5. Thus,

means of activism ranges from conflictual to collaborative on score of one to five. Similarly, the willingness to engage ranges from confrontational to cooperative on a score of one to five.

Figure 1.1

The Legislative Strategy Framework
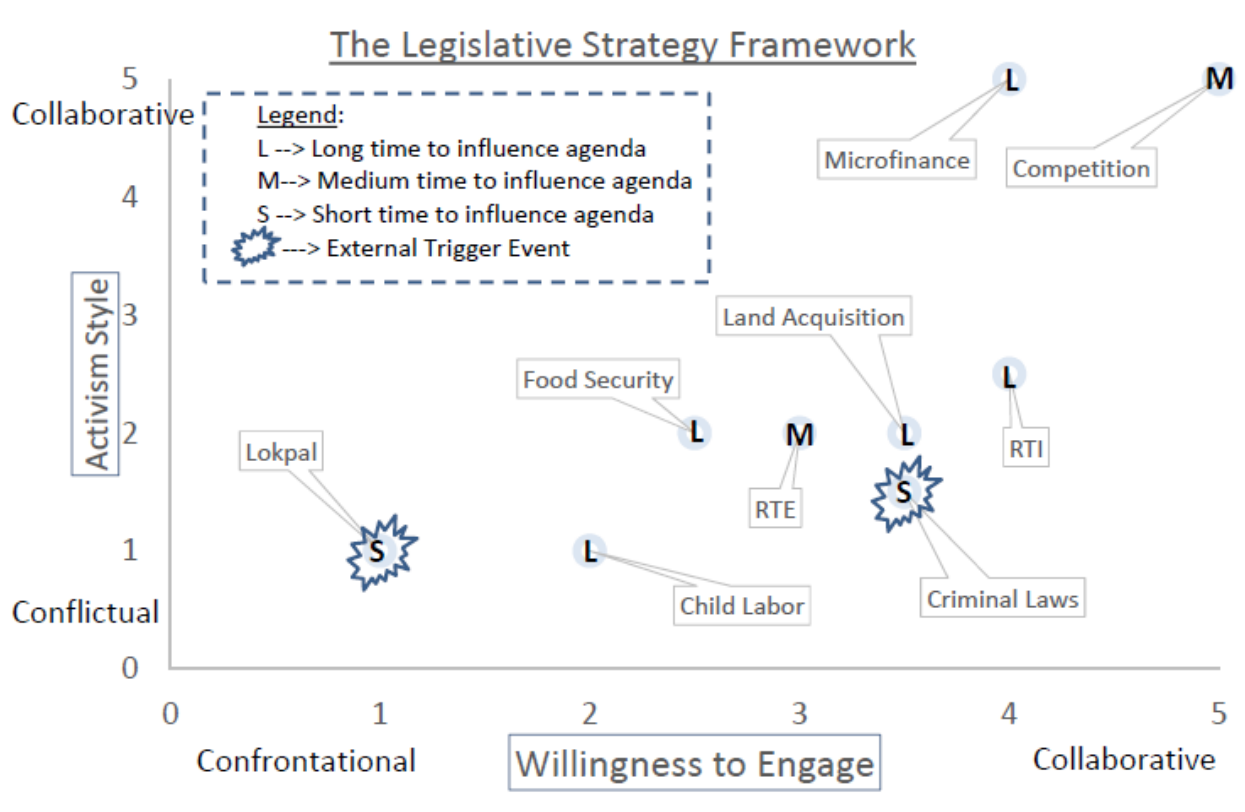
The pattern that emerges from this framework throws up a few surprises.

First, when activism is triggered by an external event, even if the government is not willing to cooperate, the time taken to influence the legislative agenda is short.

Second, it is, however, much more difficult to influence the legislative agenda without a triggering event if the means of activism is conflictual and the willingness to engage is also lacking among elected stakeholders.

Third, it is not certain that even if activists use collaborative means of activism and elected stakeholders are not confrontational, it would lead to a legislative change. This could mean that even if there is no conflict, the law denotes a significant shift in a different direction and thus requires more deliberation among stakeholders or it could mean that it is not seen as a top priority of the government.

Fourth, even if governments agree in principle about the need of a legislation, the differences about the fine-print (especially if it requires significant fiscal support) could make the government hostile to the non-elected stakeholders.

Fifth, even if the approaches of both parties (elected and non-elected) is collaborative and cooperative, without a strong champion within the government to navigate the Bill, chances of it getting passed is low.

Sixth, if the activists want to take a confrontationist stand with the government, they need to be able to identify and be prepared to take any "window of opportunity" that may arise due to an unpredictable external event to push for their desired legislation.

Seventh, it is clear that influencing the legislative agenda is an uphill task and requires years of sustained effort and innovative strategies to convince the government of its demands. The elected stakeholders are mostly driven by their need to win the next election. Therefore, they are likely to take up cudgels on behalf of a particular legislation, if they see the possibility of winning the next election through. Some evidence of this is seen in the increase in the number of bills that are passed through the year before elections (see Figure 1.2).

Figure 12.2: Legislative Cycle in India
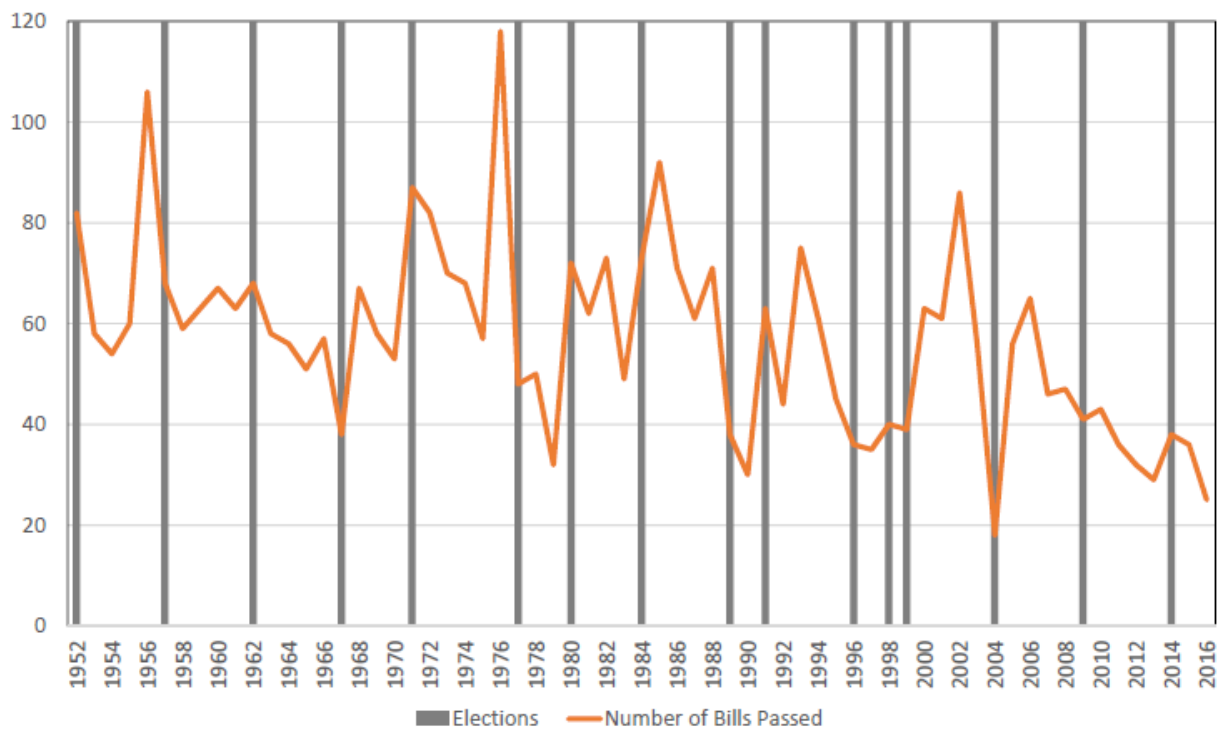
Source: PRS Legislative Research

At the risk of repetition, it is important to emphasize that the observations above are only broad initial conjectures about the nature of law-making in India. A proper theory needs to be fleshed out of these stylized observations and systematically tested using proper statistical methodology using an adequate sample.

Exploring Other Theoretical Approaches

In addition to the 'legislative strategy framework' we have proposed earlier, it is possible that the commonalities and patterns in the case studies can be unearthed through another, perhaps more, comprehensive lens. By applying complexity theory to the field of public policy (Cairney and Geyer, 2015, Geyer and Rihani 2015) – it may be possible to see patterns in the seemingly random nature of the law-making process. While a complete exposition of the complexity theory is beyond the scope of this study, we introduce here a conceptual tool

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frequently used in management and now increasingly in public policy literature to suggest a structure that may be of use in thinking about the cases presented in this book and beyond.

This is the conceptual tool of the Stacey diagram (Fig. 1.3[4]) that analyses the nature of multiparty decision-making problem on two dimensions of degree of agreement of objectives among stakeholders on one hand and the extent of certainty of appropriateness of solutions on the other. The interaction between these two variables

Figure 1.3: The Stacey Diagram
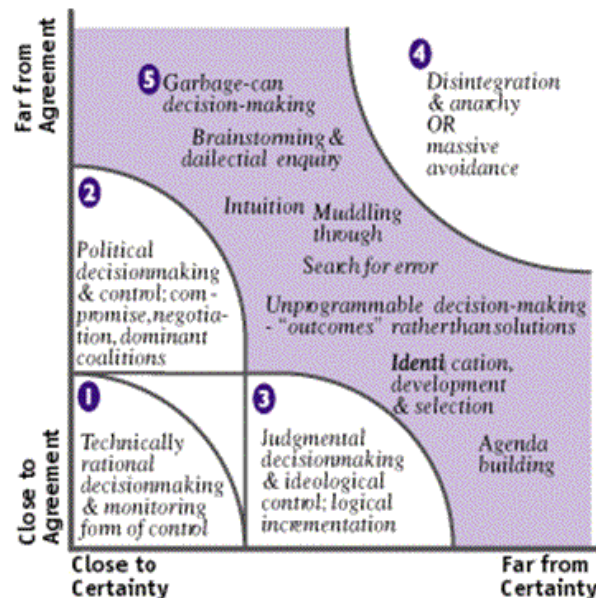
segments the space of problems into "simple" i.e. open to evidence-based policy-making, (1 in the figure), political (2), judgmental (3) and the space of "impossible or chaotic problems (4). Between these is a space (the shaded one, 5) that is the zone of "complex" problems.

Much of the complexity theory application in politics and public policy till date has focused on matters of public administration and the efficacy of laws and other policy measures. Emergence of a law has not yet been analysed using the complexity theory. However, our case studies amply demonstrate that the law-making process in India is also marked by the key elements of complexity theory: non-linear dynamics, emergent properties, path dependency

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[4] Source: GP Training website

and strange attractors that make it appropriate for viewing it as a complex process and analysing it using the learnings from the burgeoning literature in that area.

Concluding remarks

This study is a first step in understanding the puzzle of how policies are shaped through the interventions of different stakeholders as it throws light onto hitherto dark corners of the policy process in India. While there is somewhat more information of the legislative process through Parliamentary debates, standing committee reports, and media reports of the political wheeling dealing, the pre-legislative process remains a black box. This study attempts to lift the lid a fraction to give a glimpse of the behind-the-scene action as a law gets shaped. Those interested in activism will find it useful as a guide for predicting what strategies may work and at what moment in time. For policy-makers it would provide a glimpse of the inner workings of movements and campaigns and prepare them better for responding to such pressures. For the intelligent lay reader, it would be an introduction to the complex world of policy making with its pulls and pushes, the range of policy choices and the perils of decision making.

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Notes

[1]. The NAC was set up by an executive order for the specific function to "oversee the implementation of the National Common Minimum Programme" of the government. Additionally, it was to "provide inputs for formulation of policy by government and to provide support to government in its legislative business." Although the members were carefully chosen, they came from diverse fields. The NAC gave space to a diverse set of civil society actors to participate formally in the political process. However, the members were carefully chosen mix of civil society actors, technocrats, bureaucrats and academics broadly aligned with the UPA's policy agenda