

## Constitution-Public Policy Nexus: An Appraisal

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### Abstract

*The paper basically examines the interface between constitution and public policy in a state. Constitution is the supreme legal directive instrument in every democratic country. It provides the various fundamental rights to its citizens and contains the provisions in relation to policy matters as well as power relationships between different organs of the state. In fact, it designs institutional terms and conditions of living, the fundamental principles of governance, the guidelines of ensuring transparency in the affairs of governance and the policy prescriptions in matters of all development interventions of the government and citizen bodies. The fundamental principles of state policy on various substantive areas are laid down in articles of the constitution. Policy direction enabling the policy makers to set programs, projected objectives, and societal goals for the gratification of common interests stems from the constitution. To put it squarely, there is a clear correlation between constitution and the contents of public policy. This paper elaborates how constitutional provisions influence the different kind of policies in a country. It also highlights that the constitutional direction of assigning policy responsibilities enables the government to implement public policy in accordance with institutionally designed sets of rules, regulations, acts and statutes.*

**Keywords:** Constitution, Public policy, Constitution-public policy nexus, Policy formulation and policy implementation

### 1. Introduction

The constitution encompasses a potentially decisive influence on public policies in an exceedingly country, especially while determining the foundations of the political game and also the limits of legality of the selections and actions resulting from this game (Mozumder, 2019; Mashreque, 2015). The definitions of the organs of the state and the relationships thereof along with the rules of the political game, which are the content par excellence of constitutions, are key ingredients for public policies: different institutional choices alter decision or choice structures, and the encouragement and accountability for designing and implementing public policies. In real life operation, public policy remains the function of the fundamental political institution. The policy role of the dominant institutional structures like Presidency, Cabinet, Parliament, Judiciary, and Public Bureaucracy is obvious (Appleby, 1975). Endorsed by the legitimacy of the institutions, or the dominant actors decide upon priorities and develop decisions on resource mobilization and distribution of benefits within the limits set by broad policy guidelines as enshrined in the constitution (Anderson, 1975). The constitution of Bangladesh, for instance, has the

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supreme power over all legislations in Bangladesh. It was approved on November 4, 1972, by the Constitutional Assembly of Bangladesh and came into effect from December 16, 1972. It is considered as the most authoritative legal document of the unitary and independent Republic of Bangladesh that was created through a huge struggle and great sacrifice for the national liberation (Rahman, 2009). In a similar vein, the policies and programs undertaken by the government of Bangladesh is influenced and directed by the provisions of the constitutions of the country in different ways. This paper is mainly devoted to examining this chemistry between constitution and public policy of a country with reference to Bangladesh.

## **2. Objectives**

The fundamental objective of this paper is to determine the nexus between public policy and the constitution. The specific objectives of the paper are as follows:

1. To identify how the state constitution influences the policy formulation and policy implementation; and
2. To highlight the importance of this constitution-public policy relationship in the affairs of governance and the socio-economic development of a state.

## **3. Rationale of the Study**

A constitution is the framework on which a government is built and provides that government with the authority to act but also, the limitations in which it may operate assuming such verbiage exists (Haque, 2005). Public policies are initiated, endorsed, and by political leaders as policy-makers, and passed in compliance with the fundamental guidelines spelled out in a constitution (Zafarullah, 1992; Mozumder, 2019). Public policy is the formal directive to the function undertaken by the administrative or executive branches of the state about an issue or a series of issues, in a manner compatible with institutional customs and laws of the land. Corroborating this view, Scholars like Zelizer and Schulman (2009) echoed that constitutional laws and regulations of a nation embed the foundation for public policy. In democratic government, there is a diversity in constitutional design which has significant implications on policy choices and outcomes. The Constitution generally directs the basic content of all laws and policies through the Bill of Rights and it is described as “a cornerstone of democracy” (Congleton and Swedenborg, 2006). The Constitution of Bangladesh embodies in part II, certain directions to the State terming them as 'Fundamental Principles of State Policy' (Mozumder, 2019; Haque, 2005). Constitution of a state basically shapes the following activities:

- It provides fundamental guidelines for the structure of government.
- It directs the process through which various branches of government act and interact.
- It exerts influences on who decides what and how.
- It regulates the legal and institutional framework for imposing taxes and allocating revenues.
- It acts as the lighthouse to the content and context of all laws and policies, primarily through its Bill of Rights.

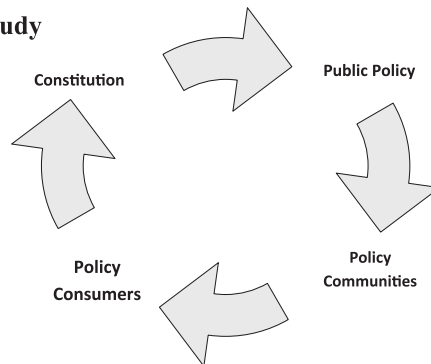
- It defines the role of government and non-government actors (such as private corporations) and their *modus operandi* in realizing the right of the citizen in different services of the government (Mozumder, 2019; Aminuzzaman, 2013; Rahman, 2009).

However, there is no other alternative to take any state policy without considering the framework of constitutional direction. So, to understand the gamut of interface between public policy and the constitution of a state like Bangladesh, this study has been conducted. It is anticipated that further research will be given an appropriate direction by this study if anyone wants to work on this specific issue of policy-constitution nexus.

#### 4. Methodology of the Study

The research has been basically conducted based on qualitative method of social research. Data and information were collected from secondary sources through content analysis such as reviewing various national and international publications, books, journals, newspapers, and related websites. However, considering its methods and purpose, this can be termed as a descriptive qualitative research. A comprehensive review of relevant literature has been undertaken with a view to examining different constitutional provisions of the Bangladesh Constitution to understand constitutional guidance and direction on the public policy of the country and the influences thereof.

#### 5. Framework of the Study



**Figure 1:** Conceptual Framework of the Study

We are given to understand that public policy is a totality of state intervention couched in legal constitutional framework with laws, statutes, ordinance, rules and regulations (Mozumder, 2019). This framework regulates government functions and governs relationship between ‘policy communities’ and ‘policy consumers.’ This institutionalization of policy into a strictly legal constitutional framework amounts to depoliticization of policy action. It ignores the fact that public policy is a reflection of societal values and political ideologies. Public policy needs to be understood in terms of the allocation of values. The vision of politics takes stock of participatory value in a modern democracy (Mashreque, 2015). Moreover, we need to investigate the impacts of social, economic, and political forces on policy intervention and the consequences of various policy strategies of the government on the society as a whole.

## 6. Operational Definitions

**6.1 Constitution:** Many contemporary constitutions define the essential principles of the state, governmental structures, and processes of governance and therefore the citizen's fundamental rights during a precept that cannot be changed unilaterally by a regular act or statute. This precept is mostly denoted to as a constitution (Austin, 2009). The character and content of a constitution, and the way it relates to the opposite legal and political order, differs significantly between countries, and there is no uncontested and universal definition of a constitution (Lerner, 2011). Corroborating the view of H E Finer (1949) as an 'autobiography of power relationship' constitution is, in a broader context, provides appropriate mechanism for highlighting the relationship among fundamental political institutions like different organs of state- executive, legislative and judiciary- along with bureaucracy, statutory bodies and authorities, electorate, political parties, pressure groups and press. Hence, "constitution is the way of life the state has chosen for itself" (Lutz, 2006).

**6.2 Public Policy:** It is often said that public policy denotes to the full range of government activities; it's going to act directly and/or indirectly through agents and have impacts on the lives of the citizens (Peters, 1999). It generally comprises political decisions for translating societal goals into actions. A typical public policy constitutes three elements: (i) the objectives, strategies, and priorities in compliance with the guidelines set in the constitution of the state; (ii) the *modus operandi* or the institutional mechanism required for translating the stated objectives, strategies, and priorities into actions; and (iii) the parameters or specifications of the institutional mechanism involved in delivering the outcomes to the citizens. Thus, the concept of public policy basically denotes the actions of government and the purposes as well as the pretexts that define those actions initiated and implemented by the involving institutions (Cochran et. al., 1999).

**6.3 Concerns about Public Policy and Constitution:** Drawn upon useful insights from past intellectual development and recent concerns about public policy as an important mechanism for understanding state intervention and governance, we get to accumulate useful insights for analyzing various theoretical dimensions, and paradigms in the context of constitution-public policy nexus. From this perspective, we are supposed to perceive that public policy is a totality of state interventions couched in legal constitutional framework with acts, statutes, ordinances, rules, and regulations (Mozumder, 2019; Masreque, 2015). Hence, it can be said that public policy needs to be designed and delivered in terms of 'authoritative allocation of values' (Mozumder, 2019).

## 7. Literature Review

At the intellectual level too, development of public policy as a field of study 'joins survey of the past to the scrutiny of the present'. The studies of the political institutions, experiences, and processes, behavior in the remote and recent past give us some hints about public policy as the product of constitutional development and governmental institutions. The field of public policy or policy science; both terms may be used with much the same meaning- has derived its epistemological roots from political philosophies as well as political theories since classical Greek times (Mashreque, 2015). At the outset, the study of



public policy used to be the concern of the political scientist. It goes ahead as a science of 'explanation of the causes and consequences of government activities as the studies of politics and administration advance. A comprehensive history of public policy study is almost identical in many respects with a history of political study. Classical writings to modern political analysis represent a sequence of conceptualization of political phenomenon that came to impact theoretical development of public policy. Machiavelli's realistic writings, for example, form the basis of policy science. Moreover, formal legal description of early political scientists is relevant to the study of public policy (Dye, 1981).

By now, policy studies have become more sophisticated. Harold Laswell (1951), Carl Friedrich (1963), Thomas Dye (1981), Charles Lindblom (1968), James Anderson (1984) and Y. Dror (1968) contributed considerably to its sophistication blazing new paths in its intellectual development. It is for their enduring contributions to this field of knowledge that the study of public policy acquires new dimensions and assumed diverse forms.

Finer (1949) examines that as an "autobiography of power relationships", constitution is, in a broader perspective, a device of apportioning power status to the ruling elite and their counterparts, assessing the actions and interactions.

Dye (1981) presented a broad view of public policy making touching upon multidimensional facets of institutional functions and organized interactions with interrelated governmental activities. He has systematically attempted to delineate the wider frontier and dimension of public policy. Various streams of thought on public policy at various conceptual levels constitute a wider body of expertise featuring a comprehensive view about this field. Some authors set to examine public policies in conceptual and paradigmatic parameters to present a universal analysis of the phenomenon. Some of them provide the parameters of operational framework for systematic analysis focusing on policy issues and areas. This somewhat echoes, empirical evidence to support the analysis.

Zafarullah (1992) states that the analysis of social dimension and developmental trend influencing the content of public policy somewhat implies the real world with the animated concepts like public, individuals, interest group, associations, civil society and bureaucratic culture. It seems that state policy resorts to the 'bottom-up' approach contrasted with the 'top down' situation where decisions are imposed on the people. It is compatible with value orientation patterns, social ethos and political culture.

Sapru (1994) reported that policy analysis as a scientific undertaking based on empirical criterion has been developed to the level of sophistication by Harold Lasswell. He formulated the concept of policy science and ventured to co-edit the monumental work, the policy Science in 1951. This work is regarded as the first systematic efforts towards building a new field of inquiry to deal with social problems.

Mashreque (2015) determines the frontiers of constitution and public policy. As he puts it squarely public policy on the substantive area like women development conforms to the provision of the constitution providing for the women's participation in national life. Policy advocacy roles of the NGOs as well as public promotional agencies for the sake of the recent neo-social movement.

Basically, no theoretical or empirical study, as far as it is known, has been undertaken on this specific issue of ‘constitution-public policy nexus’, specifically in the context of Bangladesh. As such, this study conducted in this context focuses only on the relationship between constitutional framework and the state policy of a country and the influence they usually exert on each other.

## 8. Findings of the Research

**8.1 Institutionalization of Policy into a Strictly Legal Framework:** Policy studies connected with numerous issues and problems received intense concerns of the intellectual communities. Policy research, policy dialogue, policy analysis and advocacy cover issues like transparency, governance, civil society, micro credit, poverty alleviation, environment, sustainable development, participation, urbanization, gender discrimination, children etc. (Peters, 1999). Professional development in each area of specialization improves policy action as ‘problem solving behavior’ and well-conceived agenda of action to achieve desired goals. Notwithstanding its contemporary significance as a field of study public policy has yet to acquire status of separate discipline in most universities. Even then numerous institutes, centers, and advocacy groups initiate policy studies on specific issues of utmost significance (Sapru, 1994).

**Table 1:** Five Factors for Institutionalization of Policy into a Strictly Legal Framework

Factor 1:	To initiate a series of governmental activities in response to environment
Factor 2:	To act and react on any issue depending on its merit
Factor 3:	To implement central instrument designed to effectively handle helm of public affairs
Factor 4:	To foster harmonious development and maintain stable equilibrium
Factor 5:	To promote capacity building of the various systems and subsystem to ensure governance

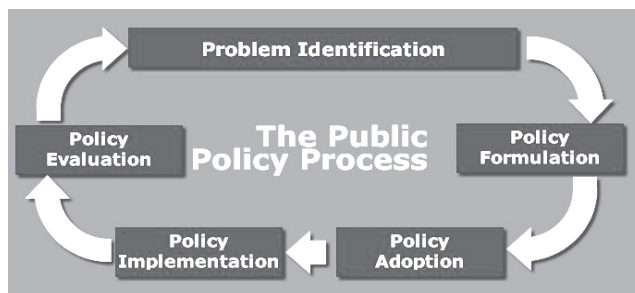
Public policy is conceptually related with a series of governmental activities in response to environment. The government continues to act and react on any issue depending on its merit. In fact, public policy is government's central instrument designed to effectively handle the helm of public affairs (Finer, 1949). This is to foster harmonious development and maintain stable equilibrium. Public policy as a suitable mechanism seeks to promote capacity building of the various systems and subsystem to ensure governance. Planning, programming, budgeting, and legislative measures are the ingredients of public policy intended to regulate the direction of development, organize human efforts, impose tax, and allocate benefits- all things taken together. It seems erroneous to state that public policy attracts the concerns of political scientists and public administrators. Earliest attempt at thinking about policy as a social phenomenon is found in the philosophical interpretation of policies shaped by political forces and the bearing of these policies on the society as a whole. Such interpretations of philosophers provide epistemological roots for traditional academic approaches to the study of public policies as the ‘outputs of government’ (Hall, 1993). Recent approaches and concepts of policy making assume considerable importance

in view of the enormous complexity of modern social life under the impact of industrialization and urbanization.

**8.2 Constitution as the Bible of Policy Formulation Process:** What government does to meet the needs and expectations of public and to set priorities or allocate values in line with these, is generally determined by legal procedures and processes contained in constitutional provisions (Mashreque, 2015; Mozumder, 2019).

- The fundamental principles of state policy on various substantive areas are laid down in different articles of the constitution.
- Policy direction enabling the policy makers to set programs, projected objectives and societal goals for the gratification of common interests stems from the constitution.
- To put it bluntly, there is a precise coordination between constitution and the content of public policy.
- Constitution shapes institutional and operational conditions of living, the fundamental principles of state management and the process of governance, the key directives and conditionalities of ensuring transparency and accountability, and above all, the *modus operandi* of all development interventions of the government and citizen bodies.

The Constitution of Bangladesh endorses fundamental principles of the state policy, and the significance of these principles are quite clearly expressed by Zafarullah (1992) "The principles set ... shall be fundamental to the governance of Bangladesh, shall be applied by the state in the making of laws, shall be a guide to the interpretation of the constitution and of the other laws of Bangladesh, and shall form the basis of the work of the state and of its citizens, but shall not be Judicially Enforceable". The fundamental principles as contained in the constitution in its original text (GOB, 1972) were: nationalism, democracy, secularism, and socialism. After the tragic incident of August 1975 and the subsequent backlash, the military regime led by General Ziaur Rahman quite abruptly changed state policy by issuing proclamations (Amendment) Order of 1977. The regime's definition of secularism, for instance, appears to be an antithesis to the institutional formation based on secular values. Likewise, socialism was whimsically redefined to denote economic and social justice.



Source: (Mashreque, 2015; Mozumder, 2019)

**Figure 2:** The Public Policy Process

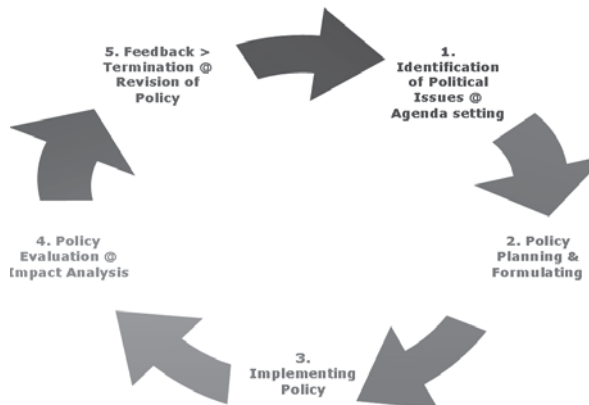
**8.3 Constitutional Recognition of Fundamental Rights:** Article 26 of the Constitution of the People's Republic of Bangladesh provides that “all existing laws inconsistent with fundamental rights become void”. Fundamental rights include among others: “equality before law, equality of opportunities in public employment, right to protection of law, protection to life and personal liberty, prohibition of forced labor, protection in respect of trial and punishment, freedom of movement, freedom of profession or occupation, freedom of religion, rights to property, and prohibition of discrimination on grounds of religion, race, caste, sex and place of birth” (Mashreque, 2015). Even then women in a third world country like Bangladesh suffer manifold maladies and uncertainties despite constitutionally prescribed legal protection from the state. Destitution of the divorced women has become momentous in the absence of institutional support. Women's maintenance is not properly ensured. Moreover, illegal social action hurled by the informal Salish prescribing punishment leads to various structural and non-structural violence against women (Haque, 2005).

In Bangladesh, a landmark development in favor of women right movement, is judicial intervention to declare all kinds of unauthorized section. The High Court division of the Supreme Court delivered this verdict in the writ petition no. 5897 of 2000 arising from a *Suo Moto* Rule issued on the basis of reports of various newspapers. Public Policy discourages all institutional efforts with reference to backward communities that are repugnant to fundamental rights and the human rights provision of the constitution. Environment consideration envisioned in a package concept like sustainable developments are recognized as constitutional obligation. This concept streams from the serious concern of directing all development projects in a befitting manner within the carrying capacity of supporting ecosystem through efficacious policy management (Rahman, 2009). This has been implicitly or explicitly endorsed in the constitutions of many countries. The constitution of the Philippines (Section 16, Article 11) proclaims that the state shall protect and advance the rights of the people to a balanced and healthy ecology in accord with the rhythm and harmony of nature. Likewise, the constitution of Papua New Guinea endorses conservation of all-natural endowment as a basic constitutional obligation to protect environment not only for the contemporaries but also for future generations.

**8.4 Constitutional Guidance for Policy Prioritization:** Policy direction prioritizing basic need orientation emanates for the constitutional provision of basic necessities that include among others the following indices:

- (a) the provision of materializing the basic physiological needs of life in the of form food, clothing, shelter, education, and medical care,
- (b) the right to earn, that is the right to easy access to employment at reasonable wage and leisure; and
- (c) the provision of social safety and security, that is to say, to ensure public assistance in cases of unforeseen circumstances arising from unemployment, illness, or disablement, or disaster or in such other cases in the form of proving social safety net to the underprivileged. Humanitarian content to development planning is preoccupied with minimum level of living approach (Hall, 1993).

In fact, constitution determines formation of government. The nature of the state is by and large reflected in the constitution and in a parliamentary democracy intervention is made by political executives, most of them, are the members of parliament. The effect of organic union between legislature and executive with the latter having majority in the house can influence the content of public policy. Theoretically, parliamentary debates in the presence of opposition bench are of particular importance since they involve a consideration of societal goals. The government- opposition relationship has a considerable influence on every aspect of legislation. Brute majority is in fact a real threat to parliamentary democracy itself. In presidential democracy the presidency is a conglomerate of high officials and committees actively participating in the making of numerous policy decisions (Mashreque, 2015). The executive office of the president is an organization intended to aid the Policy making functions of the president. The underlying assumption is that parliamentarians as the peoples' representatives are the policy makers. They may be praised or blamed or both for the manner in which they perform policy roles. Mentionable policy making process in the parliament has become significant with the policy functions exercised by parliamentary standing committees like public accounts committee, estimate committee, committee on public undertaking. Standing committees in fact supervise the direction of public policy both in the formulation and at the implementation stage. Every policy action is subject to parliamentary oversight.



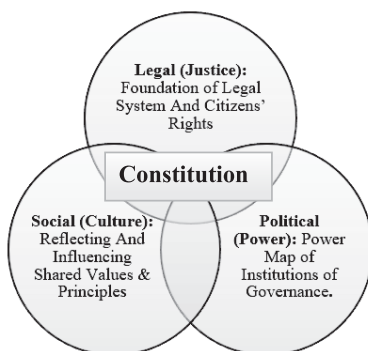
Source: (Rahman, 2009)

**Figure 3:** The Process of Policy Prioritization

**8.5 Social Dimension of Public Policy and Constitution:** The analysis of social dimension and developmental trend influencing the content of public policy somewhat implies the real world with animated concepts like public, individuals, interest group, associations, civil society and bureaucratic culture. It seems that state policy resorts to the ‘bottom-up’ approach contrasted with the ‘top down’ situation where decisions are imposed on the people. It is compatible with value orientation patterns, social ethos and political culture (Zafarullah, 1992). Various streams of thought on public policy at various conceptual levels constitute a wider body of expertise featuring a comprehensive view about this field. Some authors set to examine public policies in conceptual and

paradigmatic parameters to present a universal analysis of the phenomenon. Some provide the parameters of operational framework for systematic analysis focusing on policy issues and areas. This somewhat echoes, empirical evidence to support the analysis. Public policy making is basically a multidimensional facet of institutional functions and organized interactions with interrelated governmental activities. It is attempted to delineate the wider frontier and dimension of public policy. It does seem that most works on policy making do not show a symbiotic connection between public policy and constitution (Dye, 1981). It demonstrates the interfaces of constitution and public policy and the relationship of them to each other.

**8.6. Constitution Acts as the Intersection of Legal, Social and Political issues of Public Policy:** Constitution is considered as the legal, social, and political documents for state policy and it is the intersection of the society, political system, and the legal system. It creates significant linkage between power and justice (Lutz, 2006). It acts in making the operation of power predictable and upholding the rule of law. As a supreme law of the state, it provides the values that ordinary statutes must comply with it. Constitutions often attempt, to varying degrees, to reflect and transform society, for example, by expressing the prevailing or proposing common identity and aspirations of the people, or by pronouncing shared values and ideals. These provisions are generally found in preambles and opening statements but can also be found in oaths and mottos or on flags and other emblems or symbols that are specifically demonstrated in the Constitution. Other substantive provisions of the constitution, particularly those defining socio-economic rights, cultural or linguistic policy, or education, might also include to this category (Paul et al., 2011). The constitution prescribes a country's decision-making institutions: constitutions 'identify the supreme power', 'distribute power in a way that leads to effective decision making' and 'provide a framework for continuing political struggle' (IDEA, 2011). The political provisions show how state institutions (parliament, executive, courts, head of state, local authorities, statutory or independent bodies, etc.) are organized and governed, what powers and authorities they formally exercised and how they interact with one another. The continuous process of interaction of legal social and political issues of public policy within the broad framework of constitution is shown in the figure below-



Source: International IDEA, 2014

**Figure 4:** A Constitution as a Legal, Social and Political Document



## 9. Concluding Remarks

In fact, constitution determines the formation of government. The nature of the state is by and large reflected in the constitution. In a parliamentary democracy intervention, as stated in the above, is directly and indirectly made by political executives most of whom are the members of parliament. The effect of organic union between legislature and executive with the latter having majority in the house can influence the content as well the contexts of public policy. Theoretically parliamentary debates in the presence of opposition benches are of particular importance since they involve a consideration of the overall socio-economic goals. The relationship of the opposition with the ruling party has a considerable influence in every affair of legislation. Brute majority is in fact a real threat to parliamentary democracy itself. In presidential democracy, the presidency is a conglomerate of high officials and committees actively participating in the making of numerous policy decisions. The executive office of the president is an organization intended to aid the Policy making functions of the president. The underlying assumption is that parliamentarians as peoples' representatives, are the policy makers. They may be praised or criticized or both for the prevailing mechanism in which they perform their assigned roles in policy initiation as well as in policy development. It is mentionable to say that policy making process in the parliament has become significant with the policy functions exercised by parliamentary standing committees like public accounts committee, estimates committee, committee on public undertaking. Standing committees, in fact, supervise and co-ordinate the directions of public policy both in the formulation as well as in the implementation processes. Every policy action is subject to parliamentary oversight. Thus, every policy of a state is controlled, coordinated, directed, and monitored, and quite often, influenced in line with the broad guidelines of the supreme law of the state, and the legal provisions of the constitution.

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