

Law and Policy Formation Through Public Participation: Based on the Law-Making Process

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Abstract

This article delineates the role of public participation in law and policy formation. Fundamentally, public participation refers to a formal process through which policy formulators consult the public—either as groups or individuals—to gather their views and opinions on proposed policies, bills, statutory amendments, or policy decisions. Additionally, public participation encompasses various methods that support law and policy formulation, leveraging actors such as civil society organizations (CSOs), non-governmental organizations (NGOs), community-based organizations (CBOs), and individual citizens. Public participation in the formulation of policy and law has a long history in numerous countries, including India, the United Kingdom, the United States, South Africa, Canada, and Nepal. Moreover, this participatory process yields better policies and legislation while ultimately strengthening democratic quality; thus, public participation undeniably serves as an important component of policy formulation and functions as a democratic watchdog. However, certain constraints and barriers to public participation exist, such as a slowdown in the legislative process, increased budgetary requirements, and significant time consumption. In conclusion, this article primarily analyzes public participation in policy and law-making with comparative examples from various countries, including Nepal. Furthermore, it addresses the pros and cons, roles, and responsibilities associated with public participation, alongside a brief overview of relevant legislative affairs.

Keywords: Public Participation, Policy Formulation, Law-Making Process, Democratic Governance.

Introduction

The concept of public participation is derived from two distinct terms: "public" and "participation." The term "public" denotes the people of a nation or community as a whole,

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while "participation" signifies the act of taking part in an endeavor or proceeding. At its core, the public participation process directly involves the citizenry in decision-making and ensures that formal consideration is given to public input before a final decision is made. This process typically unfolds in a public forum visible to all citizens, where they can voluntarily offer suggestions, feedback, or comments without financial remuneration.

Public participation is anchored in the principle that those who are affected by a government decision possess an inherent right to engage in that decision-making process. This engagement connects individuals directly with the various forms, structures, and institutions of democracy. For instance, public participation encompasses the variety of ways in which non-state actors including civil society organizations (CSOs), non-governmental organizations (NGOs), and community-based organizations (CBOs) interact directly with state entities through public discussion and structured deliberation.

In practice, NGOs have influenced contemporary paradigms of international governance for over a century, tracing their origins back to their creation by Victorian naturalists and philanthropists. A landmark manifestation of this influence occurred during the 1992 Rio Conference, where an international forum of more than 8,000 NGOs took an active part in the proceedings.

Additionally, the effectiveness of NGOs varies greatly according to their seriousness of purpose, funding depth, quality of research, skills in political advocacy, means of exercising strategic pressure, and the narrowness of their focus. Some have become increasingly effective at achieving consultative status within international and regional organizations due to their structural representation and the personal lobbying of their delegates initiated during the Rio Conference. Furthermore, Article 71 of the Charter of the United Nations explicitly contains provisions aimed at promoting and regulating cooperative arrangements with NGOs. In the landmark *Doctors for Life International* case, the Constitutional Court of South Africa evaluated the mandatory involvement of citizens in the law-making process, ruling that legislative organs possess an absolute, non-discretionary constitutional obligation to facilitate public involvement within both their primary chambers and their standing committees. Collectively, these global developments demonstrate that the necessity of public participation in law and policy formulation is universally recognized. Consequently, numerous jurisdictions have enacted specialized statutes to regulate and standardize these participatory procedures; for instance, Nepal recently enacted the Legislation Act, 2081 BS to govern this framework.

Conceptually, a policy is the foundational framework of general principles by which a government is guided in the management of public affairs. It serves as the primary mechanism through which a government ushers in systemic reforms, functioning as the baseline line of action adopted by state executives. Crucially, when an administration adopts a policy framework, it remains legally inert until it is formally codified and executed through statutory

legislation. As the eminent legal scholar V.C.R.A.C. Crabbe noted, government policy directly motivates and shapes legislation; the underlying legislative policy expressed within a statutory Act is invariably determined and settled by the governing administration before formal drafting commences.

In conclusion, this article attempts to describe the profound relevance of public participation within institutional policy-making and legislative frameworks. It must be emphasized that public participation does not supplant or diminish the constitutional role of formal policy-makers and legislators in formulating policy or enacting statutes. Instead, active civic engagement provides deeper, empirical insights into the potential, real-world impacts of proposed policies and bills on the lives of citizens, thereby contributing to more robust, balanced, and effective laws. Ultimately, institutionalizing public involvement within the law-making process helps build foundational trust in democratic government structures while simultaneously reinforcing the rule of law across society. Indeed, public participation mechanisms can be implemented either broadly for the general public or targeted specifically toward distinct social groups directly affected by a given proposal, ensuring an equitable opportunity for all stakeholders to shape public policy and statutory law.

Public Participation in Nepal

Public participation represents the structured involvement of citizens in problem-solving or decision-making processes that directly interest or affect them. Moreover, it operates as a foundational democratic mechanism that engages individuals in collective thinking, deciding, planning, and executing the development and operation of public services that govern their lives. Principally, public participation holds immense value within local governance frameworks, as municipal authorities possess a distinct structural capacity to optimize the quality and accessibility of civic consultation. Thus, public participation has emerged as an indispensable sine qua non of legitimate law-making in many contemporary democracies, including Nepal. Guided by this thematic framework within the domestic context of Nepal, the following subsections analyze its historical trajectory and formal provisions.

(a) History of Public Participation

While Nepal historically lacked a consolidated statutory law governing civic consultation, the country possesses a long and rich history of informal public participation across various social domains. During the ancient Kirat regime, long before the unification of modern Nepal, public participation was deeply embedded in communal life. Citizens routinely mobilized to execute civic and public works, including the construction and maintenance of roads, public rest houses (satalas), community pastures, communal water taps, ponds, irrigation canals (kulos), and

religious forestry, alongside the collective building of temples and the performance of shared rituals by pundits. Likewise, public participation was central to promoting socio-cultural cohesion through communal institutions like wedding processions (janti), funeral assemblies (malami), religious trusts (guthis), and local festivities. Local administrative and judicial disputes were settled through participatory assemblies led by community elders, such as the Pancha and Chaudhari systems.

On an institutional level, indigenous and historical communities managed localized governance and administration through participatory assemblies such as the Chumlung, the Panchali, and the Pancha Sammuchhaya. A notable historical example occurred in 1891 BS, when local citizens in the rugged Humla district of western Nepal collectively constructed a vital public irrigation canal entirely through voluntary communal labor, alongside building roadside shelters (chautaras) across national trade routes for public travelers. While these historical examples illustrate that Nepal maintained a robust tradition of public participation in community development and local dispute resolution, these informal systems rarely intersected with the centralized formulation of state policies and statutory laws.

(b) Constitutional and Legal Provisions Relating to Public Participation

The preamble of the Constitution of Nepal explicitly declares that sovereign power resides inherently in the people, establishing popular participation as the bedrock of the country's governing framework. The preamble further pledges to protect and promote national unity in diversity, socio-cultural solidarity, tolerance, and harmony by recognizing the multi-ethnic, multi-lingual, multi-religious, multi-cultural, and geographically diverse characteristics of the state, resolving to build an egalitarian society founded upon proportional, inclusive, and participatory principles. This constitutional baseline guarantees that "inclusive participation" is a mandatory operational directive for the state. Accordingly, Article 274 of the Constitution operationalizes this principle for constitutional amendments, mandating that any Bill introduced to amend the Constitution must be published openly for public consumption within thirty days of its presentation in the federal legislature, ensuring the general public can review and evaluate its structural implications.

Furthermore, under the Directive Principles and Policies of the State, Article 51(j)(7) stipulates that the state must create an atmosphere conducive to the full enjoyment of political, economic, social, and cultural rights, while enhancing the active participation of youths in national development. To manage civil society engagement transparently, Article 51(j)(14) directs the state to adopt a single-door system for the establishment, approval, operation, regulation, and management of community-based organizations and national or international non-governmental organizations, ensuring their investments align with national priorities and remain democratically accountable. Additionally, Article 51(a)(7), which outlines policies relating to

national unity and security, directs the state to properly utilize the specialized knowledge, skills, and experiences of retired public servants, including former military and police personnel, in the interest of the nation.

In terms of parliamentary procedure, the House of Representatives Rules, 2079 introduce clear mechanisms for soliciting public feedback on pending legislation. Rules 107, 108, and 109 state that a Bill may be formally disseminated to elicit public opinion during the general discussion phase in the House. If the full House passes a motion to send a Bill out for public consultation, the Secretary of the House publishes the Bill in the Nepal Gazette alongside a specified timeline for public submissions. The Bill is also disseminated through other appropriate media channels, and the Secretariat compiles all incoming public feedback, presenting the data directly to the member-in-charge through the Speaker. Identical participatory safeguards are codified within Rules 101, 102, 103, and 104 of the National Assembly Rules, 2075.

Despite these formal legal channels, Nepal's law-making process has faced significant structural deficiencies regarding civic inclusion in the past. There has been widespread public frustration and academic criticism that public input is routinely ignored during the critical pre-legislative phase the stage before a bill is formally introduced into Parliament. Historically, state ministries have drafted bills behind closed doors, completely overlooking key stakeholders. A prominent example of this disconnect occurred when the executive branch attempted to push through the Guthi Bill, the Media Council Bill, and the Information Technology Bill. These legislative proposals faced intense public resistance from CSOs, CBOs, media practitioners, professional syndicates, and even sitting lawmakers. Ultimately, the executive branch was forced to withdraw the controversial Guthi Bill entirely due to coordinated public resistance and widespread street opposition from cultural custodians and civil society organizations. Conversely, a significant statutory milestone was achieved when the Federal Parliament enacted the Legislation Act, 2081 BS (2024 AD), which explicitly mandates public consultation and stakeholder feedback during the pre-legislative drafting phase. Despite its revolutionary framework to ensure transparency before a bill reaches parliament, this statutory requirement has yet to be fully and consistently operationalized in administrative practice.

This contemporary challenge contrasts sharply with past legislative rushes. For instance, when the Federal Parliament passed sixteen crucial acts related to fundamental rights in 2075 BS to meet an impending constitutional deadline, it failed to incorporate structured public suggestions or civic feedback during the parliamentary committee stage. Nevertheless, Parliament has occasionally established noble precedents regarding civic consultation for select pieces of legislation. Parliamentary standing committees have successfully emphasized public inclusion when reviewing structurally impactful bills; the Local Government Operation Act, 2074; the Consumer Protection Act, 2075; the Children Act, 2075; the National Sports Development Act,

2077; and the Federal, Provincial, and Local Level (Coordination and Interconnection) Act, 2077 serve as prominent examples.

To build upon these precedents, future legislative processes must offer more comprehensive opportunities for public input by providing decentralized, technologically accessible pathways to state information. Furthermore, deliberate institutional mechanisms are required to guarantee that grassroots communities and marginalized populations can participate meaningfully in broader law-making processes. At present, parliamentary participation remains disproportionately dependent on elite institutional lobbyists and close, informal access to influential parliamentarians. Therefore, the legislative framework must be reformed to structurally guarantee that ordinary citizens those who bear the direct, real-world impacts of enacted policies possess an equitable, transparent voice in the legislative process.

Public Participation in Law-Making: A Comparative Analysis

Law-making is conventionally understood as an intricate parliamentary function, encompassing both the overarching legislative framework and the specialized technical process of legal drafting. In a broader sense, legislative drafting is a structural component of the law-making process, which in turn serves as an operational extension of the primary policy cycle. Legal scholars occasionally compare the non-linear, recursive nature of drafting to a child's game of snakes and ladders, where a draft can easily be sent back to the baseline due to a sudden shift in political or administrative priorities. In contrast, policy formulation remains a separate, higher-level exercise focused on establishing specific governing goals.

Several global jurisdictions maintain highly robust mechanisms for civic inclusion, particularly in terms of engaging the public and inviting key stakeholders to submit formal reviews on proposed bills. In India, for example, landmark statutes such as the Right to Information Act and the initial drafts of the Jan Lokpal Bill were originally conceptualized and formulated by grassroots civil society groups. However, public participation regarding draft bills is not statutorily mandated in India, making civic consultation an administrative discretion rather than a binding legal requirement. In this regard, public participation may manifest either directly or indirectly through legitimate intermediary institutions and elected representatives. To be effective, this engagement must be highly informed, transparent, and structured, which inherently requires the absolute protection of the fundamental rights to freedom of speech, expression, and peaceful association. A vibrant, organized civil society serves as a core pillar of democratic governance, providing the systemic support necessary to enact legally sound, socially responsive legislation.

The comprehensive process of law-making can be conceptually bifurcated into three sequential phases: the pre-legislative stage, the legislative stage, and the post-legislative stage. All three

phases rely heavily on public participation to secure democratic legitimacy. The following subsections analyze these three stages and evaluate the corresponding public participation frameworks implemented across India, the United Kingdom, the United States, Australia, Canada, and South Africa.

(a) The Pre-Legislative Stage

The pre-legislative stage occurs when a proposed law is still in its formative draft or policy phase, prior to its formal introduction into the chambers of Parliament. The aforementioned democratic nations have established distinct procedures to facilitate public consultation during this initial window. In jurisdictions like the United Kingdom, the United States, Australia, Canada, and South Africa, draft bills, white papers, and regulatory rules are routinely published openly to elicit public comments, technical critiques, and civic suggestions.

The United Kingdom has established formal channels where departmental select committees actively conduct public consultations on draft legislation. In the United States, members of Congress introducing a bill frequently host localized community forums and expert stakeholder consultations to shape the text beforehand. Conversely, in Canada, draft bills are published for public review less frequently, typically requiring prior, explicit authorization from the federal Cabinet before public release in South Africa. Moreover, constitutional amendments Bills are published for comments 30 days prior to introduction. In Australia, draft Bills, policy documents and approach papers are published for comments. Additionally, the UK has different provisions, but here in Nepal has just introduced such provision through Legislation Act, 2081 BS.

(b) Legislative Stage

the law making known as legislative stage which begins from the time the Bill is introduced in parliament and ends once it is passed. At the legislative stage public participation is crucial in some countries. For example, the UK and USA have developed mandatory consultation provisions. However, in India, the speaker decides regarding public consultation. Similarly, committees are empowered to take comments in Australia and Canada. But different provisions are in South Africa, such as it may vary in terms of consultation. Moreover, all countries like India, UK, USA, Australia, Canada, and South Africa have provisions for publication of committee reports. However, the committee report is not as mandatory in India and South Africa compared to the USA, UK, Australia, and Canada. Interestingly, public participation is invited through notices like radio, newspapers, internet, and websites mostly in India, UK, USA, and Canada. However, in South Africa such notice is published through parliamentary democracy offices. An interesting thing is that some countries have provisions for public

meetings of parliament committees. But, in India such meetings are organized privately. Indeed, the parliament committee meeting is organized openly in Nepal, and at present, the federal parliament practices for suggestions in some Bills through the Parliament's website.

(c) Post-legislative Stage

the post-legislative stage begins when the Bill is enacted as an Act. After enacting the law, some countries have compulsory post-legislative scrutiny; like the UK, it is within three to five years. In the USA, the legislative oversight committee reviews laws on a continuous basis. But, in India and South Africa there are no such provisions. Special commissions may be appointed to conduct reviews in India, and occasionally for gender and disability laws they may review in South Africa. Likewise, most statutes have sunset and review clauses in Canada. In Australia, most laws have to be reviewed in 3 years and expire after 10 years. In Nepal we have different practices in terms of the overview of law, such as section 46 of the Environment Protection Act, 2076 has mentioned 5 years, but rule 139 of the House of Representatives Rules, 2079, has mentioned 3 years.

Public participation in the post-legislative stage in most of the countries like in the UK, public assessment is taken into account through select committees. Likewise, in the USA, committees are empowered to conduct public hearings. But, in India the commission takes account of submissions made to the ministry and other research conducted. Moreover, in South Africa parliamentary democracy offices may be approached for public participation in terms of the post-legislative stage. While in Australia, the Law Reform Commission is empowered to take evidence. But, in Canada, parliamentary committees take comments from the public during the post-legislative stage. Likewise, committees are empowered to conduct public hearings for public participation in the post-legislative stage in the USA.

Scrutiny of Public Participation regarding policy and Law Making

Public involvement in the policy formulation and law-making processes allows them to contribute to decisions that may have an impact on their lives. Also, it brings more benefits to the government and societies at large. Thus, public participation responsibilities are more valuable for policy and the lawmaking. However, there are some lacunae in terms of public participation, which deals with the following pros and cons;

(a) Pros (Benefits)

Public participation supports to increase public trust in government, because public participation is a key component for democratic legitimacy and good governance. Considering such things, public participation has the following pros;

- This is a new form of social solidarity to harness human and social capital,
- It will build a good relationship between the legislators or policy makers and the citizens by strengthening ties between representatives and their constituents,
- This increases accountability, transparency, social solidarity, and deeper relationships,

b) Cons (Disadvantages)

There is a proverb "two sides of the same coin", it means that different ways of looking at or dealing with the same situation or same thing. So, that public participation creates some difficulty in terms of policy and the law-making process, because there will be a variety of thoughts and suggestions on the policies or draft Bill. However, "opposite values are complementary to each other" as Gurudev Sri Sri Ravi Shankar thought, so the disadvantages also benefit the policy formulation and the law-making. The cause is that "two heads are better than one." For instance, the federal parliament member number is 334, but out of the member population about 30 million in the country. Thus, even if there are disadvantages of public participation, it needs to be forgiven. So, there are some disadvantages, which can be listed as follows;

- Public participation is a complex process and difficult to manage and organize, and has drawbacks for the governments and communities,
- A second criticism of participatory democracy is that it does nothing to counteract the silencing of groups historically silenced in society,
- It is time consuming and a financial burden,
- Lack of expertise in the subject matters and a chance to politicize the obtained suggestions.

The Responsibilities of Public Participation

There are some responsibilities of public participation regarding policy and law making, because this process cannot pay remuneration or fees for public participation. The participation is on a volunteer basis, so it needs commitment to the process without pay. Thus, it has the following responsibilities;

- Ensures democratic stability, growth, and concerning a clear purpose or goals,
- Focuses on public interest, not individual centric,

- The consultation, feedback, or suggestion needs to be based on solutions to the problem like constructive innovation,
- Involvement shall be fair, clear, and trustworthy,
- Participation shall be based on inclusive and effective representation.

Conclusion

Public participation refers to the interaction between government, people, and civil society through different mechanisms to design, evaluate, and implement development policies, projects, and programs. A democratic nation has some instruments through which leaders hear from the people. Basically, the instrument is a periodic election during which the people have an opportunity to hold leaders accountable. Between these traditional opportunities for democratic involvement, however, should a democratic nation have mandatory mechanisms for give and take between legislative leaders and the public, there are some questions. By tradition, Nepal has good social and cultural practices in terms of public participation such as ritual functions like janti (marriage ceremony), malami (funeral), social, and construction work such as making and maintaining temples, canals, ponds, roads, and chautari (ficus religiosa) in the society. Nepal, however, has some barriers in terms of public participation in policy and the law making, so it needs to build a constructive legal framework about it. The cause is that the source of sovereign power is vested in the people thus people participation are essentials due to their honor. However, public participation should not be made as a cheap slogan, it must be based on reality.

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