PARLIAMENT OF PAKISTAN

PIPS

PAKISTAN INSTITUTE FOR PARLIAMENTARY SERVICES

DEDICATED TO PARLIAMENTARY EXCELLENCE

ASSESSING LEGISLATION

Participants' Book

January 2015

Module 2

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Islam and its idealism have taught democracy. Islam has taught equality, justice and fairplay to everybody. What reason is there for anyone to fear democracy, equality, freedom on the highest standard of integrity and on the basis of fairplay and justice for everybody. Let us make it [the future constitution of Pakistan]. We shall make it and we will show it to the world.

Address to the Bar Association, Karachi, on the occasion of the Holy Prophet Muhammad (SAW) (PBUH) Birthday.

Karachi
January 25, 1948

PIPS TRAINING OF TRAINER SERIES

Quaid-e-Azam, Muhammad Ali Jinnah
Founder of Pakistan

"The Prophet (PBUH) was a great teacher. He was a great law-giver. He was great statesman and He was a great Sovereign who ruled".

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FOREWORD

The Pakistan Institute for Parliamentary Services, PIPS, is committed to provide research and capacity building services to Members of national and provincial assemblies/houses as well as their functionaries. The Institute follows a robust work plan 2014-15 formulated by its Board of Governors to offer legislative, research, capacity building and outreach services.

In this context, the Institute has developed its curriculum comprising modules on key areas of parliamentary life. These include modules on Drafting and Assessing Legislation, Question Hour, Legislative and Parliamentary Research, Parliamentary History, Conflict Resolution, Business of the House, Effectiveness of Committees, Budget Process and a Youth Guide on Parliament.

Most of these comprehensive training modules consist of a *Facilitator's Guide*, a *Participants' Book* and a *Power Point Presentation* developed according to the PIPS Training Standards and Procedures, and these cater for a range of activities from one day orientations/seminars to week-long thematic professional development courses. In fall 2014, PIPS also started its series of six weeks long courses by holding the 1st Management Development Course for parliamentary officers.

I am pleased to share the Reader on Assessing Legislation, 2015 with the kind readers and all concerned stakeholders. The Participant Book is aimed at equipping Members and parliamentary functionaries of the National Parliament and the Provincial Assemblies, with the techniques of assessing legislative proposals.

It would assist MPs and their staff in developing insights on problem solving methodology to assess, evaluate and improve a bill under discussion.

We extend our special thanks to UNDP Rule of Law Project, which has kindly offered to provide support for publishing the first edition of PIPS Reader on Assessing Legislation, 2015.

Mahmood Salim Mahmood
Executive Director

Islamabad
Friday, January 23, 2015

ACKNOWLEDGEMENT

Islamabad, January 23, 2015

Lawmaking is the process of making and enacting laws. It constitutes a long and often complex process including phases of very different nature such as policy making, impact assessments, the concrete law drafting, consultation procedures, questions of publication and accessibility, as well as more specific issues like possible alternatives to regulation and the roles of specific bodies in the lawmaking process.

Legislation is one of the most important instruments of government in organizing society and protecting citizens. It determines amongst others the rights and responsibilities of individuals and authorities to whom the legislation applies. On the other hand, a law has little or no value if there is neither discipline nor enforcement.

The Pakistan Institute for Parliamentary Services is pleased to share this Participants' Book on Assessing Legislation. The 2010 edition and 2015 edition have been solely developed by Mr. Muhammad Rashid Mafzool Zaka, Director Research and IT, PIPS. It aims at providing the legislators with the necessary tools that would help them in assessing legislations and proposing them to promote social and democratic change in their country.

This 2015 edition has been edited by Mr. Muhammad Faisal Israr, Research Associate (Outreach and Publications) Research & IT, PIPS.

We are grateful to the UNDP Rule of Law Programme in Pakistan for supporting PIPS in publication of this first edition of the Participants' Book on "Assessing Legislation".

We welcome any feedback and suggestions by the participants and readers of the module at: research@pips.gov.pk

Research and IT Wing

Pakistan Institute for Parliamentary Services

ABOUT THE AUTHOR

Mr Muhammad Rashid Mafzool Zaka is the Director (Research and Information Technology) and a member of the pioneering team of the Pakistan Institute for Parliamentary Services.

He brings with him almost two decades of experience in academia, research and legislative reforms and has to his credit publications on parliamentary democracy, society and comparative religion. Mr. Zaka commenced the PIPS exclusive Research on Request Services for parliamentarians in 2009 and has conducted numerous research papers for individual MPs and Standing Committees in addition to steering Institute's training programmes since November 2010. Mr Zaka has authored numerous modules for Pakistan Institute for Parliamentary Services on significant parliamentary topics such as Assessing Legislation, Legislative Research, Parliamentary Committees, 18th Constitutional Amendment and Devolution, Legislation and Media Relations, Conflict Resolution and a Youth Guide – Discover the Parliament of Pakistan. He is a certified trainer in parliamentary research, assessing laws, human rights and disaster risk management from the Asian Institute for Human Rights, Thailand and UNDP.

He has been member of founding team of the Foundation University, Islamabad. Mr Zaka has supervised numerous MS dissertations in the fields of development studies, international relations, sociology, diplomatic and strategic studies, at reputable Pakistani universities. He has been Member, Board of Studies at the Department of Defence and Diplomatic Studies, Fatimah Jinnah Women University, FJWU. Mr Zaka has also served on leading portfolios including Head, Deptt. of Social Sciences, Iqra University; Director, Centre for Peace and Development Initiatives, CPDI and Legislative Capacity Advisor, Pakistan Legislative Strengthening Project, PLSP. Mr Zaka has supervised and conducted numerous research papers for honourable Parliamentarians.

He holds an M. Phil. degree in International Relations and M.Sc in Strategic Studies with distinction from the top ranking Quaid e Azam University, Islamabad.

GOAL

Participants will understand the importance of lawmaking as well as the intricacies involved in assessing legislation to facilitate social, political and economic transformations in the public interest.

OBJECTIVES

By the end of the workshop, participants will be able to:

1. Appreciate the importance of lawmaking and describe their role as a legislator
2. Describe the general uses of legislative theory and the four steps of its problem-solving methodology
3. Read a bill effectively
4. Take necessary measures for the effective implementation of laws
5. Assess a bill's form and draft its structure
6. Apply mechanisms to enhance transparency and accountability as well as devise a general strategy and specific laws to combat a 'culture of corruption'

DURATION

- Three days

KEY TO ICONS

		
Group-based task	Pair-based task	Individual-think task
		
Video Presentation	Facilitator-led discussion	Self-study
		
Lecturette	Reference task	Three-member task

Session 1

Lawmaking and Your Role as a Legislator

OBJECTIVES	By the end of this session, participants will be able to: ▪ Appreciate the importance of Law Making ▪ Describe their role as a Legislator

DEFINING KEY CONCEPTS

INSTITUTIONS

"Institution" means a set or interrelated sets of repetitive patterns of social behaviours.

Defining an 'institution' as its constitutive sets of repetitive patterns of social behaviours focuses attention on the central problematic of this module.

Through their society's repetitive patterns of behaviour – their institutions – people shape the uses of their country's resources. Banks, schools, courts, family structures, prisons, farms, social clubs, legislatures, industries, welfare systems: these and a myriad of other institutions make up your country's political, social and economic system.

INSTITUTIONS AND GOVERNANCE

A country's institutions shape, not only its resource allocations, but the quality of that country's governance. The *institutions of governance* define a government's capacity to manage social and economic resources to facilitate development or transition. *Poor governance* consists of ineffective, *arbitrary* government decision-making processes – that is, ineffective decision-making by non-transparent, non-accountable, non-participatory (and frequently corrupt) processes. Your country's institutions play two most central roles:

- Institutions determine the relative wealth and income levels of your country's population, and of the groups and classes within it.
- They also determine the quality of its governance.

Historically-shaped institutions define a country. Their institutions and how they work distinguish the United States from Uruguay, Norway from Nepal, Canada from Kazakhstan.

THE CONCEPT OF 'GOOD GOVERNANCE'

a. **The World Bank (1989) defined good governance as** "the manner in which power is exercised in the management of a country's economic and social resources for development."

b. **The Bank's General Counsel identified governance with** ". . . 'good order', not in the sense of maintaining the status quo by the force of the state (law and order) but in the sense of having a system, based on abstract *rules* which are actually applied and on functioning *institutions* which ensure the rules' application. Reflected in the concept of 'the rule of law,' this system of rules and institutions appears in different legal systems and finds expression in the familiar phrase, 'government of laws and not of men.' These characteristics reduce to two: *effective government* and *decisions that emerge from a non-arbitrary decision-making process*. Four elements characterize those processes:
   i. ***Governance by rule*:** Decision-makers decide, not pursuant to the decision-maker's intuition or passing fancy, but according to agreed-upon norms *grounded in reason and experience*;
   ii. ***Accountability:*** Decision-makers justify their decisions publicly, subjecting their decisions to review by recognized higher authority, and ultimately by the electorate;
   iii. ***Transparency***: Officials conduct government business openly so that the public and particularly the press can learn about and debate its details; and
   iv. ***Participation***: Persons affected by a potential decision — the stakeholders — have the maximum feasible opportunity to make inputs and otherwise take part in governmental decisions."

Together, these characteristics tend towards maintaining the rule of law, and ensuring ***representativeness and predictability*** in state action.

CORRUPTION

Transparency International (TI) has chosen a clear and focused definition of the term: *Corruption is operationally defined as the misuse of entrusted power for private gain. (*http://www.transparency.org/news_room/faq/corruption_faq#faqcorr1 dated Jan 9, 2008.*).*

Corruption typically indicates poor governance. In all its forms, corruption violates the Rule of Law, and hinders effective development. Widespread corruption does not persist merely because of weak individuals or a 'culture of corruption'. It persists mainly as a result of weak *institutions* – that is, institutions that give officials opportunities and capacities to behave corruptly.

LAW

A law means a rule *promulgated by the state* and *implemented by state officials.* A *law* may take many forms: statutes, local ordinances, subsidiary legislation, ministerial rules, administrative regulations, a military junta's decrees.

LEGAL ORDER

It means the entire normative system in which the state has an involvement. It includes, not only the laws themselves, but also the institutions that make the laws (legislatures, independent agencies, ministries and courts) and that implement the laws (courts, ministries, the police).

PROBLEM IDENTIFICATION AND LAW MAKING

During and after the 1950s, a common perception evolved across indigenous leaderships that state power could transform a former colony into a modern, prosperous state. In this context, independence movements focused on gaining control over the same. A half-century later, as the new millennium dawned, both in the former colonial countries and the former Soviet Union, populist forces ruled yet all else did not follow.

Tyranny's fall did accomplish important improvements in human dignity; in South Africa, blacks could attend schools that earlier had barred them, in Pakistan as in Czechoslovakia, a newspaper columnist could criticize the government of the day, in India "***dalits***" and the laborers could formulate unions.

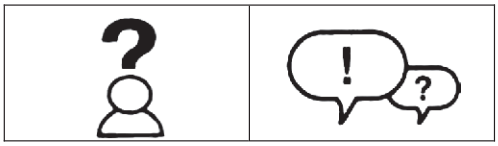
Prosperity and good governance, however, still eluded almost all new nations. Some 80% of the world's population received less than 20% of the world's output of goods and services.

In poor countries, a wealthy few waxed rich and powerful while majority – especially women, children, old folk, the disabled and ethnic minorities – lived o n survival's edge. For many, the quality of life – even life expectancy – actually declined from its level at Independence. Diseases (especially HIV/AIDS), ethnic conflicts, and civil wars engulfed much of the developing and transitional worlds.

Despite winning the political control, most of the world's people remained poor, vulnerable, and subject to execrable governance. It is noteworthy that *country's institutions which define a country's relative poverty and vulnerability, but also the quality of its governance***.** In the critical race between the old institutions and the new populist governments, by and large the old institutions won.

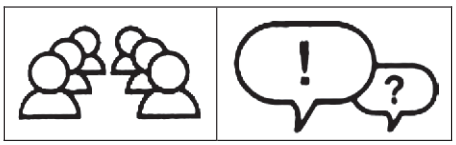
In the decisive race to change the institutions that define your country's poverty, vulnerability and governance, you as a lawmaker play a crucial role.

You and your colleagues can facilitate change by enacting laws that create the appropriate enabling institutional development. Properly designed, those laws can induce people to behave in ways likely to foster institutional changes that benefit the entire nation.



ACTIVITY
IDENTIFYING SOCIAL PROBLEMS IN PAKISTAN

What do you consider the most important social problems that confront the people in Pakistan?



SMALL GROUP DISCUSSION
EFFECTIVENESS OF PAKISTAN'S LAWS

Discuss the following in your group for the next 15 minutes:

In connection with development and transition, how effective have Pakistan's laws proven? Identify at least one law in Pakistan of which one might say, "It is a good law, but badly implemented":

ROLE OF A LEGISLATOR

The success of a Parliamentarian who ensures legislative oversight and adequate public representation primarily rests on his pro active role as a Legislator who transforms promises into policies, policies into effective laws and their implementation that induce a purposeful social change felt by institutions as well as the people.

As an elected legislator working with your colleagues, this module aims to help you to use your constitutionally-granted power to enact laws in the public interest. After you have read these modules and completed the exercises it contains you will have increased your capacity to exercise the legislative power that is to undertake the following tasks as a Legislator:

- ***To read and understand*** bills presented to your legislature;
- ***To assess*** whether those bills will advance the public interest;
- ***To ask questions to get the facts you need*** to debate whether those bills' detailed provisions will serve the public interest;
- ***To oversee the administration of the laws*** in order to ensure that the laws as enforced advance the public interest; and
- ***To communicate meaningfully with your constituents*** about the kinds of laws they need to improve the quality of their lives.

DEBATING AND VOTING ON, AND (SOMETIMES) INITIATING BILLS

The central legislative task imposed on the holders of the legislative power – yourself and your fellow lawmakers – consists in enacting (or refusing to enact) a bill. To legislate wisely you must assess the evidence about how earlier legislation works. You have two channels for acquiring that information.

THE OVERSIGHT FUNCTION

In exercising their oversight responsibilities, deputies usually may summon government ministers before the full house for questioning. In some countries, legislative committees may do so. (If legislative committees do not exist, or lack the power to do so, you may wish to consider enacting regulations to create them, and empower them to require ministry officials to answer more detailed questions).

MAINTAINING TWO-WAY COMMUNICATIONS CHANNELS WITH CONSTITUENTS

As a second channel for learning how the laws work, you learn from your constituents. As part of your *representative* function, you need to inform them about the implications of new legislation. As part of your *oversight* function, you must solicit facts from them as to how the laws affect their lives.

- Initiating, assessing, amending and debating bills;
- Overseeing executive implementation of the laws; and
- Building and maintaining two-way communication channels with the members of civil society – the 'stakeholders'.

THREE KINDS OF LEGISLATIVE ARGUMENTS

To enact a bill that you support, you must win the votes of fellow legislators. To do that, legislators make three kinds of arguments, based on consensus, interest contestation, and reason informed by experience.

1. ***Consensus: arguments based on 'core values'***

   Assuming that all the citizens of a political unit agree on their core values, a representative should support legislation based on that core value-consensus. Values, however, vary widely. In Nigeria, a Fulani nomad on the Sahara's edge lives in a completely different world from that of an Oxford-trained civil servant in Lagos. Both may speak Hausa and worship in mosques, but their webs of life – and with them, their 'domain assumptions,' their core values – fundamentally differ. If no 'core values' exist, arguments appealing to them cannot reliably persuade a bill's opponents. Argument addressed to non-existent 'core' values rank with the other arguments of power. They do not appeal to the rational sceptic; they do not invoke facts and logic.

2. ***Interest contestation: arguments based on power***

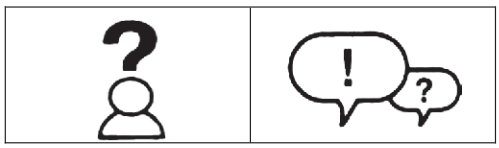
Interest contestation theorists agree that no core values exist. At the same time, they hold, 'facts' and 'values' occupy different universes; we cannot measure or compare 'values.' As Schumpeter put it, "no such thing (exists) as a uniquely determined common good that all people could agree on. . . by the force of rational argument."

Interest contestation theorists come in two varieties: pluralist and public choice. *Pluralist* theorists hold that, as interest group representatives, legislators enact into laws the bargains they make with each other. *Public choice* theorists assert that, bent on re-election, elected officials 'auction' off laws to the highest bidders. Especially where parties nominate 'lists' of candidates, legislators typically vote as agents for their parties. Both sets of theorists argue that a lawmaker has no choice but to act as an interest-group agent. For that, lawmakers make arguments resting, not on facts and logic, but power. You reach agreement not by *persuading* the other side, but by *compromising* with them. You assess a bill only in terms of what it will do for your preferred constituency.

3. ***Problem-solving: arguments based on facts and logic***

Unlike pluralism, problem-solving rejects the divide between 'facts' and 'values'. Arguments about what the law *ought to be* properly flow, not from prolonged contemplation of one's 'values', but logic reflecting on the available evidence, that is, reason informed by experience. In this mode, you appeal to the rational sceptic through appeal to reason, not emotion.

You assess bills on the same basis.



ACTIVITY
EXERCISING YOUR CONSTITUTIONALLY DELEGATED LEGISLATIVE POWER IN THE PUBLIC INTEREST

1. ***Make a list of the various tasks you have done in the last week in connection with your various roles as a member of the legislature:***

2. ***Which ones involve exercise of your constitutionally delegated legislative power in the public interest?***

STEPS OF ASSESSING LEGISLATION

STEP 1: *YOUR UNDERSTANDING OF WHY PEOPLE BEHAVE AS THEY DO IN THE FACE OF A RULE OF LAW?*

To estimate a new Law's probable outcome you must investigate the law's potential impact on society. 'Out there,' in the real world, lie uncountable 'facts.' To assess a new law's probable social impact, which should you examine? Save with respect of the simplest bills, without a guide about what facts to investigate – that is, ***what detailed questions to ask –*** you cannot know where to begin.

Legislative theory holds that, confronted by a law, social actors behave within time – and place-specific constraints and resources of the environment within which they live and work. Among these, the law (and its threats of punishment and promises of rewards) constitute only one.

Legislative theory's model of the legal system shows that, faced by a rule of law, a person – a role occupant – behaves in response to (1) the rule's words, (2) the relevant implementing agency's expected behavior, and (3) all the non-legal constraints and resources that characterize that person's specific environment. (This manual discusses these factors in much greater detail in Session 3 and 4). By investigating those three categories, you can make a more or less reliable prediction of a law's social consequences. That is the necessary predicate for using law as an instrument of social change.

Learning to use legislative theory and methodology becomes a condition for using the legislative power wisely in the public interest – and thus for winning the critical race.

STEP 2: *PRIORITIZATION OF LEGISLATION*

Every day, you hear demands for new laws. Government never seems to have enough resources for drafting, enacting and implementing them all. To avoid wasting time and money on relatively unimportant bills, **you as law-makers, the executive and the legislature, working together** must determine the order in which to draft, debate and enact transformatory legislation – that is, you must **prioritize** them. Developing and transitional countries' processes for deciding priorities of proposed legislation often seem haphazard. In reality, too often, those processes permit the beneficiaries of the *status quo* to press for unimportant, incremental measures that leave intact the institutional causes of a growing 'have-have not' gap. That seems to reflect the skewed nature of the prioritizing institutions.

The institutions for prioritizing drafting: An overview

In most countries, most bills originate in the executive branch, mainly in the ministries, as government bills. While implementing existing laws, ministry officials frequently identify new problems that call for new legislation. Occasionally, parliamentary committees or staff members or a legislator prepare a bill's initial draft. Ministries usually submit their proposed legislative projects to some body that prioritizes all the country's drafting proposals. In some countries, ministries submit their projects to a Cabinet Committee on Legislation, composed of senior ministers, which determines priorities. In others, ministries simply forward them to the central drafting office, which allocates its scarce resources to bills its staff considers important. In effect, then, the office determines the bill's priority.

Whatever the institutional structure, in practice prioritizing frequently seems completely haphazard. Taking advantage of the unsystematic prioritizing process, political leaders not infrequently press hardest for bills supported by powerful interest groups. Those with the best channels to decision-makers **– almost everywhere, those with power and privilege** – usually win priority for bills that advance their interests.

How to improve the prioritizing institutions?

Lawmakers must answer that question in light of their country's special circumstances. By setting the law-making agenda, prioritization decisions ***shape the direction of government's exercise of state power***. As an important task, make sure your country's prioritization institutions give you and your

colleagues an opportunity to assess and approve the government's legislative program. Here, we suggest a few factors that you might consider:

Prioritization

This requires *comparing* the claims of the many bills that clamor for legislative attention. The principal legislative opportunity to do that occurs where government presents its annual legislative program to the legislature for approval. (Not all governments do that, but they should.) In most (if not all) Commonwealth countries, for example, the Head of State reads out the annual legislative program at the opening of the first session of Parliament for the year.

Whatever committee controls the legislature's agenda should require a bill's proponents to provide sufficient information to enable the appropriate legislative committee wisely to determine its relative priority. That could take the form of a memorandum that describes the social problem the bill will address, a timetable for the drafting, and a guesstimate of the order of magnitude of resources required to formulate and implement its provisions. That memorandum should also specify the criteria, facts and logic that the proponents believe justify granting their bill priority status; and suggest the composition of the drafting committee, and the form for consulting stakeholders.

In ranking proposed bills, the prioritization body performs a planning function. Like all plans, its initial prioritization decisions should remain flexible. If, in the course of a year, a new social problem emerges that seems to require new legislation, the law-makers may decide – in light of the available facts and reasons, and clearly pre-defined, well publicized criteria **– to alter the priority list.**

Criteria for Prioritization

For prioritizing proposed legislation in a given country at a specific time, no one can provide a blue print. In 1994, as its first task immediately after its first democratic elections, South Africa's new government appropriately abolished state-enforced apartheid. In many countries, land reform held first place. In Afghanistan after the Taliban's ouster, laws to establish the new government, to ensure security and protect women's rights, demanded immediate attention. No one size fits all. Reason and experience, however, do suggest guidelines for questions you should ask ministers as to which bills to rank for legislative action first; that is, what criteria to use in assigning legislative priority.

Public Interest First

In prioritizing as in all law-making processes, the discourse of power inevitably also presses for your attention. As throughout this manual we here focus only on considerations of *the public interest* as determined by *logic and facts*.

Getting Information for Prioritizing Legislation: To prioritize proposed legislation, you need to ask will a proposed bill:

- Improve the quality of governance? How?
- Increase employment opportunities?
- Increase the production of goods and services to meet the basic needs of the majority of the population?
- Increase equity? How? In the short-, medium-, or long-term, who will win, who will lose?

You should also ask:

- Do the bill's detailed provisions seem do-able? At what cost? With what possible unintended social consequences?
- What constitute the bill's likely social costs and benefits?
- In light of available drafting resources, how difficult and how long a drafting task does the bill seem likely to present?
- What other proposed legislation competes for priority?

Critically Review Lawmaking Process

A country's law-making institutions shape the prioritization process. You and your colleagues should critically review and, if necessary, restructure your country's law-making processes to ensure prioritization of legislation in the public interest.

Identify Priority Areas: Ensure Benefits Outweigh Cost

In general, give precedence to legislation likely to strengthen the institutions required to ensure good governance, as well as the socio-economic institutions that shape the population's employment opportunities and quality of life. Be sure that the available facts demonstrate that the expected benefits of proposed institutional changes will likely outweigh their probable costs.

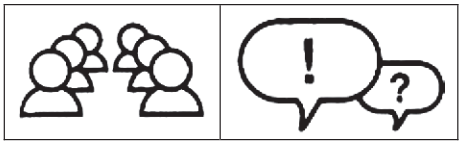
Based Judgement On Facts Of Your Own Country

When assessing the relative priority of legislation likely to affect your country's economic institutions in the fields of agriculture, industry, the informal sector, trade and finance:

- Base your decisions, not on abstract models or theories, but on the facts of your own country's specific circumstances; and
- Think carefully about the questions you should ask to assess their likely social impact, not only on the growth in the 'national pie', but on the people's productive employment opportunities and quality of life.

Every country has its own issues, problems and needs. Laws to enhance strong Parliamentary democracy with rule of law, good governance, social welfare and provincial autonomy of course deserve high priority;

so do laws aimed at strengthening your country's economic foundations. Thus no matter at prioritizing stage, you likely have relatively little information; Working with whatever information you have, give high rank to those proposals with the greatest net social and economic benefits; ask for and weigh the facts as to a law's probable socio-economic costs and benefits.



SMALL GROUP DISCUSSION

PRIORITIZING LEGISLATIVE PROPOSALS FOR DRAFTING

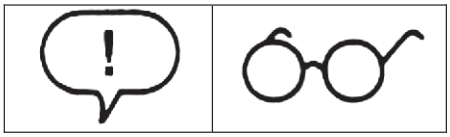
Discuss the following in your group for the next 15 minutes:

Describe the steps by which, in Pakistan, the relevant authorities decide how to prioritize legislative proposals for drafting:

Session 2

An Introduction to Legislative Theory & Methodology

OBJECTIVES	By the end of this session, participants will be able to: ▪ Describe the general uses of legislative theory and the four steps of its problem-solving methodology ▪ Discuss the range of possible causes of the problematic behaviours that comprise a dysfunctional institution ▪ Appreciate the importance of weighing the social and economic costs and benefits of the logical alternative legislative measures ▪ Explain why they should require the bill's sponsors to accompany an important bill with a research report



A PROBLEM-SOLVING METHODOLOGY: A GUIDE FOR ASKING QUESTIONS AND ASSESSING BILLS

To realize democracy's promise, you and your colleagues must exercise the legislative power in the public interest. What theory and methodology can best guide you in assessing whether proposed legislation will solve a social problem effectively and at least social cost? This section explores the use of theory in the search for facts, and the logic of the four steps required by institutionalist legislative theory's problem-solving methodology.

Implicitly or explicitly, a law rests on educated guesses about what behaviors constitute the social problem it aims to help resolve (***descriptive*** hypotheses), and about the causes of those behaviors (***explanatory*** hypotheses). To induce behaviors more likely to solve that problem, the law's detailed prescriptions logically must alter or eliminate those causes. To test these hypotheses, you must ask questions – mainly, questions about the facts that might *falsify* them. If the hypotheses prove consistent with the facts, and the solution logically addresses the causes those hypotheses reveals, the proposed law has some probability of ameliorating the social problem at which it aims. Thus legislative theory guides the search for relevant facts.

An hypothesis helps to limit the area of facts which researchers must try to discover. Someone whose hypothesis reflects a personal 'vision' will likely limit their search to facts that conform the hypothesis, and thus coincide with that person's subjective values. To overcome the universal tendency to find only confirming facts, conscientiously search for facts to ***contradict*** your hypothesis. A law has a better chance of helping to resolve a social problem — that is, to ***work*** — if it rests on hypotheses grounded, not on how you would like the world to be, but on how it actually ***is***.

THE FUNCTION OF LEGISLATIVE THEORY

This manual does not offer a treasure chest, but a tool box. Its legislative theory (including the model explaining why people behave as they do in the face of a rule of law, and the problem-solving methodology, below) offers you a guide for analyzing how a law will likely affect relevant social actors' *behaviors*.

That theory rests on the fact that all ***social*** problems reflect repetitive patterns of behavior; that is, by definition, ***institutions***. Only by re-channeling dysfunctional behaviors can law help resolve those problems. The model on LEGAL SYSTEM purports to explain why, given existing laws and conditions, people behave as they do. That constitutes an essential tool for finding and evaluating the evidence necessary to assess whether a bill will likely induce new behaviors to resolve a specified social problem.

Effective law must build, not on dreams and visions, but on concrete, real circumstances. To assess whether a bill's detailed provisions rest on real-world foundations, institutionalist legislative theory offers a methodology that, at every step, guides the search for the necessary time and place specific facts.

USING LEGISLATIVE THEORY'S PROBLEM-SOLVING METHODOLOGY

The problem-solving methodology aims to use ***reason informed by experience*** — facts and logic — to assess whether a bill's prescriptions will likely lead to effective implementation and achieve that bill's stated objectives. To determine whether in your country's unique circumstances a bill's provisions

will likely overcome the causes of a particular social problem, legislative theory's problem-solving methodology recommends that, at each of four logically-connected steps, you ask specific questions :

STEP I: *IDENTIFYING THE SOCIAL PROBLEM*

To understand the nature and scope of the social problem the bill proposes to address, you must ask two questions. **First,** you need country-specific information about its surface appearance: What facts can the bill's supporters provide to support their descriptions of its nature and scope? S**econd,** because laws can only address behaviors, ask questions to discover who constitute the relevant social actors**,** including the implementing agents, and what they do that creates or exacerbates that social problem. Unless you know exactly ***whose and what behaviors*** constitute that social problem, you cannot meaningfully assess the bill's likely effect.

Once you get the facts about a law's actual impact, you may want to revise and improve it. Your job as lawmaker does not end with the enactment of a bill. Like life itself, lawmaking involves solving one problem after another.

STEP II: *PROPOSING AND WARRANTING EXPLANATIONS*

To help resolve the problem, the proposed law must alter or eliminate the ***causes*** (that is, the explanations) of the relevant social actors' problematic behaviors. Ask the bill's proponents to explain those behaviors, and demonstrate that their explanations prove consistent with the facts.

STEP III: *PROPOSING A SOLUTION*

Once convinced that the facts justify the explanations of the existing problematic behaviors, you can assess whether logically the bill's prescriptions — especially the implementation provisions — seem likely to alter or eliminate those causes, and induce more desirable behaviors. Always ask the bill's proponents to describe the alternative solutions they have considered, and the costs and benefits of those alternatives as well as of the bill before you. Especially, ask them to describe the bill's probable impact on groups and interests typically poorly represented in the halls of power: women, children, the poor, minorities, human rights concerns, environmental protection matters.

STEP IV*: MONITORING AND EVALUATING THE NEW LAW'S IMPLEMENTATION*

Finally, ask questions about the monitoring and evaluation mechanism that the bill prescribes. No law ever works exactly as anticipated. Prior to enactment, pressures to pass legislation quickly often preclude adequate research. Constantly changing circumstances inevitably accompany transformation. After a law's passage and implementation, you and your colleagues can only carry out

your oversight tasks if you have adequate information to determine whether people and organizations (including implementing agencies) do in fact behave as the bill prescribes, with the expected consequences.

Problem-solving's second step, explaining the causes of the behaviors that comprise the problem, proves crucial. If a bill's design does not logically alter or eliminate the causes of problematic behaviors, it will not likely induce the new behaviors needed to help resolve the problem. Legislative theory suggests a set of categories to help identify all the plausible explanations for the problematic behaviors the bill addresses.

LEGISLATIVE THEORY'S GUIDE TO FINDING PROBLEMATIC BEHAVIORS' CAUSES AND SOLUTIONS

Ask about the facts concerning possible causes suggested by each category in turn. Together, these categories serve to focus your questions on the facts you need to validate the likely ***causes*** of each set of problematic behaviors the proposed bill's details aim to alter. Unless the bill's detailed measures logically seem likely to overcome the existing problematic behaviors' causes revealed by those facts, you probably should call for alternative legislative solutions more likely to succeed.

ROCCIPI

Institutionalist legislative theory builds on the premise that no single factor causes behavior. It suggests seven broad categories to help generate all the likely hypotheses as to the causes of a relevant set of social actors' behaviors: ***R****ule, **O**pportunity, **C**apacity, **C**ommunication, **I**nterest, **P**rocess and **I**deology.* (The first initials of these categories make the acronym, ***ROCCIPI*** . The order of the categories has no significance. The acronym aims to help you remember the categories.)

R for the *Rules*

The model on page 15 focuses on the question, why do people behave as they do in the face of a rule of law? In reality, people behave as they do, not in the face of *a* rule*,* but of a whole *cage* of laws*.*

HOW EXISTING LAW MAY HELP EXPLAIN BEHAVIOR: AN EXAMPLE

Suppose that, despite a law forbidding it, people pollute the rivers. On its face, the law's provisions may suggest several explanations for that behavior. ***First***, the existing law's provisions may not forbid the dumping, or may not require an agency to act to prevent it. ***Second,*** the rule's wording may grant the polluters or the implementing officials broad discretion to decide how to behave, leaving them scope to respond to inappropriate motivations. ***Third,*** the law's provisions may permit or even authorize the implementing officials to use non-transparent, unaccountable decision-making processes that make it easier for them to permit polluting behaviors (think corruption). ***Fourth,*** ambiguous or confusing language may leave polluters unclear as to the law's requirements. ***Fifth,*** other rules may exist that in effect make compliance impossible. For instance, a rule may require companies to get rid of waste without providing an alternative place for waste disposal.

Ask four kinds of questions about the precise wording used in existing laws to discover how they may help to explain problematic behaviors. Do the existing laws' detailed provisions:

1) Prescribe or expressly ***permit*** the problematic behaviors?
2) Expressly or by vague or ambiguous wording grant ***discretion*** to its addressees to decide how they should behave?
3) Specify ***criteria and procedures*** likely to ensure that implementing agency officials make decisions using non-arbitrary — i.e., transparent, open, accountable, and participatory — processes?
4) Prescribe the required behaviors of the relevant role occupants (including implementing agency officials) in words that leave them ***unsure*** about what they must or may do?

The answers to these four questions may help you to decide whether the existing law itself, on its face, helps to explain the problematic behaviors at issue. In addition to examining the existing cage of rules, the remaining ROCCIPI categories suggest that you should ask questions about non-legal causes embedded in your country's unique realities. Since the bill should alter or eliminate the causes of the behaviors that constitute the social problem the bill addresses, the answers may suggest possible additional detailed provisions in the bill.

O for *Opportunity: Do circumstances facilitate the problematic behaviors?*

First, do the circumstances create an ***opportunity*** for the relevant actor to misbehave? If so, the new law should try to change the environment to make that behavior more difficult.

For example, if customs officials, in an out-of-sight field post, take bribes, the law might require monitoring by hidden cameras, or inspectors making unannounced visits. If mining inspectors come to a mine, see only the manager in private, and then, despite dangerous conditions, give the mine a clean bill of health, an effective legislative provision might forbid the inspector from conversing with the mine manager without a representative of the labor union representing the mine workers within easy earshot. Second, do the relevant actors have an opportunity to behave as the law prescribes? For example, if a small farmer has no access to a market for a crop, that farmer may not grow it even if the law aims to encourage all farmers produce it.

C for Capacity: Do the relevant actors possess the necessary knowledge, skills, and resources they need to behave differently than they do now?

For example, to explain low farm productivity, ask: Do farmers have access to necessary new technology and the skills to operate it? To explain non-accountable decision-making: do officials have the skill and resources to publish written explanations for their decisions?

CAPACITY? IF I CAN'T DO IT MYSELF, IT WON'T GET DONE.

C for Communication: Do the actors know and understand the existing rules?

A person cannot consciously obey a law without knowing that it exists, and understanding the behaviors it prescribes. A country's channels for communicating information about laws often reflect, and in some cases foster a skewed social structure. In most jurisdictions, laws only appear in a government Gazette (or its equivalent) that appears in very few copies to which few people have access. This may seriously erode the rule of law. Local media may publish reports on the most important laws, and ministries usually inform their officials about new laws, especially those responsible for enforcing them. Urban elites, especially formal-sector businessmen, usually learn from their lawyers or business associations about laws likely to affect their affairs. In contrast, unless the responsible ministries make special efforts to inform them, the poor – especially the rural poor – seldom learn about new laws, even those supposedly designed to help them better their own lives.

Ask: Do a bill's provisions ensure that the poor and vulnerable will learn about the law, new laws that give them access to credit, or aim to facilitate their participation in decentralized government affairs? Does a law designed to protect women and children against domestic violence include a provision to inform them about it?

More generally, you might consider legislative provisions for wider communication of all laws enacted, in newspapers, radio and television programs, as well as for direct announcements to affected communities.

I for Interest: What incentives exist to induce relevant actors to behave as they do?

The category, 'Interest' (or incentives) refers to the actors' own perceptions as to how the existing law's costs and benefits affect them and people close to them. These may include material benefits, like increased cash or fringe benefits. They may also include non-material incentives, like power or their family members', friends' and associates' esteem.

In considering how particular interests influence an actor's behaviors, exercise caution. Too often law-makers propose laws that, implying that 'Interest' constitutes the main cause of problematic behaviors, merely impose heavy punishments to deter violations, or, sometimes, grant rewards as incentives for compliance.

In reality, few actors take into account a law's paper penalty. Drivers on major highways, for example, may worry less about the speed limit than whether a radar-equipped police car hides around the next bend in the road. That suggests the need, not for greater penalties, for more police patrols.

Some theorists expand the 'Interest' category to subsume all the other categories of explanation. In that view, for example, farmers fail to increase production only because they do not receive sufficient profits from the venture — never mind that no road leads from their farms to market; or officials do not obey a law to write an explanation for their decisions because they receive no punishment for their failure — never mind that they remain illiterate.

To expand any of the ROCCIPI categories so broadly destroys their usefulness for specifying detailed explanatory hypotheses. Without detailed explanations, warranted by facts, as to all the probable causes of problematic behavior, you have no basis in logic or facts for assessing a bill's detailed prescriptions.

P for Process: How do the actors decide to behave as they do?

Especially with respect of complex organizations (and that includes ***all*** implementing agencies), focus your attention on the ***process***, the criteria and procedures by which the relevant actors decide whether or not to obey the law. Usually, if the relevant actors comprise individuals, the 'Process' category yields few useful explanatory hypotheses; individuals usually decide on their own whether or not to obey the rules. In contrast, 'Process' may constitute ROCCIPI's most fruitful category for inspiring hypotheses to explain the problematic behaviors of actors who work in complex organizations: corporations, non-government organizations (NGOs), schools, trade unions, cooperatives, and especially implementing agencies — police, courts, ministries, agencies, departments, local government, bureaus.

I for 'Ideology' (values and attitudes): What goes on in an actor's head that helps explain behavior?

Many social scientists turn to 'Ideology' to explain problematic behaviors. 'Ideology' here refers to matters of belief, encompassing values, attitudes, tastes, myths about the world, religious beliefs, more or less well-defined political, social and economic ideologies. Some people try to subsume most other explanations under 'Ideology,' leading, as does a similar expansion of' 'Interest,' to the neglect of solutions aimed at other causes.

For example, in a particular country, to blame coal mine accidents solely on the managers' culture of profits over workers' safety may ignore the managers' lack of technology to prevent accidents, or even the absence of a law seeking to ensure mine safety.

CATEGORIES AND EXPLANATORY HYPOTHESES

We reiterate: Given the pressure of legislative work, you do not have much time in which to ask questions of Ministers or other officials. To make the best use of your limited time, you need a guide to formulate hypotheses as a basis of questions about relevant facts likely to help identify the causes of problematic behaviors. Broadly construed, legislative theory's seven categories, captured as "ROCCIPI", may help you to make useful 'educated guesses' about each set of problematic behaviors' causes.

For example, to explain an official's arbitrary decision-making, the category 'Rule' might 'spark off' an hypothesis that the law grants that official unlimited discretion; the category, 'Capacity'; might suggest another hypothesis; the category, 'Process', a third. No matter which category inspires useful hypotheses, the ROCCIPI agenda served its function if it inspired you to consider all the likely possible causes.'

The ROCCIPI categories help you to ensure that — given the facts available as to your country's circumstances – a bill's drafters have identified all the probable causes of the relevant actors' problematic behaviors. (That includes the behaviors of implementing agency officials). That lays the essential foundation for assessing whether the bill's detailed provisions logically seem likely to overcome the causes of the specified problematic behaviors, and thus to induce those actors to behave more appropriately.

DESIGNING A DETAILED LEGISLATIVE SOLUTION

Having incorporated the causes of problematic behavior, you must enquire about the adequacy of the solution – the proposed bill. That calls for four sets of questions:

1. Have the bill's proponents canvassed the possible alternatives?
2. Have they tested the preferred solution – the bill – against the ROCCIPI categories?
3. Have they identified in the bill the most ***socially*** cost-efficient solution?
4. Does the bill provide a method for monitoring and evaluating its implementation?

CANVASSING ALTERNATIVE POSSIBLE SOLUTIONS

The first step in assessing a bill requires that you enquire of the bill's proponents what alternative solutions they considered. One can gather ideas for alternative solutions from a variety of sources: from the professional literature on the subject; from comparative law and experience; and from one's own ideas. As we have emphasized, from foreign law there is nothing to copy, but much to learn.

Mainly, you can learn what others have tried to solve analogous social problems, and how well those solutions worked. Unless the proponents of the bill have considered alternatives, you cannot assure yourself that their solution constitutes the most appropriate one.

'REVERSE ROCCIPI'

Ask the proponents to demonstrate that their preferred solution addresses the earlier identified causes of the problematic behaviors that constitute the social problem addressed. Unless it does, the new solution may not succeed in changing those behaviors and thus fail to ameliorate the social problem. When considering explanations, you used the ROCCIPI categories to generate hypotheses to explain existing behaviors. Now use it to ***predict*** what behaviors a bill will induce.

Example: If the bill before you proposes to create a new agricultural finance bank to supply credit to small farmers, ask, for example: Will the new bank have the **Capacity** to make the many small loans required of such a bank? will it have **Opportunity** to do so? will the responsible bank officers have sufficient incentives ('**Interest**') to make the loans? do the bank's **Processes** tend to ensure accountability, transparency, and participation by stakeholders in bank decision-making?

WEIGHING A PROPOSED BILL'S PROBABLE COSTS AND BENEFITS

In particular, you should ask for facts you need to weigh the relative social and economic benefits and costs of implementing the alternatives as compared to the drafters' bill. No matter how effective a bill, unless its anticipated social and economic benefits exceed the anticipated costs, you should vote it down. To make that decision, ask for the facts about its probable impact, as well as its estimated benefits and costs compared to those of the leading potential alternatives — including the current law.

A. A Bill's likely differential impact

1. **On various social strata:** No law impacts all society's diverse social groups equally. Even a seemingly simple new law that requires drivers to change from driving on the right instead of the left side of the road imposes massive costs on the owners of existing automobiles, whose right-hand-drive cars suddenly lose much of their value. In the United States, where an income tax law requires that the rich pay a somewhat higher percentage of their income as tax than the poor, a recent seemingly equitable 10 per cent across-the-board tax cut in reality gave 62 per cent of the proposed

tax saving to the wealthiest 10 per cent of taxpayers. A regulation requiring that the police commissioner appoint as policemen only people six feet tall or taller discriminates against women.

Those with power and privilege always have channels to communicate their objections to political movers and shakers. As an elected representative, ask for the necessary facts to assess how a bill's detailed provisions will likely impact on the poor, women, children, the elderly and disabled, and, in many countries, minority ethnic groups – all typically underrepresented in the halls of power.

2. **"For the public interest":** You should also ask how proposed laws may differentially affect at least three sets of areas of common concern too often neglected by those in power: The environment, human rights, and good governance. (Note: In a particular country, people may also value other special concerns).

- *The environment*: Although almost every bill affects the environment, it too seldom has strong protectors in government. As a minimum, ask for the facts about a bill's likely environmental impact.

- *Human rights:* In some cases — as when a proposed bill gives officials the power to detain persons without trial, or imposes political controls over the press — the negative consequences for human rights may seem obvious. You should also ask questions about how other bills may affect human rights in less obvious ways. Does a legislative proposal for new roads raise issues of human rights if it takes private lands inhabited by poor people who cannot afford to move elsewhere? Does a proposal to build a hospital to serve an ethnically powerful, wealthy group — which already enjoys access to a developed health delivery system — raise issues of discrimination against neglected poorer communities? Does a bill to provide high-tech skills neglect to ensure equal opportunity for well-qualified women applicants?

- *Good governance:* Increasingly, people have come to value good governance. This requires you to ask: Does the bill provide for transparent, accountable, participatory decision-making? Does the bill contain built-in defenses against corrupt behavior?

B. Estimating costs and benefits

1. **Economic Costs:** By 'economic costs and benefits' we mean the costs a hardnosed accountant would include. The costs include government's out-of-pocket direct expenditures for personnel, buildings, equipment and services required to implement a law. Government usually pays these out of current revenues, or, over time, in the form of the principal and interest

on loans. Unanticipated factors like inflation or shortages may make estimates of these direct economic costs problematic.
Governments also pay harder-to-estimate indirect costs. If, for example, a proposed product liability law relies on individual litigation as its principal implementation measure, government revenues must cover additional expenditures to enable courts to deal with the resulting law suits.

The private sector may also bear economic costs due to a law's effect on existing enterprises' employment, wages, or present or future profits. Those costs may appear in the form of tax increases (the impact of which depends on whether the taxes fall more heavily on the high or low income groups). Some of these economic costs may only appear over time.

It frequently proves difficult (sometimes, impossible) to obtain accurate quantitative measures of a bill's economic and social costs and benefits. Request a separate analysis of the factors included in efforts to make such estimates.

2. **Economic benefits:** The economic benefits generated by a bill's authorization of government spending usually only appear over time. This makes them even harder to estimate than economic costs. For example, current government expenditures on infrastructure to stimulate new business may generate increased future government revenues as a result of expanded private sector employment and profits — but who can say by how much? Government investments may also produce more government income in the form of profits, increased fees for services or interest on government loans — but these future returns remain difficult to predict.

   New legislation may also bestow differential economic gains on various private sector groups. Laws initiating new government development projects may stimulate increased profits, employment and wages, but with different impacts on different social groups. Uncertainty concerning many interrelated factors render these potential gains difficult to estimate. Sometimes, politicians claim reduced taxes constitute a private sector gain.

   Which social group will benefit depends on the particular taxes reduced, as well as who will lose when reduced revenues force the elimination of services. Reducing the education or health budget will likely most seriously impact the poor, who have no alternatives on which to fall back. A shift from income or profits taxes to higher taxes on value added or consumer goods sales usually reduce the poor's real incomes, since they pay a greater share of their income than do the rich to buy consumer necessities.

3. **'Guesstimating' social costs and benefits:** Social costs and benefits generally prove even more difficult to compare and assess than economic costs and benefits. They affect intangible items like the quality of life (jobs

and incomes, housing, recreational facilities), human rights, and environmental conditions.

Typically, these, too, differentially affect the quality of life of society's historically disadvantaged groups. How to measure the impact on a poor family's life of a government decision to demolish their house in order to build a road through their property? Of building a school or a hospital in a high-income area rather than a low income area? Of permitting timber companies to chop down swaths of natural forest, which, over time, will likely contribute to increased water run off and flooding? Of increased spending on education so that many years later the community's poorest citizens may enjoy new employment and income opportunities?

Good governance calls for greater participation in the development process by the poorest, most historically disadvantaged segments of the population. How to measure the social costs and benefits of their participation? This makes it especially important for government to hear from the poor about the law's impact upon them.

Frequently, the intangibles comprise a law's most important development impacts. You should ask the relevant ministries to provide the best estimates they can — including an explanation of how they reached those estimates. Then do your best to evaluate the bill.

MECHANISMS FOR LEARNING ABOUT A NEW LAW'S EFFECTS – MONITORING AND EVALUATION

The difficulties involved in estimating a proposed law's probable social costs and benefits — only one of the many places where, no matter how hard the law-makers try, legislation necessarily proceeds with less than exact information — underscores the importance of incorporating in important bills an adequate monitoring and evaluation mechanism. This, problem-solving fourth step, should provide information to determine whether the law actually does induce the behaviors it prescribes, and their anticipated impact (If it does not, you may decide to amend or even repeal the law).

You should ascertain whether the bill contains provisions making it easy for the legislature to learn how well the new law has succeeded in reducing the original perceived social problem, and at what actual economic and social cost.

In the largest sense, democracy itself constitutes a gigantic, if somewhat unsystematic, monitoring and evaluation system. Constituents whose toes a law's implementation may pinch can and frequently do complain to you and your colleagues as their elected representatives. You have a constitutional responsibility to listen and respond. Many legislative committees oversee the

work of particular ministries. This system, however, does not always ensure reliable monitoring. Important transformatory laws should include built-in devices to ensure more direct feedback. Some of the recognized monitoring devices include:

- **A reporting requirement** that a responsible officer (frequently the Minister) report periodically to a legislative committee on the new law's operation. In most countries, Ministers already, almost ritually, comply with laws' requirements that they report to Parliament'– but experience shows that, too often, little comes out of this process. This underscores that, for important bills, additional monitoring devices appear essential.

- **A sunset clause** (i.e., the new law stipulates its own limited life, so that it will only continue if people become convinced that it should continue. That may stimulate those for or against the bill to investigate its performance in some detail). * A requirement that, after a stated period, an official appoint an evaluation commission; and/or

- **A provision for a referendum** at some fixed future time on whether to continue the new law.

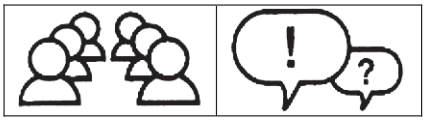
OBTAINING THE FACTS: THE ADVANTAGES OF A RESEARCH REPORT

Just as a court must ***justify*** its judicial decisions by stating the reasons that underpin them, so you might consider a rule to require sponsors of an important bill to provide a written ***justification*** for its detailed provisions. In the legislative process of Pakistani National and Provincial Assemblies, in case of a private member bill, a member needs to justify that the intended bill is accepted for consideration in the House and in addition most bills undergo scrutiny of the respective Standing Committee. To ensure the adequacy of that justification, there is a need that being the sponsor of the bill you must structure the justification of putting forth a legislation by organizing the available facts logically. Thus there is dire need to undertake an objective research to compile a report justifying a proposed legislation. The Report can be developed with the help of Researchers at the Assemblies, Parliamentary Research services, resource centres, think tanks and CSOs working on the issue as well as your self as a Parliamentarian or member of a Parliamentary Committee:

- Describe the social problem, and whose and what behaviors comprise it (including those of the responsible implementing agency);
- Explain the legal and non-legal causes of those behaviors, i.e undertake ROCCIPI analysis.
- Show – ROCCIPI solutions
    - The alternative solutions considered;

- That the bill's detailed provisions seem likely to overcome the identified causes; and
- That the bill's economic and social benefits will likely outweigh its costs; and

- Ensure that a responsible agency will monitor and evaluate the bill's implementation and social consequences.



SMALL GROUP EXERCISE
STAKEHOLDER PARTICIPATION IN THE RESEARCH

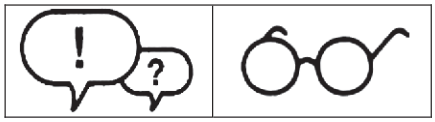
In the lawmaking or law-implementing process, someone – usually a ministry official, occasionally a fellow-legislator or a non-government organization's staff member – has evidence about an existing problem. To fulfil your duty as a lawmaker, you must ask a bill's sponsors to demonstrate that they grounded the bill's details, not only on logic, but also *facts.* The trick lies in knowing what questions to ask these knowledgeable people.

By the late 20th Century, community activists and growing numbers of professional evaluators recommended engaging the stakeholders – those affected by the law, especially the poor and vulnerable – in drawing on their own experiences to make suggestions for improving legislative programs. As an elected legislator, you can help the stakeholders among your constituents to use the problem-solving methodology to gather and analyze the relevant facts as the basis of new rules. In the process, they may also figure out ways to improve their own uses of their own resources to better their lives.

QUESTIONS

1. ***Compare the advantages and disadvantages of asking stakeholders (a) only to state their claims and demands compared to (b) engaging them in an analysis structured by problem-solving four steps.***

2. ***Which stakeholders should participate in analyzing the causes and finding legislative solutions to particular social problems in your country?***



CASE STUDY PART I: SPECIMEN OF A RESEARCH REPORT

A REPORT FOR THE PROMOTION OF THE PRIVATE EDUCATIONAL INSTITUTIONS IN THE PROVINCE OF THE PUNJAB

CHAPTER-I

INTRODUCTION

Progress and prosperity of a country, largely depends on the choices of education made available to its people. Indeed, education is one of the most powerful instruments of change. Its importance for achieving national goals through producing young minds imbued with knowledge, attitudes, skills and competencies to shape the future destiny of the nation has been fully recognized by the Government of Pakistan. Although, education is a provincial subject under the 1973 Constitution, it has been placed in the Concurrent List, which makes the Federal Government responsible for policy, planning and promotion of educational facilities in the federating units (Provinces) to meet the needs and aspirations of the people.

Education is a fundamental right of all people, women and men, of all ages, throughout the world. It is the duty of the State (Federation and Provinces) to remove illiteracy and provide free and compulsory education up to the secondary level. But, due to variety of reasons especially inadequate funding, the State has failed to fully discharge its responsibility in Pakistan. Even today, only 75% children of school going age are being admitted in schools and drop out rate at pre-primary level is also very high.

In the early nineteen seventies, the then Government nationalized all the private schools and the State has taken the responsibility to provide universal education. However, realization of the failure of this policy was felt early. Only six years after the commencement of the Constitution of 1973, the Education Policy of 1979 was announced. The Education Policy of 1979 allowed private institutions to function and provided measures for their promotion and development.

An Ordinance for promotion and regulation of the private educational institutions was promulgated in 1984. Then, in 1991, the Punjab Education Foundation was established to promote and assist the private educational institutions. Recently, in 2004, a new legislation replaced the earlier one to make the Punjab

Educational Foundation an autonomous body in order enable it to perform its function in a less bureaucratic environment.

There are elite, standard and street private schools in the Province. These schools are either owned by individuals or organizations. Some of these schools are making huge profits while others are established on no-profit philanthropic basis. A most recent empirical study suggests that out of 26,809 urban blocks in Pakistan, 6149 are without schools and similarly, out of 50,585 villages, 10,908 have no schools. An urban block is an area in a city or a town that should have a separate school for the children of the area. The children who live on these blocks or villages are either unable to go to school because there is no school they can attend, or they need to commute to the other block or village to attend a school.

The private sector caters for 33.4% of the total educational institutions in Pakistan and this percentage is growing day by day. 1.3% private educational institutions are established in Government owned buildings; 42.8% are in the buildings owned by the owners; 43.1% in the rented buildings; 11.6% rent free buildings and 1.3% of the private educational institutions do not have any building. It is needless to mention that most of these schools are established in the residential or commercial buildings and functioning without the basic facilities like class rooms, water, electricity, toilets, chairs and desks.

Another problematic area in these institutions is the quality of the teaching staff. Teaching staff is hired purely on temporary basis. There is no prescribed minimum qualification of the teachers of private school. The professional teachers for various stages are not hired by the private schools. The public schools, although may have many other problems, have a bare minimum standard for hiring professional teachers. The private school should also have some mandatory objective standard of teachers in order to enhance the quality of education being imparted in these schools.

Some of the private educational institutions are pursuing profit motive and are charging high tuition fees, apart from forced donations, capitation fees, admission fees and other charges. Their fee structures often do not match the services, which these schools render to the students. The access of poor but otherwise talented students to these institutions remains elusive because of the high fee structures. These schools charge same fee from the students irrespective of the economic background of the students. Profit motivated owners of these institutions arbitrarily enhance fees without prior notice to parents and they do not give any reason for the raise in their fee structure. It has become an ugly face of the knowledge economy.

We have a population boom (200 million at the time of our independence in 1947 has multiplied to more than 1700 million in 2007). But we do not have enough educational institutions and resource allocation to fulfill the promise of

universal free education up to the secondary level. There is a dire need to promote and assist the properly motivated private sector to establish and run the educational institutions in an appropriate manner. At the same time, the basic problems of the school buildings, teaching staff and fee structures require regulatory framework to enhance the standard of education. However, instead of penalizing the inappropriate behaviors, it is in the fitness of things to have a package of incentives and disincentives to transform the behaviors. We can't afford to shut even the inappropriate schools because we need more schools. We can only provide them incentives to change their inappropriate behaviors.

This research report is based on an empirical study. The material is gathered from comparatively authentic sources like Government policy documents, existing research conducted by the scholars, news items and articles in the leading newspapers and journals and the interviews with the major stakeholders.

CHAPTER-II

WHOSE AND WHAT BEHAVIOR CONSTITUTE THE PROBLEM

SCHOOL BUILDINGS

The primary role occupant that causes the problem of inadequate and improper school building is the owners of the schools. The secondary role occupants of this problem are the local governments and the Education Department of Government of the Punjab.

PROBLEMATIC BEHAVIORS

Owners:

The schools are not established in the purpose built buildings—need-based class rooms, well-equipped laboratories, play ground, washrooms, and water room. The 2005 National Educational Census highlights that in the whole country there are 227, 791 buildings that are being used for educational purpose and out of this number 106, 435 are in the province of the Punjab. The census however does not provide separate figure of the public and private buildings in the province.

The census shows that 61200 (57.5 %) are in satisfactory condition while 25331 (23.8 %) need minor repair and 14582 (13.7 %) require major repair work. The number of buildings in dangerous condition is 5322 (5 %). The census however does not cover those private schools which are not registered with the authorities. For example the school systems like Beacon House School Systems, Grammar Schools, Shoafaet and City School Systems (a school system being

run under this banner) are not registered with any authority in Pakistan rather they are affiliated with foreign educational authorities.

The latest available census data reveals that it did not consider the area and location of the building. The owners of private schools invariably establish the schools in the residential accommodation in an exclusive residential area because the local boards or the governments do not have any prescribed laws for the establishment of a school.

The school building neither conforms to any basic standards nor is the requisite basic facilities such as spacious class rooms, airy atmosphere and other needs for the students and teachers available. No data is available regarding the number and size of class rooms, laboratories and play areas in all level of schools. The owners seldom take into account provision of these facilities before the establishment of a school and the local boards can not put a curb on them as the law is silent on this topic.

Local Governments/local Authorities:

The schools are under the control of local governments—third tier of the government after federal and provincial governments at district level. These authorities have no clear policies to provide specific guidelines for the space and construction standards for building a new school and to improve its capacity for the coming years.

The authorities charge commercialization fee from those private school owners who intend to construct a purpose-built school buildings, in spite of the fact that these buildings are not commercially used rather they are used for the teaching purpose only. Local Governments and Development Authorities are charging commercial rates for the provision of utilities like water and sanitation to the private schools.

Government (Education Department):

The Education Department of the Government of the Punjab has not laid down any minimum standards to regulate the construction of school building. The Managing Director of the Punjab Education Foundation, Mr. A B Malik (Ph. D), while talking to this group at a meeting said that the government policy regarding the school building is to encourage the school owner even if he starts in a single room. We are of the view that maximum schools should be set up so that the shortage could be met, he added. His words clearly indicate that the department does not have any policy regarding the school buildings.

The registration of private schools is not linked with the proof of purpose built or at least appropriate school buildings. The local governments, a governing body of the private schools at lower level, do not have set rules about the class

rooms/school buildings. These authorities never felt the need of framing regulations of the school buildings—class rooms, play grounds and other basic facilities required for the education of children. There is no regulation to ensure that number of students admitted by a school is in consonance with the available space. A study conducted by the group members who had an opportunity to visit some schools not only in the urban areas but also in the rural areas reveals that the owners do not link the number of students with the available space rather they admit as many students as intended. The situation is not associated with a specific school rather all the institutions in every area follow the same practice.

SCHOOL TEACHERS

The study of the problem regarding school teachers' training and qualification reveals that the owners of the private schools are the first role occupants as they hire untrained and less qualified teachers in order to pay them meager salaries. The Education Department of Government of the Punjab is the second big role occupant as it had not prescribed any standards regarding the teachers' qualification for private schools.

PROBLEMATIC BEHAVIOURS

Owners:

The private school owners do not have any team of experts for the selection of teachers. They even do not check that the person being hired has acquired basic training for teaching – PTC, CT, B. Ed or M. Ed (teacher training certificate and degrees awarded by the education Colleges and Universities for the purpose of teaching) —rather they find unemployed boys and girls from the locality where a school is situated and hire them against meager wages. They do not have any set criteria for the selection of teachers. Payment of monthly wages to the teachers is delayed. Fee/dues from the students are collected till 10th of each month and the monthly payment of wages to teachers is made between 10th and 15th of the month. Owners/Administrators misbehave with the teachers even in front of students and parents.

Government (Education Department):

The Education Department of the Punjab Government has not laid down any sort of criteria regarding the hiring of school teachers. The existing law {The Punjab Private Educational Institutions (promotions and Regulations) Ordinance 1984} simply deals with the registration of a new school and even at this point does not lay down the guidelines for a owner as to what kind of teachers he should hire.

FEE STRUCTURE

Here in this segment the role occupants are the same school owners and the Education Department of the Punjab Government. Besides, the parents may also be considered as role occupants for the problematic behaviors.

PROBLEMATIC BEHAVIOURS

Owners:

There is no link between service being provided by the school owner and the fee received. Every school system has its own fee structure. A study by the group on the fee structure reveals that the school owners do not seriously take teaching as missions rather deal it on very commercial bases. The basic intention towards fee structure is to make profit. Lust for more money has forced owners to increase fees.

Government (Education Department):

The education department does not force the private school owners to link the fee structure with the services being provided by them to the students. The law is completely silent on this point. The assistance and facilitation to the private schools is not linked with the registration, proper fee structure and provision of other facilities in these schools.

Parents:

Some of the parents are equally responsible for causing increase in fee like the owners of the private schools. It has been noticed that several parents get their children enrolled in some specific school system only because they are status conscious. In social gatherings they feel pride to tell the others that their child is studying at ABC institution. This snobbish behavior is also one of the reasons in increase in fee in several schools.

CHAPTER-III

COMPARATIVE LAW

The Punjab Private Educational Institutions (Promotion and Regulation) Ordinance 1984 provides that no institution shall be run unless it is registered in accordance with the provisions of this Ordinance and the rules.

It is important to note that this existing law dealing with private educational institutions however does not provide provisions in respect of promotion of such institutions and does not enact about fee structure, school building and qualification of the teachers.

The Ordinance contains provisions to register educational institutions, and does not contain even a single provision aiming at promoting the establishment of such institutions. Thus, whereas the Ordinance purports to address a large issue, its details do not, in fact, contain any provision even arguably geared towards addressing half of the Ordinance, stated objective. It is not clear what factors the registering authority will take into consideration, or what process it will go through to determine whether a registration should be granted, conditioned or denied.

The Punjab Education Foundation is established under the Punjab Education Foundation Act, 2004 as a body corporate. The object of the Foundation has been described in the preamble of the Act of 2004 to promote education, especially to encourage and support the efforts of the private sector in providing education to the poor. The Act of 2004 lays down the following functions of the Foundation:

i) provide financial assistance for the establishment, expansion, improvement, and management of educational institutions and allied projects;

ii) provide incentives to students, teachers, and Educational institutions;

iii) promote public-private partnership relating to education;

iv) provide technical assistance to Educational Institutions for testing policy interventions and innovative programmes for replication;

v) rank private educational institutions based on educational standards;

vi) raise funds through donations, grants, contributions, subscriptions etc.;

vii) assist Educational Institutions in capacity building, including training of teachers; and

viii) undertake any other function as may be assigned to it by the Board with the approval of the Government.

The Foundation is only providing financial assistance to a specific category of schools on the basis of regular testing of the standard of students of those schools. The Foundation is not performing the other functions assigned to it by the legislature. Further, the regulatory framework should have direct nexus with the financial and other incentives. Hence, a comprehensive legislation containing the regulatory mechanism and the incentives is required in order to promote education in the Province. Furthermore, the functions of the Foundation are very broad and lack the clear strategy for promotion of education through private sector especially provision of education to the poor.

In comparison with laws of various other jurisdictions applicable to Private Educational Institutions, the Ordinance of 1984 and the Act of 2004 are defective and have not been able to promote private educational institutions in the Province. Although the laws of various other countries may not have detailed provisions regarding the school buildings, fee structures and the quality of teachers of the Private Educational Institutions but some skeleton provisions are available in such laws.

The Delhi School Education Act 1973 provides provisions in respect of school buildings, teachers' salaries and qualifications. e.g. its provisions provide that the private schools shall have the following building facilities:

- "It has suitable or adequate accommodation and sanitary facilities having regard, among other factors, to the number, age and sex of the pupils attending it.

- It has the prescribed facilities for physical education, library service, laboratory work, workshop practice or co-curricular activities."

About qualifications etc. of teachers of private schools, it provides that a private school shall have following measures in place:

- "It has teachers with prescribed qualifications and regarding their salaries and allowances provision enumerates,

- The scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognized private school shall not be less than those of the employees of the corresponding status in school run by the appropriate authority. "

It also provides that where the scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees

of any recognized private school are less than of the employees of the corresponding status in the schools run by the appropriate authority, the appropriate authority shall direct, in writing, the managing committee of such private school to bring the same up to the level of those of the employees of the corresponding status in schools run by the authority. Similarly, another provision of the same Act says that the administrator may make rules regulating the minimum qualifications for recruitment, and the conditions of service, of employees of recognized private schools. Provided that neither the salary nor the rights in respect of leave of absence, age of retirement and pension of an employee in the employment of an existing school at the commencement of this Act shall be varied to the disadvantage of such employee.

Quebec law titled "An Act Respecting Private Education" and Thai law namely "National Education Act of B.E 2542(1999)" also enacted such provisions which dealt with the promotion of private educational institutions and not merely with their regulation. Section 55 of Thai law for example is reproduced as under:

- "There shall be a law on salaries, remuneration, welfare and other benefits allowing teachers and educational personnel sufficient incomes commensurate with their social status and for educational benefits."

While section 50 of the Quebec law states:

- "Every institution shall ensure that any person it employs to dispense preschool education services or to teach in elementary or secondary school holds a teaching licence issued by the Ministry of Education".

Section 15 of the same law deals with the school buildings and is reproduced as under:

- "The capacity of the facilities at the disposal of institution is the capacity determined by the applicant for a permit at the Minister's request and approved by the Minister. Where the applicant fails to determine such capacity, the Minister may refuse to issue the permit".

When we compare the laws of Delhi, Quebec and Thailand with our Ordinance of 1984 read with Act of 2004, it becomes clear that our law does not cater for the important aspects of regulation and promotion of private schools. Numbers of provisions aiming at the promotion of private educational institutions are required to be incorporated into the existing law to make it comprehensive, effective and workable. The amendments required in the existing laws are of such natures that completely change the structure of the existing laws. In view of this, it is necessary to have a new comprehensive legislation instead of amending the existing laws.

CHAPTER-IV

EXPLANATION OF BEHAVIOURS

As it has been explained in an earlier chapter, Government departments, local governments, owners, teachers and parents cause the problems which require proper redressal. There is a clear policy of the successive governments in the Punjab to aid and assist the private sector in order to raise the literacy level and to impart quality education to the students of private schools. The school infrastructure and the fee being charged by the private schools in lieu of services rendered to the students play a very important role for achieving the afore-narrated policy objectives. We now try to explain the causes of the problematic behaviours of various actors.

GOVERNMENT (Education Department)

Rule:

The Ordinance of 1984 was promulgated for regulation and promotion of private educational institutions in the Province of the Punjab. Basic purpose of the Ordinance was to aid and assist the private sector in promotion of education in the Province. However, it has been made mandatory in the Ordinance that no educational institutions shall run unless it is registered. This main provision of the law has created a problem because enforcement of this legal provision requires locking of a good number of private schools in the Province that have failed to get themselves registered with the designated authority of the Government. If this happens the very object of the Ordinance i.e. to promote education and to improve literacy rate will be defeated.

The Government is obliged to transfer funds to the Punjab Education Foundation for the provision of assistance to private sector for providing education to the poor under the Act of 2004. However, there is comprehensive strategy under the Ordinance or the Act for the actual promotion and regulation of the private schools. The provision of cash and other incentives to the educational institutions shall be linked with minimum infrastructure, reasonable fee structure and quality education at a private school. The incentive as to free distribution of reading materials etc. being provided by the Government to the students as an administrative action shall also be linked with the adherence to minimum standards by a private school.

The law does not provide for the requirement of any minimum infrastructure for the establishment of a school. There is no legal impediment or regulation on the fee structure of the private schools. Furthermore, the quality of teachers is not a requirement under any of the laws regulating the private schools. Although, private schools shall not directly be forced to provide minimum infrastructure,

reasonable fee structure or hiring of qualified staff but the problematic behaviours can be changed by offering appropriate incentives to the willing partners in the private sector. Direct regulation of these measures may become counter productive as in the case of the Ordinance of 1984.

Opportunity:

Education has never been a No.1 priority of any of the past Governments in the Province. The people and the Governments have remained more concerned about law and order, security and democracy. The various political parties have not made education a top priority in the manifestoes. This lack of interest and insufficient acknowledgement of the problem has given opportunity to evade the responsibility of provision of universal primary and secondary education to the people of Punjab.

Capacity:

There is no clear sense of direction / policy for the improvement of infrastructure and teachers training in the private schools. There is no budgetary allocation for the promotion of elementary and secondary education through development of proper infrastructure of private schools and pre-service or in-service training of their staff.

The task of promotion and regulation of private schools has been assigned to the Education Department of the Government. The Education Department lacks capacity to handle this enormous task. There are frequent complaints of red-tapism at the department in its handling of the functions relating to the private schools. The proper manpower is not available at the department to exclusively handle the affairs of the private schools.

Communication:

A survey of the sample private schools suggests that most of the private school owners are unaware of the provisions of the Ordinance of 1984 which requires compulsory registration of private schools. The philanthropic private schools are not aware of the monetary incentives being offered by the Punjab Education Foundation and the deserving schools are not getting the requisite financial assistance. A complete survey of private schools is required to be conducted and various categories of school on the basis of different factors like no profit no loss schools, philanthropic schools, reasonable profit making schools and profit motivated schools may be made on the basis of empirical data for the provision of proper assistance to the deserving category of schools.

Decision making processes:

The decision in the department of education take a long time because any proposal is initiated from the highest level, it goes down to the lowest level and then again processed to the highest level in the department. It may also require approval of the Chief Minister, in which case, the department has to initiate an executive summary, consult other concerned departments including the Finance Department and it is only after the approval of a proposal that a decision on any issue has to be taken. This process takes a long time and most of the times; the person who initiated the proposal may not be holding the same office when the proposal again comes to his office for approval. Even the delay in decision making processes has invariably been counter productive. An independent corporate body to take all the necessary decisions in a corporate environment is necessary for removing the ills in the decision making processes of the Government.

PRIVATE SCHOOL OWNERS

Rule:

The Ordinance of 1984 requires compulsory registration of private schools. It is incumbent under the law upon an owner of a private school to get his school registered. The rules made under the Ordinance require an owner of a private school to register it with the district committee of the concerned district. The district committees issue registration certificates on year to year basis. The school owners are made to run from pillar to post for the sole purpose of registration of their schools with the district committees. The detailed criterions for the registration of private school are not available even in the rules and a lot depends upon the inspection report of a person nominated by the district committee. Most of the inspection reports are subjective in nature and provide an opportunity to the inspecting officer to misuse or abuse his authority. This provision has created unnecessary problems for the school owners. The registration of a school has no benefits except that the owner may face prosecution in case of absence of registration.

There is no provision in the law for the provision of minimum infrastructure of a school, quality of teaching staff and regulation of these standards. The incentives to the owners of the private schools for performing the job which is the responsibility of the state under the constitution have not been clearly outline in any of the laws relating to private schools.

Opportunity:

The owners of philanthropic private schools have no access to any interest free loan facility for the improvement of infrastructure of the school or provision of quality staff at the school. There is no system of guaranteed regular grants to

these schools even by the Punjab Education Foundation. They have little or no opportunity to improve the infrastructure of their schools or to raise the standard of education at their schools.

The lack of regulatory provisions regarding minimum infrastructure facilities, quality of teachers and fee standard have provided unlimited opportunities to unscrupulous school owners to provide insufficient facilities to the students, hire low quality teachers and charge unreasonably higher fee.

Capacity:

Most of the private school owners do not have sufficient space or land available for building a purpose built building for the school. There is no system of interest free credit facility for the purpose of building a school. Similarly, the existing school buildings of most of the schools imparting education to the poor require provision of adequate facilities. The owners of these schools are not able to manage such renovation due to low income generation from the fee received from the students.

The specific public utility plots reserved for the purpose of building schools are lying vacant in many localities. Those plots can be given to the persons interested to build schools.

The owners of street schools and schools in rural areas do not have sufficient funds to hire qualified teachers for imparting quality education to the students. They cannot train their teachers because of paucity of funds. Furthermore, the school owners of these schools do not possess sufficient managerial skills to properly manage a school and to make best use of available resources.

Communication:

The assistance to the street schools being provided by the Punjab Education Foundation, the detailed criteria and procedure for getting such assistance is not in the knowledge of all the deserving school owners.

Interest:

Establishing a private school has become a big business especially in the urban centers of the Province. The private schools are being established in the posh localities of the cities and extraordinarily high fee is being charged from the students at these schools. These schools are also able to woo the residents of these posh localities to pay huge donations. There is no system of mapping of areas for the establishment of schools. There may be five schools in one street and no school in twenty streets.

Decision making process:

The school owners prefer establishment of a school in an area where the elite class is residing or near to such area. There may be no or inadequate school for a slum or a village. If a school owner realizes the potential of building a school in a slum or at a village, he will definitely decide to establish the school at any such place. The unqualified teachers do not demand higher salaries; they are preferred over the qualified teachers. The resources are not properly managed at most of the private schools giving rise to the necessity of frequent enhancement in the rate of the fee.

Ideology:

The school owners are more concerned about the outlook, pump and show and they charge higher rate of fee because of ostentatious grandeur of their schools. Higher rates of fee being charged by a school becomes a status symbol for the parents of the kids studying in such schools.

LOCAL GOVERNMENTS / LOCAL AUTHORITIES

Rule:

The building byelaws or regulations of the local governments or the local authorities do not provide a separate category of school buildings and such buildings are clubbed in the category of commercial buildings. Sufficient space is not allocated in the master plan for the purposes of schools. The existing law does not provide any relief to the schools for the waiver of commercialization fee, water rates, sanitation fee and electricity charges. There is no provision even to give some rebate to the schools in the rates of the utilities.

Opportunity:

Lack of legal framework to provide incentives for the establishment and running of a school provides opportunity to a local government or a local authority to treat a school as a commercial concern.

Capacity:

Sufficient skill is not available at the local government or the local authority level to promote and assist establishment of proper schools through the provision of incentives in the form of exemption of commercialization fee and lower utility rates.

Communication:

The local governments and the local authorities are not even aware of the legal / constitutional requirement that it is the responsibility of the state including local governments to provide elementary and secondary education to the people. In case they have not been able to discharge this duty, at least the private sector should be provided proper environment and incentives to do the job of the governments.

Interest:

Local governments and the local authorities earn a lot of revenue through recovery of commercialization fee and charges for provision of other utilities. There should be a system to offset the loss cause to a local government or a local authority because of shortfall in its revenue due to any exemption of commercialization fee to a private school and rebate in the utility charges of such schools.

CHAPTER-V

CONCLUSION AND SOLUTIONS

In order to promote establishment of quality private schools and to enhance the quality of education imparted in privately run schools, the carrot and stick policy is required to be used in an effective manner with clear checks and balances. Following steps are necessary and appropriate for achieving the above narrated objectives:

1. Government shall establish an autonomous body with the name the Punjab Private Schools Regulatory Authority that is responsible for all the matters relating to the private schools. This body should substitute the functions of the Government under the Punjab Private Educational Institutions (Promotion and Regulation) Ordinance 1984 and those of the Punjab Education Foundation under the Punjab Education Foundation Act 2004. The Authority should have a Board of Management as the apex body with wide representation and a chief executive officer (Managing Director) to run its day to day affairs.

2. The Authority shall register the private schools. The procedure i.e. application and processes may be left for the rules.

3. The Authority shall establish institutes for the purpose of imparting proper training to the teachers and managers/administrators of the private schools.

4. The Authority shall award diploma or a certificate to a teacher or a manager of a private school who successfully completes relevant course in such institute.

5. The Authority shall develop a proper ranking system for the private schools. Rules may provide details about ranking system.

6. The Authority shall devise an intelligible and purposeful policy in respect of dividing and categorizing private schools on the basis of reasonable criteria and classification.

7. The Authority shall provide financial incentives and awards for the students and teachers of the private schools on the basis of transparent criteria.

8. The Authority should make every endeavor in respect of providing technical assistance for the establishment, extension and renovation of the school buildings of the private schools.

9. The Authority shall provide assistance to the private schools for implementation of the progressive latest method of teaching which is universally acknowledged; development of syllabuses and management/administration of a school.

10. For the purpose of establishment or successfully running a registered private school, the Authority should provide interest free credit facility ranging between fifty thousand rupees and five hundred thousand rupees to its owner or proponent.

11. The Authority shall make every effort to solicit reduction or abolition of Federal taxes, duties and utility charges on the duly registered private schools or on a category of the private schools.

12. Government should set time bound specific targets for the Authority and similarly, the Authority should set realist and achievable targets for its officers for bringing improvement in various areas of the private schools.

13. The Authority should also reward and give incentives to its efficient officers and officials.

14. The Authority should have the power to deregister a registered private school in the manner prescribed in detail in the rules. The Authority may call for the record of a private school. It may authorize a person to inspect a private school, record of a private school or record statements of students, teachers or parents of students of a private school in respect of any mal-practice, defaulting conduct of the management or any other cause. It may issue directions to a private school as per rules, conduct

surprise tests of students of a registered private school, enter into contract, acquire, hold or dispose of moveable or immoveable property, and exercise such offer ancillary powers that may be conferred on the Authority under the rules.

15. In order to curb corruption practiced by any employee of the Authority, it be made necessary for the Authority to pay cash award to an officer or a person who provides sustainable proof of corruption.

16. The Authority should offer need based scholarships to the deserving students in the manner prescribed in some detail in the rules to at least five percent schools of a registered private school. Such scholarship is meaningful in the sense that it should cover the admission, tuition, and other fee/dues of the private school plus other adequate amount as may be determined by the Board of the Authority.

17. It is also advisable and expeditious that a local government or a development authority be restrained from charging any building or commercialization fee from a proponent of a registered school on recommendation of the Authority.

18. Similarly, a local Government or a development authority shall be rendering a service by providing water supply and sanitation facilities to a registered private school at a rate that is not more than half of the rate charged from similar buildings in the vicinity of the school. The Electricity Supply Company may also be bound to do the needful by charging energy at lowest possible rates.

19. All these incentives should only be available to a registered private school and not to an unregistered or deregistered private school.

20. There shall be penalty of fine only. Dues are recovered as arrears of land revenue that provides the standard procedure for recovery of amounts. Appeal against an order of the Authority should lie to the High Court and not before any other forum.

21. The Authority must prescribe maximum fee that a private school or a category of private school may charge from the students.

22. The school teachers should have a graduate degree and have certificate, diploma or degree in the subject of teaching.

23. Normally a registered private school should be restrained from appointing a male teacher to teach students of a primary or pre-primary class and should only rely on female teachers for these classes.

24. Owners of the registered private school should be bound to file with the Authority the particulars of the teachers appointed, removed or whose terms and conditions have been changed or altered.

25. An owner or a proponent of a registered private school shall ensure availability of suitable and adequate place for students, adequate water and sanitation facilities according to the number, age and gender of the students.

26. An owner or a proponent of a registered private school shall ensure existence of the facilities prescribed by the Authority for that category of a private school including library, laboratory, workshop, heating or cooling equipments and place for co-curricular activities.

27. The Authority may fix the maximum number of students that a registered private school is entitled to admit in a class keeping in view the school building and number of classes.

28. There should be detailed provisions for funds, audit, accounts, feedback, and performance evaluation of the Authority for the effective functioning of the Authority.

29. The Government shall make rules while the Authority may frame regulations for carrying out the purposes of the proposed legislation.

30. The Legislature should have final say in the matters relating to subordinate legislation.

CHAPTER-VI

COST-BENEFIT ANALYSIS OF THE SOLUTIONS

This Bill is drafted to substitute an existing agency with a new one. Hence it involves minimum operational costs. The proposed Authority will be the successor body of the Punjab Education Foundation. If the proposed solutions are implemented through enactment of this Bill, these will promote and assist the deserving private schools, enhance the general literacy rate and will improve the quality of education in the Province at a minimum cost.

Session 3

Reading a Bill

OBJECTIVES	By the end of this session, participants will be able to: ▪ Explain why drafters number practically every sentence, and formally organize a bill into Sections, Chapters, and Parts ▪ Explain why most lawyers (including drafters) frequently use a strange dialect (*'legalese')* ▪ Explain the meaning of a bill's 'technical' sections; that the individual, numbered sections—each composed of a single narrow command, prohibition or permission —constitute the bill's basic building blocks ▪ Discuss, in the context of the existing legal system, the bill's prescriptions of behaviours comprise the bill's substantive thrust: its legislative content

UNDERSTANDING A BILL

A bill's printed pages ***look different*** from those of novels, magazines, or history and science texts. Most sentences begin with a number or letter. Some sentences seem to stop in the middle, followed by a new numbered subparagraph. They seem written in a strange language, with many almost unrecognizable words. Some appear so tangled that you can only try to puzzle them out. To assess whether a bill will **serve the public interest –** and at what economic **and social** cost **—** you must **read and understand the bill on its face.**

THREE ESSENTIAL POINTS YOU MUST SEEK CLARIFICATION FOR

As you examine a bill on its face, keep in mind three essential points:

1. **Seek Change in Behaviour:** For historical reasons, people used to believe that judges constituted the law's only important readers. Today, especially for development, transformatory law must change behaviors. Drafters must draft so that the people whose behaviors the law aims to change can read and understand what the bill says. If you do not understand a bill, neither will its addressees; the drafter has drafted it badly.

2. **Language of the bill should be simple:** Do not listen to the drafter who says that, for 'legal' reasons, a bill requires hard to- comprehend words or sentences. If drafters cannot explain a section in simple terms, they themselves probably do not know its meaning. *Nothing* in the law defies explanation in simple terms. If a bill's addresses could not readily understand it, send it back for redrafting.

3. **Remember your people:** Your constituency elected *you* **–** not the drafters. Government drafters should provide the information you need to exercise your legislative power wisely.

ELEMENTS OF A BILL

A law prescribes how a primary role occupant and designated implementing agency officials should behave. It consists of a series of ***rules***. Each ***legislative sentence*** specifies what someone ***must, may not or may do***. You might think of a bill as an onion. To get at its core meaning, you must peel back layer after layer. To help you peel back those layers, you must know its formal elements:

In a bill, numbers or letters denote titles, parts, divisions (or chapters), and sections. A bill's numbering system identifies the separate commands that together make up that bill. Drafters number sections (articles) so that, in legislative debates or in court, lawmakers and judges can refer to particular ones. Drafters group sections that deal with a single issue into a Chapter, and Chapters that have some common attribute into a Part. A bill's formal structure follows the form similar to that of any outline:

Part I
- Chapter 1
  - Section 1
  - Section 2
    - Subsection (1)
    - Subsection (2)
  - Section 3
- Chapter 2
  - Section 4
  - Section 5

Part II
- Chapter 3
  - Section 6
  - Section 7

Bills everywhere follow that outline form, but different jurisdictions' drafting conventions assign different names to the outline's various levels. (The names of a bill's levels should conform to your country's practice.)

1. **"Sections" (some jurisdictions call them Articles):** These constitute a bill's basic building blocks. A section should contain no more than one 'legislative' concept, that is, a ***single*** rule (see Section C below).

2. **"Chapter" (or "Division"):** Some jurisdictions call a group of sections within each part, 'Chapters,' while others use 'Divisions'. Most jurisdictions number chapters (or divisions) consecutively throughout a bill. Many simple bills include no level higher than chapters, and even simpler ones, no level higher than sections.

3. **"Part":** Conventionally, usually numbered consecutively by a Roman numeral ("I" or "II") , Parts constitute a bill's largest divisions. If a bill

contains a large number of parts, each of which might stand alone, you should consider whether its sponsors tried to resolve too many diverse problems in one law (called stuffing a bill).

4. **"Title":** Only a few jurisdictions use the word "Title" to mark a division in a single bill. Historically, law-makers published statutes in the order of the dates of their promulgation. Today, some jurisdictions **codify** their laws, putting them together in a single giant compilation. (Those who can put them in a computerized form). They insert each new law into that compilation, and use the label "Title" to cover all the laws concerning a particular subject, like "Education," "Transportation," or "Prisons." Understanding the bill's numbering system should help you to peel back the bill's first layer.

The language in which drafters expresses commands in each section may appear as a second impenetrable layer.

THE LAW'S LANGUAGE

In most of the world, drafters write a strange, convoluted, unfathomable language. Some call it 'legalese'. Complex legal words fall into two categories. Some reflect the requirements of law's specialized subject-matter. Others merely obscure plain meanings.

1. **Law's specialized vocabulary:** Like most professions, law sometimes requires elements of a specialized vocabulary. To understand some bills' specific subject-matter, you have to learn the relevant specialized vocabulary. ***If you do not understand the words used, ask!***

   example: In different relationships, a person may promise to do something: To pay a debt, to complete a building pursuant to a contract, to deliver some promised goods. Another person may promise to perform if the first promisor does not. The ***law of guarantees*** uses specialized words for elements common to all those kinds of promises: 'Principal' means the debtor who promises to pay or to perform some other duty; 'surety' means a person who promises to pay the debt or perform the duty if the principal defaults.

2. **'Legalese'.** Often, however, drafters use unnecessarily complicated words, and long, tortuous sentences. **Insist that they re-write them in plain language.** If you recognize a bill's underlying pattern, however, you can understand it even when written in the densest legalese. To discover a bill's pattern, try to decode the words the drafter used to write it.

   In England, historical circumstances encouraged drafters to use legalese. Before England established a central drafting office in 1869, ministers hired

conveyancers to draft bills. Conveyancers (long paid by the word to write deeds and wills for landed interests) used the same language to draft bills. Central drafting office drafters adopted the same form and style. They taught it to drafters in the colonies, where obscure vocabulary and convoluted legalese gave colonial officials and judges broad discretion to rule pretty much as they wished. Unfortunately, many post-colonial and transitional government drafters still use hard-to-understand legalese.

Example: Words like'said','such' ,'heretofore','hereinabove', 'whereas', or 'provided that', serve no function useful to the law. In many *legalese* phrases – 'to have and to hold', 'null and void', 'give, devise, bequeath, grant and bequest,' 'building or structure', 'lot, tract or parcel of land' – two words mean the same thing. The drafter could easily delete one.

If you do not understand a word in a bill, **ask what it means**. If, like 'surety' it constitutes a **technical term, insist that the bill define it in lay terms**. If a word like 'said' or 'hereinbefore' **seems meaningless, insist that the drafter use plain English**. If a bill includes **redundant words or phrases, insist that the drafter use one or the other, not both**.

3. **Definitional clauses**: Frequently, a statute begins with a section entitled 'Definitions.' In a long statute, the definition section may go on for pages. Bills include definitions for either of two reasons:
   - First in some statutes, drafters must use many, sometimes even a long list, of words to describe a complex concept. **Using the word(s) as defined in the bill's definitions section throughout the statute avoids tedious repetition and increases the bill's readability.**
   - Second, a definition helps to avoid the vagueness inherent in every word

   Example: *Consider the word 'vehicle' in a municipal ordinance that states "A person may not drive a motor vehicle in a city park." Plainly, the ordinance prohibits a person from driving an automobile in a city park. Yet reasonable speakers of English could disagree as to whether the bill prohibited motor-driven wheelchairs. To avoid disagreement, a drafter could expressly define the word 'vehicles' to* ***exclude*** *'wheelchairs.'*
   Occasionally, a drafter may intend a bill's reader to construe a word to include in its meaning items that, in ordinary language, that word might exclude. To avoid misunderstanding, the drafter should define the word in the bill, for example, by defining 'animals' ***to include*** *whales and other sea mammals.*

By using the word as defined in the bill's definition section, the drafter avoids lengthy repetitions throughout the bill. This section peeled back a second layer

of confusion about a bill – that of language. The next peals back a third layer –– **that a bill prescribes specified social actors' behaviors.**

STRUCTURE OF A SECTION

As a bill's basic building block, a section constitutes a single rule, a ***prescription***. Sometimes that prescription seems hidden behind a thicket of dense language. As you analyze a section's words, keep in mind that you need to identify the behaviors they prescribe. ***With very few exceptions (usually less than 5 per cent) each section of a well-drawn bill commands, prohibits or permits a social actor to behave as it prescribes.***

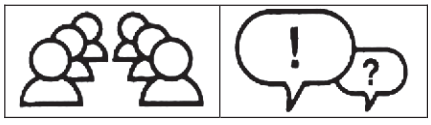
Always ask, does a section properly tell the reader, ***Who? What? When? And Where?***

1. **To answer the question, '*Who?*'** look for the person whose behavior the section prescribes. A language expert would tell you to identify the sentence's ***subject.*** (Mistakenly using a passive voice, a drafter may fail to specify the rule's ***subject.*** Take a legislative sentence that states, "The accounts of the Small Claims Court shall be audited at least twice a year." Does it state ***Who*** will audit the accounts?) ***If you cannot discover the subject of a sentence, insist that the drafter redraft it****.*

2. **The question, '*What?*'** tells you to look at how the sentence commands the person (the 'subject') to behave. A language expert would tell you to look at the sentence's ***verb***. Does the section's prescription command, prohibit, or permit a subject to 'behave' as the verb indicates? For that, language experts would tell you to look at the section's ***auxiliary verb*****:** by convention in English, drafters use ***'shall'*** (in some jurisdictions, 'must') for a command; ***'may not'*** (or 'shall not') for a prohibition; and '***may***' for a permission. If a bill's section does not limit the prescription, it applies at all times and under all conditions.

3. **Most sections do specify *where* and *when*** the command, prohibition or permission goes into effect. A section may limit the behavior prescribed – the *When?* and *Where?*— by stating a *case,* a *condition,* or an *exception.*
   i. A ***case*** modifies either:
      - A ***subject***: "An individual who has passed that individual's eighteenth birthday may vote in a national election." This sentence ***limits*** the ***subject*** to an individual ***who has reached 18 years of age.***
      - A ***verb:*** "[Under specified circumstances, a person] may vote *by* ***absentee ballot***." This sentence limits the ***verb, 'to vote,'*** to voting by an absentee ballot.
      - The ***object*** of the verb: "[Under specified circumstances] a person may cast ***a paper ballot****."* This limits the ***object*** (the kind of ballot the voter may cast).

ii. A ***condition*** states ***what*** must happen ***before the rule comes into force***: "If an individual has passed that individual's eighteenth birthday, that individual may vote in a national election." (Usually the words ***'if'*** or ***'where'*** precede a condition.)
iii. In the ***exception***, the prescription states a general rule applying to the whole domain, and then carves a portion out of it – the ***exception*** – limiting the prescription to only that part of the whole domain not excepted. "Except when an individual's eighteenth birthday has not passed, an individual may vote in a national election." (Usually, the word ***'except'*** precedes the 'exception'.) All three forms tell the reader the circumstances in which the permission granted (that is, to vote in a national election) comes into effect.



SMALL GROUP EXERCISE
DISENTANGLING A BADLY-DRAFTED SECTION

Use the four key questions — Who? What? When? and Where? – to unpack the following statute:

"ACT OF JULY 3, 1939 40 STAT. 850 (1031) [U.S.A.]
"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Commissioner of Narcotics is authorized and empowered to pay to any person, from funds now or hereafter appropriated for the enforcement of the narcotic laws of the United States, for information concerning a violation of any narcotic law of the United States, resulting in a seizure of contraband narcotics, such sum or sum of money as he may deem appropriate, without reference to any moieties or rewards to which such person may otherwise be entitled by law: Provided, That all payments under authority of this Act to any informer in any foreign country shall be made only through an accredited consul or vice consul of the United States stationed in such country; and every such payment must be supported by a voucher with an accompanying certificate of the said consul and vice consul that the payment of the amount stated on the voucher has been made to the informer named, and at the place and time specified on said voucher."

By identifying the who, what, where and when, you can explain what this horribly written statute means. Redrafted, it might read like this**:**

"(1) **Payment of reward**.

(a) The Commissioner of Narcotics (***the who***) may pay a reward to a person who provides Information concerning a violation of a United States narcotics law ***(the what).***

(b) The Commissioner may make that payment only if the information leads to a seizure of contraband narcotics.

[The remainder of the bill might specify the ***Where*** and the ***When,*** that is, the ***limits*** on the powers granted to the Commissioner]

(2). **Amount of reward**. Without taking into consideration an award which some other law may allow to the person providing the information, the Commissioner may pay the reward mentioned in (1) in an amount that the Commissioner determines.

(3). **Payment made in a foreign country.**

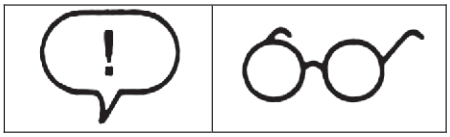
(a) If paid to a person in a foreign country, the Commissioner shall pay the reward mentioned in (1) through a United States consul or vice consul stationed in that country.

(b) The Commissioner shall accompany the Commissioner's report of a payment made pursuant to 3(a) with a certificate by the consul or vice consul that the consul or vice consul made that payment in the amount, to the person, and at the place and time stated in the report.

(4) **Source of funds**. The Commissioner shall pay an award pursuant to section 1 out of funds appropriated for the enforcement of the narcotic laws of the United States."

Note: the bill makes no provision for accounting for rewards paid to informers in the United States — an omission that only becomes clear when one breaks the bill down into more manageable sections.

These four questions – the Who? the What ? and (where relevant) the Where? and the When? – focus attention on a section as a single prescription. Once you understand a bill's formal structure of sections, chapters and parts, and what the individual words and sentences mean on their face, the answers to these four questions will give you a grasp on the meanings of about 95 per cent of that bill's substantive commands.



DISCOVERING THE BILL'S SUBSTANCE

After you have pealed back the layers of legalisms in which drafters couch their bill's commands, after you understand its various prescriptions and its 'technical' provisions, you should find it easier to ***assess*** the bill as an integrated whole. Its prescriptions may aim either to change an existing institutional structure or, more rarely, to create a whole new institutional structure.

The bill's text gives you no direct information to enable you to determine whether or how the new law, once enacted, will function. To make an estimate of the bill's probable social consequences, you must understand the bill's substantive core, the central purpose and thrust of all its commands. If, in the context of existing law, the relevant actors behave as the new law's rules prescribe, they will ***create or change eight different kinds of interrelated institutional sub-systems*** – an entire legislative system – embodied in the existing legal order.

Whether the new law will prove effectively implemented and achieve its stated purposes depends on whether and how each of those subsystems affects and becomes affected by the relevant actors' prescribed new behaviors. A complete legislative scheme prescribes behaviors that institute eight subsystems. It consists of rules addressed to:

1. Primary role occupants
2. Principal implementing agencies
3. Sanctioning agencies
4. Dispute-settlement agencies
5. Funding agencies
6. Monitoring and evaluation agencies
7. The agency that makes regulations under the law
8. The personnel who keep the corpus of the law in order

Example: HOW A BILL FITS INTO THE EXISTING LEGAL ORDER'S SUBSYSTEMS OF A LEGISLATIVE SCHEME?

Consider a simple bill forbidding spitting on the sidewalk in urban areas. It contains only a few short sections.

"1. [Short title]

2. Within the boundaries of an incorporated city, a person may not spit on the sidewalk.

3. A court shall convict a person of an offence whom after a hearing it finds violated section 2 and fine that person not more than $50."

This bill, on its face, only prescribes part of the behaviors of two subsystems – the primary role occupants and the sanctioning agency (see diagram, p. 27). It assumes that elsewhere in the body of law exist other rules addressed to the relevant actors in other subsystems.

These implicit prescriptions include rules addressed to:

1. *The implementing agency*. The police, whom an existing Police Act usually commands to arrest a person they have reasonable ground to believe committed an offence (here, spitting on the sidewalk).
2. *The sanctioning agency.* The prosecutors and the judges for whom the existing Court Act and Criminal Procedures Act prescribe procedures for bringing an accused person to trial and deciding its outcome.
3. *The dispute-settlement agency.* Frequently (as here), the courts serve simultaneously as both the sanctioning agency and the dispute-settlement agency. Existing procedural laws prescribe how courts should hold criminal trials and settle disputes over guilt or innocence.
4. *Funding agencies* which, under existing budget and finance laws, provide funds for the police and the courts.
5. *Monitoring and evaluating agencies.* Existing law usually requires the elected legislature to oversee government's implementation of laws. The Chief of Police's annual report on the incidence of crime may list the number of people arrested for spitting on the sidewalk, an indication of whether the police enforce the new law.
6. *The rule-making agencies.* In many laws (particularly those that aim to transform an institution), some agency must make and promulgate detailed regulations. In complex legislative schemes, without detailed rules, the scheme will not work. Either in the bill proposing complex legislation, or elsewhere in the body of the law, authorization to make detailed rules must exist together with criteria and procedures for doing so.
7. *The people who keep the corpus of the law in order.* The bill's section 1 constitutes a command to those concerned with the law.

CONCLUSION: FIVE STEPS TO UNDERSTAND A BILL

In short, to understand a bill, you should take five steps:

1. **Outline the bill**, following its numbering system for Sections, Chapters, and Parts. Fill in the Chapter and Part headings from the bill.

2. **Read each section carefully.** Make sure that you understand the words it uses. Don't let legalese upset you. Insist that the bill's sponsors and drafters explain each word with which you have difficulty.

3. **Analyze each section** by asking, ***Who*** does ***What?*** Under ***what limits*** or circumstances? ***When?***

4. **Disentangle the 'technical' sections by interpreting them as commands**, especially to government officials about how to fit the bill into the existing body of law.

5. **Complete the outline you started in step 1 by putting each of the commands related to one of the subsystems into a separate group**. Where, as frequently happens, the bill says nothing about a whole subsystem, ask whether another law will work to provide for that function. (For example, in the absence of a specific dispute settlement system, ask, will your country's court system adequately settle disputes arising under this bill?)

Having completed those five steps, you should understand the bill well enough to decide whether it merits your support – that is, you are at last in position to *assess* the bill. This manual's first chapters built a theoretical basis to enable you to understand a bill and the criteria for assessing it. This chapter has emphasized that you should ask more detailed questions about: the bill commands prohibits or permits ***who/whom***, to ***do what;*** and the nature and consequences of the ***limits*** it imposes on those prescriptions. The remaining chapters provide a ***methodology for assessing whether, in the public interest, the bill's substantive prescriptions will likely facilitate democratic social change.***

Session 4

Effective Laws and their Effective Implementation

OBJECTIVES	By the end of this session, participants will be able to: ▪ Describe the existing implementation agency officials and their behaviours, and to explain their failure to perform their jobs effectively ▪ Assess whether the bill's detailed provisions for implementation (including the agency and its design, and conformity-inducing measures) will likely overcome those causes ▪ Decide whether or not a transitive or an intransitive bill will more likely resolve a particular social problem

HOW TO DETERMINE THE EFFECTIVE IMPLEMENTATION OF A LAW?

The world around, effective implementation of the law proves the key to the attainment of good governance, transition and development. To serve the public interest as an elected representative, be sure to vote only for those laws promising democratic social change, which provide for their own effective implementation. A bill that comes before you raises three major sets of questions. To determine whether that bill will prove effectively implemented you need answers to these questions:

First, Does an implementing agency already have responsibility for helping to resolve the problem the bill addresses? If so —

1. What conformity-inducing measures does that agency now use to induce the new behaviors necessary to resolve the problem, and in what ways do they seem insufficient? Evidence?
2. Do the agency's decision-making processes seem non-transparent, non accountable, or non-participatory? Evidence?
3. Why do the responsible officials behave in these problematic ways? Evidence?

Second, given the kinds of decisions the agency officials must make, you must ask questions about the wisdom of the bill's assignment of the implementation task either to an existing agency, or to a new agency:

1. Given the country-specific circumstances, did the bill's proponents make a wise choice between implementation by dispute settlement, bureaucratic agency, government corporation, or private sector implementation?
2. Do the bill's implementation provisions logically seem likely to alter or eliminate the causes of existing problematic behaviors by officials?
3. Will the new law prove socially, as well as economically, cost-effective?

Finally, you should pay careful attention to any grant of rule-making (that is, *legislative*) power to an administrative agency official:

1. If an intransitive bill, do conditions require transferring to the agency this degree of legislative power?
2. Do the bill's procedures make arbitrary or idiosyncratic rule-making difficult? Or do they ensure participation, accountability and transparency?

3. What criteria does this bill impose on agency rule-making discretion? Do they seem sufficient?

WHY DO AGENCIES FAIL TO IMPLEMENT LAWS?

Nowadays, in most countries, usually some law already addresses the same social problem as does the bill before you. Usually, some agency already has the duty to enforce that law. Too often, it fails to implement that law effectively.

As directed by the problem-solving methodology, we begin, not with the 'end' – here, effective implementation of the laws – but with the social problem. In the case of an existing problematic implementation agency, ***whose*** and ***what*** behaviors contribute to the weak or non-existent implementation of existing law? To help you in asking questions about a particular bill's proposed implementation mechanisms, we then propose some general explanations for laws' too-common ineffective implementation.

WHOSE AND WHAT BEHAVIORS CONTRIBUTE TO INEFFECTIVE IMPLEMENTATION?

Organisational Failure

A complex organization, however, never functions as a 'single rational actor:' Commonly heard phrases — "The XYZ Corporation intentionally violated the anti-monopolies law" or "The Ministry of Agriculture seems biased in favor of large-scale commercial farmers" — imply that the organization ***acts***. An act requires choice. Choice requires consciousness. Complex organizations have many characteristics, but not consciousness. An agency consists of many sets of actors and their interacting behavior patterns. Those actors ***do*** have consciousness. They ***can*** choose how to behave. They can ***act.***

Officials' Failure: Two structural explanations for officials' problematic behaviors

Based on weaknesses in most implementing agencies' ***structure,*** two hypotheses frequently prove useful in explaining officials' behaviors: mechanisms do not exist adequately to implement rules addressed to officials; and some officials' prescribed duties conflict with their personal interests, ideologies, and perceived role.

First, few laws specify either direct or roundabout measures to make it likely that officials conform to the law's prescriptions. The higher the officials' rank, the more vague and ambiguous become the monitoring and enforcement provisions that address their behaviors. Very few systems regularly monitor

senior officials. To sanction perceived unacceptable performance, most have in place only default mechanisms.

Those default systems rarely prove very effective. In many countries, the Civil Service Commission has limited power to punish official misbehavior. General administrative law usually provides a method of appeal – frequently to the courts – for a citizen who feels an administrator has behaved unfairly. In a democratic society, a system of checks and balances may serve as a defense against arbitrary behaviors by top officials. Slow, cumbersome and very costly, these default procedures seldom provide relief. Thus, senior officials mostly behave without an effective agency to implement the rules that prescribe their behaviors

Second, role conflict often helps explain problematic official behaviors. In their formal role, officials should only behave as the law prescribes. Like everyone else, however, officials play many roles beyond their official capacities: as wives, mothers, husbands, fathers, children, students, teachers, consumers, home owners, renters – a long list. Occasionally, an official will use public power to play out another, private role — one that conflicts with the public interest. Called by sociologists 'role conflicts,' these may help to explain official misbehavior.

The lack of effective supervision of the implementing officials, and those officials' own role conflicts, constitute two pervasive structural explanations for officials' problematic implementing behaviors. Where existing implementing agency misbehavior constitutes part of that social problem a bill aims to help resolve (as usually happens), ask questions to determine whether structural causes influence the officials' behaviors. Then ask about the other possible causes for officials' problematic behaviors that the ROCCIPI categories suggest — especially, the **Process** category.

ROUNDABOUT MEASURES

These comprise all the activities an implementing agency may use to:

1. Alter or eliminate the country-specific non-legal circumstances (Interest causes excepted) that cause social actors — either primary role occupants, or implementing agency officials — to behave in counterproductive ways; and
2. To then induce more appropriate behavior.
   Implicitly, depending upon the causes of the problematic behaviors, the ROCCIPI agenda suggests some alternative measures likely to change an addressee's behavior in a way likely to help resolve the social problem. Ask questions about measures to –
   - Alter or eliminate curbs that circumstances impose on **Opportunity**.

- Provide required resources and skills training to ensure sufficient **Capacity**.
- **Communicate** the law's provisions to its addresses.
- Require transparent, accountable, and participatory input, feedback and conversion **Processes**. Include in those measures specific criteria and procedures to prevent arbitrary and even corrupt decision-making, especially in complex organizations (including implementing agencies).
- Introduce educational programs to alter dysfunctional **Ideologies**.

ASSESSING A BILL'S PRESCRIPTIONS FOR AN IMPLEMENTING AGENCY

When considering a bill's provisions relating to implementation, ask three preliminary questions:

- What kinds of decisions will the agency officials have to make?
- Which can better do the job, an old or a new agency?
- Which of the four alternative agency forms – dispute settlement, ministry or other bureaucratic agency, state corporation, or private sector organization – can best do the job?

You must determine the range of outputs desired. Then you must ask whether the designated agency's input, feedback and conversion processes will likely produce those outputs.

You should ask the same questions about the bill's designated implementing agency, whether it constitutes an existing agency, with or without changes, or a new one.

DIFFERENT OUTPUTS REQUIRE DIFFERENT STRUCTURES

The Process Model underscores the proposition that ***a decision-making structure has a defined range of potential outputs***. To ensure that its implementing agency produces sound decisions, the bill must prescribe input, feedback, and conversion processes appropriate to the kinds of issues it will confront. No one-size-fits-all implementing agency structure does or can exist. Agencies generally confront five sets of issues. To assess a bill's prescribed implementing agency's structure and process, you must first determine the specific shape of the agency's tasks. These usually include some or all of the following:

- Implementing the bill's conformity-inducing measures;
- Maintaining itself as an organization;
- Making regulations to fill in the law's details;
- Settling disputes; and
- Monitoring agency officials' law-implementing behaviors.

DEFINITIONS: TRANSITIVE AND INTRANSITIVE LAWS

Almost all laws (at least, laws concerned with institutional transformation and development) require some administrative rulemaking with respect to their generality, bills stretch in a continuum between a wholly *transitive* and a wholly *intransitive* bill.

A ***transitive*** law contains in its text the detailed prescriptions for the role occupants and implementing agency behavior.

An ***intransitive*** law delegates to some authority — government agency, state corporation, or private entity — the power to make and implement detailed rules (regulations, subsidiary legislation) that prescribe the desired behaviors.

FOUR KINDS OF IMPLEMENTATION AGENCIES

Having determined the range of issues with which the agency must deal, ask whether that agency's input, feedback and conversion processes will likely address those issues. Do those procedures seem likely designed to produce decisions based on reason informed by experience – questions which we amplify in the checklist below.

In general, a law may prescribe one, or a combination, of four forms of implementation agency:

1. A court or other dispute-settlement tribunal
2. A ministry or an autonomous government agency
3. A public corporation (for example, a publicly-owned electricity corporation)
4. Contracting a specified administration task to a private enterprise (for example, contracting with a private corporation to manage a prison)

Some bills contain a mix of these four forms. A law establishing a public corporation, for example, may assign a Ministry to set it up and monitor its performance, and, for disputes, an intra-Ministry proceeding with an appeal to the courts. Before doing that, however, ask: Does the bill prescribe using the existing agency, with or without change, or restructuring an existing agency or creating a new one?

In any particular case, which of these forms seems most useful? That depends on the specific circumstances in which the proposed law will operate. Here, we discuss the advantages and disadvantages of the four forms. In considering the implementation agency specified for a particular bill, ask questions to discover where — in the particular circumstances of the problem addressed by that bill — the balance of advantage seems to lie.

I. DISPUTE-SETTLEMENT INSTITUTIONS AS IMPLEMENTATION AGENCIES

To most people, dispute settlement and the implementation of the laws appear indissolubly linked. Courts — the paradigmatic dispute-settlement agency — also seem the paradigmatic implementing agency. For many laws, in the course of settling disputes, courts (or other dispute settlement agencies, for example, a Workmen's Compensation Commissioner, or an arbitrator under a contract of sale of goods) do serve as a principal implementing agency. That reflects both a long history, and society's requirements for a dispute-resolution system. First, history: Centuries before the welfare state and its gaggle of programs to round off the sharp corners of the market economy, long before development appeared on any country's program, dispute-settlement agencies (usually courts) enforced the law as an incident to settling a dispute. In England, at first they enforced the criminal law, bringing 'the King's peace' to a violent and lawless countryside.

Operating mainly through the criminal law, in 17th and 18th Century England, the Justices of the Peace – almost invariably, the local landowner — became the administrative arm of the Crown. They depended almost entirely upon criminal sanctions. As well as minor, traditional criminal laws (petty theft, minor assaults, etc.), they enforced laws that had functions not different from what today we call 'administrative regulations': laws against 'sturdy beggars' or witchcraft, and the laws of markets and toll bridges. In the later 18th and 19th Centuries, other courts enforced the property, tort and contract laws on which the economy depended.

Secondly, to avoid blood feud and private warfare, every society does need a peaceable dispute-resolution system. With respect to a particular law, in default of another system, courts serve that indispensable function. In popular perception, courts came to constitute the very capital of Law's empire. As the default mode of dispute resolution, a court has an open door. In all government, only a court *must* open its doors when a citizen has a complaint about the enforcement of a law — even if an official becomes the defendant. (That open-door characteristic makes courts the ***default*** dispute-settlement system).

No matter how useful as a ***dispute-resolution*** agency, however, for many, probably most, development programs, the choice of courts as ***implementing*** agency appear problematic. Consider, especially, **Process:** Court procedures focus on dispute resolution. For many laws the sorts of outputs – that is, decisions – required for dispute settlement differ markedly from the kinds of decisions required for implementing a law's detailed provisions. That implies that the input, feedback and conversion processes for dispute settlement may not serve the requirements of the implementation process.

To assess a bill's proposal (often implicit) that courts serve as its main implementation mechanism, ask questions about the following issues:

Will a reactive implementation system suffice?

The breach of many laws – especially 'private' law like property, contract or tort law – only come to attention of authorities on complaint of a person injured. (In technical terms, it is a ***reactive***, not a ***proactive*** process). That works well enough where the failure of a party to behave as the law prescribes injures primarily a single individual (for example, contract, tort and property law). It does not work very well where a failure to obey the law injures the public generally (for example, environmental law or public education law), or where the breach of the law injures many people, but each individual only slightly. In those cases, often nobody brings a lawsuit. If a court never learns about the breach of the law, it has no opportunity to implement it. Some argue that this constitutes an advantage. Individuals, not a nosy, intrusive government, decide what breaches of the law warrant formal implementation. On the other hand, in most countries, to bring and win a lawsuit requires resources, sophistication, and connections. Despite its seeming neutrality, in practice reactive law enforcement favors power and privilege.

How will the court learn the facts related to the implementation problem?

Dispute settlement requires decisions based on evidence. Unless both sides to a dispute have had a chance to bring forward evidence and argument, the arbiter – in a court, the judge – may decide on the basis of incomplete facts. A fair hearing lies at the heart of rational dispute-settlement.
A decision on whether to implement a law to resolve a complex social problem, however, often requires evidence from a broader range of stakeholders, as well as from neutral experts. If you complain of a violation of a law but cannot frame the complaint as a lawsuit between two parties, however, you will have difficulty in persuading a court to hear your case. In particular, courts have no funds to finance a remedy for a social problem. Without the 'power of the purse,' a court frequently lacks the means to induce changed behavior. (If a community needs a new school, a court faces almost insurmountable difficulty in getting it built.)

Are the court's processes of a level of complexity appropriate to the implementation issue?

Courts usually have slow, formal, expensive and complex procedures. These prove useful in processing difficult claims on which a great deal depends. In other instances, they may engender delays and unwarranted inefficiencies.

Do the judges have sufficient expertise to implement the law?

Necessarily generalists, a judge may not have the special expertise required to deal with particularly complex substantive issues. Implementation frequently requires expertise in the subject-matter.

Will the judges prove sufficiently zealous in implementing the law?

In courts committed to the adversarial system, judges, in principle, ought to remain uncommitted and detached, 'above the fray.' Development, in contrast, often requires dedication that only commitment can ensure.

Does implementation require gathering 'legislative facts'?

Court procedures work reasonably well in finding facts about what has happened in a particular event at a particular time and place. They do not work very well in finding 'legislative facts' – that is, data indicating broad trends or forecasting probabilities of future behaviors.

In sum, for a limited range of laws, a dispute-settlement agency can also serve as the implementing agency. For many laws, however, dispute settlement calls for different input, feedback and conversion processes, and different capacities, than does implementation. If a bill before you expressly or implicitly specifies implementation through dispute settlement, enquire about the sufficiency of its procedures and structures for the implementation task required.

II. IMPLEMENTATION THROUGH GOVERNMENT ADMINISTRATION (MINISTRIES, DEPARTMENTS, ETC.)

Government administration through implementing agencies—advantages

- A bill can structure a government agency as relatively independent of partisan political influence –for example, in many countries, the civil service.
- An administrative implementing institution, properly structured by law, seems an efficient and effective form of doing government business. (Max Weber thought that, as a great technical advance, the discovery of bureaucracy ranked with the discovery of the wheel.) Because it has enormous flexibility, drafters can shape bureaucracy to the purposes of their particular bills.
- In contrast to courts, administrative agencies serve as specialized institutions. They generally employ experts to make decisions.
- A bill can structure a ministry to take either a ***reactive*** or a ***proactive*** stance, whichever best suits the problem at hand.

- Ministerial officials may bring zeal to their task — a strong plus in implementing transformatory law. By contrast, the judges' role demands the opposite of zeal: impartiality, coolness and deliberateness.
- The ministerial form provides sufficient flexibility to enable a ministry to introduce procedures appropriate either for deciding a specific case, or for drafting subordinate legislation.

Government administration through implementing agencies — disadvantages

- Administrative agencies sometimes do prove 'bureaucratic': Bound by antique rules ('red tape'), slow, ponderous. Bureaucrats sometimes become equally hidebound, incapable of behaving as entrepreneurs, or trying out new ideas. Unless the rules expressly permit it, sometimes they seem incapable of chewing gum and walking at the same time.
- Ministries necessarily work intimately with the principal stakeholders in the area of their competence. Too often, in time, the regulated take over the regulators.
- Unless carefully-structured, the hierarchical organization of an administrative agency may encourage officials to behave in a remote, authoritarian manner that defies transparency, accountability, and stakeholder participation.

III. IMPLEMENTATION THROUGH A STATE CORPORATION

State corporations as implementing agencies — advantages

- A government corporation usually has considerable freedom from ministerial control. Some people claim this enables it to respond more readily to business or quasibusiness opportunities, and to foster greater managerial creativity and entrepreneurship.
- In dealing with personnel, a government department invariably must follow the general rules for the public service; a public corporation usually does not.
- The same applies to rules for financial accountability. That may free the corporation from a lot of red tape that binds ministries.

State corporations as implementing agencies - disadvantage

- Precisely because of their freedom from oversight and its accompanying rules, public corporations have frequently become the site of serious corruption. As do ministries unless carefully structured, that very freedom from civil service and financial constraints (that in some circumstances counts as an advantage) may facilitate behaviors in violation of good governance.

IV. IMPLEMENTATION THROUGH A PRIVATE AGENCY

In a variety of circumstances, governments implement programs through the private sector. For example, a hospitals bill may empower a health ministry to contract with private companies or individuals to manage public hospitals for a fee; a prisons bill may permit a ministry of justice to contract with private companies to manage prison for a specified price; in many countries, legislation permits welfare ministries to negotiate contracts with non-government organizations to administer welfare programs.

Implementation through a private agency – advantages

- Private enterprises may bring their own resources — personnel, financial or physical — to the implementation task.
- Some people claim that private enterprises, presumably as a result of some form of competition, operate more efficiently than government enterprise.
- Like public corporations, private enterprises may permit greater creativity and entrepreneurship than does bureaucracy.

Implementation through a private agency – disadvantages

- Private enterprise seeks to maximize profits. For government activities that require redistribution of resources, or improved services for the poor, the profit motive may conflict with the agency's mission (for example, welfare agencies; old-age homes; prisons; hospitals.)
- Practices purporting to enhance efficiency may conceal behaviors that government agency rules characterize as corrupt.
- Unlike most government agencies, no generally applicable rules subject private enterprises to requirements of transparency, accountability, and participation.

SMALL GROUP DISCUSSION
PROCESS AND IMPLEMENTATION AGENCY

Discuss the following questions in your group for the next 20 minutes:

Explain why 'Process' constitutes the category that most frequently yields useful explanations for the behavior of an implementing agency:

What categories of facts would you ask about to discover how an agency's Process influences its decisions?

A CHECKLIST: QUESTIONS TO ASK ABOUT AN IMPLEMENTING AGENCY'S STRUCTURE AND PROCESS

I. Designation of an agency to implement the law

1. If an old agency (for example, an existing ministry), which agency?
2. If a new agency, what does the bill prescribe about its title and location in the existing bureaucracy? Do these seem appropriate?

II. Agency actors (officials at all levels)

1. Number of officials at each level? Why?
2. Who will appoint them? How?
3. What qualifications must candidates have for appointment? Why those qualifications?
4. How long a term will they serve? Why?
5. By what process can which official or institution remove an official from office (end of term; resignation; removal for cause; retirement age)?

III. Duties and powers of the agency

1. What responsibilities will the agency have? If the agency performs those duties, will it contribute to altering or eliminating the causes of the primary role occupants' present dysfunctional behaviors?
2. What conformity-inducing measures will the agency officials use to carry out their responsibilities? Do these measures address the causes of the problematic behaviors that the bill aims to help resolve?
3. Will the agency have the authority to impose punishments? What kinds of punishments? How useful do these seem to help resolve the identified problematic behaviors?

IV. Input functions

1. Whom will agency officials consult about how to implement the law's details? Do these include all the stakeholders? Especially, does the bill require them to consult advocates for the poor, women, children, minorities, the environment, human rights and the Rule of Law?
2. How and from whom will agency officials gather facts to help them decide how to implement the law's detailed provisions?
3. How will the agency recruit and train personnel?

V. Feedback functions

1. How will the agency learn about whether the law's addressees obey its prescriptions?
2. Will the agency wait until people come forward with complaints?
3. Almost every implementation agency **permits** complaints; will the agency also have an obligation to search out violations? (That is, does the bill prescribe a reactive or proactive agency?)
4. Who has standing to make complaints?
5. By what procedures may those with standing make their complaints? investigations by agency employees? public hearings? by soliciting responses from those affected especially from the vulnerable, historically disadvantaged? Helping the people subject to the law to meet and develop their own assessment of implementation, and to take steps to improve it? Commissioning a research agency to investigate and report back? Hearings on charges made in writing? (especially appropriate where an individual is charged with wrongdoing that may lead to punishment, demotion, loss of job, etc.) Other?

VI. Conversion processes

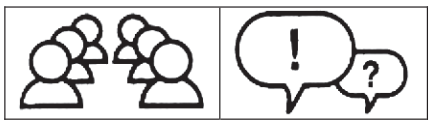
If the agency has a decision-making body empowered to make implementation decisions:

1. If that body has more than one member, what proportion of its members must vote in favor of a proposition? Must they meet and discuss the issue, or do they each write their own opinion?
2. Must decision-makers accompany their decisions with statements of reasons? Must they provide ***written*** reasons? Should they include findings of fact as well as reasons?
3. Must they notify stakeholders when they have an issue under consideration, and invite their inputs? How must the agency respond to those inputs?

VII. Appeals

1. Will a person aggrieved by an agency decision have a forum to which to appeal?

Effective implementation lies at the heart of good governance and the Rule of Law. No matter how good a law's wording seems, how laudatory its stated principles appear, it cannot facilitate the institutional transformation required for either development or transition unless it ensures that some well-chosen agency effectively implements its detailed provisions.

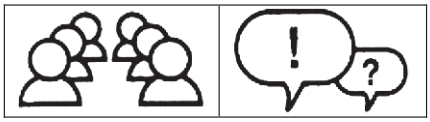


SMALL GROUP DISCUSSION

ASKING QUESTIONS TO DETERMINE THE APPROPRIATENESS OF AN IMPLEMENTING AGENCY

Discuss the following in your group for the next 15 minutes:

Recall the four principle kinds of implementing agencies. In general, what sorts of questions should you ask to determine whether a bill's drafters have assigned its implementation to the appropriate kind of agency?



SMALL GROUP DISCUSSION

JUSTIFYING ENACTMENT OF AN INTRANSITIVE LAW

Discuss the following questions in your group for the next 15 minutes:

What questions would you ask to assess whether the circumstances in which the social problem arises justify enactment of an intransitive law?

Session 5

Assessing a Bill's Form and Facts

OBJECTIVES	By the end of this session, participants will be able to: ▪ Discuss the three criteria that the legislative theory suggests for assessing a bill's form ▪ Draft a bill's structure (its outline) ▪ Describe the way a bill chains words together

DOS AND DON'TS IN THE FORM OF A BILL

CRITERIA FOR ASSESSING A BILL'S FORM

As legislator, you must determine whether a bill's form will contribute to changing the institutions – the problematic behaviors – that block transition and development in the public interest. Three criteria – completeness, accessibility, and usability – suggest detailed questions as to whether a bill's form will likely lead to effective implementation.

Completeness asks, does the bill and associated laws include all the prescriptions necessary to accomplish the desired institutional transformation? *The primary system composed of prescriptions directed to changing the primary role occupants' behaviors, plus seven other subsystems to ensure the primary role occupants behave as prescribed.*

A complete legislative scheme prescribes behaviors that institute eight subsystems (SEE CASE STUDY OF A DRAFT BILL at the end of the chapter). It consists of rules addressed to:

1. Primary role occupants.
2. Principal implementing agencies.
3. Sanctioning agencies.
4. Dispute-settlement agencies
5. Funding agencies.
6. Monitoring and evaluation agencies.
7. The agency that makes regulations under the law.
8. The personnel who keep the corpus of the law in order.

A simple bill, like one prohibiting spitting on the sidewalk, may expressly address only one aspect of one sub-system. When enacted, however, the new law will exist in the context of other laws that provide for the on-going operation of the other seven sub-systems. Assuming the other seven sub-systems function reasonably well, you can assess a simple bill on its face. A large and complex bill (for example, a bill creating a new University or a new Agricultural Bank) may incorporate rules affecting all sub-systems.

Accessibility asks, can a reader readily understand how the law requires primary role occupants and implementing agency officials to behave?

Usability asks, can a reader easily use the law's text?

DOS TO FORMULATE A COMPLETE, ACCESSIBLE AND USABLE BILL

Grouping and Ordering of a bill's provisions: The ***grouping and ordering of a bill's provisions*** help determine its ***accessibility*** and ***usability***. ***Grouping*** reflects the drafters' decisions as to ***what prescriptions belong together*** in each section, Chapter, or Part. ***Ordering*** comprises the order of prescriptions within each group. The principles used for grouping and ordering determine the bill's outline.

Think about the principles according to which different people might sort out piles of used clothing. A used-clothes salesman might sort them for the different markets in which he hopes to sell them (warm clothes to markets in cold climates, for example); the director of a home for the homeless, according the sizes of the garments and whether for men, women, or children; a paper manufacturer, according to the clothing's utility for grinding into pulp to make rag-type papers; a laundry operator, according to their colors and the likelihood of their discoloring other clothing in the washing machine load. In the same way, drafters should group and order their bills' provisions to facilitate their users' convenience.

To assess an outline's accessibility and usability, see if you can discover by what principle the drafter grouped and ordered the bill's provisions. If you cannot, ask the bill's supporters. If they cannot articulate a meaningful principle, return the bill for redrafting.

Insist that drafters write bills in plain, easy and simple language*:* If you receive a bill masked by sentences in a form that you cannot understand, insist that the drafter rewrite them ***in language that you can understand***. If you do not understand a bill's sentences, you should vote against the bill. A bill should use a vocabulary easily accessible to its readers. A bill to strengthen peasant cooperatives should use words easily understood by those likely to use the bill daily: Department of Cooperatives officials, and cooperative officers and members who do not have lawyers at beck and call. A bill about banks, in contrast, may primarily aim to help judges and lawyers resolve disputes about and among banks (who usually have legal advisors).

Specify who does what

A bill should specify the person who must behave as it prescribes

A legislative sentence must give a command, prohibition or permission to only a person or body capable of acting as prescribed.

Ensure the drafter uses same word for the same concept, different words for different concepts.

Seek the proponents of a bill to provide a research, which explains justification of need and impact assessment of intended legislation.

Use gender-sensitive terms to keep the legislation inclusive of all members of the society.

DON'TS THAT SHOULD BE AVOIDED

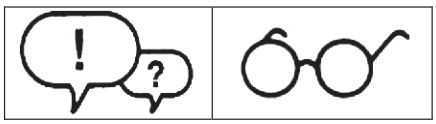
Avoid Cross References: To avoid repeating a definition of a word already defined in another law, a drafter might write, "In this statute, a 'steam engine' has the meaning it has in Statutes 1998, Chapter 17, section 3(1)." To understand the new law, a reader must scramble to find the old one. Instead, to make the new law more usable, you should make sure that, instead, the drafter copies the old definition in the new text.

Do not write long and difficult sentences*:* Long sentences make any writing difficult to understand. Only occasionally must a bill express a complicated idea that requires a long sentence. To achieve clarity in those cases, drafters should use tabulations

A bill's sentence should never use a passive voice*:* In the ***passive*** voice, the sentence's ***subject*** appears as its ***object***: 'A farm in an agent's district shall be visited not less than twice in one year.' The passive voice (much beloved by bureaucrats) too easily omits the actor. Even if, writing in the passive voice, a drafter indicates the actor:('A farm in an agent's district shall be visited *by the agent* not less than twice in one year'), the sentence leaves unclear whom it commands to act.

Avoid vague and ambiguous words*:* An ambiguous word has a several possible different meanings. ***Never approve a statute that contains a word that in context seems ambiguous.*** Insist that the drafter clarify the word (probably by specifying a definition).

Avoid redundant terms*:* drafters sometimes use redundant words like 'null and void,' or 'building or structure.' Whenever you discover that you may strike out a word without changing a sentence's meaning, ask the drafter to justify using that word, or leave it out.



CASE STUDY PART II: A DRAFT BILL

THE PUNJAB PRIVATE SCHOOLS REGULATORY AUTHORITY BILL, 2007

CONTENTS

SECTIONS

A

BILL

to establish the Punjab Private Schools Regulatory Authority for registration and promotion of the private educational institutions in the Punjab.

Whereas it is expedient to establish the Punjab Private Schools Regulatory Authority to encourage the establishment of private educational institutions, to enhance the capacity of these institutions and to regulate their affairs for the universal literacy and improvement in the quality of education and connected matters.

CHAPTER I
PRELIMINARY

1. Short title, extent and commencement.– (1) This Act may be cited as the Punjab Private Schools Regulatory Authority Act 2007.

(2) It extends to the whole of the Punjab.

(3) It shall come into force at once.

2. Definitions.– In this Act:

(a) "Authority" means the Punjab Private Schools Regulatory Authority;

(b) "Board" means the Board of Management of the Authority;

(c) "Government" means the Government of the Punjab, Education Department;

(d) "Managing Director" means the Managing Director of the Authority;

(e) "prescribed" means prescribed by the rules;

(f) "private school" means a school or a college owned by an individual or a private association;

(g) "Province" means the Province of the Punjab; and

(h) "Provincial Assembly" means the Provincial Assembly of the Punjab.

CHAPTER II
PUNJAB PRIVATE SCHOOLS REGULATORY AUTHORITY

3. The Authority.– (1) The Government shall, by notification establish an authority to be known as the Punjab Private Schools Regulatory Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal, with power to enter into contract and may sue or be sued by its name.

4. Functions of the Authority.– The Authority shall–

(a) register a private school in the prescribed manner;

(b) establish institutes for the training of the teachers and managers of the private schools;

(c) award, diploma or a certificate to a teacher or a manager of private school who successfully completes a course in an institute;

(d) develop ranking system of the private schools in the prescribed manner;

(e) categorize private schools on the basis of reasonable criteria;

(f) provide financial incentives and awards to the students and teachers of the private schools;

(g) provide technical assistance for the establishment, extension, manner and method of teaching, development of syllabus, or management of a private school;

(h) provide interest free credit facility to an owner or proponent of a registered private school of an amount that is not less than fifty thousand rupees nor more than five hundred thousand rupees;

(i) facilitate reduction or abolition of Federal taxes, duties and utility charges on the private schools or a category of the private schools; and

(j) perform any other function as may be assigned to it under the rules.

5. Powers of the Authority.– The Authority may–

(a) de-register a registered private school in the prescribed manner;

(b) summon the record of a registered private school;

(c) authorize a person to inspect a private school, record of a private school or record statements of students, teachers, or parents of students of a private school;

(d) charge fee for rendering of a service;

(e) give direction to a private school in the prescribed manner;

(f) conduct surprise tests of students of a registered private school;

(g) enter into contract;

(h) acquire, hold or dispose of movable or immovable property; and

(i) exercise a power as may be conferred on it under the rules.

CHAPTER III

BOARD OF MANAGEMENT AND MANAGING DIRECTOR ETC.

6. Board.– (1) The Government shall, by notification, establish the Board of Management of the Authority.

(2) The Board shall consist of:

(a)	Minister for Education;	Chairperson
(b)	Secretary to the Government Education Department;	Vice Chairperson
(c)	Secretary to the Government Finance Department;	Member
(d)	Vice Chancellor of the University of Education Lahore;	Member
(e)	two elected representatives of the private schools association recognized by the Government;	Members
(f)	four experts in the field of education appointed by the Government for a term of four years; and	Members
(g)	Managing Director.	Member/Secretary

(3) The administration and management of the Authority shall vest in the Board.

(4) Five Members shall constitute the quorum for a meeting of the Board.

(5) The Board may delegate any of its functions or powers to its committee or to an officer of the Authority.

7. Managing Director.– (1) The Board shall appoint the Managing Director who shall be the Chief Executive of the Authority.

(2) The Managing Director may perform a function or exercise a power as may be delegated to him by the Board.

(3) The Managing Director shall hold office for a term of four years.

(4) The Managing Director may resign by tendering his resignation to the Chairperson.

(5) The Board may, in the prescribed manner, remove the Managing Director during the tenure of the Managing Director on the ground of misconduct, inefficiency, mental or physical incapacity.

8. Qualifications of Managing Director.– A person shall not be appointed as the Managing Director unless he has:

(a) a doctorate degree in the field of education;

(b) at least fifteen years experience in the education sector; and

(c) authored a book or at least eight research articles in the field of education.

9. Staff of Authority.– (1) Subject to the rules, the Government may create or abolish a post in the Authority.

(2) A person shall not be appointed as Director of the Authority unless he holds a master's degree and ten years relevant experience in the field.

(3) The Government shall determine the terms and conditions of service of the Managing Director and other employees of the Authority.

10. Targets.– (1) The Board shall monitor and supervise the performance of the Managing Director.

(2) The Managing Director shall supervise and monitor the working and performance of the officers and other employees of the Authority.

(3) The Board shall give time bound specific targets to the Managing Director for the promotion and development of the private schools.

(4) The Managing Director may assign time bound specific targets to an officer of the Authority.

(5) If the Managing Director or an officer fails to achieve the target without any sufficient cause beyond his control, the Board may remove the Managing Director or the officer.

11. Rewards.– The Board may give incentives in the shape of cash reward to the Managing Director or an officer who has achieved the measurable targets within the specified time.

12. Information of corruption.– The Board shall, in the prescribed manner, pay cash reward to an officer or a person who provides proof of corruption of an officer or an employee of the Authority.

13. Public servants.– A Member, the Managing Director, an officer or an employee of the Authority shall be deemed to be a public servant within the meaning of section 21 of the Pakistan Penal Code, 1860 (XLV of 1860).

CHAPTER IV
REGISTRATION OF SCHOOLS

14. Registration.– (1) An owner or proponent of a private school shall in the prescribed manner apply to the Authority for the registration of the private school.

(2) The Authority may register or refuse to register a private school for reasons to be recorded in writing.

15. Effect of registration.– (1) The Authority shall extend assistance to a registered private school.

(2) A local government, a development authority, a Board of Examination, a University or a governmental or public sector organization shall extend cooperation to a registered private school.

16. Failure to register.– (1) A private school that is not registered with the Authority shall not get any assistance, aid or facilitation from the Authority.

(2) A Board of Examination or a University shall not affiliate or admit to its privileges an unregistered private school.

(3) A Board of Examination or a University shall de-affiliate a private school that has been de-registered or failed to get itself registered with the Authority.

17. De-registration.– (1) The Authority may, in the prescribed manner, de-register a registered private school through a speaking order.

(2) The Authority shall not pass an order de-registering a private school unless the owner or the proponent of the private school is afforded an opportunity of hearing.

18. Effect of de-registration.– A private school that has been de-registered shall be deemed as an unregistered private school.

19. Appeal.– A person aggrieved by an order or direction of the Authority or a designated officer of the Authority may, within thirty days of the order or the direction, prefer an appeal against the order or direction to the Lahore High Court.

CHAPTER V
SCHOOL FEE, TEACHERS & BUILDINGS

20. Tuition fee etc.– (1) The Authority may fix the maximum amount of admission, tuition or other fee that may be charged by a registered private school or a category of registered private schools from the students.

(2) The Authority shall offer need based scholarships in the prescribed manner to at least five percent students of a registered private school.

(3) The scholarship shall cover the admission, tuition and other fee of the private school and such other amount as may be determined by the Board.

21. Teachers.– (1) A person shall not be appointed or retained as a teacher in a registered private school unless he or she is at least a graduate and has obtained a certificate, diploma or degree in the subject of teaching.

(2) Subject to a general or special order of the Board, a registered private school shall not appoint a male teacher to teach students of a primary or pre-primary class.

(3) An owner or a proponent of a registered private school shall, within thirty days and in the prescribed manner, file with the Authority the particulars of a teacher appointed, removed or whose terms and conditions have been changed or altered.

(4) The particulars shall include the personal profile of the teacher, educational qualifications, tenure, allowances and facilities and in case of removal, reasons for the removal.

22. Buildings.– (1) An owner or a proponent of a registered private school shall ensure availability of suitable and adequate place for students, adequate water and sanitation facilities according to the number, age and gender of the students.

(2) An owner or a proponent of a registered private school shall ensure existence of the facilities prescribed by the Authority for that category of a private school including library, laboratory, workshop, heating or cooling equipments and place for co-curricular activities.

(3) Notwithstanding anything contained in any other law, a local government or a development authority shall:

(a) not charge any building or commercialization fee from a proponent of a registered private school if it is recommended by the Authority; and

(b) provide water supply and sanitation facilities to a registered private school at a rate that is not more than half of the rate charged from similar buildings in the vicinity of the school.

(4) The Authority may fix the maximum number of students that a registered private school is entitled to admit in a class.

23. Register of students.– (1) A registered private school shall, within thirty days of the registration or admission of a student in the school, provide the particulars of the students or student to the Authority in the prescribed manner.

(2) The Authority shall maintain registers and computerized record of the students of a registered private school.

CHAPTER VI
FUNDS, AUDIT AND ACCOUNTS

24. Sources of funds.– The Authority shall meet its expenditures from the funds received from –

(a) the Government;

(b) the Federal Government;

(c) payment of fee or a penalty by an owner or proponent of a private school; and

(d) donation or any other source.

25. Custody of funds.– (1) The Authority shall keep its funds in a scheduled bank.

(2) The Managing Director and if so authorized by the Board, any other officer of the Authority may execute a cheque of the denomination as determined by the Board.

(3) The Managing Director or the officer shall make payment from an account of the Authority to an identified person through a cross cheque, a demand draft or a pay order.

26. Budget.– (1) The Managing Director shall prepare annual budget of the Authority containing the detailed statement of the resources of the Authority and the details of the proposed expenditures of the Authority.

(2) The Managing Director shall submit the budget of the Authority, at least three months before the commencement of the next financial year, to the Board for approval.

(3) The Board may approve the budget with or without any modifications before the commencement of the next financial year.

27. Audit of accounts.– (1) The Auditor General of Pakistan shall audit or cause to be audited annually, the accounts of the Authority.

(2) The Government shall get the accounts of the Authority annually audited from a private auditor or an audit organization.

(3) The Government shall submit both of the annual audit reports of the Authority before the Provincial Assembly and the Authority shall act

according to the recommendations of the Provincial Assembly on the annual audit reports.

CHAPTER VII
EVALUATION AND MONITORING

28. Evaluation of the Authority.– A University, public or private evaluation organization, appointed by the Government, shall conduct annual evaluation of the performance of the Authority in the whole of the Province or a part of it.

29. Procedure for evaluation.– (1) The evaluation organization shall conduct surveys, research on different aspects of the private schools in a district and record the statements of the stake holders.

(2) A member or employee of the evaluation organization may, if so authorized by the Government, enter in a private school to collect information, inspect record or record statements etc. for the purposes of the evaluation.

30. Evaluation report.– (1) The evaluation organization shall submit to the Government the evaluation report of the Authority before the tenth May in a year.

(2) The evaluation report shall contain –

(a) detailed procedure of evaluation process;

(b) result of the surveys;

(c) details of the research or researches and the results of the research or researches;

(d) failure or failures of the Authority in a district, the Province or in a part of the Province and the reasons of the failure or failures;

(e) suggestions to improve the performance of the Authority, social and economic cost-benefit analysis of the suggestions;

(f) scientific estimates of the quality and quantity of education in a district, the Province or a part of the Province; and

(g) objective statement of the un-fair practices in the Authority that are harmful to the promotion of private schools.

(3) The Government shall, within one month of the receipt of the evaluation report, lay the report before the Provincial Assembly.

31. Restriction on evaluation.– No single evaluation organization shall evaluate the performance of the Authority for more than two consecutive years.

32. Annual targets for the Authority.– The Government shall fix the annual targets for the Authority for the promotion and development of the private schools in the Province.

33. Testimony of Managing Director before Standing Committee.– (1) The Managing Director shall make a statement on oath about the performance of the Authority before the Standing Committee of the Provincial Assembly on Education in the month of May in a year.

(2) The Provincial Assembly Secretariat shall fix a date, time and place of the testimony of the Managing Director before the Standing Committee.

CHAPTER VIII
MISCELLANEOUS

34. Recovery of dues.– If a person fails to pay the amount of the Authority, a designated officer of the Authority shall recover the amount due from the person as an arrear of land revenue in accordance with the provision of the Punjab Land Revenue Act, 1967 (XVII of 1967).

35. Penalty.– (1) A person who contravene a provision of this Act or the rules shall be liable to be punished to fine that may extend to one million rupees.

(2) An officer designated by the Authority may adjudicate an allegation against a person and may impose the penalty under sub-section (1) upon the person.

(3) The designated officer shall conduct trial of an accused in the summary manner in accordance with the provisions of sections 260 to 265 of the Criminal Procedure Code 1898 (V of 1898), except sub-section (2) of section 262 of the Code.

36. Rules.– (1) The Government shall propose the rules to give effect to the provisions of this Act by publishing the proposed rules in at least two leading Urdu daily newspapers.

(2) The Government shall invite objections on the proposed rules within the specified time not being less than thirty days of the publication and dispose of the objections, if any, through a speaking order.

(3) After the disposal of objections, if any, the Government shall submit the rules before the Cabinet.

(4) The Cabinet may approve, amend or return the rules for re-consideration.

(5) The rules shall come into force, after approval from the Cabinet, from the date of gazette notification or on a future date as specified by the Cabinet.

(6) The Government shall lay the rules before the Provincial Assembly within one month of the gazette notification and the Provincial Assembly may, by resolution, approve, amend or return the rules for re-consideration within a specified time or the time as may be extended by the Provincial Assembly.

(7) If the rules are approved by the Provincial Assembly with amendment, the amendment shall form part of the rules.

(8) If the Provincial Assembly has returned the rules for re-consideration and the Government fails to resubmit the rules within the specified time or the extended time, the rules shall cease to have effect from the date of the expiry of the time.

37. Time limit for making the rules.– The Government shall, within one year of the commencement of this Act, lay the rules before the Provincial Assembly, relating to–

(a) registration of a private school;

(b) the training of the teachers and managers of the private schools;

(c) awarding of a diploma or a certificate to a teacher or a manager of a private school;

(d) ranking system of the private schools;

(e) division and categorization of the private schools on the basis of reasonable criteria and classification;

(f) provision of financial incentives and awards to the students and teachers of the private schools; and

(g) provision of technical assistance for the establishment, extension, manner and method of teaching, development of syllabus, or management of a private school.

38. Amendment or repeal.– The rules made under this Act may be amended or repealed in the same manner.

39. Regulations.– (1) Subject to the provisions of the Act and the rules, the Board may, by notification in the official gazette, make regulations for carrying out the purposes of this Act.

(2) The regulations shall take effect from the date of notification or such future date as may be mentioned in the regulations.

(3) The Government shall, within thirty days of the notification, submit the regulations in the Provincial Assembly.

(4) The Provincial Assembly may, by notification in the official gazette, repeal or approve the regulations with or without amendments.

40. Repeal and succession.– (1) The Private Educational Institutions (Promotion and Regulation) Ordinance 1984 (VIII of 1984) and the Punjab Education Foundation Act 2004 (XII of 2004) are hereby repealed.

(2) The Authority shall succeed the assets and liabilities of the Punjab Education Foundation.

STATEMENT OF OBJECTS AND REASONS

Please see the research report.

MINISTER INCHARGE

Session 6

Enacting Legislation to Foster Good Governance

OBJECTIVES	By the end of this session, participants will be able to: ▪ Identify the most common and serious sorts of corrupt officials' behaviours ▪ Provide some explanations and possible legislative remedies for those corrupt behaviours, emphasizing that their roots lie, not merely in weak individuals, but also in weak institutions ▪ Use Legislative devices to structure official discretion ▪ Apply mechanisms to enhance transparency and accountability ▪ Devise a general strategy and specific laws to combat a 'culture of corruption'

CORRUPT PRACTICES UNDERMINE GOOD GOVERNANCE

In some countries, people complain that a veritable culture of official corruption undermines development efforts. That poses a major challenge to legislators: How to ensure that a bill's provisions reduce the ever-present danger of officials' arbitrary decision-making and corrupt behaviors? No law can entirely eliminate corruption. The laws you enact, however, can make it more difficult for officials to behave corruptly. This chapter gives you the tools to assess whether a bill's detailed provisions will likely reduce corrupt behaviors.

Merely by examining a decision – of a court, a minister, an agency official – no one can determine whether it accords with the Rule of Law. To reduce the probability that a bill will permit arbitrary, corrupt decision-making, it must prescribe decision-making structures in which the decision-makers:

- Receive the relevant ***inputs*** and ***feedbacks*** from the entire population of stakeholders (and exclude irrelevant or prejudicial matter);
- Take into account ***specific criteria*** that they must consider;
- Employ a methodology that ensures they ground their decisions on ***facts and logic***; and
- Reach their decisions using transparent, accountable procedures.

KINDS OF CORRUPT PRACTICES

Corrupt practices always involve officials' ***exercise of public power for their private purposes*****.** Five types of corrupt behavior seem most common:

1. **Bribery:** An official receives value for exercising discretion in the payer's favor.
2. **Embezzlement:** An official takes money from entrusted funds for personal use.
3. **Speculation**: An official uses knowledge from his or her work to make an unfair profit.
4. **Patronage and nepotism:** An official uses official power to provide jobs to family members and friends, regardless of merit.
5. **Conflict of interest:** Consciously or unconsciously, an official makes an official decision motivated, not by public good, but by personal or material interests. All constitute examples of arbitrary decision-making; they all undermine good governance.

CAUSES OF CORRUPTION: OBJECTIVE EXPLANATIONS FOR CORRUPTION

Too often, law-makers assume (implicitly if not explicitly) that officials behave corruptly only for ***subjective*** reasons – that they are greedy, or they have no moral integrity, or that they value kinship over merit. Because they see no objective mechanisms to change these corrupt official's minds, many law-makers resort to drastic criminal sanctions – including the death penalty. They ignore the fact that, as a general deterrent, capital punishment never works (not to mention that it violates human rights).

Legislative theory argues that you can help reduce corruption by ensuring that every bill contributes to reducing corruption's objective, institutional causes.

Corruption breeds where institutions permit it. A bill's provisions may help to alter or eliminate the ***institutional causes of corruption*** suggested by the ROCCIPI categories.

Rule: Sometimes a Rule or a Law can cause corruption

By granting officials discretionary power to dispense scarce government goodies in high demand, ***poorly drafted laws*** help to create circumstances that breed corruption. Official Secrets Act and the Civil Service Regulations often have secrecy provisions that permit corruption to flourish in the dark. Lack of accountability, especially fiscal accountability, breeds corrupt behavior.

Opportunity and Capacity can also cause corruption

More than two millennia ago, the Greek philosopher Aristotle articulated government's great paradox: Law cannot avoid granting officials power (that is discretion) to make crucial decisions. How to avoid the exercise of power for selfish reasons? In the 20th Century, the American jurisprudent, Roscoe Pound, observed that ***all jurisprudence concerns discretion and its control***.

Unaccountable power to allocate official favors – in procurement, in licensing, in deciding disputes, in granting zoning and planning exceptions, in locating government facilities, in ruling whether a farmer has brought to a marketing board office sixteen kilos of cocoa or only fifteen kilo (enabling the official to pocket the price of the extra kilo), in deciding who gets credit in a government loan scheme to aid small farmers and start-up industries, in running a government electricity or steel or airlines corporation, a thousand others – all of these present officials with opportunities to behave corruptly.

Circumstances differ

A Director of the Navigational Aids Division of the Coast Guard may have fewer opportunities to milk the job for corrupt advantage than a Ministry of Mines official who approves oil drilling licenses.

To try to stamp out corruption, has your country's government relied primarily on the criminal law? If so, has it effectively reduced the incidence of corrupt behaviors?

Legislative theory argues that you can help reduce corruption by ensuring that every bill contributes to reducing corruption's objective, institutional causes. In particular, we highlight here the importance of Rule, Opportunity and Capacity in explaining corruption.

HOW CAN LEGISLATORS PROTECT AGAINST MARKET ABUSE AND REDUCE THE DANGER OF OFFICIALS' CORRUPT BEHAVIORS THAT CONSTITUTES THE ISSUE YOU FACE?

Of course, the law should punish corruption – if the police can catch the culprits. Laws to reduce the objective causes suggested by the ROCCIPI categories of Rule, Opportunity and Capacity will likely prove more effective. The next section emphasizes the necessity of imposing limits on officials' discretion to make decisions.

To reduce officials' opportunity and capacity to reap personal advantage through corrupt behaviors requires **laws that create decision-making processes, which limit official discretion.**

Unaccountable, secret and unnecessarily broad discretion creates opportunities for arbitrary and corrupt decision-making. First, always ask, does a bill contains rules that require the decision maker to ***take into account a specified range of factors — and only those factors?***

Second, make sure the bill permits decision only by ***procedures authorized by the law.*** This section reviews the input-output process model of decision-making to identify the key points and ways in which a bill's details can limit officials' discretion.

LIMITING OFFICIAL DISCRETION

Input and feedback processes

A law may limit the scope of officials' discretion by specifying criteria as to whose and what kinds of facts and ideas they may consider.

- **Limit the issues agency officials may decide:** If a law permits agency officials to decide only specified issues, the *ultra vires* rule forbids them from deciding other issues. If a law says, "The Mining Environment Agency may issue rules concerning the control of the environment in coal and in hard-rock mining locations," that Agency cannot legally issue a rule regulating the drilling of oil wells ('hard-rock mining locations' does not subsume 'oil wells').

- **Specify who may supply inputs and feedbacks:** Bent on making an arbitrary decision, officials may limit facts and opinions they consider to those that support their predetermined position (on a factory safety inspection, an industrial safety inspector may have lunch with the employer, ignoring the union leadership). Similarly, an official bent on corruption invariably holds secret meetings with the corruptors, and ignores other stakeholders' inputs. To prevent officials' arbitrary or corrupt behaviors, a law might require the officials to hold a public hearing; solicit facts and ideas from vulnerable groups that the law would likely affect; and refrain from contacting one affected party without the presence of other affected parties.

  Suppose a law empowers a ministry to make regulations to facilitate disabled persons' access to a public building, and requires that the ministry first consult disabled groups' representatives. A building inspector (taking a bribe from the contractor, and without further consultation with groups representing disabled persons) might permit the contractor not to provide wheelchair access to a public building. If a disabled person complained, a court would likely insist that wheelchair access be provided, on the grounds that the building inspector had no power under the law to exempt the contractor.

  A law may limit inputs by specifying who has standing (the right) to appear and present evidence and argument. It may require that agency officials respond in writing to a stakeholder who complains about a decision. If the officials fail to respond to a proper complaint, a court could upset the decision.

- **Limiting substantive inputs to decision:** A law may specify criteria that directly or indirectly limit the inputs admitted into the decision-making process. In a proceeding to determine whether an agency should identify a particular species as endangered, a statute might state ***directly,*** "The

hearing officer may not admit evidence of the economic importance of harvesting the species"; or ***indirectly,*** "The agency may not consider the economic importance of harvesting the species." In either case, the *ultra vires* rule forbids a hearing officer from admitting or considering the forbidden evidence (see Subsection 2(b), below).

Procedural and substantive limits on the conversion process

A bill may also limit discretion by structuring the conversion process.

- **Requiring a justification for a decision**. To reduce the danger of corrupt influence, a law might limit the conversion process by several procedural devices:
  - Require agency officials to state in writing the facts and logic on which a decision rests;
  - Require officials to follow agency precedents; and
  - Require that two or more officials make decisions.

ACCOUNTABILITY AND TRANSPARENCY

INSTITUTIONS OF ACCOUNTABILITY

To reduce the ever-present danger of corruption, a bill's details must require officials to provide reasons for all-important decisions, especially those relating to finances.

Accountability for decisions

A bill may establish institutions that require:

- ***On-going*** accountability;
- accountability in response to an aggrieved party's ***complaints***;
- ***Upwards*** accountability to an office higher in the hierarchy of authority (an administrative superior, a judge); and
- ***Downwards*** accountability, for example, to a legislative committee, a stakeholders' general meeting, or a town meeting.

Some useful accountability mechanism include requirements for:

- ***Written, published reasons*** for decisions so legislators and the public can make sure administrators have taken into account the relevant factors.
- ***Regular evaluations of a law's social consequences*** by requiring a 'sunset clause' (which terminates the law on a set date unless renewed by the legislature); annual reports laid before the legislature; a legislative oversight committee.

- ***Dispute-settlement systems*** so aggrieved parties can make internal and external appeals from administrative decisions.
- In particular cases, **review of proposed decisions by a bureaucratic superior**.
- Accompanying important bills (including administrative regulations) by a ***research report*** that demonstrates that the bill contains an adequate system of accountability appropriate to its subject-matter.

Financial accountability

In the Anglophonic tradition, an Audit and Exchequer Law usually provides the basic framework for fiscal accountability. If, in your country, no such law exists, check every bill to ensure that it provides basic financial accountability. Its provisions might require:

- ***Annual audits*** by an independent auditor;
- Identification of ***a senior civil servant who must certify*** before payment that expenditure meets the requirements of the laws;
- The agency to ***keep its funds on deposit with the Treasury*** and keep up-to-date ***account books available for inspection.*** Avoid giving an agency sole power over special funds.

INSTITUTIONS OF TRANSPARENCY

From their former authoritarian rulers, some governments have inherited official secrecy laws. In contrast, Sweden's Constitution includes a public information section that, in practically all matters, forbids government secrecy. A bill's provisions may induce greater transparency by requiring an agency to:

- ***Advertise its meetings in advance,*** notifying the public of their right to attend;
- On demand to ***make available to interested persons relevant information*** from its files;
- Widen the rules of standing to ***permit interested persons to appear and speak in agency proceedings*** that may affect them; and
- ***Broaden the concept of 'interest'*** to permit, not only by those with a material but also an ideological interest to intervene in a proceeding (for example, in a proceeding to determine whether to sell a national park, permitting, not only

DISCLOSURE OF PRIVATE INTERESTS

To enable responsible authorities and the public to assess the danger of potential conflicts, *as a minimum*, officials should disclose their interests. Because of difficulties in administration and supervision, however, the code should limit (probably to legislators, ministers, and senior public service officials) the number of officials required to declare their interests. To prevent officials from shifting assets to other family members, the definition of 'potentially conflicting interest' should include family members' holdings. The officials should declare their interests under oath, under penalties of perjury. Some governments have found it useful to engage department officials in determining the scope of declaration of interests relevant to that department's particular concerns. Three categories of interests seem important:

ASSETS

The registrar should specify the value of assets required for disclosure. These might include real property, shareholdings, business interests and partnerships, directorships, other investments and assets, trusts, gifts, sponsored travel and hospitality (and perhaps others specific to a particular country's circumstances; the United Kingdom's House of Commons Register requires legislator-barristers or solicitors to declare their clients' names).

LIABILITIES

Since creditors may exercise undue influence over large debtors, the legislative provisions should require officials to declare liabilities. Country circumstances will determine the size of the debts that require listing.

INCOME

The law should require officials to declare the amounts and sources of their income.

ETHICS TRAINING

Combined with other measures, ethics training may help. As a start, a law might require officials to participate in formulating a code's details, both to legitimize its provisions and deepen their awareness of their own responsibilities for good governance.

ASSIGNING AN AGENCY TO IMPLEMENT THE CODE

For effective enforcement, every anti-corruption law should specify relevant standards; identify the responsible implementing agency; institutionalize appropriate sanctions; and establish an appeals system.

ACCESS TO INFORMATION

Laws should be enacted to allow peoples' right to know so as to hold the institutions accountable.

OMBUDSMAN

Institutions ensuring peoples easy and quick access such as Federal and Provincial Ombudsman in Pakistan must be strengthen and provided with more authority to take action against the corrupt behviours in various departments.

THREE GENERAL KINDS OF LAWS TO COMBAT CORRUPTION

1. GOVERNMENT PROCUREMENT AND SALES OF ASSETS

It must be undertaken under a standardized law and legislation should specify transparent and accountable procurement and sales practices in particular sectors. You can learn a lot about the nature and scope of corrupt procurement practices likely to emerge as your national economy expands. You can also learn about the possible causes of corrupt procurement behaviors of government officials and private sector actors, including domestic and foreign investors; the probable social costs and benefits of measures that logically seem likely to reduce or eliminate those causes; and possible measures for monitoring the social consequences of the procurement practices they incorporate into their proposed law.

2. CONFLICTS OF INTEREST LEGISLATION

Senior government officials typically comprise many of a country's most educated citizens, with extensive personal ties to civil society's leaders, including private entrepreneurs. Aspects of their personal concerns inevitably tend to conflict with the public interest.

a) Many Forms of Conflict of Interest

- **Private employment:** In some countries many officials and political figures hold part-time jobs or operate side-line businesses. These private concerns frequently conflict with their public responsibilities. Government regulations may affect their private business. As officials, they must deny privileged access to official information to persons whose favor they need in their private affairs. The potential conflicts seem innumerable.

- **Gifts, hospitality, and other personal benefits:** Persons or organizations may offer officials gifts, invitations to social affairs, holiday travel opportunities – supposedly innocent symbols of friendship. Too often, these become transformed into no-nonsense cash bribes.

- **Employment after leaving a public post:** On retiring from public office, officials may take private sector jobs from firms that do business with their former offices. As private contractors or consultants, some do business with their former offices or help unauthorized private sector actors gain access to privileged information and contacts.

- **Shareholdings, directorships, and commercial partnerships:** Holding shares or serving as directors or partners in private sector firms, officials may make decisions favoring not the public's but those firms' private interest.

- **Travel perks:** Officials may make unnecessary trips within their country or abroad in order to claim per diem payments, or to accrue airplane mileage benefits for themselves.

- **Preferential treatment:** Officials may accept preferential treatment from private interests in exchange for favors to an individual or organization. Over more competent applicants, an official may employ a family member or a friend (the act of nepotism).

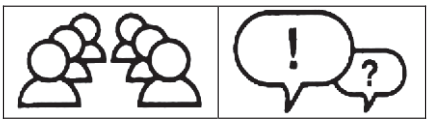
b) Specific Conflict of Interest Provisions

Many countries' laws include provisions to make it difficult for officials to conceal conflicts of interest or to participate in decisions where conflicts exist. Some or all of these might appear in a general conflicts-of-interest law:

- **Make specific corrupt activities criminal:** Giving and receiving bribes, preferential treatment of family or friends, accepting gifts above a small minimum, accepting a job with a former client of the official's department within a stated period after leaving the public service; taking kickbacks from suppliers; and others. To reduce officials' interest in violating these provisions, many laws threaten heavy fines, and encourage detection by giving whistle-blowers a major share of fines collected. As a cure for corruption, however, these rules suffer the same disabilities as general criminal law.
- **Eliminate other potential causes of corrupt behavior**, like low official salaries, secret decision-making processes, and unaccountable decision-making procedures.
- **Improve transparency** by requiring officials publicly to disclose their outside commercial and property holdings and relationships and gifts larger than a specified minimum; and, on important issues, to accompany their decisions with an adequate published justification.
- **Provide for an implementing agency with the opportunity, capacity and incentives to enforce these kinds of provisions**
- **Prohibit potentially compromising ties***:* No person running for public office may hold dual citizenship or declare allegiance to another government; no person seeking to become a legislator or minister may already hold another legislative or ministerial office.
- **Specify negative consequences for exposed conflicts of interest**, including provisions to
  - Require an appointed official holding a government contract to resign;
  - Remove the official from business operations;
  - Render the contract void;
  - Establish monitoring mechanisms to ensure that in their private capacities officials do not derive undue advantages from their official positions; and
  - Require the official to declare a personal interest to an appropriate body. *(Critics argue this reduces the negative consequences for officials who declare their interest, and permits elected officials to participate in commercial activities.*)

3. GENERAL CODES OF CONDUCT APPLICABLE TO THE PUBLIC SERVICE

A Code of Official Conduct either as a separate law or as part of the Civil Service Regulations may serve as a general deterrent to conflicts of interest.



SMALL GROUP DISCUSSION

HOW CAN LEGISLATORS CONTRIBUTE TOWARDS PREVENTING CORRUPTION?

Each group to discuss any one of the following topics for the next 20 minutes:

1. ***Enlist the most common types of corruption witnessed in Pakistani context***
2. ***Undertake ROCCIPI to identify the causes of corruption***
3. ***Undertake ROCCIPI analysis with regard to seeking Solutions to identify what needs to be embedded in a bill to ensure corruption-free implementation***
4. ***Design a code of conduct for Legislators so as to avoid any possibility of promoting corruption***

ENCIRCLE THE TOPIC SELECTED: 1 2 3 4

REFERENCES

1. Speeches and Statements 1947-1948, Introduction by S. M. Burke, Oxford University Press.

2. Ann Seidman, Robert Seidman and Nalin Abeysekere, Legislative Drafting for Democratic Social Change – A Manual for Drafters, Boston Library of Congress, 2004

3. Case Studies and Activities developed by Muhammad Rashid Mafzool Zaka, Director, Research & Information Technology, Pakistan Institute for Parliamentary Services

4. Report Specimen on Schools and a Local Drafted Bill on Schools by Mohsin Abbas Syed, Department of Law, Government of Punjab and one of the Coordinators of the Legislative Drafting Distance Learning Course

ضمیمہ

1۔ تحقیقی رپورٹ کا عنوان (Title)
2۔ پی آئی پی ایس، کی تحقیقی خدمات
3۔ قانون سازی کے محقق کی درخواست کا نمونہ
4۔ پی آئی پی ایس، تحقیقی مطالبے کی درخواست کا نمونہ

مسودہ قانون کی تیاری کے جائزے کے لیے:

ڈرافٹ بل 1	پنجاب کے نجی تعلیمی اداروں کی باضابطگی کے اختیاری ادارے کا مسودہ قانون، 2007ء
ڈرافٹ بل 2	خواتین کو ملازمتی مقامات پر ہراساں کرنے کے خلاف حفاظتی مسودہ قانون 2009ء

4۔ ممبران اسمبلی اور متعلقہ عملے کے لیے پروگرام: سیمی ناراور کانفرنس:

(1) عوامی حکمت عملی کے مسائل ومعاملات سے متعلقہ پروگرام

(2) قانون ساز ادارے: قانون سازی کے عمل پر تربیتی کورسز کا انعقاد۔

(3) نئے ممبران کے لیے کانفرنسیں

(4) ضلعی وریاستی حکومتی عملے کی آگاہی کے لیے پیش کشیں

(5) CRS سہولیات وخدمات پر ہفتہ وار بریفنگز

(6) وفاقی قانونی ارتقاء پر خطبات کا انعقاد

(7) مختلف پارلیمانی کمیٹیوں کی سفارشات میں ناکامی پر ان کی معاونت کرنے کی خدمات

3۔ حوالہ جاتی معلوماتی اور کتابیاتی خدمات:

(1) فوری حقائق کی فراہمی بذریعہ ہنگامی ٹیلیفونک سہولت

(2) PIPS کی مصنوعات کو مرتب کرنا اور حالیہ جدید موضوعات پر مضامین کی جمع بندی

(3) اسمبلیوں کے معلوماتی خطوط (نیوز لیٹرز)

(4) اسمبلی کی کارروائی، صدر نشین کے احکامات، کارروائی کے قواعد وضوابط اور تعلقات عامہ کے بروشرز پر مبنی اسمبلی کی مطبوعہ کتب کی فراہمی۔

(5) قانون سازی سے خبردار رکھنے والے خطوط (نیوز الرٹ): ان میں رواں ہفتے ہونے والے اجلاس میں ایوان میں معاملات پر بحث کا تجزیہ شامل ہیں۔

(6) حالیہ پارلیمانی مسائل کا خلاصہ

(7) کتب خانے سے مستعار لی گئی حوالہ جاتی کتب یا دیگر مواد

(8) مخصوص امدادی اشیاء کی نقول کی فراہمی: جیسے جرائد اور اخبارات کے اہم متعلقہ مضامین، سائنسی اور تکنیکی رپورٹس، قانونی وحکومتی دستاویزات

(9) کسی بھی مضمون یا موضوع پر حوالہ جات وکتابیات

(10) غیر ملکی زبانوں کے تراجم اور متعلقہ خدمات

(11) حلقہ انتخاب کے جوابات کے لیے معاونت

(12) ماہر کوائفیوں (ڈیٹا بیسز) سے حاصل کردہ مکمل تحریری متن کی فراہمی

(13) قانون سازی کی دستاویزات کی براہ راست (آن لائن) تکمیل کی سہولیات۔

2۔ تحقیقی خدمات:

(1) قانون سازی کی تجاویز کی تیاری یا سماعتوں کے لیے امدادی مواد کی فراہمی

(2) حقائق اور شماریاتی اعداد و شمار

(3) پارلیمانی مسائل پر تکنیکی معلومات

(4) قانون سازی کی پارلیمانی تاریخ کے حوالے سے امداد

(5) ممبران کے لیے تقاریر و تحقیقی رپورٹ کی ترتیب و تشکیل کے لیے دفتروں کو مواد کی فراہمی۔

(6) کتابیاتی و حوالہ جاتی مواد

(7) کسی بھی مضمون سے متعلقہ معلوماتی پس منظر

معاونت اور تحقیقی خدمات پر مبنی مصنوعات (حوالہ جاتی سہولیات) کی اقسام:

مختلف خدمات کی تفصیلات سرسری طور پر ذیل میں بیان کی گئی ہیں:۔

1۔ تجزیاتی سہولیات وخدمات:۔

(1) قانون سازی کے مسائل پر گہرے وتفصیلی پالیسی تجزیات

(2) قانونی تجزیات

(3) معاشی تجزیات

(4) مخصوص سوالات کے جواب میں رازدارانہ یادداشتیں

(5) مسودہ قانون کے موازنے/تقابلی جائزے

(6) ممبران اسمبلی اور متعلقہ عملے کے لیے بالمشافہ اور ٹیلیفونک بریفنگز کا انتظام اور انصرام

(7) پارلیمانی اور تفصیلی سماعت کے لیے معاونت

(8) کانفرنس کمیٹیوں اور نمایاں سوالات پر مشاورتی معاونت

(9) ماہرین کی شہادت ومصدقہ معلومات

(10) کمپیوٹر کی بنیاد پر نمونہ بندی اور معاونتی نقول کی تیاری

کی درخواستوں پر جواب دیں گے مگر نئی تحقیق اور تجزیے پر دستیاب وقت سے زیادہ بھی ضرورت پڑ سکتا ہے۔
آپ PIPS کے ماہرین برائے متعلقہ مضمون اور دیگر معاونتی اداروں کو صاف بتا دیں کام کی حتمی تاریخ مختصر ہے یا نہیں ۔ضرورت کے مطابق وہ آپ کو فوری زبان بریفنگز حالیہ قانونی مسائل کی نشاندہی، پس منظر سے متعلقہ مفید امدادی معلومات کی فراہمی اور متبادل معلوماتی ذرائع سے آگاہ کریں گے۔ وہ آپ کو یہ مشاورت فراہم کرنے کے قابل بھی ہوں گے کہ آپ کی تحقیقی ضروریات کو پورا کرنے کے لیے اندازاً کتنا وقت درکار ہوگا۔

پارلیمانی محققین اور لائبریرین، کس طرح آپ کی معاونت کر سکتے ہیں؟

کچھ اسمبلیوں کا عملہ اپنی تحقیق خود کرنے کو ترجیح دیتا ہے اور PIPS جیسے معاونتی اداروں پر صرف مواد، حکومتی دستاویزات کی نقول یا حوالہ جاتی کتب وغیرہ، کے حوالے سے انحصار کرتا ہے۔ اس طرح کے معاملات میں PIPS کے مختلف اشیاء کی تقسیم کار کے مراکز، حوالہ جاتی مراکز اور مطالعاتی کمرے، درکار مواد کی فوری دستیابی کو ممکن بنانے کے حوالے سے ایک زندہ حقیقت کا درجہ رکھتے ہیں۔ اسی اثناء میں پارلیمانی محققین متعلقہ اسمبلیوں میں خود بھی ایسے ذرائع اور حوالہ جاتی مراکز تشکیل دے سکتے ہیں۔
مراکز کی تحقیقی شاخیں (برانچز) انواع و اقسام کی تحقیق ضروریات پر مبنی غیر معمولی اہمیت کی رپورٹین، مطالعات اور دیگر مطلوبہ مواد اور خدمات فراہم کر سکتی ہیں۔

ان خدمات کا دائرہ کار: پس منظر کی معلومات برائے عمومی تقسیم سے لے کر ماہرانہ تکنیکی معاونت اور کلیدی مسائل و معاملات کے تجزیات تک وسیع ہے۔ تاکہ معزز ممبران ان معاملات کو تفصیلی طور پر جان سکیں اور باہمی اعتماد کا ایک رشتہ استوار ہو۔

- عام طور پر بہتر یہی وتا ہے کہ تفصیلات میں جانے سے پہلے بڑے اہم خیالات کو پیش کریں تا کہ پڑھنے یا سننے والے تفاصیل کی اہمیت اوران کے مابین تعلق کو آسانی سے سمجھ سکیں۔
- سادہ الفاظ استعمال کیجئے۔علمیت اور دانشوری جھاڑنے کی کوشش نہ کریں۔علمی شعبے اور حکومتی منشیوں کی غلط سلط اور اصطلاحات سے بھری زبان سے بچیے۔
- وضاحت وصراحت سے صرف ضروری اور اہم معلومات کو بیان یا پیش کریں۔فضول مواد نکال دیں۔اس سے بہتر اور موثر پیش کش کا تاثر ابھرے گا کیونکہ قارئین یا سامعین کا کم قیمتی وقت صرف ہوگا۔
- تصویری وضاحتوں پر مبنی، گرافیکل پیش کش: اس طرح مواد وشماریاتی معطیات کو آسانی سے عقلی گرفت میں لے کر سمجھا جا سکتا ہے۔
- اختیاری نکات: تحقیقی نتائج کا نچوڑ پیش کرتے ہوئے چھوٹی چھوٹی باتوں کو بھی قطعی طور پر معروضی اور ٹھوس انداز میں پیش کریں۔اختیاری نکات (Options) کی وضاحت کریں۔
- اعلی معاشرتی قادار کا لحاظ رکھیے: یاد رہے کہ زیادہ اہم پالیسی وحکمت عملی کے فیصلے، اعلی معاشرتی واخلاقی اقدار کے فیصلوں کی بنیاد پر ترتیب پاتے ہیں۔اپنی پیش کش اس طرح تشکیل دیں کہ حقائق کی بحث، درپیش مسائل میں شامل بنیادی اخلاقی قدروں کو مجروح یا مسخ نہ کرے۔

''وقت کا مسئلہ''

اگر چہ 'پارلیمانی: قانون سازی کی تحقیق' کے انعقاد کے لیے بعض اوقات وسیع تحقیق وتجزیے کے لیے آرام سے کافی وقت میسر ہوتا ہے۔مگر حسب معمول مجوزہ وتفویضی امور کو مختصر وقت میں تحریری ہدایات کے مطابق جلد مکمل کرنا چاہیے۔ جب مختصر وقت میں ایسی صورت حال کا سامنا ہو تو اسی موضوع پر دوسروں کے کیے گئے کام، تحقیق اور تجزیے سے استفادہ کرنے، پہلے سے تیار کردہ دستیاب رپورٹوں اور دیگر دستاویزات سے تحقیقی نتائج اخذ کرنے کی ہر ممکن کوشش کیجیے۔مثال کے طور پر آپ تیار شدہ تحقیقی رپورٹیں، اہم معلومات پر مختصر بریفنگز اور معلوماتی ذخیرے اسمبلی سیکریٹریٹ سے حاصل کر سکتے ہیں۔آپ اپنی ضروریات پوری کرنے اور تشکیل شدہ تجزیے کے لیے پارلیمانی خدمات کے ادارے: PIPS سے رجوع کر سکتے ہیں۔

اگر چہ پی آئی پی ایس، (PIPS) اور دیگر قانون سازی کی معاونت کے ادارے آپ کے نئے کام کی جلد انجام دہی

باب نمبر 7

نتائج (اور حاصل کلام) کی پیش کش

Presentation of Results and Conclusion of Report

پارلیمانی ممبران انتہائی مصروفیات کے باوجود، اہم تقاضوں کو پورا کرنے اور وقت کی ضروریات سے نبرد آزما ہونے کے لیے اس میں توازن پیدا کرتے ہیں۔ ان میں سے چند ایک ہی محقق سے بات چیت، تبادلہ خیال یا ان کی طویل رپورٹ پڑھنے کے لیے زیادہ وقت وقف کر سکتے ہیں۔ اس لیے خواہ آپ اپنے نتائج (حاصل کلام) زبانی پیش کریں یا تحریری طور پر، اپنے نکتۂ نظر کے حوالے سے صاف طور پر مطلب کی بات کریں۔ سینیٹرز، ممبران قومی وصوبائی اسمبلی اکثر لوگوں کی طرح پیش کش کے مختلف انداز یا طریقوں کو ترجیح دیتے ہیں۔

- کچھ تحریری رپورٹ جب کہ بعض زبانی بریفنگ کو ترجیح دیتے ہیں۔
- کچھ ممبران زیادہ تفصیل میں الجھنے کی بجائے مکمل تصویری خاکہ چاہتے ہیں جب کہ دیگر مکمل تفصیلات کا تقاضا کرتے ہیں۔

ایسی صورت حال کی مطابقت سے پیش کش کے حوالے سے ممبر پارلیمان کی ترجیحات اور تقاضے مختلف ہوں گے ان میں سے سب سے اہم ترجیحات: وقت کی دستیابی اور تحقیقی نتائج کا استعمال ہیں کہ ممبر کا مقصد کیا ہے۔ آپ اپنے ممبر سے زیادہ بہتر طریقے سے تبادلہ خیال کر سکیں گے اگر آپ کو اس کی ترجیحات کا علم ہو۔ پھر معاملات کی نزاکت کے پیش نظر اپنی رپورٹ کو انھی کے مطابق ترتیب دے گے۔

علاوہ ازیں کچھ اصول نہایت اہم قانون سازی یا مجموعی صورت حال کے حوالے سے قابل اطلاق ہیں جہاں آپ کو ہر قیمت پر تحقیقی نتائج پیش کرنا ہوں گے۔ انھیں ذہن نشین کر لیں، جب آپ اپنی پیش کش presentation ترتیب دیں اور یاد رہے یہ زیادہ تر حکمیہ انتباہی جملے ہیں، جیسے''۔

- اہم مسائل ومعاملات کو پیش کش کی ابتدا میں واضح طور پر بیان کریں۔ اس میں وہ بنیادی لائحہ عمل طے ہو جاتا ہے جس ک نتیجے میں تمام معاملات بیان ہوں گے۔ اور اس سے قاری یا سامع کو آپ کی پیش کی جانے والی اہم معاملات اور ان کی اہمیت میں مدد ملتی ہے۔
- صرف ضروری معلومات کو پس منظر میں لائیں تا کہ مسائل کا سیاق وسباق پوری طرح سمجھ آ جائے۔ غیر ضروری معلومات سے اجتناب کریں۔

2۔ آپ کے ملک میں کون سے متاثرہ افراد کے مبصر نمائندگان کو کسی خاص معاشرتی حوالے سے مسائل ان کی وجوہات کے جائزے اور قانون سازی کے حل کی تلاش میں شامل ہونا چاہیے؟

اپنی رائے ذیلی سطور پر درج کیجیے:۔

سوالات:

1۔ متاثرہ افراد کے نمائندگان شرکاء ومبصرین سے درج ذیل اُمور پوچھنے کے بعد فوائد ونقصانات کا موازنہ کیجیے:

ا۔ کہ وہ صرف اپنے دعوے اور مطالبات پیش کریں (اس کا تقابلی جائزہ اگلے نکتے سے لیں:)

ب۔ مسئلے کے حل کے چاروں مراحل کے تشکیلی جائزے میں انھیں شامل کرلیا جائے۔

موازنے کے نکات درج کیجیے:

اور غیر قانونی پہلو کون سے ہیں؟

- **'روسی پی' کے تجویز کردہ حلقوں کی روشنی میں پیش کریں کہ**
  - متبادل حل، جو زیر غور آئے۔
  - مسودہ قانون کی وہ تفصیلی شقیں جو معلومہ وجوہات کو ختم کر سکتی ہیں۔
  - اور یہ بھی کہ مسودہ قانون کے معاشی اور عمرانی فوائد اس کے نقصانات سے بڑھ کر ہوں گے۔ نیز
- یہ ضمانت فراہم کیجیے کہ کوئی ذمہ دار ادارہ اس مسودے کے نفاذ اور اس کے معاشرتی وسماجی مرتبہ اثرات کی نگرانی و جائزے کا فریضہ انجام دے گا۔

قلیل گروہی مشق (Small Group Exercise):۔

عمل دخل: موجود مسئلے کے حوالے سے متعلقہ حقائق، قانون سازی یا قانونی اطلاق کے عمل کے دوران آپ کو عام طور پر کسی وزارت کے دفتری عملے یا کبھی کبھار کسی قانون سازی کے ماہر یا پھر کسی غیر سرکاری تنظیم کے دفتری رکن سے دستیاب ہو سکتے ہیں۔ ایک قانون ساز کے طور پر اپنے فرائض کی بجا آوری کے لیے آپ مسودہ قانون کے حمایتیوں سے دریافت کریں کہ انھوں نے اس کی بنیاد نہ صرف منطقی دلائل بلکہ حقائق وشواہد پر بھی رکھی ہے۔ اصل تکنیک کی حکمت تو یہی ہے کہ ان عالم فاضل حضرات سے کون سے سوالات پوچھے جائیں۔

گزشتہ صدی کی آخری دہائیوں میں سماجی کارکنوں اور ماہرین تجزیہ نگاری نے متعلقہ سماجی متاثرین کے نمائندوں: خاص طور پر عدم تحفظ کا شکار اور غربت کے مارے لوگوں کو اپنے تجربات کی روشنی میں قانون سازی کے منصوبوں میں تجاویز دینے کے لیے ابھارا۔ ایک تحقیقی ذمہ دار یا منتخب قانون ساز ہونے کی صورت میں آپ رائے دہندگان کے حلقے سے مسئلے کے حل کے طریقہ کار کے مطابق نئی قانون سازی کے لیے متعلقہ شواہد اور ان کے تجزیے کے لیے متاثرہ نمائندگان ومبصرین کی مدد لے سکتے ہیں۔ وہ آپ کو ایسے ذرائع کی نشاندہی بھی کر سکتے ہیں جن سے عوامی معیار حیات میں بہتری لائی جا سکتی ہے۔

ضروری قرار پاتا ہے۔

غروبی دفعہ یا غیر مؤثر شق: کوئی بھی نیا قانون اپنی مدت حیات کا تعین خود کرتا ہے۔ یہ اسی صورت میں نافذ العمل اور موثر رہ سکتا ہے جب عوام اس بات پر مطمئن ہوں کہ اسے لاگو رہنا چاہیے۔ یہ کچھ حامی یا مخالف لوگوں کو متحرک کر سکتا ہے کہ وہ اس کی کارکردگی کے حوالے سے تفصیلی تلاش کی راہ اپنائیں۔ یہ ایک ضرورت دستور ہے کہ ایک مخصوص دورانیے کے بعد کوئی دفتری افسر جائزہ جاتی کمیشن تعینات کرے; یا اور پھر:

استصواب رائے (ریفرنڈم): کے انعقاد کے لیے مستقبل میں وقت طے کر لیا جائے کہ آیا نئے قانون کو نافذ العمل رہنا چاہیے یا پھر اسے منسوخ کیا جائے۔

حقائق حاصل کرنا: تحقیقی رپورٹ کے فائدے:

جیسے ایک عدالت کو چاہیے کہ اپنے فیصلہ جات کی گہرائی میں موجود وجوہات بیان کر کے انھیں ہو صورت درست ثابت کرے۔ ویسے ہی آپ کو بھی چاہیے کہ کسی اہم مسودہ قانون کی تفصیلی شقوں کو صحیح ثابت کرنے کے لیے اس مسودے کے حامی اراکین سے تحریری طور پر اسباب و وجوہ طلب کریں۔ پاکستان میں قومی اور صوبائی اسمبلیوں کے قانون سازی کے عمل میں ممبران کے نجی بل کے حوالے سے ایک ممبر اسمبلی کو یہ صحیح ثابت کرن یکی ضرورت پڑتی ہے تا کہ مجوزہ بل ایوان میں غور کے لیے منظور یا قبول کر لیا جائے۔ اور مزید برآں یہ کہ اکثر مسودات قانون متعلقہ سٹینڈنگ کمیٹی کی جانب سے جانچ پڑتال کے بعد پیش ہوتا ہے۔ درست ثابت کرنے کی وجہات کی معقولیت کو یقینی بنانے کے ل لیے مسودہ کی حمایت کرنے کی وجہ سے آپ کو چاہیے کہ دستیاب منطقی اور معقول حقائق کو قانون سازی کے لیے ثبوت کے طور پر مرتب کر کے پیش کریں۔ تجویز کردہ قانون سازی کو معروضی تحقیق سے مرتب کردہ ایسی رپورٹ جو اس کی معقولیت ثابت کر دے، اشد ضروری ہے۔ رپورٹ کی تشکیل کے لیے اسمبلی کے محققین، پارلیمانی تحقیقی خدمات، ذرائع کی فراہمی کے مراکز، علمی و فکری حلقوں، سی ایس اوز، وغیرہ سے مدد لی جائے۔ یہ تمام لوگ مسئلے کے حل کے لیے مصروف ہوتے ہیں۔ مسودہ قانون کے حمایتی ممبران اور پارلیمانی کمیٹی کے ممبر معقولیت کے حوالے درج ذیل پر استفسارات کر سکتے ہیں:۔

- معاشرتی مسئلے کو، قانون نافذ کرنے والے اداروں اور دیگر کن لوگوں کے کیسے رؤیہ جات سے مسئلہ تشکیل پایا تفصیلی طور پر بیان کیجیے؟
- پریشانی کا سبب بننے والے رؤیوں کو ''روسی پی'' کے سات درجاتی حوالوں سے واضح کریں کہ ان کے قانون

ایک نئے قانون کے اثرات جاننے کے لیے طریقہ ہائے کار:

نگرانی وجائزہ

مجوزہ قانون کے امکانی سماجی ومعاشرتی نقصانات وفوائد کے بارے میں جاننے کے لیے قانون ساز حضرات کوئی دقیقہ فروگزاشت نہیں کرتے اس کے باوجود اس اندازے وتخمینے کی راہ میں حائل رکاوٹوں اور مشکلات کی وجہ سے انتہائی قلیل معلومات کے ساتھ قانون سازی کے عمل کو آگے بڑھاتے ہیں۔ یہی وجہ ہے کہ اہم مسودات کی تشکیل کے لیے بہترین انداز میں جائزے اور نگرانی کی بہت زیادہ اہمیت ہے۔ مسئلے کے حل کے طریقہ کار کے چوتھے مرحلے میں یہ طے کرنے کے لیے کہ کیا ایک مسودہ قانون نئے بیان کردہ روّیے تشکیل دے کر یا امکانی اثرات مرتب کر سکے گا، ضروری معلومات مہیا ہونی چاہئیں۔ اگر ایسا نہیں ہوتا تو آپ کو فیصلہ کرنا ہوگا کہ قانون میں ترمیم کریں یا اسے کلیتہً مسترد کر دیں۔

آپ کے علم میں ہونا چاہیے کہ کیا مسودہ قانون میں ایسی دفعات موجود ہیں کہ جو قانون سازوں کے لیے یہ جاننا سہل کر دیں کہ نیا قانون حقیقی سمجھے گئے معاشرتی مسائل میں کمی کرنے میں کتنا مؤثر رہا ہے اور وہ بھی کونسی حقیقی معاشی اور سماجی قیمت پر۔

ایک وسیع تناظر میں جمہوریت بذات خود نگرانی اور جائزے کا کسی حد تک غیر منظّم دیوہیکل نظام تشکیل دیتی ہے۔ رائے دہندگان جن کے پاؤں قانون کی بیڑیوں میں جکڑے گئے ہیں آپ اور آپ کے رفقا مبران پارلیمان سے اپنی شکایات کا رونا رو تے یا رو سکتے ہیں کیوں آپ کے منتخب نمائیندگان جو ٹھہرے۔ دستور کے مطابق آپ کی ذمہ داری ہے کہ ان کی شکایات سنیں اور دادرسی کریں۔

کئی قانون ساز کمیٹیاں خاص خاص وزارتوں کے کام کی نگرانی کے فرائض انجام دیتی ہیں۔ مگر یہ نگرانی کے فرائض انجام دیتی ہیں۔ مگر یہ نگرانی کا طریقہ کار قابل اعتماد نگرانی کا ضامن نہیں ہے۔ تبدیلی کے لیے اہم قواعد وضوابط میں بنیادی طور پر ایسے طریقے ضرور شامل ہوں جن سے براہ راست جوابی تاثرات کی یقینی دہائی ہو۔ نگرانی کے عمل کو مؤثر بنانے کے لیے مسئلہ آلات وتجاویز میں کچھ ذیلی طریقے بھی شامل ہیں:۔

رپورٹ نگاری کی ضروریات: کہ ایک ذمہ دار افسر (اکثر وزیر ہی ہوتا ہے) وقتاً فوقتاً قانون سازی کی کمیٹی کو نئے قانون کے نفاذ اور اس سے متعلق دیگر معلومات مہیا کرتا رہتا ہے۔ کئی ملکوں میں وزراء کو رسوم ورواج کے تحت پہلے ہی قانونی حوالے سے پابند ہوتے ہیں کہ پارلیمان کو اطلاعات فراہم کریں۔ مگر تجربات سے یہ بات سامنے آتی ہے کہ اس عمل کے نتیجے میں ثمرات کم ہی میسر آئے ہیں لہذا واضح ہو گیا ہے کہ اہم مسودات کے لیے نگرانی مزید سخت ہونا

3۔معاشرتی نقصانات وفوائد کا اندازہ لگانا: معاشرتی نقصانات وفوائد کے اندازوں کا موازنہ اور جائزہ معاشی اندازوں اور تخمینوں کی نسبت مشکل ترین ثابت ہوتا ہے۔ کیونکہ سماجی وعمرانی حوالے جیسں بلند معیار زندگی کے حوالے سے ملازمتیں، آمدنی، گھر اور آسائشات کی سہولتیں وغیرہ انسانی حقوق اور ماحولیاتی شرائط وحالات زیادہ دلکش اور پراثر ہوتی ہیں۔

عام طور پر تمام عوامل سماج کے تاریخی پس ماندہ غریب طبقے کے معیار زندگی کو مختلف اندازہ سے متاثر کرتے ہیں۔ مثال کے طور پر ان اثرات کا اندازہ کیسے لگایا جاسکتا ہے: مثال کے طور پر ان اثرات کا اندازہ کیسے لگایا جاسکتا ہے: جب کسی حکومتی فیصلے کے تحت ایک غریب خاندان کا گھر گرا کر اس کی زمین پر سڑک بنادی جائے۔ ایسے خاندان کا معیار زندگی کتنا متاثر ہوگا غریب وکم آمدنی والے افراد کے علاقے کو نظر انداز کر کے امیر زیادہ آمدنی والے افراد کے علاقے میں مدد سے یا ہسپتال کی تعمیر کر دی جائے تو طبقہ غرباء کے تاثرات کو کیسے جانچا جائے گا؟ لکڑی کی تاجر کمپنیوں اجازت دے دی جائے کہ وہ ایسے جنگلات کا بے دریغ کٹاؤ کریں جن کی عدم موجودگی سے ماحولیاتی تبدیلیوں کے نتیجے میں زمینی سیلابوں اور تباہی میں ہر صورت اضافہ ہو جائے گا۔ یا تعلیمی شعبے پر اضافی اخراجات اس مقصد کے تحت کیے جائیں کہ نئی نسل، معاشرے کے غریب ترین شہریوں کو بھی برسوں بعد روزگار کے نئے مواقع اور آمدنی کے ذرائع مہیا ہو سکیں۔

بہتر طرز حکمرانی معاشرتی ترقی کے عمل میں غریب ترین اور پس ماندہ پسے ہوئے طبقے کی شمولیت پر زور دیتی ہے ۔ کیونکہ یہی غریب طبقہ صدیوں سے محروم چلا آ رہا ہے۔ ان کی شمولیت کے معاشرتی نفع ونقصان کو کس ترازو میں تولا جاسکتا ہے؟

سماجی تخمینوں سے یہاں یہی مراد ہے کہ وہ اس غریب طبقے سے متعلق قانون سازی کے موقع پر ان پر وارد ہونے والے اثرات کے حوالے سے ضرور رجوع کرے۔

سماجی یعنی غیر مادی پہلو قانون کے ترقی پر مرتب ہونے والے اثرات کے تسلسل کا اہم حصہ ہوتے ہیں۔ آپ متعلقہ وزارتوں سے تقاضا کریں کہ وہ بہترین تخمینے فراہم کریں نیز یہ بھی صراحتاً پوچھا جائے کہ انھوں نے یہ تخمینے کسے ترتیب دیے۔ پھر آپ خود مسودے کا جائزہ لینے کی ہر ممکن کوشش کریں۔

صورت میں اضافے کی شکل میں بھی ظاہر ہو سکتے ہیں۔ تاہم بعض معاشی نقصان صرف وقت کے ساتھ ساتھ ہی ظاہر ہو سکتے ہیں۔ اکثر و بیشتر کسی مسودہ قانون کے معاشی و معاشرتی نقصانات و فوائد کے بارے میں درست مقداری پیمانوں کا حصول نہ صرف مشکل بلکہ کبھی ناممکن بھی ہوتا ہے۔ اس قسم کے تخمینوں کے لیے کی جانے والی کاوشوں میں حائل عوامل کے لیے الگ سے ایک تجزیے کی درخواست کریں۔

2۔ معاشی فوائد: مسودے کے حکومت کو دیے ہوئے اختیارات کے معاشی فوائد رفتہ رفتہ وقت گزرنے کے بعد ظاہر ہوتے ہیں۔ ان کا تخمینہ لگانا معاشی اخراجات کی نسبت زیادہ مشکل ہوتا ہے۔ جیسے نئے کاروباروں میں بہتری اور تیزی لانے کیلئے مہیا کردہ سہولیات پر حکومتی اخراجات جمع شدہ محصولات سے زیادہ آمدنی کا سبب یوں بنیں گے کہ نجی شعبے میں ملازمتیں زیادہ ہوں گی اور آمدنی و نفع بڑھے گا۔ مگر اس بات کا اندازہ کیسے اور کون لگائے کہ آمدنی کتنی بڑھے گی ؟ حکومتی سرمایہ کاری اور زیادہ حکومتی آمدن، منافع کی صورت میں، خدمات کے زیادہ بہتر معاوضے اور حکومتی قرضوں پر زیادہ شرح منافع کی صورت میں بڑھ سکتی ہے۔ مگر آنے والے دور کے منافع کی پیشن گوئی کرنا مشکل کام ہے۔

نئی قانون سازی کے نتیجے میں مختلف نجی شعبوں کے گروہ طرح طرح کے معاشی فوائد حال کر سکیں گے۔ نئے حکومتی ترقیاتی منصوبوں کو متحرک کرنے والے قوانین کے نتیجے میں مختلف سماجی گروہوں پر زیادہ منافع، ملازمتوں اور اُجرتوں کے حوالے سے مختلف اثرات مرتب ہوں گے۔ مختلف باہم مربوط عوامل کے پیش نظر غیر یقینی صورت حال میں ان کا صحیح اندازہ نہیں لگایا جا سکتا۔ بعض اوقات سیاست دان یہ دعوی کرتے ہیں کہ ٹیکسوں میں کمی، نجی شعبے کو زیادہ فائدہ دیتی ہے۔

یہ اندازہ لگانا کہ محاصل کی کمی سے کس عمرانی طبقے کو زیادہ مفاد پہنچے گا۔ اس کا دارومدار اس بات پر ہے کو کون سے محاصل میں کمی یا چھوٹ دی گئی۔ یہ بھی دیکھا جائے کہ محاصل کی خدمات میں بھی کمی ہوگی تو اس کا نقصان کون سے سے گروہ کو ہوگا؟ اگر صحت و تعلیم کے میزانیے میں کمی ہوگی تو متبادل سہولیات کی عدم موجودگی سے غریب طبقہ ہی پسے گا۔ آمدنی یا منافع پر محاصل لگانے سے اشیاء صرف کی قیمتیں بڑھ جائیں گی۔ امیر طبقہ تو اپنی کثیر آمدن ان اشیائے ضروریہ کی خرید پر لٹاتا ہے مگر مہنگائی کے بعد غریب طبقہ قوت خرید کی کمی کا شکار ہو جاتا ہے۔

اور پریس پر سیاسی کنٹرول کو جائزہ ہونے جیسے اختیارات دے دیتے ہیں۔اس سے حقوق انسانی پر منفی اثرات واضح طور پر مرتب ہوتے ہیں۔آپ کو یہ بھی پوچھنا چاہیے کہ دوسرے مسودات کس طرح کم واضح انداز میں انسانی حقوق پر اثرات مرتب کر سکتے ہیں۔،

کیا ایسا مجوزہ قانون، جو نئی سڑکوں کو تعمیر کے بارے میں ہے، حقوق انسانی کا خیال رکھتا ہے۔جب وہ ان زمینوں پر بنائی جائیں گی۔جو غریب لوگوں کی ملکیت ہیں اور جو کسی اور جگہ آباد نہیں ہو سکتے؟ کیا ایک ایسا ہسپتال جو لسانی طور پر طاقت ور اور امیر طبقے کے لیے علاج معالجے کی سہولیات مہیا کرے، نظر انداز کیے جانے والے غریب طبقات کیخلاف امتیازی سلوک پر مبنی نہیں ہے؟ کیا اعلیٰ تکنیکی مہارتوں کے حصول کے لیے تیار شدہ قانون تعلیم یافتہ خواتین کے لیے مواقعوں کی مساوی دستیابی کا یقین دلاتا ہے؟

- بہتر انداز حکومت: عوام نے بہتر انداز حکومت کو اب اہمیت دینا شروع کر دی ہے۔یہ حقیقت آپ سے قیمتی ہے کہ آپ پوچھیں کیا مسودہ شفاف، قابل احتساب اور شراکت داری کے اصولوں پر مبنی سازی کے لیے اپنی دستیابی فراہم کرتا ہے؟ کیا مسودے میں بدعنوان رویوں کے خلاف دفاعی دفعات موجود ہیں؟

ُب۔ فوائد و نقصانات کا تخمینہ لگانا:

1۔ معاشی نقصانات: معاشی فوائد و نقصانات سے مراد وہ تمام قیمتیں ہیں جو ایک بے حس قسم کا اکاؤنٹنٹ شامل کرتا ہے۔اُس میں وہ تمام اخراجات بھی شامل ہیں جو حکومتی خزانے سے قانون کے نفاذ سے متعلق افراد، عمارات، سازو سامان اور خدمات وغیرہ پر براہ راست خرچ ہوتے ہیں۔حکومتیں بالواسطہ طور پر بھی اخراجات کرتی۔جن کا تخمینہ لگانا مشکل ہوتا ہے۔

مثلاً اگر پیداواری ذمے داری سے متعلق مجوزہ قانون دانی مقدمہ بازی کو اپنے نفاذ سے متعلق بنیادی عنصر قرار دیتا۔تو حکومتی خزانے کو وہ تمام اضافی اخراجات بھی برداشت کرنا ہوں گے، جو عدالتوں کو ان نئے قوانین کے بننے کے بعد درکار ہوں گے۔

پرائیویٹ شعبہ جات کو بھی یہ معاشی اخراجات کو بھی یہ معاش اخراجات برادشت کرنا پڑ سکتے ہیں کیوں کہ ان قوانین کے ملازمتوں، تنخواہوں اور موجودہ یا مستقبل کے منافع جات پر اثرات مرتب ہو سکتے ہیں۔یہ اخراجات ٹیکس کی

ا۔ایک مسودے کے ممکنہ اثرات

1۔مختلف سماجی طبقات پر اثر: کسی بھی قانون کا تمام سماجی گروہوں پر یکساں اثر نہیں ہوتا۔حتی کہ ایک بالکل سادہ قانون بھی مثلاً ایک نیا قانون اگر گاڑیوں کو بائیں طرف بلانے کے بجائے سڑک کے دائیں جانب چلانے کا حکم نافذ کرے تو اس سے موجودہ گاڑیوں کے مالکان کو،جن کی دائیں طرف سے چلنے والی گاڑیاں اپنی قدر کھو دیں گی۔

بہت زیادہ نقصان کا سامنا کرنا پڑے گا۔امریکہ میں انکم ٹیکس کے قوانین کے تحت امیروں کو غریبوں کی نسبت زیادہ ٹیکس ادا کرنا پڑتا ہے،وہاں حال ہی میں نافذ کیے گئے قانون میں سبھی کو یکساں اعتبار سے ٹیکس کی ادائیگی میں ۱۰ فی صد کی چھوٹ دی گئی ہے۔درحقیقت اس چھوٹ کا سب سے زیادہ فائدہ،سب سے زیادہ ۱۰ فی صد افراد کو ہوا ہے۔ جنھوں نے اس چھوٹ کا ۱۰ فی صد حصہ پایا۔ایک ایسا قانون جو پولیس کمشنر کو صرف چھ یا چھ فٹ سے زیادہ لمبے قد کے افراد کو سپاہی بنانے کے لیے،درحقیقت عورتوں کے ساتھ امتیازی سلوک پر مبنی ہے۔

معاشرے میں موجود بااختیار افراد کو ہمیشہ سیاسی حکمرانوں کے ساتھ اپنے اعتراضات پیش کرنے کے مواقع ملتے رہتے ہیں۔ایک منتخب نمائندے کے طور پر آپ ان ضروری حقائق کو طلب کیجئے تاکہ آپ یہ واضح کر سکیں کہ ایک مسودے کی تفصیلی دفعات غربا،خواتین،بچوں،عمر رسیدہ معزور افراد اور بہت سارے ممالک میں لسانی اقلیتوں جن کی طاقت ور حلقوں میں بہت کم نمائندگی ہے،پر کیا ممکنہ اثرات مرتب کر سکیں گی۔

2۔عوامی مفادات کے لیے آپ کو یہ بھی پوچھنا چاہیے کہ مجوزہ قوانین کس طرح مختلف انداز سے عام دلچسپی کے کم از کم ان تین پہلوؤں کو متاثر کریں گے۔جنھیں طاقت ور حلقہ اکثر نظر انداز کرتا ہے،یہ ہیں ماحولیات،حقوق انسانی اور بہتر انداز حکومت۔کسی خاص ملک میں دیگر پہلو بھی اہم ہو سکتے ہیں۔

- **ماحولیات:** اگرچہ تقریباً ہر مسودہ ماحولیات پر اثر انداز ہوتا ہے،ایسا بہت ہی کم ہوتا ہے کہ حکومت میں اس کے طاقت ور محافظ موجود ہوں کم از کم حد تک ایک مسودے کے ممکنہ ماحولیاتی اثرات کے بارے میں حقائق ضرور طلب کیجئے۔
- **انسانی حقوق:** کچھ معاملات میں مجوزہ مسودات اہل کاروں کو بغیر عدالتی کارروائی کے حراست میں رکھنے

''روسی پی' ROCCIPI کی درجاتی پڑتال''

مسودے کے تحریک دہندگان سے کہے کہ وہ ثابت کریں کہ سماجی مسائل کو جنم دینے والی ممکنہ وجوہات (جنھیں واضح کیا جا چکا ہے) اور پریشان کن رویوں کے سدباب کے حوالے سے ان کا تجویز کردہ حل ہی مئوثر ہے۔ جب تک وہ خود اعتمادی سے ایسا نہ کرلیں۔ نیا حل رویے تبدیل کرنے میں کامیاب نہیں ہو سکے گا اور نتیجے کے طور پر عمرانی مسئلے کے تدارک میں ناکامی ہوگی۔ وضاحتی بیانات پر سنجیدگی سے غور کے دوران آپ نے 'روسی پی' کے درجات کو موجود رویہ جات کی وضاحت پر مبنی مفروضے کی تشکیل کے لیے استعمال کیا تھا۔ اب وقت آ گیا ہے کہ آپ اسے استعمال کرتے ہوئے قبل از وقت بتا دیں کہ ترتیب شدہ مسودے کی روشنی میں کیسے رویے سامنے آئیں گے۔

مثال: اگر آپ کے سامنے موجود مسودہ ایسے نئے زرعی بینک کے قیام کی تجویز پیش کرتا ہے جو صرف چھوٹے درجے کے زمینداروں کو قرضے کی سہولت فراہم کرے گا تو اس طرح کا سوال پوچھا جائے: کیا اس مجوزہ بینک کی 'استعداد' اتنی ہو گی کہ وہ بڑے پیمانے پر قرضوں کے اجراء کے 'مواقع' فراہم کرے گا؟ کیا اس کے ذمہ دار افسران ان قرضوں کے اجراء کے لیے مناسب 'ترغیبات' دے سکیں گے؟ کیا بینک کے 'عمل' اور طریق کار احتساب، شفافیت اور شراکت داران کی فیصلہ سازی میں شرکت کو یقینی بنائیں گے؟

مجوزہ مسودہ کے امکانی فوائد و نقصانات کا اندازہ لگانا:۔

خاص طور پر، آپ کو ان حقائق سے متعلق ضرور دریافت کرنا چاہیے جو اس مجوزہ قانون کے تحریک دہندگان کے دعووں کے برعکس آپ کو متبادل حلوں کے اطلاقی پہلوؤں کے متعلقہ سماجی و معاشی نقصانات و فوائد اجاگر کریں۔ آپ اس وقت تک مسودے کو ووٹ نہ دیں جب تک یہ ثابت نہ ہو جائے کہ اس کے نقصانات کے مقابلے میں سماجی و معاشی فوائد بہت زیادہ ہیں خواہ وہ کتنا ہی حقیقت پر مبنی اثرات کا حامل ہو فیصلہ کرنے کے لیے اس کے مکانی اثرات بارے حق دریافت کریں۔ ان کا دیگر متبادلات سے نقصان و فوائد کے حوالے سے موازنہ کریں۔

حقائق کی روشنی میں مسودہ سازوں نے کرداروں کے پریشان کن رویوں کو شناخت کرلیا ہے (جن میں قانون نافذ کرنے والے دفتری عملے کے رویے بھی شامل ہے۔) جائزے کی ضروری بنیاد کے ذریعے ہی ہم تجزیے کے قابل ہوتے ہیں ہ کیا مسودہ قانون کی بیان کردہ شرائط محضوص پریشان کن رویہ جات پر قابو پانے کے قابل ہیں تا کہ ان کرداروں کو بہتر رویوں کی تشکیل میں معاونت ہو۔

ایک مفصل قانونی حل کی تشکیل

پریشانی کا سبب بننے والے رویے کی وجوہات پر بنظر عمیق غور وخوض کے بعد آپ کو لازمی طور پر کافی وشافی حل تجویز کرنے کے بارے میں جستجو کرنی چاہیے ____ اور وہ حل تجویز کردہ مسودہ قانون ہی تو ہے، جس میں بنیادی تقاضا ہے کہ درج ذیل چار گروہی قسم کے سوالات پوچھے جائیں:۔

1۔ کیا مسودے کے محرکین نے ممکنہ متبادل حلوں کا مکمل جائزہ لیا ہے؟

2۔ کیا انھوں نے روسی پی کے درجات کی روشنی میں ترجیحی حل یعنی مسودہ قانون کو پرکھا ہے؟

3۔ کیا انھوں مسودے میں سب سے اہم عمرانی قدر و قیمت پر مبنی حل کی شناخت ونشاندہی کر لی ہے؟

4۔ کیا مسودے میں اس کے اطلاق کی نگرانی وجائزے کا کوئی طریق کار دیا گیا ہے؟

متبادل ممکن حلوں کا جائزہ لینا:۔

مسودہ قانون کے جائزے اور جانچ پڑتال کا پہلا مرحلہ تقاضا کرتا ہے کہ آپ مسودے کے حامی تحریک دہندگان سے دریافت کریں کہ انھوں نے کون کون سے متبادل حل ڈھونڈ لیے ہیں۔ کوئی بھی متبادل حلوں کے لیے خیالات کو مختلف ذرائع سے جمع کرسکتا ہے: متعلقہ موضوع پر پیشہ وارانہ مہارت کے تحریری ذخیرے، موازنہ قانون و تجربات اور ذاتی مرتبہ خیالات ونظریات کی مدد سے ایسا ممکن ہے۔ جیسا کہ پہلے بھی واضح کیا جا چکا ہے کہ غیر ملکی قوانین کی نقالی کا کرئی فائدہ نہیں البتہ ان سے بہت کچھ سیکھا جا سکتا ہے۔

خاص طور پر آپ یہ سبق حاصل کرتے ہیں کرتے ہیں کہ ملتے جلتے معاشرتی مسائل کو دیگر ملکوں کے لوگوں نے کس طرح حل کیا اور وہ حل کتنے مئوثر رہے۔ جب تک مسودہ کے حامی تحریک دہندگان متبادلات پیش نہ کرلیں آپ ضمانت فراہم نہیں کر سکتے کہ متبادل حل سب سے مناسب ومئوثر شکل اختیار کرے گا۔

نظریہ: اقدار و اطوار

ایک سماجی کردار کے دماغ میں کون سا عمل واقع ہوتا ہے جو رویے کی وضاحت میں مددگار ثابت ہوتا ہے؟

بہت سے سماجی ماہرین نظریے کی مدد سے پریشانی کا سبب بننے والے رویہ جات کی وضاحت کرتے ہیں۔ نظریے کے ذیل میں ایمانیاتی معاملات، گرفت میں لے لینے والی اقدار، انسانی اطوار، ذوق سلیم، دنیا کے بارے میں قدیم دیومالائی قصے، مذہبی عقائد، واضح طور پر بیان کردہ سیاسی، عمرانی اور معاشی نظریات شامل ہیں۔ کچھ حضرات ترغیبات سے مماثل قرار دے کر بعض دیگر وضاحتوں کو نظریے کے ضمن میں شامل کر کے دوسری وجوہ کے حل کو یکسر نظر انداز کر دیتے ہیں۔

اس حوالے سے یہ مثال پیش کی جاسکتی ہے کہ کسی خاص ملک میں کوئلے کی کانوں میں ہونے والے حادثات کا الزام اگر صرف انتظامی افسروں پر عائد کر دیا جائے کہ وہ کان کنوں کی زندگی پر زیادہ منافع کو ترجیح دیتے ہیں تو یہ حقیقت فراموش نہ کی جائے کہ ان مینجروں کے پاس حادثات سے بچاؤ کی ٹیکنالوجی کا بھی فقدان ہے اور کانوں کے حفاظتی اقدامات کے قانون بھی موجود نہیں کہ جن کے تحت حادثات کی روک تھام کی جائے۔

درجات اور وضاحتی مفروضہ:

یہ بات ہم بار بار دہراتے ہیں کہ قانون سازی کے امور کے زیادہ دباؤ کی وجہ سے آپ کے پاس اتنا وقت نہیں ہوتا کہ آپ وزراء اور دیگر دفتری عملے سے سوالات پوچھتے رہیں۔ اپنے محدود قیمتی وقت کے بہتر استعمال کے لیے ایک ایسے رہبر کی ضرورت ہے جو آپ کو پریشان کن رویوں کی وجوہات جاننے میں مددگار ہو۔ پریشان کن رویہ جات کی علمی انداز میں مفید وضاحت و شناخت میں معاونت پر مبنی سات درجاتی روسی پی (ROCCIPI) نظریہ قانون سازی موجود ہے جو بہتر تخمینوں میں معاونت فراہم کرے گا۔

مثال کے طور پر کسی افسر کی آمریت پسند فیصلہ سازی کی وضاحت کے لیے پہلا 'درجہ اصول' ایسا مفروضہ نمایاں کر سکتا ہے کہ قانون دفتری اہل کار یا افسر کو غیر محدود اختیار فراہم کرتا ہے۔ استعداد کا تیسرا درجہ کوئی اور مفروضہ، اور 'عمل کا چھٹا درجہ' کوئی تیسرا مفروضہ تجویز کر سکتا ہے۔ اس سے کچھ فرق نہیں پڑتا کہ کون سا درجہ (Category) مفید مفروضہ سامنے لاتا ہے۔ 'روسی پی' کے درجہ وار فعالیت کے مقاصد اسی وقت ظاہر ہوں گے جب آپ تمام امکانی اسباب کو زیر غور لانے پر تیار ہوں۔

روسی پی کے درجات کی مدد سے آپ یہ امر یقینی بناتے ہیں کہ آپ اپنے ملک کے حوالے سے فراہم کردہ اور دستیاب

'روسی پی' کے سات درجاتی نکات میں سے کسی ایک کا بھی زیادہ تفصیلی پھیلاؤ اس کے تحت تفصیلی تشریحاتی مفروضے کی تشکیل میں افادیت کو زائل کر دیتا ہے۔ پریشانی کا سبب بننے والے رویوں کی تمام امکانی وجوہات بجائے تفصیلی تشریحات کے اگر حقائق کی ضمانتوں پر مبنی ہوں تو تبھی آپ مسودہ قانون کے مندرجات کو جانچ سکتے ہیں وگرنہ منطقی حقائق کے بغیر تو کوئی چارہ کار ہی نہیں۔

عمل (Process)

کردار کیسے فیصلہ کرتے ہیں کہ وہ فلاں طرز عمل یا رویہ اپنائیں گے؟

قانون نافذ کرنے والے اداروں سمیت پیچیدہ تنظیموں پر بھرپور توجہ دیں کہ ان کا عمل، معیار اور طرز عمل کے انداز کیا ہیں۔ جن کی وجہ سے متعلقہ کردار یہ فیصلہ کرتے ہیں کہ قانون کی پابندی کریں گے یا نہیں۔ اگر متعلقہ کردار انفرادی طور پر ہوں تو ''عمل'' کا درجہ (Category) کچھ وضاحتی مضروضے ہی پیش کرتا ہے: یعنی افراد بذات خود یہ فیصلہ کرتے ہیں کہ آیا انھیں قانون کی پابندی کرنا ہے یا کہ نہیں۔ اس کے برخلاف پیچیدہ تنظیمات: کارپوریشنوں، غیر سرکاری تنظیموں ،سکولوں، ٹریڈ یونینیوں اور خاص طور پر نافذانہ اختیار کے اداروں: جیسے پولیس، عدالتوں، وزارتوں ایجنسیوں کے مختلف شعبوں، مقامی حکومتوں اور بیورو دفتروں وغیرہ کی سطح پر پریشان کن رویے کے افراد کے لیے ''عمل'' کا درجہ ''روسی پی'' کے تحت دلکش مفروضے کی تشکیل میں زیادہ مفید درجہ شمار ہو سکتا ہے۔

ترغیبی فوائد(Interests)۔

کون سے ترغیبی فوائد متعلقہ کرداروں کو مطلوبہ رویے اپنانے کے لیے پیش کیے گئے ہیں؟

اس مرحلے پر سات درجاتی سیٹ میں ''ترغیبی فوائد'' اس جانب توجہ دلاتا ہے کہ متعلقہ کرداروں کو فہم عطا کرتا ہے کہ وہ موجود قوانین کے نفع ونقصان کو جان سکیں جو انھیں اور انکے عزیزوں کو متاثر کرتے ہیں۔ان میں مادی و مالی فوائد جیسے سرمائے میں اضافہ اور دیگر مالی نفع جات شامل ہو سکتے ہیں۔ نیز ان میں غیر مادی ترغیبی فوائد مثلاً اختیار، یا ان کے خاندانی افراد، دوستوں اور رفقاء کی عزت میں اضافے کو بھی شامل کیا جا سکتا ہے۔اس بات کا جائزہ لے کر کہ ترغیبی فوائد کردار پر اثر انداز ہوتے ہیں آپ انھیں خبردار کہنے کے انتباہی انداز کو بھی استعمال کر سکتے ہیں۔زیادہ تر قانون ساز ایسے قوانین تشکیل دیتے ہیں جن میں یہ اندازہ لگا کر کہ پریشان کن رویہ جات کا سبب ترغیبی عوامل ہی ہیں۔کرداروں کو غلط رویوں سے روکنے کے لیے صرف بھاری جرمانے اور پسندیدہ رویے اپنانے پر بڑے انعامات کی سفارشات کی جاتی ہیں۔

دراصل بہت ہی کم لوگ یا کردار قانونی سزا کا خیال رکھتے ہیں جیسے بڑی سڑکوں پر حدرفتار کے بارے میں پریشان ہونے کی بجائے ڈرائیور طبقہ اگلے کسی موڑ پر رفتار نوٹ کرنے والی پولیس کی گشتی گاڑی پر توجہ دیتے ہیں۔جس سے صاف ظاہر ہے کہ بھاری جرمانے عائد کرنے کے ساتھ گشتی پولیس کے عملے میں اضافے کی سفارشات بھی ہونی چاہئیں کچھ نظریہ ساز اس درجہ ترغیب و دلچسپی یا فوائد میں دیگر تشریحات کو بھی شامل کرتے ہیں۔جیسے ان کے خیال کے مطابق زمیندار پیداواری صلاحیت میں اضافہ اس لیے نہیں کر سکتے کہ انھیں زیادہ ترغیبی فائدہ یا منافع نہیں ملتا۔اس بات پر دھیان ہی نہیں کہ آیا کھیتوں سے فصل منڈیوں تک پہنچانے کا بنیادی ذریعہ سڑک بھی موجود ہے یا نہیں۔یہ اہل کاران کے اس رویے کی کوئی وضاحت پیش نہیں کرتے کہ پیداواری صلاحیت نہ بڑھانے پر تو سزا ہے ہی نہیں۔یا پیداواری صلاحیت نہ بڑھانے پر تو سزا ہے ہی نہیں۔یا پیداواری شرح کم ہونے کی وجہ ان کی ناخواندگی ہے ہ اس پر توجہ نہیں دی جاتی۔

غیر احتسابانہ فیصلہ سازی کی وضاحت کے حوالے سے پوچھا جائے کہ: کیا متعلقہ اہل کاران کے پاس وہ مہارت اور ذرائع موجود ہیں جن کے ذریعے وہ اپنے فیصلوں کی تحریری وضاحتیں شائع کرا سکیں؟

ابلاغ (Communication)

کیا معاشرتی کردار نافذ العمل قوانین کو جانتے اور ان کا فہم رکھتے ہیں؟

ایک ایسا قانون جس کے نافذ العمل ہونے یا اس کے تحت رؤیہ جاتی تقاضوں کی ضرورت کا علم نہ ہی ہو تو کوئی بھی شخص بطریق احسن قانون کی پابندی کیونکر سکتا ہے۔ کسی بھی ملک میں ذرائع ابلاغ کی معلومات تک رسائی کے ذرائع اکثر و بیشتر بدلتے ہوئے معاشرتی تناظر میں دب کر رہ جاتے ہیں۔ محدود تعداد میں چھپنے والے اکثر فیصلوں پر مبنی قوانین صرف حکومت گزٹ میں اشاعت پذیر ہونیکی وجہ سے عوام تک پہنچتے ہی بہت کم ہیں۔ ایسے حالات میں قانون کی بالادستی کا خواب شرمندہ تعبیر ہونے کا امکان ختم ہو جاتا ہے۔

مقامی ذرائع ابلاغ ممکن ہے صرف اہم ترین قوانین پر مبنی رپورٹیں شائع کرے اور وزارتیں صرف قانون نافذ کرنے والے اداروں اور اپنے دفتری عملے کو حسب معمول آگاہ کرتی ہیں۔ رؤسائے شہر خاص طور پر کاروباری طبقے کے لوگ بھی اپنے وکیلوں یا تجارتی تنظیمات ہی کے ذریعے اپنے معاملات سے متعلقہ قوانین کو جان پاتے ہیں۔ اس کے برخلاف جب تک متعلقہ وزارتیں خصوصی انتظامات سے عوام نئے نافذ العمل قوانین تو ایک طرف رہے اپنے عوامی مفادات سے متعلقہ فلاحی قوانین کی تشکیل و تعمیل سے بھی نا آشنا رہتے ہیں۔

یہ سوال پوچھا جائے کہ: کیا مسودہ قانونکی دفعات میں یہ امر یقینی ہے کہ بے چاری غریب عوام جس قانون سے ان کی زندگی بھی متاثر ہوگی آیا انھیں اس کا علم بھی ہوگا یا کہ نہیں؟ مثال کے طور پر زمیندار قرضے کی فراہمی کے قانون کی رسائی حاصل کر پائیں گے یا عدم مرکزیت پر مبنی حکومتی معاملات میں انھیں نمائندگی کی کوئی ضمانت بھی مذکورہ بل فراہم کرتا ہے۔ کیا خواتین اور بچوں کو گھریلو تشدد سے بچاؤ کی خاطر بنائے جانے والے قانون میں یہ یقین دہانی بھی ہے کہ خواتین اور بچوں کو اس قانون سے آگاہی فراہم کی جائے۔ مزید برآں یہ کہ تمام قوانین کو وسیع انداز میں ذرائع ابلاغ عامہ (مثال کے طور پر اخبارات، ریڈیو اور ٹیلی وژن) کے ذریعے پھیلانے اور متاثرہ طبقے تک براہ راست ابلاغ کی شرائط بھی مسودہ قانون کے مندرجات میں ضرور شامل کرنی چاہئیں۔

کی وضاحت کرتا ہے یا نہیں کرتا؟۔موجود قانون کی قیود کے مشاہدے کے ساتھ ROCCIPI' کے باقی چھ درجات سفارش کرتے ہیں کہ آپ اپنے ملک کے معروضی حقائق میں مستور غیر قانونی وجوہ پر سوالات کریں۔حالانکہ مسودے کے پیش نظر مقصد میں معاشرتی مسئلے اور رویہ جات کی وجوہ کی تبدیلی یا خاتمے کا عندیہ بھی ہوتا ہے۔وصول جوابات کی سفارشات میں مسودے میں اضافی دفعات ہونی چاہئیں۔

مواقع (Opportunity)

کیا حالات پریشان کن رویوں کے لیے مددگار ہیں؟ پہلی بات، کیا حالات ایسے مواقع تخلیق کرتے ہیں کہ متعلقہ کردار بدتمیزی کے انداز اپنا سکے؟ اگر ایسی صورت حال ہے تو نئے قانون میں یہ کوشش کرنی چاہیے کہ ایسا ماحول پیدا کیا جائے جو اس قسم کے رویوں کا تدارک اور سدباب کرے۔مثال کے طور پر اگر کسٹم کے اہل کار دوران تعیناتی رشوت طلب کریں تو قانون میں اس بات کا انتظام ہو کہ پوشیدہ کمرے ان پر نظر رکھیں یا انسپکٹر وغیرہ چھاپے ماریں۔اگر کان کنی کے انسپکٹر معدنی کان کا دورہ کر کے صرف منیجر سے ذاتی ملاقات کر کے باوجود خطرناک وغیرہ تسلی بخش ماحول کی سند عطا کر دیتے ہیں تو ایک موثر قانون کے تحت ایسے انسپکٹر پر مزدوروں کے نمائندے کی غیر موجودگی میں صرف منیجری ملاقات پر پابندی عائد کر دینی چاہیے۔دوسری بات یہ دیکھنا ہے کہ کیا متعلقہ کرداروں کو مواقع میسر ہیں کہ قانون کے دائرہ کار کے مطابق انداز اپنائیں؟ مثال کے طور پر ایک زمیندار فصل کو فروخت کرنے کے لیے منڈی تک پہنچانے کے مواقع اور رسائی ہی نہیں رکھتا تو ہوسکتا ہے آئندہ وہ اس فصل کی کاشت ہی بند کر دے۔حالانکہ قانون تو کاشت کاروں کو متعلقہ فصل کی کاشت کاری کی ترغیب دیتا ہو۔

استعداد (Capacity)

کیا متعلقہ کرداروں کے پاس وہ ضروری علم، مہارت اور ذرائع ہیں کہ رویے کی تبدیلی کے لیے جو انھیں درکار ہیں؟

استعداد کے متعلق ایک قول یاد رکھیے:

''میں اگر کوئی کام کرنیکی استعداد ہی نہیں رکھتا تو اسے پایہ تکمیل تک نہیں پہنچا پاؤں گا!''

مذکورہ بالا سوال کی روشنی میں، مثال کے طور پر کم زرعی پیداواری وضاحت کے لیے یہ سوال پوچھا جائے: کیا کسانوں کو ضروری نئی ٹیکنالوجی اور اس کے استعمال کے لیے ضروری مہارتوں تک رسائی حاصل ہے؟

موجود قانون کرداری رؤیے کی وضاحت میں مددگار مگر کیسے؟

ایک مثال:۔

فرض کر لیجئے کہ قانونی بندش کے تحت دریاؤں کے پانی کو آلودہ کرنا ممنوع ہے مگر لوگ ایسا کر گزرتے ہیں۔ بظاہر قانونی شقیں اور دفعات اس قسم کے رؤیے کی توجہات پیش کر سکتی ہیں۔ جیسے نمبر 1: موجود قانون دریاؤں میں کوڑا کرکٹ اور گندگی پھینکنے سے لوگوں کو باز نہیں رکھتا یا کسی ادارے کو یہ ذمہ داری نہیں دیتا کہ وہ روک سکے۔ نمبر 2: قواعد وضوابط کے مندرجات آلودگی پھیلانے والوں یا قانون نافذ کرنے والے اہل کاروں کو امتیازی سلوک کے وسیع مواقع فراہم کرے۔ نمبر 3: قانونی شقیں، قانون نافذ کرنے والے اداروں کے اہل کاروں کو اس بات کی اجازت بلکہ اختیار دیں کہ وہ فیصلہ کرتے وقت غیر شفاف اور غیر محتسبانہ عمل اختیار کریں جو انھیں اس قابل بنائے کہ وہ ویسے ہی رؤیے اپنائیں جیسں آلودکنندگان کا ہے یعنی بدعنوانی پر مبنی۔ نمبر 4: غیر واضح مندرجات قانونی ضروریات کے تحت آلودکنندگان کی وضاحت نہ کر سکیں۔ نمبر 5: دیگر قوانین بھی نفاذ پذیر ہوں جو موجودہ قانون کو غیر موثر کریں۔ مثال کے طور پر کوئی ایسا قانون جو کمپنیوں کو اس بات کی اجازت دے کہ وہ اگر اپنے کوڑا کرکٹ وغیرہ کو ضائع کرنے کی مناسب جگہ نہ ملنے پر اسے دریا برد کر سکیں۔

پریشانی کا سبب بننے والے کرداری رؤیہ جات کی وضاحت موجود قوانین کیونکر کرتے ہیں؟.... یہ جاننے کے لیے چار ذیلی سوالات پوچھیے:

کیا موجودہ قوانین کی مفصل شقیں اور مندرجات:

1۔ صاف الفاظ میں پریشان کن رؤیوں کی اجازت دیتی ہیں؟

2۔ مبہم انداز میں قانون نافذ کرنے والوں کو امتیازی سلوک کی اجازت فراہم کرتی ہیں کہ کیسا سلوک روا رکھا جائے؟

3۔ کوئی ایسا لائحہ عمل فراہم کرتی ہیں کہ جس کے تحت متعلقہ اداروں کے اہلکار غیر شفاف، قابل احتساب اور بدعنوانی پر مبنی طریقے یا عمل اپنائیں۔

4۔ متعلقہ کرداری ادارے، اہل کار یا افراد نے کیا کرنا اور وہ کیا کر سکتے ہیں جیسے انداز و کردار کی وضاحت بھی بیان نہ کر رہی ہوں۔

مزکورہ سوالات کے جوابات آپ کو فیصلہ کرنے میں مددگار ہوں کہ کیا قانون موجودگی کے باوجود پریشان کن رؤیہ جات

تو اس کے ذریعے نئے رویوں کو تشکیل دے کر مسئلے کو حل نہیں کیا جا سکے گا۔ نظریہ قانون سازی مختلف درجاتی سیٹ تجویز کرتا ہے۔ تاکہ مسودے میں زیرغور پریشان کن رویوں کی تمام معقول ترین تشریحات کی پہچان ہو جائے۔

پریشان کن رویوں کی وجہات اور انکے حل کے لیے راہنمائی کیسے کی جائے؟

ہر درجے (کیٹیگری) کے حوالے سے باری باری ممکنہ تجویز شدہ وجوہات کے تمام حقائق و شواہد دریافت کیے جائیں۔ تاہم مربوط یہ درجات آپ کے سوالات کی توجہ ان حقائق پر مرکوز رکھتے ہیں۔ جن کے ذریعے آپ پریشان کن رویوں کے ہر مجموعے (Set) کی اُن ممکنہ وجوہات کو درست ثابت کر سکیں جو مجوزہ قانون تبدیل کرنا چاہتا ہے۔ جب تک مسودے کی مجموعی منطقی امکانی حقائق کی روشنی میں طے شدہ وجوہات پر قابو کی اہلیت ثابت نہ ہو کیونکہ موجود پریشان کن کرداری رویوں کی اصل وجوہ یہی ہیں۔ آپ کو چاہیے کہ ممکنہ موثر ترین متبادل قانونی حل کے لیے کاوش جاری رکھنی ہوگی۔

ROCCIPI: سات درجاتی الفاظ کا مخففات پر مبنی لفظ ترتیب دینے کا مقصد انھیں آسانی سے یاد رکھنا ہے۔ اس ترتیب کی اپنی کوئی اہمیت نہیں۔ ادارہ جاتی نظریہ قانون سازی کی بنیادی تمہید منطقی طور پر یہ ہے کہ کسی بھی ایک عامل یا وجہ سے رویہ نہیں بنتا۔ بلکہ اس کے مطابق سات درجاتی سیٹ ہے جن کی مدد سے معاشرتی کرداری رویوں کی وجوہات کے حوالے سے تمام ممکنہ مضروضے ترتیب دے جا سکتے ہیں: جو یہ ہیں:۔ (1) اصول (2) مواقع (3) استعداد (4) ابلاغ (5) ترغیبی فوائد (6) عمل اور (7) نظریہ

Rule, Opportunity, Capacity, communication, Interest, Process and Ideology)

1) اصول (Rules): صفحہ نمبر 63 پر موجود نمونہ جاتی شکل کا محور یہی سوال ہے کہ قوانین کی موجودگی میں رویے من مانی والے نہیں ہوتے بلکہ قوانین کے پورے پنجرے، شکنجے یا ڈھانچے کی وجہ سے ایسا ہوتا ہے۔

متعلقہ سماجی کرداروں کی پریشان کن رویہ جات کا سبب ہیں مسودے کے محرکین سے ان رویوں کی وضاحت مانگیے اور وضاحتوں کو حقائق سے پایہ ثبوت کو پہنچانے کا کہیے۔

تیسرا مرحلہ: ایک حل تجویز کرنا

جب یہ تسلی ہو جائے کہ حقائق وشواہد موجود پریشان کن رویوں کی جب یہ تسلی ہو جائیکہ حقائق وشوائد وضاحتوں کو درست ثابت کرتے ہیں تو آپ یہ اندازہ لگا سکتے ہیں کہ آیا منطقی طور پر مسودے کے بیانات خصوصاً اس کے نفاذ کے متعلق شقیں ان وجوہات کو تبدیلی یا ختم کرنے کا سبب بن سکیں گی اور مزید متوقع بہتر رویہ جات کی تشکیل ممکن ہوگی مسودے کے محرکین سے ہمیشہ دریافت کریں کہ وہ تلاش کردہ متبادل حل برائے مسئلہ بیان کریں۔ نیز مسودے اور متبادلات کے فوائد ونقصانات بھی پیش کریں۔ خصوصاً ان سے یہ دریافت کیا جائے کہ مسودے کے ممکنہ اثرات مختلف سماجی طبقات اور عوامی مفادات انسانی حقوق کے معاملات اور ماحولیاتی تحفظات کے حوالے سے کیا ہوں گے۔ نیز خواتین، بچوں، نادار لوگوں اور اقلیتوں وغیرہ پر کیا اثرات ہوں گے جو پہلے ہی مقتدر حلقوں میں آٹے میں نمک کے برابر نمائندگی رکھتے ہیں۔

چوتھا مرحلہ: نئے قانون کیا اطلاق کا جائزہ اور نگرانی

اس مرحلے پر آخر کار مسودے کے بیان کردہ طریق کار کی نگرانی اور جائزے سے متعلق سوالات پوچھے جائیں ۔ کیونکہ کوئی بھی قانون نفاذ کے بعد ہمیشہ تمام متوقع نتائج فراہم نہیں کرتا۔ توضیع سے قبل جلد قانون سازی کے مطالبات اکثر مناسب تحقیق کی مشکلات میں اضافے کا سبب بنتے ہیں۔ مستقل طور پر تبدیل ہوتے حالات آخر کار مکمل تبدیلی کا سبب بنتے ہیں۔ کسی قانون کے پاس ہونے اور اسکے نفاذ کے بعد آپ اور آپ کے رفقائے کار صرف نگرانی کے امور انجام دے سکتے ہیں۔ بشرطیکہ جب آپ کے پاس اس حوالے سے عوام، جماعتوں اور قانون نافذ کرنے والے اداروں کے متعلق ٹھوس معلومات ہوں کہ وہ فی الحقیقت وہی انداز اور رویہ جات اپنا رہے ہیں جیسا کہ متعلقہ مسودہ قانون کے متوقع اثرات کے حوالے سے بیان کیے گئے تھے۔

مسئلے کے حل کے اس طریقہ کار کے انتہائی اہم مرحلے پر ان رویوں کی وجوہات بیان کی جاتی ہیں جو مسائل کا سبب بنتی ہیں۔ اگر کسی مسودے کا انداز منطقی طور پر ان پریشان کن رویہ جات کی وجوہات کو تبدیل یا ختم کرنے کا سبب نہیں بنتا

نظریہ قانون سازی کے تحت، مسئلہ کے حل کا طریقہ کار

مسئلہ کے حل کا طریقہ کار

تجربے کی بنیاد پر معلوم دلیل

حقائق اور منطق کے ذریعے جائزے لینے کے مقاصد پیش نظر رکھنے کا وہ طریقہ ہے جس کے تحت مسودہ قانون کے مندرجات کے موثر اطلاق اور مذکورہ مقاصد تک رسائی کے امکانات کا جائزہ لیا جاتا ہے۔ یہ طے کرنے کے لیے کہ آیا آپ کے وطن کی معروضی صورت حال میں مسودہ قانون کی شقیں کسی خاص عمرانی مسئلے پر قابو پانے کا سبب بن سکتی ہیں یا نہیں۔ نظریہ قانون سازی کے تحت، مسئلہ کے حل کے طریقہ کار کی سفارشات کے مطابق منطقی طور پر مربوط درج ذیل چار مراحل پر متعلقہ خاص سوالات پوچھے جائیں:۔

پہلا مرحلہ: عمرانی وسماجی مسئلے کی نشاندہی وشناخت کرنا:۔

معاشرتی مسئلے کی ساخت اور دائرہ کار کو سمجھنے کے لیے، مسودہ قانون درپیش مسئلے کو حل کرنے کے لیے تجویز کرتا ہے کہ آپ کو دو بنیادی سوالات ضرور پوچھنے چاہئیں:

1۔ آپ کو مسئلے کے ظاہری خدوخال کے حوالے سے مخصوص ملکی معلومات درکار ہیں کیونکہ یہ علم ہونا ضروری ہے کہ مسودے کے حامی اس کی تفصیلات، ساخت اور دائرہ کار کی حمایت میں کون سے حقائق پیش کر سکتے ہیں؟

2۔ یہ جاننے کے لیے سوالات پوچھیے کہ متعلقہ معاشرتی کردار کون تشکیل دیتا ہے نیز اس کے نفاذ کے محرکات کیا ہیں۔ اور یہ نافذ انہ کردار کیسے افعال انجام دیتے ہیں جن سے معاشرتی مسئلہ تخلیق پاتا یا سنگین بنتا ہے۔ جب تک آپ کو قطعی علم نہ ہو کہ کن افراد کے کون سے رویے یا کردار معاشرتی مسئلہ پیدا کرتے ہیں اس وقت تک آپ مسودہ قانون کے ممکنہ اثرات کا معنی خیز جائزہ نہیں لے سکتے۔

جب ایک بار آپ ایک قانون کے حقیقی اثرات کے حوالے سے حقائق وشواہد جمع کر لیتے ہیں تو آپ نظر ثانی کر کے اسے مزید بہتر بنانا چاہئے ہیں۔ ایک پارلیمانی قانون ساز محقق کی حیثیت سے کسی مسودہ قانون کی توضیع وفعالیت کے ساتھ ہرگز ختم نہیں ہوتی۔ بلکہ زندگی کی طرح قانون سازی کا عمل بھی ایک کے بعد دوسرے مسئلے کے حل کے لیے منہمک رہتا ہے اس لیے پارلیمانی محقق قانون کے نفاذ وتوضیع سے قبل، درمیان اور مابعد بھی ضروری ہے۔

دوسرا مرحلہ: سفارشات وضمانتی وضاحتیں طلب کرنا:

کسی مسئلے کے حل کیلئے مجوزہ قانون کو ان تمام وجوہات اور وضاحتوں کو تبدیل یا سرے سے ختم کرنا چاہیے جو

قانون سازی کے جائزے کے لیے تحقیقی ذمہ داری

نظریہ قانون سازی کا کردار:۔

پارلیمانی تحقیق میں قانون سازی کا جائزہ روح کی مانند ہے کیونکہ اکثر اوقات ممبران پارلیمان اور سینیٹ کو کسی مسودہ قانون (بل) کا فوری تجزیہ درکار ہوگا۔اس تجزیے میں مجوزہ تجزیاتی اثرات اور رائے عامہ کا جائزہ بیک وقت شامل ہوں گے۔ پارلیمانی قانون سازی کے تحقیق کار سے توقع کی جاتی ہے کہ اسے جدید نظریہ قانون سازی کا پورا علم ہوتا کہ وہ ایوان میں پیش کیے جانے والے مسودہ قانون کی جزئیات کا مکمل جائزہ لے سکے۔

اس پارلیمانی قانون سازی کے نظریے کا انحصار اس حقیقت پر ہے جسے ''ادارے کے طور پر بیان کرتے ہوئے کہا جا سکتا ہے کہ تمام سماجی مسائل، کرداری تکرار کے نمونوں کے مظہر ہوتے ہیں۔قانون سماجی مسائل کے حل کے لیے مدد گار ثابت ہوسکتا ہے اگر غیر فعال کردار ارروئیوں کو فعال صورت میں تبدیل کر دیا جائے۔قانونی نظام کا ذیلی نمونہ یہ مفصل مفہوم پیش کرتا ہے کہ موجود قوانین وضوابط کے باوجود لوگ اپنی مرضی ومن مانی کرتے ہیں۔ یہ اُن شواہد کی جستجو اور جائزے کے لیے ایک آلہ کار تشکیل دیتا ہے، وکسی مسودہ قانون کے لیے کرداری روئیوں کی ترغیب کے ذریعے مخصوص سماجی مسئلے کے حل کے جائزے کے لیے لازمی ہیں۔

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Participants' Book

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