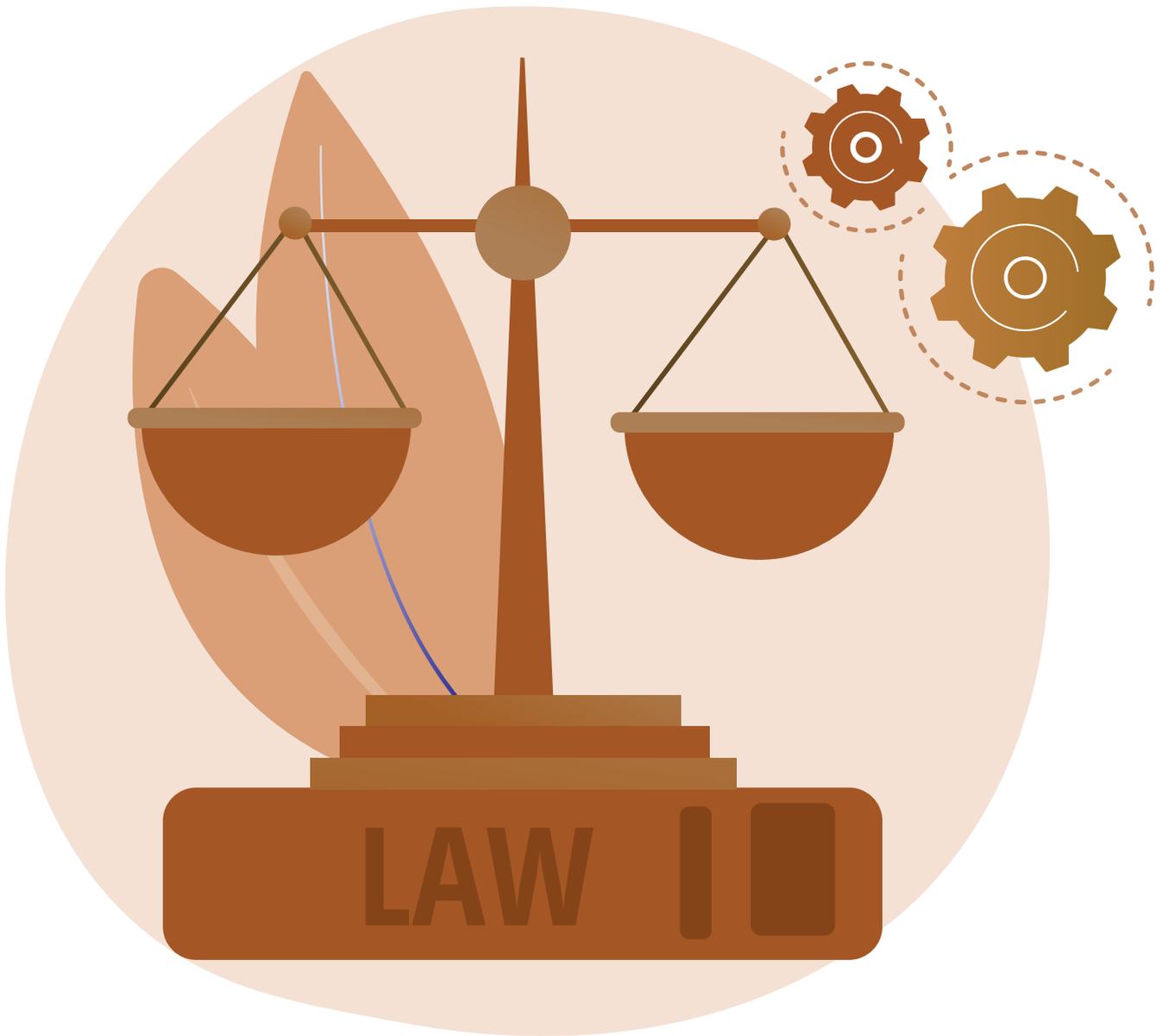


Quality of Laws Toolkit



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Authors: Prashant Narang and Jayana Bedi
Contributors: Arjun Krishnan and Meghna Sharma
Design and Layout: Ravi Kumar Yadav

Support by
Atlas Network

For more information and other requests, write to:
Centre for Civil Society
A-69, Hauz Khas, New Delhi – 110016
Phone: +91 11 26537456
Email: ccs@ccs.in Website: www.ccs.in



Introduction

Laws and regulations impact the social and economic wellbeing, and freedom of members of a society. They alter how individuals interact and trade with each other. While all laws and regulations alter behaviour and impact stakeholders, a good regulation will maximise social welfare while minimising the cost and extent of intervention ([CUTS Centre for Competition, Investment & Economic Regulation](#)).

A cost-benefit analysis alone is insufficient to assess the quality of a law or regulation fully. This is, in part, because it is not possible to know all the costs and benefits associated with a specific regulation. Further, while known costs and benefits can be calculated, there will be costs and benefits that are impossible to predict ex-ante ([Frédéric Bastiat](#) 1850). Added to this, is the knowledge problem ([Friedrich Hayek](#) 1945). All the relevant data will never be available to any one individual since this knowledge and data is distributed among individual actors.

The Quality of Laws toolkit attempts to address this gap. It borrows from various global indices of regulatory quality like the World Bank Global Indicators for Regulatory Governance ([GIRG](#)), OECD [Indicators of Regulatory Policy and Governance](#), and the European Union's [Better Regulation Toolbox](#). Last year, we released a binary-style Quality of Regulation checklist ([Anand et.al 2019](#)). It outlined the minimum set of benchmarks that a law must meet irrespective of the sector governed.

This year, we worked on a scorecard to measure the quality of laws and rules (Forthcoming 2021). It constitutes three parts: Representation safeguards (i.e accessibility of laws and public consultation), Rights safeguards (i.e. checks on executive discretion) and Resource safeguards (i.e. administrative burden and change in incentive structure based on Epstein's framework). These safeguards and benchmarks apply to all laws, irrespective of the sector they govern. The safeguards are further explained in the sections that follow.





1. REPRESENTATION SAFEGUARDS

Democratic rule-making requires that each law reflect the will of the people. Representation safeguards ensure that the general public and affected stakeholders are consulted about laws and rules that will affect their lives. This involves both ex-ante and ex-post procedural safeguards.

Ex-ante, those in power must consider the public's views about the law and make the law available for public scrutiny. This process allows the lawmakers to take into account all viewpoints and the concerns of stakeholders before reaching a decision. It partially addresses the knowledge problem as well by encouraging individual actors to provide their assessment.

Part 1A and 1B of this toolkit are based on the 'Democratic Safeguards' section of the Quality of Regulation Checklist 2019 (Anand et.al 2019). To these questions, we have added examples and a scorecard.

1A. Parent Legislation

The following questions assess the ex-ante democratic procedures.

S.No.	Question	Points
1	Was the entire text of the bill made available on the government or legislature's website?	
Info	1 point for YES; 0 points for NO. NA if the law was enacted before 2000	
Eg.	The National Food Security Bill was first placed in the public domain in 2011. It was only passed into law in 2013. YES	1
2	Was the bill open for comments from the general public through a government/ legislature's website?	
Info	1 point for YES; 0 points for NO. NA if the law was enacted before 2000	
Eg.	The National Food Security Bill was recommended to a standing committee and comments from the general public were solicited.	
3	Was the comment period open for at least 30 days following the draft bill's public release (from the date of announcement)?	
Info	1 point for YES; 0 points for NO. NA if the law was enacted before 2000	
Eg.	The National Food Security Bill allowed comments for over 30 days	1
4	Were all the comments received (or their summary) made available on the government or legislature's website?	
Info	This is mandated by the pre-legislative consultation policy of India. 1 point for YES; 0 points for NO. NA if the law was enacted before 2000	
Eg.	The summary of comments was not made available for the National Food Security Bill	0
5	Were the consultation's results (response to the comments received) on the bill made available on the government or legislature's website?	
Info	This includes a summary of the comments received from the public/other stakeholders 1 point for YES; 0 points for NO. NA if the law was enacted before 2000	
Eg.	Response to the comments received on the National Food Security Bill was not made available on the government or legislature's website.	0



Tabulation 1.1:

Tabulate the total points you have scored so far and the total number of points available to you. **Questions that are not applicable do not count against your score.** For example, if a law was passed in 1999 then the available points is 0

Points Scored [PS1] : **Available Points [AP1]** :

An ex-post review helps manage the stock of regulation to ensure that the law in question is valid, cost-effective, efficient and fit for purpose. It also helps identify and record unintended consequences. The toolkit asks four questions to assess the ex-post review mechanism.

S.No.	Question	Points
6	Is the legislation or any of its provision to be periodically reviewed?	
Info	1 point for YES; 0 Points for NO	
Eg.	Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 require review every 5 years.	1
7	Has the line ministry/department conducted any ex-post review of this legislation?	
Info	There is a difference between reviewing the law and reviewing the implementation. Review here means review of the statute not its implementation. 1 point for YES; 0 points for NO. NA if law was passed in the past 5 years	
Eg.	The line ministry has not conducted an ex-post review of the Foreign Trade (Development and Regulation) Act 1992.	0
8	Was an ex-post review conducted?	
Info	If YES award 1 point and answer 8a and 8b. If NO award 0 points and go to question 9. NA if law was passed in the past 5 years	
8a	Were any specific guidelines followed?	
Info	1 point for YES; 0 points for NO.	
Eg.	Since no ex-post review was conducted for the Foreign Trade (Development and Regulation) Act 1992, this question will be skipped.	
8b	If an ex-post review was conducted, were the findings made available on the government or legislature's website?	
Info	1 point for YES; 0 points for NO. NA if law was passed in the past 5 years	
Eg.	Since no ex-post review was conducted for the Foreign Trade (Development and Regulation) Act 1992, this question will be skipped.	

Tabulation 1.2:

Tabulate the total points you have scored so far and the total number of points available to you. **Questions that are not applicable do not count against your score.** For example, if a law was passed 2 years ago then the available points is 1

Points Scored [PS2] : **Available Points [AP2]** :



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S.No.	Question	Points
9	Is the entire text of the legislation currently available on the government or legislature's website?	
Info	1 point for YES; 0 Points for NO	
Eg.	The entire text of the Foreign Trade (Development and Regulation) Act including the Amendments made in 2010 are available on the Ministry of Law and Justice website.	1
10	Does the parent legislation mandate that the subordinate legislation is placed before the parliament/state legislature before being notified?	
Info	1 point for YES; 0 Points for NO	
Eg.	Section 3 of The Foreign Trade (Development and Regulation) Act requires all changes be laid before the parliament. "Both Houses agree in making any modification in the rule or the Order or both Houses agree that the rule or the Order should not be made, the rule or the Order, as the case may be, shall thereafter have effect only in such modified form or be of no effect, as the case may be..."	1
11	Does the legislation prescribe consultation with stakeholders while making subordinate legislation?	
Info	1 point for YES; 0 points for NO.	
Eg.	The National Food Security Act 2013 mandates the draft of all rules to be placed in the public domain before enactment.	1

Tabulation 1.3:

Tabulate the total points you have scored so far and the total number of points available to you. These 3 questions are applicable to all laws so the available points are 3

Points Scored [PS3] : **Available Points [AP3]** :

These procedural checks ensure participatory, transparent and accountable rule-making.



1.B Subordinate Legislation

Representation safeguards are required not only for the primary legislation but also for the subordinate legislation that follows. **If you are not looking at the subordinate legislation, skip this section.**

S.No.	Question	Points
1	Was the entire text of the subordinate legislation made available on the concerned department/ministry's website before enactment?	
Info	1 point for YES; 0 points for NO. NA if the law was enacted before 2000	
Eg.	Tamil Nadu Food Security Rules, 2017 were published online before enactment.	1
2	Was the subordinate legislation open for comments from the general public through the concerned department/ ministry's website before enactment?	
Info	1 point for YES; 0 points for NO. NA if the law was enacted before 2000	
Eg.	Tamil Nadu food security rules, 2017 were placed in the public domain in May, 2017 before being enacted in July, 2017.	1
3	Was the comment period open for at least 30 days following the public release of the draft of the subordinate legislation?	
Info	1 point for YES; 0 points for NO. NA if the law was enacted before 2000	
Eg.	Following the release of a notification, comments on the Tamil Nadu Food vSecurity Rules were invited for a period of 15 days.	0
4	Were all the comments received made available on the concerned department/ ministry's website?	
Info	1 point for YES; 0 points for NO. NA if the law was enacted before 2000	
Eg.	The summary of the comments received on Tamil Nadu Food Security Rules was not made available on the concerned department/ministry's website.	
5	Were results of the consultation (response to the comments received) on the proposed subordinate legislation made available on the concerned department/ministry's website?	0
Info	1 point for YES; 0 points for NO. NA if the law was enacted before 2000	
Eg.	Response to the comments received on the Tamil Nadu Food Security Bill was not made available on the department/ministry's website.	0
6	Is the entire text of the subordinate legislation as on date available on the concerned department/ministry's website?	
Info	1 point for YES; 0 points for NO. NA if the law was enacted before 2000	
Eg.	Tamil Nadu Food Security Rules are available in both English and Tamil.	1
7	Was the subordinate legislation placed before the Parliament/state legislature before being notified?	
Info	1 point for YES; 0 points for NO. NA if the law was enacted before 2000	



Tabulation 1.4:

Tabulate the total points you have scored so far and the total number of points available to you.

Questions that are not applicable do not count against your score. For example, if a law was passed in 1999 years ago then the available points are 2.

Points Scored [PS4] : **Available Points [AP4]** :

Tabulation for section 1: Representation Safeguards

Count your total points and divide by total available points. Refer to the previous tabulation to collect the scores

Total Points Obtained [PS1+PS2+PS3+PS4] : _____

Available Points[AP1+AP2+AP3+AP4] : _____

Percentage scored P1 [Total Points Obtained/Available Points * 100] : _____



2. RIGHTS SAFEGUARDS¹

2. A Parent Legislation

Laws often delegate rule-making and decision-making powers to the executive (such as the power to frame rules and grant approvals). These powers are exercised by unelected officials and have a bearing on the rights and obligations of the people. Each law must therefore instill checks on the executive's exercise of power.

Some of the following questions are based on the 'Legal Safeguards' section of the Quality of Regulation Checklist 2019 (Anand et.al 2019). The authors have modified the questions, added examples, and built a scorecard for them.²

Questions listed below assess a law on Rights Safeguards.

S.No.	Question	Points
1	Does the preamble of the legislation capture why the legislation was introduced?	
Info	Check whether the objective can be classified as market failure, government failure and welfare objective. Market Failure is a situation where the market mechanism alone cannot achieve economic efficiency. Government failure is when a government intervention causes a more inefficient allocation of goods and resources than would occur without that intervention. Welfare objective-promotes vertical equity, horizontal equity or social inclusion. If an objective is laid out, but cannot be classified under one of the three heads above, write NO. 1 point for YES; 0 points for NO.	
Eg.	"An Act to provide for the better regulation of marketing of agricultural produce and the establishment of markets for agricultural produce in the National Capital Territory of Delhi and for matters connected therewith or incidental thereto"—Delhi APMC Act 1998. Although the preamble mentions what the Act sets out to do, the reason for regulating the marketing of agricultural produce is not clear. It does not mention any particular problem that is being tackled through this law.	0
2	Is the preamble written clearly and unambiguously?	
Info	Indicators of ambiguity: 1. if the words or phrases used have two or more meanings 2. if the words are meaningless by themselves and require the use of a reference for clear interpretation. 1 point for YES; 0 points for NO	
Eg.	"An Act to provide for the establishment of a national standards body for the harmonious development of the activities of standardisation, conformity assessment and quality assurance of goods, articles, processes, systems and services and for matters connected therewith or incidental thereto" -- Bureau of Indian Standards Act 2016. The terms 'harmonious' and 'conformity assessment' are unclear.	0
3	Does the legislation delegate rule-making powers to the executive?	
Info	If YES answer Question 3A and 3B, otherwise move on to question 4	
Eg.	Section 99 and 102 of the Andhra Pradesh Education Act 1982. Such sections are typically at the end of the law and titled as 'Power to make rules' and 'Power to remove difficulties'	

1. We thank Farrah Ahmed and Dr Puneeth Puttaiah for their valuable feedback on this section.

2. Question 3, 3a, 3b, 4, 6, 7, 7a, 7b, 7g, 10, 17, 18, and 19.



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3a	Are the rule-making heads for the subordinate legislation enumerated in the parent legislation?	
Info	1 point for YES; 0 points for NO.	
Eg.	Andhra Pradesh Education Act 1982 mentions the rule heads under section 99	1
3b	Does it specify by when the subordinate legislation must be made?	
Info	1 point for YES; 0 points for NO	
Eg.	Section 36(1) of the Street Vendors Act mentions that rules must be made within one year: "The appropriate Government shall, within one year from the date of commencement of this Act, by notification, make rules for carrying out the provisions of this Act."	1
4	Does the legislation grant the executive (rule-making authority) power to give retrospective effect to the subordinate legislation?	
Info	1 point for YES; 0 points for NO	
Eg.	Section 99 (2) of Andhra Pradesh Education Act 1982 grants such a power: "Any rule may be made under this Act with retrospective effect and when such a rule is made the reasons for making the rule shall be specified..."	1
5	Does the parent legislation grants the executive power to remove difficulties	
Info	If YES answer 5A. If NO, move to question 6.	
Eg.	Section 8 of the Bihar Non-Government Elementary Schools (Taking Over of Control) Act, 1976 grants the executive the power to remove difficulties. "Power to remove difficulties—If any difficulty arises in giving effect to the provisions of this Act, the State Government may take such action or pass such order as appears to it necessary for the purposes of removing the difficulty."	-
5A	Are there any limits to that power?	
Info	These limits are: 1. The phrase 'not inconsistent with the Act' 2. Time limit beyond which the executive shall cease to have such powers. If both phrases are present, award one point. If one of the two are present award 0.5. If neither are present award 0	
Eg.	Street Vendors Act, 2014 Sec 39: Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not in consistent with the provisions of this Act, as appear to it to be necessary expedient for removing the difficulty: Provided that no order shall be made under this section after expiry of three years from the commencement of this Act. (2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament	1
6	Does the parent legislation introduce a residual clause as one of its rule-heads?	
Info	1 point for NO; 0 points for YES.	
Eg.	Section 52(2) of the Jharkhand APMC Act 2000 introduces a residual clause: "any other matter for which there is no provision in this Act and for which provision is, in the opinion of the Jharkhand Government, necessary for giving effect to the purposes of this Act."	1



Tabulation 2.1:

Tabulate the total points you have scored so far and the total number of points available to you. Questions that are not applicable do not count against your score. For example, if your answer to 3 is NO and 5 is YES the available points is 5 since 3a and 3b are not applicable. If you answer yes to both 3 and 5 total points available is 7.

Points Scored [PS5] : **Available Points [AP5]** :

S.No.	Question	Points
7	Does the legislation confer upon the executive the authority to grant approval/licence?	
Info	If YES Answer question 7a to 7g . If NO go to question 8	
Eg.	Section 18 of the Right to Education Act 2009, requires schools to get a certificate of recognition (from the prescribed authority) before establishment. Any such entry requirement, that requires a regulated entity to get permission from the executive would be included here.	
7a	Does the legislation identify the decision-making authority for granting approval/licence?	
Info	1 point for YES; 0 points for NO.	
Eg.	Section 18 of the Right to Education Act does not identify the authority for granting approval. It mentions that the authority shall be 'prescribed'.	0
7b	Does the legislation define criteria for grant of approval?	
Info	If all approvals have a defined criteria mark YES and give 1 point. Otherwise give a score that represents what percentage have defined criteria. For instance, if 3 approvals out of 4 have specified criteria, this should receive 0.75. If none mark NO and award 0 points	
Eg.	The Andhra Pradesh Education Act 1982 confers upon the executive 10 approval functions (including recognition, alienation of property of private institutions, registration for tutorial institutions, transfer of land and buildings of educational institutions, etc). Of these, it only defines the criteria for one approval function. Section 53 (2) enlists the criteria on the basis of which the government may approve transfer of land or buildings.	0.1
7c	Does the legislation delegate the power to define the criteria for approval to the executive?	
Info	If all approvals have delegated criteria mark YES and give 0 points. Otherwise give a score that represents what percentage have been delegated. For instance, if 3 approvals out of 4 have delegated criteria, this should receive 0.25 (1-0.75). If none mark NO and award 1 point	
Eg.	The Andhra Pradesh Education Act 1982 confers upon the executive 10 approval functions. Of these, it delegates the power to define the criteria for approval in 4 provisions (Section 21, 33b, 45, and 79) . So the score is calculated as (10-4)/10	0.6



7d	Are there any arbitrary conditions laid down for the grant of approval?	
Info	An arbitrary condition is one that has no nexus or connection with the purpose. If there are no arbitrary conditions in ANY approval function mark NO and award 1 point. Otherwise, give a score based on how many approval functions have at least one arbitrary condition. For instance, if 3 approvals out of 4 have at least one arbitrary condition, this should receive 0.25 (1-0.75). If all approval functions have at least one arbitrary condition, mark YES and award 0 points.	
Eg.	One of the conditions that the Andhra Pradesh Education Act 1982 introduces for those who wish to establish a school is to prove the 'need' for such a school in the first place (Section 23). It is not clear how this condition has any nexus with the objective of the Act. Such a condition is arbitrary. Of the 10 approval functions, one function has an arbitrary criteria.	0.9
7e	Are there any excessive conditions laid down for the grant of approval?	
Info	Excessive conditions are ones that go overboard. To check this, ascertain if the legislation introduces the least restrictive measure to achieve its purpose. If there are no excessive conditions in ANY approval function mark NO and award 1 point. Otherwise, give a score based on how many approval functions have even one excessive condition. For instance, if 3 approvals out of 4 have an excessive condition, this should receive 0.25 (1-0.75). If all approval functions have excessive conditions, mark YES and award 0 points.	
Eg.	Section 19 (read with schedule 1) of the Right to Education Act 2009 lays down input and infrastructure norms that schools must meet to get recognised. These norms are excessive and can impose a heavy burden on budget private schools.	0
7f	Does the legislation set a time limit for grant of approval/licence?	
Info	If a time limit is laid down for all approval functions mark YES and give 1 point. Otherwise give a score that represents what percentage have time limits For instance, if 3 out of 4 have time limits, this should receive 0.75. If none mark NO and award 0	
Eg.	Section 18(2) of the Right to Education Act 2009 does not prescribe the time-limit. It delegates this function to the executive: "The authority prescribed under sub-section (1) shall issue the certificate of recognition in such form, within such period, in such manner...as may be prescribed"	0
7g	Does the legislation mandate the decision-making authority to provide reasons in writing (for denial or approval)?	
Info	If the mandate is laid down for all approval functions mark YES and give 1 point. Otherwise give a score that represents what percentage have mandates For instance, if 3 out of 4 have mandates, this should receive 0.75. If none mark NO and award 0 points. Ensure that the compliance is mandatory and not discretionary. The provisions should not use phrases like 'may provide reasons for order in writing'. Mark yes only if there is a mandate for reasoned order.	
Eg.	Section 29 of the Clinical Establishments Act mandates the authority to record reasons if it denies approval: "Provided that the authority shall record its reasons, if it disallows an application, for permanent registration."	0.5



Tabulation 2.2:

Tabulate the total points you have scored so far and the total number of points available to you.

Questions that are not applicable do not count against your score. For example, if your answer to 7 is NO the available points is 0 since 7a to 7g are not applicable. If your answer to 7 is yes to the total points available is 7.

Points Scored [PS6] : **Available Points [AP6]** :

S.No.	Question	Points
8	Does the legislation mandate a pre-decisional hearing (or issuance of a show-cause notice) in case of denial of approval?	
Info	If the mandate is laid down for all approval functions mark YES and give 1 point. Otherwise give a score that represents what percentage have mandates For instance, if 3 out of 4 have mandates, this should receive 0.75. If none mark NO and award 0 points.	
Eg.	Section 64 (3) of the Electricity Act 2003, mandates that an applicant must be given a reasonable opportunity to be heard before their application is rejected: "Provided that an applicant shall be given a reasonable opportunity of being heard before rejecting his application."	
9	Does the legislation allow for appeal against the decision on denial of approval?	
Info	The answers can also include provisions which provide for revision of orders, or other similar phrase, provided they satisfy the following criteria:- 1. The affected party has the right to approach an authority to challenge an order made against him 2. The decision on revision/appeal is given by an authority different from the authority which made the impugned order If the legislation allows for appeal in all approval functions mark YES and give 1 point and answer 9a to 9d. Otherwise give a score that represents what percentage allows for appeal. For instance, if 3 out of 4 approval functions allow for appeal, this should receive 0.75. If none mark NO and award 0 points and go to question 10.	
Eg.	Section 36 of the Clinical Establishments Act allows for appeal against the decision on denial of certificate of registration: "Any person, aggrieved by an order of the registering authority refusing to grant or renew a certificate of registration or revoking a certificate of registration may, in such manner and within such period as may be prescribed, prefer an appeal to the State Council"	1
9a	Is there a limitation period within which the aggrieved has to file an appeal?	
Info	If there is a limitation period in all appeals mark YES and give 1 point. Otherwise give a score that represents what percentage have limitation periods. For instance, if 3 out of 4 appeals have limitation periods, this should receive 0.75. If none mark NO and award 0 points	



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Eg.	Section 36 of the Clinical Establishments Act leaves it up to the executive to prescribe the limitation period: "Any person, aggrieved by an order of the registering authority.. may...within such period as may be prescribed, prefer an appeal..". This is the only provision for appeal against denial of approval, making the score 0.	0
9b	Has the appellate authority been empowered to condone the delay in appropriate cases?	
Info	If the appellate authority can condone the delay in all appeals mark YES and give 1 point. Otherwise give a score that represents what percentage allows condoning delays.. For instance, if 3 out of 4 allow you to condone delays, this should receive 0.75. If none mark NO and award 0 points	
Eg.	Section 36 of the Clinical Establishments Act allows the appellate authority to condone delay in appropriate cases: "Provided that the State Council may entertain an appeal preferred after the expiry of the prescribed period if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time."	1
9c	Does the legislation prescribe the time-limit within which the appellate authority must dispose of the appeal?	
Info	If the legislation prescribes a time-limit n all appeals mark YES and give 1 point. Otherwise give a score that represents what percentage have time limits. For instance, if 3 out of 4 have time limits, this should receive 0.75. If none mark NO and award 0 points	
Eg.	Section 36 of the Clinical Establishments Act does not prescribe a time-limit for the appellate authority to dispose of the appeal. Therefore the score will be 0.	0
9d	Can the appellate authority extend the time limit if there is a reasonable cause for delay?	
Info	If the appellate authority allows time extensions for all appeals mark YES and give 1 point. Otherwise give a score that represents what percentage allows extension . For instance, if 3 out of 4 allow extensions, this should receive 0.75. If none mark NO and award 0 points	
Eg.	Since Section 36 of the Clinical does not prescribe any time-limit for the appellate authority, this question is not applicable.	

Tabulation 2.3:

Tabulate the total points you have scored so far and the total number of points available to you.

Questions that are not applicable do not count against your score. For example, if your answer to 9 is NO the available points are 2 since 9a to 9d are not applicable. If your answer to 9 is yes, the total points available is 6.

Points Scored [PS7] : **Available Points [AP7]** :



S.No.	Question	Points
10	Does the legislation identify the authority for carrying out enforcement actions?	
Info	1 point for YES; 0 points for NO	
Eg.	Section 18 (3) of the Right to Education Act, gives the prescribed authority, the power to withdraw the recognition of a school: Since it only mentions 'prescribed authority', i.e. the power to define this authority has been delegated to the subordinate rules the answer is NO	0
11	Does the legislation define the criteria for a breach?	
Info	If the criteria is laid down for all breaches mark YES and give 1 point. Otherwise give a score that represents what percentage have criteria laid For instance, if 3 out of 4 have criteria laid down, this should receive 0.75. If none mark NO and award 0 points.	
Eg.	The Andhra Pradesh School Education (Community Participation) Act, 1998 confers upon the executive the authority to ensure enforcement in only one provision (Section 18). This provision clearly defines the criteria for breach:“(2) Government may remove any member of the above mentioned committees at any time, on proven misconduct, non-performance or misuse of funds...”. Since this is the only enforcement function, and the criteria is laid down, the score will be 1.	1
12	Does the legislation delegate the power to define the criteria for a breach to the executive?	
Info	If the criteria is delegated for all breaches mark YES and give 0 points. Otherwise give a score that represents what percentage are delegated For instance, if 3 out of 4 are delegated, this should receive 0.25 (1-0.75). If none mark NO and award 1 point.	
Eg.	Section 32 (read with Section 12) of the Clinical Establishments Act 2010 allows the cancellation of the registration of a clinical establishment if it does not comply with the conditions prescribed by the executive “If, at any time after any clinical establishment has been registered, the authority is satisfied that,— (a) the conditions of the registration are not being complied with...it may... cancel its registration”	0.9
13	Are these conditions/criteria clear and unambiguous?	
Info	If all the criteria are clear and unambiguous mark YES and give 1 point. Otherwise give a score that represents what percentage are clear and unambiguous. For instance, if 3 out of 4 criteria are clear and unambiguous , this should receive 0.75. If none mark NO and award 0 points.	
Eg.	Section 60 of the Andhra Pradesh Education Act 1982 sets an unclear/ ambiguous criteria for breach:“(1) Where the Government are of opinion that the management of any educational institution should either in the public interest or in order to secure the proper management of the said educational institution be taken over, they may...direct by notification, that the management of the said educational institution, shall...therein vest in the Government...”. Similarly Section 62 of the Act allows the government to cancel any contract, if it is found to be “detrimental to the interests of the educational institution”. Of the 27 enforcement powers given to the executive under this Act, 2 provisions have an unclear and ambiguous criteria. The score will be calculated as: [(27-2)/27].	0.925



14	Are any of these criteria for breach arbitrary?	
Info	If all the criteria are arbitrary mark YES and give 0 points. Otherwise give a score that represents what percentage is arbitrary. For instance, if 3 out of 4 criteria are arbitrary , this should receive 0.25 (1 - 0.75). If none mark YES and award 1 point. A criteria is arbitrary if it has no nexus with the objective of the Act.	
15	Are any criteria for breach excessive?	
Info	If all the criteria are excessive, mark YES and give 0 points. Otherwise give a score that represents what percentage is excessive . For instance, if 3 out of 4 criteria are excessive, this should receive 0.25 (1 - 0.75). If none mark YES and award 1 point. Please note: this deals with conditions not consequences	
Eg.	The Karnataka Education Act 1983 aims to improve the quality of education and ensure “harmonious development of the mental and physical faculties of students”. One of its provisions prohibits employees of a recognised school to give private tuition to any individual (Section 4). Given the law’s objective, a complete prohibition on giving tuition to any individual is excessive. Of the 18 enforcement functions the law lists, one function has an excessive criteria for breach. The score will thus be 17/18, i.e. 0.95.	0.95
16	Are all the measures proportionate to the breach?	
Info	If all the measures are proportionate, mark YES and give 1 point. Otherwise give a score that represents what percentage is proportionate. For instance, if 3 out of 4 measures are proportionate this should receive 0.75 Please note: this deals with consequences not conditions. 1 point for YES; 0 point for NO	
Eg.	Under Section 9 of the Andhra Pradesh Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act 1983, “Whoever contravenes the provisions of this Act or the rules made thereunder shall on conviction be punishable with imprisonment for a term which shall not be less than three years but which shall not exceed seven years”. Imprisonment for contravention with any provision of the Act (which regulates fees) is excessive.	0.75
17	Does the legislation mandate the enforcement authority to provide reasons for its decision in writing?	
Info	If the legislation mandates a reasoned order for all its decisions, mark YES and give 1 point. Ensure that the compliance is mandatory and not discretionary. The provisions should not use phrases like 'may provide reasons for order in writing'. Mark yes only if there is a mandate for reasoned order. Otherwise give a score that represents what percentage have mandates for a reasoned order. For instance, if 3 out of 4 have a mandate, this should receive 0.75. If none mark NO and award 0 points.	
Eg.	Section 18 (3) of the Right to Education Act: “On the contravention of the conditions of recognition, the prescribed authority shall, by an order in writing, withdraw recognition...”. Of the 5 enforcement functions in the Act, only one provision has the mandate for reasoned order.	0.2



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18	Does the legislation mandate a pre-decisional hearing (or issuance of show cause notice)?	
Info	If the legislation mandates a pre-decisional hearing for all its decisions, mark YES and give 1 point. Otherwise give a score that represents what percentage have mandates for a pre-decisional hearing. For instance, if 3 out of 4 have a mandate, this should receive 0.75. If none mark NO and award 0 points.	
Eg.	Section 18 (3) of Right to Education Act: "...Provided further that no recognition shall be so withdrawn without giving an opportunity of being heard to such school, in such manner, as may be prescribed." Of the 5 enforcement functions in the Act, three provisions have a mandate for pre-decisional hearing.	0.6
19	Does the legislation allow for appeal against the decisions of the enforcement authority?	
Info	If the legislation allows for appeal for all its decisions, mark YES and give 1 point and answer questions 19a to 19d. Otherwise give a score that represents what percentage allows appeal.. For instance, if 3 out of 4 allow for an appeal, this should receive 0.75. If none mark NO and award 0 points and go to question 20. The answers can also include provisions which provide for revision of orders, or other similar phrase, provided they satisfy the following criteria:- 1. The affected party has the right to approach an authority to challenge an order made against him 2. The decision on revision/appeal is given by an authority different from the authority which made the impugned order.	
Eg.	Section 32(3) of the Right to Education Act 2009: "Any person aggrieved by the decision of the local authority may prefer an appeal to the State Commission for Protection of Child Rights". The Act mentions appeal for only one enforcement function (out of 5).	0.2
19a	Is there a limitation period within which the aggrieved has to file an appeal?	
Info	If all appeals have a limitation period mark YES and give 1 point. Otherwise give a score that represents what percentage have a limitation period. For instance, if 3 out of 4 have a limitation period, this should receive 0.75. If none mark NO and award 0 points.	
Eg.	Section 41 (6) of the Clinical Establishments Act 2010: "Any person aggrieved by the decision of the authority may prefer an appeal to the State Council within a period of three months from the date of the said decision"	0.67
19b	If yes, has the appellate authority been empowered to condone the delay in appropriate cases?	
Info	If all appeals that have a limitation period allow you to condone a delay, mark YES and give 1 point. Otherwise give a score that represents what percentage allows delay. For instance, if 3 out of 4 have allow delay this should receive 0.75. If none mark NO and award 0 points.	
Eg.	Of the three provisions that allow for appeal against enforcement decisions in the Clinical Establishments Act 2010, none empower the authority to condone delays.	0



19c	Does the legislation prescribe the time-limit within which the appellate authority must dispose of the appeal?	
Info	If all appeals that have a time limit mark YES and give 1 point. Otherwise give a score that represents what percentage have time limits. For instance, if 3 out of 4 have time limits this should receive 0.75. If none mark NO and award 0 points.	
Eg.	Of the three provisions that allow for appeal against enforcement decisions in the Clinical Establishments Act 2010, none prescribe a time-limit to dispose appeals.	0
19d	Can the appellate authority extend the time limit if there is a reasonable cause for delay?	
Info	If the appellate authority allows time extensions for all appeals mark YES and give 1 point. Otherwise give a score that represents what percentage allows extension . For instance, if 3 out of 4 allow extensions, this should receive 0.75. If none mark NO and award 0 points	
Eg.	This question will not be applicable to the Clinical Establishments Act 2010.	
20	Does the Act provide for an independent appeal mechanism?	
Info	1 point for YES; 0 points for NO	
Eg.	Section 15 of the Jharkhand Education Tribunal Act 2005 introduces an independent appeal mechanism: "Appeal against the order/directions/judgements passed by the Tribunal will be before the Jharkhand High Court [within a period of ninety (90) days....]"	1
21	Does the legislation introduce provisions that are redundant, archaic or out-dated?	
Info	1 point for NO; 0 points for YES	
Eg.	Karnataka Education Act 1983 introduces penalties that are outdated. Section 113 (2) of the Act states: " If any parent fails to comply with an attendance order...he shall, on conviction, be punished with fine not exceeding two rupees..."	0

Tabulation 2.4:

Tabulate the total points you have scored so far and the total number of points available to you. If you answer Yes to 19, there are 16 points available. If you answer no to 19 there are 12 points available.

Points Scored [PS8] : **Available Points [AP8]** :



2B. Subordinate Legislation

This section of the toolkit checks how the executive exercises its powers under the Parent law and identifies abuse of power (if any). Please ignore this section if you are not studying subordinate legislation.

S.No.	Question	Points
1	Does the legislation identify the authority for carrying out enforcement actions?	
Info	1 point for YES; 0 points for NO	
Eg.	Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Institutions of Higher Education) Rules, 1987: "In exercise of the powers conferred by Sections 20 and 21 read with Section 99 of the Andhra Pradesh Education Act, 1982 (Act No.1 of 1982)..."	1
2	Does the subordinate legislation sub-delegate rule-making powers?	
Info	UNSCORED	
Eg.	Rule 43 of the Delhi School Education Rules 1973 sub-delegates rule-making powers: "The Administrator may, if he is of opinion that in the interest of school education in Delhi it is necessary so to do, issue such instructions in relation to any matter, not covered by these rules, as he may deem fit."	
3	If the subordinate legislation sub-delegate rule-making powers, does it have a mandate from the parent legislation?	
Info	1 point for YES; 0 points for NO. Ignore if NA	
Eg.	Section 23 of the Delhi School Education Act allows sub-delegation: "(1) The Administrator may delegate all or any of his powers, duties and functions under this Act to the Director or any other officer."	1
4	Has the subordinate legislation been given retrospective effect?	
Info	Check if the date on which it comes into force is before the date on which it is notified. 1 point for NO; 0 points for YES	
Eg.	The Madhya Pradesh Ashasakiya Shikshan Sanstha Anudan Niyam, 2008 came into effect retrospectively.	0
5	Does the subordinate legislation introduce any provision(s) under the residual powers clause of the parent legislation?	
Info	0 points for YES; 1 point for NO	
Eg.	Rules 34-37 of the Delhi School Education Rules, 1973 mandate an enforceable code of conduct for students in educational institutions. This does not fall under any of the rule-heads of the Delhi School Education Act, 1973 (except the residual clause).	0
6	Does the subordinate legislation introduce any provision that does not fall under the clause(s)/ rule-head(s) it has invoked?	
Info	1 point for YES; 0 points for NO. ignore if NA	



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Eg.	Goa, Daman and Diu School Education Rules, 1986, Rule 127: No leaving certificate is valid unless it is in the form prescribed by the Director of Education and is signed by the Head of the school himself. This does not correspond to any rule-head under the parent Act.	0
7	Does the subordinate legislation introduce any criterion for approval that is inconsistent with the objective of the parent legislation?	
Info	1 point for NO; 0 points for YES	
Eg.	Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Schools Under Private Managements) Rules, 1993, Rule 8:“(2)...In respect of Secondary Schools, however, the permission granted shall be only up to class VIII. The educational agency shall be permitted to open classes IX and X only after obtaining due recognition and only from second and third year respectively after the commencement of class VIII. For example if class VIII is commenced in the academic year 1994 95, the class IX can be commenced in the next year and class X in the year 1996 97”. This provision creates a limitation that is not mentioned in the parent legislation.	0
8	Does the subordinate legislation introduce any criterion for a breach that is inconsistent with the objective of the parent legislation?	
Info	1 point for NO; 0 points for YES	
Eg.	Rule 36 (a) of the Delhi School Education Rules creates an odd criteria for breach (not mentioned in the parent Act). A student below 14 years of age can be shifted by an administrator to a ‘special school’, if (among other things) they do not spit in a spittoon.	0
9	Does the subordinate legislation introduce any measures of enforcement that is inconsistent with the objective of the parent legislation?	
Info	1 point for NO; 0 points for YES	
Eg.	Rule 23 of Goa, Daman and Diu School Education Rules, 1986 states: “In case of breach of discipline by a student below the age of 14 years, if the Director is satisfied that continuance of such a student in the school in which he is studying, is likely to be detrimental to the general tenor or discipline of the school, he may send such a student to such special school as he may think fit”. Such disciplinary measures are not mentioned in the parent Act.	
10	Was the subordinate legislation made within the time frame mentioned (if any) in the parent legislation?	
Info	1 point for NO; 0 points for YES	
Eg.	Section 36 of the Street Vendors Act 2014 requires rules to be made “within one year from the date of commencement of this Act”. However, the Delhi Street Vendors (Protection of Livelihood and Regulation of Street Vending) Rules were notified in 2016.	



Tabulation 2.5:

Points Scored [PS9] : **Available Points [AP9]** :

Tabulation for section 2: Rights Safeguards

Count your total points and divide by total available points. Questions that are not applicable do not count against your score.

Total Points Obtained [PS5+PS6+PS7+PS8+PS9] : _____

Available Points[AP5+AP6+AP7+AP8+AP9] : _____

Percentage scored P2 [Total Points Obtained/Available Points * 100] : _____



3. RESOURCES SAFEGUARDS

Laws aim to achieve one or more of the following: advance a welfare objective, tackle a market failure or overcome a government failure (World Bank [2017](#)). Regardless of the purpose, each law imposes costs and effects a change in the behaviour of individual actors. Epstein categorises ‘administrative costs’ into three types: (i) compliance costs, borne by the regulated entities (individuals and private enterprises) to ensure compliance with the law; (ii) enforcement costs, incurred by the government in implementing and enforcing the law; and (iii) error costs incurred by both players in case non-compliance is identified incorrectly (Epstein [2009](#)).

Epstein argues that the administrative costs imposed by a law must be justified based on whether they improve the overall incentive structure of individuals. He presents 4 scenarios/possibilities on what a law may do:

- Increase administrative costs that will create superior incentive structures;
- Increase administrative costs that will create inferior incentive structures;
- Decrease administrative costs that will create superior incentive structures;
- Decrease administrative costs that will create inferior incentive structures. (Epstein [2009](#))

In the second and the third case, there is no trade off required. It is clear that the second scenario needs to be avoided and the third scenario must be welcomed. The first and the fourth case, however, are more complicated and an informed decision in these scenarios would require a cost-benefit analysis. The magnitude of the administrative costs need to be compared to the magnitude of benefits (i.e. gains from a superior incentive structure) (Epstein [2009](#)).

Based on Epstein’s framework of simple rules a law may fall under one of the following 4 categories. Please select the category that most accurately represents the nature of the law you are assessing.

S.No.	Question	Points
1	Does the law increase administrative costs while aligning the incentive structure?	
Info	If you pick this statement the score will be 0.5	
2	Does the law increase administrative costs while misaligning the incentive structure?	
Info	If you pick this statement the score will be 0	
3	Does the law decrease administrative costs while aligning the incentive structure?	
Info	If you pick this statement the score will be 1	
4	Does the law decrease administrative costs while misaligning the incentive structure?	
Info	If you pick this statement the score will be 0.5	

Tabulation 3:

Points Scored [PS10] : **Available Points [AP10]** :

Percentage scored P3 [Total Points Obtained/Available Points * 100] :



TABULATION FOR GRAND TOTAL

Count your total points and divide by total available points. Questions that are not applicable do not count against your score.

Percentage in Representation Safeguards [P1]	: _____
Percentage in Rights Safeguards [P2]	: _____
Percentage in Resource Safeguards [P3]	: _____
Average Percentage [(P1 + P2 + P3)/3]	: _____

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A-69 Hauz Khas, New Delhi – 110016
Phone: +91 11 2653 7456 | Website: www.ccs.in