

## The Bureau of Indian Standards Bill, 2015

The Bureau of Indian Standards (BIS) Bill, 2015 was introduced in the Lok Sabha on August 07, 2015. The Bill replaces the BIS Act, 1986 and establishes a Bureau for the purpose of standardisation, marking and certification of articles and processes. The Bill seeks to broaden its ambit, and allow the Central Government to make it mandatory for certain notified goods, articles, processes, etc. to carry the standard mark. Interestingly, the 1986 Act has not been amended since its inception. An Amendment Bill was introduced in the Lok Sabha in 2012 and referred to the Parliamentary Standing Committee on Food, Consumer Affairs & Public Distribution. But with the formation of the new Government at the Centre, the bill was required to be re-introduced, thus the present BIS Bill 2015.

### The Bill at a Glance

#### Highlights

- ◆ Ambit of the BIS widened
- ◆ Reinforces BIS as the National Standards Body of India (NSB)
- ◆ Functions to be performed through a Governing Council headed by a President
- ◆ Government can bring in mandatory certification for goods to protect health, safety, environment etc.
- ◆ Stringent penal provisions for effective compliance and enable compounding of offences for violations
- ◆ Allow multiple types of simplified conformity assessment schemes
- ◆ Mandatory hallmarking of precious metal articles

#### Lowlights

- ◆ Does not provide for professional appointments to ensure better performance
- ◆ Does not encourage the active involvement of voluntary consumer organisations (VCOs) though it is practiced
- ◆ Fails to ensure regular and periodic monitoring of activities by the Bureau
- ◆ Fails to underline the need for harmonisation of Indian standards as per international obligations and best practices
- ◆ No proviso for testing laboratories in each state capital for easy access to consumers
- ◆ Less clarity in terms like *jeweller* and *manufacturer*

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### Action Points

- The BIS must be headed by a professional rather than a generalist civil servant so that it can be run more effectively
- Advisory committees of Bureau should include all stakeholders including registered VCOs, who are active members of Central Consumer Protection Council (CCPC)
- Bureau should take steps for regular and periodic monitoring of quality of goods, articles, processes and services to protect the interests of consumers
- Bill should have a proviso entrusting the Bureau to work towards the harmonisation of Indian standards as per international obligation and best practices to deal with new challenges
- The final authority to decide, process and issue quality control orders in the case of public interest or for the protection of human, animal or plant health, safety of the environment, or prevention of unfair trade practices (UTPs), or national security must rest with BIS/Ministry of Consumer Affairs. The Central Government could only recommend such cases to BIS
- Bring more clarity in terms like *'jeweller'* and *'manufacturer'*. Bureau should establish, maintain and recognise testing laboratories at each state capital for the purposes of conformity assessment and quality etc.
- Need to harmonise the Bill with other consumer legislations viz, Consumer Protection Act & Legal Metrology Act

## Introduction

In the globalised market, a major challenge confronting developing countries is the lack of national capacity to address technical barriers to trade (TBT) and comply with requirements of agreements on sanitary and phytosanitary (SPS) conditions. To address these, developing countries need to develop or improvise existing institutional infrastructure related to standards, testing and quality, and conformity assessment in order to be an able partner in the global trade regime.

In India, the quality assurance and safety are facilitated by standards laid down by the BIS, the NSB of India. The ISI mark of the BIS is synonymous with quality and safety. Currently, the BIS has developed over 19,000 quality standards and 28000 licensees who use the ISI quality mark in manufacturing their products. The sudden steep growth coupled with inadequate regulation of market in the country has resulted in flooding of markets with both domestic and foreign sub-standard products. Besides, due to the lack of purchasing power, a majority of the population buys low quality products that are seldom manufactured following standards.

The BIS Bill 2015 introduced in the Lok Sabha seeks to strengthen the quality assurance regime for goods and services in India; prevent the entry of sub-standard goods; eliminate the dumping of poor quality products; provide for ease of doing business in India and make the market surveillance and testing of products more stringent. The list of products under mandatory certification will be expanded significantly to provide better quality products to Indian consumers. This transformation in

our quality assurance eco system will catalyse the 'zero defect, zero effect' approach under the 'Make in India' campaign.

## National Standards Body

The Preamble of the 1986 Act does not explicitly authorise BIS as a NSB, despite the fact it functions as NSB. Section 14 of the Act also restricts the Central Government to notify only those articles or processes as given in Schedule of Industries (Development & Regulations) Act, 1951, under compulsory regime.

Addressing these shortcomings, the present Bill explicitly mandates BIS as a NSB and incorporates proviso to include articles, processes and services in addition to goods for the purpose of marking and quality certification.

As a national body, BIS will be empowered to formulate, implement and certify certain standards of quality for goods, services, articles, processes and systems thus, widening its ambit which was otherwise applied only to certain articles and processes.

For the same, technical committees of experts will be setup by the Bureau to formulate such standards. The Bill also constitutes a Governing Council which would be responsible to look at the general superintendence, direction and management of the Bureau.

## Civil Society Organisations

The role of consumer organisations in standard formulation holds much relevance and largely helps to address the demand of the consumer. Many a times, these organisations have raised important issues at regular intervals though there were mixed responses from authorities. Few

organisations are recognised by the BIS and referred to while updating standards and are a part of most of committees, however steps should be taken to increase their involvement.

The present Bill does not encourage the active involvement of such VCOs. For instance, advisory committees of Bureau should include all stakeholders, i.e. registered VCOs, who are active members of CCPC. Such a key forum should comprise senior representatives from prominent consumer organisations, who could through research and their ongoing contact with consumers, would be in a better position to identify current issues and problems.

World over, the positive role of such organisations in NSBs are recognised and they do play an essential role in the standards-making process.

## Periodic Monitoring

The Comptroller and Auditor General (CAG) of India in its 2012 report criticised BIS for being unable to perform its monitoring and inspection roles adequately despite being a quality assurance body. It noticed a shortfall of up to 68 percent in the collection of factory samples and 72 percent in the collection of market samples for testing. Even the testing facilities in its laboratories were inadequate.

The report stated that there were significant delays of up to two years in granting licences to manufacturers to produce goods of standard quality. Hence, in the interest of consumers at large, the Bill should categorically state the need for timely formulation and review of standards, especially those pertaining to the health and safety of consumers.

## Clarity in Definitions

The term 'jeweller' has been defined in a narrow and vague sense. As per the Bill, the definition of 'jeweller' means a person engaged in the business to get manufactured precious metal article for sale or to sell precious metal articles. This needs to be amended and read as – 'jeweller' means a person manufacturing and/or repairing and/or selling precious metal articles.

Likewise, the term 'manufacturer' means a person responsible for designing and manufacturing any goods or article. This definition needs to be reworded as – 'manufacturer' means a person engaged in the business of manufacturing any goods, article or process for sale and includes any person who obtains such article/goods from another person and packs and labels it for sale or only labels it for such purposes.

Similarly, the definition of terms 'goods' and 'services' under the Bill & Consumer Protection Act, 1986 could have been harmonised as both are consumer welfare legislations.

## Harmonisation

International standards are of much importance as it aids in international trade among member countries. As per WTO TBT agreement, Member countries are encouraged to formulate their technical regulations based on international standards. It is, therefore, imperative for a developing country, like ours, to harmonise national standards in line with international standards (like ISO/IEC standards) to keep pace with latest technologies at the

international level and thereby facilitate in international trade.

BIS has been representing India in the ISO and IEC since the very beginning and is actively participating in international standardisation activities. A large number of Indian standards have been harmonised with ISO/IEC standards to facilitate acceptance of Indian products in the international market.

According to BIS, as on January 2014 it has established more than 18600 Indian standards out of which 5000 have been harmonised with the corresponding ISO and IEC standards. However, much more needs to be done.

The Bill, should therefore, have a proviso to underline the need for Bureau to pursue vigorously towards the harmonisation of Indian standards as per international obligation and best practices to deal with new challenges.

Likewise, within India, there are around 35 bodies which formulate regulatory standards or standards in niche sectors. Some of these bodies have international linkages with specific international standards' bodies in their respective areas; for example, Food Safety and Standards Authority of India (FSSAI) with Codex; Automotive Research Association of India (ARAI) with United Nations Economic Commission for Europe (UNECE) etc.

Many of these bodies involve BIS in the standards' formulation process and refer to BIS, if any, while formulating their own standards. However, in some cases, there are overlaps of standards, which is an area of concern for BIS. Hence, there is also a need for harmonisation of standards set by various bodies within the country.

## Final Authority

As per the proviso of the Bill, the Central Government is given the power to direct compulsory use of standard mark for articles and processes of any industry. The final authority to decide, process and issue quality control orders in the case of public interest or for the protection of human, animal or plant health, safety of the environment, or prevention of UTPs, or national security must rest with BIS/Ministry of Consumer Affairs. The Central Government can only recommend such cases to BIS. The Bill thus needs more clarity on the final authority.

## Testing Laboratories

To support the product certification scheme, which requires testing of products on regular basis for checking conformity to the relevant Indian standards, BIS has established a network of eight laboratories. A Laboratory Recognition Scheme has also been formulated with the objective of having sufficient number of external laboratories in India and abroad to cater to the needs of the Product Certification Scheme.

As of October 2015, 154 laboratories have been recognised under the scheme. However, to ensure better compliance of standards, BIS needs to set up new laboratories in a phased manner targeting each and every state for the benefit of consumers at large. The present Bill states that the Bureau would establish testing laboratories as per the need. There is no explicit proviso for setting up of testing laboratories in each state capital for easy access to consumers.

The Bureau should establish, maintain and recognise testing laboratories at each state capital for the purposes of conformity assessment and quality assurance and for such other purposes as may be required for carrying out its functions.

## Hallmarking

Currently, hallmarking the jewellery is a voluntary exercise. A need for protecting consumers from unscrupulous jewellers has been felt for a long time and even emphasised by the Parliament in its various reports. However, till date such an enforcement of mandatory hallmarking has not been possible due to absence of an enabling provision in the BIS Act, 1986. Noteworthy, the proposed Bill has proviso for compulsory hallmarking of precious metals, including silver, gold, platinum and palladium or their alloys.

Such a move will not only protect consumers by ensuring quality products but also facilitate India's accession to the Convention on Control and Marking of Precious Metals (popularly known as Vienna Convention 1972). This would boost our export of jewellery articles to member countries of the Convention, apart from creation of internationally-recognised hallmarking centres.

## Enhanced Penalties

As per the existing provisions, penalty for violation is imprisonment for a term, which may extend to one year, and/or fine which may extend to ₹50,000. Such penalties prescribed are too meagre to create any deterrence in the minds of offenders. By and large, the offenders get away with paltry fines. In fact, there has been hardly a case of imprisonment so far since the inception of the BIS Act, 1986. This limiting factor has seriously impacted the effective enforcement and prevention of misuse of ISI Mark.

Hence, it is a welcome move to enhance penalties and make BIS more stringent and deterrent against offenders. As per the Bill, the penalty for improper use of the Indian standard mark will be a fine of up to ₹5 lakh. The Bill also prescribes penalties for: (i) the improper use of the standard mark by testing and marking centres, and (ii) manufacturing or selling goods and articles which do not carry a standard mark and have been mandated to do so, among others. The Bill also provides for compounding of offences punishable with fine except when a person has committed such an offence for the second time or if such an offence committed by him has been compounded earlier.

## Harmonise Legislations

The Bill should be harmonised with other consumer legislations viz, Consumer Protection Act and the Legal Metrology Act. For example, once the product is declared unsafe and product liability case is established against a product under the Consumer Protection Act, there should be automatic recall of product by the Bureau. Such a move would avoid replication of work and ensure better protection of consumers. Likewise, the definition of terms – goods and services under the Bill and Consumer Protection Act, 1986 could have been harmonised as both are consumer welfare legislations.

## Conclusion

Since standards are of greater importance, effective functioning of NSBs is becoming more important. Powerful establishment and stringent enforcement of standards are imperative for the competitiveness of industry and effective protection of consumers. The proposed provisions in Bill, if effectively implemented, will empower the Bureau to promote a culture of quality of products and services through mandatory and voluntary compliance with Indian standards.

Any institution is as effective as the people who run it. It is therefore important that good professionals are in charge to run it, rather than generalist civil servants.

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