

  
वास्तुकला परिषद्  
Council of Architecture

वास्तुविद अधिनियम, 1972 के अंतर्गत भारत सरकार का एक स्वायत्त सांविधिक निकाय  
(An Autonomous Statutory Body of Govt. of India, under the Architects Act, 1972)

Ref. No.CA/28/2015/BIS(NBC)

December 23, 2015

Shri B. K. Sinha  
Head (Civil Engg)  
Bureau of Indian Standards  
Manak Bhawan,  
9 Bahadur Shah Zafar Marg  
New Delhi – 110 002

Subject : Comments views/ comments on National Building Code Part 2- Administration – reg.  
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Dear Sir,

Please find attached herewith the views/ comments of the Council of Architecture on the Part-2, Administration of National Building Code, for your kind perusal and further necessary action in the matter.

Yours faithfully,



R. K. Oberoi  
Registrar

Encl : As above



**Doc.No.CED 46(8068)WC BIS Letter Ref : CED 46/T-2 dated : 24<sup>th</sup> November, 2015**

Title : Draft National Building Code of India : Part 2 Administration

[Third Revision of SP 7 (Part 2)]

**Name of the Organisation : Council of Architecture**

**Preliminary Objections :**

The Council of Architecture has very serious and basic objection on the prescription of Part 2- Administration in the National Building Code because the same is beyond the mandate and scope of the provisions of the Bureau of Indian Standards Act, 1986. The BIS Act provides for the establishment of a Bureau for the harmonious development of the activities of standardization, marking and quality certification of good and for matter connected therewith or incidental thereto.

Thus, BIS has been mandated to deal with standardization of article or process or goods. Thus, BIS by prescribing a Guideline in the Name of "National Building Code" is travelling beyond its, functions powers and authority by dealing with issues related to Land, Land Improvement, Building, Urban Planning including Town Planning, Regulation of land-use and construction of building, local government, Urban Development/ Architectural Controls, laying down technical / professional qualifications and competence for carrying on the profession/ vocation by a class of person(s).

Further, in the NBC the duties, functions and scope of work of an architect has been mixed / overlapped with non-architects and thus confusion has been created as if architect, engineer, supervisor, town planner and landscape architect are one and the same persons.

In this regard, it is clarified that as per Section 2 (a), 14, 25, 35, 36 and 37 of the Architects Act, 1972, only a person registered as an architect with the Council is entitled to use the title and style of architect and carry on the profession of an architect in India. Therefore, allowing non-architect to act as Architects is violative of Sections 35, 36 and 37 of the Act.

The attention of BIS is invited towards the following :







1. Division Bench Judgement dated 20.06.2000 of Hon'ble Gujarat High Court in Special Civil Application no.1111 of 1999 and Civil Application No.1927 of 2000, wherein the Hon'ble High Court has clearly held that the nature of work to be performed by an Architect and by an engineer is different though there may be overlapping.
2. Ministry of Finance Circular No.354/128/97-TRU dated 18.12.1997, wherein the Govt. of India, held the view that the "Architecture" discipline and "Engineering" discipline are two different disciplines and separate educational facilities exist for both the disciplines and term Consulting Engineer will not include "Architects" within its scope and services rendered by a consulting Engineer in any discipline of engineering will not cover the architectural services rendered by Architects.
3. Hon'ble Supreme Court of India vide order 08.10.2003, in M.D., Army Welfare Housing Organisation v/s Sumangal Services Pvt. Ltd., wherein the Hon'ble Supreme Court discussed the role of Architects at length as under :

73. *An Architect plays an important role in execution of a building contract.*

74. *In Hudson's Building and Engineering contracts at page 23, it is stated :*

*xxxxx Thus, it will be seen that although it is the primary and vital function of the architect to create new ideas of amenity and design and to set down those ideas on a drawing board, his duties extend far into other fields of technical knowledge and business management. On the other hand, while he will remain primarily remain responsible to the owner for all matters of design, modern techniques of construction and specialized building products and processes in fact demand expertise and skill for which he will inevitably not always be personally qualified. The employment of outside consultants or the less satisfactory (from the legal point of view if employer's interest is to be properly protected) devise of delegating important design functions to specialist and sub-contractor and suppliers and therefore a frequent and inevitable accompaniment of many major building projects but, as will be seen, **"the Architect is the Captain of the Ship"** and will be person to whom the owner will normally look if a design failure occurs, though in some, but not all, cases he will adequately discharge his own overall responsibility if he exercise due professional care in referring matters outside his own expertise to a consultant or specialist supplier or contractor, particularly if these latter are engaged on behalf of the owner and not by the Architect himself.*





76. In *R.v/s Architects' Registration Tribunal, ex.P Jaggar* [1945] 2 All ER 131, it is stated :

*"An Architect is one who possesses, with due regard to aesthetic as well as practical consideration, adequate skill and knowledge to enable him (i) to originate, (ii) to design and plan, (iii) to arrange for and supervise the erection of such buildings or other works calling for skill in design and planning as he might in the course of his business reasonably be asked to carry out or in respect of which he offers his services as a specialist."*

Thus, it is clear that only an architect or a firm of architects is to be appointed for providing architectural services and to integrate the services rendered by other consultants such as Engineers specialist in the concerned field.

Further, it is informed that the Council has defined and laid down the Architectural Services in its Conditions of Engagement and Scale of Charges prescribed to pursuant to Architects (Professional Conduct) Regulations, 1989. The Architectural Services and Scope of Work of an Architect is as under:

#### Part I – ARCHITECTURE

- 1.1 Taking Client's instructions and preparation of design brief.
- 1.2 Site evaluation, analysis and impact of existing and/or proposed development on its immediate environs.
- 1.3 Design and site development.
- 1.4 Structural design.
- 1.5 Sanitary, plumbing, drainage, water supply and sewerage design.
- 1.6 Electrical, electronic, communication systems and design.
- 1.7 Heating, ventilation and air conditioning design (HVAC) and other mechanical systems.
- 1.8 Elevators, escalators, etc.
- 1.9 Fire detection, Fire protection and Security systems, etc.
- 1.10 Periodic inspection and evaluation of Construction works.

#### Part II — ALLIED FIELDS

- 1.10 Landscape Architecture.
- 1.11 Interior Architecture.
- 1.12 Architectural Conservation.
- 1.13 Retrofitting of buildings
- 1.14 Graphic design and signage.

The above services are complete right from conceptual stage to completion of construction of a building. An Architect is responsible for integration of these services







though they may be performed with help of different consultants. Thus, different Engineering consultants i.e. electrical, civil, mechanical, structural, etc. can be appointed for providing their specific field of services but not acting as Architects and providing architectural services.

Further, at the international level also difference between Architectural and Engineering Services is clearly laid down and specified specifically under WTO Regime under GATS wherein Architectural Services are classified as UN CPC 8671 and Engineering Services as 8672.

The Grundnorm of our country is the "Constitution of India" and as per the Constitution all the above powers and authorities are now vested in the Municipal Corporations/ Municipalities/ Panchayat Institutions by virtue of 73<sup>rd</sup> and 74<sup>th</sup> Amendments in the Constitution of India and also under special laws such as Architects Act, 1972.

Therefore, the Bureau of Indian Standards is not competent to undertake the exercise which it has chosen to undertake and continuing in spite of there being specific statutory and constitutional provisions on the same. Had this exercising been undertaken by Ministry of HRD, Ministry of Housing or Ministry of Urban Development then also it would have been justified.

The prescription of NBC by BIS is even not in the interest of consumers/ general public as it is violation of the Architects Act, 1972 as it seeks to allow unqualified and under-qualified persons to carry on the profession of an architect in India.

Thus, the Council of Architecture advises and requests the BIS not to deal with the issues related to Land, Land Improvement, Building, Urban Planning including Town Planning, Regulation of land-use and construction of building, local government, Urban Development/ Architectural Controls, laying down technical / professional qualifications and competence for carrying on the profession/ vocation by a class of person(s) in its prescription titled as "National Building Code".

Without prejudice to the above objections and reserving its right to submit further detailed objections at any stage, the Council submits following views/ comments on the Part -2, administration of NBC :

Clause/ Para/ Table No.	Comments	Justification
Foreword	<p>The BIS is not empowered for codifying or unifying provisions related to development controls, qualifications of enforcing authority and to lay down responsibilities and duties of Authority and owner.</p> <p>BIS is also not supposed to deal with</p>	<p>No legal authority to BIS to deal with these issues.</p>





	<p>safeguard of aesthetics of construction of buildings of public importance or historic/monumental buildings, etc.</p> <p>There is no justification how BIS is dealing with such issues related to Urban Development, Hosing, construction of buildings and how it is competent to lay such guidelines.</p> <p>This prescription of competence of professionals is in violation of Article 19 (1) (g) of the constitution as well as the Architects Act, 1972 and also 73<sup>rd</sup> and 74<sup>th</sup> amendment of the constitutions of India.</p> <p>Hence, this should be amended.</p>	
Section 1 Clause 1- Scope	BIS is not competent to lay down any prescription on organization of building department and lay down procedure for development and building permits as well as the responsibilities of owner. Hence, this should be amended.	No legal authority to BIS
Clause 2- Terminology	All the definitions laid down, though may be factual, but BIS is not competent to prescribe such definitions/ terminologies.	No legal authority to BIS
Clause 2.17	<p>BIS is not competent to prescribe and define qualification and competence of Architects and other persons and also lay down registration requirement of any person.</p> <p>In the notes use of word "Architectural Engineer" is against provisions of the Architects Act, 1972 and as such use of same is a punishable offence.</p> <p>Hence, should be deleted.</p>	No legal authority to BIS
Section 2 Clause 6-	BIS is not competent to make such prescription. Hence should be deleted.	No legal authority to BIS







Department of Building		
Section 2 Clause 6.5 Qualification of Building Officials	The BIS is not empowered to lay down any qualification of Building Officials. Hence should be deleted.	No legal authority to BIS
Clause 7 – Power and Duties of Team of Building Officials	The BIS has no powers to seek mandatory enforcement of the National Building Code on mode or manner of construction of buildings, material used, erection, re-erection, addition, alteration, repair, removal, demolition, installation of services equipment, maintenance of buildings, etc.	No legal authority to BIS to prescribe such clause and seek mandatory enforcement of NBC
Clause 7.5 – Construction not according to Plan	No penalty or injunction can be levied on violation of NBC therefore seeking mandatory enforcement of NBC is violative of BIS Act, Architects Act, 1972 and provisions of the Constitution of India.	No legal authority to BIS to prescribe such clause and seek mandatory enforcement of NBC
Clause 9 – Violation and Penalties	NBC cannot be enforced mandatorily and violations of the same are not offence and no penalty can be imposed as NBC is not a law or prescribed under the authority of law. Hence, this clause should be deleted.	No legal authority to BIS to prescribe such clause and seek mandatory enforcement of NBC
Clause 12 – Application for Development/ Building Permit	BIS is not competent to make such prescription and the manner of preparation of drawings and plans cannot be laid down by BIS.	No legal authority to BIS
12.3 Preparation and Signing of Plans	The BIS has failed to distinguish between an architect and an Engineer / Supervisor or other persons and treated them as one and same by	This in violation of the Architects Act, 1972.





	<p>prescribing similar functions for them. This is violation of the Architects Act, 1972. Hence this should be deleted.</p>	
12.9	<p>The BIS is not competent to lay down technical or professional qualification for practice of any profession/ vocation. Therefore this clause should be deleted.</p> <p>Further, presently only Architects are statutorily registered. Therefore, reference to Registered Engineers, etc. is illusory and illegal.</p>	No legal authority to BIS
Annex A A-1 Essential Requirements	<p>This whole annex is contrary to the provisions of the Architects Act, 1972 as it equates non-architects with architects and treats them as professionals. It is only an Architect who is statutorily registered and regulated. Therefore, calling Engineers, Supervisor, Town planners, etc. as registered professionals is illegal and farce.</p>	No legal authority to BIS
A-2 Requirements for registration and competence of Professionals	<p>Only Architects are professionals who are statutorily regulated. The BIS has no powers and mandate to lay down qualification and Competence of any person to carry on any profession, trade or vocation.</p> <p>Whereas Architects, Engineers Town Planners and Supervisor undergo different education and training and enjoy different statutory status, the BIS has prescribed similar competence for Engineers, Supervisor, Town Planner, etc. with that of Architects in violation of the Architects Act, 1972.</p> <p>Further, a Landscape Architect is also described in violation of the Act since under the Architects Act as landscape architect is defined to be a person who deals with design of open spaces relating to plants, trees and landscape.</p> <p>Hence, this whole annex needs to be deleted.</p>	No legal authority to BIS and violation of the Architects Act.







	Further all other annex such as D, G, H, K, M and N be deleted.	
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Thus, it is concluded that this whole exercise is without authority of law and void ab initio and in violation of the Architects Act, 1972 and the relevant constitutional provisions and Bureau of Indian Standards should not create any such confusion/legal void all over India.

A handwritten signature in blue ink, appearing to be 'Anand'.

Registrar  
Council of Architecture,  
New Delhi



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