

Shouldn't Indian 'standards' be freely accessible to all?



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A PIL filed in Delhi High Court argues that Articles 14, 19 and 21 of the Constitution have been interpreted to ensure that all citizens have fundamental right to know and be informed

In June, 2013, Carl Malamud, on behalf of *Public.Resource.Org* procured a complete set of Indian Standards from BIS and not only made them available online for public non-commercial use, but also took great pains to retype and process many of the standards to make them more useful to people – including redrawing 202 diagrams in SVG vector format to allow for them to be resized and cut and pasted into documents by users, retyping and reformatting the entire National Building Code of India (as well as over 700 other Standards) into valid XHTML code so that it works in modern browsers and mobile platforms

- When he applied for a renewal in 2014, he received a reply stating that his efforts were against the copyright policy of BIS and was requested to “remove all documents relating to the standards from his website, failing which legal action would be taken against him for violation of their copyright.”
- The year after this petition was filed, three of the signatories – Carl Malamud, who is the founder of *Public Resources*, Dr Sushant Sinha who is the founder of *Indian Kanoon* and Mr. Srinivas Kodali, a “civic hacker” and the co-founder of *Open Stats*, filed a public interest litigation (PIL) before **the Delhi High Court through the law firm, Nishith Desai Associates (NDA)** asking for standards notified by BIS to be made available to the public for free without any payment.
- The petition says that the Bureau of Indian Standards (BIS) earned a total income of ₹324 crores and a surplus of ₹44 crores in the year 2014 from the sale of publication containing these standards.
- The petitioners argue that Articles 14, 19 and 21 of the Constitution have been interpreted to ensure that all citizens have fundamental right to know and be informed. The petition also draws attention to the fact that the BIS standards deemed compulsory are as good as the law and that citizens should therefore have the right to be informed of the law. It cites Supreme Court decisions which have interpreted the fundamental right to free speech to include the right to educate and also the right to inform.

- The second argument of the petitioners is based on the Right to Information Act, 2005. The petition cites decisions of the RTI Act to argue that BIS being a public authority will have to make available its standards in response to an application under the RTI Act and that public authorities cannot deny such information on the grounds that the government's copyright will be violated.
- The third argument which is based on Section 52(1)(q)(i) of the Copyright Act. This provision categorically states that it shall not be copyright infringement to reproduce or publish any matter which has been published in any Official Gazette. The petition draws on Rule 7(1)(b) of the BIS Rules which mandates the publication of the standards in the Gazette of India.
- According to the petitioners, BIS "does not publish the complete Indian Standards in the official gazette but merely publishes the Indian Standard number and the title of the Indian Standard stating that such Indian Standard is established and a complete copy thereof is available for sale at its office." The petition links to one such publication in the Gazette of India and it is quite clear that BIS is not publishing the entire standard as required by the rules.
- The fourth argument is that Rule 7(9) of the BIS Rules, which grants the BIS the power to decide the pricing of its standards, is unconstitutional. The petition argues that the parent legislation, the BIS Act, does not grant BIS the power to charge any fees for making available these standards. When the parent legislation does not delegate any such power to BIS, it follows that BIS charge for accessing copies of the standards is unconstitutional.