

Legislative Brief

Nuclear Safety Regulatory Authority Bill, 2011

The Bill was introduced in the Lok Sabha on September 7, 2011. The Bill was referred to the Standing Committee on Science and Technology, Environment and Forests. The Committee submitted its report on March 6, 2012.

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September 28, 2012

Highlights of the Bill

- ◆ The Bill seeks to dissolve the Atomic Energy Regulatory Board and replace it with the Nuclear Safety Regulatory Authority (NSRA).
- ◆ The NSRA shall regulate nuclear safety and activities related to nuclear material and facilities. The government can exempt facilities from NSRA's jurisdiction if they relate to national defence and security.
- ◆ The Bill also establishes the Council of Nuclear Safety to review policies on nuclear safety. The Council shall include the Chairman of the Atomic Energy Commission.
- ◆ The Chairperson of the NSRA will be on the search committee for the remaining members. A member of the NSRA may be removed by the central government after providing him an opportunity to be heard.
- ◆ An order of the NSRA can be appealed before the Appellate Authority, which would be set up by the Council 'as and when required'.
- ◆ The Bill penalises all violations with imprisonment for up to five years.

Key Issues and Analysis

- ◆ The Council includes the Chairman of the Atomic Energy Commission, who also heads the department that controls nuclear plants. This may lead to a conflict of interest.
- ◆ The Chairperson of the NSRA will be on the search committee for other members. This may affect the independence of other members.
- ◆ The Bill allows the central government to regulate certain nuclear facilities on its own. Such facilities would not be under any other independent regulatory authority.
- ◆ The Bill permits the central government to establish other regulatory bodies for regulating exempted facilities or activities. The extent of Parliamentary oversight over these bodies is not clear.
- ◆ Members of the NSRA may be removed without a judicial inquiry. The process differs from the procedure under other legislations.
- ◆ The NSRA's orders can be appealed before an Appellate Authority, which is not a standing body. It is not clear how an appeal may be filed if the Appellate Authority is not constituted.
- ◆ The penalty for all offences under the Bill is the same. It is unclear whether the gravity of these offences is the same in all cases.

PART A: HIGHLIGHTS OF THE BILL¹

Context

The Atomic Energy Act, 1962 (Act) provides the legal framework for the development, control and use of atomic energy. The Atomic Energy Regulatory Board (AERB) was established in 1983 through a notification under the Act. The AERB is empowered to regulate safety of nuclear facilities in India (except the Bhabha Atomic Research Center).² It develops safety codes and standards to be followed by nuclear facilities. The AERB is accountable to the Atomic Energy Commission, which is chaired by the Secretary, Department of Atomic Energy.³ The Department controls the administrative functioning of the Nuclear Power Corporation of India Limited (NPCIL), the sole operator of nuclear power facilities in the country.

The AERB's status differs from recommendations of the Safety Review Committee in 1981.⁴ The committee had recommended the establishment of a statutory authority to regulate safety of atomic energy facilities.⁵ The Comptroller and Auditor General (CAG) had conducted a performance audit of the AERB in 2012. It referred to the Raja Ramanna Committee Report, 1997 that recommended that the AERB be granted statutory basis.⁶ The CAG noted that the Act only provided for delegation of powers by the government to a subordinate body.⁷ The CAG criticised the manner of establishment of the AERB as it affected its independence.

Following the Fukushima incident in 2011, the Prime Minister gave an assurance to the Rajya Sabha that work was underway for "further strengthening India's national nuclear safety regulatory authority".⁸ Subsequently, this Bill was introduced in Parliament on September 7, 2011 to set up a legal framework to regulate radiation safety.⁹

Key Features

The Bill establishes the Nuclear Safety Regulatory Authority (NSRA) to replace the AERB. It also establishes the Council of Nuclear Safety to oversee and review the policies of the NSRA. The NSRA will have jurisdiction over all nuclear facilities and premises apart from the ones exempted by the central government.

Functions of the NSRA

- The NSRA will develop and notify standards for safety related to radiation materials and plants. It will issue licenses for carrying out certain activities, inspect premises and enforce nuclear safety policies.

Council of Nuclear Safety

- The Bill requires the central government to establish the Council of Nuclear Safety to oversee and review policies related to nuclear and radiation safety. The Council will comprise the Prime Minister, several union ministers, the Cabinet Secretary, the Chairman of the Atomic Energy Commission (AEC), and experts nominated by the government.

Composition of NSRA

- The NSRA shall consist of a Chairperson, two whole-time members and up to four part-time members. All members to the NSRA would be appointed by the central government.
- The Council will appoint two search committees to recommend members to the NSRA: one to recommend the Chairperson of the NSRA; the other to recommend its remaining members. The Chairperson of the NSRA will be a part of the search committee to recommend the remaining members of the NSRA.

Regulation of activities by NSRA

- All persons are required to obtain the NSRA's permission to carry out certain activities. These activities include production, storage and transfer of nuclear materials and equipment used to produce atomic energy.
- The central government may exempt any nuclear or radioactive material, facilities, premises and activities from the NSRA's jurisdiction. Such exemption may be granted in relation to national defence and security. In relation to such premises and facilities, the central government may constitute other regulatory bodies to carry out the functions of the NSRA or may carry out such functions itself.

Review and appeal

- An applicant can seek a review of NSRA's orders rejecting or revoking a permit issued by it. Review applications can only be filed within 30 days of the order. NSRA must decide review applications within 90 days of the date of filing the application.
- NSRA's orders can be appealed within 30 days before the Appellate Authority. The Council will constitute the Appellate Authority as and when required. The Appellate Authority will consist of a Chairperson and up

to two members. The Chairperson will be a current or former Supreme Court judge or High Court chief justice. The other members will be eminent scientists who were secretaries to the government of India, or equivalent functionaries in science and technology departments of the central government.

Penalties

- The Bill penalises certain activities, including: (i) disclosure of prohibited information; (ii) contravention of conditions subject to which a consent is granted; (iii) failure to obey instructions; and (iv) obstruction of a person authorised to inspect the premises. These may be penalised with imprisonment for up to five years.

PART B: KEY ISSUES AND ANALYSIS

Regulatory mechanism may not be independent

The provisions of the Bill may not secure an independent character to the NSRA. In particular, the provisions of the Bill related to composition of the Council, the composition of the search committees and the procedure for removal of the members may affect the independence of the NSRA.

AEC Chairman as a member to the Nuclear Safety Council

Clauses 7, 8(1), 20(2)(a)

The Bill establishes the Council to oversee and review nuclear safety policies. The Council includes the Chairman, AEC, who is also the secretary to the Department of Atomic Energy. The Department controls the functioning of NPCIL. Thus, the Chairman, AEC is on the Council that reviews safety policies, and also heads the administrative department that controls nuclear power plants. This could lead to a conflict of interest.

The Chairperson of NSRA would be on the search committee for other members

The Bill provides for separate search committees for the Chairperson and the members of NSRA. The Chairperson of NSRA will be on the search committee for members. The strength and composition of these committees is not provided in the Bill. This raises two issues.

Clauses 10(1) and 15(3)

The Standing Committee recommended that the number of members to the search committee be specified.¹⁰ It stated that the composition of the search committees would play a vital role in the scheme of the Bill.

Second, the Chairperson of NSRA would be on the search committee for the remaining members. This may affect the independence of the NSRA as each member is expected to make independent decisions on each case. Some recent Bills that seek to establish search committees for regulatory bodies do not have similar provisions.¹¹

Removal of members to the NSRA

Clause 14

The Bill provides that members of the NSRA can be removed by an order of the central government. In case of misbehaviour (acquisition of a financial or such other interest), such removal may be ordered after providing the member a reasonable opportunity to be heard. However, the Bill does not require a judicial inquiry to be conducted before removal.

This is different from the process provided under some other legislations. For instance, the Competition Act, 2002, the Right to Information Act, 2005 and the Protection of Human Rights Act, 1993 require a judicial inquiry prior to the removal of the Commissioners if there is an allegation of misbehaviour against them. The Electronic Delivery of Services Bill, 2011 and the Lokpal and Lokayuktas Bill, 2011 also have a similar inquiry procedure.

Regulation of strategic facilities

The Bill empowers the central government to exempt nuclear facilities from the jurisdiction of the NSRA if they relate to national security or defence. In such cases the central government may either: (a) notify other regulatory bodies for regulating these premises; or (b) itself discharge the functions of the NSRA. This raises two issues.

Absence of a regulatory body

Clause 27

If the government undertakes NSRA's functions, there may be no independent regulatory mechanism for those facilities. The Standing Committee recommended that nuclear premises that are exempted from the NSRA should be mandatorily brought under the purview of another regulatory authority.¹⁰ It stated that this would ensure sufficient safeguards for the safety of citizens. The International Atomic Energy Agency too has recommended independent mechanisms for safety oversight.¹²

Oversight mechanism for regulatory bodies

Clauses
25(1),
25(2), and
38

The Bill empowers the government to notify other bodies to regulate facilities for the purposes of defence or national security. It also states that the government may extend the Bill's provisions to these regulatory bodies. However, it does not mandatorily require the oversight mechanisms instituted for the NSRA, to apply to notified regulatory bodies. These mechanisms include audits by the CAG, and Parliamentary oversight over these audits.

Appellate Authority

Clause 35

Under the Bill, orders of the NSRA may reject or revoke a licence to carry out certain activities. These orders of the NSRA may be appealed before the Appellate Authority. The Council shall 'as and when required' constitute the Appellate Authority to hear appeals from the NSRA's orders. The Appellate Authority would dispose of appeals within 90 days of their receipt.

The phrase 'as and when required' appears to indicate that the Appellate Authority will not be a standing body but will be constituted as an ad hoc body. The Bill also provides that appeals have to be filed within 30 days of the NSRA's orders. It is not clear how an appeal may be filed if the Appellate Authority is not constituted. The Standing Committee has recommended that the Bill be amended to clarify the process of appeals.¹⁰

Also, if the Appellate Authority is not a permanent body there may be delay in its establishment. This may cause economic loss to the appellant whose licence has been rejected. The Standing Committee has expressed its apprehension that the Appellate Authority may not be established within the time frame for determining appeals.¹⁰

Penalties

Clause 40

The Bill provides a maximum penalty of imprisonment of upto five years for all offences. This may lead to two issues. First, all offences under the Bill carry the same penalty. It is unclear if the offences are of similar gravity. For instance, the Bill treats disclosure of information by officers of bodies to regulate strategic facilities at par with failure to furnish information to the NSRA.

Second, some of the offences in the Bill have penalties different from similar offences under other enactments. A table comparing the penalties for offences under the Bill with other legislations is provided below.

Table 1: Comparison of offences under the Bill with other legislations

Offences	NSRA Bill, 2011	IPC, 1860	Official Secrets Act, 1923	EPA, 1986
Disclosure of confidential information	Five years with fine.	Not provided for.	Three years with fine.	Not provided for.
Obstruction of inspectors	Five years with fine.	3 months and a fine of Rs 500.	Not provided for.	Up to five years and a fine of Rs one lakh.

Sources: NSRA Bill; Indian Penal Code, 1860; Official Secrets Act, 1923; and the Environment Protection Act, 1986; PRS.

Notes

1. This Brief was prepared on the basis of the Nuclear Safety Regulatory Authority Bill, 2011 introduced in Lok Sabha on September 7, 2011.
2. S.O. 4772 dated November 15, 1983 under the Atomic Energy Act, 1962.
3. Constitution Resolution No. 13/7/58-Adm., March 1, 1958.
4. Office Order No. 25/1/79-FR dated July 23, 1979 (Annexure 1A).
5. Report of the Committee constituted to Review the Terms of Reference of the Department of Atomic Energy, Safety Review Committee, February 1981.
6. Performance Audit of the Activities of the Atomic Energy Regulatory Board, CAG, August 23, 2012.
7. Section 27, Atomic Energy Act, 1962.
8. Statement of the Prime Minister in Rajya Sabha on March 14, 2011, p. 593 accessible at <http://164.100.47.5/newdebate/222/14032011/Fullday.pdf>.
9. Statement of Objects and Reasons of the Bill introduced in Lok Sabha on September 7, 2011.
10. Report of the Standing Committee on Environment & Forests, Science & Technology, March 6, 2012.
11. Lokpal and Lokayuktas Bill, 2011 and the Right of Citizens for Time Bound Delivery of Goods and Services Bill, 2011.
12. Government, Legal and Regulatory Framework for Safety, International Atomic Energy Agency, 2010, pp. 6-7.

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