

## CIVIL NUCLEAR LIABILITY – POLITY

NEWS: India is **considering easing nuclear liability laws**, specifically to reduce accident-related fines on equipment suppliers, in order to attract U.S. and other foreign firms for civil nuclear projects.

### WHAT'S IN THE NEWS?

#### Concept of Civil Nuclear Liability

- Civil nuclear liability laws are enacted to **ensure prompt and adequate compensation** to victims in the event of a nuclear accident.
- These laws **define the legal responsibility** for compensation and streamline judicial procedures by **channeling liability primarily to the nuclear operator**.
- The concept is rooted in the belief that nuclear energy, while beneficial, involves high risks, and thus **clear legal frameworks are needed for public safety** and private sector participation.

#### Nuclear Infrastructure in India

- India currently operates **22 nuclear reactors**, all managed by the **Nuclear Power Corporation of India Limited (NPCIL)**, a public sector enterprise.
- Although India has signed civil nuclear cooperation agreements with the **U.S., France, and Japan**, only **Russia has proceeded with actual project implementation** (e.g., Kudankulam Nuclear Power Plant).
- Key projects like:
  - **Jaitapur Nuclear Power Project (with France)** have been delayed since 2009 due to liability concerns.
  - **Kovvada Project (Andhra Pradesh)** remains in preliminary stages, awaiting clearance and implementation.
- The Russian projects were shielded from these concerns as they were initiated **prior to the enactment of India's CLNDA in 2010**.

#### International Legal Framework

- After the **Chernobyl disaster in 1986**, there was global momentum to **establish a standard liability framework** for nuclear accidents.
- The **Convention on Supplementary Compensation (CSC)**, adopted in 1997:
  - Sets **minimum standards for compensation**.
  - Provides for **additional public funding** from member states if the operator's liability is insufficient.
  - Restricts liability to the **operator alone**, limiting the scope for legal action against suppliers.

- Although India signed the CSC earlier, it was **ratified only in 2016**, much after the passage of the CLNDA in 2010.

### **India's Civil Liability for Nuclear Damage Act (CLNDA), 2010**

- The **CLNDA was enacted to align with international norms**, but India introduced additional provisions, notably supplier liability, to reflect national sensitivities.
- The law was strongly influenced by the **memory of the Bhopal Gas Tragedy (1984)**, where lack of supplier accountability caused public outrage and regulatory gaps.

#### **a) Operator Liability Provisions**

- **Strict and no-fault liability** is imposed on the operator, i.e., **the Central Government or its authorised agency** under the Atomic Energy Act, 1962.
- The operator must provide compensation of up to **₹1,500 crore**, either through insurance or financial securities.
- If the claims exceed this limit, the **Government of India covers additional compensation up to 300 million SDRs** (approx. ₹2,100–₹2,300 crore).

#### **b) Supplier Liability – Section 17**

- **India's unique feature** in nuclear liability law is its inclusion of supplier liability under Section 17 of CLNDA.
- It allows the operator a **right of recourse against suppliers** under the following conditions:
  - **17(a):** If the right is **explicitly stated in the contract** between the operator and supplier.
  - **17(b):** If the incident is caused by **latent or patent defects in equipment or services**, even **without intention**.
  - **17(c):** If the incident results from an **intentional act or omission** of the supplier.
- These go **beyond the CSC**, which only permits recourse under 17(a) and 17(c).

#### **Legal Ambiguity – Section 46 of CLNDA**

- Section 46 of the Act states that **other civil/criminal proceedings are not barred**, meaning that civil suits **outside the CLNDA framework** are still allowed.
- This provision creates **legal uncertainty**, as suppliers fear they may be **subject to tort law claims** or criminal proceedings despite the limited liability framework.
- Under **tort law**, victims may sue for damages based on negligence, potentially leading to **unlimited liability** for suppliers.
- While tort law serves a **restorative justice function**, its use in nuclear liability cases **undermines the predictability and limitation of risk** for foreign suppliers.

### **Government's Interpretation and Position**

- The Indian Government has maintained that the **CLNDA is consistent with CSC obligations**, and does not breach international norms.
- Regarding **Section 17(b)**, the government has clarified:
  - It **permits** the operator to seek recourse from suppliers but does not **mandate** such recourse in every case.
- On **Section 46**, the government argues:
  - The clause is **operator-specific**, and the word “supplier” is not mentioned.
  - Parliamentary debates confirm that the section was intended only for **protecting victims’ rights against the operator**, not for extending liability to suppliers.

### **Conclusion: Challenges and Implications**

- India’s inclusion of **supplier liability under Section 17(b)** is seen as a **departure from international norms**, creating significant **concerns for foreign reactor suppliers**.
- This legal ambiguity and extended liability have acted as **roadblocks to operationalising civil nuclear cooperation agreements**, especially with countries like the U.S. and France.
- Without legal clarity or amendment:
  - **Foreign investment and technological collaboration** in India’s nuclear sector will remain hesitant.
  - This impacts **India’s long-term energy security**, especially in the context of clean energy transition.
- Thus, **legal certainty, contractual safeguards, or legislative clarification** may be necessary to attract wider participation in India’s civil nuclear expansion plans.

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