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India's Nuclear Civil Liability Act: A Paradigm Shift from International Nuclear Civil Liability Regime

GORRE MUTCHU MAHITH VIDYASAGAR¹

ABSTRACT

The civil nuclear liability regime of India is governed by Civil Liability for Nuclear Damage Act (CLNDA), 2010. From its very inception the nuclear liability act of India is a centre for many controversies. The cases challenging the constitutional validity of this Act are yet to be decided by the Hon'ble Supreme Court. Concerns are raised against the Act. Despite all those issues India's Nuclear Liability Act for the first time introduced the channelling of liability to the suppliers. Those provisions questioned India's adherence to international nuclear liability conventions. Against this background, this paper briefly evaluates the concept of nuclear civil liability under CLNDA. Along with that an attempt has also been made to explain the constitutional validity of the Act and also its conformation with the international nuclear liability principles.

Keywords: Nuclear Liability Law, Nuclear Damage, Nuclear Accident, CLNDA, Supplier Liability.

I. INTRODUCTION

There was a fear for both the suppliers and the construction companies that the excessive liability claims would destroy their business during the early stages of the nuclear industry development. The suppliers/construction companies would be liable if there exists any fault or negligence on part of them, in common law. As a result, for encouraging such companies and to make them play an important role in the field of nuclear energy, the governments incorporated *channelling* concept into their legislations. It means, *the operator is liable irrespective of whose acts or omissions were the actual cause of the accident.*

The usage of channelling the entire liability upon an operator in an event of nuclear incident who has an obligation to make sure that the supplied products and rendered services to him are not damaged, has been accepted by the nuclear industry many years ago.² Accordingly, any

¹ Author is an Advocate at High Court of Andhra Pradesh, India.

² Mohit Abraham, *Nuclear Liability: A Key Component of the Public Policy Decision to Deploy Nuclear Energy in Southeast Asia*, (American Academy of Arts and Sciences, 2014).

substantial liability is placed on the supplier by the international or domestic law. There are only two situations accepted internationally where an operator could be claimed a right of recourse against a supplier: (1) if a nuclear incident arose from an act of omission or commission by the supplier *with intent to cause damage*; and (2) a contractual right of recourse (e.g., a private contract to apportion liability freely entered into by operator and supplier).³

For many years this nuclear liability principle remains unchallenged and in the Third Party Liability Convention in the Nuclear Energy Field (1960), the Vienna Convention on Civil Liability for Nuclear Damage (1977, as amended), and the Convention on Supplementary Compensation for Nuclear Damages (1977), it was codified. The jurisprudence of international nuclear law took the principle of channelling all the liability to the nuclear power plant operator and excluding the liability of supplier undisputed for several years. This principle is almost complied by the nations pursuing nuclear energy and with the change of time this principle also incorporated into the domestic laws of the nuclear liability of countries which required for the propagation of such legislation.

The belief that the nuclear power business becomes unviable if the principle of unlimited liability is associated with many players - is the main justification for the principle of nuclear liability. Subsequently, two important factors have inspired the approach of channelling all the liability to the operator. First, this approach avoids difficult and complicated questions of legal cross-actions to establish liability in every individual case. Second, it obviates the necessity for all those that might be associated with construction or operation of a nuclear installation, other than the operator itself, to take out insurance, and thus allows concentration of the insurance capacity available.⁴

Therefore, the current system is observed as cost-efficient because operators of nuclear plants can divert the insurance cost towards prospective nuclear incidents which are likely to arise in future for the consumers of nuclear power. If there is wider dispersion of liability, there is also an increase in nuclear equipment's price to cover insurance costs incurred by nuclear products suppliers, who are in plenty even for one nuclear project.⁵

It has also been argued by the nuclear industry that liability restriction to operators only could serve as a bonus for them for the strict adherence to safety standards and also helps for

³ *Id.*

⁴ Revised text of the Expose des Motifs of the Paris Convention, approved by the Organisation for Economic Co-operation and Development (OECD) Council on November 16, 1982, available at http://www.oecd-nea.org/law/nlparis_motif.html.

⁵ Arya Hariharan, *India's Nuclear Civil Liability Bill and Supplier's Liability: One Step towards Modernizing the Outdated International Nuclear Liability Regime*, 36 WILLIAM & MARY ENVI. L. POL'Y REV. 223-255 (2011).

introducing the latest technology in order to maintain safety standards at a higher level.⁶

Currently, the nuclear industry is having a sense of attractive new beneficial markets where the important power source will be nuclear energy because of developing States like India and China's growing influence. However, the surprised thing was India being one of those developing States, would try to alter the international nuclear liability law's basic principles through changing the liability limits of suppliers.

The Supplier's liability principle was presented when the Civil Liability for Nuclear Damages Act, 2010 (CLNDA), was passed by the Indian Parliament. Under the CLNDA, the liability for a nuclear accident would principally rest with the operator, who would be required for the payment of compensation. However, the act introduced for the first time a new liability concept (new somewhat in the nuclear liability law sphere), for suppliers over and beyond the operator liability principles that are accepted.

II. NUCLEAR LIABILITY UNDER CLNDA, 2010

India's national policy for atomic energy is always concerned with the safety and security of Nuclear Power Projects (NPPs) and provisions have also been "*made for remedying or compensating environmental damage caused by the accidents, without merely limiting it to personal injury and damage to property.*"⁷ As nuclear energy is associated with certain concerns from the public in matters of NPP public opinion also plays an important role. At the same time nuclear energy has a significant weightage in the economic development of a country as well. It means there is a link among all these. In words of **Radhakrishnan, J.**

[P]ublic opinion, national policy, economic growth, sustainable development, energy security are all intrinsically interlinked. One cannot be divorced from other, all the same, a balance has to be struck. National policy of this country...is that atomic energy has a unique position in the emerging economics in India. Nuclear energy is, therefore, considered to be a viable source of energy and it is necessary to increase the country's economic growth. Nuclear energy is now considered in India as a sustainable source of energy and India cannot afford to be a nuclear isolated nation, when most of the developed countries consider it as a major source of energy for their economic growth. Renewed momentum against the setting up of NPPs picked up fast after accidents at the Three Miles Island Power Plant in USA, Chernobyl in Ukraine and Fukushima in Japan. Primary reason for such opposition seems to be on the issues of the impact

⁶ Kathy J.S. Fritz, *Civil and State Liability for Nuclear Accidents: A Proposal for Eastern Europe*, 6 I L. P 37, 60-61 (1994).

⁷ G. Sundarajan v. Union of India, (2013) 6 SCC 620, ¶ 85.

of nuclear installations on life and property, environment, flora and fauna, marine life, nuclear waste disposal, health, displacement of people etc. which has a direct link with Article 21 of the Constitution of India and the environmental laws of the country.⁸

As India is emerging as a global power it turned the country into a highly profitable market especially in the nuclear energy field.⁹ The energy needs of India exceed the present capacity, because it is the world's most populous democracy.¹⁰ Nuclear energy can serve as a best alternative source, at the present moment there are 22 nuclear reactors which are being operable and 7 nuclear reactors that are under construction.¹¹ The international vendor market had been opened to India by the influential Group of Nuclear Suppliers in 2008 fall, because of investors of nuclear industry confidence vote.¹² Number of civilian nuclear agreements have been signed by India since that vote, the most significant among them are one with the U.S., France and Russia.¹³ The fact that neither to any international nuclear conventions nor Nuclear Non-Proliferation Treaty and the introduction of these agreements compelled the Indian legislature for drafting a legislation in order to provide compensation in the case of a nuclear accident.¹⁴

When the Nuclear Damage Bill introduced in the Lok Sabha certain provisions of the bill differ from the international conventions on nuclear liability and also domestic laws of some other nations in certain issues only such as the liability thresholds of the operator, the total maximum liability and also the definition of the nuclear damage.¹⁵ The nuclear liability had faced severe criticisms from different analysts. The following are the grounds for those opposition that had raised against the bill:

1. The operator's liability was fixed at Rs. 500 Cr.
2. The total liability of a nuclear damage was limited to 300 million SDR (approx. Rs. 2,100 to 2,300 Cr.)
3. By way of payments the substantial costs of payments had to be borne by the public.
4. Both national and international equipment suppliers were exempted from all types of liability charges.

⁸ *Id.*

⁹ See RAJYA SABHA, TWO HUNDRED TWELFTH REPORT ON "THE CIVIL LIABILITY FOR NUCLEAR DAMAGE BILL, 2010," DEP'T-RELATED PARLIAMENTARY STANDING COMM. ON SCI. & TECH., ENV'T & FORESTS 4 (Aug. 18, 2010) [hereinafter STANDING COMMITTEE REPORT].

¹⁰ See Kritivas Mukherjee, *India Nuclear Plans on Track Despite Japan Crisis*, REUTERS, (Mar. 15, 2011)

¹¹ <https://www.world-nuclear.org/information-library/country-profiles/countries-g-n/india.aspx>.

¹² STANDING COMMITTEE REPORT, *supra* note 8, at 4.

¹³ ANDIRUDH BURMAN, LEGISLATIVE BRIEF: THE CIVIL LIABILITY FOR NUCLEAR DAMAGE BILL, 2010, PRS LEGISLATIVE RESEARCH (July 5, 2010).

¹⁴ *Id.*, at 2.

¹⁵ G. Balachandran, *The Civil Nuclear Liability Bill*, 26 IDSA BRIEF (July, 2010).

5. Through restricting the limit of an operator to Rs. 500 Cr. subsidy is provided to the nuclear industry.

The total liability for a nuclear damage limited by Indian Nuclear Liability bill was only three hundred million Special Drawing Rights (SDRs) in accordance with some international conventions.¹⁶ The total liability of the operator was also limited at five hundred crores (approx. \$109 million), however this limit if there is private participation then only this liability limit is applicable.¹⁷ The definition for nuclear damage includes “*loss of personal life or injury*”, or “*loss of, or damage to property.*”¹⁸ Damage calculations include the environmental damage and the resulting economic loss.¹⁹

The chapter on claims and awards in the Bill address the matters regarding third party liability.²⁰ Clause 17 of the bill states that:

*[T]he operator of a nuclear installation shall have a right of recourse where . . . (b) the nuclear incident has resulted from the wilful act or gross negligence on the part of the supplier of the material, equipment, or services, or of his employees; (c) the nuclear incident has resulted from the act of commission or omission of a person done with the intent to cause nuclear damage.*²¹

An opportunity was granted to an operator as a recourse right against a third party supplier who is negligent, therefore the liability of supplier made a part of nuclear law of India.²²

However after the recommendations from the Standing Committee on Science & Technology, Environment & Forests, the provisions which are in controversy were amended and the Bill was enacted into Act.

The Act also limited the liability for a nuclear incident at 300 million SDR and it also gave powers to the Central Government to specify any higher amount through notification. It means if the damage caused by a nuclear incident is more than three hundred million SDR, the Act empowered the Central Government for taking necessary additional measures beyond the threshold amount.²³

¹⁶ BURMAN, *supra* note 13.

¹⁷ THE CIVIL LIABILITY FOR NUCLEAR DAMAGE BILL, No. 19 of 2010, INDIA CODE, ch. I cl. 6–7 (2010). Currently all of India’s nuclear power plants are owned by the state or by state-run entities, but these clauses allow for joint ventures between the public and private sectors. STANDING COMMITTEE REPORT, *supra* note 8, at 4.

¹⁸ THE CIVIL LIABILITY FOR NUCLEAR DAMAGE BILL, ch. 1 & ch. 2

¹⁹ *Id.*

²⁰ *Id.*, at cl. 17.

²¹ *Id.*

²² Hariharan, *supra* note 5, at 244.

²³ THE CIVIL LIABILITY FOR NUCLEAR DAMAGE ACT, § 6(1).

As stated earlier, initially the Bill limits the total liability of an operator at five hundred crore rupees, however the total liability of the operator was raised up to 1500 crore rupees and separate liability limits were imposed based on the reactor capacity. The following are the liability limits of an operator in case of a nuclear accident:

1. *The liability limit for a nuclear reactor that have a thermal power capacity equals to or more than 10 MW, it is 1,500 crore rupees;*²⁴
2. *With respect to the spent fuel processing plants, 300 crore rupees;*²⁵
3. *With respect to the reactors of research that have thermal power less than 10 MW, fuel cycle facilities except plants that reprocesses spent fuel and nuclear materials transportation, 100 crore rupees.*²⁶

However the proviso to Sec. 6(2) empower the Central Government to review the amount of the operator's liability from time to time and to specify any higher amount through notification. And it also has to be noted that the liability amount that was stated in the sub-section does not include any interest or the proceedings cost.

The Act also empowered the Central Government to appoint a one or more Claims Commissioner for adjudicating the compensation claims. These claims commissions will specifically deal with the compensation claims with respect to a nuclear incident.²⁷

The most peculiar feature is that the CLNDA is for the first time it changed the principle of channelling all liability to an operator and it incorporated the channelling of liability to the supplier as well. Section 17(b) of the Act deals with it. It says as follows:

17. Operator's right of recourse. - The operator of the nuclear installation, after paying the compensation for nuclear damage in accordance with section 6, shall have a right of recourse where-

...

(b) the nuclear incident has resulted as a consequence of an act of supplier or his employee, which includes supply of equipment or material with patent or latent defects or sub-standard services;

...

Section 17 empowers the operator to bring an action against supplier as a right of recourse, if

²⁴ *Id.*, § 6(2)(a).

²⁵ *Id.*, § 6(2)(b).

²⁶ *Id.*, § 6(2)(c).

²⁷ *Id.*, § 9.

the nuclear incident has resulted because of an act done by the supplier or his employee this includes the equipment or material that is being supplied with patent or latent defects. This provision made the India's Nuclear Liability Act a unique one in the international nuclear liability regime. Rule 24 of the CLND Rules also made two important limitations on the right of recourse of the operator- first that right would extend to the liability of the operator under sec. 6(2) of the Act or the value of the contract, *whichever is less*; and second that the right would be limited in the duration of initial licence of issued under the Atomic Energy (Radiation Protection) Rules, 2004 or the product liability *whichever is longer*.

The Act also provided for the time limit for claiming compensation. In case of damage to property the time limit for making a claim is 10 years and for personal injury it is 20 years from the date of incident notified under Sec. 3(1).²⁸

III. CONSTITUTIONAL VALIDITY OF CLNDA

The constitutional validity of CLNDA was decided by the High Court of Kerala in the case of *Thomas Mannully v. Union of India*.²⁹ It was the first case which decided the constitutional validity of the Act. The pronouncement made by the Kerala HC brought back certain thorny issues of the Act into light in this case. The PIL challenged the constitutionality validity of sections such as 3(1), 4(2) and provisio, 4(4), 5, 6, 9(2), 15(2), 16(5), 18(b), 19, 20, 32(10), 35 and 38(1) of the Act. The CLNDA was passed in 2010 for both the purposes of imposing no fault liability on the nuclear operators and also for providing sufficient compensation to the nuclear accident victims. All the above provisions which were challenged in the petition was examined by the court while upholding the constitutional validity of the Act.

This is not the first case where the constitutional validity of the Act was challenged. *Common Cause and Ors*, had challenged the constitutional validity of the Act in 2011 itself stating that it "*clearly violates the 'polluters pay' principle and the 'absolute liability' principle which have become recognised as part of the law of the land under Article 21 of the Constitution.*"³⁰ This matter is still pending in the Hon'ble SC, hence, it is appropriate to say that the verdict of *Thomas Mannully* is the first one that decided the constitutional validity of the CLNDA. While giving its reasoning HC was more articulate because of this distinction and for its verdict it gave better justifications, even the challenge before the HC was made on different grounds than that was made in the apex court.

²⁸ *Id.*, § 18.

²⁹ WP(C).No. 27960 of 2011(S).

³⁰ *Common Cause & Ors. v. Union of India*, W.P. (Civil) No. 464 of 2011.

The issue pertaining to the independence of the Claims Commissioner and the Nuclear Damage Claims Commission is one of main grounds on which the constitutional validity of the Act was challenged before the court. In the words of the petitioner

*... as per Section 10, it is possible for the Central Government to appoint an officer of the Government having specified qualifications as a Claims Commissioner. When the Government appoints a Government servant as Claims Commissioner it will amount to arbitrariness and also violates the doctrine of judicial independence, which is part of the basic structure of the Constitution of India...*³¹

The High Court dismissed the contention of the petitioners and rightly it also stated that there is a mere contention on part of the petitioners and held that:

*The contention is with reference to the independence of the Claims Commissioner. When a person is appointed as claims Commissioner he performs a statutory function and is expected to carry out the statutory duty in accordance with law and it cannot be stated that he might be acting to the dictates of the Central Government. Whether an order passed by the Claims Commissioner is justifiable or not can be decided only at the relevant time and it cannot be stated that the legislation is bad. That apart such orders passed are subject to judicial review by the High Court under article 226 of the Constitution of India. Hence this ground also fails.*³²

The decision of the court could have been justified by explaining that the establishment of a specialised mechanism for adjudication is not only done through CLNDA. For example, if we look at Sec. 46 of IT Act, 2000 also empowers the Central Government to appoint an adjudicating officer not below the rank of a director to the Government of India or an equivalent officer of a State Government for holding an inquiry in relation to the offences where there is an involvement of penalties or compensation. The appointment of adjudicatory officers in order to make them as special mechanisms for resolving disputes is a general function performed by the Central Government and it is a well-known fact, hence the delegation of such power under CLNDA is constitutionally tenable. However, the High Court of Kerala while reaching its conclusion had failed to provide sufficient justification on these questions.

The validity of Sec. 35 was also questioned by the petitioners, and argued that exclusion of civil court jurisdiction violates the basic structure of judicial review.³³ The argument made by

³¹ Thomas Mannully v. Union of India WP(C).No. 27960 of 2011(S), ¶ 6.

³² *Id.*, ¶ 19.

³³ *Id.*, ¶ 7.

the petitioners has to be observed in the light of the decision given by the Hon'ble Supreme Court of India in the case of *L. Chandra Kumar v. Union of India*³⁴, where the apex court had cleared that where there was a substitution of judiciary by an adjudicating authority as an alternative institutional mechanism for judicial review, then such authority has to apply the principles of judicial objectivity and independence strictly. Whereas, under the CLNDA the adjudication framework is not of such nature. The concerns of the petitioners' can be disposed of by plain reading of the text of Sec. 35, which barred the civil court's jurisdiction from hearing a suit pertaining to any issue which the Claims Commissioner or the Nuclear Damage Claims Commission is authorised under the Act to adjudicate. Hence, on the private claims that have been made under the tort law and which do not come under the ambit of CLNDA, the civil courts still entertain their jurisdiction. This proposition has been further clarified by Sec. 46 by expressly providing some space for claims made under other laws. Whereas, for utter disappointment of legal scholars, the justification given by Kerala HC in this case lacks of these connections while disposing of the claim of petitioners with respect to sec. 35.

Whereas, the concern raised by the petitioners that there is an apparent lack of autonomy of the Atomic Energy Regulatory Board (AERB), was seems to be a genuine one. The functioning of the AERB as per its website, is under the direct control of the Atomic Energy Commission, which forms a part of Department of Atomic Energy (DEA), Government of India. Major portion of the members of AERB are also the former officials of DEA. This seems to be a bit problematic if we observe the fact that, under CLNDA the current nuclear operators that are being regulated by AERB, are the entities owned by the government and reported to DAE. Subsequently, the autonomy of the AERB, as the complete enforcement agency in the atomic energy field in India, might be doubted.³⁵ This concern is a genuine one, especially in the view of recent review of regulatory framework of India regarding the NPP safety measures, where a concern of similar kind has been raised by the International Atomic Energy Agency (IAEA), pertaining to the regulator's independence and also made certain recommendations for maintaining its autonomy from the hands of Government. Nuclear Safety Regulatory Authority (NSRA) Bill, 2011, has been introduced in Lok Sabha, to replace the AERB. However, this Bill was still in pending stage and the current NDA Government is planning to introduce a new bill on the same lines.³⁶ It is not certain when this new law will come into force.

³⁴ (1997) 3 SCC 261.

³⁵ Ritwika Sharma & Yashwini Mittal, *The Nuclear Liability Law has Passed its First Legal Test but There will be Others*, THE WIRE (Dec. 02, 2015).

³⁶ Anil Sasi, *Nuclear Safety Regulatory Authority Bill: Statutory Backing Key to Better Safety*, THE INDIAN EXPRESS (Apr. 26, 2017).

IV. CONFIRMATION OF INDIA'S NUCLEAR LIABILITY LAW WITH INTERNATIONAL REGIME

Even though India is signatory party to the instrument of Convention on Supplementary Compensation, 1997 (CSC) it did not ratify the convention till Feb. 4, 2016. On that day only India submitted its *Instrument of Ratification of the Convention on the Supplementary Compensation for Nuclear Damage* to IAEA. The ratification came into effect after 90 days under the rules. The nuclear liability framework of India is based on the three pillars – the CSC ratification, the guidance issued by the Ministry of Home Affairs on India's Nuclear Liability Law in 2015 and the nuclear insurance pool constituted by the General Insurance Corporation. However, the entire nuclear liability framework further raised a question whether it will be sufficient to open up the nuclear market of India for business, especially for the suppliers of the U.S.

In 2010 when CLNDA was in force India was not a contracting party to either Paris or Vienna Conventions. The Act had been a subject of extreme discussion and controversy.³⁷ The issues and concerns over the provisions of the supplier's liability put fear among the both international and national suppliers from entering into contracts to supply components and reactors for the nuclear power projects. The sale of nuclear reactors was stalled because of the provisions of CLNDA not only from the U.S. but also from the other two suppliers- France and Russia as well. However, the concerns that are being raised against the provisions of supplier liability by the U.S. are more when compared with that of the other two countries.

A domestic law with the established international standards is sufficient for assuring the international suppliers but because of the additional benefits provided by CSC India wanted to adopt this Convention.³⁸ In order to pay damages in the case of a nuclear accident, beyond the funding that is being available through domestic sources, CSC will provide access to additional international funding. CLNDA followed the entire structure that has been specified in the Annex of CSC with two exceptions i.e. sec. 17(b) and 46. However, the community of suppliers perceived the Act as contrary to the legal instruments of CSC and the Paris and the Vienna Conventions, because of the inclusion of these two provisions.³⁹

With regard to the concerns over sec. 17(b) it was opined by the supplier community that it is contrary to Article X of the Annex of CSC. Article X of the CSC also grants a *right of recourse*

³⁷ A Vinod Kumar & Kapil Patil, *Resolving India's Nuclear Impasse*, IDSA ISSUE BRIEF (Dec. 8, 2014).

³⁸ Balachandran, *supra* note 14, at 3.

³⁹ Vinod & Kapil, *supra* note 36, at 3.

to an operator, it says as follows:

National law may provide that the operator shall have a right of recourse only:

(a) if this is expressly provided for by a contract in writing; or

(b) if the nuclear incident results from an act or omission done with intent to cause damage, against the individual who has acted or omitted to act with such intent.

If we look at Article X, the term ‘*may*’ implies that it gave a discretionary power to the domestic law whether to incorporate the provision of *right of recourse* or not. On the other hand, it also contains the word *only* which was interpreted by the international community that it narrows the scope of this provision and the right of recourse will be granted under any one of the circumstances mentioned in the Article.

By combining interpretation of both the terms *may* and *only* that were there in the Article, it shows that if a contracting party chooses to provide *right of recourse*, in such case it have to provide such right under any one of the listed circumstances. But, when we look at the provision of sec. 17 it provides the right under both the circumstances that has been laid down in Article X. It means it provides an additional recourse to the operator which is held to be contrary to Article 10 of the Annex of CSC.⁴⁰

The other provisions of the CSC which stress on the operator’s absolute liability, for a different interpretation minimal flexibility is allowed.⁴¹ The principle of absolute liability has been understood to be applicable to hazardous or inherently dangerous industries due to their very nature.⁴² It has been evolved to ensure prompt compensation to victims who suffer on account of such industries.⁴³

The verdict of the SC in *Bhopal Gas Tragedy*⁴⁴ case is the primary reason for the inclusion of Sec. 17(b). The SC decision in this world’s worst industrial accidents was felt unsatisfactory. Partly compensation was granted by the SC to the victims and reduced the other charges of *murder or culpable homicide not amounting to murder to death due to criminal negligence* against the officials of Union Carbide.⁴⁵ An enormous impact had been made by the verdict of

⁴⁰ Arghya Sengupta et. al., *Operationalising India’s Nuclear Agreements*, at 8 (VIDHI, Jan. 2015).

⁴¹ Convention on Supplementary Compensation for Nuclear Damage, IAEA Doc. INFCIRC/567 (Sept. 12, 1997) (‘CSC’), Article 3(3) of the Annex.

⁴² See MC Mehta v. Union of India, AIR 1987 SC 1086, ¶ 31; see also Charan Lal Sahu v. Union of India, AIR 1990 SC 1480, ¶ 74, 90-91; Deepak Nitrate Ltd. v. State of Gujarat, (2004)6 SCC 402, ¶ 4.

⁴³ *Id.*

⁴⁴ See Union Carbide Corporation v. Union of India, No. 8460/1996 (June 7, 2010); see also Union Carbide Corporation v. Union of India, AIR 1990 SC 273.

⁴⁵ See Union Carbide Corporation v. Union of India (1989) 1 SCC 674; Keshub Mahindra v. State of Madhya Pradesh (1996) 6 SCC 129.

Bhopal Gas Tragedy on the deliberations around the CLND Bill in Lok Sabha. Among the civil society as well as the government it caused a huge uproar, which made to adopt a strengthened approach towards all the stake-holders accountability and liability in the field of nuclear energy under the Bill. These circumstances resulted in the push of the opposition parties and the civil society groups for the incorporation of sec. 17(b) into the Act.⁴⁶

The *Deep Water Horizon oil leak* in the Gulf of Mexico, is considered to be another important development around the drafting stages of the Bill.⁴⁷ It has been highlighted by the facts and circumstances that on behalf of the companies there is no accountability in complying with necessary precautions and safeguards for the prevention damage that is being caused to people and environment.⁴⁸ The inequitable approach which was also adopted by the government of the U.S. was also highlighted by this incident. On one side for not taking sufficient precautions a huge amount was imposed by the government of the U.S on BP Oil as compensation and on the other side, they forced for the exemption of liability for the nuclear suppliers from America in an event of a nuclear incident caused because of their products in India.⁴⁹

An evolutionary approach in the matter of civil liability for nuclear damages was taken by Sec. 17(b) of the CLNDA. Channelling of all the liability to an operator was adopted in the times where the growth of nuclear industry was at initial stage and the channelling the liability to the suppliers will help the operators to opt for an supplier who had reputation for being safest and one of issue that had been raised against supplier liability is that it will increase the costs of insurance but as a matter of fact that the inclusion of supplier liability may not adequately affect the costs of insurance by way of implementing various measures which includes funds pooling and effective working of nuclear market. The discussion given under Part 2 ***Legal Channelling of Liability*** forms to be the justification for incorporation of suppliers' liability in CLNDA.

Therefore, the inclusion of the said provision into India's nuclear liability regime is said to be rationale and without any bias. In fact it is to be believed that a *human friendly* and safe approach has been taken by the section towards the usage of nuclear energy in India.⁵⁰

The other issue for consideration regarding the ratification for CSC was Sec. 46 which deals with the legal cases against the operators other than CLNDA. The section merely says that:

46. *Act to be in addition to any other law. - The provisions of this Act shall be in addition to,*

⁴⁶ Sengupta et. al., *supra* note 40, at 10.

⁴⁷ *Id.*

⁴⁸ CENTRE FOR LEGISLATIVE RESEARCH AND ADVOCACY (CLRA), POLICY BRIEF FOR PARLIAMENTARIANS: CIVIL LIABILITY FOR NUCLEAR DAMAGE BILL 2010: HOW CIVIL AND HOW LIABLE? (2010).

⁴⁹ *Id.*

⁵⁰ Sengupta et. al., *supra* note 40, at 11.

and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt the operator from any proceeding which might, apart from this Act, be instituted against such operator.

The possibility of facing liability charges which are of unlimited nature was the another concern arose from suppliers against sec. 46.⁵¹ As stated by the SC in case of ***Shanker Raju Vs Union of India***⁵²

*In a court of law or equity, what the legislature intended to be done or not to be done can only be legitimately ascertained from what it has chosen to enact either in express words or by reasonable and necessary implication. Where the Legislature clearly declares its intent in the scheme of a language of Statute, it is the duty of the Court to give full effect to the same without scanning its wisdom or policy and without engrafting, adding or implying anything which is not congenial to or consistent with such express intent of legislature. Hardship or inconvenience cannot alter the meaning employed by the Legislature if such meaning is clear on the face of the Statute. If the Statutory provisions do not go far enough to relieve the hardship of the member, the remedy lies with the Legislature and not in the hands of the Court.*⁵³

Based on this a case against the supplier cannot stand in a court of law. The language of the section clearly states that the actions can only be brought against operators. Therefore, the fears of the suppliers that they might face unlimited liability charges under other laws are not true and it is not against the instrument of CSC.

In spite of these concerns and issues against the CLNDA, along with the instrument of ratification India submitted a declaration to IAEA stating that:

- i. the CLNDS was enacted to provide for prompt compensation to the victims of a nuclear incident through a no-fault liability regime channelling liability to the operator; and*
- ii. that it complies with the provisions of the Annex to the CSC.*

A web link directing to the FAQs issued by the MEA in 2015 which outlines its views on the nuclear liability law of India and its adherence to the norms of CSC was also included in the declaration. With respect to Sec. 17(b) it was stated by MEA that it “*permits but does not*

⁵¹ G. Balachandran, *Some Issues in respect of India's Nuclear Liability Law- I*, IDS ISSUE BRIEFS (Feb. 10, 2015), available at https://idsa.in/issuebrief/issuesinIndiansnuclearliabilitylaw_gbalachandran_100215.

⁵² (2011) 2 SCC 132.

⁵³ *Id.*

require an operator to include in the contract or exercise a right of recourse.” With regard to sec. 46 MEA stated that *“this section applies exclusively to the operator and does not extend to the supplier.”* The position of MEA was that *“the CLND Act channels all legal liability for nuclear damage exclusively to the operator and Section 46 does not provide a basis for bringing claims for compensation for nuclear damage under other Acts.”* Hence, it has been concluded by MEA that *“the provisions of the CLND Act are broadly in conformity with the CSC and its Annex in terms of channelling the strict/absolute legal liability to the operator.”*

V. CONCLUSION

Nuclear energy is considered to be a promising one for the economic development of a country. The major issue that has to be considered with nuclear energy is the risks associated with it and the ability to pay compensation in case of a nuclear accident. At the international level the major conventions that deal with the nuclear civil liability are the Paris Convention, the Vienna Convention and CSC. These Conventions laid down the established principles in regard to the nuclear civil liability. CSC came to fulfil the gaps that are there in the international nuclear liability regime. It gave certain additional benefits for the contracting parties. It gives flexibility to the States that they can join CSC even though they were not the members of any of the previous ones. However, CSC has yet to come into force because of the installation capacity it required to bring it into effect.

In India the primary legislation that deals with the nuclear civil liability is Civil Liability for Nuclear Damage Act, 2010. It came into force in 2010. The Act was designed on the international principles that are being established by the Conventions on Nuclear Damage such as

1. The no-fault liability principle (strict liability);
2. Liability is channelled exclusively to the operator of the nuclear installation (legal channelling);
3. Only courts of the state in which the nuclear accident occurs would have jurisdiction (exclusive jurisdiction);
4. Limitation of the amount of liability and the time frame for claiming damages (limited liability); and
5. The operator is required to have adequate insurance or financial guarantees to the extent of its liability amount (liability must be financially secured).

But India was not a member either to the Paris Convention or the Vienna Convention and

signed the CSC in 2010 itself but it did not ratify it. In 2016 only India submitted the instrument of ratification to IAEA and it also made clear all the issues and concerns that revolve around the CLNDA. The ratification instrument declared that the provisions of CLNDA are in accordance with CSC. This shows that India's nuclear liability regime was in par with the established international standards.
