

BRIDGING THE HIATUS - AN APPRAISAL OF THE CIVIL LIABILITY FOR NUCLEAR DAMAGES ACT, 2010 AND ITS CONFORMITY WITH THE PRINCIPLES OF PUBLIC INTERNATIONAL LAW

- Ashwin Pant and Drushan Engineer*

ABSTRACT

In this day and age, a country like India, with its rapid urbanization and bludgeoning population, needs a lot of energy to sustain itself. With the dangers of using fossil fuels apparent, but its use still inevitable, the Indian government saw it fit to open its borders to foreign companies, and allow them to build and operate civilian nuclear reactors. A large section of the Indian public voiced concerns, that these foreign companies, interested only in a quick profit, would neglect safety standards and may not pay compensation to the affected people as required. It was also noted in India that the volume of risk dealt and lives lost could be very high, given the inherent dangers of operating nuclear energy. To work around the problem, the Indian Parliament passed the Civil Liability for Nuclear Damage Act, in 2010. The Act was made with the specific intention of ensuring that, in the unfortunate event of an accident at a nuclear facility, the people who are responsible for the same pay compensation to the victims. However, some parts of the Act, like S.46 and S.17 (b) were not welcomed by the foreign suppliers and they saw it as a way to make them liable for something that is not in their control. It was also said that these go against international customs and that in the various international instruments signed regarding civil nuclear liability, only the operator of the nuclear facility is held liable, unlike in India, where even the supplier can be held liable for any defect on his end. These differences between the laws have caused a lot of delays and cost escalations, which a developing country like India can ill afford. Plus, there is an immediate need for power in India, especially in rural areas. Therefore, what this research paper will attempt to do is that it will clarify the laws in question (both domestic and

* Students, 2nd year, B.A LL.B (Hons.), Dr. Ram Manohar Lohiya National Law University, Lucknow.

international), examine the facts from both sides and then try to come up with an equitable solution. This paper has been divided into four parts. The first part will be the analysis of current laws, which will also identify the bone of contention. The second part will analyse and give the readers, a perspective on the international laws and treaties in place governing civil nuclear liability. The third part will explain India's standpoint and spell out the concerns they have about the delicate issue of liability, and the fourth part will try achieving a balance between just and equitable liability and unnecessary corporate policing.

1. THE CURRENT SCENARIO AND LAW

1.1. Indian Nuclear Liability Framework Prior to, and Post Indo-United States Nuclear Agreement

Section 123 of the United States Atomic Energy Act of 1954, titled "Cooperation With Other Nations", established an agreement for cooperation as a prerequisite for nuclear deals between the United States (hereinafter referred to as 'US') and any other nation.¹ Such an agreement is called a 123 Agreement.² To date, the US has entered into roughly twenty-five 123 agreements with various countries.³ The framework for the India-US civilian nuclear agreement was the India-US joint statement by then Indian Prime Minister Manmohan Singh and US President George W. Bush through which India agreed to separate its civil and military nuclear installation and place its civil nuclear facilities under the safeguard of the IAEA, in return for which, the US agreed to work towards full civil co-operation with India⁴, which also included an India-specific NSG waiver. Under the 123 Agreement, one of the understandings reached between the two countries was the enactment of a statute in India dealing with civil nuclear liability, which would ensure that the US companies are able to get insurance cover back at home.

¹ The Atomic Energy Act (Act of August 30 1954) S.123 (United States).

² *Nuclear Non-proliferation Issue*, Issue Brief for Congress (Washington, 10/05/2002).

³ *National Nuclear Security Administration - 123 Agreements for Peaceful Cooperation*. National Nuclear Security Administration, available at <http://nnsa.energy.gov/aboutus/ourrogrmsnonproliferation/treatiesagreements/123agreementsforpeacefulcooperation>, last seen on 9/3/2015.

⁴ Office of the Press Secretary, *Joint Statement Between President George W. Bush and Prime Minister Manmohan Singh*, The White House (18/06/2005).

Prior to the passing of the Act, due to lack of penetration of nuclear energy in India and paucity of commercial agreements, India did not have an elaborate liability law. National Power Corporation of India Limited (hereinafter referred to as '**NPCIL**') could enter into contracts with Indian suppliers for nuclear reactors, and there was no liability imposed on them and elaborate compensation schemes, as seen now, were not even envisaged.⁵ With the increase in penetration of nuclear energy and with the outbreak of nuclear disasters, it was realised that the present form of nuclear liability laws was short-sighted. The scenario then mandated a civil nuclear liability law which was in conformity with the basic international principles and which would give an efficacious remedy to the aggrieved parties in case of a disaster. It was imperative that nuclear incidents, having trans-boundary ramifications and the costs of which could be of great magnitude, were governed by international conventions. It was in this aspect that the conformity of the Civil Liability for Nuclear Damages Act, 2010 (hereinafter referred to as '**CNLDA**') with the international conventions was of a vital nature. Most international conventions are like insurance pools wherein each contracting party which has ratified the convention is given financial support and assistance in case of a nuclear incident. India had not ratified any major nuclear treaty and it was clear that the costs entailed in paying off claims would be too much for either the state or the operating party to bear and it was deemed necessary for India to become party to an international convention like the Convention on Supplementary Compensation (hereinafter referred to as '**CSC**') which would grant the state additional funds to cope with the disaster, above and beyond what it could afford to pay.

1.2. Thorny Issues in the Indian Nuclear Liability Law and their Effect on Commercial Agreements

Since the exemption to civil nuclear trade was granted to India by the Nuclear Supplier's Group (hereinafter referred to as '**NSG**'), agreements to that effect were signed with 3 countries i.e. Russia, France and the US. In Section 13.1 of the first agreement with Russia⁶ and Section 15,

⁵ R. Gruendel & E. Kini, *Through The Looking Glass*, Volume 3 Issue 1 OECD iLibrary 112, 115 (2012).

⁶ Agreement between The Government of The Republic of India and The Government of The Russian Federation on Cooperation in the Construction of Additional Nuclear Power Plants at Kudankulam Site as well in the Construction of Russian Designed Nuclear Power Plants at New Sites in the Republic of India; which was signed on December 5, 2008.

it has been clearly laid down that the operator of power units of the nuclear power plant at Kudankulam site shall be fully responsible for any damage. Section 3.2 of the second agreement⁷ is also to the effect that both these agreements and the relevant sections explicitly absolve the Russian supplier of any liability whatsoever in case of a nuclear incident at site hosting a Russian reactor. India signed a civil nuclear cooperation agreement with France⁸ wherein clause 2 of Article VIII states that each party shall create a civil nuclear liability regime based upon established international principles.

The CLNDA was passed after frenetic debate and discussion and was one of the most controversial laws enacted in modern Indian history. Many of the provisions of the Act have been criticised, mostly by suppliers of nuclear inventory⁹ and countries which are parties to various conventions and claim that it is in derogation of internationally accepted conventions and principles emanating from them.¹⁰ The criticism ranges from domestic issues such as share of government in the financial liability to international issues such as supplier liability; which is said to be in contravention of major international conventions. This paper delves into the issues that spring up from an international viewpoint and its ambit will exclude the domestic issues. Section 17(b) of the CLNDA¹¹ states that:

“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 the nuclear incident has resulted is 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.”

⁷ Agreement between the Government of the Republic of India and the Government of the Russian Federation on Cooperation in the Use of Atomic Energy for Peaceful Purposes; which was signed on March 12, 2010 and ratified on September 20, 2010.

⁸ Cooperation Agreement between the Government of the Republic of India and the Government of the French Republic on the Development of the Peaceful Uses of Nuclear Energy with France; signed on September 30, 2008.

⁹ K. Patil, *Untying the Civil Nuclear Liability Knot in the Indo-US Nuclear Deal*, NAPSNet Policy Forum, available at <http://nautilus.org/napsnet/napsnet-policy-forum/untying-the-civil-nuclear-liability-knot-in-the-indo-us-nuclear-deal/>, last seen on 30/07/14.

¹⁰ N. Pelzer & Göttingen, *The Indian Civil Liability for Nuclear Damage Act, 2010 – Legislation with Flaws?*, 56 International Journal for Nuclear Power 32 (2011).

¹¹ S. 17(b), The Civil Liability for Nuclear Damage Act of 2010.

This section has been the reason for the disagreement between the Indian government and foreign countries including suppliers of those countries as no international convention imposes liability on the supplier for any nuclear incident. The principle of channelling of absolute liability to the operator as enshrined in the bare text of numerous conventions is achieved through 'legal channelling' while in national laws like the Anderson-Price Act of US,¹² it is achieved through 'economic channelling'.¹³

Our country and its legislature has good reason to include the supplier in the liability chain as demonstrated in the latter part of the paper but the presence of S. 17 coupled with S.46 have been great hurdles in the goal to achieve our nuclear energy goals, from the point of foreign suppliers as the provisions of the CLNDA have stalled not only sales of nuclear reactors from US to India but from other major nuclear suppliers— Russia and France as well. Even though the NSG exemption for nuclear commerce was granted more than six years ago, and India had signed the nuclear cooperation agreements with these countries nearly six years ago, it has not been able to finalise even a single commercial contract for the import of reactors from any of these countries. The only nuclear cooperation that India has been able to conclude with any of the countries with whom it has nuclear cooperation agreements is in respect of nuclear fuel which would not have any implication on application of CLNDA¹⁴.

Recent reports also indicate that one of the main reasons why no contract has been signed between NPCIL and Russian's Atomstroy export is that India would like Russia to accept the CLNDA in the case of Kundakulam 3 and 4. It is also said to be not in conformity with the

¹² Price–Anderson Nuclear Industries Indemnity Act of 1957 (United States).

¹³ D. Koplow, *Nuclear Power: Still Not Viable without Subsidies*, Union of Concerned Scientists (1/02/2011), available at http://www.ucsusa.org/sites/default/files/legacy/assets/documents/nuclear_power/nuclear_subsidies_report.pdf, last seen on 29/06/2015.

¹⁴ G. Balachandran, *A primer on the Indian Civil Liability for Nuclear Damage Act 2010*, Institute for Defence Studies and Analyses, available at http://www.idsa.in/background/IndianCivilLiability_gbalachandran_240914.html, last seen on 25/02/2015.

IAEA recommendations for a nuclear liability law.¹⁵ As per the Standard General Conditions of Contract for Supply of Indigenous Stores:¹⁶

“6.7.7 The Purchaser shall indemnify and hold harmless the Contractor in respect of Third Party life and Property damage claims arising out of nuclear event at Purchaser’s Site.”

It is also contended that not only did the CLNDA go against the foreign suppliers and agreements, it was also contrary to agreements that the nuclear suppliers had signed with state-owned NPCIL with respect to nuclear liability in case of an accident. This lack of legal consensus has led to the stalling of progress in the commercial agreements which India had signed with France, US and Russia.

2. INTERNATIONALLY ACCEPTED PRINCIPLES OF CIVIL NUCLEAR LIABILITY

2.1. Dawn of International Conventions based on Internationally Accepted Principles of Nuclear Liability

The financial costs and implications posed by the unique risks that nuclear accidents pose are potentially enormous and unquantifiable.¹⁷ This potential liability is of concern not only to nuclear power plant operators but to all entities involved in design, construction, operation and decommissioning of a nuclear power plant, including equipment and service providers, manufacturers and even lenders providing finance to the plant. A state that has nuclear facilities on its territory, or is embarking upon a programme to develop nuclear facilities, must have legal regimes in place to provide compensation to possible victims of nuclear damage.¹⁸ In addition to the potential trans-boundary impact of nuclear damage; neighbouring states and, arguably, all states should have

¹⁵ C. Stoiber, Alec Baer, N.T. Pelzer & W. Tonhauser, *Handbook on Nuclear Law*, 107 (IAEA, 2003).

¹⁶ Nuclear Power Corporation of India, Government of India, *General Conditions of Contract*, available at https://npcil.etenders.in/tender_document/tender_3953/tech_com_doc/GCC%20CMM44%20Supply1%20R2.pdf, last seen on 1/1/2015.

¹⁷ International Atomic Energy Agency, The Chernobyl Forum, *Chernobyl's Legacy: Health, Environmental and Socio-Economic Impacts and Recommendations to the Governments of Belarus, Russian Federation and Ukraine* (2003–2005).

¹⁸ C. Cambbell, *Sustainable Environmental Law*, (Barry Breen and J William Futreel, St. Paul Minnesota, West Publishing Co, 1993).

legal regimes in place to protect their population, property and environment in the event that a nuclear accident does affect their territories. Nuclear liability regimes were borne out of the need to balance many different and at times, conflicting interests.¹⁹ Prior to these conventions, many nations, which had nuclear facilities, enacted their own national laws.²⁰ Most international conventions came into force and were envisaged before the Chernobyl nuclear disaster and the first text in this regard was the Paris Convention²¹ adopted by all OECD members. Later, the Vienna Convention²² was adopted by the IAEA.

2.2. Paris, Vienna Convention and the doctrine of channelling of liability to the operator

The Paris and Vienna Convention envision the principle of 'legal channelling'³ imposing all liability on the operator of the nuclear installation and to the exclusion of any other entity. It is stated in the Paris Convention that the operator is liable for damage to or loss of life of any person and damage to or loss of property upon proof that such damage or loss was caused by a nuclear incident in such installation or involving nuclear substances coming from such installation.²³ This liability is only subjected to certain exceptions relating to carriage of nuclear substances.²⁴ The right to compensation for damage caused by an incident may be exercised only against the liable operator and no other person is liable for damage caused by a nuclear incident, (i) subject to the ability to claim directly against an insurer or financial guarantor of the liability,²⁵ (ii) unless a different arrangement applies to an incident occurring during the course of carriage of nuclear material,²⁶ or (iii) pursuant to the application of an international agreement in the field of transport.²⁷

¹⁹ H. Cook, *The Law Of Nuclear Energy*, 71 (George Borovas, 1st ed., 2013).

²⁰ Price-Anderson Act 1957, (United States) and Nuclear Installations (Licensing and Insurance) Act 1959, (United Kingdom).

²¹ Paris Convention on Third Party Liability in the Field of Nuclear Energy of 1960 (IAEA), available at https://www.oecd-nea.org/law/nlparis_conv.html, last seen on 01/06/2015.

²² Vienna Convention on Civil Liability for Nuclear Damage of 1963 (IAEA), available at <https://www.iaea.org/publications/documents/infcircs/protocol-amend-vienna-convention-civil-liability-nuclear-damage>, last seen on 01/06/2015.

²³ Supra 21, at Article 3.

²⁴ Supra 21, at Article 4.

²⁵ Supra 21, at Article 6.

²⁶ Supra 21, at Article 4.

²⁷ Supra 21, at Article 6.

The operator has a right of recourse only in limited circumstances.²⁸ This liability is limited in both amount and time. The maximum liability of the operator is set at 15 million SDRs²⁹ and this amount is subject to the ability of a contracting party to increase or decrease the amount. The amount though, cannot be set lower than 5 million SDRs, which is, in effect the “minimum liability amount”.³⁰ Article 15 further provides that a contracting party may increase the levels of compensation. New provisions have been subsequently introduced in respect of the existing amount of compensation, pursuant to the Brussels Supplementary Conventions and the 2004 Protocols wherein it was felt that existing compensatory mechanisms were not sufficient. The Brussels Supplementary Convention was formed with the intention to make additional compensation available in the event of a nuclear accident. After amendment by the 2004 Protocol, the total compensation granted by the Brussels Supplementary Convention is now increased to 1.5 billion Euros and the operator’s liability was increased to a minimum of 850 million pounds.

Under the Vienna Convention too, the liability is channelled to the operator and the liability is strict. The operator is liable for nuclear damage upon proof that it has been caused by a nuclear incident occurring in the operator’s nuclear installation.³¹ Subject to limited exceptions, no person other than the operator is liable for nuclear damage.³² An operator may even be held liable for a nuclear damage caused directly due to a grave natural disaster of an exceptional character after the 1997 Protocol.³³ The operator will not be held liable only when he can prove that the nuclear damage is directly due to an act of armed conflict, hostilities, civil war or insurrection.³⁴ The liability of the operator is absolute³⁵ and he can escape it only when he proves that the person affected by the incident himself was in the wrong or was affected by his own act or negligent omission.³⁶ The operator has a right of

²⁸ Supra 21, at Article 6.

²⁹ Supra 21, at Article 7; A Special Drawing Right is an “international reserve asset”, created by the International Monetary Fund (IMF) and used as the IMF’s unit of account.

³⁰ Supra 21, at Article 7.

³¹ Supra 22, Article II para 1.

³² Supra 22, Article II para 5.

³³ Supra 21, Article 6 para 1.

³⁴ Supra 22, Article IV para 3.

³⁵ Supra 22, Article IV para 1.

³⁶ Supra 22, Article IV para 2.

recourse only if it is expressly provided for in a written contract, or 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.³⁷ The liability may be limited by the installation state to 300 million SDRs and anything below this up to 100 million SDRs will have to be provided for by the state from its public funds in the event of a nuclear incident, to be ready to compensate victims.³⁸

Both Vienna³⁹ and Paris⁴⁰ Conventions have set the limitation period for bringing legal claims for compensation after a nuclear incident to 30 years. The conventions require the operator to have a specified amount of financial security and insurance to cover the liability imposed by both the Paris⁴¹ and the Vienna⁴² Conventions. There was no direct link between the Vienna convention and the Paris convention and to bridge this gap in coverage and prevent potential conflicts, a joint protocol was entered into force in 1992. The protocol provides that either the Paris convention or the Vienna Convention will apply to a nuclear incident to the exclusion of the other. The determining factor would be whether the relevant nuclear installation is located in the territory of a party to the Paris Convention or the Vienna Convention.⁴³

2.3. Post-Chernobyl Emergence of the Convention on Supplementary Compensation, a Radically Different Regime

After the Chernobyl incident, it was quite clear to the international community that existing compensatory mechanisms under various conventions were far too ill-equipped and would never serve to be an efficacious remedy for the claims arising out of them. It was to fix this very problem that the CSC⁴⁴ emerged from nearly a decade of work

³⁷ Supra 22, at Article X.

³⁸ Supra 22, Article V at para. 1.

³⁹ Article 8, 1997 Protocol; 1(a) amending Article VI, 1963 Vienna Convention.

⁴⁰ Supra 21, at Article 8.

⁴¹ Supra 21, at Article 10.

⁴² Supra 22, at Article VII; Minimum financial security is set at 300 Million SDRs when liability is unlimited and financial security not less than 5 million SDRs may be prescribed by installation state.

⁴³ Article III, Joint Protocol relating to the Application of the Vienna Convention and Paris Convention 1992 (IAEA), available at <https://www.oecd-nea.org/law/joint-p-rotocol.html>.

⁴⁴ Convention on Supplementary Compensation for Nuclear Damage 1997, (IAEA), available at <https://www.iaea.org/publications/documents/treaties/convention-supplementary-compensation-nuclear-damage>, last seen on 01/06/2015.

which had begun soon after the Chernobyl disaster. The CSC is a free-standing instrument open to all states wherein the states can become a party to it without adopting the Vienna or Paris Convention. However in this case, it must have a national legislation that is consistent with the general principles of international nuclear liability⁴⁵ as set out in the Annex to the CSC. The objective of the CSC is to enhance and supplement the Vienna and Paris Conventions and also the regimes developed by the consistent national legislations, with the primary intention of supporting contracting parties by increasing the amount of compensation that is available to the victims.⁴⁶ The compensation is made available to the contracting parties pursuant to the following two criteria: (i) Installation state must make available a minimum of 300 million SDRs (or a transitional amount).⁴⁷ (ii) The contracting parties are to make available public funds in accordance with a formula that takes into account both the amount of installed capacity in each contracting party and the UN rate of assessment.⁴⁸ A state that has a nuclear installation in its territory must also be a contracting state to Convention of Nuclear Safety.⁴⁹ In the annex to the CSC, the definition of nuclear damage has been broadened to give it a wider ambit such that all nuclear related incidents come under its purview. Article 2(1)(b) of the convention states that for conformity of the national legislation with CSC, it must contain provisions that “*require the indemnification of any person other than the operator liable for nuclear damage to the extent that person is legally liable to provide compensation*”. Article 8 and 9 and 10(a) of the very same annex state that:

“Article 8: Nothing in this Convention shall affect the liability outside this Convention of the operator for nuclear damage for which by virtue of paragraph 7(c) he is not liable under this Convention.

Article 9: The right to compensation for nuclear damage may be exercised only against the operator liable, provided that national law may permit a direct right of action against any supplier of funds that are made available pursuant to provisions in national law to ensure compensation through the use of funds from sources other than the operator.

⁴⁵ Ibid, at Article II para.1.

⁴⁶ Ibid, at Preamble and art. II.

⁴⁷ Ibid, at Article III para.1.

⁴⁸ Ibid, at Article IV para.1(b).

⁴⁹ Ibid, at Article XIX para.1.

Article 10: 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;”

CSC is based on the US nuclear liability legislation⁵⁰, which came prior to it and protects the suppliers and financiers of nuclear inventory through economic channeling by means of a two tier insurance protection system. The CSC borrows from the very same concept and in this convention also there is a no fault liability exclusively upon the operator. Therefore, from a bare perusal of the text of each of the major international conventions, we can gather that they all channel liability solely to the operator and are in fact, absolve the suppliers from any liability. After the Chernobyl disaster, it dawned upon the international nuclear community the need to provide more efficacious remedy to the victims of such hazards. The international approach now is to further increase the liability of the state and the operators to make them more ‘responsible’ in their pursuit for nuclear generated power.

3. A DECONSTRUCTION OF THE INDIAN POSITION

The Indian standpoint in this situation is quite clear. Foreign suppliers of atomic reactors to India cannot be sued for the damages by victims of a nuclear accident but can be held liable by the operator who has the right of recourse.⁵¹ It is an attempt to meet the principles laid down by international conventions at a halfway point.

3.1. Historical Burden of Past Disasters

To put this into perspective, it must be recalled that in November 1984, what has been called the “largest industrial chemical accident ever”⁵² took place in Bhopal. Over half a million people were adversely affected,

⁵⁰ S.Tromans, *Nuclear Law: The Law Applying to Nuclear Installations and Radioactive Substances in its Historic Context*, 143 (2nd ed., 2010).

⁵¹ Insuring nuclear suppliers using Indian tax payers’ money – how nationalist is diluting liability, Mr. PM?, Coalition for Disarmament and Peace, available at <http://cndpindia.org/2015/01/insuring-nuclear-suppliers-using-indian-tax-payers-money-how-nationalist-is-diluting-liability-mr-pm/>, last seen on 18/3/2015.

⁵² I. Ekerman, *Chemical Industry and Public Health Bhopal as an Example*, Essay in Master of Public Health, 7, MPH 2001:24, Essay in Master of Public Health Nordic School of Public Health, Göteborg, Sweden, Nordic School of Public Health, Göteborg, Sweden, (2001).

and 16,000 people died because of the gas effects within 6 weeks. The Bhopal Gas Leakage has become a symbol of transnational corporate negligence towards human beings. It has thus served as a wake-up call.⁵³ Despite widespread protests, the compensation paid by the owner of the plant, Union Carbide, was abysmally low and it's then CEO, Warren Anderson had evaded the Indian justice system till he died in 2014. It ensured that the Indian government would put in place stringent norms for such potentially dangerous industries and set up a proper system for the maintenance of safety standards. The Supreme Court of India has devised the principle of "absolute liability" as a part of tort law where an offending party can be held liable, even without any intention to commit a crime, for an offence which involves a hazardous or dangerous material escaping and causing widespread damage while it was under his care.⁵⁴ When it was announced by the previous UPA government that India would throw open her markets for private companies who wish to generate nuclear energy, immediate safety concerns were raised and the example of the erstwhile USSR's Chernobyl disaster was cited. Then, in March 2011, 3 out of the 6 reactors of the Fukushima Dai-ichi Nuclear Reactor in Japan melted down because of an earthquake that measured 9 on the Richter scale and its subsequent tsunami prompted the evacuation of 300,000 people.⁵⁵ The possibility of a disaster and the fallibility of human engineering were exposed once again.

International conventions like the Vienna Convention exclusively channel the liability to the operator. In India, however, it was suggested that channelling liability solely to the operator is a means of protecting powerful nuclear suppliers from liability claims.⁵⁶ Contrary to popular belief, this is at the expense of the victims, the greater public, and the environment. The suppliers have no real incentive to ensure the safety and longevity of their goods and services. In addition, it is very difficult for plaintiffs to collect sufficient damages. It is understood that most of the reactors will be operated by NPCIL. NPCIL is a public sector

⁵³ I. Ekerman, *The Bhopal Saga- Causes and Consequences of the World's Largest Industrial Disaster*, 2 (1st ed., 2004).

⁵⁴ M.C. Mehta v. Union of India, AIR 1987 SC 1086.

⁵⁵ P. Lipsky, K. Kushida & T. Incerti, *The Fukushima Disaster and Japan's Nuclear Plant Vulnerability in Comparative Perspective*, Environmental Science and Technology (2013), available at <http://web.stanford.edu/~plipsky/LipskyKushidaIncertiEST2013.pdf>, last seen on 19/03/2015.

⁵⁶ Department-related Parliamentary Standing Committee on Science & Technology, Environment & Forests, Rajya Sabha, *The Civil Liability for Nuclear Damage Bill, 2010*, 2010.

undertaking and in the event of an accident, even if it happened due to a mistake on the part of the supplier, a very heavy burden will be put on the tax payer and especially when the ultimate liability is that of the Central government as per the provisions of Section 7 of the CLNDA.⁵⁷

3.2. Stance of the Indian Government

Section 46 of the CLNDA was the one which received the most parliamentary scrutiny. Currently, it reads as:

“The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt the operator from any proceedings which might, apart from this Act, be instituted against such operator.”⁵⁸

Thrice the Left Front tried to amend it. They wanted to ensure that in the event of an accident, the supplier should also be held liable, not only in an Indian court, but also in foreign courts.⁵⁹ International conventions, they argued only favoured the suppliers. Also, under Section 17(b), a liable operator can recover compensation from suppliers of nuclear material in the event of a nuclear accident if the damage is caused by the provision of substandard services or patent or latent defects in equipment or material if it is previously agreed upon to do so under the terms of the contract signed. This is contrary to the practice of recourse in international civil nuclear liability conventions, which channel the liability exclusively to the operator.⁶⁰ Rakesh Sood, the then Prime Minister’s Special Envoy for Disarmament and Non-Proliferation has previously said in a meeting of the Nuclear Law Association of India that the current international conventions were put in as a part of international law in the 1950s in an attempt to shield the US companies (which enjoyed a monopoly) in what was then a very nascent and growing industry. He further went on to elaborate by saying that this was no longer the case and that the Indian law was truly

⁵⁷ Supra 14, at 21.

⁵⁸ S. 46, The Civil Liability for Nuclear Damage (CLND) Act, 2010.

⁵⁹ G. Balachandran, *Some issues in respect of Indian’s nuclear liability law – I*, IDSA, available at http://www.idsa.in/idsacomments/issuesinIndiansnuclearliabilitylaw_gbalachandran_100215.html, last seen on 11/03/2015.

⁶⁰ See Vienna Convention, Paris Convention, Convention on Supplementary Compensation, Brussels Supplementary Compensation, Joint Protocol; all available at <https://www.iaea.org/>.

reflective of the “spirit of the times”.⁶¹ He also said that India’s unique position as a developing country, along with the historical burden of the Bhopal Gas Tragedy, warranted an exception.

Furthermore, the CSC allows countries to make reservations to certain provisions in treaties despite being signatories to them. India can do so and express her valid reservations and concerns to the International community.

3.3. Reasons for India’s Apprehension

The Indian concerns are centred on reservations they have about the quality of the materials that are to be set up and run in India. Since the supplier and the operator of the facilities are going to be separate, Parliament feared negligent practices because legal channelling, in practice, transfers liability onto the victims, and would not compel the industry to comply with safety measures. Channelling benefits the nuclear industry and its suppliers but it prejudices the victims as it limits the parties against whom they may claim.⁶² This is because the manufacturers, designers, suppliers, and transporters agree to transfer all liability towards the operators in an attempt to limit damages and costs, and ignore the basic social costs to victims.⁶³

The concern is that why would the foreign suppliers bother safety compliance if the system does not impose any liability upon them and offers them protection for any potential loss of income, without making them even remotely liable for the damages cost, even if they have made a manufacturing or designing error on their end. The effects of negative incentive on both care and activity are magnified correspondingly when

⁶¹ *Nuclear energy and Indian society: Public engagement, risk assessment and legal frameworks*, 93 Nuclear Law Bulletin 63, 66 (2014), available at <http://www.oecd-nea.org/law/nlb/nlb93.pdf>, last seen on 18/03/2015.

⁶² D. Currie, *The Problems and Gaps in the Nuclear Liability Conventions and an Analysis of How an Actual Claim Would be Brought Under the Current Existing Treaty Regime in the Event of a Nuclear Accident*, 35 Denver Journal of International Law and Policy 85, 93 (2006), available at <http://www.law.du.edu/documents/djilp/The-Problems-Gaps-Nuclear-Liability-Conventions-Analysis-How-Actual-Claim.pdf>, last seen on 18/03/2015.

⁶³ E. Ameye, *Channelling of Nuclear Third Party Liability Towards the Operator: Is it Sustainable in a Developing Nuclear World or is There a Need for Liability of Nuclear Architects and Engineers?*, 19 European Energy and Environmental Law Review 33, 35 (2010).

liability is channelled strictly to the operator.⁶⁴ It must also be remembered here that in the nuclear power generating industry, the magnitude of damage and the quantum of destruction that can be wrought is extremely high. Critics of the bill in its infant form believed that taking a product's liability-type approach would help minimize potentially negligent practices by foreign suppliers far removed from the negative impacts a nuclear disaster would have on the subcontinent.⁶⁵

To put the Indian apprehensions further into perspective, it must be remembered that India is a developing country. In the event of a nuclear disaster, the vulnerability that India and her people will have is much more than that of a developed country, like Japan⁶⁶. Plus, high density of population and growth of inhabited areas are ever-increasing in India.⁶⁷ After the disaster at Bhopal, the lack of adequate compensation granted and the intense media scrutiny has egged on the Indian government to put in clauses like Section 17(b). The central idea is not only to ensure that a just and equitable compensation from a company when the accident takes place because of some oversight on their part but also to ensure that the supplier company takes all the required care and responsibility to build something as sensitive as a nuclear reactor.

4. THE CIVIL NUCLEAR LIABILITY FOR DAMAGES ACT AND ITS HARMONY WITH INTERNATIONAL CONVENTIONS

4.1. *The CLNDA and its Conformity with the CSC*

The CLNDA has received flak from many quarters, including the parties to major conventions. India has been consistently pressurised to ratify any one of the major conventions so that its nuclear liability law is consistent with the broad international principles regarding nuclear

⁶⁴ M. Trebilcock & R. Winter, *The Economics of Nuclear Accident Law*, 17 International Review of Law and Economics 215, 219 (1997).

⁶⁵ P. Purkayastha, *Nuclear Liability Bill: Subsidizing Foreign Suppliers With Indian Money*, Delhi Science Forum, available at <http://www.delhiscienceforum.net/peace-and-disarmament/407-nuclear-liability-bill.html>, last seen on 18/03/2015.

⁶⁶ *Nuclear Power in India*, World Nuclear Association, available at <http://www.world-nuclear.org/info/Country-Profiles/Countries-G-N/India/>, last seen on 19/03/2015.

⁶⁷ W. Donner & H. Rodriguez, *Disaster Risk and Vulnerability: The Role and Impact of Population and Society*, Population Reference Bureau, available at <http://www.prb.org/Publications/Articles/2011/disaster-risk.aspx>, last seen on 18/03/2015.

liability. After events like the Fukushima disaster⁶⁸, it has dawned upon the Indian authorities that it will be impossible for the state to pay off claims on its own and assistance will be required by the international community in managing the legal claims in the aftermath of a nuclear incident. India, not being an OECD member, cannot ratify the Paris Convention and the subsequent supplementary and amending conventions. Consequently, the least cumbersome route for India to be a party to international conventions would be ratifying the CSC, as all it requires is for the contracting party to have a national legislation that is in conformity with the annex to the CSC. The benefits of joining the CSC are two-fold. It will make India eligible for grant of excess funds to cope with any nuclear disaster and it will establish that the national legislation of India is in conformity with the broad international principles. This will enable India to move forward with agreements with various countries, for example, the Indo-French Agreement. For this, the other parties to the convention do not have to object to the ratification by India. The US has been very keen on India joining the CSC and has voiced concerns that the CLNDA may not be consistent with international principles⁶⁹; but the Indian government in a press release by MoEA has said that the CLNDA is in 'broad conformity' with the CSC and that India will be ratifying the CSC in the near future⁷⁰. The ICJ had stated in its advisory opinion that:

“a State which has made and maintained a reservation which has been objected to by one or more of the parties to the Convention but not by others, can be regarded as being a party to the Convention if the reservation is compatible with the object and purpose of the Convention; otherwise, that State cannot be regarded as being a party to the Convention.”⁷¹

It remains to be seen whether after ratification of the CSC, the US

⁶⁸ The Fukushima Nuclear Accident Independent Investigation Commission, The National Diet of Japan, *The official report of The Fukushima Nuclear Accident Independent Investigation Commission, 2012*, available at https://www.nirs.org/fukushima/naic_report.pdf, last seen on 17/03/2014.

⁶⁹ R. Einhorn & W.P.S. Sidhu, *Operationalizing U.S.-India Civil Nuclear Cooperation*, Brookings.edu, available at <http://brookings.in/wp-content/uploads/2015/01/Einhorn-Sidhu-Civil-Nuclear-Cooperation.pdf>, last seen 2/03/2015.

⁷⁰ Ministry of External Affairs, Government of India, *Frequently Asked Questions and Answers on Civil Liability for Nuclear Damage Act 2010 and related issues*, available at http://www.mea.gov.in/pressreleases.htm?dtl/24766/Frequently_Asked_Questions_and_Answers_on_Civil_Liability_for_Nuclear_Damage_Act_2010_and_related_issues, last seen on 29/06/2015.

⁷¹ Advisory Opinion: I.C. J. Reports, *Reservations to the Convention on Genocide*, 15 (1951).

relents with its objections to the CLNDA and lets India become a party to the convention.

4.2. Other Countries with Provisions for Supplier Liability and the Status of their Commercial Nuclear Trade

Much of the debate on CLNDA's inconsistency with international principles stems from a few provisions, most controversial of them being the provisions connected with supplier's liability⁷². It must be kept in perspective, that other countries already have domestic laws in place that do not comply completely with international conventions with respect to channeling all the liability only to the operator, or have simply not ratified the same.

Section 5 of the Japanese "Act on Compensation for Nuclear Damage"⁷³ states

"Where nuclear damage is covered by Section 3 and if the damage is caused by the wilful act of a third party, the nuclear operator who has compensated the damage pursuant to Section 3 shall retain a right of recourse against such third party. The provisions of the preceding paragraph shall not prevent a nuclear operator from entering into a special agreement with any person regarding rights of recourse."

In South Korea, Article 4 of the "Act on Compensation for Nuclear Damage"⁷⁴ has the following:

"1. Where nuclear damage is caused by the wilful act or gross negligence of a third party, a nuclear operator who has provided compensation for nuclear damage in accordance with Article 3 shall have a right of recourse against such third party, provided however, that where the nuclear damage occurs due to the supply of material or services (including labour) for the operation of a nuclear reactor (hereinafter referred to as "supply of material"), the nuclear operator shall have a right of recourse only insofar as there has been a willful act or gross negligence by the supplier of the materials concerned or by his employees."

S. 17, being termed contrary to CSC, is by itself no barrier for foreign

⁷² S. 17 & 46, The Civil Liability for Nuclear Damages Act, 2010.

⁷³ S. 5, Act on Compensation for Nuclear Damage 1961, (Japan).

⁷⁴ A. 4, Act on Compensation for Nuclear Damage 1969, (Republic of Korea).

companies willing to supply nuclear technology to invest in India. South Korea, for example, has suppliers from the private sectors of countries like Canada, France, and US etc. supplying nuclear items despite the domestic laws being unduly “scared away” by the operator’s right of recourse against the supplier, unless, of course, the suppliers have special pre-signed contractual agreements regarding the right of recourse⁷⁵.

On the advent of the visit of President Barack Obama to India, both countries claimed to have broken a major deadlock concerning the supplier liability due to which many nuclear companies were having apprehensions of investing in India, by declaring the creation of The India Nuclear Insurance Pool. This is a risk transfer mechanism formed by the General Insurance Corporation of India and 4 other PSUs who will together contribute a capacity of Rs 750 crores out of a total of Rs 1500 crores. The balance capacity will be contributed by the Government on a tapering basis. The pool will cover the risks of the liability of the nuclear operator under S. 6(2) of the CLNDA and of the suppliers u/s 17 of the Act. The Pool envisages three types of policies including a special suppliers’ contingency policy for suppliers other than turn key suppliers⁷⁶. As a result of the insurance pool, compensation to the tune of 300 million SDRs or 2610 crores can be paid which is much more than what most countries offer as compensation.⁷⁷ The formation of the insurance pool is similar to that provided by the British government to its operators⁷⁸ and negates the need of the operator to take recourse from the supplier by providing for a type of economic channelling. Besides this, what also needs to be taken into account is the fact that the right of recourse is not mandatory. So in all cases, the operator can forego the right of recourse with a supplier in the contractual stages itself. Since out of the 2610 crores, 750 crores will come from the state on a tapering basis, the requirement of an

⁷⁵ Supra 14, at 18.

⁷⁶ Supra 71, at Answer to Question 14.

⁷⁷ Only 4 other countries out of 28 NPP offer higher compensation than 300 million SDRs.

⁷⁸ In UK the Nuclear Risk Insurers Ltd (NRI) is a Financial Services Authority (FSA) authorised intermediary that acts as the UK insurance market’s underwriting agent for all matters of nuclear insurance. It operates as a limited company and has a membership consisting of over 20 leading UK market property & casualty insurers from both Lloyd’s and the general market, who pool their insurance capacity for nuclear risks into NRI; it is therefore commonly known as the British nuclear insurance pool.

installation state to compensate victims is also fulfilled, very much in line with the principles enshrined in the CSC. An appraisal of the provisions relating to limit on liability and limitation period for bringing claims⁷⁹ in the CLNDA reveals that the provisions are more or less within the internationally accepted norms of liability.

4.3. The Middle Ground and the Indian Governments Approach to Solving the Issue

The wording in S. 46 of CLNDA is similar to the wording in other laws that have liability as an issue in them, such as the Telecom Regulatory Authority Act, Electricity Act, Securities and Exchange Board of India Act, Insurance Commission Act. The entire point of such wording is that it makes sure that other relevant laws continue to be applicable in their respective domains, to ensure that the most efficacious remedy is available to the aggrieved. On the issue of S. 46 conferring a very wide right upon litigants to sue suppliers also, the Indian Government in a FAQ released through the MoEA has made it very clear that the provisions of S.46 will not be used to hold suppliers liable in conjunction with S.17 nor will it be used to grant jurisdiction to the foreign courts over the issue.

The major challenge faced by the Indian side was to strike a just and equitable balance where domestic misgivings are placated and international conventions are followed. The successful completion of the nuclear reactors is, without doubt, in India's interests. It remains to be seen, if the foreign suppliers, who contend that they are immune from liability by most of the International Conventions in place, are sufficiently assured by India's willingness to start an insurance pool, and also sign the CSC which will further indemnify India's citizens from a nuclear disaster. The Indian side also sees the addition of this clause as a way to ensure that the designing and manufacturing of the reactor is done as per international standards.

However, attention must be given to the fact that the Indian Government under the UPA regime itself has passed the Civil Liability for Nuclear Damage Rules, 2011⁸⁰ which was nothing but a clever

⁷⁹ S. 18, The Civil Liability for Nuclear Damage (CLND) Act, 2010.

⁸⁰ Department of Atomic Energy, Government of India, *CLNDA Rules*, available at <http://www.prindia.org/uploads/media/Nuclear%20Rules/Civil%20Liability%20for%20Nuclear%20Damage%20Rules%202011.pdf>, last seen on 01/06/2015.

sleight of hand by the authorities concerned with the primary aim of diluting the supplier liability legislation imposed by the CLNDA. The devil is in the detail, and one must carefully analyse the contents of Chapter V of the rules, which explains the operator's Right of Recourse under Clause 17(a) of the Act. *Firstly*, Rule 24(1) binds the amount of compensation which the operator can seek from the supplier through right of recourse under Clause 17(a) of the Act. Since the maximum liability of the operator is Rs. 1,500 crores as per the Act, Rule 24(1) states that the right of recourse from the supplier in no case can be more than that amount, whatever is the contract value. But, if the contract value is lower than that, the right of recourse from the supplier will be capped at the contract value. In any case, certainly Rule 24(1) appears to preclude the operator from seeking any 'consequential damages' from the supplier under Section 17(a) of the Act to compensate for the larger damage the supplies could have caused to the public and the environment.

The legal intent of the Act was to provide three separate and stand-alone sub-clauses, viz S. 17 Clause (a), S. 17 Clause (b), and S. 17 Clause (c). As per the Act, S. 17(b) reads:

“The operator... shall have the right of recourse where the nuclear incident has resulted as a consequence of an act of the supplier or his employee, which includes supply of equipment or material with patent or latent defects or sub-standard services.”

But now if we compare clause with S. 17(a), as elaborated through Rules 24(2) and 24(2)(a), it can be seen that both S. 17(a) and S. 17(b) now deal with the identical shortcoming of 'supply of equipment or material with patent or latent defects or sub-standard services.' Except that, u/s 17(a) and the associated contract between the operator and supplier, the quantum and time validity of the supplier's liability towards the operator under right of recourse is well-defined and bounded whereas for the same default of the supplier, S. 17(b) of the Act allows recourse without specifying any limits on time period or amount.

If an accident occurs within the applicable time limit as per the contract mentioned in S. 17(a), the operator can argue for recourse u/s 17(a), for the quantum of compensation as per the contract. But if an accident occurs as a result of the supply, beyond the period of validity mutually agreed in the contract, S. 17(a) will not help in seeking right of recourse as it will be time-barred through limitation in the contract. It must be

remembered here that nuclear power plants generally have a long shelf life. Then, S. 17(b) cannot be resorted to because the supplier will argue that for the very same deficiency or default, he has a contract with the operator whose time validity has already expired. In effect, one finds that through a clever manipulation of rules framed u/s 17(a), the government has succeeded in linking Clauses 17(a) and 17(b) of the Act in contravention of the legal intent of the Parliament that they should be independent of each other, and shall be applicable separately. The serious consequence of this linkage is that the provisions for recourse from the supplier given in the contract under Section 17(a) and its rules will prevail at all times, thus nullifying the provisions of Clause 17(b)⁸¹.

Although this legislation was enacted by the UPA Government in order to circumvent the opposition at the time, by giving a different interpretation of clause 17(b), it has not yet been nullified by the present NDA-led government also whose primary aim at the moment is to get as much corporate wealth and foreign business into India as possible. Even the current government hopes to ensure that as a result of this, the CLNDA becomes more palatable to the foreign entities concerned and they do not see the Indian nuclear market to be a hostile one. Both the CLNDA and the CSC make it abundantly clear that the RoR should be expressly provided for in a written contract. As the primary instrument to determine the framework for transactions between the operator and supplier, the contract could be suitably drafted in a manner that satisfies both parties while being consistent with the principles of various laws. In other words, the time and resource limits to the supplier's liability, actual conditions under which RoR will be invoked and other functional pre-requisites could be incorporated into the contract to mutual satisfaction. In fact, the CLNDA does not carry any provision to restrict such flexibility in drafting contracts. Furthermore, some jurists have opined that S. 17(a) allows the operator to decide whether RoR provision should be incorporated in a particular contract or not⁸².

It shall be imperative to instil some collaborative ethos to redress the lingering mistrust over the operator-supplier relationship. Contrary to

⁸¹ Dr. A Gopalakrishnan, *Why the Nuclear Liabilities Rule Must be amended*, DNA (05/12/11), available at <http://www.dnaindia.com/analysis/comment-why-the-nuclear-liability-rules-need-to-be-modified-1621411>, last seen on 02/06/2015.

⁸² S. Dikshit & J. Venkatesan, *Manmohan may carry Nuclear Liability dilution as gift for US Companies*, The Hindu (19/09/2013), available at <http://www.thehindu.com/news/national/manmohan-may-carry-nuclear-liability-dilution-as-gift-for-us-companies/article5142882.ece>, last seen on 29/06/2015.

the spirit of nuclear cooperation envisaged between India and other supplier countries, the ongoing contractual engagements seem to have given little space for collaborative structures, like a joint assessment mechanism for quality assurance or for early detection of product or design defects. These difficulties can be overcome by some flexibility on the part of both the parties. The supplier should by all means be obligated to provide for safety and quality guarantees for the reactor or equipment for a particular period (product liability/guarantee period), ideally concurrent with the contractual timeline or license period, whichever suits both the parties. Similarly, the operator could certify its confidence on the quality of equipment for a particular timeline with the contractual qualification that such certification may not mitigate its RoR if an act with intent to cause damage is proven in the event of a nuclear accident. Neither the CSC nor CLNDA forbids the scope of any such joint mechanisms which could go a long way in building a durable operator-supplier relationship⁸³.

There is no compulsion for any nation to be a part of any international nuclear liability conventions as they will always be able to have bilateral agreements with various countries pertaining to civil nuclear trade. However, the nature of our present agreements with various countries and India being a developing nation can ill-afford not to be a part of any international convention. The Indian government believes, especially after the Obama-Modi meet that they have made all the efforts that they possibly could and it is up to the foreign suppliers now to gauge the business scenario and make a foray into the Indian civil nuclear market. On Feb 8th 2015, the MoEA stated:

“During the course of the discussions in the Contact Group, using case law and legislative history, the Indian side presented its position concerning the compatibility of the CLNDA and the Convention on Supplementary Compensation for Nuclear Damage (CSC). The idea of the India Nuclear Insurance Pool as a part of the overall risk-management scheme for liability was also presented to the U.S. side. The CLND Act is compliant with the Annex to the CSC.”⁸⁴

It must be realised that not all the circuitous routes, the government has

⁸³ V, Kumar & K. Patel, *Resolving India's Nuclear Liability Impasse*, ISDA Issue Brief, 2014, available at http://www.idsa.in/issuebrief/ResolvingIndiasNuclearLiabilityImpasse_kumarpatil_061214.html, last seen on 01/06/2015.

⁸⁴ Supra 71, Answers to Questions 4 and 6.

taken, may stand legal scrutiny; and the constitutional validity of the rules itself may come under challenge as the Supreme Court has held that:

“in the absence of a specific warrant, delegated legislation (rules) cannot be so exercised as to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Act itself”.⁸⁵

Rule 24 clearly specifies a substantive limitation that operates as a disability on operators seeking to claim recourse, and that such a limitation is not contemplated by the Act. On the contrary, the Act specifically omits to mention any limitations whatsoever regarding the exercise of the right of recourse despite several proposals to this effect having been suggested. Only time and the prevailing business atmosphere will tell how the companies choose to sway within the Indian nuclear industry. Notwithstanding the fervent criticism from various quarters, the Indian law has emerged as an appropriate template that could rekindle the nuclear energy sector while also safeguarding the public interest. Post-Fukushima, many countries, including Japan⁸⁶, are now coming around to appreciate the Indian law, its innate ethos of public interest and its spirit of promoting a culture of safe nuclear energy. Tokyo University Professor, Eri Osaka, in his article argues how, despite Japan being a member of the CSC⁸⁷ and the fact that under Japanese law, a nuclear operator bears strict channelling and unlimited liability for nuclear damage, even the Tokyo Electric Power Company must compensate any damage if the nuclear accident is the consequence of their actions. The professor also says that General Electric, the designer of the reactors at the plant, shall also be liable for the nuclear damage under US law, assuming the reactors had any weaknesses in their design⁸⁸. We must also accrue the benefit that the Japanese got

⁸⁵ Kunj Bihari Butail v. State of Himachal Pradesh, AIR 2000 SC 1069.

⁸⁶ S. Dixit, *Japan may amend its nuclear damage compensation act*, The Hindu (05/03/2015), available at <http://www.thehindu.com/sci-tech/energy-and-environment/japan-may-amend-its-nuclear-damage-compensation-act/article4476106.ece>, last seen on 29/06/2015.

⁸⁷ A. Dixit, *Japan Joins the Convention on Supplementary Compensation for Nuclear Damage*, International Atomic Energy Agency, available at <https://www.iaea.org/newsCenter/news/japan-joins-convention-supplementary-compensation-nuclear-damage>, last seen on 01/06/2015.

⁸⁸ E. Osaka, *Corporate Liability, government liability, and the Fukushima Nuclear Disaster*, 21 Pacific Rim Law and Policy Journal 433, 452 (2012), available at <https://digital.law>

while ratifying their CSC as our liability legislation is more or less an import of theirs and our situation can be deemed to be similar to theirs.

All the provisions of the CLNDA can now be defended as being compliant with the annex to the CSC. The ratification to the CSC is the most appropriate way for the Indian government to get huge amount of funds from the International community in order to cope with any nuclear disaster. The forming of the National Insurance Pool, which has funds to the tune of 300 million SDRs, now insures the operators as well as the suppliers and ensures that the suppliers are protected from liability in the form of economic channelling of liability much similar to the insurance pool protecting the suppliers as under the Price-Anderson Act. Also it must be taken into account that there are countries like South Korea and Japan which are doing business with countries such as Canada and USA despite having supplier liability clauses in their domestic legislations. The Indian Government's stand on s.46 has been quite clear, especially after the MoEA press release, and it is merely a non-obstante clause in the legislation and cannot be invoked to grant jurisdiction to the foreign courts over the issue, nor can it be used in conjunction with S. 17 to hold the suppliers liable. The BJP government, being the major proponent of holding suppliers liable, is unlikely to dilute the provisions of the legislation to any extent. It must now play the role of a soothsayer and allay the fears of the foreign suppliers and itself, must make a move to ratify the CSC. When India does ratify the CSC in the near future, it can be rest assured that the US will find no reason to object as the Indian administration has taken various steps over the course of the last 4 years to harmonise the CLNDA's provisions with the accepted international legal principles governing nuclear liability. The same old legislation, coupled with various new mechanisms, clarifications and undertakings from the Indian side will sail through the ratification process unhindered and the CLNDA can be only deemed complaint with the annex to the CSC and not otherwise. Once India ratifies the CSC, it can move forward with the agreements it has signed with the French side too since the Indian piece of legislation will now be compliant with clause 2 of Article VIII of the Indo-French agreement which states that "each party shall create a civil nuclear liability regime based upon established international principles". If all things go as the Indian government has planned, we may have our first commercial agreement signed for the first time in six years since inking major agreements with 3 different countries, ushering in an era of nuclear power for prosperity.