

With respect Mr. Attorney General

It appears from various news reports that the Manmohan Singh government is carrying with it a rather disconcerting gift in its impending visit to the United States. Buckling under sustained pressure from the United States the government is all set to dilute the supplier liability provision provided for in the Civil Liability for Nuclear Damage Act, 2010. This dilution appears to be based upon an opinion from the Attorney General's office. The controversy is in the context of the '*right to recourse*' provided for under section 17 of the act whereby a supplier can be held liable in one of the following three scenarios: (a) if the right is expressly provided for in writing; or (b) if the accident is caused by faulty material or equipment provided by the supplier; or (c) the accident results from an act of commission or omission of an individual done with intent to cause nuclear damage. It is pertinent to note that the three conditions for supplier liability under section 17 are coextensive and operate without prejudice to one another. In other words as they are separated by 'or' instead of 'and', it would be sufficient to satisfy any one of the three to trigger supplier liability.

The Attorney General however takes an entirely different and with great respect completely unsustainable view that: "*Section 17(a) provides for recourse if such right is expressly provided for in a contract in writing. If the operator chooses not to incorporate such a provision in the contract, it would be open for him to do so.*" With great respect this amounts to reading the sub-section (a) of section 17 in isolation and the same is not permissible under settled rules of statutory interpretation. As has been stated above, sub section (a) is only one of the three conditions which may trigger supplier liability and thus supplier liability cannot under any circumstances be wished away contractually as sub sections (b) and (c) are binding irrespective of sub section (a).

This move can potentially reverse a strong democratic process that has over the years strengthened the '*right to recourse*' under Section 17 of the act. It is noteworthy that when the act was originally passed in 2010, at that point section 17 was privy to easy circumvention and it is since then that attempts were made to dilute section 17 in the same manner the AG has now opined. This was however rejected and scientists, lawyers, civil servants and people from diverse walks of life engaged with their government and through a peaceful and democratic process brought about an unprecedented clause in the face of stiff western opposition. Despite having entered the fray of nuclear energy only recently India has had the most heated and comprehensive debates on this issue. The conclusion of these debates and the evolution of our liability laws over the last three years provide an invaluable guide in an issue that has global implications. The government is now looking to turn back the clock by almost three years and rendering this work and material moot. This is entirely unacceptable and legally unsustainable. The world's largest democracy has spoken and it shall not have its laws re-written based on the sweet will of western interests.

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