



Nuclear Liability Laws: India and Japan

For Greenpeace

Introduction:-

- Liability for nuclear damage arising out of peaceful use is a controversial topic globally.
- The international liability regime puts a cap on such liability.
 - The cap that has been put on operator's liability is too meagre as compared to the magnitude of damage caused.
- India is the only Country in the world today which has a legislation providing for Supplier Liability.
- This move is neither surprising nor sudden as Indian jurisprudence in the field of liability laws has been unique and has zealously guarded the human rights of its people.

International Regime:-

- The Paris Convention on Third Party Liability in the Field of Nuclear Energy, 1960 (The Paris Convention)
- The Vienna Convention on Civil Liability for Nuclear Damage, 1963 (The Vienna Convention)
- Conventions were linked by the Joint Protocol adopted in 1988 to bring together the geographical scope of the two, after the Chernobyl incident, combining them into one expanded liability regime.
- 1997- Protocol to amend the Vienna Convention was adopted and also the parties to the International Atomic Energy Agency (the IAEA) adopted the Convention on Supplementary Compensation for Nuclear Damage (CSC).

International Regime:-

- Both the Conventions were governed by similar principles:
 1. The operator of a nuclear installation is exclusively liable for nuclear damage
 2. Strict or no fault liability of the operator
 3. Exclusive jurisdiction is granted to the courts of one state, to the exclusion of courts of other states
 4. Liability is limited in amount and time
 5. Mandatory financial coverage of the operator's liability

Background of Indian Liability Regime:-

- *Rylands v Fletcher* [1868] UKHL 1
- Origin of the Doctrine of Strict Liability
- Blackburn, J.: “The rule of law is that the person who, for his own purpose, brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril; and if he does not do so is *prima facie* answerable for all the damage which is the natural consequence of its escape.”

Background of Indian Liability Regime:-

- Exceptions to the Doctrine laid down in *Rylands v Fletcher*:
 1. An Act of God (eg: earthquake or flood)
 2. The Act of a third party (eg: sabotage)
 3. The Plaintiff's own default
 4. The Plaintiff's consent
 5. Statutory Authority

Background of Indian Liability Regime:-

- India, being a Commonwealth Nation, followed the principles laid down in *Rylands v Fletcher*, i.e. Principle of Strict Liability.
- The situation changed in the year 1987.

Background of Indian Liability Regime:-

- The Principle of Absolute Liability was laid down by the Supreme Court of India in the case of *M.C. Mehta v Union of India* (1987) 1 SCC 395 (Shriram Gas Leak Case a.k.a. Oleum Gas Leak Case)
- “Where an enterprise is engaged in a hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas, the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate *vis-à-vis* the tortious principle of strict liability under the rule in *Rylands v Fletcher*.”

Background of Indian Liability Regime:-

- Bhopal Gas Leak Case
 - Worst Industrial accident in Indian history (03.12.1984)
 - Official death toll- 2,500 on the night of the incident and 2,800 due to consequential effects.
 - Reports as per Social Activists- around 8,000 on the night, and an equal number subsequently.
 - Government of India sued Union Carbide for Rs.3,900 crores (US \$3 Billion) in damages in 1986.
 - Full and Final Settlement in 1989 wherein Union Carbide agreed to pay US \$470 Million to the Indian Government on behalf of the Bhopal victims.

Background of Indian Liability Regime:-

- Bhopal Gas Leak Case
 - The 1989 Settlement also resulted in the Apex Court of the country dropping all criminal charges against Union Carbide.
 - In 1996, the Apex Court directed the charges be converted from culpable homicide to death due to negligence (with maximum sentence of two years).
 - The main accused Warren Anderson has been since absconding.
 - The government formally asked for his extradition in 2004, but the US government rejected the request.

Background of Indian Liability Regime:-

- The Principle of Absolute Liability was given recognition by the Legislature of India by virtue of:
 - The Public Liability Insurance Act, 1991
 - The National Environment Tribunal Act, 1995
- The Principle of No-Fault Liability has been incorporated in The Civil Liability for Nuclear Damage Act, 2010 (“Nuclear Liability Act”)

The Civil Liability for Nuclear Damage Act, 2010:-

- It provides for limited liability in case of a nuclear accident and was introduced so as to implement the Indo-U.S. nuclear deal.
- Without it, serious questions were raised as to whether any nuclear company would bear the risk of doing business in India.
- Important for India if it wants to import nuclear technology from the U.S. and other nations.
- Passed by the Lok Sabha on August 25, 2010.
- Passed by the Rajya Sabha on August 30, 2010.
- Presidential Assent received on September 21, 2010.

The Civil Liability for Nuclear Damage Act, 2010:-

- The Act fixes liability for nuclear damage and specifies procedures for compensating victims.
- The Act fixes no-fault liability on operators and gives them a right of recourse against certain persons.
- It caps the liability of the operator at a maximum of Rs.1,500 crore
- All operators (except the central government) need to take insurance or provide financial security to cover their liability.
- The Act specifies who can claim compensation and the authorities who will assess and award compensation for nuclear damage.
- Those not complying with the provisions of the Act can be penalised.

Capped vs Uncapped Liability:-

- Section 6 of the Civil Liability for Nuclear Damages Act, 2010 relates to limits of liability.
- The maximum amount of liability in respect of each nuclear incident shall be the Rupee equivalent of Three Hundred Million Special Drawing Rights (with a provision to increase the said cap by a Notification by the Central Government).
- The liability of an operator for each nuclear incident shall be Rupees One Thousand Five Hundred crores.
- It also provides that the amount of liability of the operator shall not include any interest or cost of proceedings.

Capped vs Uncapped Liability:-

- Earlier, the maximum liability in the Civil Liability for Nuclear Damages Bill, 2010 was limited to the same amount, but without the provision for an increase of the cap.
- The maximum liability for an operator was limited to Rupees Five Hundred Crore only.
- Under the present Act, if the liability of the operator exceeds the amount as specified in the respective provision, the remainder liability shall be borne by the Central Government.

Capped vs Uncapped Liability:-

- The Central Government also shall be exclusively liable in the event the nuclear incident occurs in an installation owned by it, or if nuclear damage is caused directly due to a grave natural disaster of an exceptional character or due to an act of armed conflict, hostility, civil war, insurrection or terrorism.
- This liability would again be subject to the limitation as prescribed under Section 6 of the Civil Liability on Nuclear Damage Act, 2010.
- The Cap on Liability in India, as in comparison to other countries, is abysmally low as has been shown in the chart as displayed hereinafter-

Capped vs Uncapped Liability:-

Country	Cap on Liability
Japan	Unlimited, but if a Cabinet Order provides it may be limited to 120 Billion Yen.
US	First (1) \$300 million will come from the operator, then (2) \$10 billion from a fund contributed to by all nuclear plant companies, and finally (3) government funds.
France	91 million Euros per nuclear plant.
Russia	A domestic nuclear insurance pool helps cover liability amounts up to \$350 million.
Canada	Current legislation to change insurance required for each plant from \$650 million to \$75 million.
China	Not party to any liability convention, only a 1986 domestic liability law.
Germany	The cap for operator liability is unlimited. However the operator is required to provide security in the form of 2.5 billion Euros per plant. This security is covered by insurance of up to 256 million Euros.
U.K.	140 million pounds for each major installation, with the operator responsible up to that amount.
Switzerland	Operators are required to insure to 600 million Euros.
Finland	Operator's liability is unlimited beyond the 1.5 billion Euros provided under the Vienna Convention, and operators are required to take at least 700 million Euros in insurance cover.
Sweden	Operators are required to be insured for at least 302 million Euros. After that amount the state will cover up to 6 billion Swedish Kroner.
Czech Republic	Requires each reactor to have insurance cover of 296 million Euros.

Evolution of S.17 of Civil Liability on Nuclear Damage Act, 2010:-

- Civil Liability on Nuclear Damage Bill, 2010
 - Gave the operator a statutory right of recourse.
 - The conditions for exercising the right being:
 - a) such right is expressly provided for in a contract in writing; and
 - 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 employee;
 - c) the nuclear incident has resulted from the act of commission or omission of a person done with the intent to cause nuclear damage.

Evolution of S.17 of Civil Liability on Nuclear Damage Act, 2010:-

- The changes brought about by the Civil Liability on Nuclear Damage Act, 2010 were significant:
 - Pre-condition attached to availing the right of recourse, i.e. operator must first pay the compensation for nuclear damage.
 - The term 'and' has been omitted after sub-clause (a) thereby implying that any condition may be complied with independently for availing the right of recourse.
 - Sub-Clause (b) has done away with the requirement of the act of the supplier to be a 'willful act' or an act of 'gross negligence'.
 - Sub-Clause (b) included latent or patent defects or sub-standard services, thereby enlarging the scope of the provision.

Standing Committee Report:-

- Need for the Bill:
 - ❑ To provide for a prompt compensation to the victims of nuclear incident.
 - ❑ A transparent and predictable liability regime would help domestic nuclear equipment manufacturing industry to develop and grow.
 - ❑ India is not a party to the four international instruments for nuclear liability- no provisions exist with regard to nuclear liability or compensation for nuclear damage.

Standing Committee Report:-

- Brief Highlights of the Bill:
 - Act applies to nuclear damage suffered in the territory of India, in/over maritime areas, in/over exclusive economic zones, any artificial island, structure or installation under the jurisdiction of India.
 - Special circumstances where operator is not liable for nuclear damage.
 - Maximum liability prescribed.
 - Limitation period on right to claim compensation.
 - Requirement of insurance policies.
 - Exclusive jurisdiction to award compensation with the Central Government.
 - Establishment of a Nuclear Damage Claims Commission.

Standing Committee Report:-

- Committee held thirteen meetings from June to August 2010 to hear various government, non-government organizations and concerned Ministries on the various aspects of the Bill.
- NGO's/Trade Unions: Insurance should be made mandatory for all operators; right of recourse may be used only after operator pays damages; period of 10years to make a claim was considered too short.

Standing Committee Report:-

- Ministry of Finance: operator should have bulk of the responsibility; government's liability should be quantified; burden sharing should be based on an exact formula; incentivise/encourage the practice of highest international safety standards.
- Ministry of Home Affairs: need for inserting meanings of terms like armed conflict, hostilities, civil war, insurrection, an act of terrorism.
- Ministry of Environment & Forests: define scope of environment or adopt as defined under Environment Protection Act 1986; time limit for making claims should be revisited.
- Ministry of External Affairs: domestic civil nuclear liability regime in India would help in realizing the potential for nuclear cooperation with various countries.
- Ministry of Power: operator and government appear to be the same entity under the Bill which would have a bearing on liability sharing; time period for notification of nuclear incident needs to be reduced.
- Ministry of Defense: absolute/fool-proof protection for nuclear assets cannot be guaranteed.
- Ministry of Health: Hospitals are not equipped to deal with a system to handle such large-scale emergencies resulting from nuclear incidents- hospitals should have trained staff and doctors.

Standing Committee Report:-

- Observations and Recommendations of the Committee:
 - The Bill being a domestic legislation should reflect Indian interests.
 - Provisions of the present legislation should be made in consonance with International Conventions.
 - There will be no private operator of Nuclear Installations.
 - Loss of life or personal injury includes immediate and long term health impact to a person.
 - Maximum amount of liability- Rupee equivalent of three hundred million Special Drawing Rights or as notified by the Central Government.
 - No fault/ Strict Liability on the operator and maximum liability of Rupees 1.500 Crores on such operator- government only increase the said amount.
 - Concept of Mens rea, in compensation cases, is grossly inadequate and misplaced- Clause 17 removed the concept.
 - There should be a clear-cut liability on supplier in case of defects.
 - Period of claims in case of personal injury may be increased to 20 years.
 - Right to appeal to the High Court and Supreme Court in case of non-satisfaction with award by Claims Commissioner.

Japanese Liability Law- 1961

Act:-

- Section 1 states purpose “Protect person suffering from nuclear damage”, “sound development of Nuclear Industry”, “establishing the basic system regarding compensation in case of nuclear damage”- **contradiction- not in public interest**
- Act is lopsided and makes nuclear operator solely liable- See Part II Section 4.
- Liability of operator under Section 4 is unlimited (only plausible exception being natural disasters).
- No supplier liability- Section 5 i.e. right to recourse is a dead-letter in light of Section 4

Conclusion:-

- The 1961 Act is out of sync with human rights considerations and the need of the hour.
- It is widely believed that supplier liability is an essential pre-requisite given the Japanese experience
- There is a need to amend the 1961 Act particularly Part II and provide for supplier liability.
- Advantages of introducing Supplier Liability:
 - Incentivize safety
 - “Good Business sense”
 - USA, Russia and France (the “Trinity”) would divert its resources from resisting the move to strengthening safety features
 - Balance between profit motives and human rights principles