



**Centre for
Legislative Research
and Advocacy**

CLRA Policy Brief for Parliamentarians

**Civil Liability for Nuclear Damage Bill 2010:
How Civil and How Liable?**

INTRODUCTION

The Civil Liability for Nuclear Damage Bill 2010 will signify India's step into the international nuclear arena. The Bill outlines the terms of domestic liability, an integral piece in gaining not only admission to international nuclear conventions, but also the confidence of investors. With the passing of this bill, India hopes to attract investors to the country's budding nuclear program. Ultimately the plan is to derive 25% of India's electricity from nuclear power by 2050.¹

However, the Bill has faced immense controversy, due to the sensitivity of past accidents such as the Bhopal gas leak and concerns over its efficacy at addressing certain imperative questions. The Bill now stands at a critical juncture, as India's Parliament faces pressure on the international stage to pass some form of legislation addressing nuclear liability. Without a domestic law outlining liability, India cannot gain entrance into global conventions on nuclear trade.

As a Parliamentarian, you are facing both internal and external pressure to pass this bill. There is the external pressure from international companies, which wish to enter the Indian market but require the Bill in order to apply for insurance. Additionally, there is the pressure of foreign governments, some of which have made agreements and exceptions for India in order to pass legislation on equipping India with technology and supplies.

However, it is necessary that as a representative of India's people you take an intimate look at the Bill's clauses and understand the risks, the costs, and the repercussions that India and its citizens will absorb at the passing of the Bill. What this policy brief will serve to do is highlight the most compromising sections of the Bill, provide alternative examples, from other countries and present policy recommendations on how next to act.

The Bill has parts that are of significant concern; presently it institutes an ambiguous system that inadequately protects India and its citizens in case of calamity. The on-going litigation surrounding the Bhopal gas leak has exposed the shortfalls on the recourse and compensation process. That experience has shown the necessity in drafting a bill that denotes clear liability. Yet despite its major shortfalls, the Bill can be salvaged with amendments—but only if Parliamentarians are earnestly willing to attack the problematic sections, ask the controversial questions, and push for what is in the best interest of their constituents.

The passage of this bill will set a standard: whether

India will create its own development path formulated out of the necessities of its people and the state, or whether it will succumb to international pressure and the interests of multinational corporations at the cost of its own interests. This policy brief seeks to provide the information needed to help Parliamentarians make well-informed decisions on the Civil Liability for Nuclear Damage Bill 2010.

What does the Civil Liability for Nuclear Damage Bill 2010 Propose?

The Bill proposes establishing several key points: providing a cap for level of compensation, denoting responsibility to specific parties, setting numeric bars for liability insurance, and creating authoritative bodies to assess claims and distribute compensation in the case of nuclear damage.

PROPONENTS OF BILL

The main proponents of the Bill advocate that the Bill will strengthen India's development on four fronts:

1. It will increase India's ability to produce energy and electricity.
2. It will develop India's defence technology.
3. It will allow for advancements in India's space program.
4. It will stimulate global interest and investment in India.

Spotlight: Atomic Energy Commission

1. Some form of liability laws specific to nuclear accidents is necessary. Currently, neither the Indian Atomic Energy Act nor the Environmental Protection Public Liability Insurance Act, 1991 has jurisdiction over accidents due to radioactivity.
2. It will be easier to reconcile India's stance on nuclear technology with the global Convention on Supplementary Compensation for Nuclear Damage once there is a national legislation in place.²

OPPONENTS OF BILL

There are concerns that the Bill inadequately addresses issues raised from past accidents such as Bhopal and current situations such as the BP Gulf of Mexico spill. Significant concerns include the inadequate monetary cap, the push for operator liability over any supplier liability, and the implications that multinational companies such as

DOW or individuals hold neither responsibility nor assume liability in the event of an accident.

Primary concerns include:

- **The Bill is discriminatory, as it will let foreign suppliers escape liability.**
- **The inadequate liability cap amount means that it will be taxpayers' rupees that pay the remaining compensation if damages exceed Rs. 500 crore.**
- **The Bill will allow future accidents resembling Bhopal to occur without adequate repercussions.**
- **The inadequate system of recourse means victims will have difficulty receiving compensation.**

Spotlight: The Left and BJP

1. The cap is inadequate in the case of a nuclear accident.
2. Liability is transferred to the Government.
3. There is no mention of supplier's liability.³
4. The Bill is "illegal" and "unconstitutional."⁴

BJP spokesman: "The government should withdraw the nuclear liability bill. The aim of the Bill is to please Americans. The Bill is not for the people of India."⁵

CONTROVERSIES OF BILL

Below are clauses that are of the most concern to opponents of the Bill. This section will (1) define the clause and the reasons presented by proponents, (2) point out the primary weakness in the clause, (3) provide contrast by showing another country's approach to the issue at hand, and (4) recommend an amendment that the government should make in regard to India's best interest.

● Clause 6

The maximum financial liability of each nuclear accident has been set at the rupee equivalent of 300 million Special Drawing Rights, which equals \$458 million. One incentive to set the amount of financial liability at the minimum is because any insurance premium paid by the supplier or the operator will add to the overall cost of business. This in turn means that it will cost the government more money to set up the plant, as well as cost the public more to buy the electricity.⁶ A second incentive is that following the Convention on Supplementary Compensation (CSC) for Nuclear Damage a country is eligible for international funding in the case of an accident – but only if its cap sits at 300 million SDR and the costs of an accident end up exceeding that amount.

CON: This cap is inadequate for a nuclear disaster. Beyond this amount victims will receive no compensation.

CONTRAST: Refer Chart

AMENDMENT: The financial liability is inadequate in covering the damages in the case of a nuclear accident. The amount should be increased, or another source should be added on in the case that the cost of damages exceed the cap.

Chart

U.S.	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. ⁷
France	91 million Euros per nuclear plant.
Russia	A domestic nuclear insurance pool helps cover liability amounts up to \$350 million. ⁸
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 placing absolute liability on operator. ⁹
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. ¹⁰
U.K.	140 million pounds for each major installation, with the operator responsible up to that amount. (ibid.)
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. (ibid.)
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. (ibid.)
Czech Republic	Requires each reactor to have insurance cover of 296 million Euros. (ibid.)

● Clause 7

Expands on the liability of each party defined in Clause 6: the maximum liability of an operator for each nuclear accident is set at Rs. 500 crore, with the Indian Government liable for damages exceeding that amount. The reason that liability lies with the operator is that the UN-adopted Convention on Supplementary Compensation makes the operator of the nuclear installation – and not the suppliers – liable in the event of an accident. This Bill is a prerequisite for India to become a part of the Convention. (ibid.)

In addition, proponents of this clause say that it is to protect private companies that may be deterred from entering the Indian nuclear market over the possibility that in the event of an accident, liquidation of all assets would still prove insufficient at covering the amount required for compensation.

CON: As the operator is a government owned facility, all payments will come entirely from the government – meaning that it will come from Indian taxpayers.

CONTRAST: Refer Chart

AMENDMENT: The executive and the legislature need to come to a consensus on the additional resources for compensation in the case that the total compensation exceeds maximum liability amounts covered in the Bill.

- **Clause 17**

Allows only the operator to sue manufacturers and suppliers for negligence in case of nuclear disaster.¹¹

CON: Victims can only sue the operator, and not the manufacturers and suppliers. However, in India the operator will be a government owned facility. Therefore if victims sue the government and receive monetary compensation, the money will come from fellow taxpayers.

CONTRAST: The Russian Federal Act on Atomic Energy does not impose a limit upon the operator's right of recourse.¹²

CONTRAST: Germany allows persons other than the operator to be liable for the damage, and allows victims to sue suppliers for fault-liability and receive compensation beyond what the operator pays. (ibid.)

AMENDMENT: A clause needs to be added detailing supplier liability, or victims should be allowed to sue both suppliers and operators depending on where the issue of negligence lies.

- **Clause 18**

Limits the right to claim compensation for any nuclear damage at 10 years from the date the accident is notified.

CON: Using past accidents as reference, 10 years is too limited a time frame to assess the full extent of damages from a nuclear accident. The long-term health effects of an accident may not be known until after 10 years, and research and studies on long-term damage and illnesses can take more than 10 years to be conducted and published.

CONTRAST: In comparison to other nuclear conventions, the Vienna and Paris conventions allow for a 30-year claim period.

AMENDMENT: A period of 20-30 years would be a more adequate time frame. The 10-year limit should be increased so that people are given the opportunity to ask for compensation once post-accident studies have had an opportunity to be conducted.

- **Clause 35**

Civil courts have no authority on nuclear accident claims. Trials will go to the Nuclear Damage Claims Commissions, and be adjudicated by the Claims Commissioner appointed to each prescribed 'zone.'

CON: Decision of the Claims Commissioner on compensation for victims cannot be appealed, even at the High Court.

CONTRAST: In comparison, in the U.S. the Price Anderson Act allows lawsuits and criminal proceedings to go under the U.S. Civil Courts. According to an expert, the U.S. system "allows tort claims as well as an unrestricted right of recourse for the operator," giving the operator a chance to sue the supplier for the mishap. (ibid.)

AMENDMENT: A more comprehensive system giving victims the right of recourse should be established. Victims should also be allowed to sue in civil courts, rather than make claims to a commission, which under Clause 38 is permitted to be dissolved even in the event that there exist pending cases. The judiciary should have authority on these cases, rather than a 6-person commission.

RECOMMENDATIONS FOR BILL

The current Civil Liability for Nuclear Damage Bill 2010 inadequately looks at issues of critical importance. This policy brief brings those issues to the forefront, and presents the controversies regarding specific clauses in the Bill. As Members of Parliament, your participation in the drafting and passing of the Bill will shape India's future on nuclear technology. Here are a few recommendations for improving the Bill:

- **Denote Absolute Liability**

Clause 5 in the Bill provides for circumstances where the operator will not be liable for any nuclear damage, yet subsequently fails to denote the party that will be responsible. Clauses such as this will become problematic when victims try to find recourse and are unable to attribute liability or responsibility to any party. What Clause 5 reveals is a bigger issue: the Bill's failure to attribute absolute liability. Whether this should be with the government, the operator, or the supplier, one party needs to ultimately hold liability or at the very least be responsible for dealing with the pertinent issues that may arise.

- **Create a Straightforward and Functioning System for Victims to Find Recourse**

This system should allow victims to sue in civil court. Suppliers and operators can be liable, but victims need channels to attribute responsibility and to receive compensation. In addition, Clause 3(1) specifies that the accident be reported within 15 days of its occurrence. However, it fails to address the situation of a notification occurring after 15 days, and where does the liability lie if such a situation were to occur? In such a case, will victims still be able to approach the Claims Commissioner? These loopholes and hypothetical situations need to be addressed in order to create a comprehensive legal framework.¹³

- **Extend Time Limitations**

Clause 18 of the Bill allows a period of 10 years for the right to claim compensation. This should be extended to 20 to 30 years so that damages from an accident have time to arise and be assessed.¹⁴

- **Address Inadequate System of Oversight**

According to the qualifications outlined in Clause 10(a)(b), the Claims Commissioner can't be a practising lawyer with only 10 years of experience. It is necessary that other provisions be provided in order to put in position an individual qualified to handle nuclear accidents. There should also be more stringent qualifications for the experts who compose the Claims Commission. In addition, the

Commissioner is not required to report everything in the case of an accident, and the Bill should be amended to require that he or she do so.¹⁵

- **Establish Institutions Equipped to Handle Accidents**

There is no system in place capable of handling the aftermath of a nuclear accident, and it is necessary that some sort of governmental organization be established and be given responsibility before India can safely proceed with nuclear technology.

- **Increase Liability Cap**

Past nuclear events like the Chernobyl Disaster or the Three Mile Island incident have shown that an accident of such scope can cost billions in damages. The current cap needs to be raised to a more realistic amount, and the government needs to bear that liability.

- **Clarify the Bill; Address the Vagueness of Clauses**

The Bill is riddled with ambiguities. As a result, the Bill loses its operational integrity as it leaves adherence and enforcement of the entire Bill at the government's discretion. For example, terms such as "nuclear damage" in Clause 2(F) need to be more clearly and extensively defined. (ibid.)

- **Address Issue of Supplier Liability**

Clause 17(a) states that a foreign supplier can be liable if a clause is included in a private contract between the supplier and the operator. The Bill needs to provide a blanket clause that specifically details the liability on a supplier. A point of concern is Clause 46, which fails to mention supplier liability in any form, and only mentions the operator.

- **Demand More Research**

More research is needed on the costs of cleaning up a nuclear plant accident. For example, Canada produced a study showing that it could cost \$250 billion to clean up a nuclear accident.¹⁶

Current Status

The Civil Liability for Nuclear Damage Bill, 2010 was introduced in the Lok Sabha on May 7, 2010. The Bill was subsequently referred to the Department-related Parliamentary Standing Committee on Science and Technology, Environment & Forests on May 13, 2010 for examination and report. In order to have wider

consultation, the Committee invited memoranda containing suggestions/views/comments of experts/institutions/organisations interested in the subject matter of the Bill. The 31-member Committee will submit a report to the Parliament after hearing on the depositions, and thereafter clause by clause deliberations in the Committee.

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