

PARLIAMENT OF INDIA

RAJYA SABHA

212

DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE ON SCIENCE & TECHNOLOGY, ENVIRONMENT & FORESTS

TWO HUNDRED TWELFTH REPORT ON "THE CIVIL LIABILITY FOR NUCLEAR DAMAGE BILL, 2010"

(PRESENTED TO THE RAJYA SABHA ON 18TH AUGUST, 2010)
(LAID ON THE TABLE OF THE LOK SABHA ON 18TH AUGUST, 2010)

RAJYA SABHA SECRETARIAT
NEW DELHI
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**COMPOSITION OF THE DEPARTMENT-RELATED PARLIAMENTARY
STANDING COMMITTEE ON SCIENCE AND TECHNOLOGY,
ENVIRONMENT AND FORESTS (YEAR 2010)**

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RAJYA SABHA

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3. Shri Anil H. Lad
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LOK SABHA

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14. Shri A. Ganeshamurthi
15. Shri D.V. Sadananda Gowda
16. Shrimati Kaisar Jahan
17. Dr. Charan Das Mahant
18. Shri Jayaram Pangi
- @ 19. Shri Arjun Ram Meghwal
- @ @ 20. Shri Balakrishna K. Shukla
21. Shri Gajendra Singh Rajukhedi
22. Shri S.S. Ramasubbu
23. Shri Francisco Sardinha
- # # 24. Shri P.C. Chacko
25. Dr. Rajan Sushant
26. Shri Pradeep Tamta
27. Shri Bibhu Prasad Tarai
28. Shri Mansukhbhai D. Vasava
29. Prof. Ranjan Prasad Yadav
30. Shri Akhilesh Yadav
31. Shri K.C. Singh Baba

* Nominated w.e.f. 14th June, 2010

@ Nominated w.e.f. 21st June, 2010

@ @ Nominated w.e.f. 21st June, 2010

\$ Nominated w.e.f. 22nd July, 2010

Nominated w.e.f. 4th August, 2010

** Nominated w.e.f. 9th August, 2010

SECRETARIAT

Smt. Agnes Momin George, Joint Secretary
Shri Alok Chatterjee, Director
Shri V.S.P. Singh, Joint Director
Shri Girija Shankar Prasad, Assistant Director

Preface

I, the Chairman of the Department-related Parliamentary Standing Committee on Science & Technology, Environment & Forests, having been authorized by the Committee to present the Report on its behalf, present this Two Hundred and Twelfth Report on 'The Civil Liability for Nuclear Damage Bill, 2010'.

2. In the meetings of the Committee held on 8th, 15th, 16th, 23rd & 24th June, 2010, 13th, 14th, 21st and 27th July, 2nd, 3rd, 5th and 10th August, 2010; the Secretaries of the Ministries/Department of Atomic Energy, Finance (Departments of Financial Services and Department of Expenditure), Home Affairs; External Affairs; Power; Law & Justice (Legislative Department & Legal Affairs); Food & Public Distribution; Water Resources; Environment & Forests; Health & Family Welfare; Labour & Employment; Agriculture; Defence besides various Trade Unions, experts, organizations, non-governmental organizations; tendered oral evidence on the various aspects related to 'The Civil Liability for Nuclear Damage Bill, 2010'.

3. The Committee expresses its thanks to the Officers of the Ministries/Departments of Government of India and experts/representatives for rendering their valuable views/clarifications sought by the Members of the Committee.

4. In the meeting held on 17th August, 2010 the Committee considered the draft report and adopted the same.

NEW DELHI;
18, August, 2010

Dr. T. Subbarami Reddy
Chairman,
Department-related Parliamentary Standing
Committee on Science & Technology, Environment & Forests.

REPORT

The Chairman, Rajya Sabha, in consultation with the Hon'ble Speaker, Lok Sabha, referred* 'The Civil Liability for Nuclear Damage Bill, 2010'(Annexure-I) as introduced in Lok Sabha on 7th May, 2010 and pending therein, to the Standing Committee on Science & Technology, Environment & Forests for examination and report.

Background and Need for the Bill:

The Department of Atomic Energy through a background note on 'Civil Liability for Nuclear Damage Bill, 2010' submitted to the Committee gave an outline for the need of a Liability Bill, summary of which is as follows:

(a) The principal objective of the 'Civil Liability for Nuclear Damage Bill, 2010' is to provide for prompt compensation to the victims of a nuclear incident. While making the design, and during construction and operation of nuclear power plants every care is taken to ensure safety of the plant, public and the environment. However, in the unlikely event of a nuclear incident or accident, there may be damage to individuals, property and environment on a large scale. Further, the geographical scope of damage caused by a nuclear accident may not be confined to national boundaries and it may have trans-boundary effects.

(b) At present, nuclear power plants and facilities in India are owned by the Central Government or its Public Sector Undertakings. Therefore, any incident

* Rajya Sabha Parliamentary Bulletin Part II dated the 13th May, 2010.

or accident that happens in these installations, and the liability issues arising therefrom, are the responsibility of the Central Government.

(c) It is also important to bear in mind that the nuclear industry in India is growing and as a result of the steps taken particularly in the recent period, it is expected to form an important part of the energy-mix of the country. Recent developments including the decision of the Nuclear Suppliers Group (NSG) of 8 September 2008 has given India the possibility of providing for additionality to the indigenous programme by setting up nuclear power plants in cooperation with major international vendors. This would mean more opportunities for Indian suppliers including in the private sector and they would increasingly be in a position to supply items for nuclear power plants being set up both through indigenous efforts and also in cooperation with foreign vendors. A transparent and predictable liability regime would help domestic nuclear equipment manufacturing industry to develop and grow.

(d) At the international level there are four instruments for nuclear liability i.e. the 1960 Paris Convention, 1963 Vienna Convention, 1997 Protocol to Amend the Vienna Convention, and 1997 Convention on Supplementary Compensation for nuclear damage. Each of these conventions are based on the following basic principles:

- i. Channeling of liability to the installation operator,
- ii. Absolute liability
- iii. Liability limited in amount
- iv. Liability limited in time

- v. Include a single competent court to adjudicate claims
- vi. Compulsory financial security, and
- vii. Non-discrimination based on nationality, domicile or residence

(e) India is not a party to any of the nuclear liability conventions mentioned above. Indian nuclear industry has been developed within the context of a domestic framework established by the Atomic Energy Act, 1962. There is no provision in this Act about the nuclear liability or compensation for nuclear damage due to nuclear accident or incident and no other law deals with nuclear liability for nuclear damage in the event of nuclear incident. It was, therefore, considered necessary to enact legislation to provide for prompt compensation to the victims of a nuclear incident. Accordingly, the Civil Liability for Nuclear Damage Bill, 2010 has been drafted.

Following are the other highlights of the proposed legislation:-

- The provisions of the Act shall apply to nuclear damage suffered in the territory of India or in or over the maritime areas beyond the territorial sea of India or in or over the exclusive economic zone of India or on board or by a ship flying the flag of India or on board or by an aircraft registered in the territory of India or on or by an artificial island, installation or structure under the jurisdiction of India.
- The operator of the nuclear installation shall be liable for any nuclear damage resulting from nuclear incident occurring in his nuclear installation and the consignor of a nuclear material shall be deemed to be the operator and shall be liable for any nuclear damage during the transport of such material;
- Under special circumstances, the operator of a nuclear installation shall not be held liable for nuclear damage where the accident is due to a grave natural disaster, or act of armed conflict, or hostilities or insurrection or act of terrorism.
- The maximum amount of total liability for a nuclear incident shall be up to rupee equivalent of 300 million Special Drawing Rights and the liability of the operator shall be limited to rupees 500 crore per nuclear incident;
- The Central Government shall be liable for nuclear damage where such damage occurs in any nuclear installation owned by the Central Government; and where the liability is in excess of the operator's liability;
- The right to claim compensation gets extinguished after ten years from the date of notification of nuclear incident;
- Every operator shall take insurance policy or financial security for an amount not less than the amount of his liability;
- Every nuclear incident shall be notified by the Atomic Energy Regulatory Board
- Where the Atomic Energy Regulatory Board is satisfied that the gravity of threat and risk involved in a nuclear incident is insignificant, it shall not be required to notify such nuclear incident.
- Whoever suffers nuclear damage shall have a right to claim compensation and the Claims Commissioner appointed by the Central Government shall have exclusive jurisdiction to award compensation.

- Where the amount of compensation could exceed the amount of operator's liability or it is in the public interest to provide special measures for compensation, the Central Government may establish a Nuclear Damage Claims Commission and all claims cases would be transferred to such a Commission and the Commission shall make the awards in all cases pertaining to nuclear damage;
- The Commission shall have a Chairperson and other members not exceeding six;
- The Chairperson shall have the financial and administrative powers of the Commission;
- The Central Government shall have power to dissolve the Commission.

So far as the international legislation concerning nuclear liability laws is concerned, the Committee was also informed that as far as Convention on Supplementary Compensation (CSC) which has been developed under the auspices of International Atomic Energy Agency (IAEA), provides for relations among all countries that accept the basic principles of nuclear liability law and an international fund to compensate for nuclear damage in the event of nuclear incident. CSC envisages a two tier system with respect to the amount of compensation e.g. Installation State to ensure availability of the amount of compensation (at least 300 million Special Drawing Rights), and an International Fund for which all contracting parties are obliged to contribute the amount based on a formula for calculation of contribution.

Historical Background of the Bill

Prof. V.B. Coutinho, former Vice-Chancellor, Gulbarga University, and presently Director, Legal Studies, Directorate of Legal Education, Bar Council of India who deposed before the Committee informed that the project on “A critical and comprehensive study of the nature and extent of state responsibility arising out of nuclear incidents/accidents within national boundaries and beyond” **was started in 1999** with the objective of going into the various aspects of civil liability arising out of the nuclear damage. He further informed that since the number of power plants and facilities in India are owned and promoted by the union government and a government undertaking, any accident or incident arising in these installations and the legal issue arising therefrom, naturally becomes a matter of state responsibility or liability. Hence it was proposed in the study to concentrate on determining the nature and extent of this responsibility in the background of the development in the field of international law and also prepare a domestic legislation.

Initiatives taken by the Committee for the examination of the Bill

The Committee held its first meeting with the Secretary, Department of Atomic Energy and the Chairman & Managing Director, Nuclear Power Corporation of India Limited and other senior officials of the Department on the 8th June, 2010, for a preliminary discussion on the various provisions of the Bill. In all the Committee held thirteen meetings (five of them full day) to hear various experts, organizations, non-governmental organizations and Secretaries of the concerned Ministries/Departments on the various aspects of the Bill on the 8th, 15th, 16th, 23rd & 24th June, 2010 and 13th, 14th, 21st and 27th July and 2nd, 3rd, 5th and 10th August, 2010.

Considering the significance of the Bill, the Committee also issued a Press Release in the national dailies and other regional newspapers on the 24th June, 2010, inviting memoranda containing suggestions/ views/ comments of experts/ institutions/ organizations interested in the subject matter of the Bill. In all 24 memoranda were received by the Committee from various organizations and individuals, etc. which were sent to the Department of Atomic Energy for their comments/observations.

The Committee also undertook a study visit to Mumbai and Chennai from 5th to 8th July, 2010 in the course of examination of this Bill. The Committee

visited the Nuclear Power Plants at Tarapur (Maharashtra) and Kalpakkam (Tamil Nadu) to have first-hand experience of the functioning of various Nuclear Power Plants, the safety parameters/measures which are in place to avoid a nuclear incident and the effect of radiation in general on the environment, flora-fauna, water in the nearby rivers/lakes/ponds and the plant and animal life. After the detailed examination during the course of the visit the Committee expressed its satisfaction at the measures which have been initiated by the Nuclear Power Corporation and the Department of Atomic Energy to avoid a nuclear incident and mitigate the affects of nuclear radiation in the areas surrounding the nuclear plants.

The Committee heard the views of a number of experts from various Institutes/Organisations/ Non-Governmental Organisations *viz.* Institute for Defence Studies & Analyses; Centre for Policy Research; The Hindu Group; Green Peace India Society; PRS Legislative Research; Delhi Science Forum, and Coalition for Nuclear Disarmament & Peace. The Committee also held wide ranging discussions with the representatives of various Industrial Organisations *viz.* Federation of Indian Chambers of Commerce and Industry (FICCI); Associated Chambers of Commerce and Industry of India (ASSOCHAM); Confederation of Indian Industry (CII) and the India Atomic Industrial Forum (IAIF). The representatives of Insurance companies both in public and private sectors namely New India Assurance Company Limited; United India Assurance Company Limited; General Insurance Company Limited; ICICI Lombard and Tata AIG also presented their views on the aspects relating to the Insurance provisions of the Bill. Bajaj Alliance was also invited to present their views before the Committee but their representatives did not appear.

The Committee also interacted with the representatives of trade unions such as the Centre of Indian Trade Unions (CITU), Bhartiya Mazdoor Sangh (BMS) and Hind Mazdoor Sabha (HMS) to know about the safety measures that are in place and also additional safety measures, if any, to be put in place to protect the workers in case of a nuclear incident and the compensation available to them. Representatives of All India Trade Union Congress (AITUC) however did not attend the meeting.

Since the consequences of nuclear and radiological incidents may have wider impact not only on human beings but also on crops, arable land/soil, bovine animals and other live stock, environment including land, water and biosphere, food and food products stored in godowns, the Committee also heard the views of all the concerned Secretaries of various Ministries/Departments of Government of India *viz.*; Ministry of Finance, Department of Expenditure; Power; Environment & Forests; Water Resources; Consumer Affairs, Food and Public Distribution; Labour and Employment; Agriculture;

Health and Family Welfare alongwith Director-General, Indian Council of Medical Research, etc to know about their opinion on the Bill pertaining to the component of the legislations falling under these respective Ministries/ Departments. The Committee also heard the views of Secretary, Department of Financial Services, Ministry of Finance; particularly on the insurance aspect of the liability amount. Apart from the above the Committee also heard the views of Secretary, Ministry of Home Affairs alongwith the Director-General, Central Industrial Security Force & Vice-Chairman, National Disaster Management Authority to know about the existing preparedness of the ministry to deal with any eventuality in case of nuclear incident and the future preparations that they require to make for speedy evacuation, safety measures/security cover to be provided to the nuclear installations, etc. Alongwith the above, the clause-wise opinion of the Secretary, Legislative Department, Ministry of Law & Justice, was also heard by the Committee.

Although, clause-by-clause consideration of the Bill had been on the agenda of the meetings of the Committee held on 5th, 9th, 10th and 11th August, 2010, however, the Committee took up clause-by-clause consideration of the draft report on the 17th August, 2010. Twenty seven Members attended the meeting on that day and adopted the report by broad consensus, except for two Members, namely, Dr. Barun Mukherjee and Shri Saman Pathak, who disagreed with some of the observations/recommendations of the Committee. The Chairman of the Committee tried to explain the position to those Members that their concerns have been taken care of in the report. Still they gave minutes of dissent, which have been appended to the report.

Views/ Suggestions of Experts from various Organisations/

Non-Governmental Organisations/Trade Unions etc.

- (i) An opinion was expressed by one of the experts that the facilities directly owned by the Central Government or Government companies are exempt from application of this clause regarding insurance, which will leave almost all facilities now operational, whether safeguarded or not, out of the Bill. This is dangerous because an accident is more likely to happen in an aging facility built long ago and will defeat the very purpose of the Bill. They were of the view that Insurance should be made mandatory as far as practicable for all operators, government or private.
- (ii) Some of the experts took exception to Clause 16(5) of the Bill which provides that every award made by Claims Commissioner shall be final and desired that appeal against the award may be permitted.
- (iii) During the deliberations of the Committee, the experts expressed a view that the Bill permits recourse against suppliers only in cases of willful acts or gross negligence and should be redrafted to provide for recourse to recover damages levied on the operator, damages to plant and machinery. It should contain provisions from product liability laws that holds the supplier liable for product liability, faulty design, faulty manufacture, negligence, etc. Further the experts were of the view that when the Clause 17 is read with Section 6, it limits the amount that the Operator can claim from suppliers to Rs.500 crores only. Some of the experts were also of the view that the Right of Recourse should be a separate clause altogether and should not be mixed with claims and awards and the operator of a nuclear installation shall be absolutely liable to pay the damages caused by the nuclear incident. It shall be his foremost duty to pay damages to those affected first and then only, he may use his right of recourse. One of the experts

argued that deficiencies in the technology of a supplier will not be propagated openly which could be discovered by the operator only during operation. Even if the supplier makes a contract with the operator, it would be in a vague and opaque language to hide his own deficiencies and would be a recipe for unending legislation.

The Committee was, however, also informed by an expert organisation that the provision granting a right of recourse against the supplier (Sub-Clause B), does not comply with international agreements of the major international conventions agreement on nuclear liability (the Paris Convention, the Vienna Convention and the 1997 CSC) which provide for recourse only if: (a) there is a written contract and (b) if the damage results from an act or omission of someone with intent to cause damage. So, a legislation providing an additional right of recourse against the supplier for a willful act or negligence could not be compliant with CSC which Government proposes to join. Moreover, wilful act is difficult to prove in the court of law.

(iv) The Committee during its deliberations came across an expert's view that a period of ten years from the date of incident is an unacceptably short period for a nuclear accident, as usually the adverse effects of internal and external radiation exposure manifest themselves often quite late and may be even after twenty years.

(v) The Committee was suggested that Clause 9 regarding appointment of Claims Commissioner(CC) and Clause 19 regarding the appointment to Nuclear Damage Claims Commission(NDCC), which apparently shows that the appointment of CC and establishment of NDCC, will be done by issuing a notification by the Government only after a nuclear incident takes place. It was also argued that Clause 19(c) also provides for special measures for speedy adjudication of claims for compensation necessary in public interest by NDCC. It was further argued that the spirit of this clause is contradicted by Clause 21, which provides that the Chairperson and Members of NDCC shall hold office for a term of three years, which is extendable by another three years if necessary. The Clause 22 provides for payment of salary and Allowances and retirement benefits of the Chairperson & Members of the NDCC and Clause 11 provides for the salary and allowances of the CC. As per the opinion of the expert, that if speedy adjudication is the spirit of Clause 19(c), then what is the justification of paying salary and allowances and other benefits to the Chairperson & Members of NDCC and CC under Clauses 22 and 11 respectively. Moreover, the justification of keeping Clause 21 in the Bill is apparently a contradiction to the spirit of Clause 19 (c) of the Bill as mentioned above.

These suggestions were considered by the Committee.

(vi) The Committee was also informed that the Clause 35 takes away the citizen's right to appeal against the award given by the Claims Commissioner or Claims Commission in case of a nuclear incident. Since the Commissioners and members of the Commission are persons taken mostly from administrative and government service background and they cannot be viewed on par with justices of High Courts or the Supreme Court. In our democracy, where the ultimate judicial responsibility rests with the Supreme Court of India, every citizen must have the right to approach the judiciary at the highest level, if need be to seek redressal.

In the same vein, the experts opined that the Bill must include a clause that the victims themselves or their representatives shall have the right to approach any court in India to seek justice if they feel the same has been denied to them through the provisions & procedures contained in the Bill. Such litigation could include cases

against the operator, his suppliers of equipment, civil constructors, designers and manufacturers of systems & equipment, etc. for compensation, over and above what has already been granted under the provisions of this Bill, for damages caused by these allied entities. The experts were therefore of the opinion that there must be provision for appeal to an appellate authority-High Court or Supreme Court, without prejudicing the immediate implementation/enforcement of the award/order by the claims commission, otherwise, it would be violation of natural justice.

These suggestions have been considered by the Committee.

(vii) The experts observed that this Clause does not specify whether such proceedings (instituted under laws other than the Bill) will be adjudicated by the Claims Commissioner or by a civil court. In view of the exclusion of jurisdiction of civil courts vide Section 35, this issue required clarification. It also fails to specify whether suppliers can be proceeded against under other laws i.e. it restricts the operation of other laws only to the operator.

These Suggestions have been considered by the Committee.

(viii) Some of the experts opined that CSC stipulates that the compensation arising out of nuclear damage made available by other CSC members can be spent only to compensate damages suffered in the territory of a "Contracting Party", namely, a country which itself has acceded to the CSC. Accordingly, if an Indian nuclear accident causes trans-boundary adverse impacts in any of the neighboring countries, the liability for compensation has to be made from the Indian taxpayers funds if no supplementary financial assistance from the CSC is forthcoming.

Some other experts also opined that CSC does not have support from many countries and only thirteen countries have signed it. The high densities of nuclear power stations in Europe could be one of the reasons for those countries pushing this convention, so that extra resources are available from international contributions.

(ix) Some experts during their deliberations before the Committee said that this Bill is mainly to favour United States of America but this is not true. Material provided by the Department of Atomic Energy and deposition of Secretary External Affairs on 15.06.2010 suggests that there is no international pressure and that the Government of India has entered into agreement with several countries such as France, Russia and USA. However, the Committee did not agree with their arguments.

Views/Suggestions of Secretaries of the various Ministries/Departments of Government of India

Ministry of Finance

The Finance Secretary while giving evidence before the committee argued that conceptually there does not seem to be a symmetrical apportionment of responsibility between the operator and the Central Government while fixing the cap of Rs.500 crores as the amount of liability under clause 6 (2), of the bill. He further mentioned that Finance Ministry would be more happy if either there is no specific cut off of Rs.500 crores or Rs.600 crores; and if it is possible to have any linkage with the kind of risk from the nuclear installation that can be quantified, it would be better. And, in any case, the operator should have bulk of the responsibility. He also argued that government's liability should be quantified in the legislation so that there is clarity on who has to bear what part of the responsibility in the event of an accident. The point of burden-sharing

between the Central Government and the operator in case of liability, it should be based on an exact formula.

The Secretary, Ministry of Finance expressed reservations over the fact that the Central Government is expected to meet the difference between the maximum amount of liability, i.e. rupee equivalent of 300 Million SDR and the operator's liability of Rs. 500 Crores. He was of the view that limiting the liability of the operator to a fixed amount of Rs. 500 Crores appears to be somewhat arbitrary and exposed the Government to substantial liabilities for the operators' failings.

Secretary, Ministry of Finance had accordingly suggested that a formula based limitation should be considered which matches the regime for the operator to the types of accidents that may occur so as to incentivise adherence to the higher safety standards; limit negligence and encourage the practice of highest international standards while providing reasonable and scientifically determined cover by the Central Government.

While further discussing the issue of insurance, Secretary, Financial services, Ministry of Finance pointed out that GIC will do the initial insurance but there is a nuclear pool available outside in other countries. CMD, GIC, who appeared before the committee argued that there are 28 pools in the world working all around and these pools are connected to mother pool, and they provide capacity to each pool as and when required. So far as India is concerned, there is no concept as such of providing nuclear liability as per legislations as well as the asset insurance for hot zone of nuclear power plant. Insurance is only provided for the cold zone where there is no nuclear reaction. He further stated that within the country capacity will be available of something about 50 million dollar, around Rs.200 crores of rupees which can be absorbed within GIC as well as the other insurance companies joining together and forming a pool. Beyond this Rs.200 crores, when it comes to Rs.500 crores or what is decided, then GIC can work out a pool providing a liability due to this nuclear accident and with the support of international insurers who become a part of this pool as such. This is the concept which goes and GIC already has pool of same amount like terrorism pool. Chairman, GIC in a subsequent depositions stated that it would be possible to have a pool of Rs. 500 Crores. On the same concept, the Secretary, Financial Services stated that insurance in the form of nuclear pool which provides liability towards nuclear accident as well as the asset liability could be provided by this pool.

Secretary, Financial Services, further argued that if insurance of 300 million SDR is done, the premium of insurance will be extremely high that is about 1.8 to 2.7 percent.

He therefore argued that any increase in premium of insurance will lead to increase in the cost of production of electricity for nuclear power. It is argued that higher the liability limit higher will be the insurance premium and subsequently higher will be the cost of electricity production.

He further argued that insurance companies are not doing insurance of hot areas. He also stated that if hot areas are also required to be insured and reinsured, it can be done because the nuclear pools in other countries do the hot and cold areas insurance and reinsurance. Now, regarding the capability of Indian insurance companies, he stated that India can build up expertise over a period of time. Once we are going to seriously enter into this area of insurance and reinsurance of the hot and cold areas, our insurance companies will certainly build up the expertise. On the issue relating to foreign insurance companies, the Secretary stated that the reinsurance with other nuclear pools cannot take

place if outside surveyors from other reinsurance companies cannot come and inspect nuclear power plants which is mandatory. Without that, no insurance or reinsurance company from abroad will be in a position to provide insurance or reinsurance.

At this stage, the CMD, GIC emphasised that the permission for inspecting the hot zone areas of a nuclear plant is important in two senses. First is that the inspectors who inspect all these hot zone plants are well versed with the intricacies of this specific line. As per his argument, these people are not only internationally acclaimed inspectors and they inspect plants on the basis of management studies, they also even work out safety features including the quality of the plants and positive features of safety and security involved in it. After the inspection, as he informed the Committee, inspectors submit a detailed report carrying effective suggestions which the plant operator can follow to preserve the safety interest of the plant.

The second point of argument what the CMD, GIC kept was that, on the basis of the report so submitted by the inspector, the plant operator can rectify any deficiency in the operation of the plant and a detailed risk analysis of the plant could be designed determining the premium part of the insurance. Therefore, ultimately, undertaking inspection is beneficial for the plant operator as it reduces the risk involved in the operation of the plant by taking all the positive measures as suggested in the report.

During deposition of Secretary, Financial Services, Chairman, Insurance Regulatory and Development Authority and Chairman and Managing Director, General Insurance Company, the Committee was informed that they can arrange insurance for any amount by seeking reinsurance from international insurance companies, provided foreign surveyors are allowed to inspect Nuclear Power Plants. Since Secretary, Department of Atomic Energy clarified that for the Nuclear Power Plants proposed to be installed in future, equipments would be purchased from foreign countries, foreign surveyors can be allowed.

The Committee is satisfied with the development.

Ministry of Home Affairs

The Secretary, Ministry of Home Affairs while commenting on the conditions in which the operator of a nuclear power plant, who could be made liable for nuclear damage, contain such terms as armed conflict, hostilities, civil war, insurrection or an act of terrorism stated that these terms have wide meanings but have not been defined in the present Bill. Therefore there is a need for inserting meanings of these terms from other laws, in Section 2 of this Bill. Otherwise, the vagueness in connotations, besides leading to situations of disputes between the operator and the Central Government make the operators negligent on observing security procedures.

Ministry of Water resources

The Secretary, Water resources was of the opinion that any nuclear incident may induce radioactive contaminations in surface, ground water bodies, and other water resources. However, he stated that the Ministry does not have any facility for testing water quality, from point of view of nuclear contamination because this work has been done by the Department of Atomic Energy. Secretary, Department of Atomic Energy responded by saying that Ministry of Water Resources has not been involved in checking and monitoring the quality of water because this job is done by the Environmental Survey Laboratories of the Department of Atomic Energy. The Secretary, Water Resources

stated that since this expertise is available in the Department of Atomic Energy and not in Ministry of Water Resources, this Bill was not sent to Ministry of Water Resources for their comments/views. He also stressed upon the need to study the impact of nuclear contaminated water on human beings, animals, plants and crops.

Ministry of Environment & Forests

Since, nuclear incident may have potential effect on environment, the Committee heard the views of Secretary, Ministry of Environment and Forests. The Committee wanted to know from the Environment Secretary as to what efforts are being made to safeguard the environment system around the nuclear power plants in case of any nuclear incident. He suggested that this Bill itself clearly recognizes that nuclear incident could cause environmental damage, but the scope of environment has not been defined in the Bill. So, it is necessary to define the scope of environment because if we define the scope of environment only then we will be able to make an assessment of the cost of measures for any remediation which will be required for the environment impaired due to nuclear incident. The Secretary, in this context, suggested that the definition of the environment as given in Environment protection Act, 1986 which is a tried and tested definition should be adopted for this Bill and suitably incorporated in the Bill in Clause 2(f) (iv).

Commenting on the Clause 18 of the Bill, the Ministry of Environment & Forests, who were consulted in the matter were of the view that the time limit of 10 years may extinguish the genuine claim of victims who have been affected by mutagenic and teratogenic changes, which may have a delayed onset and therefore suggested that the time limit may be determined in consultation with the Ministry of Health & Family Welfare and it should be computed from the date on which the cause of action for such compensation first arose, rather than from the date of notification of the nuclear accident as provided in the Bill.

Ministry of Law & Justice(Legislative Department)

While discussing Clause 4 of the Bill, the Secretary pointed out that the Section 3 (a) of the Atomic Energy Act, 1962 provides that the Central Government shall have power to produce, develop, use and dispose of atomic energy either by itself or through any authority or Corporation established by it or a Government company and carry out research into any matters connected therewith. He further stated that in this Bill the expression “either by itself or through any authority or corporation established by it, or a Government company” has not been provided.

While contesting the legal position of clause 35, Secretary, Legislative Department deposed before the Committee by saying that whenever a particular specialized body or a tribunal adjudicate, in many of the Acts the appeal is provided to the High Court or the Supreme Court. The difference between the appeal and the writ petition is that writ petition can be dismissed *in limini*, whereas, the right of appeal cannot be dismissed and has to be adjudicated. He further mentioned that whenever any legislation is brought and any special mechanism is created because there is a lot of pendency in the courts, for the adjudication of the cases, either tribunal or a commission is created for the purpose of the adjudication of a particular matter being technical in nature. So, for that purpose, a tribunal or a commission is created, this is the usual clause which is found there which debars the jurisdiction of the civil courts. So far as the

jurisdiction of the High Courts and the Supreme Court under articles 226 or 32 of the Constitution is concerned, nobody can debar that. Anybody can go to the High Court and Supreme Court, and this is the usual provision which is found.

The Secretary, Legislative Department further repeated his argument by saying that no separate clause is necessary to amplify the fact that appellate jurisdiction always remains in-vogue vide articles 226 and 32 in the Constitution since it finds a place in a large number of statutes and it has been existing for a very long time. However, he agreed to the fact that if the Committee insists, a separate provision invoking the application of judicial review could be incorporated in a suitable place in the legislation.

Ministry of External Affairs

The Committee enquired from the Foreign Secretary that whether there are other considerations apart from the legal requirements that necessitated the Bill. She informed that since the Government is operating within the ambit of international agreements and on the basis of certain principles the nation should have provisions of the nuclear liability Bill. She further informed that the Bill needed to be seen in the background that currently there is no regulatory mechanism or legislative provision in India for dealing with claims of damages arising out of a nuclear incident. Moreover, domestic civil nuclear liability regime in India would help in realising the potential for nuclear cooperation with various countries.

Ministry of Power

The Secretary, Ministry of Power apprised the Committee about the implications and importance of joint-venture projects to be undertaken between the National Thermal Power Corporation Ltd.(a Government PSU) and the NPCIL, as regards nuclear power production in India. He was of the view that operator and Government seem to be the same entity as per the Bill, however, at the same time there should be a clear distinction. In his view there is a bit of blurring between these two components and it would have its bearing on the liability sharing between them in case of nuclear incident. He also referred to the Clause 3 of the Bill, wherein the notification regarding the occurrence of a nuclear incident is to be issued within 15 days by the AERB, and as per the opinion of the Power Secretary, the nuclear power station incharge/ director will immediately declare nuclear emergency, and forthwith the disaster management plan will start, without waiting for the publication of the notification and the 15 days time-period also needs to be reduced.

Ministry of Consumer Affairs, Food and Public Distribution (Department of Food & Public Distribution)

The Secretary, Department of Food & Public Distribution, while explaining the functioning of her Ministry, emphasized the ill-effects of nuclear radiation on food items and its subsequent repercussions on human health and safeguards to be taken to prevent nuclear contamination of food during radiological accidents. She further mentioned although radiological damage to food items may fall within the generic definition of the property as mentioned in Clause 2f(ii) of the Bill, it would be better if the said Clause could provide a separate definition food grains alongwith of storage of foodgrains. Additionally she also mentioned that safety norms, distance, location and operating procedure, which should be defined in the Bill during the construction of the warehouses for foodgrains storage to be followed, near a nuclear facility. She also mentioned about

the establishment of laboratories for the standard testing of food articles to ascertain radiation levels.

Ministry of Health and Family Welfare

The Secretary, Ministry of Health and Family Welfare while deposing before the Committee mentioned that her Ministry is nowhere to meet an eventuality that may arise out of nuclear and radiological emergencies. She further mentioned that while drafting the Bill the Dept. of Atomic Energy did not consult them. Since the response system to deal with any kind of emergency of such type, the hospitals are not well-equipped, it is natural that mortality and morbidity due to multiple burn, blasts, radiation injuries and psycho-social impact could be on very high scale and medical tackling of such a large emergency could have enough repercussions in the nearby areas of radioactive fall out. She also mentioned that in the entire Bill, there is not a single clause which speaks about taking health care during radiological emergencies. It reflects only about payment of compensation due to health impacts of such radiation. She suggested while setting up nuclear plants consideration may also be given to the fact that there should be hospital having trained doctors near such establishments and arrangements should also be made for free treatment of people who are affected by serious nuclear fall out.

Ministry of Agriculture

The Secretary, Agriculture mentioned before the Committee that the disaster management structure in the country is oriented in such a manner that emergencies arising out of floods, earthquakes and droughts could be managed in an efficient manner. However, on the other hand, unfortunately the disaster management structure in the country, as per his opinion, is not well tailored in meeting radiological fall out and more unfortunate to mention that even educated section of the people is not well aware about the implications of a serious nuclear disaster. He therefore, felt that more public awareness needs to be built in respect of nuclear disaster and its hair-raising impact on biological population. He further pointed out that as a consequence of a nuclear disaster of the Chernobyl type, it is quite possible that agricultural crops around 30 to 100 kms. from the site of the incident could be wiped out total. This may affect seriously the biodiversity of the crops in the radiation area and the farmer may lose their traditional variety of crops. In this connection he mentioned that the National Bureau of Plant Genetic Resources and Gene Bank in the country who are keeping a sample of each variety of crops can preserve these varieties which could be planted for further production if a variety of crops is entirely lost due to radiological emergency. He however, mentioned that there should be suitable rules, regulations and guidelines and compensation model for agricultural damage that could be inserted at an appropriate place in the legislation which may work after a radiological eventuality takes place. Secretary, Department of Atomic Energy, however, stated that the Reactor at Chernobyl did not have a containment, while old reactors in India have containments and, therefore, Chernobyl type incident can never take place in India.

Ministry of Labour and Employment

Secretary, Ministry of Labour and Employment while referring to Clause 5 (1)(i) which provides for non-liability of operator for any nuclear damage arising out of a grave natural disaster of an exceptional character pointed out that grave natural disaster should

not include earthquakes or floods. He advised the Committee that if nuclear plant is placed in a seismic zone, it should be properly designed to withstand earthquake of severe character. The word natural disaster is too general.

He further mentioned that concept of absolute liability of the operator in case of a nuclear damage whether it is on worker or someone else should be invoked in the Bill.

The Secretary, while referring to Clause 39 (1) of the Bill, drew the attention of the Committee that no specific monetary quantum has been mentioned in regard to the fine to be imposed under the chapter on offenses and penalties. He therefore, suggested that specific quantum of fine in monetary terms should be defined in the Bill. He further mentioned about Factories Act wherein under the chapter for Hazardous Processes, the maximum period of imprisonment is 10 years. Since handling nuclear equipments could be equally hazardous the term of imprisonment in the chapter on Offenses and Penalties under Clause 39(1) could be increased to at least 10 years as on the line as mentioned in Factories Act instead of 5 years, as currently mentioned in the legislation.

Ministry of Defence

The Defence Secretary, who also appeared before the Committee, mentioned that in peace time there are different levels of protection cover of various civilian assets in the country, which are called 'vital assets' and also include nuclear assets as per their very nature. Under different layers of protection, nuclear assets including nuclear installations are being protected through Defence. However he admitted that absolute and fool proof protection cannot be guaranteed for any nuclear or other assets in the country during peace or war.

The Director General, Coast Guard also mentioned that since maritime security is a matter of great concern and since some of the nuclear installations are located along the coast, the co-ordination, operational and capacity building assets have been emphasized to improve coastal security and radars have been put up along the coast, along with the introduction of coastal or marine police for patrolling vulnerable points. A number of joint operational exercises with the navy have taken place in pursuit of coastal security.

In the meeting held on 5th August, 2010, Secretaries of the Ministries of Health and Family Welfare, Agriculture, Labour and Employment, Environment and Forests appeared before the Committee with formulations of changes suggested by them in the Bill. These formulations were discussed with the Secretary, Department of Legal Affairs as well as Legislative Department and the Committee considered these formulations and agreed to incorporate some of the suggestions.

Observations and Recommendations of the Committee

It has been the unanimous opinion of the Committee that the Bill being a domestic legislation should reflect Indian interests. Accordingly, it has been the attempt of the Committee to ensure that the Bill is in line with India's expectations in terms of adequacy and promptness of payment of compensation and also to enable Indian nuclear industry to grow by not subjecting it to excessive burden. At the same time, it has also been the objective of the Committee to see that the provisions of the present legislation can be made in consonance with the International Convention, so that as and when needed India can join it for availing

of benefits flowing from this International Convention finalised under the aegis of the single universal organisation for nuclear cooperation – IAEA.

When the Committee inquired from the Secretaries of Ministries/Departments of Government of India who appeared before the Committee as to whether the draft nuclear liability Bill was referred to them for their views/comments, some of them viz. Ministries of Health & Family Welfare, Agriculture, Labour & Employment, Food & Public Distribution, etc. replied in the negative. The Committee is of the opinion that Government must have sought the opinion of Ministries which are even distantly related to any provision of the legislation. The Committee, therefore, recommends that in future Government should consult all such Ministries/ Departments which are even remotely concerned with the provisions of a proposed legislation.

The Committee after taking into account the views/ suggestions of all experts and various Secretaries of the Ministries/ Departments of Government of India, who appeared before the Committee, observes the following clause-wise views and recommendations that could be incorporated in the Bill:

Clause 1

Some of the witnesses who appeared before the Committee expressed their apprehensions that private operators may enter into nuclear energy sector sooner or later. It was also stated by them that Government should not give subsidy to the private nuclear operators. The Committee has taken their suggestions into account. **The Committee after hearing the views of the Secretary, Legislative Department also, recommends that a new Sub-clause 3 (A) should be inserted into Clause 1 after Sub-clause (3)(e) which may read as follows:-**

“The Bill applies only to nuclear installations owned and controlled by the Central Government either by itself or through any authority or corporation established by it or a government company, as defined in the Atomic Energy Act, 1962.”

This will make the position clear that there will be no private operator of nuclear installation.

Clause 2

Secretary, Ministry of Health & Family Welfare suggested that the meaning of nuclear damage needs to be expanded so as to include loss of or damage to health of a person. **The Committee considered the suggestion of the Health Secretary and recommends that Sub-clause f (i) of Clause 2 of the Bill should be read as follows:-**

Loss of life or personal injury (including immediate and long term health impact to a person).

The Committee after hearing the views of the Secretary, Ministry of Environment & Forests feels that the meaning of the word ‘environment’ as assigned to it in Clause (a) of Section 2 of the Environment (Protection) Act, 1986 should be suitably incorporated in the Bill.

The Committee finds that the definition of the term 'operator' as provided in Clause 2(1) of the Bill is not clear. **The Committee, therefore, recommends that this clause may be modified as follows:-**

'Operator', in relation to a nuclear installation, means the person designated by the Central Government as per Section 3(a) of the Atomic Energy Act, 1962 as the operator of that installation.

Clause 6 (1)

The Committee thoroughly discussed the issue of maximum amount of liability in respect of each nuclear incident as provided in Clause 6(1) of the Bill. **The Committee feels that this Clause needs to be modified and recommends that Clause 6(1) may be read as follows:**

"The maximum amount of liability in respect of each nuclear incident shall be the rupee equivalent of three hundred million Special Drawing Rights or such higher amount as may be notified by the Central Government from time to time.

Clause 6 (2)

A majority of the experts who deposed before the Committee were of the view that the cap on liability of an operator to Rs. 500 crore is on the lower side and it should be increased. The Committee is also of the opinion that keeping in view the disastrous effects of a nuclear incident and the consequent loss or injury to life, damage to property, economic loss, cost of measures for reinstatement of the damages to the environment, keeping the level of liability of the operator to Rupees 500 crores seems to be inadequate. The Committee also feels that a lower amount may result in the operator marginalising the issue of safety and security of the nuclear power plant, which may lead to an incident. Since the operator holds a no-fault liability and is being held responsible for a nuclear incident, the Committee is of the opinion that it should bear a substantial cost of payment of compensation for the nuclear incident. **The Committee therefore recommends that the liability of the operator needs an upward revision from the present level of Rs 500 crores, specially keeping in view the present level of inflation and the purchase value of the Indian currency. The Committee, after considering the issue feels that the principle of no fault/ strict liability of the operator should be explicitly stated in the Bill and the amount of liability of the operator should be rupees 1500 Crores.**

The Committee feels that the further proviso to Clause 6 (2) of the Bill which gives power to the Central Government to either increase or decrease the amount of liability of the operator by notification, having regard to the extent of risk involved in a nuclear installation, is not justified.

The Committee is of the opinion that the decrease in liability cannot be accepted. The Committee, therefore, recommends that while Government may increase the amount but in no case it should decrease it.

The Department further explained that the powers to reduce the amount of liability was considered as there are many research reactors which are small and there are also other facilities such as fuel fabrication, reprocessing, transportation etc. which may not require high level of financial security. **The Committee in view of the above feels**

that if required the Government may create a separate category for such facilities based on the extent of risk involved.

Some of the experts suggested that nuclear operators could create a nuclear liability fund by charging a nominal amount in the unit energy cost in such a way that in course of time Government liability is reduced.

The Committee agrees with the above views and recommends that Clause 6 may be appropriately reframed.

Clause 10

After hearing the views of the experts in this Clause and also keeping in view the financial magnitude and the extreme scale of human tragedy that may occur from the possible nuclear holocaust that may emanate from a nuclear incident, **the Committee recommends that the compensation amount should be determined by an officer not less than the rank of Additional Secretary to Government of India or a judicial authority of a similar rank, instead of an officer of the rank of Joint Secretary in the Bill.**

Clause 17

The Committee is of the view that the implication of the word 'wilful act or gross negligence' is quite vague in the context of the present Bill. In case an incident takes place it would be difficult to prove and establish the fact that it was a wilful act or gross negligence on part of the supplier. Hence there should be clear cut liability on the supplier of nuclear equipments/material in case they are found to be defective. Clause 17(b) gives escape route to the suppliers of nuclear materials, equipments, services of his employees as their willful act or gross negligence would be difficult to establish in a civil nuclear compensation case. *Mens rea*, which is only amplifying the intent in clause 17(b), as argued by the Secretary (Legislative Department) is generally used in Criminal and taxation laws, but in compensation cases the use of this doctrine is grossly inadequate and misplaced. **The Committee therefore recommends that Clause 17 (a) may end with word "and" and Clause 17 (b) should be modified as:**

"the nuclear incident has resulted as a consequence of latent or patent defect, supply of sub-standard material, defective equipment or services or from the gross negligence on the part of the supplier of the material, equipment or services."

The Committee also recommends that the operator must secure his interest through appropriate provisions in the contract with the supplier.

Even though the supplier is liable to the operator as per Clause 17(a), (b) and (c) of the Bill, the Committee recommends that if a written contract between the operator and the supplier provides for the right of recourse, the operator, may, after compensating the victims, exercise his right of recourse against the supplier in accordance with the provisions of the contract.

The Committee therefore, recommends that the above observations of the Committee should be reflected in Clause 17 of the Bill.

Clause 18

The Committee agrees with the contention of the experts and the Secretary, Ministry of Environment & Forests that a period of ten years from the date of

incident is a short period for a nuclear accident, as usually the adverse effects of internal and external radiation exposure manifest themselves often quite late. A number of experts, NGOs, Trade unions etc. have also suggested to increase it to twenty years. Moreover, Director, Tata Memorial Hospital, Mumbai, categorically mentioned that any cancer reported within first five years of radiation exposure is almost certainly not related to radiation exposure. Mutation related changes take minimum five to seven years and earlier than that mutation cannot be expressed into a grossly killer cancer. He therefore emphasized that to be on a safer side this limit may be put to about twenty years. **The Committee therefore recommends that period of extinction of right to claim compensation of any nuclear damage in case of personal injury is short and may be increased to twenty years. The Committee is further of the view that the claim should be computed from the date on which the cause of action for such compensation first arose, rather than from the date of notification of the nuclear incident as provided in the Bill.**

Clause 20

Some experts suggested that it is not desirable that a Committee consisting of bureaucrats decides the appointment of Chairperson and Members of the Nuclear Damage Claims Commission (NDCC) as provided in Clause 20(2) of the Bill.

The Committee agrees with the views put by the experts and recommends that the appointment of Chairperson and other Members of the Commission should be done by the Central Government by any other credible mechanism.

Clause 35 and 46

The Committee observes that both Clauses 35 and 46 deal separately with legal remedies to the victims and feels that all the legal remedies available to the victims should be dealt together.

It should also be clarified that the Clause 35 ensures that prompt remedy is given to the victims without protracted litigation. The Committee recommends that victims shall have right to appeal to the High Court and Supreme Court if they are not satisfied with the award given by the Claims Commissioner or Nuclear Damage Claims Commission.

NOTE OF DISSENT ON THE CIVIL LIABILITY FOR NUCLEAR DAMAGE BILL

Dt. 17th August, 2010

The Chairman,
Standing Committee on Science & Technology,
Environment and Forests,
Parliament House,
New Delhi.

Dear Dr. T. Subbarami Reddy Ji,

Sub.: Civil Liability for Nuclear Damage Bill 2010

I must congratulate the Chairman of the Committee that he has taken the onerous task and responsibility to obtain the views, suggestions and comments of a wide section of experts, individuals and collective bodies, Secretaries of all concerned Ministries/Departments and 24 memoranda on the merits and demerits of the proposed bill. The Honourable Members and officials of the Committee must also be congratulated for their active participation in 14 no. of sittings (full day) of the Committee on this issue.

After careful examination of these submissions made before the committee, I put forward my views for your consideration:

1. The 'Statement of Objects and Reasons' is not so convincing due to its disproportionate presentation of some issues. While mentioning about four existing international instruments for nuclear liability Viz. the 1960 Paris Convention, 1963 Vienna Convention, 1997 Protocol to Amend Vienna Convention and 1997 Convention on Supplementary Compensation (CSC) for nuclear damage, it has elaborately stated only about CSC which was developed by the IAEA, but in fact monitored and controlled by the US. It has clearly stated that any State willing to join the CSC will have to ensure that its national legislation is consistent with the provisions laid down in the Annex to CSC. The present Bill has been drafted accordingly to facilitate India's joining the CSC. During discussion at the Standing Committee, the Secretary, Department of Atomic Energy has also confirmed such intention of India to join CSC.

Such approach on behalf of the government appears to be biased and hence much of its credibility is lost. After all, it is not obligatory for any country to join any international nuclear liability convention. In fact, many of the countries like Canada, China, Japan, Korea, S. Africa are not members of any Liability Convention, in spite of having their own national legislation. Out of 30 nuclear power countries, only 4 countries have ratified CSC so long. It is still not in vogue. It needs other countries to join and ratify it. Moreover, the

total installed capacity has to touch 400000 MW thermal. After reaching this level, the other condition is to be satisfied. The newly joined country should have its own liability provision of 300 million SDR (Rs. 2140 crore) and beyond that only it can go to the CSC. If it is less than that, the CSC can not be approached.

Then the question comes, inspite of these constraints, why India intends to join CSC.

My submission is that, the 'Statement of ~~Objections~~ and Reasons' be suitably amended and its ~~last sentence~~ ^{17th clause} be deleted.

2. India has the bitter experience of Bhopal gas leak in 1984, which is the worst industrial disaster so far happened anywhere in the world killing 10000 people in the first hour and shortly after the death roll reached 20000. Even after 26 years, the victims of the tragedy are still suffering due to lack of proper compensation and rehabilitation provision. Hence, for finalizing the proposed nuclear liability bill, our first priority should be the interest of our people, property and environment in case there is a nuclear incident or accident. We must not be misled to endorse a bill that may intend to safeguard the interest of the private operators, Indian or foreign, as well as to exempt the suppliers, mostly of foreign origin, from any sort of liability for nuclear damage. We need to be concerned about these serious liability issues in the case of any incident and accident in a nuclear installation.

3. It is stated in the Bill that at present, the nuclear power plants and facilities in India are owned by the Central Government or its Public Sector Undertakings who are the only operator in the nuclear power generation. But the Atomic Energy Act 1962 (as amended in 1987), which sets the guideline framework for this Bill, states that the 'Government Company' means a company in which not less than fifty one per cent of the paid up share capital is held by the Central Government. There are also enough indications in several clauses of the Bill that it facilitates entry of private, Indian or foreign, operator in near future, which will be detrimental to the interest of the country.

In view of this, the Committee's latest revised draft may be accepted, with the addition of the following at the end of its para: "excluding joint ventures between private and Government companies".

4. The operator's liability cap has been absurdly lowered. It must be properly enhanced with amendment of clause 6. Even the Central Government reserves the right to 'decrease' this amount of liability of the operator, which is not acceptable.

5. Clause 17 needs amendments to make it acceptable. Compensation to the victim should be made absolute. Operator's right of recourse must be expressly provided for in a

contract in writing. By mentioning 'willful act or gross negligence on the part of the supplier of the material, equipment or services', which is difficult to prove, the supplier is given scope for exemption. Hence, that is to be substituted by saying ___ 'defective or faulty material, equipment or services given by the supplier.'

6. Clause 2(f) ___ "nuclear damage" ___ should be further elaborated.

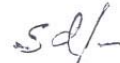
Many other clauses need thorough review and amendment.

7. I would therefore urge upon the committee to recommend to the Government to amend the present 'Statement of Objects and Reasons' and also to adequately amend the defective clauses, a few of which are mentioned above.

In case you do not find it possible to agree to my aforesaid view, I would like to put on record my disagreement with ~~o~~ the Bill in its present form.

With regards,

Yours sincerely,



(Dr. Barun Mukherji)
MP(RS)

Member of the Standing Committee
on Science & Technology, Environment and Forests

To,

The Chairman,
Department-related Parliamentary Standing Committee on Science & Technology,
Environment & Forests
Parliament House Annexe
New Delhi

Note of Dissent on the Standing Committee Report on
Civil Liability for Nuclear Damage Bill

I had suggested some changes in the Bill which have not been accepted by the Committee. Hence I am submitting this note of dissent.

The changes I had proposed are given below:

1. With respect to Section 6 of the Bill, the Report suggests the modification that the operator's liability be increased to Rs. 1,000 crore. The following may be noted in this context.
 - ❖ As the law stands today, the operators of nuclear plants are liable for unlimited damages, which would imply that the operator would be liable to pay for all damages that may arise out of a nuclear accident.
 - ❖ The Bill will significantly alter this position since it now seeks to *firstly* cap the liability of operators at Rs. 1,000 crores & *secondly* cap the **entire liability** (government + operator) arising out of a single nuclear incident at **300 million SDRs**.
 - ❖ The amounts provided for are extremely low given the possible scale of a nuclear incident and global standards.
 - ❖ Countries such as Germany, Japan and Finland provide for unlimited operator liability while countries such as the USA, have limited operator liability to about \$10.2 billion.
 - ❖ This also indirectly implies that the recourse of the Operator against a Supplier is also limited to 1,000 crores.

Proposed Amendment: -

- a. Section 6(1) be deleted (no cap on total liability)
 - b. Section 6(2) to be amended to read, "the liability of an operator for each nuclear incident shall be rupees 10,000 crores."
2. Section 17 was initially modified to strengthen 17 (b). However, the current draft has gone **one step back from even the original draft Bill in protecting the supplier**. It is now suggesting that section 17 (a) end with an added "**and**", which makes all subsequent section 17 (b) and (c) defunct if 17 (a), is not met. Section 17 (a) is that a right to recourse for the operator shall exist only if it is expressly provided for in the contract. This means that the existing law by which a supplier is responsible to the owner is now to be substituted by a private contract between the owner and the supplier.

Proposed Amendment: -

- a. Delete "and" after 17 (a)
- b. **There should be a separate sub-clause which states that right to**

recourse for the operator or the Government should be there in the event of supply of equipment which is defective or due to faulty design.

3. Clause 46 contains two propositions. The first proposition states that the Act shall not override any other law for the time being in force and shall merely supplement them. However, as clarified before the committee, this means that only provision that will remain is with regards to Article 226 and Article 32 of the Constitution on judicial review. All other parallel jurisdiction is barred under this legislation. In any case, Article 226 and 32 cannot be barred and therefore, this clause in its current form has no meaning. **Further, as the Section stands, it may be limited to only operators and not suppliers.**

Proposed Amendment: -

"Clause 46: The provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force. Nothing contained herein shall exempt the Operator *and/or the Supplier of any material, design or services*, from any proceeding which may, apart from this Act, be instituted against such *person, either in any Indian or any external court.*"

Since these changes have not been accepted, I am constrained to draw the conclusion that the provisions of the Bill will unduly favour the foreign suppliers of nuclear equipments. This is being done to make the provisions compatible with the Convention on Supplementary Compensation (CSC). I am not convinced why India should join the CSC.

I am of the firm opinion that any legislation on civil nuclear liability should keep the interests of the Indian people, who may be affected in a nuclear accident, as its core concern. The provisions suggested in the Bill and those proposed by the Committee fail to ensure that. Hence my dissent on the Report.

Sd/-

(SAMAN PATHAK)
August 17, 2010

THE CIVIL LIABILITY FOR NUCLEAR DAMAGE BILL, 2010

ARRANGEMENT OF CLAUSES

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PRELIMINARY

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1. Short title, extent, application and commencement.
2. Definitions.

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4. Liability of operator.
5. Operator not liable in certain circumstances.
6. Limits of liability.
7. Liability of Central Government.
8. Operator to maintain insurance or financial securities.

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CLAIMS COMMISSIONER

9. Compensation for nuclear damage and its adjudication.
10. Qualifications for appointment as Claims Commissioner.
11. Salary, allowances and other terms and conditions of service of Claims Commissioner.
12. Adjudication procedure and powers of Claims Commissioner.

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CLAIMS AND AWARDS

13. Inviting application for claims by Claims Commissioner.
14. Persons entitled to make application for nuclear damage.
15. Procedure for making application before Claims Commissioner.
16. Award by Claims Commissioner.
17. Operator's right of recourse.
18. Extinction of right to claim.

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NUCLEAR DAMAGE CLAIMS COMMISSION

19. Establishment of Nuclear Damage Claims Commission.
20. Composition of Commission.
21. Term of office.
22. Salary and allowances and other terms and conditions of service of Chairperson and Members.
23. Filling up of vacancies.
24. Resignation and removal.
25. Chairperson or Member deemed to retire from service.
26. Suspension of pension.
27. Prohibition of acting as Arbitrator.
28. Prohibition of practice.

TO BE INTRODUCED IN LOK SABHA

Bill No. 19 of 2010

29. Powers of Chairperson.
30. Officers and other employees of Commission.
31. Application for compensation before Commission.
32. Adjudication procedure and powers of Commission.
33. Transfer of pending cases to Commission.
34. Proceedings before Claims Commissioner or Commission to be judicial proceedings.
35. Exclusion of jurisdiction of civil courts.

36. Enforcement of awards.
37. Annual report.
38. Dissolution of Commission in certain circumstances.

CHAPTER VI

OFFENCES AND PENALTIES

39. Offences and penalties.
40. Offences by companies.
41. Offences by Government Departments.
42. Cognizance of offences.

CHAPTER VII

MISCELLANEOUS

43. Power to give directions.
44. Power to call for information.
45. Exemption from application of this Act.
46. Act to be in addition to any other law.
47. Protection of action taken in good faith.
48. Power to make rules.
49. Power to remove difficulties.

(ii)

CLAUSES

THE CIVIL LIABILITY FOR NUCLEAR DAMAGE BILL, 2010

A

BILL

to provide for civil liability for nuclear damage, appointment of Claims Commissioner, establishment of Nuclear Damage Claims Commission and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-first Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Civil Liability for Nuclear Damage Act, 2010.

(2) It extends to the whole of India.

Short title,
extent,
application
and
commencement.

Bill No. 19 of 2010

2

(3) It also applies to nuclear damage suffered—

- (a) in or over the maritime areas beyond the territorial waters of India;
- (b) in or over the exclusive economic zone of India as referred to in section 7 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976;
- (c) on board or by a ship registered in India under section 22 of the Merchant Shipping Act, 1958 or under any other law for the time being in force;
- (d) on board or by an aircraft registered in India under clause (d) of sub-section (2) of section 5 of the Aircraft Act, 1934 or under any other law for the time being in force;
- (e) on or by an artificial island, installation or structure under the jurisdiction of India.

(4) It shall come into force on such date as the Central Government may, by notification, appoint; and different dates may be appointed for different provisions of this Act, and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. In this Act, unless the context otherwise requires,—

- (a) "Chairperson" means the Chairperson of the Commission appointed under sub-section (1) of section 20;

- (b) "Claims Commissioner" means the Claims Commissioner appointed under sub-section (2) of section 9;
- (c) "Commission" means the Nuclear Damage Claims Commission established under section 19;
- (d) "Member" means a Member of the Commission appointed under sub-section (1) of section 20;
- (e) "notification" means a notification published in the Official Gazette and the term "notify" shall be construed accordingly;
- (f) "nuclear damage" means—
- (i) loss of life or personal injury to a person; or
- (ii) loss of, or damage to, property, caused by or arising out of a nuclear incident, and includes each of the following to the extent notified by the Central Government;
- (iii) any economic loss, arising from the loss or damage referred to in clauses (i) or (ii) and not included in the claims made under those clauses, if incurred by a person entitled to claim such loss or damage;
- (iv) costs of measures of reinstatement of impaired environment caused by a nuclear incident, unless such impairment is insignificant, if such measures are actually taken or to be taken and not included in the claims made under clause (ii);
- (v) loss of income deriving from an economic interest in any use or enjoyment of the environment, incurred as a result of a significant impairment of that environment caused by a nuclear incident, and not included in the claims under clause (ii);
- (vi) the costs of preventive measures, and further loss or damage caused by such measures;

80 of 1976.

44 of 1958.

22 of 1934.

Definitions.

3

(vii) any other economic loss, other than the one caused by impairment of the environment referred to in clauses (iv) and (v), in so far as it is permitted by the general law on civil liability in force in India and not claimed under any such law, in the case of sub-clauses (i) to (v) and (vii) above, to the extent the loss or damage arises out of, or results from, ionizing radiation emitted by any source of radiation inside a nuclear installation, or emitted from nuclear fuel or radioactive products or waste in, or of, nuclear material coming from, originating in, or sent to, a nuclear installation, whether so arising from the radioactive properties of such matter, or from a combination of radioactive properties with toxic, explosive or other hazardous properties of such matter;

(g) "nuclear fuel" means any material which is capable of producing energy by a self-sustaining chain process of nuclear fission;

(h) "nuclear incident" means any occurrence or series of occurrences having the same origin which causes nuclear damage or, but only with respect to preventive measures, creates a grave and imminent threat of causing such damage;

(i) "nuclear installation" means—

(A) any nuclear reactor other than one with which a means of transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose;

(B) any facility using nuclear fuel for the production of nuclear material, or any facility for the processing of nuclear material, including re-processing of irradiated nuclear fuel; and

(C) any facility where nuclear material is stored (other than storage incidental to the carriage of such material).

Explanation.— For the purpose of this clause, several nuclear installations of one operator which are located at the same site shall be considered as a single

nuclear installation;

(j) "nuclear material" means and includes—

(i) nuclear fuel (other than natural uranium or depleted uranium) capable of producing energy by a self-sustaining chain process of nuclear fission outside a nuclear reactor, either by itself or in combination with some other material; and

(ii) radioactive products or waste;

(k) "nuclear reactor" means any structure containing nuclear fuel in such an arrangement that a self-sustaining chain process of nuclear fission can occur therein without an additional source of neutrons;

(l) "operator", in relation to a nuclear installation, means the person designated by the Central Government as the operator of that installation;

(m) "prescribed" means prescribed by rules made under this Act;

(n) "preventive measures" means any reasonable measures taken by a person after a nuclear incident has occurred to prevent or minimise damage referred to in sub-clauses (i) to (v) and (vii) of clause (f), subject to the approval of the Central Government;

(o) "radioactive products or waste" means any radioactive material produced in, or any material made radioactive by exposure to, the radiation incidental to the production or utilisation of nuclear fuel, but does not include radioisotopes which have reached the final stage of fabrication so as to be usable for any scientific, medical, agricultural, commercial or industrial purpose;

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(p) "Special Drawing Rights" means Special Drawing Rights as determined by the International Monetary Fund.

CHAPTER II

LIABILITY FOR NUCLEAR DAMAGE

3. (1) The Atomic Energy Regulatory Board constituted under the Atomic Energy Act, 1962 shall, within a period of fifteen days from the date of occurrence of a nuclear incident, notify such nuclear incident:

Provided that where the Atomic Energy Regulatory Board is satisfied that the gravity of threat and risk involved in a nuclear incident is insignificant, it shall not be required to notify such nuclear incident.

(2) The Atomic Energy Regulatory Board shall, immediately after the notification under sub-section (1) is issued, cause wide publicity to be given to the occurrence of such nuclear incident, in such manner as it may deem fit.

4. (1) The operator of the nuclear installation shall be liable for nuclear damage caused by a nuclear incident —

(a) in that nuclear installation; or

(b) involving nuclear material coming from, or originating in, that nuclear installation and occurring before —

(i) the liability for nuclear incident involving such nuclear material has been assumed, pursuant to a written agreement, by another operator; or

(ii) another operator has taken charge of such nuclear material; or

(iii) the person duly authorised to operate a nuclear reactor has taken charge of the nuclear material intended to be used in that reactor with which means of transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose; or

(iv) such nuclear material has been unloaded from the means of transport by which it was sent to a person within the territory of a foreign State; or

(c) involving nuclear material sent to that nuclear installation and occurring after—

(i) the liability for nuclear incident involving such nuclear material has been transferred to that operator, pursuant to a written agreement, by the operator of another nuclear installation; or

(ii) that operator has taken charge of such nuclear material; or

(iii) that operator has taken charge of such nuclear material from a person operating a nuclear reactor with which a means of transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose; or (iv) such nuclear material has been loaded, with the written consent of that operator, on the means of transport by which it is to be carried from the territory of a foreign State.

(2) Where more than one operator is liable for nuclear damage, the liability of the operators so involved shall, in so far as the damage attributable to each operator is not separable, be joint and several:

Provided that the total liability of such operators shall not exceed the extent of liability specified under sub-section (2) of section 6.

33 of 1962.

Atomic Energy

Regulatory

Board to notify

nuclear

incident.

Liability of

operator.

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(3) Where several nuclear installations of one and the same operator are involved in a nuclear incident, such operator shall, in respect of each such nuclear installation, be liable to the extent of liability specified under sub-section (2) of section 6.

Explanation.— For the purposes of this section,—

(a) where nuclear damage is caused by a nuclear incident occurring in a nuclear installation on account of temporary storage of material-in-transit in such installation, the person responsible for transit of such material shall be deemed to be the operator;

(b) where a nuclear damage is caused as a result of nuclear incident during the transportation of nuclear material, the consignor shall be deemed to be the operator;

(c) where any written agreement has been entered into between the consignor and the consignee or, as the case may be, the consignor and the carrier of nuclear material, the person liable for any nuclear damage under such agreement shall be deemed to be the operator;

(d) where both nuclear damage and damage other than nuclear damage have been caused by a nuclear incident or, jointly by a nuclear incident and one or more other occurrences, such other damage shall, to the extent it is not separable from the nuclear damage, be deemed to be a nuclear damage caused by such nuclear incident.

5. (1) An operator shall not be liable for any nuclear damage where such damage is caused by a nuclear incident directly due to—

(i) a grave natural disaster of an exceptional character; or

(ii) an act of armed conflict, hostility, civil war, insurrection or terrorism.

(2) An operator shall not be liable for any nuclear damage caused to—

(i) the nuclear installation itself and any other nuclear installation including a nuclear installation under construction, on the site where such installation is located; and

(ii) to any property on the same site which is used or to be used in connection with any such installation; or

(iii) to the means of transport upon which the nuclear material involved was carried at the time of nuclear incident:

Provided that any compensation liable to be paid by an operator for a nuclear damage shall not have the effect of reducing the amount of his liability in respect of any other claim for damage under any other law for the time being in force.

(3) Where any nuclear damage is suffered by a person on account of his own negligence or from his own acts of commission or omission, the operator shall not be liable to such person.

6. (1) The maximum amount of liability in respect of each nuclear incident shall be the rupee equivalent of three hundred million Special Drawing Rights.

(2) The liability of an operator for each nuclear incident shall be rupees five hundred crores:

Provided that the Central Government may, having regard to the extent of risk involved in a nuclear installation, by notification, either increase or decrease the amount of liability of the operator:

Provided further that where the amount of liability is decreased, it shall not be less than rupees one hundred crore:

Provided also that the amount of liability shall not include any interest or cost of proceedings.

Operator not
liable in
certain
circumstances.
Limits of
liability.

6

7. The Central Government shall be liable for nuclear damage in respect of a nuclear incident, —
(a) where the liability exceeds the amount of liability of an operator specified under sub-section (2) of section 6, to the extent such liability exceeds such liability of the operator;

(b) occurring in a nuclear installation owned by it; and

(c) occurring on account of causes specified in clauses (i) and (ii) of subsection (1) of section 5.

8. (1) The operator shall, before he begins operation of his nuclear installation, take out insurance policy or such other financial security, covering his liability under sub-section (2) of section 6, in such manner as may be prescribed.

(2) The operator shall from time to time renew the insurance policy or other financial security referred to in sub-section (1), before the expiry of the period of validity thereof.

(3) The provisions of sub-sections (1) and (2) shall not apply to a nuclear installation owned by the Central Government.

CHAPTER III

CLAIMS COMMISSIONER

9. (1) Whoever suffers nuclear damage shall be entitled to claim compensation in accordance with the provisions of this Act.

(2) For the purposes of adjudicating upon claims for compensation in respect of nuclear damage, the Central Government shall, by notification, appoint one or more Claims Commissioners for such area, as may be specified in that notification.

10. A person shall not be qualified for appointment as a Claims Commissioner unless he—

(a) is or has been or qualified to be a District Judge; or

(b) is or has been in the service of the Central Government and has held the post of the Joint Secretary to the Government of India or any other equivalent post in the Central Government for a period of not less than five years and possesses special knowledge in law relating to nuclear liability arising out of nuclear incident.

11. The salary and allowances payable to and other terms and conditions of service of Claims Commissioner shall be such as may be prescribed.

12. (1) For the purposes of adjudication of claims under this Act, the Claims Commissioner shall follow such procedure as may be prescribed.

(2) For the purpose of holding inquiry, the Claims Commissioner may associate with him such persons having expertise in the nuclear field or such other persons and in such manner as may be prescribed.

(3) Where any person is associated under sub-section (2), he shall be paid such remuneration, fee or allowance, as may be prescribed.

(4) The Claims Commissioner shall, for the purposes of discharging his functions under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

Liability of

Central
Government.
Operator to
maintain
insurance or
financial
securities.
Compensation
for nuclear
damage and
its
adjudication.
Qualifications
for
appointment
as Claims
Commissioner.
Salary,
allowances
and other
terms and
conditions of
service of
Claims
Commissioner.
Adjudication,
procedure and
powers of
Claims
Commissioner.
5 of 1908.
7

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copies thereof from any court or office;

(e) issuing of commission for the examination of any witness;

(f) any other matter which may be prescribed.

(5) The Claims Commissioner shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

CHAPTER IV

CLAIMS AND AWARDS

13. After the notification of nuclear incident under sub-section (1) of section 3, the Claims Commissioner, having jurisdiction over the area, shall cause wide publicity to be given, in such manner as he deems fit, for inviting applications for claiming compensation for nuclear damage.

14. An application for compensation before the Claims Commissioner or the Commission, as the case may be, in respect of nuclear damage may be made by—

(a) a person who has sustained injury; or

(b) the owner of the property to which damage has been caused; or

(c) the legal representatives of the deceased; or

(d) any agent duly authorised by such person or owner or legal representatives.

15. (1) Every application for compensation before the Claims Commissioner for nuclear damage shall be made in such form, containing such particulars and accompanied by such documents, as may be prescribed.

(2) Subject to the provisions of section 18, every application under sub-section (1) shall be made within a period of three years from the date of knowledge of nuclear damage by the person suffering such damage.

16. (1) On receipt of an application under sub-section (1) of section 15, the Claims Commissioner shall, after giving notice of such application to the operator and affording an opportunity of being heard to the parties, dispose of the application within a period of three

months from the date of such receipt and make an award accordingly.

(2) While making an award under this section, the Claims Commissioner shall not take into consideration any benefit, reimbursement or amount received by the applicant in pursuance of contract of insurance taken by him or for members of his family or otherwise.

(3) Where an operator is likely to remove or dispose of his property with the object of evading payment by him of the amount of the award, the Claims Commissioner may, in accordance with the provisions of rules 1 to 4 of Order XXXIX of the First Schedule to the Code of Civil Procedure, 1908, grant a temporary injunction to restrain such act.

(4) The Claims Commissioner shall arrange to deliver copies of the award to the parties within a period of fifteen days from the date of the award.

(5) Every award made under sub-section (1) shall be final.

17. The operator of a nuclear installation shall have a right of recourse where —

(a) such right is expressly provided for in a contract in writing;

Inviting
application
for claims by
Claims
Commissioner.
Person
entitled to
make
application
for nuclear
damage.

Procedure for
making
application
before Claims
Commissioner.

Award by
Claims
Commissioner.

Operator's
right of
recourse.

5 of 1908.
2 of 1974.

8

(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.

18. The right to claim compensation for any nuclear damage caused by a nuclear incident shall extinguish if such claim is not made within a period of ten years from the date of incident notified under sub-section (1) of section 3:

Provided that where a nuclear damage is caused by a nuclear incident involving nuclear material which, prior to such nuclear incident, had been stolen, lost, jettisoned or abandoned, the said period of ten years shall be computed from the date of such nuclear incident, but, in no case, it shall exceed a period of twenty years from the date of such theft, loss, jettison or abandonment.

CHAPTER V

NUCLEAR DAMAGE CLAIMS COMMISSION

19. Where the Central Government, having regard to the injury or damage caused by a nuclear incident, is of the opinion that—

(a) the amount of compensation may exceed the limit specified under sub-section (2) of section 6; or

(b) it is expedient and necessary that claims for such damage be adjudicated by the Commission instead of Claims Commissioner; or

(c) it is necessary in the public interest to provide special measures for speedy adjudication of claims for compensation,

the Central Government may, by notification, establish a Nuclear Damage Claims

Commission, for the purposes of this Act.

20. (1) The Commission shall consist of a Chairperson and such other Members, not exceeding six, as the Central Government may, by notification, appoint.

(2) The Chairperson and other Members of the Commission shall be appointed by the Central Government on the recommendations of a Committee consisting of —

(a) Cabinet Secretary — Chairman;

(b) Secretary, Department of Atomic Energy — Member;

(c) Secretary, Ministry of Law and Justice — Member.

(3) A person shall not be qualified for appointment as the Chairperson of the Commission unless he has attained the age of fifty-five years and is or has been or qualified to be a Judge of a High Court:

Provided that no appointment of a sitting judge shall be made except after consultation with the Chief Justice of India.

(4) A person shall not be qualified for appointment as a Member unless he has attained the age of fifty-five years and—

(a) has held or is holding or qualified to hold, the post of Additional Secretary to the Government of India or any other equivalent post in the Central Government and possesses special knowledge in law relating to nuclear liability arising out of nuclear incident; or

(b) has been a Claims Commissioner for five years.

Extinction of
right to claim.

Establishment

of Nuclear

Damage

Claims

Commission.

Composition

of

Commission.

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21. The Chairperson or a Member, as the case may be, shall hold office as such for a term of three years from the date on which he enters upon his office and shall be eligible for re-appointment for another term of three years:

Provided that no person shall hold office as such Chairperson or Member after he has attained the age of sixty-seven years.

22. The salary and allowances payable to and other terms and conditions of service, including pension, gratuity and other retirement benefits, of the Chairperson and other Members shall be such as may be prescribed:

Provided that no salary, allowances and other terms and conditions of service of the Chairperson or other Members shall be varied to his disadvantage after his appointment.

23. If, for reasons other than temporary absence, any vacancy occurs in the office of the Chairperson or Member, as the case may be, the Central Government shall appoint another person in accordance with the provisions of this Act to fill such vacancy and the proceedings may be continued before the Commission from the stage at which it was, before the vacancy is filled.

24. (1) The Chairperson or a Member may, by a notice in writing under his hand addressed to the Central Government, resign his office:

Provided that the Chairperson or the Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is earlier.

(2) The Central Government shall remove from office the Chairperson or a Member who—

(a) has been adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(c) has become physically or mentally incapable of acting as a Member; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member; or

(e) has so abused his position as to render his continuance in office detrimental to the public interest:

Provided that no Member shall be removed under clause (d) or clause (e) unless he has been given an opportunity of being heard in the matter.

25. A person who, immediately before the date of assuming office as a Chairperson or a Member, was in service of the Government, shall be deemed to have retired from service on the date on which he enters upon office as such, but his subsequent service as the Chairperson or a Member shall be reckoned as continuing approved service counting for pension in service to which he belonged.

26. If a person who, immediately before the date of assuming office as the Chairperson or a Member was in receipt of or being eligible so to do, has opted to draw, a pension, other than a disability or wound pension, in respect of any previous service under the Central Government, his salary in respect of service as the Chairperson or a Member shall be reduced—
(a) by the amount of that pension; and

Term of office.

Salary, allowances and other terms and conditions of service of Chairperson and Members.

Filling up of vacancies.

Resignation and removal.

Chairperson or Member deemed to retire from service.

Suspension of pension.

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(b) if he had, before assuming office, received, in lieu of a portion of the pension due to him in respect of such previous service, the commuted value thereof, by the amount of that portion of the pension.

27. No person shall, while holding office as a Chairperson or a Member, act as an arbitrator in any matter.

28. On ceasing to hold office, the Chairperson or a Member shall not appear, act or plead before the Commission.

29. The Chairperson shall have the power of superintendence in the general administration of the Commission and exercise such powers as may be prescribed.

30. (1) The Central Government shall provide the Commission with such officers and other employees as it may deem fit.

(2) The salary and allowances payable to and the terms and other conditions of service of officers and other employees of the Commission shall be such as may be prescribed.

31. (1) Every application for compensation before the Commission for nuclear damage shall be made in such form, containing such particulars and accompanied by such documents, as may be prescribed.

(2) Subject to the provisions of section 18, every application under sub-section (1) shall be made within a period of three years from the date of knowledge of nuclear damage by the person suffering such damage.

32. (1) The Commission shall have original jurisdiction to adjudicate upon every application for compensation filed before it under sub-section (1) of section 31 or transferred to it under section 33, as the case may be.

(2) Upon transfer of cases to the Commission under section 33, the Commission shall hear such applications from the stage at which it was before such transfer.

(3) The Chairperson may constitute benches comprising of not more than three Members of the Commission for the purpose of hearing of claims and any decision thereon shall be rendered by a majority of the Members hearing such claims.

(4) The Commission shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made thereunder, the Commission shall have the power to regulate its own procedure including the places and the times at which it shall have its sittings.

(5) The Commission shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely: —

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copies thereof from any court or office;

(e) issuing of commission for the examination of any witness;

(f) any other matter which may be prescribed.

(6) The Commission shall, after giving notice of application to the operator and after affording an opportunity of being heard to the parties, dispose of such application within a period of three months from the date of such receipt and make an award accordingly.

Prohibition of acting as arbitrator.

Prohibition of practice.

Powers of Chairperson.

Officers and other

employees of Commission.

Application for compensation before

Commission.

Adjudication procedure and

powers of Commission.

5 of 1908.

5 of 1908.

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(7) While making an award under this section, the Commission shall not take into consideration any benefit, reimbursement or amount received by the applicant in pursuance of any contract of insurance or otherwise.

(8) Where an operator is likely to remove or dispose of his property with the object of evading payment by him of the amount of the award, the Commission may, in accordance with the provisions of rules 1 to 4 of Order XXXIX of the First Schedule to the Code of Civil Procedure, 1908, grant a temporary injunction to restrain such act.

(9) The Commission shall arrange to deliver copies of the award to the parties concerned within a period of fifteen days from the date of such award.

(10) Every award made under sub-section (6) shall be final.

33. Every application for compensation pending before the Claims Commissioner immediately before the date of establishment of the Commission under section 19 shall stand transferred on that date to the Commission.

34. Every proceeding before the Claims Commissioner or the Commission under this

Act shall be deemed to be judicial proceeding within the meaning of sections 193, 219 and 228 of, and for the purposes of section 196 of, the Indian Penal Code.

35. No civil court shall have jurisdiction to entertain any suit or proceedings in respect of any matter which the Claims Commissioner or the Commission, as the case may be, is empowered to adjudicate under this Act and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

36. (1) When an award is made under sub-section (1) of section 16 or under subsection (6) of section 32, —

(a) the insurer or any person, as the case may be, who under the contract of insurance or financial security under section 8 is required to pay any amount in terms of such award and to the extent of his liability under such contract, shall deposit that amount within such time and in such manner as the Claims Commissioner or the Commission, as the case may be, may direct; and

(b) the operator shall, subject to the maximum liability specified under subsection (2) of section 6, deposit the remaining amount by which such award exceeds the amount deposited under clause (a).

(2) Where any person referred to in sub-section (1) fails to deposit the amount of award within the period specified in the award, such amount shall be recoverable from such person as arrears of land revenue.

(3) The amount deposited under sub-section (1) shall be disbursed to such person as may be specified in the award within a period of fifteen days from the date of such deposit.

37. The Commission shall prepare, in such form and at such time in each financial year, as may be prescribed, an annual report giving full account of its activities during that financial year and submit a copy thereof to the Central Government which shall cause the same to be laid before each House of Parliament.

38. (1) Where the Central Government is satisfied that the purpose for which the Commission established under section 19 has served its purpose, or where the number of cases pending before such Commission is so less that it would not justify the cost of its continued function, or where it considers necessary or expedient so to do, the Central Government may, by notification, dissolve the Commission.

Transfer of
pending cases
to
Commission.
Proceedings
before Claims
Commissioner
or
Commission
to be judicial
proceedings.
Exclusion of
jurisdiction of
civil courts.
Enforcement
of awards.
Annual
report.
Dissolution of
Commission
in certain
circumstances.
5 of 1908.
45 of 1860.

12

(2) With effect from the date of notification of dissolution of Commission under subsection (1), —

(a) the proceeding, if any, pending before the Commission as on the date of such notification shall be transferred to the Claims Commissioner to be appointed by the Central Government under sub-section (2) of section 9;

(b) the Chairperson and all Members of the Commission shall be deemed to have vacated their offices as such and they shall not be entitled to any compensation for premature termination of their office;

(c) officers and other employees of the Commission shall be transferred to such other authority or offices of the Central Government, in such manner, as may be prescribed:

Provided that the officers and other employees so transferred, shall be entitled to the same terms and conditions of service as would have been held by them in the Commission:

Provided further that where an officer or an employee of the Commission refuses to join the services in such other authority or office, he shall be deemed to have resigned and shall not be entitled to any compensation for premature termination of contract of service;

(d) all assets and liabilities of the Commission shall vest in the Central Government.

(3) Notwithstanding the dissolution of the Commission under sub-section (1), anything done or any action taken or purported to have been done or taken including any order made or notice issued or any appointment, confirmation or declaration made or any document or instrument executed or any direction given by the Commission before such dissolution, shall be deemed to have been validly done or taken.

(4) Nothing in this section shall be construed to prevent the Central Government to establish the Commission subsequent to the dissolution of the Commission in accordance with the provisions of this Act.

CHAPTER VI

OFFENCES AND PENALTIES

39. (1) Whoever—

(a) contravenes any rule made or any direction issued under this Act; or

(b) fails to comply with the provisions of section 8; or

(c) fails to deposit the amount under section 36,

shall be punishable with imprisonment for a term which may extend to five years or with fine or with both.

(2) Whoever fails to comply with any direction issued under section 43 or obstructs any authority or person in the exercise of his powers under this Act shall be punishable with imprisonment for a term which may extend to one year or with fine or with both.

40. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment under this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

Offences and penalties.

Offences by companies.

13

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. — For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals;

(b) "director", in relation to a firm, means a partner in the firm.

41. Where an offence under this Act has been committed by any Department of the Government, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this section shall render such Head of the Department liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

42. No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act:

Provided that cognizance of such offence shall not be taken except on a complaint made by the Central Government or any authority or officer authorised in this behalf by that Government.

CHAPTER VII

MISCELLANEOUS

43. The Central Government may, in exercise of its powers and performance of its functions under this Act, issue such directions, as it may deem fit, for the purposes of this Act, to any operator, person, officer, authority or body and such operator, person, officer, authority or body shall be bound to comply with such directions.

44. The Central Government may call for such information from an operator as it may deem necessary.

45. The Central Government may, by notification, exempt any nuclear installation from the application of this Act where, having regard to small quantity of nuclear material, it is of the opinion that the risk involved is insignificant.

46. 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 proceeding which might, apart from this Act, be instituted against such operator.

47. No suit, prosecution or other legal proceedings shall lie against the Central Government or the person, officer or authority in respect of anything done by it or him in good faith in pursuance of this Act or of any rule or order made, or direction issued, thereunder.

48. (1) The Central Government may, by notification, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers such rules may provide for —

(a) the other financial security and the manner thereof under sub-section (1) of section 8;

(b) the salary and allowances payable to and the other terms and conditions of service of Claims Commissioner under section 11;

Offences by
Government
Departments.
Cognizance
of offences.
Power to give
directions.
Power to call
for
information.
Exemption
from
application of
this Act.
Act to be in
addition to
any other law.
Protection of
action taken
in good faith.
Power to
make rules.

- (c) the procedure to be followed by Claims Commissioner under sub-section (1) of section 12;
- (d) the person to be associated by Claims Commissioner and the manner thereof, under sub-section (2) of section 12;
- (e) the remuneration, fee or allowances of associated person under sub-section (3) of section 12;
- (f) any other matter under clause (f) of sub-section (4) of section 12;
- (g) the form of application, the particulars it shall contain and the documents it shall accompany, under sub-section (1) of section 15;
- (h) the salary and allowances payable to and other terms and conditions of service of Chairperson and other Members, under section 22;
- (i) the powers of Chairperson under section 29;
- (j) the salary and allowances payable to and the terms and other conditions of service of officers and other employees of the Commission, under sub-section (2) of section 30;
- (k) the form of application, the particulars it shall contain and the documents it shall accompany, under sub-section (1) of section 31;
- (l) any other matter under clause (f) of sub-section (5) of section 32;
- (m) the form and the time for preparing annual report by Commission under section 37;
- (n) the manner of transfer of officers and other employees of the Commission under clause (c) of sub-section (2) of section 38.

(3) Every rule made under this Act by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

49. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty:

Provided that no order shall be made under this section after the expiry of three years from the commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

Power to
remove
difficulties.

STATEMENT OF OBJECTS AND REASONS

The nuclear industry in India is growing and as a result of the steps taken particularly in the recent period, it is expected to form an important part of the energy-mix of the country. While making the design, and during construction and operation of nuclear power plants every care is taken to ensure safety of the plant, public and the environment. However, in the unlikely event of a nuclear incident or accident, there may be damage to individuals, property and environment on a large scale. The geographical scope of damage caused by a nuclear accident may not be confined to national boundaries and it may have trans-boundary effects. In such an event, it is desirable that protection is accorded to victims of such incident or accident by a third party liability regime. It is necessary to give compensation to persons if they suffer nuclear damage as a result of a nuclear incident and therefore it is important to make provision to ensure clarity of liability and the requirement to pay compensation.

2. At present, the nuclear power plants and facilities in India are owned by the Central Government or its Public Sector Undertakings. Therefore, any incident or accident that

happens in these installations, and the liability issues arising therefrom, are the responsibility of the Central Government. This, however, leaves any trans-boundary liability to uncertainty. There is also a need to address the issue of nuclear liability during transport of nuclear material.

3. At the international level there are four instruments for nuclear liability, *i.e.*, the 1960 Paris Convention, 1963 Vienna Convention, 1997 Protocol to Amend Vienna Convention and 1997 Convention on Supplementary Compensation for nuclear damage. Convention on Supplementary Compensation was developed under the auspices of International Atomic Energy Agency and which deal with nuclear liability. It provides for treaty relations among all countries that accept the basic principles of nuclear liability law and an international fund to compensate nuclear damage in the event of nuclear incident. The said Convention on Supplementary Compensation envisages a two tier system with respect to the amount of compensation, *e.g.*, Installation State to ensure availability of the amount of compensation (at least 300 million Special Drawing Rights), and International Fund for which all contracting parties are obliged to contribute the amount based on a formula for calculation of contribution.

4. Convention on Supplementary Compensation is a free standing instrument open to all countries. It offers a country the means to become part of the global regime without having to become a member of the Paris Convention or the Vienna Convention. However, all countries party to the Convention on Supplementary Compensation are expected to abide by the basic principles of the nuclear liability law. For this reason, the Convention on Supplementary Compensation sets out a number of rules, which are consistent with the general principles of both the Paris Convention and the Vienna Convention. Any State willing to join the Convention on Supplementary Compensation will have to ensure that its national legislation is consistent with the provisions laid down in the Annex to Convention on Supplementary Compensation.

5. Many countries which are engaged in nuclear power generation are having their own legislations and some of them are parties to one or other international regimes.

6. India is not a party to any of the nuclear liability conventions mentioned above. Indian nuclear industry has been developed within the context of a domestic framework established by the Atomic Energy Act, 1962. There is no provision in the said Act about the nuclear liability or compensation for nuclear damage due to nuclear accident or incident and no other law deals with nuclear liability for nuclear damage in the event of nuclear incident.

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7. It is, therefore, considered necessary to enact a legislation which provides for nuclear liability that might arise due to a nuclear incident and also on the necessity of joining an appropriate international liability regime.

8. The Bill seeks to achieve the above objectives.

NEW DELHI;

The 11th February, 2010. PRITHVIRAJ CHAVAN

Notes on clauses

Clause 2.— This Clause defines certain words and expressions used in the Bill including 'nuclear damage', 'nuclear incident', 'nuclear installation', 'nuclear material', 'nuclear reactor', operator, etc.

Clause 3.— This clause contains provisions for notification of nuclear incident. it requires the Atomic Energy Regulatory Board to notify nuclear incident within a period of fifteen days from the date of its occurrence and give wide publicity to the occurrence of such nuclear incident. However, the Atomic Energy Regulatory Board would not be required to notify nuclear incident where it is satisfied that the gravity of threat and risk involved in such nuclear incident is insignificant.

Clause 4.—This clause contains provisions relating to liability of operator. It, *inter alia*, provides that the operator shall be liable for nuclear damage caused by a nuclear incident occurring in that nuclear installation.

The sub-clause (1) contains provisions for liability of the operator in respect of a nuclear damage caused by a nuclear incident involving nuclear material coming from or originating in that nuclear installation before and after the operator has assumed the liability.

It also provides that where more than one operator is liable for nuclear damage, the liability of the operators so involved shall be joint and several if the damage attributable to each operator is not separable. However, the total liability of such operators shall not exceed the extent of liability specified in sub-clause (2) of clause 6 of the Bill. It also provides that where several nuclear installations of one and the same operator are involved in a nuclear incident, such operator shall, in respect of each such nuclear installation, be liable to the extent of liability specified in sub-clause (2) of clause 6 of the Bill.

Explanation to sub-clause (3) of this clause specifies the circumstances under which a person shall be deemed to be an operator.

Clause 5.—This clause provides for circumstances under which an operator shall not be liable for the nuclear damage. It provides that where a nuclear damage is caused by nuclear incident directly due to a grave natural disaster of an exceptional character or by acts of armed conflict, hostility, civil war, insurrection or terrorism, the operator shall not be liable. It further provides that the operator shall not be liable for any nuclear damage caused to (a) the nuclear installation itself or any other nuclear installation including a nuclear installation under construction, on the site where such installation is located; (b) any property on the same site which is used or to be used in connection with any such installation; (c) the means of transport upon which the nuclear material involved was carried at the time of nuclear incident. However, any compensation liable to be paid by the operator for a nuclear damage shall not have the effect of reducing the amount of his liability in respect of any other claim for damage under any other law for the time being in force. However, the operator shall not be liable (a) where a nuclear damage is suffered by a person on account of his own negligence; or (b) where a nuclear damage occurs from the acts of commission or omission of a person, to each person suffering such damage.

Clause 6.—This clause contains provisions relating to limits of liability. This clause provides that the maximum amount of liability in respect of each nuclear incident shall be the rupee equivalent of three hundred million Special Drawing Rights and the liability of an operator for each nuclear incident shall be rupees five hundred crores. However, it empowers the Central Government to increase or decrease, by notification, the amount of liability of the operator, having regard to the extent of risk involved in a nuclear installation but, such liability shall not be decreased less than rupees one hundred crore. It also provides that the amount of liability of the operator shall not include any interest or cost of proceedings.

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Clause 7.—This clause contains provisions for the liability of the Central Government. It seeks to fix the liability on the Central Government in certain circumstances and provides that the Central Government shall be liable for nuclear damage in respect of a nuclear incident (a) to the extent such liability exceeds the amount of liability of the operator specified in sub-clause (2) of clause 6; or (b) where such nuclear damage occurs in a nuclear installation owned by it; or (c) occurring directly due to a grave natural disaster of an exceptional character or by acts of armed conflict, hostility, civil war, insurrection or terrorism.

Clause 8.—This clause imposes an obligation upon the operator to take out, before beginning the operation of a nuclear installation, insurance policy or such other financial security covering his liability as specified under sub-clause (2) of clause 6 and to renew the same. However, the Central Government shall not be required to take out such insurance or financial securities.

Clause 9.—This clause confers a right upon a person who suffers nuclear damage to claim compensation in accordance with the provisions of the this Act and claims for such compensation shall be adjudicated by one or more Claims Commissioners to be appointed by the Central Government.

Clause 10.—This clause contains provisions for qualifications for appointment as Claims Commissioner. It provides that a person shall not be qualified for appointment as a Claims Commissioner unless he is, has been or qualified to be a District Judge or is or has been in the service of the Central Government and has held the post of the Joint Secretary to the Government of India or any other equivalent post in the Central Government for a

period of not less than five years and possesses special knowledge in law relating to nuclear liability arising out of nuclear incident.

Clause 11.—This clause contains provisions relating to the salary and allowances payable to and other terms and conditions of service of Claims Commissioner which shall be specified by rules to be made by the Central Government.

Clause 12.—This clause contains provisions for procedure to be followed by the Claims Commissioner and powers to be exercised by the Claims Commissioner for adjudicating such claims. The Claims Commissioner shall have certain powers which are vested in a Civil Court under the Code of Civil Procedure, 1908, for discharging functions under the proposed legislation. It, *inter alia*, provides that Claims Commissioner shall follow the procedure for adjudication of claims under the proposed legislation in the manner provided by rules to be made by the Central Government. The Claims Commissioner can associate experts in the nuclear field in the manner provided by rules for the said purpose.

Clause 13.—This clause contains provisions for inviting applications for claims by the Claims Commissioner. It provides that the Claims Commissioner shall, after the notification of a nuclear incident, cause wide publicity to be given for inviting applications for claiming compensation for nuclear damage.

Clause 14.—This clause specifies the category of persons who would be entitled to make application for nuclear damage. It provides that an application to the Claims Commissioner for compensation in respect of nuclear damage may be made by a person who has sustained injury or by the owner of the property to which damage has been caused or by the legal representatives of the deceased or by an authorised agent.

Clause 15.—This clause contains procedure for making applications before the Claims Commissioner. It provides that the application for compensation before the Claims Commissioner for nuclear damage shall be in the form and manner provided by rules to be made by the Central Government and such applications shall be made within a period of three years from the date of knowledge of nuclear damage by the person suffering such damage.

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Clause 16.—This clause contains provisions for making of awards by the Claims Commissioner. It contains provisions relating to procedure to be followed by the Claims Commissioner on receipt of application for compensation and the manner for making an award. This clause requires that the Claims Commissioner shall dispose of the application within a period of three months from the date of such receipt and make an award accordingly. However, while making the award, the Claims Commissioner shall not take into consideration any benefit, reimbursement or amount received by the applicant in pursuance of contract of insurance taken by him or for members of his family or otherwise. It also empowers the Claims Commissioner to grant temporary injunction to restrain the operator where he is likely to remove or dispose of his property with the object of evading payment by him of the amount of the award, from doing so. It also provides that every award, so made, shall be final.

Clause 17.—This clause contains provisions relating to right of recourse. It provides that the operator of a nuclear installation shall have a right of recourse where such right is expressly provided for in a contract in writing or where 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 or where the nuclear incident has resulted from the act of commission or omission of a person done with the intent to cause nuclear damage.

Clause 18.—This clause contains provisions relating to extinction of right to claim. It provides that the right to claim compensation for any nuclear damage caused by a nuclear incident shall extinguish if such claim is not made within a period of ten years from the date of incident notified under sub-clause (1) of clause 3 of the Bill. However, where a nuclear damage is caused by a nuclear incident involving nuclear material which, prior to such nuclear incident, had been stolen, lost, jettisoned or abandoned, the said period of ten years shall be computed from the date of such nuclear incident, but, in no case, it shall exceed a period of twenty years from the date of such theft, loss, jettison or abandonment.

Clause 19.—It empowers the Central Government to establish a Nuclear Damage Claims Commission in certain cases. It provides that the Central Government may, if it is of the opinion that the amount of compensation may exceed the limit specified under subclause (2) of clause 6 of the Bill or it is expedient and necessary that claims for such damage should be adjudicated by the Commission instead of the Claims Commissioner or it is necessary in the public interest to provide special measures for speedy adjudication of claims for compensation, establish a Nuclear Damage Claims Commission.

Clause 20.—It provides for the composition of the Nuclear Damage Claims Commission which would consist of a Chairperson and Members, not exceeding six, to be appointed by the Central Government on the recommendations of a Committee consisting of Cabinet Secretary as Chairman, Secretary, Department of Atomic Energy and Secretary, Ministry of Law and Justice as Members. This clause further provides that a person shall not be qualified for appointment as the Chairperson of the Commission unless he has attained the age of fifty-five years and is or has been or qualified to be a Judge of a High Court. The appointment of a sitting judge of a High Court shall be made after consultation with the Chief Justice of India. It further provides that a person shall not be qualified for appointment as a Member unless he has attained the age of fifty-five years and has held or is holding or qualified to hold, the post of Additional Secretary to the Government of India or any other equivalent post in the Central Government and possesses special knowledge in law relating to nuclear liability arising out of nuclear incident or has been a Claims Commissioner for five years.

Clause 21.—This clause contains provisions for the term of office of the Chairperson and Members of the Nuclear Damage Claims Commission. It provides that the Chairperson and a Member shall hold office as such for a term of three years from the date on which he enters upon his office and shall be eligible for re-appointment for another term of three years. However, no person shall hold office as such Chairperson or Member after he has attained the age of sixty-seven years.

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Clause 22.—This clause contains provisions relating to the salaries and allowances payable to and other terms and conditions of service, including pension, gratuity and other retirement benefits, of the Chairperson and other Members of the Nuclear Damage Claims Commission and provides that they shall be specified by rules to be made by the Central Government. However, the salary, allowances and other terms and conditions of service of the Chairperson or other Members shall not be varied to his disadvantage after his appointment.

Clause 23.—This clause contains provisions for filling up of vacancies in the office of Chairperson or Members of the Nuclear Damage Claims Commission. It provides that if, for reasons other than temporary absence, any vacancy occurs in the office of the Chairperson or Member of the Commission, the Central Government shall appoint another person in accordance with the provisions of this Act to fill such vacancy and the proceedings may be continued before the Commission from the stage at which it was, before the vacancy is filled.

Clause 24.—This clause contains provisions for resignation and removal of the Chairperson or Member of the Nuclear Damage Claims Commission. It provides that the Chairperson or a Member may, by a notice in writing under his hand addressed to the Central Government, resign his office. It further provides that the Central Government shall remove the Chairperson or Member from his office under the circumstances specified in this clause and in certain cases, such person shall be given an opportunity of being heard in the matter before his removal.

Clause 25.—This clause contains provisions to provide that a Chairperson or a Member shall be deemed to have retired from service. It provides that a person in the service of the Government immediately before the date of assuming office as a Chairperson or a Member shall be deemed to have retired from service on the date on which he enters upon his office. However, his subsequent service as the Chairperson or a Member shall be reckoned as continuing approved service counting for pension in service to which he belonged.

Clause 26.—This clause contains provisions relating to deduction of pension in certain cases. It provides that if a person, immediately before the date of assuming office as the Chairperson or a Member, was in receipt of, or has opted to draw, a pension, other than

a disability or wound pension, in respect of any previous service under the Central Government, his salary in respect of service as the Chairperson or a Member shall be reduced by the amount of that pension and where he has received the commuted value in lieu of a portion of the pension due to him in respect of such previous service, his present salary shall be reduced by the amount of that portion of the pension as well.

Clause 27.—This clause contains provisions for prohibition of acting as an Arbitrator. It provides that no person shall, while holding office as a Chairperson or a Member of the Nuclear Damage Claims Commission, act as an Arbitrator in any matter.

Clause 28.—This clause contains provisions for prohibition of practice. It provides that on ceasing to hold office, the Chairperson or a Member of the Nuclear Damage Claims Commission shall not appear, act or plead before the Commission.

Clause 29.—This clause contains provisions relating to powers of the Chairperson of the Nuclear Damage Claims Commission. It provides that the Chairperson shall have the power of superintendence in the general administration of the Commission and exercise such powers as may be specified by rules to be made by the Central Government.

Clause 30.—This clause contains provisions for appointment of officers and other employees of the Nuclear Damage Claims Commission. It provides that the Central Government shall provide the Commission with such officers and other employees as it may deem fit. It further provides that the salaries and allowances payable to and the terms and other conditions of service of officers and other employees of the Commission shall be specified by rules to be made by the Central Government.

Clause 31.—This clause contains procedure for making application for claiming compensation before the Nuclear Damage Claims Commission. It provides that an application

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to the Commission in respect of a nuclear damage shall be made in the form and manner provided by rules to be made by the Central Government and such application shall, subject to the provisions of clause 18, be made within a period of three years from the date of knowledge of nuclear damage by the person suffering such damage.

Clause 32.—This clause contains provisions for procedure and powers of Nuclear Damage Claims Commission. It provides that the Commission shall have original jurisdiction while adjudicating upon application for compensation filed before it under sub-clause (1) of clause 31 or transferred to it under clause 33 of the Bill, and upon such transfer, the Commission shall hear the applications from the stage at which it was before such transfer. Further, it empowers the Chairperson to constitute benches comprising of not more than three Members of the Commission for the purpose of hearing of claims and that any decision thereon shall be rendered by a majority of the Members hearing such claims. The Commission shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice and shall have the power to regulate its own procedure. The Commission shall have certain powers which are vested in a civil court under the Code of Civil Procedure, 1908, for discharging functions under the proposed legislation. It provides that the Commission shall dispose of the application within a period of three months from the date of its receipt and make an award accordingly. However, while making an award under this section, the Commission shall not take into consideration any benefit, reimbursement or amount received by the applicant in pursuance of any contract of insurance or otherwise. It empowers the Commission to grant temporary injunction to restrain the operator where he is likely to remove or dispose of his property with the object of evading payment by him of the amount of the award. It also provides that every award so made shall be final.

Clause 33.—This clause contains provisions for transfer of pending cases to the Nuclear Damage Claims Commission. It provides that every application for compensation pending before the Claims Commissioner immediately before the date of establishment of the Commission under clause 19 shall, after the establishment of the Commission, stand transferred on that date to the Commission.

Clause 34.—This clause provides for the nature of proceedings before the Claims Commissioner or the Nuclear Damage Claims Commission. It provides that every proceedings before the Claims Commissioner or the Commission under the proposed legislation shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of, and

for the purposes of section 196 of the Indian Penal Code.

Clause 35.—This clause contains provisions for exclusion of jurisdiction of civil courts. It provides that no civil court shall have jurisdiction to entertain any suit or proceedings in respect of which the Claims Commissioner or the Nuclear Damage Claims Commission is empowered to adjudicate under the proposed legislation and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the proposed legislation.

Clause 36.— This clause contains provisions for enforcement of awards. It provides that when an award is made by the Claims Commissioner under sub-clause (1) of clause 16 or by the Nuclear Damage Claims Commission under sub-clause (6) of clause 32 of the Bill, the insurer or the person responsible under the contract of insurance or financial security to pay the amount of such award to the extent of his liability, shall be required to deposit such amount within such time and in such manner as directed by the Claims Commissioner or the Commission and the remaining amount by which such award exceeds the amount so deposited shall be deposited by the operator, subject to the maximum extent of his liability under sub-section (2) of section 6 of the Bill. It further provides that on the failure of any person to deposit the amount of award within the period specified in the award, such amount shall be recoverable from such person as arrears of land revenue and the amount so deposited shall be disbursed to the awardees within a period of fifteen days from the date of such deposit.

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Clause 37.—This clause contains provisions for preparation of annual report. It provides that the Nuclear Damage Claims Commission shall prepare in each financial year an annual report giving full account of its activities during that financial year in the manner provided by rules to be made by the Central Government and submit a copy to the Central Government to enable it to lay the same before each House of Parliament.

Clause 38.—This clause contains provisions for dissolution of Nuclear Damage Claims Commission in certain circumstances. It provides that where the Central Government is satisfied that the purpose for which the Commission established under clause 19 has served its purpose, or where the number of cases pending before such Commission is so less that it would not justify the cost of its continued function, or where it considers necessary or expedient so to do, it may, by notification, dissolve the Commission. It also provides for consequences of such dissolution and provides that with effect from the date of notification of dissolution of Commission, (a) the proceeding, if any, pending before the Commission as on the date of such notification shall be transferred to the Claims Commissioner to be appointed by the Central Government under sub-clause (2) of clause 9; (b) the Chairperson and all Members of the Commission shall be deemed to have vacated their offices as such and they shall not be entitled to any compensation for premature termination of their office; (c) officers and other employees of the Commission shall be transferred to such other Authority or offices of the Central Government in the manner provided by rules to be made by the Central Government. However, officers and other employees so transferred shall be entitled to the same terms and conditions of service as would have been held by them in the Commission and in the case of an officer or employee of the Commission refusing to join the services in such other Authority or office, he shall be deemed to have resigned and shall not be entitled to any compensation for premature termination of contract of service. It also provides that upon the dissolution of the Commission, all assets and liabilities of the Commission shall vest in the Central Government and that anything done or any action taken or purported to have been done or taken including any order made or notice issued or any appointment, confirmation or declaration made or any document or instrument executed or any direction given by the Commission before such dissolution, shall be deemed to have been validly done or taken. The Central Government shall have power to re-establish the Nuclear Damage Claims Commission subsequent to its dissolution in accordance with the provisions of the proposed legislation.

Clause 39.—This clause contains provisions for offences and penalties. It provides punishment for contravention of any rule to be made or any direction to be issued under the proposed legislation or for failure to take out and renew insurance policy or other financial

security under clause 8 or for failure to deposit the award amount under clause 36 of the Bill, with imprisonment for a term which may extend to five years or with fine or with both. It also provides punishment for failure to comply with any direction to be issued under clause 43 of the Bill or for causing obstruction to any authority or person in the exercise of his powers under the proposed legislation, with imprisonment for a term which may extend to one year or with fine or with both.

Clause 40.—This clause contains provisions for offences by companies. It provides that where an offence under the proposed legislation has been committed by a company, every person directly in charge of, and responsible to, the company for the conduct of its business at the time of commission of offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. It also provides that where any offence under the proposed legislation has been committed with the consent or connivance of, or attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

The *Explanation* to the clause seeks to define the terms "company" and "director".

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Clause 41.—This clause contains provisions for offences by Government Departments. It provides that where an offence under the proposed legislation has been committed by any Department of the Government, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly, in accordance with the provisions of the said clause.

Clause 42.—This clause contains provisions for cognizance of offences and provides that no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under the proposed legislation and that cognizance of such offence shall be taken only on a complaint made by the Central Government or any authority or officer authorised by it.

Clause 43.—This clause confers powers upon the Central Government to give directions to any operator, person, officer, authority or body for carrying out the purposes of the proposed legislation and such person shall be bound to comply with such direction.

Clause 44.—This clause confers power upon the Central Government to call for such information from an operator as it may deem necessary for the purposes of the proposed legislation.

Clause 45.—This clause confers power upon the Central Government to exempt, by notification, any nuclear installation from the application of the proposed legislation where it is of the opinion, having regard to small quantity of nuclear material, that the risk involved from such installation is insignificant.

Clause 46.—This clause provides that the provisions of the proposed legislation shall be in addition to, and not in derogation of, any other law for the time being in force and it shall not exempt the operator from proceeding against him under the provisions of any other law for the time being in force.

Clause 47.—This clause contains provisions for protection of action taken in good faith under the proposed legislation. It provides that no suit, prosecution or other legal proceedings shall lie against the Central Government or person or officer or authority in respect of anything done in good faith in pursuance of such proposed legislation or of any rule or order made, or direction issued, thereunder.

Clause 48.—This clause empowers the Central Government to make rules in respect of the matters specified in the said clause. The rules made by the Central Government shall be laid before each House of Parliament.

Clause 49.—This clause contains provision for power to remove difficulties. It provides that if any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty. However, no such order can be made under this section after the

expiry of three years from the commencement of the proposed legislation. Further, every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

FINANCIAL MEMORANDUM

Person who suffers nuclear damage shall be entitled to receive compensation under this Act for any nuclear damage resulting from nuclear incident. For this purpose, clause 6 of the Bill proposes to fix the maximum amount of liability for a nuclear incident at rupee equivalent of three hundred million Special Drawing Rights and the liability of the operator at rupees five hundred crores per nuclear incident at present and empowers the Central Government to increase or decrease the amount of liability of the operator depending on the extent of risk involved.

2. Clause 7 of the Bill proposes to fix liability of the Central Government for nuclear damage resulting from a nuclear incident in the following cases—

- (a) where the liability exceeds the amount of liability of an operator, to the extent such liability exceeds such liability of the operator;
- (b) where the nuclear incident occurs in a nuclear installation owned by it; and
- (c) where the nuclear incident occurs on account of grave natural disaster of an exceptional character or on account of act of armed conflict, hostility, civil war, insurrection or terrorism.

However, since the possibilities of such eventualities are very rare and the actual liability of the government in the event of a nuclear incident would very well depend on the magnitude of the incident, it would be very difficult to estimate the cost of liability at this stage.

3. Sub-clause (2) of clause 9 of the Bill empowers the Central Government to appoint Claims Commissioner for the purpose of adjudicating upon the claims for compensation in respect of nuclear damage and clause 11 thereof provides for the salary and allowances payable to and other terms and conditions of service of Claims Commissioner.

4. Clause 19 of the Bill empowers the Central Government to establish a Nuclear Damage Claims Commission under the circumstances specified thereunder and clause 22 thereof, provides for Salary and allowances payable to and the other terms and conditions of service including pension, gratuity and other retirement benefits of the Chairperson and other Members of the Commission.

5. Sub-clause (1) of clause 30 of the Bill empowers the Central Government to provide the Nuclear Damage Claims Commissioner with officers and other employees and sub-clause (2) thereof provides for the salary and allowances payable to and other conditions of service of such officers and employees.

6. It would be difficult to work out the exact expenditure, both recurring and nonrecurring towards the establishment of Claims Commissioner and Nuclear Damage Claims Commission, as it can be determined only after their appointment in case of any nuclear incident.

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MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 48 of the Bill empowers the Central Government to make rules for carrying out purpose of the Act. Such power to make rules, *inter alia*, includes (a) the other financial security which an operator of a nuclear installation may take for covering his liability under the Bill and the manner thereof; (b) the salary and allowances payable to and the other terms and conditions of service of Claims Commissioner; (c) the procedure to be followed by Claims Commissioner; (d) the person to be associated by Claims Commissioner and the manner thereof; (e) the remunerations, fee or allowances of associated person; (f) any other matter with respect to which the Claims Commissioner shall have the power of a Civil Court; (g) the form of application, the particulars it shall contain and the documents it shall accompany; (h) the salary and allowances payable to and other terms and conditions of service of Chairperson and other Members; (i) the powers of Chairperson; (j) the salary and allowances payable to and the terms and other conditions or service of officers and other employees of the Commission; (k) the form of application, the particulars it shall contain and the documents it shall accompany; (l) any other matter with respect of which the Commission shall have the power of a Civil

Court; (m) the form and the time for preparing annual report by the Commission; and (n) the manner of transfer of officers and other employees of the Commission.

2. The matters in respect of which the said rules may be made or notification issued are matters of procedure and administrative detail, and as such, it is not practicable to provide for them in the proposed Bill.

3. The delegation of legislative power is, therefore, of a normal character.

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to provide for civil liability for nuclear damage, appointment of Claims Commissioner, establishment of Nuclear Damage Claims Commission and for matters connected therewith or incidental thereto.

(Shri Prithviraj Chavan, Minister of State for Science and Technology and Earth Sciences)

GMGIPMRND—810LS(S5)—02-03-2010.
