

4. The ambiguities in the nuclear liability law

Prelims Syllabus: Governance

Mains Syllabus: GS-III Science & Technology - Awareness In The Fields Of It, Space, Computers, Robotics, Nano-Technology, Bio-Technology, Pharma Sector & Health Science



Why in News?

- The issues surrounding nuclear liability law in India continue to cause delays in the plan to build six nuclear power reactors in Maharashtra's Jaitapur.

Background:

- The French energy company Electricite de France (EDF) submitted its techno-commercial offer for the construction of six nuclear power reactors in Maharashtra's Jaitapur in April 2021.
- The proposed project at Jaitapur is estimated to be a 9,900-MW project and is regarded as the world's biggest nuclear power generation site under consideration at present.
- However, the discussions between Indian and French officials over issues like nuclear liability and the high cost of power per unit have still not resulted in any breakthrough.

Laws governing nuclear liability in India:

- Civil nuclear liability laws play a crucial role in ensuring that timely compensation is extended to the victims of nuclear catastrophes or disasters.
- These laws also set out who will be liable for those damages.

- The international nuclear liability regime which was strengthened post the Chernobyl nuclear disaster (1986) consists of several treaties and an umbrella Convention on Supplementary Compensation (CSC) was adopted in 1997.
- Despite being adopted in 1997, CSC could only enter into force after it had been ratified by at least five states with a minimum of 400 GW (thermal) of installed nuclear capacity.
- Japan became the fifth such state to ratify the convention in January 2015, and hence CSC came into force on 15 April 2015.
- CSC aims to establish a minimum national compensation amount that can be further increased via public funds if in case the national amount is insufficient to compensate for the damage caused by a nuclear accident.
- India signed CSC in October 2010 and ratified the convention in 2016.
- In line with the international convention, India introduced the Civil Liability for Nuclear Damage Act (CLNDA) in 2010.

Civil Liability for Nuclear Damage Act (CLNDA), 2010:

- CLNDA was enacted with the aim to establish a speedy compensation mechanism for victims of a nuclear disaster.
- The CLNDA provides for stringent and no-fault liability on the operator of the nuclear plant.
- As per the legislation, nuclear plant operators can be held liable for damage regardless of any fault on their part.
- The act mentions that the operator must pay ₹1,500 crores in case of damage caused by a nuclear accident and also mandates the operator to cover liability through insurance or any such financial security mechanisms.
- If the damage caused by an incident exceeds ₹1,500 crores, the CLNDA expects the government to step in.
- CLNDA has limited the government liability amount to the equivalent of 300 million Special Drawing Rights (SDRs) which is about ₹2,100 to ₹2,300 crores.

CLNDA on supplier liability:

- Various legal frameworks on civil nuclear liability available globally, including the CSC are formulated based on the principle of exclusive liability of the operator of a nuclear installation and no other person.

- During the incipient stage of the nuclear industry's development, it was widely accepted by the industry as well as foreign governments that excessive liability claims against suppliers of nuclear equipment would make the business unviable and affect the growth of the nuclear energy industry.
- Other key reasons for putting in place exclusive liabilities for the operator are to avoid legal complications by having separate liabilities and to simplify the insurance process by having only one entity in the chain.
- Further, Section 10 of the annex of the CSC mentions two conditions under which a national law can provide the operator with the "right of recourse" i.e. operators can extract liability from the supplier. The two conditions are:
 - If the clause is expressly agreed upon in the contract.
 - If the nuclear accident is caused due to an act or omission done with intent to cause damage.
- However, India in its CLNDA, introduced the concept of supplier liability over and above that of the operators for the first time.
- The framers of the legislation, by acknowledging that such defective parts were partly responsible for disasters like the Bhopal gas tragedy, came up with a clause on supplier liability.
- According to Section 17 (b) of the CLNDA, after paying their share of compensation for damages as per the provisions of the Act, the operator of the nuclear plant will have the "right of recourse" in case the nuclear accident has "resulted as a consequence of an act of supplier which includes the supply of equipment or material with patent or latent defects or sub-standard services".

Issues surrounding supplier liability clause:

- Foreign as well as domestic suppliers of nuclear equipment have expressed concerns over the supplier liability clause and have been cautious while signing nuclear deals with India.
- The CLNDA has further limited or capped the liability for operators but exposes suppliers to unlimited amounts of liability.
- Apart from the concerns over being subjected to unlimited liability, suppliers have also flagged the existing ambiguity over how much insurance to set aside in case of damage.
- Suppliers of nuclear equipment have expressed concerns over Section 17(b) and Section 46 of CLNDA.

- Section 46 of CLNDA states that nothing would prevent proceedings other than those which can be brought under the Act, to be brought against the operator.
- According to industry experts, this clause offsets the key purpose of the legislation which is acting as a mechanism enforcing the channelling of liability to the operator to ensure prompt compensation for victims.
- Furthermore, with a lack of a comprehensive definition of the types of “nuclear damage” by the Government, Section 46 allows civil liability claims to be initiated against the operator as well as the suppliers through other civil laws such as the Law of Tort.
- The Law of Torts is a body of legislation that addresses and provides remedies for non-contractual acts of civil wrongdoings.

Government’s stand:

- The Government has maintained that the existing Indian laws are in line with the CSC.
- The Government has also said that the provision of Section 17(b) permits but does not mandate an operator to include such clauses in the contract or exercise the right to recourse.

Existing nuclear projects in India:

- At present India has 22 nuclear reactors and over 12 more projects are being planned.
- All the existing nuclear reactors in India are operated by the Nuclear Power Corporation of India Limited (NPCIL).
- The plans to develop the Jaitapur nuclear project have been delayed for over 10 years as the initial MoU was signed in 2009 with EDF’s predecessor Areva.
- Other nuclear projects that have experienced roadblocks include the one proposed at Kovvada in Andhra Pradesh.
- Despite signing civil nuclear agreements with various countries such as the US, France and Japan, Kudankulam nuclear plant is the only plant built in collaboration with a foreign nation (Russia).