

# US presses India to further water down nuclear liability law

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The US nuclear industry and the Obama administration are pressing the Indian government to amend or circumvent the controversial Civil Liability for Nuclear Damage law that was passed by India's parliament in late August.

"We are not going to chase bad deals," declares John Rice, General Electric's head of infrastructure-technology businesses. "And we're not going to do business in countries where the nuclear-liability regime is not well-defined."

The US-India Business Council, a mouthpiece for US big business and their Indian allies, has also criticized the Indian law. It argues that by failing to exempt nuclear industry suppliers from legal liability and lawsuits in the event of accidents, the law could "preclude involvement by the private sector—both Indian and foreign—and stymie India's multi-year effort to develop civil nuclear power."

US State Department spokesperson P. J. Crowley and the US Ambassador to India, Timothy J. Roemer, have publicly declared that Washington is pressing India's Congress Party-led coalition government to have the new law amended. Said Crowley, "We continue our discussions with the Indian government on this issue and we note that Indian business leaders are concerned about some specific aspects of the law that was just passed by Parliament. We will look to the Indian government to see what changes can be made."

Roemer said the Obama administration is "aware of the concerns of industry regarding the final version of the legislation ... The US government is engaged with the government of India to ensure that the potential of [the] historic [Indo-US civil nuclear] agreement can be realized."

The *Wall Street Journal* is reporting that Washington, recognizing the difficulty of the government sending a freshly minted law back to parliament for amendment, is seeking to make a government-to-government agreement with India that could take precedence over it.

In other words, the self-proclaimed "world's two largest democracies" are conspiring to find a mechanism to circumvent the nuclear liability regime just fashioned by India's parliament so as to please GE and other US and Indian companies that hope to profit from India's plans to rapidly expand nuclear power.

The focus of the complaints is the law's Clause 17 (b). It

states that the "operator" of a nuclear installation, after paying compensation for any damages caused by a nuclear accident, has the right to sue and obtain compensation from a supplying company if "the nuclear incident has resulted as a consequence of an act of the supplier or his employee, which includes supply of equipment or material with patent or latent defects or substandard services."

US nuclear companies claim this clause will force them to pay exorbitant liability insurance fees and will put them at a huge competitive disadvantage with French and Russian nuclear companies, who have access to cheaper state-sponsored insurance.

Russia has seconded the US complaints and is seeking "official clarification" as to the implications of Clause 17 (b). The Russian ambassador to India, Alexander M. Kadakin, told the *Times of India*, "One should not shift solution-finding to the shoulders of partners in the nuclear sphere, including Russia, who are sincerely ready to help India."

Indian Prime Minister Manmohan Singh has responded to the criticisms of the new law by saying that if US and other foreign nuclear companies "make a lot of money, they will forget some of the concerns they have expressed."

But he and his government have clearly been taken aback by the US reaction, which has included articles in the *New York Times* and other major US dailies expressing great disappointment over the law and more broadly concern over whether the Indo-US civil nuclear accord, from which it arose, is paying Washington sufficient dividends.

On the US's part, the passage of a civil nuclear liability bill protecting US companies from large damage claims was essential for the operationalisation of the civil nuclear treaty that India and the United States hammered out in 2008.

Washington conceives of the treaty and associated military cooperation and arms deals as a means of cementing an Indo-US "global, strategic partnership" that would tie India to US strategic objectives, especially in countering a rising China, extending US influence in oil-rich Central Asia, and isolating Iran.

US business, for its part, calculated that the lifting of the embargo on nuclear trade with India would pave the way for hundreds of billions of dollars worth of Indian contracts to buy

US civilian nuclear reactors, armaments, and hitherto restricted military-security technology.

India's corporate elite and most of its strategic, nuclear and military establishment strongly endorsed the Indo-US nuclear treaty. This is because they believe it goes a long way to recognizing India as a nuclear-weapons state and granting India the "world power" status they covet, gives India access to much-needed advanced nuclear, military and other technology, and will allow India to concentrate the resources of its indigenous nuclear program on developing its nuclear-weapons arsenal.

Manmohan Singh went to great lengths to overcome opposition to the Indo-US nuclear accord. At one point he threatened to resign as prime minister if the Congress Party leadership did not allow him to move it forward and in July 2008 he called the dare of the Stalinist-led Left Front, bringing the accord before parliament even though the Stalinists had vowed to withdraw support for the government and thereby jeopardize its parliamentary majority.

Singh was similarly behind the push to secure passage of the liability law prior to a summit meeting with US President Barack Obama in New Delhi this November.

The initial drafts of the liability law gave US and Indian big business everything they were after and more.

Indeed, so weak was the proposed law—it proposed maximum financial liability for the operator of a nuclear facility at around \$110 million, or 23 times less than the legal liability of an operator in the US—that it provoked a political uproar.

Adding to the government's difficulties was that the discussion of the nuclear liability law coincided with the renewed public interest in, and outrage over, the 1984 Bhopal Union Carbide disaster. This interest and outrage was occasioned by last December's 25th anniversary of the world's worst-ever industrial accident and by the first criminal convictions of Union Carbide executives this June. (See "India: Bhopal verdict provokes public outrage")

The Bhopal disaster killed as many as 30,000 people and has left tens of thousands of others blind or otherwise permanently damaged; yet under a 1989 settlement the company paid the Indian government just \$470 million, a fraction of its profits in any given year.

Critics of the nuclear liability law—environmental groups, other NGOs and some opposition politicians—warned that the government, in its anxiety to placate the nuclear industry and Washington, was creating conditions for a Bhopal-type scenario in which a giant corporation through negligence commits mass murder, then escapes any meaningful sanction.

Under public and opposition pressure, the government ultimately agreed to increase the cap on liability to 15 billion rupees, or about \$335 million, still a very small amount and substantially less than the Bhopal settlement.

During the debate over the bill, the government also stipulated that all civilian nuclear plants will continue to be legally "operated" by the Indian government, even if they are designed, built, and serviced by foreign companies.

This makes Clause 17 (b)'s rules governing "suppliers" all the more important.

In the final stages of the debate on the bill, India's Congress Party led United Progressive Alliance (UPA) coalition government sought, unsuccessfully, to smuggle new language into Clause 17 (b) that would have required the government to prove an "intent" to cause an accident in making liability claims. Critics rightly charge this would have rendered the liability clause meaningless, by raising the liability bar from negligence to something deliberate, i.e. more akin to terrorism.

With the withdrawal of the "intent clause" and the tripling of the liability limit to 15 billion rupees, India's official opposition, the Hindu supremacist Bharatiya Janata Party (BJP), announced it would vote for the bill.

Since falling from power in 2004, the BJP has generally adopted a provocative stance toward the minority UPA government, raking up communal issues in an attempt to destabilize it and refusing to support measures such as the Indo-US nuclear treaty that it had previously advocated. This has been severely criticized by broad sections of the corporate media who believe that the BJP, as the Indian elite's alternate party of government, should cooperate in passing legislation considered vital to the interests of the bourgeoisie.

Following passage of the nuclear liability law, Manmohan Singh was effusive in his praise of the BJP, noting that it was the former BJP-led National Democratic Alliance (NDA) government that initiated the negotiations with Washington to end the Nuclear Non-Proliferation Treaty-mandated embargo on civilian nuclear trade with India.

But US big business, the Obama administration, and much of India's corporate elite deem the modest concessions the UPA government made to secure passage of the liability law to be excessive. They wanted and want legislation that gives nuclear suppliers iron-clad guarantees against all liability claims.



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