Don't nuke civil liabilities Bill

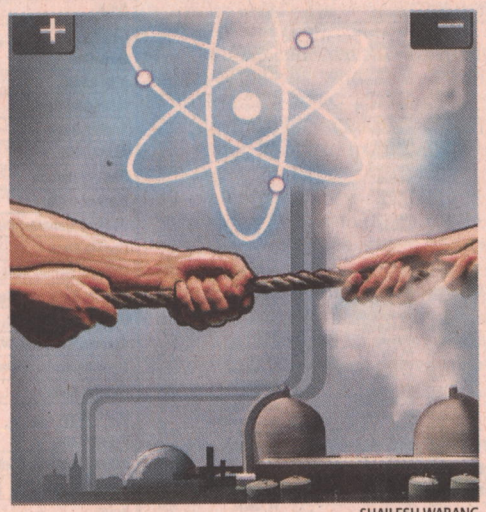
ALTHOUGH THE CIVIL LIABILITY FOR NUclear Damage Bill, 2010, has been extensively debated, it appears that both the critics and the supporters of the Bill have misunderstood its provisions and have failed to appreciate its terms. The critics have described the Bill as a sellout of the nation or a ploy to protect foreign suppliers of nuclear material and technology. The Bill is being criticised for fixing a cap on the liability, for attempting to save overseas exporters of radioactive material from the liability for nuclear accident, for circumventing environmental law principles laid down by the Supreme Court, and so on.

The supporters of the Bill contend that it is essential to protect foreign suppliers to develop the country's civil nuclear energy sector as no foreign nuclear material or technology supplier would come forward if such a protection was not guaranteed in law. So what does the Bill seek to achieve?

The Bill seeks to fill in a huge gap in the existing legal and regulatory regime by establishing 'civil liability for nuclear damage'. This is the first time a legislation is being considered for laying down a mechanism for claiming compensation for damage caused by nuclear accidents. A victim of a nuclear accident would want compensation at least commensurate with the actual damage caused. She also needs an efficient and prompt state machinery for adjudication of her claims for compensation.

In absence of this Act, a victim of a nuclear accident would not know how to seek compensation for loss of life and property. The obligation of an operator of a nuclear facility at present to obtain insurance cover for damage to life, property and the environment, outside the plant, is only Rs 50 crore under the Public Liability Insurance Act, 1991. Thus, it is surprising that a Bill that requires a nuclear facility operator to obtain and maintain insurance cover that is 30 times the existing requirement is being overlooked and criticised.

There is also some misunderstanding regarding the fixing of liability for nuclear accidents and incidents on the operator of the nuclear energy plant. The definition of 'operator' in the Bill is dynamic. The Bill defines 'operator' in a manner that liability keeps shifting from the operator of the installation, to the transporter or the consignor — while the goods are in transit — depending on who has the actual possession or control over the radioactive material when a nuclear accident or incident occurs.



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The Civil Liability For Nuclear Damage Bill is a much-needed requirement and its opponents should focus on strengthening the mechanism for compensation

Under the Atomic Energy Act, 1962, the complete control over mining, manufacture, handling, storage, management, transportation, etc, of radioactive material as also the operation of nuclear installations and reactors can vest with either the central government or a government company in which the government has majority stake. This may change if nuclear energy sector is liberalised in future.

It is also not correct to say that the foreign suppliers are being given legal immunity. The consignor of material is responsible if the nuclear accident occurs during the transportation of material. However, it would be bizarre to hold the supplier of a radioactive material responsible regardless of whether (a) the supplier had any control over the material at the time of the accident, (b) there was any defect in the material supplied by it, or (c) there was an omission on the supplier's part, wilful or otherwise.

The act of supplying the material cannot give rise to the obligation to compensate the victims of a nuclear disaster. It is pertinent to note that the Bill already envisages supplier's liability in cases where a nuclear accident occurs as a result of a wilful act on the part of the supplier of the material, equipment or services, or where defective or sub-standard material or services has been supplied.

Critics of the Bill have also argued that limitation of liability is regressive and seeks to circumvent the principle of absolute liability laid down by the Supreme Court in the landmark Oleum Gas leak case. However, world over, it is always the operator of a hazardous industry who is primarily responsible for the clean-up or damages. Even the law laid down by the Supreme Court is that an enterprise, engaged in a hazardous or inherently-dangerous industry that poses a potential threat to the health and safety of people owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently-dangerous nature of the activity that it has undertaken.

As per this principle, it is the enterprise engaged in a hazardous activity that is responsible and not the industry or enterprise that supplies such equipment or material used in the plant where a leak or accident occurs. Extending the liability to the supplier — after the hazardous material and equipment have been handed over to the operator of the plant in India — may not be consistent with the absolute liability principle.

Last, but not the least, in an appropriate circumstance, the provisions of the Bill leave enough room for interpretation that the liability of a grossly-negligent supplier, transporter or contractor is not limited to the amounts set out therein. The Bill, undoubtedly, is a much-needed requirement and the opponents of the Bill should focus their energies in seeking appropriate amendments that would strengthen the structure and mechanism for awarding timely compensation to the victims.