

1. Critically examine international framework pertaining to nuclear liability? What are nuclear liability principles? Also enumerate logjams in implementation of civil nuclear cooperation agreement between India and the USA. (150 words)

Answer:

In 2008, India and the US reached an agreement on nuclear cooperation that was hailed in many quarters — by nuclear suppliers and vendors in the US, India and across the world — as an opportunity to facilitate the rapid expansion of India's civilian nuclear programme. India envisaged expanding its civilian nuclear programme from its current capacity of 4.8 GW to 30 GW by 2030. To fully engage with international nuclear suppliers, however, India needed to harmonise certain laws, particularly those addressing civil nuclear liability in the case of an accident, with international norms.

Internationally, the fundamental nuclear liability principles include:

- 1) Strict liability of the nuclear operator
- 2) Exclusive liability of the operator of a nuclear installation
- 3) Compensation without discrimination based on nationality, domicile or residence
- 4) Mandatory financial coverage of the operator's liability
- 5) Exclusive jurisdiction (only courts of the State in which the nuclear accident occurs have jurisdiction)
- 6) Limitation of liability in amount and in time

Logjams in implementation of civil nuclear cooperation agreement between India and USA:

India's nuclear liability law, enacted in 2010, contains elements that address each of the above principles. However, Section 17(b) grants the operator the right to seek recourse from suppliers and vendors (only after the operator compensates victims) if the accident was the result of a patent or latent defect in equipment or substandard services. This provision is fundamentally different from those in nearly all other jurisdictions. It is a significant difference, at least from the perspective of the international nuclear industry.

From a policy perspective, sophisticated parties may agree to cap liability or provide a right of recourse under a contract. This is a perfectly acceptable mechanism when the only damage is economic harm to one or both of the parties to the contract (such as damage to a reactor in the event of an accident). In that case, there is no need for a legislation. The situation is different when the victim of an accidental release is not in a contractual relationship with either the vendor or the operator but is a member of the public. In that case, the transaction costs are prohibitive — the vendor and operator cannot negotiate with each potentially affected party separately. There is then a need for legislative action (for example, liability caps, financial protection, a single court) to reduce transaction costs to an acceptable level. The legislation should create proper incentives to ensure that the entity with the greatest ability to influence accident risk adopts an optimal activity level. For nuclear power, this full internalization of responsibility occurs when the operator is exposed to the activity's full costs. This is because the operator is responsible for selecting the supplier/

vendor, qualifying equipment, overseeing construction and the installation of equipment, choosing maintenance priorities, monitoring performance, repairing equipment and operating the plant. In short, it is the operator who is ultimately responsible for the safe operation of a nuclear power plant.

In the context of India's nuclear liability law, the right to seek recourse from suppliers and vendors has two significant implications. First, it increases the costs of nuclear projects. Second, it alters the operator's incentives by shifting some responsibility for safety to vendors. The first implication is fundamentally a matter of price. Because India's liability regime is different from the international regime, it creates more uncertainty (or risk) for the vendor that must be accommodated in the contract price. And, when choosing between a half-century-old approach used internationally and an untested liability provision, a rational company will demand a significant price increase to accommodate the unique provision. This dynamic, which is far from surprising, is a major reason why negotiations remain at an impasse.

Nuclear vendors are also concerned that the right of recourse fundamentally alters the balance of responsibility between the operator and the vendor. Not only should a regulator and the public be able to demand accountability from a single entity (the operator), but the operator must also take responsibility for the actions of its suppliers and vendors. The operator should, and must, uncover latent or patent defects before equipment is put into service. Anything less would be an abdication of its responsibility to protect public safety. Vendors, therefore, are justified in being concerned that a right to recourse creates the wrong incentive, by giving an operator a mechanism for shifting responsibility from its role in an accident to the vendor. This concern is probably compounded by the fact that the sole operator in India, the Nuclear Power Corporation of India Limited, is government-owned and therefore would have the bully pulpit and motivation to blame a foreign vendor in the unlikely event of an accident.

PRACTICE QUESTIONS

Answer the following Questions

1. Progress in India-US ties has been accompanied by equally significant divergences on important issues. Examine in the context of recent developments. (150 words)
2. Despite bonhomie, the structural differences between Indian and Israeli national security situations, their worldviews and absence of explicitly shared enemies limit stronger strategic rapprochement. Critically discuss. (150 words)