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URL: http://works.bepress.com/vikas_kumar/55/ Last Updated: August 30, 2010 (July 30 2010)

Indo-US civil nuclear commerce is all set to take off after India and the United States signed an agreement for reprocessing nuclear fuel and the Indian Parliament institutionalized a nuclear liability regime for the nuclear power sector. The Indian government left no stone unturned in trying to get the Civil Liability for Nuclear Damage Bill, 2010 (‘the Bill’) passed in the Parliament. The Bill was initially supposed to be introduced to the Parliament in March 2010 but was introduced only on May 7, 2010, the last day of the session. The Bill has been controversial ever since. But ultimately the Parliament approved the Bill with amendments in the last week of August after the ruling party arrived at an understanding with the main opposition party.

The controversy surrounding the Bill was/is not entirely politically motivated. The Bill continues to be deeply flawed: in a hurry to complete the necessary formalities to kick start Indo-US civil nuclear commerce before the US President’s visit to India later this year, the government did not even checked if the Bill dovetailed with existing legislation and policies.

For instance, nuclear power plant operators will get an unfair advantage over operators working with other fuels since operators’ liability is severely limited in case of nuclear accidents. It is not clear if and when energy pricing will be amended to create a level playing field in the power generation sector. And the Bill also lacks internal consistency regarding key issues like how to assign liability when more than one nuclear installation located at the same site is involved in a nuclear accident.

But one of most important deficiencies of the Bill is fiscal.

In general terms, the Bill could affect the obligations of the government under the Fiscal Responsibility and Budget Management Act, 2003, which requires the government to manage the budget deficit in a transparent manner so as to achieve ‘inter-generational equity in fiscal management’. And even if we ignore the inter-generational costs of the government’s plan to expand the nuclear energy sector, there are still unaccounted costs to the tax-payer.

There are at least three different ways in which the Bill could strain the fiscal responsibility of the government.
First, the Bill caps total liability in respect of a nuclear accident in terms of Special Drawing Rights (SDR 300 million, about $ 458 million), whereas the cap on the operator’s liability is expressed in Rupees (₹ 15 billion, about $ 324 million or € 247 million). The state takes care of the difference between the total and operator’s liability. At the current rate, a 24 per cent increase in the value of SDR will increase the public burden by ₹ 5000 million, equivalent to the annual budget allocation for an average sized province under the Education for All program. It is worth noting that between December 2007 and August 2010 the SDR value appreciated by 15 per cent in comparison to the value of the Rupee.

Second, despite an amendment that triples the operator’s liabilities the state would still be liable for at least ($ 134 million, assuming 1 SDR = 1.5 USD). A number of reactors are likely to be built and operated by private or public-private companies. So the state is exposing itself to substantial liabilities. In addition, uncompensated damages resulting from a nuclear accident that exceed the liability cap are beyond the scope of the Bill. And the Bill is silent on damages after a nuclear power plant comes to the end of its useful life. Unless otherwise legislated, public pressure in the event of an accident would inevitably compel the state to bear these liabilities.

Third, the original Bill’s Statement of Objects and Reasons indicates that the government might at some point want to sign the Convention on Supplementary Compensation for Nuclear Damage, 1997 (CSC). CSC (Arts IV, VI, VII) provides that if a member state cannot take care of the damages arising out of a nuclear accident, then other members are obliged to extend financial support. This financial support is based on a pre-determined formula referring to installed nuclear energy capacity and annual contribution to the United Nations. The United States, a key contracting state of CSC, has a large proportion of the world’s nuclear reactors, and many of these reactors are old and relatively accident-prone. The government has failed to estimate the budgetary implications of signing CSC.

The above issues are not addressed in the Bill’s Financial Memorandum. In short, the budgetary implications of the Bill need to be carefully examined. It is unfortunate that such an important Bill was passed by the Parliament without sufficient scrutiny. Hopefully, the controversy surrounding this Bill will chasten the government, and lead to its taking the necessary steps needed to improve legislative bill drafting.

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