



Environmental Social  
Justice  
&  
Governance Initiatives

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13 March 2010

**Reg.:** Civil Liability of Nuclear Damage Bill, 2010 and related concerns

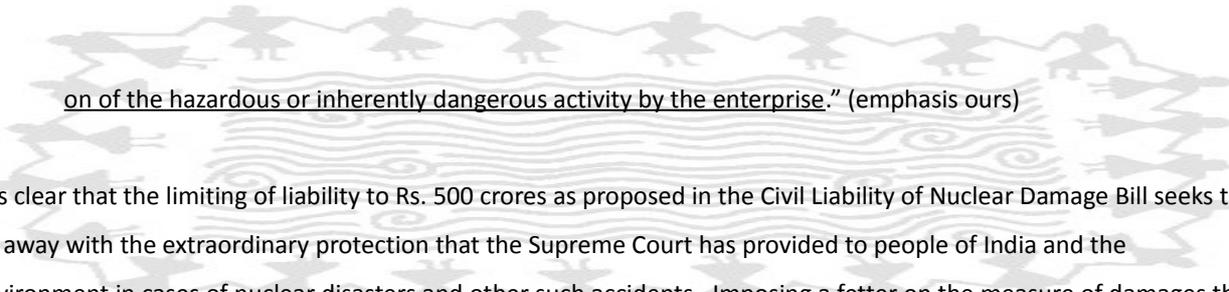
Respected Prime Minister,

Significant changes are being proposed in laws pertaining to public safety, environmental impacts and liability by introducing Biotechnology Regulatory Authority of India Bill, 2009 and Civil Liability of Nuclear Damage Bill, 2010 in the Parliament of India. Both these legislations are being introduced without any public debate and have been developed with considerable secrecy.

It is a matter of grave concern to the people of India that the Civil Liability of Nuclear Damage Bill, 2010 seeks to alter the existing legal principles of polluter pays, precautionary principle and also the principle of absolute liability as laid down in various Supreme Court judgments.

In the Oleum Gas Leak case in Delhi [M. C. Mehta vs. Union of India, WP (Civil) No.12739 of 1985] the Supreme Court has held as follows:

*“We would therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-à-vis the tortious principle of strict liability under the rule in Rylands v. Fletcher. We would also like to point out that the measure of compensation in the kind of cases referred to in the preceding paragraph must be co-related to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying*



on of the hazardous or inherently dangerous activity by the enterprise.” (emphasis ours)

It is clear that the limiting of liability to Rs. 500 crores as proposed in the Civil Liability of Nuclear Damage Bill seeks to do away with the extraordinary protection that the Supreme Court has provided to people of India and the environment in cases of nuclear disasters and other such accidents. Imposing a fetter on the measure of damages that may be claimed by victims amounts to taking away the Right to Life as guaranteed under Article 21. The present Bill which seeks to do away with this Constitutional Right will not stand the scrutiny of being free from arbitrariness.

In this context we bring to your attention a rather disturbing development pursuant to an MOU signed between Indian Ministry of Environment and Forests (MoEF) and the United States Environment Protection Agency (EPA) on 16 January 2002, and renewed in 2007. In August 2009, the EPA issued a Request for Proposal to any international non-profit organisation to bid for a grant amounting to US \$ 500,000/-, the purpose of which was stated as follows:

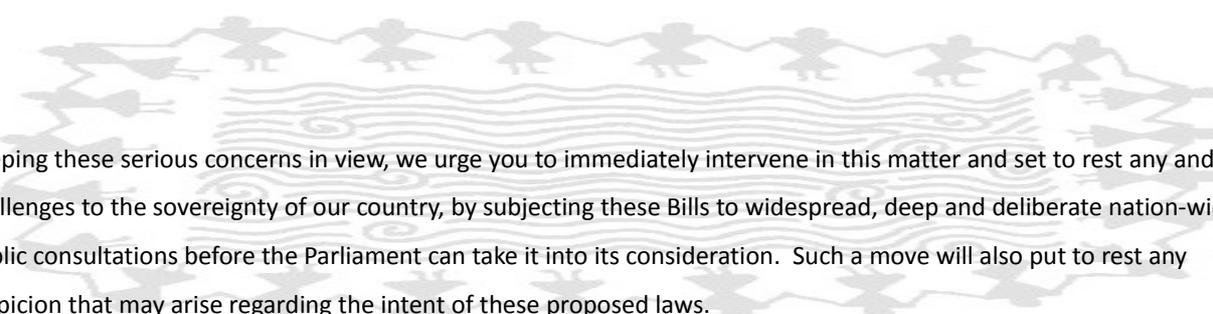
“The first activity that the selected recipient should undertake is the organization of a workshop with a cross-section of Indian stakeholders and experts to facilitate a dialogue concerning the establishment of environmental civil judicial authority in India. This dialogue should be preceded by an analysis, to be developed by EPA, of India’s current and relevant statutory provisions, with a discussion of their interpretations and application in civil cases, as well as specific recommended changes to the Indian Constitution or environmental statues/regulations that are necessary to establish civil judicial authorities.”

A copy of this RFP is enclosed.

It is clear that this massive grant by the US Government (the recipient of which could be any international non-profit organisation) is to ensure that the grantee would work with MoEF to make “specific recommended changes to the Indian Constitution or environmental statues(sic)/regulations” with the clear intent of establishing “civil judicial authorities”. This amounts to interference with the sovereignty of India as changes in Indian legal system are initiated at the instance of a foreign entity and are being sponsored with foreign funds. Thus causing considerable disquiet about the oblique motives that would have formed the basis of such financing. The proposed changes would also have the effect of contravening the judicially evolved limitation on amending the “basic structure” of our Constitution.

A clear and present danger by such financing is that it proposes to do clear the way for substitution of criminal liability for environmental damage with civil liability. If this is read along with the proposed Bill, it appears that the MOU may have formed a basis for the proposed whittling down of India's strong liability regime, the beneficiaries of which can only be trans-national corporations and their host governments.

Seen in light of the fact that the country is also seized with another important question relating to the promotion of genetically modified foods, which is a technology fraught with equally significant and irreversible risks like in the nuclear industry, the manner in which invisible hands may be at work gives little room for complacency, especially considering the secrecy and the rush with which these Bills are being rushed through.



Keeping these serious concerns in view, we urge you to immediately intervene in this matter and set to rest any and all challenges to the sovereignty of our country, by subjecting these Bills to widespread, deep and deliberate nation-wide public consultations before the Parliament can take it into its consideration. Such a move will also put to rest any suspicion that may arise regarding the intent of these proposed laws.

Thank you,

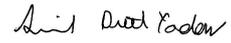
Yours sincerely,



Leo F. Saldanha  
Coordinator - ESG



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Coordinator (Education) - ESG



Sunil Dutt Yadav  
Advocate

Encl. As above

Cc.:

1. Her Excellency the President of India
2. Members of the Union Cabinet
3. Members of Parliament
4. Appropriate Standing Committees of Parliament
5. State Governments and Legislatures