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Civil Liability of Nuclear Damage Bill Compromises Absolute Liability

As USEPA finances a Race to the Bottom that belittles Indian life and environment

The move by the Government of India to enact the Civil Liability of Nuclear Damage Law has rightly caused a great deal of concern in the Parliament and across Indian society. The effort to cap the maximum liability to the operator in the event of a nuclear accident in a nuclear power plant to a maximum of Rs. 500 crores (US \$ 100 million), is nothing short of an outrageous effort that belittles Right to Life in India and trivialises costs involved in compensating the largely irreversible damage to property and environment. This sets a precedent for whittling away the absolute liability regime now in force, and could well serve in undermining compensatory efforts due to a variety of other hazardous and potentially irreversible impacts such as by industrial disasters and genetic contamination.

Two significant compensation efforts over the past week reveal the shocking nature of this effort to cap civil liability, a move seemingly aimed at protecting foreign nuclear establishments keen to invest in India. In a landmark development, a nine-member expert panel headed by Addl. Chief Secretary of Kerala K. Jayakumar, has quantified the socio-economic damages caused due to soil and water pollution by Hindustan-Coca Cola Beverages Ltd at Plachimada, Palakkad Dt., at Rs. 200 crores. In another compensation to workers affected by secondary impacts through dust pollution in the collapse of the World Trade Centre, New York, the US \$ 657 million (Rs. 3000 crores) awarded is being condemned as disgustingly low.

Taking this into account, ESG's representation to Dr. Manmohan Singh, Hon'ble Prime Minister of India, urges him to first subject the Nuclear Bill to widespread, deep and deliberate nation-wide public consultations, and then table it for discussion and debate in the Parliament. In this context, ESG has brought to the attention of the Prime Minister a Request for Proposal issued by United States Environment Protection Agency wherein any international non-profit organisation can bid for a grant amounting to US \$ 500,000/- to implement the following goal:

"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 statutes/regulations that are necessary to establish civil judicial authorities." (emphasis ours).

We have submitted that the intent of this funding appears to be one of moving India away from its present strong absolute liability regime which was brought into effect in the Oleum Gas Leak case by the Hon'ble Supreme Court wherein it stated held that "the measure of compensationmust 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)

We have drawn the Prime Minister's attention to the possibility "that such financing of projects amounts to interference with the sovereignty of India" as they are directed at proposing "changes in Indian legal system, initiated at the instance of a foreign entity and are being sponsored with foreign funds." We have stated that such methods cause "considerable disquiet about the oblique motives that would have formed the basis of such financing."

The representation also urges that such law changing initiatives have to be reviewed "...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". In that sense, "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", particularly considering that mega transnational corporations are the main beneficiaries of such liability caps.

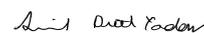
A copy of the representation made to the Prime Minister, the RFP of USEPA and the Civil Liability of Nuclear Damage Bill, 2010 can be accessed at www.esgindia.org.



Leo F. Saldanha
Coordinator - ESG



Bhargavi S. Rao
Coordinator (Education) - ESG



Sunil Dutt Yadav
Advocate

Address: Environmental, Social Justice and Governance Initiatives - Environment Support Group Trust, 1572, 36th Cross, Ring Road, Banashankari II Stage, Bangalore 560070. Tel: 91-80-26713559-61 Voice/Fax: 91-80-26713316 Email: esg@esgindia.org Web: www.esgindia.org Cell: 91-9448377403/1