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Critical Analysis of Civil Liability for Nuclear Damage Act, 2010

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Abstract

India did not have any particular laws on responsibility for nuclear harm under civil law. Instead, it enforced the general law on damages outside of contractual provisions. However, the ambitious Indian civil nuclear program needs increased international cooperation. Future partners in that cooperation include implementing liability legislation based on international conventions on nuclear liability to provide their export industries with legal certainty. In May 2010, the Indian parliament adopted draft legislation on liability. The President confirmed the draft legislation on September 21st, 2010, thus making it law. The 2010 Civil Responsibility for Nuclear Harm Act defined a system to compensate victims of damage caused by a nuclear accident, to impose liability and to define compensation procedures. In recent years, one of the finest policy initiatives has been the Civil Responsibility for Nuclear Harm Act 2010. The exercise was important because, for the first time, nuclear energy and the implications of pursuing such a source of energy were discussed extensively in Parliament. The consequence was a liability law that had extraordinary domestic political acceptability but appeared to defy traditional international practice in several respects. Owing to the liability issues of the operators and the manufacturers, this Act has been fraught with speculation, with suppliers reluctant to invest in nuclear energy due to fear of incurring liability. The international nuclear community, led by supplier countries and manufacturers, argued that in order to be consistent with the existing practice of international nuclear liability law, the legislation should be revised. This paper aims

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to critically analyse the law of liability in this context and also propose solutions to the flaws in the law.

Introduction

The shock of the Bhopal Gas tragedy, where a gas spill at Union Carbide factory in Bhopal City killed about 20,000 people in 1984 is one of the world's worst industrial disasters. Even today it shocked the confidence in the legal framework of the country. It is an established fact that, we as a society failed to redress the grievances of the poor and the helplessness of suffering masses. It raised a question- What could we have done differently for fixing liability and responsibility and providing compensation to victims? If we had a proper statutory framework in place of traditional tort law, could we have provided remedy officially? These questions haunted our lawmakers for decades. With Indians' ever-increasing population; industries' hunger for energy has also increased which couldn't be met with the traditional fossil fuel-based power industry. Today India has over 32 nuclear power plants in operation with a capacity of 4780 MW with potential disaster risk and at the backdrop of the India-USA Civil Nuclear Deal.[1] Parliament finally came up with a Civil Liability for Nuclear Damage Act, 2010 to cure monetary compensatory lacuna with respect to Nuclear Installations.[2] This Act was passed amid the backdrop of the Fukushima *Daiichi nuclear accident* and it allows private companies to take part in India's Nuclear programme, one of the requirements of USA companies to claim insurance in their home states.[3] This Act has further amended the *Atomic Energy Act of 1962* amendments enabling private interest in the Indian nuclear programme.[4]

In this article, we will critically analyse the legal framework and Civil Liability for Nuclear Damage Act 2010 to see where any lacuna or grey area still exists in its interpretation.[5]

The Legislative Framework in India

Hans Kelsen perceives the 'Constitution' as *"a template that serves as genesis of statutes,*

1 U.S. Department of State, www.state.gov/p/sca/c17361.htm.

2 Jayanta Kumar Ghosh, *The Civil Liability for Nuclear Damage Bill, 2010: Looking Back*, Looking Forward 1 NSLJ 15 (2012).

3 Sudha Ramachandran, *Japan's nuclear disaster spooks India,* Asian Times Online http://www.atimes.com/atimes/South_Asia/MC17Df02.html.

4 Atomic Energy Act, 1962, No. 33, Acts of Parliament, 1962 [hereinafter Atomic Act].

5 Civil Liability for Nuclear Damage Act, 2010, No. 38, Acts of Parliament, 2010 [hereinafter Civil Liability Act].

determiner of the state organs, and foundation of all orders of the state" needless to say it shall be as firm and unchangeable as possible.[6] But what if the text of the constitution is ambiguous? Then it falls under the domain of interpretation, the art of listening to the *"Sound of the Silence"*.[7]

Needless to say, this art has been developed by many Jurists of the Catena School of Thoughts.[8] The theory of *"textualist"* championed by Justice Scalia of the Supreme Court of the United States who promoted interpretation, emphasised on what the text would reasonably be understood to mean, rather than upon what it was intended to mean.[9] *"Doctrinairism"* championed by Mark Garber who promoted contemporary constitutional controversies shall be solved by interpreting past precedents. The focus of this school of thought is the idea that the principle underlying a past decision provides the standard for interpreting the Constitution in future cases.[10] According to Justice Robert Jackson in its *"Prudentialism"*, *"if the Court does not temper its doctrinaire logic with a little practical wisdom, it will convert the constitutional Bill of Rights into a suicide pact".*[11] *"Purposive interpretation"* championed by Justice Aharon Barak of Supreme Court of Israel, put forward this theory of interpretation which demonstrates its sensitivity to the uniqueness of a Constitution in the balance it aims to strikes between subjective purpose that is the intent of the authors of the Constitution, and objective purpose that is the intent of the system.[12]

The Constitution of India has its own interpretation development for *textualists* to *Purposive Interpretation*. From *A.K Gopalan V. State of Madras* where the court refused to infuse the Principle of Natural justice under "procedure established by law",[13] wherein Shankari *Prasad V. Union of India*[14] where "law" under Article 13(2) was being interpreted where the court held that the term "law" does not include an amendment to the constitution

6 Lars Vinx , The Guardian Of The Constitution: Hans Kelsen And Carl Schmitt On The Limits Of Constitutional Law, 28 (Lars Vinx ed., trans., Cambridge University Press 2015).

7 Laurence H. Tribe, *Soundings and Silences*, 115 Mich. L. Rev. 26, (2016).

8 Nishita kapoor, *All About Interpretation of Statutes*, Latest-Laws https://www.latestlaws.com/wp-content/uploads/2018/06/All-about-Interpretation-of-Statutes-By-Nishita-Kapoor.pdf.

9 Antonin Scalia, A Matter Of Interpretation: Federal Courts And The Law, 144 (Amy Gutmann et al., ed., Princeton University Press, 1997).

10 Mark A. Graber, A New Introduction To American Constitutionalism, 80 (OUP, 2013).

11 Terminiello v. City of Chicago, 93 L. Ed. 1131: 337 U.S. 1 (1949).

12 Aharon Barak, Purposive Interpretation in Law, 371 (Sari Bashi trans., Princeton University Press, 2007) (2005).

13 A.I.R. 1950 S.C. 27 ¶ 21.

14 A.I.R. 1951 S.C. 458 ¶ 13.

by parliament to *Kesavananda Bharati V. Union of India*[15] where the court held that parliament's power to add, alter or repeal Article, did not include the power to abrogate or alter the basic structure of the constitution, *Maneka Gandhi V. Union of India* where while interpreting Article 21 of the Constitution, the Court overruled *A.K Gopalan* and held that "procedure established by law" must have reasonableness and adhere to the principle of Natural justice.[16]

Questions of compensation for violation of Fundamental rights have always found favour in Courts. To illustrate in *Bhagalpur blinding case*[17] where the issue emerged before the high court was whether the court can grant pay to one who may have endured illegal confinement or substantial damages because of the state and whether the victim can move a writ petition in place of a civil suit. Justice Bhagwati, ordered the state to meet the costs of lodging these men in a visually impaired home in Delhi. From this judgment of the court, a compensatory approach of the court could be seen in *Rudual Shah v. State of Bihar*[18] where the Supreme Court granted Rs 35,000 as remuneration against the State of Bihar to the advocate who was kept in prison for a very long time after he had been vindicated by the Sessions Court. In Criminal Jurisprudence as well as in some different spaces, the compensatory tendency had denoted its noteworthiness like in the case of infringement on quality of life[19] right to livelihood[20] slum dwellers[21] hawker's[22] clinical care,[23] education[24], sexual harassment.[25]

Courts have attempted by interpretation to remedy environmental damage by *MC Mehta V. Union of India*[26] where the court has propounded the Doctrine of Absolute Liability whereby the operator of the plant alone would be held liable for all the damages occurring in the event of industrial disaster irrespective of the exception provided in *Rylands V.*

15 (1973) 4 SCC 225 ¶ 209.

16 (1978) 1 SCC 248 (V. Y. Chandrachud) ¶ 48, 49 & 56.

17 Khatri v. State of Bihar, A.I.R. 1981 S.C. 928 (PN Bhagwati J) ¶ 4.

18 A.I.R. 1983 S.C. 1086 ¶ 11 & 12.

19 Francis Coralie v. Administrator, Union Territory of Delhi, A.I.R. 1981 S.C. 746 ¶ 9.

20 Olga Tellis v. Bombay Municipal Corporation, A.I.R. 1986 S.C. 180 ¶ 31,37.

21 Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan, A.I.R. 1997 S.C. 152 ¶ 13, 25.

22 Sodan Singh v. New Delhi Municipal Corporation, A.I.R. 1989 S.C. 1988 ¶ 17.

23 Permanand Katara v. Union of India, A.I.R. 1989 S.C. 2039 ¶ 7 & 8.

24 Mohini Jain v. State of Karnataka, A.I.R.1992 S.C. 1858 ¶ 17 & 21.

25 Vishakah v. State of Rajasthan, A.I.R. 1997 S.C. 3011 ¶ 3.

26 1987 A.I.R. 1086 ¶ 31.

Fletcher[27] like the Act of God, the mischief of Third Person etc. Courts have further in *Indian Council for Enviro-legal Action V. Union of India*[28] had developed the Polluter Pay Principle whereby enterprises that pollute shall compensate for their Act.

Atomic Energy Act, 1962

It is an established position of statutory interpretation that language of Statute shall be provided with natural meaning as clear from obiter of Justice D.A Desai that,

> *"... If the words of the Statute are clear and unambiguous, it is the plainest duty of the Court to give effect to the natural meaning of the words used in the provision. The question of construction arises only in the event of an ambiguity or the plain meaning of the words used in the Statute would be self-defeating."*[29]

To truly ascertain the meaning of law court can take into account historical facts of the statute as rightly observed by Justice Mukherjee:

> *"It is a settled canon of construction that the interpreter should place himself, as far as possible, in the position of those whose words he is interpreting and the meaning of certain words and terms used in an ancient document or a statute can be properly explained only by reference to the circumstances existing at the time when the statute was enacted or the document was written"*[30]

This statute was formulated to assist in the development, control and use of atomic energy for the *welfare of the People* of India. The Government has constituted Atomic Energy Regulatory Board (AERB) under Sec. 27 to further this objective, the board is mandated to ensure that there are no undue threats to health and the atmosphere from the use of ionising radiation and nuclear technology in India. As of now the Act on Atomic Energy and the Laws authorize only the central Government to carry out such actions relating to the use and processing of radioactive material and the production of atomic energy.[31] It will be appropriate here to quote *Section 3 of the said Act* that gives authority over atomic energy

27 (1868) LR 3 HL 330 (U.K.) (Lord Cairns) ¶ 6.

28 1996 A.I.R. 1446 ¶ 37.

29 R.S Nayak v A.R Antulay., AIR 1984 S.C. 684 ¶ 18.

30 Doypack Systems Pvt Ltd v UOI, A.I.R. 1988 S.C. 782, 797 ¶ 61.

31 Atomic Act, *supra* note 4, S. 3(a).

to the Central Government.

Similarly, Sub-rule (2) of Rule 1 of the Rules on Atomic Energy (Factories) 1996 implies, in particular, that specific law extends exclusively to all factories operated by the central Government and engaged in the enforcement of the provisions of the Act on Atomic Energy, 1962.

In the case of *G Sundarrajan v. Union of India*[32] The Supreme Court held that all the expert teams were prompt with regards to the protection of the Kudankulam Nuclear Power Plant, both in terms of people's lives and property and the atmosphere. Therefore, As expressed in the Atomic Energy Act, the Court had to respect the national nuclear policy of the country, and the same had to be applied in the interests of the health of the people and the economic development of India. The Court's ruling was in consonance with the current Indian Nuclear Policy.

The Act and the Rules lay down that only the Central Government has the right to use hazardous material in factories for mining or power generation purposes.[33] Rationale is, for safety purposes, that the Government, which is directly accountable to the citizens of the world, bear the duty to prevent nuclear substances from falling into the wrong hands and take significant steps to produce atomic power.[34] The knowledge that could often be necessary for the protection of the Government should not be disclosed to private parties, and this law was thus in the interest of the country and its citizens. This strictness when it comes to nuclear installation is due to past incidences suffered by the world. We hear name few to elaborate

The Industrial Disaster of Other Countries: A Comparative Analysis

We have two cases. The first one is *the three-mile Island accident* and *the Chernobyl disaster***.**

32 (2013) C.A. No. 4440 S.C. ¶ 189.

33 The Atomic Energy (Amendment) Act, 2015, No. 5, Acts of Parliament, Statement of Objects and Reasons.

34 Atomic Act, *supra* note 4, § 16.

Three-mile Island accident[35]

Three-mile accident occurred on 28th-March-1979. This accident has occurred at the Three Mile Island unit 2 nuclear power plants near Middletown.[36] The calculation estimated a cost of US$ 1,034 billion and the clean-up was expected to be finished by 1986, but the overall clean up took 14 years, and 2, 23 million gallons of water were processed primarily to get the toxic material out of it. Thus, we see how long it takes to resolve the repercussions of a nuclear accident and the cost of the destruction caused by it.

Chernobyl Disaster[37]

This is the worst power reactor disaster that occurred in Ukraine on 26th-April-1986.[38] This disaster occurred about 20 km south of the border with Belarus. It has contributed to the exposure of vast numbers of toxic material which were released. Approximately 36 hours after the crash, 45,000 residents of Pripyat who lived within 4 km of the incident site were evacuated by bus.[39] The town remained uninhabited until today. From the 76 villages residing within a distance of 30 km in the field around the crash site, nearly 1, 30,000 people had to be evacuated by 5 May 1986. In Belarus, Russia and Ukraine, more than 4000 cases of thyroid cancer were detected in children and adolescents (0–18 years) diagnosed in 1992-2002.[40]

India-US Treaty on Civil Liability

The U.S.-India Civil Nuclear Agreement or Indo-U.S. nuclear deal is known as the 123

35 WNA. *Three Mile Island Accident*, World Nuclear Association, (Mar., 2020) https://world-nuclear.org/information-library/safety-and-security/safety-of-plants/three-mile-island-accident.aspx.

36 (2021), https://www.nrc.gov/reading-rm/doc-collections/fact-sheets/3mile-isle.html (last visited Aug 14, 2021).

37 WNA, Chernobyl Accident 1986, World Nuclear Association, (May., 2021) https://world-nuclear.org/information-library/safety-and-security/safety-of-plants/chernobyl-accident.aspx.

38 Editorial, *Chernobyl disaster* - Causes & Facts, Encyclopaedia Britannica (2021), https://www.britannica.com/event/Chernobyl-disaster.

39 Nuclear Energy Association, *Chernobyl: Executive summary*, Organization for Economic Co-operation & Development Nuclear (2021) https://www.oecd-nea.org/jcms/pl_28265/chernobyl-executive-summary#:~:text=Introduction,large%20quantities%20of%20radioactive%20substances.

40 ICRN, International Chernobyl Portal of the ICRIN Project (Nov. 17, 2020) http://www.chernobyl.info/index.php?userhash=564160&navID=12&LID=2.

Agreement negotiated between the United States of America and the Republic of India.[41] A joint statement by the Indian Prime Minister Dr. Manmohan Singh and then U.S. Minister Dr. Manmohan Singh was the basis for this agreement on July 18, 2005. Under President George W. Bush, India agreed to divide its civilian and military nuclear facilities and put all its civilian nuclear facilities under the International Atomic Energy Agency (IAEA). In return, the United States agreed to work with India towards full civil nuclear cooperation.

It took more than three years for this U.S.-India deal to come to fruition as it had to go through several complicated phases, including the modification of U.S. domestic law, especially the Atomic Energy Act of 1954, a civil-military nuclear separation plan in India, an inspection agreement between India and the IAEA and the grant of an exemption to India by the Nuclear Suppliers Alliance, an export control cartel. In its final form, the agreement places those nuclear facilities defined by India as 'civil' under permanent safeguards. It allows for broad civil nuclear cooperation while excluding the transfer of 'sensitive' equipment and technology, including civil enrichment and reprocessing products, even under IAEA safeguards.[42] On August 18, 2008, the IAEA Board of Governors agreed, and on February 2, 2009, India signed an agreement with the IAEA on India-specific safeguards.[43]

Following the entry into force of this Agreement by India, inspections began in a phased manner on India's 35 civilian nuclear installations in its Separation Plan. In U.S.-India relations, the agreement is seen as a watershed and adds a new aspect to international non-proliferation attempts.[44] The IAEA approved the safeguards agreement with India on August 1, 2008, following which the United States approached the Nuclear Suppliers Group (NSG) to grant India a waiver to commence civilian nuclear trade. On September 6, 2008, the 48-nation NSG issued India a waiver to enable civilian nuclear technology and fuel from other countries. The introduction of this waiver made India the only recognized nuclear weapons country that is not a party to the Non-proliferation Treaty (NPT) but is

41 Mitesh Agrawal, *U.S. - India Civil Nuclear 123 Agreement*, Stanford Edu (Feb. 20, 2015) http://large.stanford.edu/courses/2015/ph241/agrawal1/.

42 NTI, *Nuclear Suppliers Group*, The Nuclear Threat initiative (Jul. 14, 2020) https://www.nti.org/learn/treaties-and-regimes/nuclear-suppliers-group-nsg/.

43 IAEA, *IAEA Board Approves India-Safeguards Agreement*, International Atomic Energy Agency (Aug. 1, 2008) https://www.iaea.org/newscenter/news/iaea-board-approves-india-safeguards-agreement

44 Jayshree Bajoria & Esther Pan, *The U.S.-India Nuclear Deal*, Council on Foreign Relations (Nov. 5, 2010) https://www.cfr.org/backgrounder/us-india-nuclear-deal.

also authorized to engage in nuclear trade with the rest of the world.[45]

Civil Liability for Nuclear Damage Act, 2010

Brief Object of the Statute

It is a 38 Act of 2010, to understand the nature of the act Statement of Object and reasons (hereinafter SOR) accompanied by appears to be helpful as an external aid. However, they cannot be used to determine the true meaning of the active part of the statute.[46] None the less as rightly observed by Justice Lahoti in *Bhaiji V. Sub-divisional Officer Thandla*:

> *"Reference is permissible for understanding the background, the antecedent state of affairs, the surrounding circumstances concerning the statute, and the evil which the statute sought to remedy".*[47]

Though it is not a hard and fast rule, Courts have time and again made an exception and used it in determining the operative part of a statute. In *Subodh Gopal Case*[48] SOR is used to judge the reasonableness of an Act under Art. 19(1) of the Constitution. It is being used to judge reasonable classification under Article 14 of the Constitution.[49] It appears as a tendency of the Court to use SOR when it comes to remedial statutes. To substantiate Court used SOR for judging Chapter VI-A (permanent Lok Adalat) in LSAA, 1987[50], Sec 7-A of PCA, 1947[51], Sec. 7(1) of Provincial Small Cause Courts Act, 1887[52] to name a few. SOR of present concern indicates that the legislature intended to clear uncertainty regarding trans-boundary liability and liability during transport of nuclear material amid the international legal framework of 1960 Paris Convention, 1963 Vienna Convention, 1997 Protocol to amend Vienna Convention and 1997 Convention on Supplementary Compensation for nuclear damage. These mandates creating special funds in the special drawing rights and party›s obligation to contribute for the same and that India, though not a party to these treaties, needed to develop a statutory framework with the demand of

45 Treaty on the Non-Proliferation of Nuclear Weapons (NPT) - UNODA, 317 U.S.T., https://www.un.org/disarmament/wmd/nuclear/npt/ (last visited Aug 14, 2021).

46 State of WB v. UOI, A.I.R. 1963 S.C. 1241, 1247, (Sinha CJ.).

47 (2003) 1 SCC 692, 700, (Lahoti J.) ¶ 11.

48 *State of WB v. Subodh Gopal Bose*, A.I.R. 1954 S.C. 92 ¶ 38.

49 A Thangal Kunju Musaliar v M Venkatachalam Potti, AIR 1956 SC 246, 265 ¶ 50.

50 Bar Council of India v. UOI, (2012) 8 SCC 243, 255 ¶ 2.

51 *Arivazhagan v. State,* A.I.R. 2000 S.C. 1198, 1202 ¶ 11.

52 *Kedarnath v. Mohan Lal Kesarwar*, A.I.R. 2002 S.C. 582, 585 ¶ 7.

growing nuclear industry and compensation regime that this Act aims to provide for.[53] This is further asserted by the extended title of the same, which gives a general description of the Act›s object and purpose.[54] This Act intends to provide civil liability for nuclear damage and prompt compensation to the victims of nuclear damage through no fault liability channelling liability to the operator and *modus* to claim compensation.[55]

This statute appears to be enacted with the object of promoting the general welfare in response to urgent social demand and intended to impact social vice by operating directly towards curing liability regime; from the natural reading of the same, it is clear that it is a remedial statute[56] hence liable for liberal interpretation is warranted to as «to secure that the relief contemplated by the statute shall not be denied to the class intended to be relieved»[57] needless to say, it shall be done «without rewriting or doing violence to the enactment».[58] However, to truly appreciate this statute's mandate, we have to appreciate the Act's operative provisions.[59]

Nature of Liability under the Act

The Act is clear about the allocation of responsibility for nuclear damage. The operator is strictly liable (which is in line with the general principle internationally) for nuclear damage arising out of a nuclear incident[60] except in the case of a force majeure event, in which case the central government takes the risk.[61] The Act has defined Nuclear Damage as any loss of life or personal injury, property damage. It also takes into account loss of environment, and any loss of income attributed to environmental damage as in the case of the tourism industry or agriculture-related activates or any cost for preventive measures and any other economic loss as far as permitted by the general law of civil liability[62] which is attributable due to radiation inside the installation, nuclear fuel, and products or nuclear material coming in or out from installation. The operator›s liability is essentially capped at

53 Civil Liability Act, *supra* note 5, Statement of Objects and Reasons.

54 Amarendra Kumar Mohapatra v. State of Orissa A.I.R. 2014 S.C. 1716 ¶ 51.

55 Civil Liability Act, *supra* note 5, Preamble.

56 *Central Railway Workshop, Jhansi v. Vishwanath,* A.I.R. 1970 S.C. 488, 491, (Dua J.) ¶ 8.

57 *Raghuraj Singh v. Hari Kishan,* A.I.R. 1944 P.C. 35, 38, (Ld. Atkin) ¶ 9.

58 Steel Authority of India Ltd v. National Union Water Front Workers, A.I.R. 2001 S.C. 3527, 3535 ¶ 9.

59 Manoharlal v. State of Punjab A.I.R. 1961 S.C. 418 ¶ 5.

60 Civil Liability Act, *supra* note 5, at § 4.

61 *Id.* at § 5.

62 *Id.* at § 2(g).

a maximum of 1500 Crore Rupees.[63] The central government is at liberty to specific new amounts from time to time.[64] To mitigate the operator's financial burden if liability exceeds the maximum capped amount burden will be borne by the central government about any particular nuclear incident is capped at an equivalent of 300 million Special Drawing Rights (SDR) of the IMF.[65] Further operators are mandated to take insurance policies.[66] Further, the cause of concern appears to be when liability exceeds the maximum capped amount as Act is silent, making implementation arbitrary in cases of grave nuclear incidences. The Act has also established authorities in the form of claims commissioner and commission to adjudicate claims[67] who shall dispose of claims within three months by following the Principle of Natural Justice?[68]

Liability of the Supplier

The Indian Nuclear liability regime has provided a stumbling block for would-be suppliers. In most civil nuclear plant operating countries, operators are liable for any nuclear incidence and undertaking liability insurance.[69] However, in India, a noticeable exception is provided whereby, after paying compensation, operators can take recourse against suppliers for damages. Such recourse depends upon terms of indemnity contract and when an incident is caused due to any act or omission in part of the supplier or any person authorized on his behalf or any incident caused due to any patent or latent defects sub-standards services on the part of the supplier.[70] This stand of the statute makes suppliers› position venerable as liability for the operator is fixed at 1500 Crore rupees, if any incident happened due to the above-called conditions, the supplier would be contractually liable to indemnify the operator.[71] Such a stand is further asserted by Rule 24 of Civil Liability for Nuclear Damage Rules of 2011 wherein any contract shall have a clause for indemnity.

63 *Id.* at § 6(2).

64 *Id.* at § 6.

65 *Id.* at § 6(1).

66 *Id.* at § 8.

67 *Id.* at § 9 & § 19.

68 *Id.* at § 16 & § 32.

69 Faizanur Rahman, *Civil Liability for Nuclear damage Act, 2010: A Critical Analysis*, Enrg. Law Repts. Jun., 2018, 149, 152.

70 Civil Liability Act, *supra* note 2, at § 17.

71 *Frequently Asked Questions and Answers on Civil Liability for Nuclear Damage Act 2010 and related issues* (Feb. 08, 2015) https://www.mea.gov.in/press-releases.htm?dtl/24766/Frequently_Asked_Questions_and_Answers_on_Civil_Liability_for_Nuclear_Damage_Act_2010

Liability under Tort Law

Furthermore, as per Sec. 46[72] Act shall be in addition to, and not in derogation of, any other law for the time being in force and that nothing contained herein shall exempt the operator from any proceeding which might, apart from this Act, instituted against him. Its natural reading makes operators liable, but the question is whether suppliers can also be held liable under tort law. This question needs to be looked at with due consideration of the Doctrine of Harmonious Construction and Rules of Construction of Remedial Statutes.

Firstly, as stated by Venkatarama Aiyar J, "The rule of construction is well settled that when there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that; if possible, the effect should be given to both. This is what is known as the rule of harmonious construction".[73] This principle has been utilized for curing disharmony between provisions of two separate statutes altogether.[74] For instance, Sec. 32 of SEBI Act, 1992 provides that the provision of this Act shall be in addition to and not derogation of the provision of any other law. Court held that SEBI Being a Special Act should be read in harmony with the provisions of the Companies Act 1956; they shall work in tandem for the public at large[75].

Secondly, as a general rule of Remedial construction, courts ought to give "widest operation which its language will permit and what mischief sought to be remedied by the enactment"[76] and this practice is followed in social benefit-oriented legislation like the Consumer Protection Act that intends to provide compensation[77] The only limitation is that it shall be construed in such a manner not to do violence to the language of the Act.[78] It is a fact that the present Act provided for recourse to operators against suppliers and tortious liability of supplier against operator or victims is not expressly prohibited by statute, with due regard to the above mentioned rules of construction and facts, it can rightly be construed that Suppliers can be held under Tortious liability by operator and victims.

72 Civil Liability Act, *supra* note 5, at § 46.

73 VenkataramanaDevaru v. State of Mysore, A.I.R. 1958 S.C. 255, 268 ¶ 29.

74 Jogendra Lal Saha v. State of Bihar, A.I.R. 1991 S.C. 1148, 1149 ¶ 6 & 8.

75 Sahara India Real Estate Corp Ltd v. SEBI, (2013) 1 SCC 1, 57, 60 ¶ 58.

76 Sayad Mir Ujmuddin Khan v. Ziaulnisa Begum, (1879) I.L.R. 3 Bom. 422, pp. 430-431. (Sir James Colville) ¶ 9.

77 State of Karnataka v. Vishwabharathi House Building Co-Op Society, (2003) 2 SCC 412, 429 ¶ 12.

78 Lucknow development Authority v. MK Gupta (2003) 2 SCC 412, 429 ¶ 2.

Conclusion

From above mentioned Statutory Provision and relevant Case laws, it can rightly be concluded that Civil Liability for Nuclear Damage Act, 2010 is a step in the right direction on part of the legislature. Though this act is rigid with controversies regarding liability towards suppliers, maximum liability cap towards operators and government and the fact that it overturned the Absolute liability Principle and limited Polluter pay principle. That doesn't mean the legislature was void of its competence, on the contrary legislature was well within its competence. The Act is in addition to other relevant laws of the land and by no means, frustrating application of other laws such as tortuous common law liability. Furthermore, it has given the Central Government power to change the liability cap with regards to existing situations and it being a remedial statute by itself will be afforded by courts with liberal interpretation. Hence, it can be concluded that the legislature was well within its competence, and rights of victims are well protected in this Act.