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COMMITTEE ON SUBORDINATE LEGISLATION
(FIFTEENTH LOK SABHA)
(2011-2012)

TWENTY SEVENTH REPORT

THE CIVIL LIABILITY FOR NUCLEAR DAMAGE RULES, 2011

(PRESENTED ON 28.8.2012)

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LOK SABHA SECRETARIAT
NEW DELHI

August, 2012/Bhadra,1934 (Saka)

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C O N T E N T S

		Para No.	Page No.
COMPOSITION OF THE COMMITTEE			(iii)
INTRODUCTION			(v)
REPORT			
I.	Background	1.1-1.10	1
II.	Interim Relief to the victims of Nuclear Damage	2.1-2.8	7
III.	Right of Recourse	3.1-3.15	10
IV.	Notification of Nuclear incident	4.1-4.4	21
V.	Delay in framing Rules	5.1-5.7	23
VI.	Legislation by reference	6.1-6.5	26
VII.	Definition of Terms in Act/Rules	7.1-7.6	28

A P P E N D I C E S

I.	Summary of main recommendations/observations made by the Committee	31
II.	Extracts of the Minutes of the fourth sitting of the Committee (2011-12) held on 16.4.2012 and Minutes of the Ninth sitting of the Committee (2011-12) held on 27.8.2012.	35

COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION

(2011-2012)

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2.	Shri S.C. Chaudhary	-	Director
3.	Shri Sirinivasulu Gunda	-	Addl. Director
4.	Shri Krishendra Kumar	-	Under Secretary

I N T R O D U C T I O N

I, the Chairman, Committee on Subordinate Legislation having been authorized by the Committee to submit the report on their behalf, present this Twenty Seventh Report.

2. The matters covered by this Report were considered by the Committee on Subordinate Legislation at their sitting held on 16.4.2012.

3. The Committee considered and adopted this Report at their sitting held on 27.8.2012.

4. For facility of reference and convenience, recommendations/observations of the Committee have been printed in thick type in the body of the Report and have also been reproduced in Appendix-I of the Report.

5. Extracts of the Minutes of the fourth sitting of the Committee (2011-12) held on 16.4.2012 and Minutes of the Ninth sitting of the Committee (2011-12) held on 27.8.2012 relevant to this Report are included in Appendix-II.

P. KARUNAKARAN
Chairman,
Committee on Subordinate Legislation

New Delhi;
August, 2012
Bhadra, 1934 (Saka)

REPORT

BACKGROUND

The Civil Liability For Nuclear Damage Rules, 2011

The nuclear industry in India is growing and it is expected to form an important part of the energy mix of the country. In the unlikely event of a nuclear accident or incident, there may be damage to individuals, property and environment on a large scale.

1.2 Details of the major nuclear incidents/accidents involving loss of life and damage to property, that have taken place in nuclear power plants across the world over a period of time as furnished by the Department of Atomic Energy (DAE) are as follows:-

> "Over the years three major nuclear accidents have occurred in the world at Three Mile Island, USA in 1979, Chernobyl, Ukraine (in the then USSR) in 1986, and Fukushima Daiichi, Japan in 2011. While 30 people have reportedly died due to Chernobyl accident, no deaths have been reported due to nuclear accidents at TMI and Fukushima. Brief details are as follows-
>
> (1) In 1979 at Three Mile Island nuclear power plant in USA a cooling malfunction caused part of the core to melt in the TMI-2 reactor. Some radioactive gas was released a couple of days after the accident, but not enough to cause any dose above background levels to local residents.

There were no injuries or adverse health effects from the Three Mile Island accident. More than a dozen major, independent health studies of the accident showed no evidence of any abnormal number of cancers around TMI year after the accident. The only detectable effect was psychological stress during and shortly after the accidents.

(2) The Chernobyl accident in 1986 was the result of a flawed reactor design that was operated with inadequately trained personnel. Two Chernobyl plant workers died on the night of the accident, and a further 28 people died within a few weeks as a result of acute radiation poisoning. United Nations Scientific Committee on the Effects of Atomic Radiation says that apart from increased thyroid cancers, "there is no evidence of a major public health impacts attributable to radiation exposure 20 years after the accident". Resettlement of areas from which people were relocated is ongoing.

(3) Following a major earthquake, a 15-meter tsunami disabled the power supply and cooling of three Fukushima Daiichi reactors, causing a nuclear accident on 11 March 2011. There have been no deaths or cases of radiation sickness form the nuclear accidents. In accordance with directive of the Government, over 100,000 people were evacuated from their homes''.

1.3. At the international level, there are four instruments for nuclear liability *i.e,* the 1960 Paris Convention, 1963 Vienna Convention, 1997 protocol to amend the Vienna Convention and 1997 Convention on

Supplementary Compensation for nuclear damage. India is not a party to any of the Nuclear Liability Conventions.

1.4 Indian nuclear industry has developed over a period of time within the context of a domestic framework established by the Atomic Energy Act, 1962. There is no provision in the Atomic Energy Act, 1962, about nuclear liability or compensation for nuclear damage due to nuclear accident or incident and no other law deals with nuclear liability for nuclear damage in the event of nuclear incident. It was, therefore, considered necessary to enact a legislation which provides for nuclear liability that might arise due to a nuclear incident and also on the necessity of joining appropriate international liability regime.

1.5 The Civil Liability for Nuclear Damage Act, 2010 **(CLND Act)** received the assent of the President on 21 September, 2010 and enforced with effect from 11 November, 2011.

1.6 The Act provides for Civil Liability for Nuclear Damage and prompt compensation to the victims of a nuclear incident through a no-fault liability regime channelling liability to the operator, appointment of Claims Commissioner, establishment of Nuclear Damage Claims Commission **(NDCC)** and for matters connected therewith or incidental thereto. It

extends to the whole of India. It applies to nuclear damage suffered (i) in or over the maritime areas beyond the territorial waters of India, (ii) in or over exclusive economic zones of India, (iii) on board or by a ship/aircraft registered in India, and; (iv) on or by an artificial island, installation or structure under the jurisdiction of India. It applies only to the nuclear installation owned or controlled by the Central Government either by itself or through any authority or corporation established by it or a Government company.

1.7 As per Section 48 of the Act, the Central Government may make rules for carrying out the purposes of this Act by notification. Such rules may provide for (i) the other financial security and the manner thereof; (ii) the salary and allowances payable to and the other terms and conditions of service of Claims Commissioner; (iii) the procedure to be followed by Claims Commissioner; (iv) the person to be associated by Claims Commissioner and the manner thereof; (v) the remuneration, fee or allowances of associated person; (vi) the form of application, the particulars it shall contain and the documents it shall accompany; (vii) the salary and allowances payable to and other terms and conditions of service of Chairperson and other Members of Nuclear Damage Claims Commission; (viii) the powers of Chairperson; (ix) the salary and allowances payable to and the terms and other conditions of service of

officers and other employees of the Commission; (x) the form of application, the particulars it shall contain and the documents it shall accompany; (xi) the form and the time for preparing annual report by the Commissioner , and; (xi) the manner of transfer of officers and other employees of the Commission.

1.8 In exercise of powers conferred under section 48 of the Civil Liability for Nuclear Damage Act, 2010, the Department of Atomic Energy **(DAE)** published the Civil Liability for Nuclear Damage Rules, 2011, in Gazette of India (GSR 804/E) on 11 November, 2011 and laid the same on the Table of the House on 23 November, 2011.

1.9 On scrutiny of the Civil Liability for Nuclear Damage Rules, 2011 **(CLND Rules)** framed by the Government in pursuance of section 48 of the Act, the following infirmities/shortcomings were observed:

(i) Absence of provision with regard to Interim Relief to the victims of Nuclear Damage; and

(ii) Substantial limitations on the Supplier's liability without specific warrant in the Civil Liability for Nuclear Damage Act, 2010;

(iii) Time lag of 15 days provided for notification of Nuclear incident under Section 3(1) of the Act;

(iv) Delay in framing of rules on the terms and conditions of service of Claims Commissioner and also of Chairperson and other members of the Commission as stipulated in section 11 and 22 of the Act;

(v) Delay of more than one year in enforcement of the Civil Liability for Nuclear Damage Act, 2010 which has been assented to by the President of India on 21 September 2010;

(vi) Deficiency in the rules by making reference to other Acts/Rules viz. reference of Atomic Energy Act, 1962 in Rule 5 and Atomic Energy (Radiation Protection) Rules 2004 in Rule 24(2).

(vii) Use of undefined terms such as, supplier, representative, etc. in the Rules.

1.10 Comments of the DAE were sought on the aforesaid infirmities/shortcomings. The Committee on Subordinate Legislation, also, took oral evidence of the representatives of the Department of Atomic Energy on 16 April, 2012.

II

Interim Relief to the victims of Nuclear Damage

2.1 As per section 9 (1) of the Act, whoever suffers nuclear damage is entitled to claim compensation in accordance with the provisions of the Act. The Central Government, as per section 9(2) of the Act is required to appoint one or more Claims Commissioner to adjudicate upon claims for compensation in respect of nuclear damage. As per section 19, the Central Government may also appoint Nuclear Damage Claims Commission, if it is of the opinion that it is expedient in public interest that such claims for such damage be adjudicated by the Commission instead of a Claims Commissioner.

2.2 Section 13 of the CLND Act provides for inviting applications for claims by Claims Commissioner, after notification of the nuclear incident under sub section 1 of section 3 of the Act, from the persons affected by the nuclear incident for damages.

2.3 As per section 16(I), on receipt of an application under sub-section (I) of section 15, the Claims Commissioner shall, after giving notice of such application to the operator and affording an opportunity of being heard to

the parties, dispose of the application within a period of three months from the date of such receipt and make an award accordingly.

2.4 Section 16(5) of the Act specifies that every award made under section 16 (1) shall be final. The DAE, in post evidence written reply to a query as to whether section 16(1) of the Act implies that no appeal lie against the compensation for nuclear damage given by the Claims Commissioner, stated as follows:

> "The orders of the Claims commissioners and the Commission are final under the Act in the absence of any appellate provision in the Act. However, the same are subject to judicial review by the High Courts and Supreme Court as provided under Section 35 of the Act."

2.5 In response to a query as to whether there is any provision for interim relief, the Secretary, DAE, while deposing before the Committee on 16.04.2012 stated as under-

> "If you put interim then it is further delayed. The purpose was that the claims should be immediately settled. That is all."

2.6 Elaborating further on the issue, the Secretary, DAE stated as follows-

> "With regard to interim relief, the issue is that it has to be settled so quickly that there will be no requirement of interim relief"

2.7 Reiterating their stand that there is no need for interim relief, the DAE, in written reply to a post evidence query as to whether it was

desirable to have a provision for interim relief in the rules in view of the sensitivity/severity of the nuclear incidents and also the time involved in providing compensation to the losses suffered, stated as follows:

> "The Act prescribes under sub-section 16 and sub-section (6) of Section 32 a period of 3 months from the date of application for disposal of the claim. This period is short and pre-empts the need for a provision for interim relief."

2.8 The Civil Liability for Nuclear Damage Act, 2010 provides that the Claims Commissioner or the Nuclear Damage Claims Commission (NDCC) are required to adjudicate claims and award claims for nuclear damage within three months of receipt of application. The Committee observe that though there is no provision in the Act for appeal against the award of Claims Commissioner/NDCC, any applicant not satisfied with the award, can seek judicial review of the awards. The Committee feel that in the event of an applicant seeking judicial review of the award given by Claims Commissioner/NDCC, the amount awarded as compensation should be treated as interim relief and be disbursed pending verdict of the court. The Committee desire that a suitable enabling provision be incorporated in this regard either in the CLND Act or the CLND Rules as may be deemed appropriate.

III

Right of Recourse

3.1 Rule 24 dealing with right of recourse provides that any contract under sub section (a) of Section 17 of the Act shall not be for an amount less than the amount of operator liability under the Act or the value of the contract itself, whichever is less.

3.2. Section 17 of the Act which provides for right of recourse to the operators of the nuclear installations reads as follows:

> "The Operator of the nuclear installation, after paying the compensation for nuclear damage in accordance with section 6, shall have a right of recourse where
>
> (a) such right is expressly provided for in a contract in writing;
> (b) the nuclear incident has resulted as a consequence of an act of supplier or his employee, which includes supply of equipment or material with patent or latent defects or sub-standard services;
> (c) the nuclear incident has resulted from the act of commission or omission of an individual done with the intent to cause nuclear damage."

3.3 Rule 24 of Civil Liability for Nuclear Damage Rules, 2011 on the right of recourse states as follows:

> "(1):- A contract referred to in clause (a) of section 17 of the Act shall include a provision for right of recourse for not less than the extent of the operator's liability under sub-section (2) of Section 6 of the Act or the value of the contract itself, whichever is less.

(2) The provision for right of recourse referred to in sub-rule (1) (1) shall be for the duration of initial license issued under the Atomic Energy (Radiation Protection) Rules, 2004, or the product liability period, whichever is longer

Explanation 1- For the purposes of this rule, the expressions:-

(a) "product liability period" means the period for which the supplier has undertaken liability for patent or latent defects or sub-standard services under a contract,

(b) "supplier" shall include a person who-

(i) Manufactures and supplies, either directly or through an agent, a system, equipment or component or builds a structure on the basis of functional specification, or

(ii) provides build to print detailed design specifications to a vendor for manufacturing a system, equipment or component or building a structure and is responsible to the operator for design the quality assurance, or

(iii) provides quality assurance or design services

Explanation 2- For the removal of doubts it is clarified that an operator's claim under this rule shall in no case exceed the actual amount of compensation paid by him up to the date of fling such claim''

3.4 Section 17 of the Act enables the operator of the nuclear installation after paying compensation for nuclear damage in accordance with section 6 of the Act to have the right of recourse in case *inter-alia* such right is expressly provided for in a contract in writing. Explaining the rationale for the provision, the Secretary, DAE during the evidence held on 16.04.2012 stated as under:-

''Supplier shall also include a person who manufactures and supplies either directly or through an agent a system, equipment or component or he builds a structure on the basis of functional specifications. There is a difference between functional specifications and engineering drawings. If the operator provides all the details and has the quality control, then he cannot go to the supplier and say this is because of you because you have provided everything. They have only provided the service.

When the operator is giving a functional specification and not a detailed drawing and design, to a vendor for manufacturing a system, then the supplier is responsible. If the operator is giving complete details, even manufacturing details, equipment or components for building a structure, then he is responsible for design and quality assurance. Only when you can pinpoint the responsibility of the supplier, then only it should be possible to make the supplier liable for the damage. Otherwise, because of the fault of somebody else, you will make the supplier responsible. That should not be done. That is what has been explained by the rules related to the provision of the CLND Act.

How will you make the contract between the two parties? At present contract between the two parties take care of the product liability for covering. That is for their own damage. This will allow that to happen for external damages also, that is nuclear damage."

3.5. Section 6 (2) of the Act which prescribes the liability of the operator for nuclear incidents reads as under:

'' the liability of an operator for each nuclear incident shall be

(a) in respect of nuclear reactors having thermal power equal to or above ten MW , rupees one thousand five hundred crores ;
(b) in respect of spent fuel reprocessing plants , rupees three hundred crores;
(c) in respect of the research reactors having thermal power below ten MW , fuel cycle facilities other

than spent fuel reprocessing plants and transportation of nuclear materials , rupees one hundred crores:

Provided that the Central Government may review the amount of operator's liability from time to time and specify, by notification, a higher amount under this sub section:

Provided further that the amount of liability shall not include any interest or cost of proceedings."

3.6 Responding to a query as to whether operators' claim can exceed the actual amount, Secretary, DAE, deposing before the Committee on 16.04.2012, stated as under-

" for the removal of doubt, it is also clarified that the operator's claim under this rule shall in no case exceed the actual amount. The operator's liability is fixed to Rs. 1500 crore. You have seen some of the components we are buying are at the price of Rs. 2500 crore or even more. But can you go to him for a damage exceeding Rs. 1500 crore? It is because the operator is paying only Rs. 1500 crore. Can they claim more than that? That is not possible. What we are saying is that if the operator is paying Rs. 1500 crore, that is the limit, they should not claim more than that. It is a kind of reimbursement. You can't reimburse an amount larger than what you have paid. The operator will pay only Rs. 1500 crore and not more. That is all''

3.7 Rule 24 prescribes that the contract between the supplier and the operator shall include a provision for the right of recourse for not less than the extent of operator's liability as mentioned under section 6 (2) (i) of the Act or the value of the contract itself. In reply to a query as to whether Rule 24 (1) violates the substantive provisions of the Act as it

restricts the liability prescribed by the Act, the Department of Atomic Energy *vide* their reply dated 21.2.2012 *inter-alia* stated as follows:

> "Under the right of recourse, an operator will have the right to claim reimbursement from the supplier and reimbursement cannot be more than what he has paid. Liability of operator is prescribed by sub-section 2 of section 6. The Rule 24 automatically links sub-section 2 of section 6 and section 17. Rule 24 prescribes minimum requirements for contract made under clause (a) of section 17 of the Act. It does not restrict the parties from entering into a contract involving an amount higher than the contract value (limited of course to the provision of sub section 2 of section 6) or a longer duration."

3.8 The following are the main principles of the liability regimes under 1960 Paris convention and 1963 Vienna Convention:

"(i) Liability is channelled exclusively to the operators of the nuclear installations

(ii) Liability of the operator is absolute, i.e. the operator is held liable irrespective of fault

(iii) Liability is limited in amount. Under the *Vienna Convention*, it may be limited to not less than US$ 5 million (value in gold on 29 April 1963), but an upper ceiling is not fixed. The *Paris Convention* sets a maximum liability of 15 million SDR provided that the installation State may provide for a greater or lesser amount but not below 5 million SDRs taking into account the availability of insurance coverage.

(iv) Liability is limited in time. Compensation rights are extinguished under both *Conventions* if an action is not brought within ten years from the date of the nuclear incident. Longer periods are permissible if, under the law of the installation State, the liability of the operator is covered by financial security. National law may establish a shorter time limit, but not less than two years (the *Paris*

Convention) or three years(the *Vienna Convention*) from the date the claimant knew or ought to have known of the damage and the operator liable;

(v) The operator must maintain insurance of other financial security for an amount corresponding to his liability; if such security is insufficient, the installation State is obliged to make up the difference up to the limit of the operator´s liability;

(vi) Jurisdiction over actions lies exclusively with the courts of the Contracting Party in whose territory the nuclear incident occurred;

(vii) Non-discrimination of victims on the grounds of nationality, domicile or residence."

3.9 On the issue of liability regime fixed under 1960 Paris Convention, 1963 Vienna Convention, and the Protocol to amend the Vienna convention, the Secretary, DAE , deposing before the Committee on 16 April, 2012 , stated as under-

> "Today, in the world over, if you see liability law, the Indian Liability Act has become most strict. All over the world the trend is that you have to fix the liability to the operator. If you can't fix the liability to the operator, then you go to the litigation and it can never be settled within short time , So, that was the reason for which the Parliament has also cleared the act on the spirit that it has to be done by Claims Commissioner in the time frame
>
> ... In the nuclear liability regime internationally, this third party damage is not there in other places. We have introduced it in the Act. Now the question is there is a question of cause - effect relationship that is because of the fault of somebody's supply that this damage is caused. This fault is not fault of one particular company. A series of companies have to have a cause ..."

Limiting the Liability Period

3.10 Rule 24(2) of the Rules imposes restrictions in terms of time period during which liability is applicable – five years or the product liability period whichever is longer.

3.11 On being inquired that the Rule 24(2) not only inhibits the very purpose of the Act but is in conflict with the Act itself as the right of recourse has been restricted to duration of initial license issued under the Atomic Energy Rules 2004 (which is 5 years) or the product liability whichever is longer, the Department of Atomic Energy *vide* their reply dated 21.2.2012 furnished following comments:

> "Section 17 (b) refers to the liability for patent or latent defect in the nuclear material, equipment or sub-standard services and therefore, refers to the product liability which is dependent on the relevant clause in the contract. The equipment and components are subject to periodic inspection and quality check throughout the process of contraction of a nuclear installation. When the plant goes into operation, checks on the health of components, equipment and systems are carried out by the operator based on a planned schedule. Any weakness or defects in the plant would invariably manifest themselves during commissioning or during the first few days and months of operation. Atomic Energy Regulatory Board gives license for a limited period so as to be in a position to keep checking that operator maintains the plant in a healthy condition and also asks operator to keep upgrading the plant safety system in accordance with any new safety requirements that might emerge due to operating experience anywhere in the world or development in science and technology. The equipment and components requiring replacement is changed as and when their useful life is over and this ensures that reactor

always remains healthy even as the reactor ages. Since significant changes might be done during initial operation of the plant and the fact that operation and maintenance is the responsibility of the operator, it is not desirable to hold the supplier responsible beyond certain initial period. Period of initial license becomes a natural choice for the period for the supplier's liability.

Further, in view of redundancy provided in the design of a reactor, no single failure can lead to an incident. An incident will happen only when there are multiple failures.

It is to be noted that suppliers will have to take insurance equal to their liability and burden of the premium will increase the capital cost of the plant and will be passed on to the consumer of electricity in terms of higher tariff".

3.12 In response to a query whether the product liability period is akin to standard warranty period which is generally 12 months from the commissioning of the Nuclear Plant, DAE in a written reply dated 21.02.2012 stated as follows:

"Each contract has a product liability clause and the product liability period is regulated in accordance therewith. General conditions of contract generally include a period of 12 months for patent defects and 5 years for latent defects."

3.13 In response to a query as to why initial license period is kept five years and whether there is any difficulty in extending this, representative of DAE deposing before the Committee on 16 April, 2012 replied as follows:

"there are couple of reasons for that. All equipment requires a certain maintenance schedule. The maintenance is the responsibility of the operator and not of the supplier. The moment we want to go beyond the product liability period, supplier will have to be given responsibility for maintenance also. So, we will end up paying more money for those cases where we ourselves have the competence. The moment we say the period is 10 years or 20 years, the supplier will take insurance for that period. The cost of the insurance premium will be added to the cost of the equipment. The net result will be that Indian money will be going to foreign insurance companies without any benefit to us. Thirdly, AERB, the regulatory body, gives license only for five years. After five years they will inspect. They can always say, to keep the plant modern as per latest scientific knowledge, make this, this, and this change. Once the operator has made the changes as directed by the regulatory body, then we can't hold the Original supplier responsible. So these are the three reasons: (1) regulatory provision which enjoins on the operator to keep the plant up to date. , (2) the equipment cost will go up because unnecessary insurance premium which will be invariably outside the country and Indian money will flow outside, and (3) the maintenance. If we entrust maintenance of everything to foreign companies, then what are our engineers and scientists there for? They are capable of doing it. Why should we let our money go outside for those jobs which we can do ourselves."

3.14 The explanation to Rule 24 of the CLND Rules states that an operator's claim against the supplier shall in no case exceed the actual amount of compensation paid by him up to the date of filing of such a claim. The Committee in this connection note that Section 15(2) of the CLND Act enables filing of application for compensation within three years from the date of knowledge of nuclear damage by the person suffering from such damage subject to section 18 which stipulates extinction of the right to claim compensation, if such claim is not made

within ten years in case of damage to property and 20 years in case of personal injury. In such cases, in the event of an applicant filing a suit against the award, the final disposal of the suit by the judiciary may even fall beyond the 20 year period. There is no clarity in the CLND Act and Rules as to whether the operator can make successive claims from the supplier in such an eventuality, irrespective of time limit, in case the maximum amount of recourse available is not exhausted. The Committee, therefore, urge that the CLND Act or Rules thereunder should be suitably amended to provide necessary clarity on this aspect and the Committee be informed of the action taken in this regard.

3.15 Rule 24 of the CLND Rules has the effect of diluting the stringent liability provided in section 17 of the CLND Act by imposing limitations in terms of the amount which can be claimed by exercising right of recourse (limiting to the extent of operator's liability or the value of the contract whichever is less) and also the duration for which a supplier can be held liable, not contemplated under the CLND Act. The Committee hold that delegated legislation (viz. rules made by the Executive) should be consistent with the substantial provisions of the Act and should not contain any limitations or excesses which are not contemplated under the Act. The Committee are of the firm view that rule 24 has inserted limitations not mandated by the CLND Act as brought out above. The

Committee, therefore, exhort DAE to amend rule 24 suitably to remove the limitations imposed on the liability as well as the duration of the liability period.

IV

Notification of Nuclear incident

4.1 As per Section 3(1) of the CLND Act, 2010 the Atomic Energy Regulatory Board (AERB) constituted under the Atomic Energy Act, 1962 shall notify nuclear incidents within a period of fifteen days from the date of occurrence of a nuclear incident.

4.2 To a query whether the fifteen days provided for notification of the nuclear incident are on the higher side, the Department of Atomic Energy in their written reply dated 21.2.2012, stated:

> "The notification of nuclear incident by AERB would involve complex technical issues, analysis of data, deliberations by experts and decision by the Board of AERB. Keeping this in view a time of 15 days has been stipulated in the Act. Emergency response team will, of course, come into action immediately after any nuclear accident."

4.3 When enquired during the course of evidence on 16.04.2012 whether the time allowed for notification of nuclear incident can be curtailed to 7 or 10 days. The Secretary, DAE, deposed as follows:

> "……One has to do a complete analysis of what is the radiation distribution in that area. Second, many people also inhale the radiation. It has to be assessed by pathological determination. This process will go on. Actually this issue has been debated for long in the Parliamentary Committee also. After all the consideration, from the Parliament Committee we got this number of 15 days….."

4.4 The Committee note that though 15 days time has been stipulated in the Act to notify a nuclear incident as it involves complex technical issues, analysis of data, deliberations by experts and the decision by Atomic Energy Regulatory Board, the Committee feel that in the event of a nuclear incident, the matter should be handled at the shortest possible time on a war footing and no time should be lost in bureaucratic procedures in notifying a nuclear incident.

V

Delay in framing Rules

A. Delay in framing Rules

5.1 As per instruction, rules under an Act should ordinarily be framed as soon as possible after the commencement of the Act and in no case this period should exceed six months. The Civil Liability for Nuclear Damage Act, 2010, assented to by the President on 21 September, 2010, was enforced from 11 November, 2011 by Department of Atomic Energy. The Civil Liability for Nuclear Damage Rules, 2011 (herein after referred to as the Rules) were, however, notified on 11 November, 2011.

5.2 In response to the query on the reasons for delay of about thirteen months in enforcing the Act, the Department of Atomic Energy, in a written reply dated 16.05.2012, submitted as follows:

> "It was necessary to notify the Act and the Rules together. The drafting of Rules took quite some time as the Department had to go through legal consultations including multiple consultations with the Attorney General for India."

5.3 The submission of the Department of Atomic Energy with regard to delay in enforcement of the Act is not tenable as framing of draft Rules should have been initiated along with the drafting of the proposed bill so

that the draft rules would have been ready by the time the bill was introduced in the House.

5.4 The Committee are distressed to note that delay in framing of rules under the CLND Act has caused delay of thirteen months in notification / enforcement of the Act. Had the Department of Atomic Energy initiated action to frame the rules along with drafting of the legislation, there would not have been such inordinate delay in enforcement of the Act. The Committee hope that the Department will initiate timely action in framing rules while drafting any legislation in future.

B.<u>Delay in framing of rules on various aspects under Section 48 of the Act</u>

5.5 As per Section 48 of the Act, the Central Government may, by notification, make various rules for carrying out the purposes of the Act. On scrutiny of the rules, it was observed that the rules required to be framed in terms of section 11 and 22 of the Act with regard to other terms and conditions of services of Claims Commissioners and also of the Chairperson and other Members of the Commission could not be framed.

5.6. In response to a query as to whether other terms & conditions of service of claims commissioner and the Chairman and members of the

Commission have been prescribed, the Department of Atomic Energy *vide* their reply dated 16 May, 2012, submitted as under:

> "A departmental Committee is working on the rules governing other terms and conditions of service of the Claims Commissioner and the Chairperson and members of the Commission. Rules will be notified in due course"

5.7 The Committee regret to note that the CLND Rules notified more than one year after the Bill was assented to by the President are not complete and "the other terms and conditions of service" of the Claims Commissioner and the Chairperson and the members of the Commission are stated to be still under the consideration of a departmental committee of DAE. The Committee do not expect such lackadaisical approach in framing of rule by the DAE The Committee hope that the Departmental Committee would complete its task without any further loss of time and DAE will notify the rules under intimation to the Committee.

VI

Legislation by reference

6.1 In rule 5(1) and 24 (2) reference is made to the Atomic Energy Act, 1962 and the Atomic Energy (Radiation Protection) Rules, 2004 respectively. The Committee on Subordinate Legislation have time and again recommended that the legislation by reference should be avoided and the rules should be self-contained.

6.2 Rule 5 (1) of the Rules reads as follows:

> " Report of licensing authority. – (1) The claims adjudication authority shall, as soon as a claim arising out of a nuclear incident notified under section 3 of the Act is filed, issue direction in Form A to the licensing authorities as applicable under sections 14, 16 and 17 of the Atomic Energy Act, 1962 (33 of 1962)."

6.3 The Rule 24 (2) of the Rules provides as under:

> "The provision for right of recourse referred to in sub rule (1) shall be for the duration of initial license issued under the Atomic Energy (Radiation Protection) Rules, 2004 or the product liability period, whichever is longer."

6.4 Asked about their comments for not making the rules self contained and making references to other Act and Rules in the CLND Rules, 2011 [Reference to Atomic Energy Act, 1962 and Atomic Energy (Radiation

Protection) Rules, 2004], the Department of Atomic Energy (DAE) submitted as follows:

> "Reference to the Atomic Energy Act, 1962 and the rules made there under is necessary in order to avoid duplication. Since the licensing of facilities is regulated by the Atomic Energy (Radiation Protection) Rules, 2004, reference to the same adds clarity to the provision. A reference to Atomic Energy Act and the Atomic Energy (Radiation Protection) Rules would mean that any change therein will automatically be reflected in the Rules."

6.5 The submission of the Department regarding reference to other Acts and Rules in CLND Rules (viz. Section 14, 16 and 17 of the Atomic Energy Act, 1962 and the Atomic Energy (Radiation Protection) Rules, 2004) is not convincing as such references necessitate one to search for the relevant Act and the Rules to make a complete reading of the Rules. The Committee stress that Rules should, as far as possible, be self-contained and drafted in such a manner as to make available to the public the entire text of the rules including the relevant extracts of these Acts/rules which are cited in the rules.

VII

Definition of Terms in Act/Rules

A. Definition of the term representative / legal representative

7.1 The term 'Supplier' is occurring in section 17 of the Act, but the term is not defined in Section 2 of the Act. However, the same has been defined in the rule 24.

7.2 The Department of Atomic Energy in their comments dated 21.02.2012, on the issue of not defining the term 'supplier' in the Act, stated as under:

> '' The word 'supplier' occurs only in Section 17. Rule 24 has been framed to implement section 17 and the explanation to the rule has been added for the sake of clarity in implementation of the provision''.

7.3 The term 'supplier' which appears in Section 17 of the CLND Act has not been defined in the Act but defined in CLND Rule 24. Definition of a term appearing in an Act should be made in the very statute and not in the rules made thereunder. It is not for the Executive to lay down the contours of a term or to interpret it through the rules. This again amounts to Executive exceeding the authority delegated by the

Parliament. The Committee, therefore expect the DAE to amend the Act to incorporate the definition regarding 'supplier'.

B. Ambiguity in the term 'Representative'

7.4 The term 'legal representative' is defined in Rule 2 (d) (Definitions). However, the term 'representative' is used in Rule 6(1) (c) for the purposes of application for compensation. The term 'representative' is not defined either in Rule 2 or in section 2 of the Act.

7.5 In response to a post evidence query as to whether there is a need for defining the term ' representative' used in Rule 6(1)(c), the department of Atomic Energy in a written reply submitted as under:

> "Legal representative is a term in vogue in legislations and includes the legal heirs and successors in interest of the deceased ''

7.6. The term 'representative' used in rule 6(1) (c) of the CLND Rules has not been defined and leaves scope for different interpretations. The contention of the DAE that the term 'representative' carries same meaning as the term 'legal representative' is not convincing as it fails to explain the reason for not using the term 'legal representative' in Rule 6(1)(c). There should be uniformity in usage of terms in the Rules as these have legal implications. The Committee, therefore, desire that the

term 'representative' should be replaced with the term 'legal representative' in the rule.

P. KARUNAKARAN
Chairman,
Committee on Subordinate Legislation

New Delhi;
August, 2012
Bhadra, 1934 (Saka)

APPENDIX –I

(Vide Para 4 of the Introduction of the Report)

SUMMARY OF RECOMMENDATIONS MADE IN THE TWENTY SEVENTH REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION

(FIFTEENTH LOK SABHA)

Sl. No.	Reference to Para No. in the Report	Summary of Recommendations
1	2	3
1	2.8	**Interim Relief to the victims of Nuclear Damage** The Civil Liability for Nuclear Damage Act, 2010 provides that the Claims Commissioner or the Nuclear Damage Claims Commission (NDCC) are required to adjudicate claims and award claims for nuclear damage within three months of receipt of application. The Committee observe that though there is no provision in the Act for appeal against the award of Claims Commissioner/NDCC, any applicant not satisfied with the award, can seek judicial review of the awards. The Committee feel that in the event of an applicant seeking judicial review of the award given by Claims Commissioner/NDCC, the amount awarded as compensation should be treated as interim relief and be disbursed pending verdict of the court. The Committee desire that a suitable enabling provision be incorporated in this regard either in the CLND Act or the CLND Rules as may be deemed appropriate.
2	3.14	**Right of Recourse** The explanation to Rule 24 of the CLND Rules states that an operator's claim against the supplier shall in no case exceed the actual amount of compensation paid by him up to the date of filing of such a claim. The Committee in this connection note that Section 15(2) of the CLND Act enables filing of application for compensation within three years from the date of knowledge of nuclear damage by the person suffering from such damage subject to section

		18 which stipulates extinction of the right to claim compensation, if such claim is not made within ten years in case of damage to property and 20 years in case of personal injury. In such cases, in the event of an applicant filing a suit against the award, the final disposal of the suit by the judiciary may even fall beyond the 20 year period. There is no clarity in the CLND Act and Rules as to whether the operator can make successive claims from the supplier in such an eventuality, irrespective of time limit, in case the maximum amount of recourse available is not exhausted. The Committee, therefore, urge that the CLND Act or Rules thereunder should be suitably amended to provide necessary clarity on this aspect and the Committee be informed of the action taken in this regard.
3.	**3.15**	**Rule 24 of the CLND Rules has the effect of diluting the stringent liability provided in section 17 of the CLND Act by imposing limitations in terms of the amount which can be claimed by exercising right of recourse (limiting to the extent of operator's liability or the value of the contract whichever is less) and also the duration for which a supplier can be held liable, not contemplated under the CLND Act. The Committee hold that delegated legislation viz. rules made by the Executive should be consistent with the substantial provisions of the Act and should not contain any limitations or excesses which are not contemplated under the Act. The Committee are of the firm view that rule 24 has inserted limitations not mandated by the CLND Act as brought out above. The Committee, therefore, exhort DAE to amend rule 24 suitably to remove the limitations imposed on the liability as well as the duration of the liability period.**
	4.4	**<u>Notification of Nuclear incident</u>** **The Committee note that though 15 days time has been stipulated in the Act to notify a nuclear incident as it involves complex technical issues, analysis of data, deliberations by experts and the decision by Atomic Energy Regulatory Board, the Committee feel that in the event of a nuclear incident, the matter should be handled at the shortest possible time on a war footing and no time should be lost in bureaucratic procedures in notifying a nuclear incident.**

4.		**<u>Delay in framing Rules</u>**
	5.4	**The Committee are distressed to note that delay in framing of rules under the CLND Act has caused delay of thirteen months in notification / enforcement of the Act. Had the Department of Atomic Energy initiated action to frame the rules along with drafting of the legislation, there would not have been such inordinate delay in enforcement of the Act. The Committee hope that the Department will initiate timely action in framing rules while drafting any legislation in future.**
	5.7	**The Committee regret to note that the CLND Rules notified more than one year after the Bill was assented to by the President are not complete and "the other terms and conditions of service" of the Claims Commissioner and the Chairperson and the members of the Commission are stated to be still under the consideration of a departmental committee of DAE. The Committee do not expect such lackadaisical approach in framing of rule by the DAE The Committee hope that the Departmental Committee would complete its task without any further loss of time and DAE will notify the rules under intimation to the Committee.**
5.		**<u>Legislation by reference</u>**
	6.5	**The submission of the Department regarding reference to other Acts and Rules in CLND Rules (viz. Section 14, 16 and 17 of the Atomic Energy Act, 1962 and the Atomic Energy (Radiation Protection) Rules, 2004) is not convincing as such references necessitate one to search for the relevant Act and the Rules to make a complete reading of the Rules. The Committee stress that Rules should, as far as possible, be self-contained and drafted in such a manner as to make available to the public the entire text of the rules including the relevant extracts of these Acts/rules which are cited in the rules.**
6.	**7.3**	**<u>Definition of Terms in Act/Rules</u>**

		The term 'supplier' which appears in Section 17 of the CLND Act has not been defined in the Act but defined in CLND Rule 24. Definition of a term appearing in an Act should be made in the very statute and not in the rules made thereunder. It is not for the Executive to lay down the contours of a term or to interpret it through the rules. This again amounts to Executive exceeding the authority delegated by the Parliament. The Committee, therefore expect the DAE to amend the Act to incorporate the definition regarding 'supplier'.
	7.6	**The term 'representative' used in rule 6(1) (c) of the CLND Rules has not been defined and leaves scope for different interpretations. The contention of the DAE that the term 'representative' carries same meaning as the term 'legal representative' is not convincing as it fails to explain the reason for not using the term 'legal representative' in Rule 6(1)(c). There should be uniformity in usage of terms in the Rules as these have legal implications. The Committee, therefore, desire that the term 'representative' should be replaced with the term 'legal representative' in the rule.**

APPENDIX –II
(Vide Para 5 of the Introduction of the Report)

MINUTES OF THE FOURTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2011-2012)

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The Fourth sitting of the Committee held on Monday, the 16th April, 2012 from 1400 to 1600 hours in Committee Room No. G-074, Parliament Library Building, New Delhi.

PRESENT

1. Shri P. Karunakaran — Chairman

MEMBERS

LOK SABHA

2. Shri Kalyan Banerjee
3. Shri E.T. Mohammed Basheer
4. Shri Ramen Deka
5. Shri Mahesh Joshi
6. Dr. Thokchom Meinya
7. Dr. Bhola Singh
8. Shri Vijay Bahadur Singh

SECRETARIAT

1.	Shri A. Louis Martin	-	Joint Secretary
2.	Shri S.C. Chaudhary	-	Director
3.	Shri Srinivasulu Gunda	-	Additional Director
4.	Shri Krishendra Kumar	-	Under Secretary

REPRESENTATIVES OF DEPARTMENT OF ATOMIC ENERGY

1 Dr. Srikumar Banerjee, Secretary

2. Dr. R. B. Grover, Principal Advisor

3. Shri Rahul Kulshresth, Joint Secretary (ER)

4. Shri Vijay Bhushan Pathak, Joint Secretary, DAE Branch Sectt., Delhi

5. Shri Ashok Chavan, Executive Director, NPCIL

2. At the outset, the Chairman welcomed the Members of the Committee and the representatives of the Department of Atomic Energy and drew the attention of the witnesses to Direction 55 (1) of Directions by the Speaker, Lok Sabha regarding confidentiality of the proceedings of the sitting of the Committee.

3. The Committee, thereafter, held discussion with the representatives of the Department of Atomic Energy in connection with examination of the Civil Liability for Nuclear Damage Rules, 2011, particularly on the issues such as exceeding the power of delegation, right of recourse, time limit for settlement of claims, period of liability of supplier, etc.

4. The Chairman then desired that the Department may furnish written replies to those points which remained unanswered during the discussion.

The Committee then adjourned.

MINUTES OF THE NINTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2011-2012)

The Ninth sitting of the Committee held on Monday, the 27th August, 2012 from 1500 to 1530 hours in Chairman's Room No. 143, Parliament House, New Delhi.

PRESENT

1. Shri P. Karunakaran — Chairman

MEMBERS

2. Shri Ghanshyam Anuragi
3. Dr. Thokchom Meinya
4. Dr. Bhola Singh
5. Shri Vijay Bahadur Singh

SECRETARIAT

1.	Shri A Louis Martin	-	Joint Secretary
2.	Shri S.C. Chaudhary	-	Director
3.	Shri Srinivasulu Gunda	-	Additional Director
4.	Shri Krishendra Kumar	-	Under Secretary

2. At the outset, the Chairman welcomed the Members of the Committee

3. The Committee, then, considered the draft 'Twenty Seventh Report' and adopted the same without any modification. The Committee authorized the Chairman to present the same to the House.

The Committee then adjourned.
