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COMMITTEE ON SUBORDINATE LEGISLATION
(SIXTEENTH LOK SABHA)
(2014-2015)

FIRST REPORT

[ACTION TAKEN BY GOVERNMENT ON THE OBSERVATIONS/RECOMMENDATIONSCONTAINED IN THE TWENTY-SEVENTH REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTEENTH LOK SABHA) ON THE CIVIL LIABILITY FOR NUCLEAR DAMAGE RULES, 2011]

(PRESENTED TO LOK SABHA ON 19.12.2014)

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LOK SABHA SECRETARIAT

NEW DELHI

December, 2014/Agrahayana, 1936 (Saka)

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(2014-2015)

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SECRETARIAT

1.	Shri R S Kambo	-	Joint Secretary
2.	Shri Raju Srivastava	-	Additional Director
3.	Shri Vinod V. George	-	Senior Committee Assistant

INTRODUCTION

I, the Chairman, Committee on Subordinate Legislation having been authorised by the Committee to submit the report on their behalf, present this First Report of the Committee on action by the Government on the observations/recommendations contained in their Twenty-seventh Report (Fifteenth Lok Sabha) on the Civil Liability for Nuclear Damage Rules, 2011.

2. The Twenty-seventh Report (2011-2012) (Fifteenth Lok Sabha) was presented to Lok Sabha on 28.08.2012. The Department of Atomic Energy furnished their action taken replies on all the observations/recommendations contained in the Twenty-seventh Report (15th Lok Sabha).

3. The Committee considered and adopted this Report at their sitting held on 18 December, 2014. The Minutes of the sitting of the Committee are given in Appendix I.

4. An Analysis of the action taken by Government on the observations/recommendations contained in the Twenty Seventh Report of the Committee on Subordinate Legislation (Fifteenth Lok Sabha) is given in Appendix II.

DILIPKUMAR MANSUKHLAL

GANDHI
New Delhi;
December,2014/Agrahayana,1936(Saka)

CHAIRPERSON,
COMMITTEE ON SUBORDINATE LEGISLATION

CHAPTER – I

REPORT

This Report of the Committee on Subordinate Legislation (2014-15) deals with the action taken by the Government on the observations/recommendations contained in their Twenty-seventh Report (Fifteenth Lok Sabha) on the subject 'The Civil Liability for Nuclear Damage Rules, 2011' which was presented to Lok Sabha on 28.08.2012.

2. The Department of Atomic Energy (DAE) *vide* their OM dated 26 February, 2013 had furnished their action taken replies on all the nine observations/recommendations made by the Committee in its 27th Report (15 LS). Since, replies to all the observations/recommendations were inconclusive, the matter was placed before the Committee.

3. The Committee in its sitting held on 12 September, 2013 desired that further information/comments of the DAE may be obtained on certain issues. Accordingly, further information/clarification from DAE was sought on certain points based on the action taken replies furnished by the DAE in the observations/recommendations contained in the 27th Report (15 LS) of the Committee.

4. Action taken replies in respect of all the nine recommendations/observations contained in the Report and replies to the points on which further information was sought have been received from the DAE. These have been categorised as follows:-

(i) Observations/Recommendations which have been accepted by the Government:

Recommendations Paragraph Nos. 4.4, 5.4 and 5.7 Total 3
Chapter - II

(ii) Observations/Recommendations which the Committee do not desire to pursue in view of the reply received from the Government:

Recommendations Paragraph No. - Nil Total 0
Chapter - III

(iii) Observations/Recommendations in respect of which replies of the Government have not been accepted by the Committee:

Recommendations Paragraph Nos. 2.8, 3.14, 3.15 and 6.5 Total 4
Chapter – IV

(iv) Observations/Recommendations in respect of which the Government have furnished interim replies:

Recommendation Paragraph Nos. 7.3 and 7.6 Total 2
Chapter - V

5. The Committee note that three out of nine recommendations contained in the Twenty-seventh Report (Fifteenth Lok Sabha) have been accepted by the Department of Atomic Energy. Four recommendations have not been accepted and in the case of two recommendations, interim reply have been furnished by the DAE.

6. The Committee will now deal with the action taken by the Government on some of their observations/recommendations that require reiteration or merit comments.

A. <u>Interim Relief to the Victims of Nuclear Damage</u>
Recommendation (Para No. 2.8)

7. The Committee in their original Report (27th Report) on "the Civil Liability for Nuclear Damage Rules, 2011" had observed that though there is no provision in the Act for appeal against the award of Claims Commissioner/Nuclear Damage Claims Commissioner (NDCC), any applicant not satisfied with the award, can seek judicial review of the awards. The Committee felt 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. Therefore, the Committee desired that a suitable enabling provision be incorporated in this regard either in the CLND Act or the CLND Rules as may be deemed appropriate.

8. The Department of Atomic Energy in their action taken reply dated 26 February, 2013 have submitted that, the Act provides under Section 16 (5) and Section 32 (10) that awards made by the Claims Commissioner and the Nuclear Damage Claims Commission shall be final and therefore, there is no right of appeal allowed under the Act. If, however, an award is

challenged before a High Court exercising jurisdiction under Articles 226 and 227 of the Constitution or the Supreme Court, in the interim period, the award shall operate unless its operation is stayed by such higher court and, therefore, the payment to the applicant will have to be made by the operator or insurer, as the case may be. In view of this, there may not be a necessity to amend either the Act or Rules.

9. When the Department of Atomic Energy were further requested to state whether there was any difficulty in incorporating the aforesaid clarification in the CLND rules to make the rules self explanatory to the public, the Department *vide* their subsequent reply dated 12 May, 2014 stated as under:-

> *"Reference was made on this point to Ministry of Law and Justice (Legislative Department and Department of Legal Affairs). While no guidance has been received from it, it may be noted that the Civil Liability for Nuclear Damage (CLND) Rules, 2011 were finalized in consultation with Ministry of Law and Justice.*
>
> *The Department has also added that Chapter IV of the CLND Rules, 2011 deals with the manner of the adjudication of claims for compensation by the claims adjudication authority. The claimant's right to challenge the compensation award before a High Court exercising jurisdiction under Article 226 and Article 227 of the Constitution or before the Supreme Court is a Constitutional provision and, therefore, the Department remains of the view that a clarification to the effect that the compensation award by the claims adjudication authority set up under the CLND Act, 2010 be treated as interim relief should the claimant seek review of the award before a High Court or the Supreme Court does not appear to be necessary.*

10. The recommendation of the Committee was aimed at incorporating a suitable enabling provision either in the Civil Liability for Nuclear Damage (CLND) Act or the Rules for treating the amount awarded as compensation by the Claims Commissioner/ Nuclear Damage Control Commission (NDCC) as interim relief and disbursing the same in the event of an applicant seeking judicial review of the award. The Department of Atomic Energy, however, in their reply has highlighted that Chapter IV of the CLND Rules, 2011 deals with the manner of adjudication of claims for compensation by the claims adjudication authority and that the claimants right to challenge the compensation award before a High Court by exercising jurisdiction under Article 226 and Article 227 of the Constitution or before the Supreme Court is a constitutional provision and therefore incorporating the relevant clarification does not appear to be necessary. The Committee

are dismayed to note that Chapter IV of the CLND Rules, 2011 deals with various issues viz., application of compensation, notice to opposite parties, supply of copies of documents, examination of applicant, appearance and examination of the parties etc. which are not connected with treating the compensation awarded as interim relief and disbursing the same pending verdict of the court. The Committee are of the opinion that the Department has digressed the issue and have not considered the aspect of inherent wider public interest in the right perspective. The Committee, therefore, once again reiterate that suitable enabling provision be incorporated either in the CLND Act or the Rules to take care of the interests of the applicant seeking judicial review of the award. The Committee would also like to be apprised of conclusive action taken in this regard.

B. <u>Right of Recourse</u>
Recommendation (Para No. 3.14)

11. The Committee have noted that Section 15(2) of the CLND Act enabled 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. Thus there was 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, urged that the CLND Act or Rules thereunder should be suitably amended to provide necessary clarity on this aspect.

12. The Department in their reply dated 26 February, 2013 have stated as under:-

"Section 17 of the Act provides for the right of recourse of the operator against the supplier which will be exercisable before a Civil Court. It is correct to say that victims of a nuclear incident will keep filing claims as and when a damage is noticed by them. Therefore, it is necessary that, wherever justified the operator files successive claims for the amount paid by him so that his case does not become barred by limitation. Explanation 2 in Rule 24 has been provided precisely to address this aspect and the explanation makes it clear that the operator can file claims for amounts paid by him upto the date of filing such claim. It may not, therefore, be necessary to make any further provision in the Act or in the Rules."

13. The Department of Atomic Energy *vide* their subsequent reply dated 12 May, 2014 furnished the views of Ministry of Law and Justice as follows:-

> *"The issue was referred to Ministry of Law and Justice, Department of Legal Affairs has advised that the draft Rule 24 of the CLND Rules was considered by the Learned Attorney General of India on a reference made at the request of this Department and the Learned Attorney General vide his opinion dated 17.3.2011 and 12.10.2011 found the draft Rule 24 satisfactory. Department of Legal Affairs has also pointed out that there is no express bar in Rule 24 prohibiting the operator to make successive claims from the supplier. This Department's earlier response on this issue was thus in line with the opinion made available by the Department of Legal Affairs."*

14. While observing ambiguity in Rule 24 of CLND Rules read with Sections 15(2) and 18 of the CLND Act to the extent that operator can make successive claims from the supplier, irrespective of time limit, in case the maximum amount of recourse available is not exhausted, the Committee had recommended the Department to suitably amend the CLND Act or Rules thereunder to provide necessary clarity on this aspect. The Department has, however, informed that since Explanation 2 in Rule 24 has been provided precisely to address the aspect of filing claims by the operator for amounts paid by him upto the date of filing such claim, it may not be necessary to make any further provision in the Act or in the Rules. The Committee are perplexed to note that on the one hand, the Department has concurred with the observations made by the Committee that victims of nuclear incident will keep filing claims as and when a damage is noticed by them and on the other hand, the Department has curtly linked this aspect with Explanation 2 of Rule 24 which stipulates that the operator's claim shall in no case exceed the actual amount of compensation paid by him to the date of filing such claim. The moot question, therefore, still remains unanswered as to whether the operator can make successive claims from the supplier irrespective of time limit prescribed under Section 15(2) and 18 of the CLND Act. The Committee are of the firm belief that any ambiguity in the Act/ Rules cannot be wiped out by way of clarifications which are especially not part of relevant Act/ Rules and such types of situations often pave way for avoidable litigations before the already burdened courts. The Committee would, therefore, reiterate their earlier recommendation that CLND Act or Rules thereunder should be suitably amended to provide necessary clarity on this aspect. The Committee would await further development on follow-up exercise in this direction.

Recommendation (Para No. 3.15)

15. The Committee had observed that 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 the 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 were, therefore, of the view that rule 24 has inserted limitations not mandated by the CLND Act in terms of the amount which can be claimed by exercising right of recourse and also the duration for which the supplier can be held liable.

16. In response, the Department of Atomic Energy *vide* their communication dated 26 February, 2013 have stated as follows:-

> *"Rule 24, or any other rule, does not restrict the scope of the CLND Act, or any of its provision, in any way, and is in consonance with the Act. In particular, Rule 24 does not restrict the scope of the operators right of recourse as contained in section 17 of the Act, either in extent or in time.*
>
> *Rule 24 only deals with Section 17 (a) of the Act, i.e., situations where the operator's right to recourse "is expressly provided for in a contract in writing". It may be noted that Section 17 (a) does not make it compulsory to include such right of recourse in a contract, Rule 24 merely specifies a minimum amount for the operator's right of recourse, and the corresponding time period for which this must be valid. This is intended to secure the interest of the Indian Operator. However, nothing in Rule 24 prohibits the operator and the supplier from agreeing to a larger right of recourse in the contract.*
>
> *The principal objective of the provisions of Rule 24 is to protect the interests of the Indian nuclear suppliers, who would be supplying nuclear material or nuclear equipment or components of values covering a wide range including as low as a few crores i.e, less than the limit of the operator's liability. Every domestic supplier, irrespective of the value of the contract with the operator, should not be asked to obtain insurance for the full amount of the operator's liability under the CLND Act. This would present a huge barrier for indigenization and ensure that only the large suppliers, usually foreign, would be able to bear the high insurance and liability burden. Hence, Rule 24 links the right of recourse to the value of the contract and provides that the*

operator's right of recourse shall not be less than the extent of the operator's liability under the Act or the value of the contract itself, whichever is less. It may be emphasised that this will not have any impacts on contracts with the foreign suppliers, which will usually be for amounts greater than the operator's own liability. Concerns that large contracts can be split into several smaller value contracts thereby effectively limiting liability, is neither based on the facts nor on the practice of trade.

Regarding duration of the operator's right of recourse, plant life and equipment life are not the same. Equipment life can be much less than the life of the nuclear power plant and equipment is guaranteed only for its own life and not for the life of the plant. Equipment are typically required to be changed or replaced several times during the lifetime of the plant. Nuclear power plants are also upgraded periodically to incorporate advancements in safety standards. It is for these reasons that the Indian regulator licenses a plant for 5 years at a time. This time period also allows for the manifestation of both patent and latent defects, if any, in the equipment or material supplied. At the time of renewal of licence, the regulator may ask the operator to make changes to ensure that the plant remains safe and satisfies the safety criteria prevalent at the time of licence renewal. This is done precisely to ensure that chances of any accident do not increase as the reactor ages. Thus, right of recourse for a equipment or service has to be linked to the specific product liability period. Rule 24 actually extends the duration of this right to the period of initial licence in cases where this period is longer than the product liability period stipulated in the contract."

17. The Department of Atomic Energy *vide* their subsequent reply dated 12 May, 2014 submitted as follows:-

"This Department reconsidered the recommendation of the Committee to amend Rule 24 suitably to remove the limitations imposed on the liability as well as the duration of the liability period.

The purpose of Rule 24 is to guide negotiations of the contract envisaged under section 17 (a) of the CLND Act, 2010. It lays down the minimum criteria to be fulfilled in the contract negotiated under section 17 (a) so that the operator's interests are protected. Nothing in Rule 24 prevents an operator and a supplier to agree for a more liberal clause for right of recourse in the contract and it is a matter of choice on the part of the parties thereto.

Nuclear Power Plants need upgradation to achieve the improved safety standards at periodic intervals; this is imperative in view of safety requirements. For this reason, the Indian nuclear regulator issues licence for a period of 5 years initially and every renewal is also for a period of five years. This period is long enough to take care of the manifestation of both patent and latent defects in the equipment or material supplied. Generally, existing contracts have a product liability period of 1 year for patent defects and product liability period of 5 years for latent defects. Equipment and components are upgraded or replaced as and when necessary. For any component or equipment, probability of latent/patent defect is highest in the initial 5 years of its operation and it sharply decreases thereafter. By referring to initial license period or product liability period, whichever is longer, the period of license for operation of a nuclear facility stipulated by AERB and also issues related to product liability as included in a contract between operator and supplier are taken into account. The liability for patent or latent defect cannot be stretched beyond the product liability period. However, Rule 24 goes a step further and extends the liability to the period of initial license if it is longer than the product liability period stipulated in the contract. Relating the duration of the right of recourse to the product liability period in the contract or the period of initial license issued under the Atomic Energy (Radiation Protection) Rules, 2004 thus has a rational basis.

Plant life and equipment life are not the same. Equipment life in many cases will be much less than the plant life. To cover his liability, a supplier has to take risk cover. For this purpose, the supplier needs to know the amount for which risk cover is to be taken and also the period. Over time Indian industry has developed significant capabilities and is contributing in a substantial manner to the indigenous nuclear power programme. It (i.e. the industry) is unlikely to participate within a framework in which its liability is open-ended.

It may be noted that the Learned Attorney General in the opinion dated 12.10.2011 observed that Rule 24 has to be read with reference to section 17 (a) of the CLND Act, 2010 and section 17 (a) "assumes that the contract providing for recourse would make provision for a period for which such recourse ("Product Liability Period") would be available".

It is also for information that there is no insurance mechanism available in the country yet that covers nuclear damage and this applies equally to the operator and the supplier."

18. The Committee in their Report had observed that Rule 24 of the CLND Rules has the effect of diluting the stringent liability provided in Section 17 of the CLND Act by way of 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. Since 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 had recommended the Department to amend Rule 24 suitably to remove the limitations imposed on the liability as well as the duration of the liability period. The Department in their action taken reply has *inter alia* stated that Rule 24 only deals with Section 17(a) of the Act i.e., situations where the operator's right to recourse is expressly provided for in a contract in writing. Section 17(a) does not make it compulsory to include such right of recourse in a contract. Rule 24 merely specifies a minimum amount for the operator's right of recourse and the corresponding time period for which this must be valid. This is intended to secure the interest of the Indian Operator. However, nothing in Rule 24 prohibits the operator and the supplier from agreeing to a larger right of recourse in the contract. They have, therefore, stated that Rule 24 or any other rule does not restrict the scope of CLND Act or any of its provision, in any way, and is in consonance with the Act. The Committee are of the view that reply of the Department is devoid of specific mechanism as well as remedial measures to ensure that delegated legislation 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 and the Department seems to be happy to go with the existing provisions of excessive delegation mechanically. In the process they have tried to justify the status quo by stating that specifying a minimum amount for the operator's right of recourse and the corresponding time period as specified in Rule 24 is intended to secure the interest of the Indian Operator. The Department has failed to appreciate that Rule 24 is restrictive and may encourage Supplier at the cost of Indian Operator. Though the existing provision may not prohibit the Operator and the Supplier from entering into a larger right of recourse, yet the Committee are apprehensive that there may not be any propensity for the Supplier to agree for a recourse higher than the minimum amount and the time period prescribed. The Committee, therefore, expect the Department to re-visit the related provisions of the CLND Rules which appear to be in conflict with the relevant Sections of the Act and work out modalities to provide an effective prescription for delegated legislation consistent with the provisions of the Act.

C. <u>Legislation by Reference</u>
Recommendation (Para No. 6.5)

19. With regard to the reference made to certain sections of the Atomic Energy Act, 1962 and to the Atomic Energy (Radiation Protection) Rules, 2004. The Committee had stressed 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.

20. The Department in their reply dated 26 February, 2013 have stated that reference to the applicable provisions of other statutes and rules were for the purpose of precision and avoidance of repetition of the statutory provisions.

21. The Department when asked to state the difficulty, if any, in making the rules self contained, the Department vide their subsequent reply dated 12 May, 2014 stated as follows:-

> *"The Department also made a reference in respect of this point to Ministry of Law and Justice. However, no guidance was received. Again, the Department would nevertheless point out that Ministry of Law and Justice vetted the Rules at the formulated stage."*

22. The Committee, considering the importance of incorporating all the relevant extracts of Act/Rules referred to in the CLND Rules [*viz.,* Sections 14, 16 and 17 of the Atomic Energy Act, 1962 and the Atomic Energy (Radiation Protection) Rules, 2004], had recommended the Department 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 Rules. However, in the action taken reply, they have only stated that reference to the applicable provisions of other statutes and rules were for the purpose of precision and avoidance of repetition of the statutory provisions. The Committee are unhappy with the manner in which their recommendation has been belittled by the Department by way of resorting to amplified vocabulary. As a matter of fact, the Committee have emphasised time and again that the rules should, as far as possible, be self contained and drafted in a manner that no difficulty is caused to the public in locating and referencing of rules. The Committee are, therefore, of the view that the Department should amend the CLND Rules by appending the extracts of the relevant Act/ Rules referred to in the Rules in order to make the CLND Rules self contained.

CHAPTER II

OBSERVATIONS/ RECOMMENDATIONS WHICH HAVE BEEN ACCEPTED BY THE GOVERNMENT

Notification of Nuclear incident
Recommendation (Para No. 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.

Reply of the Department of Atomic Energy

The time limit of 15 days time has been stipulated in the Act to notify a nuclear incident by Atomic Energy Regulatory Board is the maximum statutory period. The Government appreciates the concern of the Committee for notification at the earliest possible time and the Atomic Energy Regulatory Board will be apprised of the observations of the Committee to take due account of the same in dealing with the notification of a nuclear incident.

(DAE OM No. 4/4/1/2010-ER/Vol III/R-25 dated 26.2.2013)

Delay in framing Rules
Recommendation (Para No. 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.

Reply of the Department of Atomic Energy

The delay in notification of the Act and the rules was essentially on account of several rounds of consultation on vexed legal issues.

(DAE OM No. 4/4/1/2010-ER/Vol III/R-25 dated 26.2.2013)

The Department of Atomic Energy have issued internal instructions for timely framing of rules in future and steps to be adopted while dealing with various aspects of subordinate legislation.

(DAE vide OM No. 4/4/1/2010-ER/Vol IV/3377 dated 20.11.2013)

Delay in framing of rules on various aspects under Section 48 of the Act
Recommendation (Para No. 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.

Reply of the Department of Atomic Energy

Remaining rules are being drafted and will be notified as early as possible.

(DAE OM No. 4/4/1/2010-ER/Vol III/R-25 dated 26.2.2013)

As explained earlier, the framing of the rules involved vexed legal issues which required technical and legal scrutiny and several rounds of consultation had to be completed before finalizing the content. An internal DAE Committee was constituted to examine for drafting rules for the service conditions of the Claims Commissioner(s), the Chairperson and the Member of Nuclear Damage Claims Commission. The Committee reached the conclusion that the Civil Liability for Nuclear Damage Act, 2010 and the Civil Liability for Nuclear Damage Rules, 2011 refer to the service conditions of the Claims Commissioner (s), the Chairperson and the Member of Nuclear Damage Claims Commission and there was, therefore, no necessity to

frame separate rules in this regard. The Nuclear Liability Fund Rules have already been drafted and placed before the Atomic Energy Commission and, as advised by AEC, DAE is in the process of consultations with the Ministry of Finance on the operation of the fund.

(DAE OM No. 4/4/1/2010-ER/Vol IV/3377 dated 20.11.2013)

CHAPTER III

OBSERVATIONS/RECOMMENDATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN VIEW OF THE REPLIES RECEIVED FROM THE GOVERNMENT

-NIL-

CHAPTER IV

OBSERVATIONS/RECOMMENDATIONS IN RESPECT OF WHICH REPLIES OF THE GOVERNMENT HAVE NOT BEEN ACCEPTED

Interim Relief to the victims of Nuclear Damage

Recommendation (Para No. 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.

Reply of the Department of Atomic Energy

The Act provides under Section 16 (5) and Section 32 (10) that awards made by the Claims Commissioner and the Nuclear Damage Claims Commission shall be final and therefore, there is not right of appeal allowed under the Act. If, however, an award is challenged before a High Court exercising jurisdiction under Articles 226 and 227 of the Constitution or the Supreme Court, in the interim period, the award shall operate unless its operation is stayed by such higher court and, therefore, the payment to the applicant will have to be made by the operator or insurer, as the case may be. In view of this, there may not be a necessity to amend either the Act or Rules.

(DAE OM No. 4/4/1/2010-ER/Vol III/R-25 dated 26.2.2013)

Reference was made on this point to Ministry of Law and Justice (Legislative Department and Department of Legal Affairs). While no guidance has been received from it, it may be noted that the Civil Liability for Nuclear Damage (CLND) Rules, 2011 were finalized in consultation with Ministry of Law and Justice.

Chapter IV of the CLND Rules, 2011 deals with the manner of the adjudication of claims for compensation by the claims adjudication authority. The claimant's right to challenge the compensation award before a High Court exercising jurisdiction under Article 226 and Article 227 of the Constitution or before the Supreme Court is a Constitutional provision and, therefore, the Department remains of the view that a clarification to the effect that the compensation award by the claims adjudication authority set up under the CLND Act, 2010 be treated as interim relief should the claimant seek review of the award before a High Court or the Supreme Court does not appear to be necessary.

(DAE OM No. 4/4/1/2010-ER/Vol V/1320 dated 12.5.2014)

Comments of the Committee

(Please see Paragraph No. 10 of Chapter I of the Report)

Right of Recourse
Recommendation (Para No. 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.

Reply of the Department of Atomic Energy

Section 17 of the Act provides for the right to recourse of the operator against the supplier which will be exercisable before a Civil Court. It is correct to say that victims of a nuclear incident will keep filing claims as and when a damage is noticed by them. Therefore, it is necessary that, wherever justified the operator files successive claims for the amount paid by him so that his case does not become barred by limitation. Explanation 2 in Rule 24 has been provided precisely to address this aspect and the explanation makes it clear that the operator can file claims for amounts paid by him upto the date of filing such claim. It may not, therefore, be necessary to make any further provision in the Act or in the Rules.

(DAE OM No. 4/4/1/2010-ER/Vol III/R-25 dated 26.2.2013)

As directed by the Committee, the issue was referred to Ministry of Law and Justice, Department of Legal Affairs has advised that the draft Rule 24 of the CLND Rules was considered by the Learned Attorney General of India on a reference made at the request of this Department and the Learned Attorney General vide his opinion dated 17.3.2011 and 12.10.2011 found the draft Rule 24 satisfactory. Department of Legal Affairs has also pointed out that there is no express bar in Rule 24 prohibiting the operator to make successive claims from the supplier. This Department's earlier response on this issue as in para 2(a) above was thus in line with the opinion made available by the Department of Legal Affairs.

(b) The Committee in their Report exhorted DAE to amend rule 24 suitably to remove the limitations imposed on the liability as well as the duration of the liability period. The Department of Atomic Energy has, *inter-alia* stated that right of recourse for a equipment or service has to be linked to the specific product liability period and that rule 24 extends the duration of this right to the period of initial licence in cases where this period is longer.

(DAE OM No. 4/4/1/2010-ER/Vol V/1320 dated 12.5.2014)

Comments of the Committee

(Please see Paragraph No. 14 of Chapter I of the Report)

Recommendation (Para No. 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.

(Reply of the Department of Atomic Energy)

Rule 24, or any other rule, does not restrict the scope of CLND Act, or any of its provisions, in any way, and is in consonance with the Act. In particular, Rule 24 does not restrict the scope of the operator's right to recourse as contained in Section 17 of the Act, either in extent or in time.

Rule 24 only deals with Section 17 (a) of the Act, i.e., situations where the operator's right to recourse "is expressly provided for in a contract in writing". It may be noted that Section 17 (a) does not make it compulsory to include such right of recourse in a contract, Rule 24 merely specifies a minimum amount for the operator's right of recourse, and the corresponding time period for which this must be valid. This is intended to secure the interest of the Indian Operator. However, nothing in Rule 24 prohibits the operator and the supplier from agreeing to a larger right of recourse in the contract.

The principal objective of the provisions of Rule 24 is to protect the interests of the Indian nuclear suppliers, who would be supplying nuclear material or nuclear equipment or components of values covering a wide range including as low as a few crores i.e, less than the limit of the operator's liability. Every domestic supplier, irrespective of the value of the contract with the operator, should not be asked to obtain insurance for the full amount of the operator's liability under the CLND Act. This would present a huge barrier for indigenization and ensure that only the large suppliers, usually foreign, would be able to bear the high insurance and liability burden. Hence, Rule 24 links the right of recourse to the value of the

contract and provides that the operator's right of recourse shall not be less than the extent of the operator's liability under the Act or the value of the contract itself, whichever is less. It may be emphasised that this will not have any impacts on contracts with the foreign suppliers, which will usually be for amounts greater than the operator's own liability. Concerns that large contracts can be split into several smaller value contracts thereby effectively limiting liability, is neither based on the facts nor on the practice of trade.

Regarding duration of the operator's right of recourse, plant life and equipment life are not the same. Equipment life can be much less than the life of the nuclear power plant and equipment is guaranteed only for its own life and not for the life of the plant. Equipment are typically required to be changed or replaced several times during the lifetime of the plant. Nuclear power plants are also upgraded periodically to incorporate advancements in safety standards. It is for these reasons that the Indian regulator licenses a plant for 5 years at a time. This time period also allows for the manifestation of both patent and latent defects, if any, in the equipment or material supplied. At the time of renewal of licence, the regulator may ask the operator to make changes to ensure that the plant remains safe and satisfies the safety criteria prevalent at the time of licence renewal. This is done precisely to ensure that chances of any accident do not increase as the reactor ages. Thus, right of recourse for a equipment or service has to be linked to the specific product liability period. Rule 24 actually extends the duration of this right to the period of initial licence in cases where this period is longer than the product liability period stipulated in the contract.

(DAE OM No. 4/4/1/2010-ER/Vol III/R-25 dated 26.2.2013)

This Department reconsidered the recommendation of the Committee to amend Rule 24 suitably to remove the limitations imposed on the liability as well as the duration of the liability period.

The purpose of Rule 24 is to guide negotiations of the contract envisaged under section 17 (a) of the CLND Act, 2010. It lays down the minimum criteria to be fulfilled in the contract negotiated under section 17 (a) so that the operator's interests are protected. Nothing in Rule 24 prevents an operator and a supplier to agree for a more liberal clause for right of recourse in the contract and it is a matter of choice on the part of the parties thereto.

Nuclear Power Plants need upgradation to achieve the improved safety standards at periodic intervals; this is imperative in view of safety requirements. For this reason, the Indian nuclear regulator issues licence for a period of 5 years initially and every renewal is also for a period of five years. This period is long enough to take care of the manifestation of

both patent and latent defects in the equipment or material supplied. Generally, existing contracts have a product liability period of 1 year for patent defects and product liability period of 5 years for latent defects. Equipment and components are upgraded or replaced as and when necessary. For any component or equipment, probability of latent/patent defect is highest in the initial 5 years of its operation and it sharply decreases thereafter. By referring to initial license period or product liability period, whichever is longer, the period of license for operation of a nuclear facility stipulated by AERB and also issues related to product liability as included in a contract between operator and supplier are taken into account. The liability for patent or latent defect cannot be stretched beyond the product liability period. However, Rule 24 goes a step further and extends the liability to the period of initial license if it is longer than the product liability period stipulated in the contract. Relating the duration of the right of recourse to the product liability period in the contract or the period of initial license issued under the Atomic Energy (Radiation Protection) Rules, 2004 thus has a rational basis.

Plant life and equipment life are not the same. Equipment life in many cases will be much less than the plant life. To cover his liability, a supplier has to take risk cover. For this purpose, the supplier needs to know the amount for which risk cover is to be taken and also the period. Over time Indian industry has developed significant capabilities and is contributing in a substantial manner to the indigenous nuclear power programme. It (i.e. the industry) is unlikely to participate within a framework in which its liability is open-ended.

It may be noted that the Learned Attorney General in the opinion dated 12.10.2011 observed that Rule 24 has to be read with reference to section 17 (a) of the CLND Act, 2010 and section 17 (a) "assumes that the contract providing for recourse would make provision for a period for which such recourse ("Product Liability Period") would be available".

It is also for information that there is no insurance mechanism available in the country yet that covers nuclear damage and this applies equally to the operator and the supplier.

(DAE OM No. 4/4/1/2010-ER/Vol V/1320 dated 12.5.2014)

Comments of the Committee

(Please see Paragraph No. 18 of Chapter I of the Report)

Legislation by reference

Recommendation (Para No. 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.

Reply of the Department of Atomic Energy

Reference to the applicable provisions of other statutes and rules was for the purpose of precision and avoidance of repetition of the statutory provisions.

(DAE OM No. 4/4/1/2010-ER/Vol III/R-25 dated 26.2.2013)

Comments of the Committee

(Please see Paragraph No. 22 of Chapter I of the Report)

CHAPTER V

RECOMMENDATIONS/OBSERVATIONS IN RESPECT OF WHICH FINAL REPLIES OF THE GOVERNMENT ARE STILL AWAITED

Definition of Terms in Act/Rules

Recommendation (Para No. 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'.

Reply of the Department of Atomic Energy

The explanation of the term 'supplier' under the first explanation to rule 24 is merely explanatory and inclusive in nature and does not in any way restrict the provision of the parent Act. It is clarificatory in nature in as much as it relates to the application of the rule to the practice followed by the nuclear industry. They may not be any need to amend the Act.

(DAE OM No. 4/4/1/2010-ER/Vol III/R-25 dated 26.2.2013)

It is correct that the world 'supplier' has been used in Section 17 (b) of the CLND Act, 2010 regarding operators Right to Recourse. The word 'supplier' has not been defined in the CLND Act. In the body of Rule 24 (i) and (ii) the word 'supplier' has not been used. However, the word 'supplier' is used in Explanation 1(a) to Rule 24 which explains the meaning of 'product liability period' and in Explanation 1(b) the word 'supplier' is defined. It is understood that the word 'supplier' explained in Explanation 1(b) refers to the 'supplier' mentioned in Explanation 1(a). The term 'supplier' explained in Explanation 1(b) may also be used for interpreting the term 'supplier' mentioned in Section 17 of the Act. However, whether the term 'supplier' is to be defined in the Act itself is a matter of drafting and policy on which DAE may take appropriate decision in consultation with the Legislative Department".

(DAE OM No. 4/4/1/2010-ER/Vol V/1320 dated 12.5.2014)

Recommendation (Para No. 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.

Reply of the Department of Atomic Energy

Rule 6 (1) (C) refers the legal representatives and successors in interest of the deceased as would be clear by a cumulative reading of the provision along with the proviso thereto which refers to the legal representatives of the deceased. Therefore, it may not be necessary to amend the provision.

(DAE OM No. 4/4/1/2010-ER/Vol III/R-25 dated 26.2.2013)

Department of Legal Affairs has advised that, "Rule 6 deals with the filing of an application for compensation. In Rule 6(1)(c) of the word 'representative' is used while in the proviso to Rule 6(1) the word 'legal representatives' are used. The word 'legal representative' has been defined in Rule (1)(d). DAE may consider to amend Rule 6 (1) (c) for substituting the word "representative" with "legal representatives" unless it intends to include representatives other than legal representatives also".

The Department notes the guidance of the Department of Legal Affairs. However, Writ Petition (Civil) 407/2012 (Centre for PIL & Ors. Vs. UOI) challenging the constitutional validity of the CLND Act, 2010 is pending before the Hon'ble Supreme Court. This WP is also connected to WP (Civil) 464/2011. The Department wishes to submit for consideration of the Committee that further action in respect of amendment of Rule 6(1)(c) may be kept pending till disposal of the WP by the Hon'ble Supreme Court.

(DAE OM No. 4/4/1/2010-ER/Vol V/1320 dated 12.5.2014)

DILIPKUMAR MANSUKHLAL GANDHI
CHAIRPERSON,
COMMITTEE ON SUBORDINATE LEGISLATION

New Delhi;
December,2014/Agrahayana,1936(Saka)

Appendix – I

(Vide Para 3 of the Introduction)

MINUTES OF THE THIRD SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2014-2015)

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The third sitting of the Committee (2014-15) was held on Thursday, the 18th December, 2014 from 1500 to 1545 hours in Chairperson's Chamber, Room No. 146, Parliament House, New Delhi.

PRESENT

1. Shri Dilipkumar Mansukhlal Gandhi — Chairperson

MEMBERS

2. Shri Idris Ali
3. Shri P. P.Chaudhary
4. Shri Shyama Charan Gupta
5. Shri Jhina Hikaka
6. Shri S. P. Muddahanumegowda
7. Shri Chandu Lal Sahu
8. Shri Ram Prasad Sarmah
9. Adv. Narendra Keshav Sawaikar
10. Shri Ram Kumar Sharma

SECRETARIAT

1. Shri R.S. Kambo - Joint Secretary
2. Shri Raju Srivastava - Additional Director

2. At the outset, the Chairperson welcomed the members to the sitting of the Committee (2014-15).

3. The Committee, then, considered and adopted the draft 'First Action Taken Report' and 'Second Report' of the Committee without any modification. The Committee also authorized the Chairperson to present the reports to the House.

The Committee then adjourned.

APPENDIX II

(Vide para 4 of the Introduction)

Analysis of the Action Taken by Government on the observations/recommendations contained in the Twenty Seventh Report of the Committee on Subordinate Legislation (Fifteenth Lok Sabha).

I	Total number of observations/recommendations	9
II	Observations/Recommendations that have been accepted by the Government [vide recommendations at para Nos.4.4, 5.4 and 5.7]	3
	Percentage of total	33.33%
III	Observations/Recommendations which the Committee do not desire to pursue in view of Government's replies	Nil
	Percentage of total	0%
IV	Observations/Recommendations in respect of which replies of the Government have not been accepted by the Committee. [vide recommendations at para Nos.2.8, 3.14, 3.15 and 6.5]	4
	Percentage of total	44.44%
V	Observations/Recommendations in respect of which final replies of Government are still awaited [vide recommendations at para Nos.7.3 and 7.6]	2
	Percentage of total	22.22%