
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

**THE PRICE OF PROGRESS: WHY INDIA'S NUCLEAR LAW
GUARANTEES COMPENSATION, BUT DENIES FULL JUSTICE**

- Priyansh Shukla¹ & (Dr.) Mrs. Sandhya P. Kalamdhad²

Abstract

This work critically examines the Civil Liability for Nuclear Damage Act (CLNDA), 2010, analysing its dual mandate of aligning India's nuclear liability framework with international conventions while ensuring prompt victim compensation. Born from the tragic legacy of the Bhopal Gas Tragedy and the inadequacy of traditional tort law, the CLNDA establishes a strict liability regime channelled exclusively to the operator. The author argues that although the Act succeeds in creating a legal "floor" of guaranteed, no-fault compensation, its inherent financial caps and restrictive supplier liability provisions (Section 17) severely compromise the principle of complete justice. This work also attempts at highlighting the tension between statutory limits and the constitutional "Right to Life" (Article 21), especially the "Absolute Liability" principle, through a comparative analysis with US and Canadian liability regimes. The "saving clause" (Section 46) is examined in detail in this paper, which argues that it is the crucial, though controversial, mechanism for protecting victims' rights to seek unliquidated damages against all tortfeasors, including suppliers. It concludes by proposing specific reforms, including dynamic liability limits and a more precise judicial interpretation of supplier liability, to bridge the gap between guaranteed relief and complete accountability.

Keywords: Civil Liability for Nuclear Damage Act (CLNDA), Nuclear Liability, Victim Compensation, Absolute Liability, Supplier Liability.

Introduction

¹ PhD Scholar at Dr. Ambedkar College, Nagpur; Assistant Professor at KLE Law College, Bengaluru

² Professor of Law at Dr. Ambedkar College, Deekshabhoomi, Nagpur

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

The legislative architecture of India's civil nuclear liability regime represents a direct consequence of historical trauma. The Bhopal Gas Tragedy of 1984 is the definitive, catastrophic catalyst, which tragically exposed the deep inadequacy of the pre-existing common law framework-specifically, traditional tort law-to deliver comprehensive and timely victim compensation following mass industrial disasters.³ The core deficiency lay in the requirement to be discharged by the claimant in terms of the burden of proof for establishing negligence on the part of the operator, an all but impossible task in the complex, transnational context of catastrophic industrial harm. This institutional failure spurred the Indian Supreme Court to broaden the interpretation of liability, substituting the strict liability principle from *Rylands v Fletcher* with the more stringent absolute liability principle in the *Oleum Gas Leak Case (M.C. Mehta v. Union of India)*, establishing a critical precedent for enterprises engaged in ultra hazardous activities.⁴

This failure was critically compounded by the jurisdictional dismissal of claims by US courts, often on the doctrine of *forum non conveniens*, effectively underlining the need for proactive state intervention. This experience accelerated the creation of targeted, strict liability regimes to ensure the delivery of swift and certain relief, signalling a national pivot away from a precarious fault-based system.

It is against this backdrop that the Civil Liability for Nuclear Damage Act, 2010, was enacted. The Act aimed to achieve a dual, and often inherently contradictory, purpose. First, it sought to establish a robust domestic mechanism for compensating victims of nuclear incidents, meeting the post-Bhopal mandate for guaranteed relief. The Act's declared objective is to provide for "civil liability for nuclear damage and prompt compensation to the victims."⁵ Second, and most importantly, it aimed to bring India's domestic nuclear liability regime into conformity with relevant international conventions, including the Paris, Vienna, and Convention on Supplementary Compensation (CSC), so as to enable international cooperation and encourage foreign investment in the country's ambitious nuclear power

³FOUNDATION OR, 'Civil Liabilities for Nuclear Damages Bill 2010 – The Way Forward' (orfonline.org) <<https://www.orfonline.org/research/civil-liabilities-for-nuclear-damages-bill-2010-the-way-forward>>

⁴M.C. Mehta v. Union of India AIR 1987 SC 1086

⁵Civil Liability for Nuclear Damage Act, 2010, Preamble.

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

program.⁶ The move for international compliance led, however, to a domestic law that in many ways "appeared to defy conventional international practice."⁷

The CLNDA thus represents a basic tension between the pursuit of a guaranteed no-fault statutory compensation system and the pre-existing non-negotiable goal of full and fair justice for every victim. A statutory compromise, necessary to pave the way for global trade, normally happens at the expense of limiting redress scope, a fact that resulted in extensive constitutional and policy debate inside and outside Parliament, especially on the constitutional principle of the right to life.⁸

The following paper argues that while the CLNDA has successfully created a legal floor of no-fault, guaranteed compensation for victims by way of channelling liability exclusively to the operator, it does so under section 4(4) but immediately defaults because of its inherent financial caps under section 6 and the highly restrictive provisions shielding powerful international and domestic suppliers under section 17, denying the principle of full and fair justice required to cover catastrophic losses. This structural deficiency requires-and arguably demands in itself-the robust preservation of common law remedies under the Act's saving clause at section 46 as the only flexible route to true victim-centered and complete accountability.

The Statutory Guarantee: No-Fault and Channelled Liability

The essential element of the CLNDA is a progressive legislative victory for victims by fundamentally shifting the burden of liability away from the individual claimant onto the nuclear industry. The Act is based on internationally accepted principles: strict liability and legal channelling.⁹

A. Strict and No-Fault Liability

⁶Faizanur Rahman, 'Civil Liability for Nuclear Damage Act, 2010: A Critical Review' (2018) Energy Law Reports 149, 150<<https://docs.manupatra.in/newslines/articles/Upload/6C4C0DFE-1428-45AF-9B4A-396E2471C48D.pdf>>

⁷ibid 149.

⁸Niranjan, 'A Comparative Study of Nuclear Liability Regimes in US, Canada and India' (2021) II HPNLU Journal of Environment & Disaster Management 67–87<<https://hpnlu.ac.in/journal-level-3.aspx?ref-id=21>>

⁹ ibid.

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

In marked deviation from the conventional requirements of the tort, the no-fault strict liability principle¹⁰ renders the operator liable under the CLNDA. In this way, compensation is guaranteed without requiring the victim to prove negligence, a practical simplification given the complexity associated with attributing fault in a nuclear incident. This is in tune with the domestic jurisprudential evolution carved out by the Supreme Court of moving beyond the mere proof of fault to emphasize the hazardous nature of the industry itself.

Most importantly, the Act expands the very definition of harm. According to the interpretation of Section 2(g), "nuclear damage" does not simply refer to loss of life or personal injury but encompasses a wide-ranging spectrum of loss, including:

1. **Economic Loss:** means loss of income derived from an economic interest in the use or enjoyment of the environment.¹¹
2. **Environmental Remediation:** The costs of measures of reinstatement of an impaired environment.¹²
3. **Preventive Measures:** The costs of measures taken to prevent or minimize damage after an incident has occurred.¹³

The Act goes beyond archaic definitions of injury by explicitly recognizing environmental degradation and economic loss, apart from the widespread effect of a nuclear disaster.

The trigger to this liability mechanism is a notification by the AERB of a "nuclear incident". According to Section 3, the AERB has to notify an incident, which has occurred within a period of 15 days, so that the claims mechanism gets triggered without bureaucratic delay, unless the threat is considered insignificant.¹⁴

B. Legal Channelling and Operator Responsibility

The CLNDA follows the principle of legal channelling whereby liability for nuclear damage is channelled through one single entity, the operator of a nuclear installation. Section 4(1) renders the operator liable for any nuclear damage arising out of an incident in the

¹⁰ Civil Liability for Nuclear Damage Act, 2010 (India), s 4(4).

¹¹ Civil Liability for Nuclear Damage Act, 2010 (India), s 2(g)(v).

¹² Civil Liability for Nuclear Damage Act, 2010 (India), s 2(g)(iv).

¹³ Civil Liability for Nuclear Damage Act, 2010 (India), s 2(g)(vi).

¹⁴ Civil Liability for Nuclear Damage Act, 2010 (India), s 3.

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

installation, or one involving nuclear material coming from or sent to that installation. This channelling is important because it:

1. **Simplifies Litigation:** Victims only need to sue the operator, removing the difficulty of identifying and pursuing multiple, potentially foreign, tortfeasors - such as suppliers or contractors.
2. **Provides Financial Certainty:** It directs liability to the entity required to maintain mandatory financial security.

With the aim of facilitating expeditious justice, the Act dismantles slow-moving civil court procedures for these select claims, substituting in its place a unique two-tier adjudicatory architecture:

1. **Claims Commissioner:** The Central Government appoints a Claims Commissioner with the powers of a civil court for immediate adjudication of the claims.¹⁵ Very importantly, Section 16(1) requires the Commissioner to dispose of applications within three months from the date of receipt, reflecting the focus of the Act on speed.¹⁶
2. **Nuclear Damage Claims Commission:** If the damage is severe (estimated over ₹500 crores) or affects public interest, the Government can constitute a Nuclear Damage Claims Commission.¹⁷ This would be a special and high-powered body for dealing with complex mass claims with a panel comprising experts in nuclear science and law.

As such, to make available the guaranteed compensation immediately, the Act has imposed a requirement on the operator that, before the start of the operation of the nuclear installation, the operator shall take out an insurance policy or otherwise provide financial security or any other combination, covering their specified liability limit.¹⁸ This compulsory financial support, adopted in India through channels like the Nuclear Insurance Pool, offers the

¹⁵ Civil Liability for Nuclear Damage Act, 2010 (India), s 9; s 12(4).

¹⁶ Civil Liability for Nuclear Damage Act, 2010 (India), s 16(1).

¹⁷ Civil Liability for Nuclear Damage Act, 2010 (India), s 19.

¹⁸ Civil Liability for Nuclear Damage Act, 2010 (India), s 8(1).

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

immediate financial resource required to fulfill the intent of "prompt compensation to the victims" under the Act.¹⁹

Having established strict, channelled, and mandatory-insured liability in the form of a guaranteed, fast-track claims process can be an effective way of ensuring timely compensation for victims, rather than their being sucked into the legal quicksand that swallowed justice for the victims of Bhopal. But this very fact of its channelled and guaranteed nature has within it the seeds of its limitation in the form of imposing a financial cap and denying full justice.

The Denial of Full Justice: Capped Liability and Financial Inadequacy

However, despite the promise of prompt relief at the beginning, there are two essential limitations to the mechanisms under the CLNDA that make this constitutional guarantee of the right to life fall short and impede full justice: financial caps and the shielding of private suppliers.

A. The Arbitrary Financial Ceiling

The trade-off for such certainty of compensation is in the form of limited financial liability. Strict statutory limits on the amount of liability arising from nuclear damage are imposed by the Act (Section 6). For nuclear reactors with a thermal power equal to or above 10MW, the liability of the operator is fixed at ₹ 1500 crores.²⁰ This is much lower than the overall limit of liability for each nuclear damage, which is the rupee equivalent of three hundred million Special Drawing Rights (SDRs), an amount the Central Government is liable to supplement in case the damages exceed the operator's cap.²¹

This capped scheme, though considered necessary for the insurability and commercial viability of nuclear power projects, intrinsically detracts from the very principle of a just, fair compensation on an individualized basis. In the case of a severe accident, the actual, unliquidated damages pertaining to long-term chronic illnesses, genetic defects, loss of lifetime earning capacity, and environmental cleanup costs would far exceed this pre-

¹⁹n 3.

²⁰Civil Liability for Nuclear Damage Act, 2010 (India), s 6(2)(a).

²¹Civil Liability for Nuclear Damage Act, 2010 (India), s 6(1); s 7.

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

determined statutory limit.²² The victims thus get a fixed relief that falls "short of addressing the full extent of loss suffered."²³ Moreover, even the capping of liability on industries involved in inherently hazardous activities has been constitutionally challenged, as it is seemingly contrary to the unlimited absolute liability principle laid out by the Supreme Court in the domestic jurisprudence that holds an industry involved in hazardous activity is strictly and absolutely liable to compensate all those who suffer on account of an accident.²⁴

Also, the Act does not provide for any specific conditions under which the damages exceed the additional cap put by the government, thus making its application arbitrary in the case of severe nuclear damage. As the operating company, NPCIL, is a government undertaking, the burden of compensation actually comes from the Indian taxpayer, thus, in essence, socializing losses while privatizing profits of the nuclear industry.²⁵

B. Shielding Private Suppliers: Restricted Right of Recourse

The pursuit of full accountability is further complicated by the Act's provisions concerning the operator's right of recourse against suppliers under Section 17. This dictates how private actors who might be responsible for a fault or defect are held accountable. The operator, after paying compensation, shall have a right of recourse only where:

1. Such a right is explicitly provided for in a written contract between the operator and the supplier.
2. The nuclear incident resulted as a consequence of an act of a supplier or of any of his employees, including the supply of equipment or material with patent or latent defects or sub-standard services.
3. The incident resulted from an individual's intentional act to cause damage.²⁶

First, Rule 24(1) of the CLNDA Rules limits the contractual right of recourse to no less than the extent of the operator's liability or the value of the contract itself, whichever is less, and limits the duration of this right to the duration of the initial license or the product liability

²²n 4.

²³Priyansh, 'India's Nuclear Energy Ambitions: Challenges and Opportunities for a Cleaner Future' (2025) International Journal of Advanced Research in Science, Communication and Technology (IJARSCT) 5(3)<<https://ijarsct.co.in/Paper23414.pdf>>

²⁴n 6.

²⁵n 6.

²⁶Civil Liability for Nuclear Damage Act, 2010 (India), s 17.

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

period, whichever is longer.²⁷ This regulatory step was meant to clarify the limited financial exposure of the supplier. In the process, it effectively insulated powerful international and domestic private players from unlimited liability. In thus narrowing the basis for recourse and placing the onus, almost exclusively, on the operator-usually a state-backed entity-the Act has been criticized for compounding the flaws of the pre-CLNDA regime by sacrificing full accountability of all tortfeasors to the imperatives of foreign vendors and international trade. Suppliers, whose financial liability is capped and usually negotiable, may thus lack adequate incentives to ensure the highest level of safety.²⁸

The Saving Clause: Preserving the Common Law Path (The Floor, Not the Ceiling)

These inherent limitations of the CLNDA's capped compensation model and its restricted channelling of liability are mitigated by the saving grace of a legislative anchor in Section 46 entitled Act to be in addition to any other law. This section provides that the victim's right to seek complete, unliquidated justice outside the statutory regime is preserved.

A. The Legislative Anchor: Section 46

Section 46 is perhaps the most important provision for rights of victims, as it establishes the statutory remedy provided by the CLNDA as a floor and not a ceiling. It provides:

*"The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt the operator from any proceeding which might, apart from this Act, be instituted against such operator."*²⁹

The main clause here, stating the provisions of the CLNDA to be "in addition to, and not in derogation of, any other law," is a legislative recognition that the capped, no-fault scheme is intended as swift, quick relief but not as an exhaustive substitute for all legal remedies. This clause preserves the common law right to sue for environmental torts, negligence, or product liability. Further, the limited jurisdiction of the Claims Commissioner and the Commission (s 35) is expressed explicitly "Save as otherwise provided in section 46," emphasizing the supremacy of this saving clause. What this really implies is that for unliquidated damages-

²⁷Civil Liability for Nuclear Damage Rules, 2011, r 24(1); r 24(2).

²⁸Id. 6.

²⁹Civil Liability for Nuclear Damage Act, 2010 (India), s 46.

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

long-term genetic defects, for instance, or extensive environmental loss not covered fully by the Act-the "other law" (tort law) remains open for redress.³⁰

B. The Interpretative Battleground: Supplier Liability and the Polluter Pays Principle

However, the application of Section 46 creates a significant legal and diplomatic ambiguity, especially regarding the supplier. In fact, the second part of that section mentions only the operator as not being exempted from other proceedings, noticeably leaving out the word 'supplier'. This has led to a contentious debate about the "intention of the legislature."³¹

Legal experts point out that when debating in parliament, such an amendment to explicitly bring suppliers under the ambit of Section 46 was moved in the Rajya Sabha and negated.³² The history thus suggests that the Act intends liability to flow only to the operator and thus immunize the suppliers to promote international nuclear commerce. However, this position is juxtaposed by another perspective, which banks upon the principal clause: since the Act is "not in derogation of any other law," and the "Polluter Pays Principle" is the law of the land (as pronounced by the Supreme Court), a supplier who sells defective equipment is a "polluter" and thus liable.³³

This friction puts Section 46 in conflict with the Convention on Supplementary Compensation, which requires strict legal channelling to the operator to prevent cross-litigation against suppliers.³⁴ However, in the Indian context, the "Polluter Pays Principle" and the expansive interpretation accorded to Article 21 Right to Life indicate that the domestic courts would not permit an offender to go scot free due to mere technicality of international convention. The potential specter of unlimited liability under a common law tort claim-saved by the ghost of Bhopal as also by the letter of Section 46-continues to act as a

³⁰

³¹n 6.

³² 'Indian Victims Cannot Sue Foreign Suppliers for Nuclear Accident as Govt Not to Amend Liability Law' The Economic Times (8 February 2015) <<https://economictimes.indiatimes.com/news/politics-and-nation/indian-victims-cannot-sue-foreign-suppliers-for-nuclear-accident-as-govt-not-to-amend-liability-law/articleshow/46163417.cms?from=mdrhttps://economictimes.indiatimes.com/news/politics-and-nation/indian-victims-cannot-sue-foreign-suppliers-for-nuclear-accident-as-govt-not-to-amend-liability-law/articleshow/46163417.cms?from=mdr>>

³³n 6.

³⁴n 4.

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

strong disincentivizer against investment, proving the saving clause as no theoretical provision but rather a potent legal fact.³⁵

Conclusion: Towards Full Justice and Accountability

Thus, the conflicted but necessary legislative response to India's terrible industrial liability history is reflected in the CLNDA. Strict liability is ultimately undermined by the strict application of financial limits under Section 6 and restricting the channels of recourse under Section 17, even though the Act does establish a legal framework that guarantees specific, no-fault compensation, the floor. The "no-fault" regime paradoxically limits the fault of those who might be most at fault, the suppliers, because the law strikes an uncomfortable balance between the rights of victims and the commercial viability of nuclear power.

A. The Constitutional Conflict: Absolute vs. Limited Liability

The primary conflict in the CLNDA is its tension with the absolute liability principle established in *M.C. Mehta* and the expanded Right to Life under Article 21 of the Constitution, which includes the right to a clean and safe environment. The argument that "no-fault liability at any cost cannot be capped" is a strong constitutional one. A statutory cap on liability for hazardous activities effectively acts as a subsidy to the nuclear industry at the expense of the victims' fundamental right to be fully restored.³⁶ This unresolved constitutional challenge requires judicial clarity to affirm that the arbitrary financial limits of the statute do not supersede the fundamental rights of the affected population.

B. Harmonizing with International Practice: A Comparative View

Comparative analysis indicates that India is not alone in struggling with these limits, but other jurisdictions offer pathways for reform. For example, Canada's Nuclear Liability and Compensation Act (2015) increased the operator's liability limit to \$1 billion and provided, importantly, for periodic review and increase of this limit.³⁷ In contrast, the US Price-Anderson Act uses a system of "economic channelling" in which operators and suppliers are covered by an umbrella insurance pool. This allows victims to receive compensation without

³⁵n 21.

³⁶n 21.

³⁷Canada NR, 'The Nuclear Liability and Compensation Act' (22 December 2016) <<https://natural-resources.canada.ca/energy-sources/nuclear-energy-uranium/nuclear-liability-compensation-act>>

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

having to prove fault against a specific supplier while still maintaining a sizable fund.³⁸ India's inflexible adherence to a fixed cap without an explicit mechanism for periodic review or an umbrella coverage explicitly extending to suppliers entails a vulnerability not fully shared by either the US or Canadian models.

C. Concrete Proposals towards an Effective Liability Scheme

In addition to guaranteed compensation, the following measures would help bridge the gap to full justice and resolve the current legal impasse:

1. **Judicial Settlement of Ambiguities:** The Supreme Court has to definitively decide the pending litigation regarding the interpretation of Section 46. A categorical judgment that the "Polluter Pays Principle" applies to suppliers, even in the silence of the Act, would bring the statute in harmony with the constitutional mandate of Article 21.
2. **Dynamic Liability Limits:** The financial caps in Section 6 must be revised to include a mandatory periodic review, with indexation to inflation and the SDR basket in much the same way as in Canada, to avoid real erosion of the compensation pool over time.
3. **Insurance Pool Strengthening:** The Nuclear Insurance Pool as it exists today is in urgent need of dramatic expansion. The government ought to provide encouragement toward an "economic channelling" model, as exists in the US, whereby a single insurance product covers the liability of operator and supplier alike, meeting the financial security needs of the supplier while still providing a larger, unified corpus for victim compensation.
4. **Unimpeded Constitutional Access:** To prevent the Claims Commission under the Act from superseding the jurisdiction of the High Courts and the Supreme Court under Articles 226 and 32, respectively, legislation or judicial clarification should be implemented. In order to prevent the "floor" from becoming a cage, PIL should continue to be a useful tool for victims in the event that insufficient awards or procedural delays are to be contested.

³⁸n 6.

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

The CLNDA is thus a necessary first step but not the final word on justice. The Act affords a basic financial certainty, but Section 46 is still that critical "saving grace" that leaves the door open for full accountability. Legitimacy in the long run for India's nuclear energy program is based not only on the megawatts it generates but also on the justice it guarantees to those citizens who live in its shadow.



For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

© 2025 International Journal of Advanced Legal Research