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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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**“CRITICAL ANALYSIS OF ATOMIC ENERGY LAWS
IN INDIA AND THE CIVIL LIABILITY FOR NUCLEAR
DAMAGE ACT 2010 WITH REFERENCE TO POWER
TO ACQUIRE LAND AND PROPERTY”**

AUTHORED BY - GEETA A. PATIL

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ABSTRACT

The atomic energy program initiated in a modest manner and later it was developed into multi-dimensional organizations under the department of atomic energy. In this it includes significant activities like the research and development in nuclear sciences and engineering, exploration and mining of radioisotopes, nuclear energy development and implementation, application of nuclear energy, bio- agricultural research, medical sciences. Though India have acknowledged the potential of nuclear energy since independence, yet it has contributed a little to it. It is clear all the developed nations in the world have made the most of the development through their energy resources. But Speaking about India in order to transform into a developed nation there is a need of huge amount of energy requirement. The Nuclear power has potential to offer India to be energy independence beyond 2050. But said so the main concern about the nuclear power is that only small fractions of the nuclear energy is used from the total commercial energy consumed within the country. The issue related to the use of the nuclear is within the two common features i.e., channelling liability to the operator, capping this liability, and transferring the final responsibility to compensate the victims to the government. Having adhered to the international norms and standards, the laws regarding atomic energy in India, appears to be in consonance with the prescribed International Atomic Energy standards.

INTRODUCTION: -

The Atomic Energy is used in the country for many peaceful applications in the areas of power generation, healthcare, agriculture, food preservations, industry and research. Atomic energy is the energy in the core of the atom. The Atomic Energy Act enacted in the year 1962 had set its objectives for widely setting a path leading towards development in relation to the utilization of nuclear energy and to train scientists further for them to carry out more intricate research for the benefit and welfare of the nation. World over many countries could power their economies towards industrialization based on the strength of nuclear power. They equally sought to allay any fears through establishment of robust laws and institutions for regulation and protection.

The Atomic Energy Act, 1962 and the Civil Liability for Nuclear Damage Act, 2010 are central to India's legal framework governing nuclear energy. Both laws address the management, regulation, and potential liabilities associated with nuclear energy, including provisions related to the acquisition of land and property for nuclear projects. A critical analysis of these laws, particularly in relation to land acquisition, raises several important considerations.

1. The Atomic Energy Act, 1962

The Atomic Energy Act, 1962, is the foundational legislation for the regulation and control of nuclear energy in India. It grants the central government broad powers to manage all aspects of atomic energy production, use, and disposal

Key Provisions

Exclusive State Control: The Act gives the central government exclusive authority over the production, development, and use of atomic energy, emphasizing the strategic importance of nuclear energy

Land Acquisition Powers: Section 14 of the Act allows the government to compulsorily acquire land and property required for atomic energy projects. This is a significant power, given the need for extensive land for nuclear facilities, which must be located in geographically suitable and safe areas.

Safety and Security: The Act emphasizes safety and security in the operation of nuclear facilities, requiring strict regulatory oversight and compliance with safety standards. This

includes the management of radioactive waste and the prevention of accidents.¹

Critical Analysis

Compulsory Land Acquisition: The power to acquire land for nuclear projects, while necessary, can lead to conflicts with local communities, especially if the acquisition process is perceived as unjust or insufficiently compensated. The Act does not specify detailed procedures for land acquisition, leaving it to other laws like the Land Acquisition Act, 1894 (replaced by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013).

Inadequate Public Participation: The Act does not mandate public participation or consultations in the decision-making process for land acquisition. This can result in a lack of transparency and public trust, particularly in rural or tribal areas where land is acquired for nuclear projects.

Environmental and Social Concerns: The acquisition of land for nuclear projects often raises significant environmental and social concerns, including displacement, loss of livelihoods, and ecological damage. The Act's focus is primarily on energy production and safety, with less attention to the broader socio-environmental impacts of land acquisition.

Balance Between National Interest and Local Rights: The Act prioritizes national interest and energy security over local concerns, which can create tension between the government and affected communities. There is a need for a more balanced approach that considers both national imperatives and the rights of local populations.

2. Civil Liability for Nuclear Damage Act, 2010

The Civil Liability for Nuclear Damage Act, 2010, was enacted to establish a liability regime for nuclear damage, defining the responsibilities of nuclear operators and the mechanisms for compensation in the event of a nuclear accident.

Key Provisions

Operator Liability: The Act places primary liability for nuclear damage on the operator of the nuclear installation, with a capped liability amount (initially set at ₹1,500 crore). The central

¹ <https://www.sciencedirect.com/science/article/abs/pii/B9780128182567000076> last visited on 28/08/2024

government assumes liability beyond this cap, up to an additional ₹2,100 crore.

Supplier Liability: The Act includes a controversial provision that allows operators to seek recourse against suppliers if the nuclear accident results from a supplier's defective equipment or materials. However, the scope and enforcement of this provision are limited.

Compensation Mechanisms: The Act establishes a compensation framework for victims of nuclear accidents, including immediate relief and longer-term compensation for injury, death, or property damage.

Critical Analysis

Limited Scope of Compensation: The Act's compensation provisions are often criticized as inadequate, especially given the potentially catastrophic impact of a nuclear accident. The cap on operator liability and the limited scope for supplier liability have raised concerns about the sufficiency of funds available for victim compensation.²

Impact on Land and Property: In the event of a nuclear accident, the Act provides for compensation for damage to property. However, the assessment of such damage and the adequacy of compensation are often contentious, particularly in cases where the contamination renders land unusable for extended periods.

Displacement and Resettlement: While the Act addresses compensation for property damage, it does not adequately cover the broader issues of displacement and resettlement for communities living near nuclear facilities. These issues are particularly relevant in the context of land acquisition, where entire communities may be displaced to make way for nuclear installations.

Challenges in Implementation: The implementation of the Act's provisions, particularly in relation to compensation, has been questioned. Ensuring that victims receive timely and fair compensation requires efficient administrative mechanisms, which may not always be in place.

Public Concerns and Resistance: The Act does not sufficiently address public concerns

² https://en.wikipedia.org/wiki/The_Civil_Liability_for_Nuclear_Damage_Act,_2010 last visited on 28/09/2024

regarding nuclear safety and the impact of nuclear installations on surrounding communities. This has led to resistance from local populations in areas where land is acquired for nuclear projects, as seen in protests against projects like the Kudankulam Nuclear Power Plant.

3. Intersection with Land Acquisition Laws

The acquisition of land for nuclear projects is governed by both the Atomic Energy Act, 1962, and general land acquisition laws, such as the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.³

Key Considerations

Fair Compensation and Resettlement: The 2013 Land Acquisition Act emphasizes fair compensation, rehabilitation, and resettlement for those displaced by land acquisition. However, the integration of these principles with the provisions of the Atomic Energy Act remains a challenge, particularly in ensuring that affected communities are adequately compensated and resettled.

Public Interest vs. Individual Rights: Land acquisition for nuclear projects often pits public interest against individual property rights. The laws must strike a balance between the state's need to develop nuclear energy infrastructure and the rights of landowners and communities.

Judicial Scrutiny: Indian courts have increasingly scrutinized land acquisition processes, particularly in cases where public interest is claimed to justify compulsory acquisition. This judicial oversight is crucial in ensuring that the rights of affected individuals and communities are protected.

4. Recommendations for Reform

Given the critical issues identified in the analysis, several reforms could improve the legal framework governing nuclear energy and land acquisition in India:

Enhanced Public Participation: The laws should mandate more robust public participation in the decision-making process, particularly during land acquisition for nuclear projects. Public consultations should be meaningful, with efforts to address the concerns of affected communities.

³ <https://www.indiacode.nic.in/handle/123456789/2121?locale=en> last visited on 28/8/2024

Independent Regulatory Oversight: An independent regulatory authority, separate from the Department of Atomic Energy (DAE), should oversee nuclear safety and land acquisition processes to ensure transparency and fairness.⁴

Strengthened Compensation Mechanisms: The compensation framework under the Civil Liability for Nuclear Damage Act should be expanded to ensure that victims of nuclear accidents, including those suffering property damage, receive adequate and timely compensation. This should include provisions for long-term rehabilitation and resettlement of displaced communities.

Integration with Environmental and Social Impact Assessments: Land acquisition for nuclear projects should be closely integrated with comprehensive environmental and social impact assessments (EIA and SIA). These assessments should be mandatory and rigorous, ensuring that the full impact of nuclear projects on local communities and the environment is considered.

Judicial Oversight and Redressal Mechanisms: Strengthening judicial oversight of land acquisition processes and nuclear liability claims is essential. There should be accessible and effective redressal mechanisms for affected individuals and communities, allowing them to challenge unjust acquisition processes and inadequate compensation.

5. Constitutional Allocation of Legislative Powers

The distribution of legislative powers between the Union and the States in India is detailed in the Seventh Schedule of the Constitution. This Schedule contains three lists:

Union List (List I) State List (List II)

Concurrent List (List III) Union List and Atomic Energy

Atomic energy and its regulation fall under the Union List, giving the central government exclusive authority to legislate on these matters. The relevant entries in the Union List are:

Entry 6: "Atomic energy and mineral resources necessary for its production."⁵

This entry grants the central government the authority to legislate on all aspects of atomic energy, including the exploration and use of atomic energy for various purposes, such as energy production, scientific research, and defence.

⁴ <https://iihs.co.in/knowledge-gateway/wp-content/uploads/2017/05/Land-Acquisition.pdf> last visited on 28/08/2024

⁵ <https://www.barc.gov.in/ebooks/9789356590526/paper03.pdf> last visited on 28/8/2024

Entry 7: "Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war."

Although broader in scope, this entry includes industries related to atomic energy, especially given the strategic importance of nuclear energy in national defence.

6. Parliament's Legislative Authority

Based on the above entries, Parliament has the power to enact laws related to atomic energy. This authority has been exercised through key legislations such as:

Atomic Energy Act, 1962: This Act governs the development, control, and regulation of atomic energy in India. It reflects the central government's exclusive authority over atomic energy as granted by the Union List of the Constitution.

Civil Liability for Nuclear Damage Act, 2010: This Act establishes a liability framework for nuclear damage, ensuring that victims of nuclear incidents are compensated and delineating the responsibilities of nuclear operators.

7. Other Constitutional Provisions of Relevance

While atomic energy is not explicitly mentioned elsewhere in the Constitution, several constitutional principles and provisions are relevant:

Directive Principles of State Policy (Part IV):

Article 39(b): The State is directed to ensure that the ownership and control of the material resources of the community are distributed in a manner that best serves the common good. This principle indirectly supports the state's role in managing resources like uranium, thorium, and other minerals critical to atomic energy.

Environmental Protection:

Article 48A: Directs the State to protect and improve the environment and safeguard forests and wildlife. While this article is more focused on environmental concerns, it has implications for the regulation of nuclear energy, particularly regarding environmental safety and the handling of nuclear waste.⁶

⁶ <https://www.constitutionofindia.net/articles/article-48a-protection-and-improvement-of-environment-and-safeguarding-of-forests-and-wild-life/> last visited on 28/8/2024

Fundamental Duties (Part IVA):

Article 51A(g): It is the duty of every citizen to protect and improve the natural environment, including forests, lakes, rivers, and wildlife. This duty is particularly relevant in the context of nuclear energy, where environmental protection is critical.

8. Judicial Interpretations

The Indian judiciary has played a role in interpreting the scope of atomic energy regulation, particularly in cases involving environmental concerns, land acquisition for nuclear projects, and the safety of nuclear facilities. The courts have generally upheld the central government's authority under the Constitution to regulate atomic energy while emphasizing the need for safety and environmental protection.

The Hon'ble Supreme Court of India in G. Sundarrajan's case held that;

Maintaining safety is an ongoing process not only at the design level, but also during the operation for the nuclear plant. Safeguarding NPP, radioactive materials, ensuring physical security of the NSF are of paramount importance. NPCIL, AERB, the regulatory authority, should maintain constant vigil and make periodical inspection of the plant at least once in three months and if any defect is noticed, the same has to be rectified forthwith. NPCIL shall send periodical reports to AERB and the AERB shall take prompt action on those reports, if any fallacy is noticed in the reports. SNF generated needs to be managed in a safe manner to ensure protection of human health and environment from the undue effect of ionizing radiation now and future, for which sufficient surveillance and monitoring programme have to be evolved and implemented.⁷

Conclusion:

The legal framework governing nuclear energy in India, particularly the Atomic Energy Act, 1962, and the Civil Liability for Nuclear Damage Act, 2010, is essential for the development and regulation of the nuclear sector. However, critical issues, especially those related to land acquisition and compensation, require reform to ensure that the rights of affected communities are protected, and public trust in the nuclear program is maintained. By addressing these challenges, India can achieve a more balanced and just approach to nuclear energy development, aligning national interests with the rights and welfare of its citizens.

⁷ <https://indiankanoon.org/search/?formInput=npcil> last visited on 28/8/2024

India's atomic energy laws represent a crucial framework for regulating one of the nation's most strategic sectors. These laws have evolved in response to both domestic needs and international obligations, reflecting India's commitment to safe and responsible nuclear energy use. The Atomic Energy Act of 1962, along with subsequent amendments and related legislation, underscores the government's monopoly over nuclear energy and the importance of maintaining stringent safety standards.

However, as India continues to expand its nuclear energy capacity to meet growing energy demands, the legal framework must evolve to address emerging challenges. Issues such as nuclear liability, waste management, and public safety require ongoing attention and possible legal reforms to ensure that India's atomic energy program remains both sustainable and secure. In conclusion, while India's existing atomic energy laws have provided a solid foundation for the development of its nuclear capabilities, the dynamic nature of the global nuclear landscape demands that these laws be continuously reviewed and updated. Ensuring transparency, safety, and compliance with international standards will be key to the future success of India's atomic energy sector.

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