



The ‘breakthrough’ in Indo-US nuclear deal will bleed Indians every which way

The taxpayer will be made to pay to cover US companies’ untested technologies and the expensive electricity they generate.

By Nityanand Jayaraman

Jan. 29

Two recent unrelated events formed a subtle connection in my mind. On 25 January, India and the United States announced a “breakthrough” in negotiations to operationalise the long-stalled nuclear deal. On 26 January, eminent cartoonist R K Laxman, the creator of the much-loved “Common Man”, died. The Indian and American governments, and GE and Toshiba Westinghouse, see the “breakthrough” as cause for celebration. If American corporations are sufficiently convinced to follow through and supply nuclear power plants to India, the common man (and woman) – namely, Indian taxpayers, electricity consumers and communities that host the plants – may well get the wrong end of the stick.

Here’s why. The Indo-US civil nuclear deal was signed by George Bush and Manmohan Singh in 2008. As per the deal, India agreed to separate its civilian and military nuclear activity and open up the civilian part to inspection by the International Atomic Energy Agency. In return, the US offered to resume full nuclear trade with India, ending its nuclear ostracism.

A thankful India carved out two large chunks of real estate in Mithi Viridi, Gujarat, and Kovvada, Andhra Pradesh, and offered them to two American multinationals to set up nuclear power plants. Toshiba-Westinghouse was given the Gujarat site for building six AP1000 reactors of 1100 MW each. GE-Hitachi plans to set up six units of 1594 MW each at the Kovvada site. Both projects involve untested technologies. In both instances, public sector Nuclear Power Corporation of India will be the operator.

Damages to run into billions

But two thorny issues have held up the export of nuclear technology from the US to India. First, US domestic law requires tracking by US authorities of nuclear supplies made to countries like India that have not ratified the Non-Proliferation Treaty. India found the requirement unduly

intrusive as it was in addition to International Atomic Energy Agency verification.

Second, the Indian Civil Liability for Nuclear Damages Act provides for two-part recourse – through Section 17(b) and Section 46 – against nuclear equipment suppliers if the nuclear plant blows up.

India is not alone in providing such avenues. Japan, Austria, Switzerland and Germany have actually gone one step further and even removed liability caps. This is in line with the realisation that damages arising from nuclear accidents can run into billions of dollars, including compensation, relocation and rehabilitation, environmental remediation and lost trade due to contaminated agricultural and marine produce.

A study released in 2014 by researchers from Ritsumeikan University and Osaka City University said the Fukushima disaster will cost \$105 billion or twice the predicted damage in 2011. This figure does not include the cost of decommissioning of reactors or safe disposal of the contaminated material and wastes. The researchers point out that the increased costs would be passed down to taxpayers and electricity ratepayers through increased tariffs. Belarus, which was worst hit by the Chernobyl disaster, has spent at least \$235 billion over the last 30 years on relief, rehabilitation and clean-up. That is more than twice the size of the Indian nuclear market that American corporations are hoping to tap into.

Scrapping even limited liability

Indian law – CLNDA – is already weak. But American and Indian private equipment suppliers – like Westinghouse, L&T, JSW Steel and Tata Power – feel it is not weak enough. Section 17(b) of the Indian Act allows the operator to sue equipment suppliers. The Rules to the Act, however, limit supplier liability to Rs 1,500 crore in damages or the value of the contract, whichever is less. Section 46 of the Liability Act potentially exposes suppliers to unlimited tort liability under relevant Indian laws. However, under Section 17, only the operator can sue, and only if such a provision is expressly made in the contract.

Winning the suit is conditional to proving deficiencies in the material or equipment supplied or services rendered. After all this trouble, if the value of the contract with the supplier of the equipment that caused the accident is only Rs 5 lakh, then regardless of the extent of damage caused by that flawed equipment, Rs 5 lakh is all the operator is entitled to get from that supplier. A writ petition challenging the constitutional validity of the Act is pending before the Supreme Court.

The Indian government has indicated that it will do away with even this limited liability.

In a twist of Republic Day irony, Obama and Modi have opted to use backroom deals and executive discretion to bypass the spirit and intent of their respective legislatures. The US president says he has found a way to exempt supplies to India from US inspections meant to ensure non-proliferation goals. In return, the Indian prime minister has suggested that a publicly funded insurance pool will be set up to indemnify foreign suppliers and cover the liability under Section 17(b). Section 46 is sought to be neutralised through a legal opinion offered by the Attorney General.

Insurance burden on Indians

Declarations by Indian and US negotiators and the cautious optimism of industry players in response to the “breakthrough” make it appear as if only a few minor issues remain to be ironed out. It is made to seem as if once that is done, US multinationals like GE will “bring good things to life” and nothing will stand between 400 million Indians without electricity and their first light bulbs.

India’s nuclear establishment too continues to exude its typical optimism, unfazed by the sorry reality of having installed less than 5000 MW of ill-functioning nuclear capacity in 60 years. Anupbeat article in *Business Standard* cites several establishment experts, including former Nuclear Power Corporation of India chairman S K Jain, who believe that most of the difficulties have been sorted out, and that the Kovvada and Mithi Viridi projects will now gain momentum.

But as things stand, the prospects of getting American nuclear technology to light up Indian homes are dim. The insurance pool arrangement is commercially shaky and the protection offered by the Attorney General’s opinion against Section 46’s tort liability is legally fraught.

Details about the insurance pool are not available yet. But if it is set up, Indian taxpayers will be made to pay to cover risks associated with GE and Westinghouse’s technologies. A Reuters report talks of a kitty of \$244 million, with the government-run General Insurance Corporation of India and a few public sector companies contributing one half and the government contributing the other. The Indian taxpayer will have to pay even if the plants do not blow up. If the supplier is asked to contribute to the pooled fund, that increased project and electricity cost would be passed on to Indian consumers. Anyway you cut it, we are screwed.

The Price-Andersen Act in the US also places a similar burden on American taxpayers. Cato Institute, a free-market think tank, estimates that this translates into a subsidy of 2 to 3 US cents (Rs 1.20 to Rs 1.80) per unit of nuclear electricity generated. Another calculation pegs the annual subsidy per American reactor at about \$30 million.

More expensive electricity

Financially, solar and wind energy are already becoming more attractive than nuclear. Electricity from these renewable sources cost Rs 8 and Rs 4.5 per unit respectively, according to a report by solar think-tank Bridge to India. Renewables are quicker to erect and are not as politically contentious as nuclear. In contrast, the Mithi Viridi project has run into serious opposition from local residents and farmers. If it is ever built, electricity from the Westinghouse reactors will cost Rs 12 per unit.

Mithi Viridi power is too expensive for most utilities to afford even without the cost implications of a pooled liability fund. What then are we to make of this pursuit of expensive, untested American reactors? Is the government really serious that Rs 12 per unit electricity will light up indigent Indian homes? Or is all this merely an orchestrated pirouette in a more elaborate Indo-US diplomatic choreography? Is this about India's electricity future, or its aspiration to be included in the club of nuclear big boys?

Answers to these questions aside, the stalled deal, the subsequent negotiations and the dubious "breakthrough" that the media refers to offer several sobering realisations. Both Obama and Modi consider corporations and not the people of Bhopal to be the real victims of the 1984 Bhopal disaster. Both leaders agree that a nuclear disaster is real enough, and that it is a matter of bilateral priority to protect – not communities and the environment – but the operators and suppliers of nuclear equipment in the event of a disaster. As for dealing with the aftermath of a nuclear catastrophe, the heads of the two great democracies seem to contend that Indians will make do with some compensation – about \$480 million – from their own tax moneys.