

Critics of India signing the Convention on Supplementary Compensation for Nuclear Damage (CSC) argue the country has signed away the gains made in the Civil Liability for Nuclear Damage Act (17 b talks of the right to recourse against suppliers of nuclear power equipment) while supporters argue the signing has paved the way for the Arevas, Westinghouses and General Electrics to start supplying nuclear power equipment to India. The actual position is more nuanced. While India's nuclear liability Act suggested the operator (Nuclear Power Corporation of India Limited) would have to pay the immediate no-fault damages (300 million SDRs or whatever the central government may notify) in case of an accident and have recourse to the suppliers in case it could prove their equipment was defective, nuclear suppliers argued the Act was ambiguous. In the sense, they said, it did not make it clear the first recourse was only to NPCIL. Theoretically, there was the possibility the suppliers could also be dragged in even without proving their equipment was defective. The CSC, however, makes it clear the liability is only that of the operator {Article 3(9)}. To that extent, signing the CSC should pave the way for nuclear suppliers, but the CSC is not in force and for India to ratify it, it will have to show its nuclear liability law is in consonance with the CSC—while India argues it is, other countries don't believe this to be the case.

The fate of 17 (b) in the civil nuclear Act is also not as cut and dry as critics make out. Under the CSC, the sole liability is that of the operator—and this makes sense, given that it is difficult to hold suppliers responsible for the way the operator (NPCIL in India's case) runs their equipment over several decades, indeed it is the nuclear power regulator's (Atomic Energy Regulatory Board in India's case) job to ensure the plant meets safety standards over its life. But even if India had not signed the CSC, proving the equipment was faulty and the reason for an accident, to the satisfaction of courts, was always going to be an uphill task even under the civil nuclear Act. Critics would also do well to keep in mind the clause in the Indo-Russian Inter-Governmental Agreement, which says the liability, at all times, will be that of NPCIL and not of Russian suppliers. India will try hard to convince President Obama and his nuclear power suppliers that signing the CSC demonstrates its good intentions but we have to wait and see if they buy it.