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India's Flawed Nuclear Legislation Leaves U.S.–India Partnership Short

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This week, India's parliament passed a flawed civil nuclear liability law—one that threatens to cast a pall over the historic U.S.–India civil nuclear deal. The deal, which involved the U.S. spearheading a contentious international push to provide India access to nuclear fuel and technology for the first time in 35 years, is seen as the bedrock for the developing strategic partnership between the U.S. and India.

With India's legislative clock running down and U.S. President Barack Obama's visit to India set for November, Washington had hoped the Indian government would pass crucial legislation establishing an internationally compliant civil nuclear liability regime that would facilitate U.S. investment in India's nuclear industry. Such legislation would have been the last step in completing the U.S.–India civil nuclear deal, which has drawn out over five years now.

U.S. policymakers and industrial leaders were thus taken off guard when the legislation (titled the Civil Liability for the Nuclear Damages Bill, 2010) passed the Upper House of the Indian parliament yesterday despite retaining language inconsistent with international standards for engaging in nuclear commerce. The law includes language that makes suppliers of equipment, raw materials, and services liable—beyond the recourse already available through the courts—for 80 years after the construction of a plant in the unlikely event of a nuclear accident.

Indian Business Leaders Denounce Legislation. Indian business groups have denounced the

legislation. The Director General of the Confederation of Indian Industries, Chandrajit Banerjee, said the clause went against the global practice of placing civil liability exclusively on the operators. A story that ran August 30 in *The New York Times* described the law as bucking international norms by making suppliers potentially liable for nuclear accidents and questions whether any foreign or Indian energy company would now be willing to enter the Indian civil nuclear market.

Most damning, India's own Nuclear Power Corporation of India—the state-owned operator of India's existing reactors and suppliers' only prospective customer—has been scathing in its criticism, warning that “no manufacturer, Indian or foreign, would be able to serve the nuclear power industry” under the provisions of this new law.

Russia, which also hopes to construct several nuclear power plants in India in the coming years, has also reportedly told Indian officials that it will not accept any liability for the supply of equipment and other material it provides to India's nuclear sector.

Context for the Bill. This latest obstacle in the U.S.–India nuclear deal is unfortunate, as it follows the successful completion of a U.S.–India nuclear

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reprocessing agreement earlier this year, which granted India the right to reprocess spent nuclear fuel.¹ India was able to secure significant concessions in the reprocessing accord, particularly by gaining approval to operate not just one but two reprocessing sites. Only countries in Europe and Japan have been able to negotiate this type of special arrangement with the U.S.

This liability law also follows a dust-up between the U.S. and India over flawed U.S. legislation passed in the U.S. Congress a few weeks ago that directly targets Indian companies that bring highly skilled workers into the U.S.² The U.S. provision, passed in the border security bill targeting illegal immigration, requires companies that hire a large number of highly skilled foreign workers to pay millions more in visa fees.

Prompt Attention Needed. There is still an opportunity to find solutions to these issues before President Obama visits India in November, but both sides will have to step up their engagement and find common ground on issues of mutual interest.

Minister of State in the Prime Minister's Office Prithviraj Chavan acknowledged, "The (nuclear liability) law would make India the only country in the world that placed some liability on suppliers....

This is not finality... If required, the bill will be changed for the better." Fixing this issue in a prompt manner would help improve the atmosphere surrounding President Obama's upcoming visit to India. Given the obstructive behavior on this issue by India's principle opposition party—the BJP—it is easy to forget that it was the BJP-led government who first introduced the idea of U.S.–India civil nuclear cooperation.

Domestic politics can impact foreign policy in any genuine democracy. The very fact that both the U.S. and India share strong democratic traditions provides the basis for developing a strategic partnership. China's recent muscle-flexing in the waters nearest its shores—the South China Sea, Yellow Sea, and East China Sea—and diplomatic games with regard to its border with India also drive home the importance of building stronger U.S.–India ties. Washington and New Delhi need to move past the recent irritants in the relationship caused by domestic politics in both countries so that this important bilateral partnership will continue to advance.

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1. Rama Lakshmi and Steven Mufson, "U.S., India Reach Agreement on Nuclear Fuel Reprocessing," *The Washington Post*, March 30, 2010, at <http://www.washingtonpost.com/wp-dyn/content/article/2010/03/29/AR2010032901744.html> (August 31, 2010).
2. Derek Scissors, "The Wrong Way to Deal with India," *The Foundry*, August 9, 2010, at <http://blog.heritage.org/2010/08/09/the-wrong-way-to-deal-with-india>.