

Vol 4 Issue 11 Aug 2015

ISSN No : 2249-894X

*Monthly Multidisciplinary
Research Journal*

*Review Of
Research Journal*

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RNI MAHMUL/2011/38595

ISSN No.2249-894X

Review Of Research Journal is a multidisciplinary research journal, published monthly in English, Hindi & Marathi Language. All research papers submitted to the journal will be double - blind peer reviewed referred by members of the editorial Board readers will include investigator in universities, research institutes government and industry with research interest in the general subjects.

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INDO-US NUCLEAR DEAL: A NEW DAWN IN THE BILATERAL RELATIONSHIP



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ABSTRACT

The Indo-US Nuclear Deal is seen as a major landmark in Indo-US relations. The deal not only reverses US policy of pressurizing India to roll back its nuclear weapons programme by imposing nuclear technology trade related sanctions on her for being not a party to the NPT and other international nuclear non-proliferation related treaties as a non-nuclear weapon state but also ushered in a new era in Indo-US bilateral relations. Though full potentiality of the deal is yet to be realized, there is no denying that the deal has transformed the Indo-US relations over the last decade bringing about a genuine strategic bilateral partnership which was not possible without

resolving the differences on nuclear non-proliferation between the US and India.

KEYWORDS : *Indo-US Nuclear Deal , bilateral relationship , security and global issues.*

INTRODUCTION :

The Indo-US Nuclear Deal or the Indo-US Civil Nuclear Cooperation is a historical agreement between the USA and India. The deal is also known as the 123 agreement, so called after the clause in the United States Atomic Energy Act of 1954 that governs the nuclear trade of the US with other countries. In July 18, 2005, the then USA President George W. Bush and Indian Prime Minister Manmohan Singh issued a joint statement resolving to establish a global partnership between the two countries through increase cooperation on numerous economic, security and global issues. The Joint Statement of July 18, 2005, is the framework for the 123 agreement in which India took the pledge to separate its civil nuclear facilities from its military ones. The deal generated heated debate and controversies in India due to its various implications and consequences on India's foreign policy and defense set up etc. and the benefits it would fetch, perceived by deferent sections of the society. On the other hand even in America the agreement could not escape from heated debate on the basis of whether the deal would dilute the nuclear non-proliferation efforts as emphasized in the NPT or the deal is actually an American effort to bring India under the NPT. The Left Parties in India were so upset that they withdrew their outside support to the UPA government because of its insistence on the conclusion of the civil nuclear cooperation between India and the USA which according to the Lefts is a

device for American imperialism. It has also invited severe criticism from the then main opposition party the BJP and other small parties. It was such a contentious issue that the government had to face the confidence motion and it won the confidence of the lower House of the Parliament with a narrow margin of votes. The discrepancies between the 123 Agreement and the Hyde Act added fuel to the fire. Indeed some of the provisions of the Hyde Act passed by the US Congress are really disturbing. The present article having given a very brief description of the 123 Agreement, the Hyde Act, addresses a number of criticisms focusing on the major areas of the criticism, and proceeds along that with the explanation of the principle advantages that India would be endowed with through its civil nuclear cooperation with the United States of America, proving as per my interpretation of the various documents related to the 123 Agreement, that most of the criticisms are based on unsound grounds.

The 123 Agreement

The 123 agreement is a bilateral accord for the Indo-US Civil Nuclear Cooperation. The agreement is known as the Indo-US Civil Nuclear Cooperation or Indo-US Nuclear Deal. It was concluded in July 2007. In Oct, 2008: External Affairs Minister Pranab Mukherjee and his US counterpart Condoleezza Rice signed the deal. The bilateral accord for the Civil Nuclear Cooperation is called 123 agreement because of the section 123 of the US Atomic Act of 1954, which deals with the US nuclear cooperation with other countries. The agreement has 17 articles. The Joint Statement of July 2005 as mentioned above issued by the then Prime Minister of India Manmohan Singh and the then President of the US George W. Bush assured among other things to establish a global partnership between the two countries through increased cooperation on numerous economic, security and global issues. The Joint Statement of July 18, 2005, is the framework for the 123 Agreement. In August, 2008 International Atomic Energy Agency approved the safeguards agreement and in September, 2008: India was granted the waiver at the Nuclear Suppliers Group meeting in Austria. . The essence of the deal was simple: the United States was to offer India full civil nuclear cooperation and would give up trying to roll back India's nuclear weapons programme and change its domestic law and tweak international rules to facilitate civil nuclear cooperation with Delhi after New Delhi agreed to first separate its civilian and military nuclear facilities and then open its civilian reactors to inspections by the International Atomic Energy Agency.

The Hyde Act

Under the Atomic Energy Act, the US Congress delegates to the President the authority to negotiate agreements for nuclear cooperation known as 123 agreements. However the final power to reject or amend the agreement belongs to the Congress. The Henry Hyde Act passed in December 2006 is an enabling act which amends the US Law, to allow nuclear trade with India. The Act is shortly titled in the text of the Hyde Act as Henry J. Hyde United States India Peaceful Atomic Energy Cooperation Act of 2006. The Act provides a legal basis for the civil nuclear cooperation between India and the US. US law permits the United States to enter into nuclear energy collaboration with declared non-nuclear weapons states who have signed the NPT and CTBT under section 123 (titled cooperation with nations) of the United States Atomic Energy Act of 1954. India, Pakistan and Israel are countries that have not joined the NPT. North Korea joined but later withdrew. India is not a signatory to the NPT, therefore the Hyde Act is an enabling domestic legislation that has made the negotiation of bilateral 123 agreement possible, otherwise the US Atomic Energy Act of 1954 does not allow civilian nuclear cooperation with a non NPT country, that has conducted a nuclear test, that does not accept full scope safeguards and is engaged in nuclear weapons related activities. Thus the objective of the Act is "to exempt India from

certain requirement of the Atomic Energy Act of 1954”.

Criticisms and Assessment of the Indo – US Civil Nuclear Deal

The Indo-US Nuclear Deal is seen as a major land mark in Indo-US relations. The deal not only reverses US policy of pressurizing India to roll back its nuclear weapons programme by imposing nuclear technology trade related sanctions on her for being not a party to the NPT and other international nuclear non-proliferation related treaties as a non-nuclear weapon state but also ushered in a new era in Indo-US bilateral relations. Though full potentiality of the deal is yet to be realized, there is no denying that the deal has transformed the Indo-US relations over the last decade bringing about a genuine strategic bilateral partnership which was not possible without resolving the differences on nuclear non-proliferation between the US and India.

However the deal did come in to existence easily. The Indo-US Civil Nuclear Cooperation agreement has been severely criticized by different sections of the society both in India and the US. While in India it is criticized on the basis of the adverse implications of the deal and Hyde Act on India's independent foreign policy, sovereignty, ability to conduct a nuclear test in the future etc. in the US it has been vehemently criticized on the basis that nuclear cooperation with India will dilute the provisions of the NPT, give stimulus to other countries to achieve nuclear weapons, make global effort in general and America's endeavours in particular for nuclear non proliferation ineffective, give full opportunity to India to enhance its nuclear weapons as all of its nuclear reactors will not be under IAEA safeguards and India will be free to use its domestic nuclear fuel supplies for the military purpose etc. The major criticisms are.

The 123 agreement is dangerous to India's independent foreign policy sovereignty and national security.

It is claimed that “the agreement is an assault on our sovereignty and our foreign policy options”. Serious concerns have been expressed by the Left Parties and the others including BJP about various conditions incorporated in the Hyde Act passed by the US Congress for the conclusion of civil nuclear cooperation. According to the critics the 123 agreement cannot be read in isolation with the Hyde Act as it is the national law of the US which would be binding on it. There is a provision in the 123 agreement (Article 2(1) of the 123 Agreement) in which each party is required to implement the 123 agreement in accordance with its national laws and regulations and no doubt that the Hyde Act and the US Atomic Energy Act of 1954 are the national laws of the United States of America. So it is clear that though India is not bound by the US domestic laws, the US will be bound surely by its law. Since India is a recipient country it will be at the disadvantageous position while dealing with bilateral conflicts between the two countries. As already has been motioned that various provisions of the Hyde Act goes beyond the mere civil nuclear cooperation. For instance “this Act wants to bind India into various US initiated treaties and regimes of which India is not part of, including the MTCR, Fissile Material Cut off Treaty etc. The advisory in the Hyde Act pointed out to specific issues that the US wants India to do. These include that India sign the FMCT and PSI. The US would pressurize India on all these issues and eventually as India gets more bound, violations on these counts would lead to suspension of the agreement and a return of the nuclear technology and fuels” Therefore India cannot ignore the interests of the United States of America while pursuing its own foreign policy because India's independent foreign policy regarding a particular issue without taking into consideration the US interests, may lead to the cessation or termination of the 123 agreement. Therefore the 123 agreement is an assault on the sovereignty and independent foreign policy of India. Some of the provisions of the Hyde Act provided the critics sounded grounds on the basis of which they vehemently criticized the 123

agreement. There are several provisions e.g. the American President will have to certify every year that he is satisfied with the behaviour and programmes of India in the nuclear field, "Annual certification and reporting to the US Congress by the President on variety of foreign policy issues such as India's foreign policy being "congruent to that of the United States" and more specially India joining US efforts in isolating and even sanctioning Iran (Section 104g (2) E(i))" in the Hyde Act that can be used according to the critics for termination of the nuclear deal in case, India's foreign policy goes against the US policies. However it must be taken into consideration that with the passage of time, situations change. Gone are the days when the US could bypass India's concerns while dealing with bilateral issues. Now India is one of the fastest growing economy and the third largest economy in Asia after China and Japan. As for the Indo-US civil nuclear cooperation is concerned, both India and the US were guided by their own national interests which, I think, is beneficial for both the countries. The deal is one of the major achievements of India's foreign policy. The agreement indicates virtual acceptance of India as a nuclear weapon state. India on its part is to unilaterally place its civilian nuclear reactors and material to be acquired from US under the IAEA safeguards. This is a great achievement as India is not a signatory to the NPT and the US Atomic Energy Act 1954 bars trade with non-NPT countries. The deal provides an opportunity to India by allowing her to acquire nuclear and advanced reactors from the US and other countries under the IAEA new India specific guidelines, to meet the energy needs. Once the deal has been concluded it will not be easy for the US to terminate the civil Nuclear Cooperation because of some petty issues. India is not bound by the Hyde Act, the civil nuclear cooperation between the two countries will be governed by the 123 agreement. India has supported Mahmood Abbas led resolution for a separate state for the Palestinians at the UN. Had the 123 agreement restricted India's independent foreign policy, it would not have supported the resolution as it was against the US stand. Also by refusing to follow the US and its allies' backed resolution on Syria, India has shown that that she will not compromise on its independent foreign policy guided by its national interests. Any opposition to the deal should be based on rational and scientific grounds and not merely on ideological rigidity. The critics in general and the Left allies in particular failed to gain an insight in the interpretation of the Indian national interests and were left howling about fictitious issues like sovereignty, independent foreign policy making and the like. Moreover the US condemns many of the policies of China, yet economic and other compulsions restrained it from severing ties with the People's Republic of China. "We are right in being concerned about many provisions of the Hyde act and giving expressions to them but we should not allow these concerns to be over blown and come in the way of further opening the Indo – US door. It is a fact that the nuclear deal is not an act of charity by the US in a moment of magnanimity to India" By establishing close relationship with the US India can play big role in world affairs related to peace security and prosperity of the world in general and that of India in particular. Our close relations with the US do not mean that we support every US policy and we have proved that by supporting the Palestinian cause. The Indo-US deal should be seen in the light of bilateral cooperation in a number of fields – production of clean energy to mitigate the shortage of energy and help the cause of environment at the same time, increase agricultural production, facilitate trade and check nuclear proliferation. The Indo-US nuclear deal is actually an explicit acceptance of India as a responsible global power by the world powers. In the beginning Australia was one of the staunch opponents of the 123 agreement as India was not a party to the NPT. However now keeping in view India's emergence as one of the fastest growing economy in the world, Australia, the biggest supplier of Uranium in the world is ready to do nuclear trade with India.

The belief that in case India conducts a nuclear test, the 123 agreement will be nullified or cancelled and America will have power to make India return all the nuclear related technologies and

materials as has been mentioned in the Hyde Act, is also misleading. Firstly India has already put a voluntary moratorium on further nuclear test. So there is no need to conduct more nuclear tests in the future. Secondly even if India conducts nuclear tests the deal will not automatically come to an end, the US will give India an opportunity to explain the circumstances that led to the nuclear test. So this is an implicit acceptance by the US that India can test nuclear weapons if its national interests are in danger. The creation of this sympathetic environment itself is a huge change from the fact that Washington until not long ago did not even acknowledge that India had legitimate security concerns that required the acquisition of nuclear weapons capability. Thirdly, the US would pay adequate compensation in case India is required to return the nuclear technologies and materials provided by the US under the deal. Fourthly, not only the interests of the state but also economic interests of the private companies are involved in the civil nuclear cooperation. Therefore to cancel the civil nuclear cooperation will not be an easy task for the US. "If at all India may feel the need to test again, it would be in response to a perceptible change in its threat perceptions as a result of the conduct of similar activity by others. One such situation may arise in case India's nuclear deterrence with China is perceived to have been undermined after china's conduct of tests to buttress its nuclear capabilities. China's action would most likely be in response to a US move towards a concerted modernization of its own nuclear weapons. Therefore the international security environment would anyway have been vitiated enough for other countries to be conducting further nuclear tests. In such a scenario, if India felt compelled to carry out its own tests would it really matter to the US? Would the India action then be seen as destabilizing or stabilizing? Of course the law would necessitate a termination of cooperation but given the circumstances would the US President not be able to find a way around it? As mentioned earlier politics plays a far greater role than legal technicalities in relations of such nature"

Nuclear Energy is too Much Costly

Another point of criticism is that, Nuclear Energy at present is 2.6% of total energy produced. India projects that it will produce 20,000 Megawatts by 2020 that will make up only about 7% of our total energy mix. . So why go for it.? Sitaram Yechuri (MP, CPM Politburo) has given a rough estimate of the cost of nuclear energy per Megwat produced by the imported reactors including the cost of import to be around Rs 11crores while "the cost of the best of thermal energy the of technologies to control pollution etc, megawatt" would be Rs 4 crores and the cost of one Megawat of hydroelectricity would be Rs 3 crores and cites the estimation of national hydroelectric corporation that at present India only uses 20 percent of her potential for hydroelectricity. However, this is an incorrect way of thinking for 7% when converted into absolute numbers gives us a large amount- enough to power up several metropolitan areas. The logic that nuclear energy produced by the imported nuclear fuels is too expensive is also not sound. Coal is an exhaustible source of energy, and a major contributor to global warming. In addition to that India's coal reserves, despite being found in plenty are generally inferior in quality. India has not been blessed with oil and natural gas in sufficient quantity to meet its energy requirements. Moreover, fossil-based fuels are fast depleting and their scarcity is already inspiring geopolitical instabilities around the world At present India's thermal and hydroelectric power constitute 71 and 24% respectively of our electricity . "Although India's coal reserves comprise 8% of the world total and the country is its fourth largest producer our coal is high on ash content and for that reason it has to be mixed with the imported low ash coal. Only 20% of the total coal which is transported to the power plants is of superior grade with ash content of 24% or less". The remaining 80% of the coal transported to the power plants are of inferior quality with too much ash content which poses environmental problems and also raises the cost of operation and adversely affects efficiency of the

thermal power plants. In addition to that, had the mines been near the plants, the thermal power would have been cheaper. According to an estimation of Nuclear Power Corporation “if the thermal power plant is more than thousand km away from the coal pithead as most of our power plants are, then nuclear power may be a cheaper option.” Burning of fossil fuels creates environmental problems. Release of the tonnes of smokes in the atmosphere, leads to various diseases in human beings and livestock. Global warming caused by green house emission, paved the way for fast melting of glaciers, causes rise in the level of seas, thus submerging many coastal areas and islands. Nuclear energy on other hand is clean and environment friendly compared to thermal power station, even the waste it generates is compact and considered a strategic fuel reserve for future. There are no effects of acid rain due to the emission of sulphur dioxide, Nitrogen oxide and no effect of global warming due to the emission of CO₂ “By substituting for other fuels in electricity production, nuclear energy has significantly reduced U.S. emissions of nitrogen oxides, sulfur dioxide and carbon dioxide.” Gas plants with continued supply of fuel have cost advantage over coal and nuclear energy. However since India imports 75% of its gas, these benefits remain elusive to India. Given these estimates, Nuclear power for India is a viable option, and the nuclear deal could help as it lifts the ban which has excluded India for nearly three decades from trade in nuclear plant or material, which has hampered its development of civil nuclear energy.

Safety issues

Another point criticism is that nuclear energy is unsafe as there are serious health hazards from radioactive radiations in case of accidents which could happen in spite of all the safeguards as proved by accidents at the Three Mile Island plant in Pennsylvania (1979) and Chernobyl nuclear power plant in Ukraine (1986), then part of the Soviet Union. The recent explosion and fire at Fukushima and Quagama nuclear reactors in Japan, following the earth quake and tsunami, have further strengthened the fears of the people; the entire nuclear fuel cycle is fraught with danger and exposes human beings to hazardous radiation. Many developed countries seem to be reviewing their nuclear energy programmes and commissioning of new nuclear power plants in these countries has almost come to a standstill. However these charges are not based on sound grounds. Since some countries are no longer showing their interest in nuclear fuel, does it mean that India must follow their paths? “The Indian population is misled when it is said that some western nations have ended their nuclear programme, or that Japan is reconsidering nuclear power plant expansion. The study indicates that most of the prosperous nations are extracting about 30-40 percent of power from nuclear power. In India we are not generating even 5000 MW of nuclear power from the total of about 150 GB of electricity generation, most of it coming from coal” After the Bhopal gas tragedy which was far more damaging than any of the above mentioned nuclear accidents, did we shut down all chemical factories? Our response was not to shut down all the pesticide manufacturing units but to make our environmental and safety regulation stricter.

If nuclear plants (or any other industrial unit for that matter) are prone to risk the solution lies in improving safety standards to minimize risk, not abandoning nuclear power itself-which has tremendous benefits. “We need to put the Fukushima Daiichi events in the historic frame of nuclear accidents and analyze them. While there was huge loss to property and disruption of normal life, there was no direct loss of life due to the accident. As a silver lining, the way the accident was handled – compared to the Chernobyl disaster of 1986 – showed how much progress we have achieved in nuclear emergency management over a period of two and half decades. The Fukushima Daiichi plant was almost five times as big in terms of power generation and contained about nine times the nuclear fuel at the

time of the accident. Yet with better emergency management learnt over the years the maximum radiation was less than 0.4 percent of that released during the Chernobyl disaster”

Solar and Wind Energy

Another belief is that solar and wind energy can fill the requirements that would otherwise be filled by nuclear power. “There are today safe, affordable, renewable alternatives like wind and solar in to this dirty technology” . There is no doubt that we should increase our solar and wind power generation capacity. Unfortunately, in India’s present and future scenario, solar, wind and nuclear power are not replacements for each others. “The greenest sources of power are definitely solar and wind. But solar and wind power are not stable and are dependent excessively on weather and sunshine conditions.” Another thing is that, the potential of Hydro-Electricity power is mostly concentrated in Northern and North East India. The non conventional energy source like wind, wave, solar, geo-thermal energy etc are renewable and non polluting sources but we are far away from their cost effective utilization at the present state of available technology.

The Deal will strengthen India’s Nuclear Weapons program

This has been one of the strongest and most consistent criticisms of the nuclear pact by American analysts and critics that India’s fuel supply is limited and by allowing India fuel for its peaceful nuclear program, India will be able to divert its domestic reserves for the weapons program. The deal, claim the critics will help India to produce more nuclear weapons. As under the separation plan only 14 of India’s 22 nuclear power reactors will be safeguarded and even India will solely decide whether to place an indigenously built future nuclear reactor under civilian category or military ones. It is alleged by the critics that “India currently has a dwindling stockpile of uranium and does not produce enough fissile material to sustain and expand both its nuclear power and weapon programs. One of the most problematic consequences of the proposed deal is the risk that any nuclear fuel assistance from the United States and other members of the Nuclear Suppliers Group will free up India’s existing uranium for weapons use.” Unfortunately, neither argument holds any water. In his outstanding report ‘Atoms for War? U.S.-Indian Civilian Nuclear Cooperation and India's Nuclear Arsenal’ Ashley J. Tellis has critically analysed saying that India currently does not develop or enrich as much nuclear weapons grade fuel as it can and India’s indigenous reserves are sufficient enough for its nuclear weapons programme and will not be affected by the Indo-US nuclear deal.

It must be taken into consideration that India’s commitment to nuclear non-proliferating is not new. Pt. Nehru’s call in 1954 for a standstill to nuclear tests and then for a test ban began a process that eventually led to 1963 Partial test Ban Treaty. Nehru warned the world as far back 1957 not only of nuclear proliferation but also of its destructive nature. Unlike Pakistan which is proved proliferators of nuclear weapons technology, India never played such a dirty game in this regard and international community has accepted its credibility.

Though India has not bought a single reactor from the US so far due to bilateral differences over the Civil Liability for Nuclear Damage Act, there is no denying that the deal as C. Raja Mohan says has brought about broader transformation of the bilateral relationship over the last decade. The deal has caused several positive developments. The US has lifted many high technology trade sanctions imposed on India post-1974 as a result of India’s first nuclear test, and as a result of intensified commercial engagement, the US has emerged as the largest trading partner in goods and services. The last decade has also witnessed growing counter terrorism cooperation and intelligence sharing. President Obama’s high profile visit to India has resolved the differences over the Civil Liability issue

which may lead the deal to realize its full potentiality.

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5. Ibid P. 41
6. Shri Yashwant Sinha and Shri Arun Shourie, BJP's Reponse, Press Statement issued On Indo – US Nuclear Deal in S.K Pande ed , " Indo-US Nuclear Deal: A Reference Cooperation" (Delhi Union of Journalists and its Media centre 2007) P- 172
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18. Ibid P-165
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22. Ibid p-14

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25.THOMAS GRAHAM JR., LEONOR TOMERO, LEONARD WEISS "Think Again: U.S.-India Nuclear Deal"

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