

## **The Indo-US Nuclear Policy: Analyzing Continuity and Change in The Modi Era**

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### **Abstract**

Continuity is always a part of India's foreign policy and a change in government can only bring in certain nuances in the conduct of that policy. As exception, in regard to the Indo-US relations a lot of transformation and changes had occurred under the Modi regime. Nuclear policy does play a vital role in relation between both these states. After India's nuclear tests there were series of sanctions imposed upon India. But the Indo-US nuclear 2005 deal came out as an opportunity for India to have access to advanced nuclear technology. The Bush administration demonstrated a strong design to revitalize the relations with India but it lapsed during the first Obama Administration.

The Narendra Modi government has signaled greater self-confidence and pragmatism towards America over the last decade. The US President Mr. Barack Obama has not only endorsed the agreement entered into between Mr. Bush and Dr. Singh but also joined hands with Prime Minister Narendra Modi to complete the journey begun a decade ago by endorsing a mutually agreed misrepresent on India's civil nuclear liability law. In 2015, the leaders welcomed the understandings reached on civil nuclear liability and administrative arrangements for civil nuclear cooperation, and looked forward to US-built reactors contributing to India's energy security at the earliest.

The paper explores the continuity and change in the Indo US relations with special reference to the nuclear policy during the NDA government and analyze the factors that led US to take positive views of India's nuclear programme.

## **Introduction**

For over half a century, Indo-US relations had not been friendly. But the situation gradually changed in the post-Cold War era and signs of improved relations were visible in coming period. Both the governments began to extend bilateral cooperation in different areas, from industry to agriculture and space technology to nuclear energy but main emphasis was on civilian nuclear cooperation ( Jabeen 2011) There have been periods of marked improvement in the relationship which have been suddenly punctuated by periods of heightened dismay and mistrust. The pursuit of a more substantial strategic partnership between the two countries was still a specific feature. The delay in implementing the Indo-US civil nuclear deal was seen as reflective of policy drift in the relationship. However, with the formation of the BJP government and the Modi government in the span of two years have marked a remarkable change in the relations between the two countries. There are indication of serious efforts made from both the sides to clear away the divergences coming in the way of the commercial operationalisation of the deal. Even in the absence of commercial operationalisation, the nuclear deal between India and the USA still has the significance for having brought policymaking elites in the countries closer to each other in the first place. In building the emerging partnership between the two countries, the signing of the civilian nuclear agreement is often seen as a game changer. India's non-proliferation credentials were acknowledged, and the US administration began to see India as a solution to the nuclear proliferation issue, and not as a problem.

The nuclear deal and the associated dividends for India's energy security were important objectives in their own right. Equally, if not more important, were the negotiations that went into the process, and the length to which both the governments went to fulfil the requirements of the nuclear deal proved to be an exercise in confidence and trust building between the leaders and the bureaucracies of the two democracies, which suffer from inertia of their own. The pain staking maneuvering, both at the domestic and the international levels, that went into signing the deal, and bringing around all the members

of the Nuclear Suppliers' Group (NSG) to accede to the NSG-waiver for India, led to habits of cooperation between the two countries. Moreover, it emphasized the need to build domestic constituencies in both countries when it comes to taking the next steps in the evolving strategic partnership (Tourangbam 2015).

## **History**

The United States actively promoted nuclear energy cooperation with India from the mid-1950s, building nuclear power reactors (Tarapur), providing heavy water for the CIRUS research reactor, and allowing Indian scientists to study at U.S. nuclear laboratories. India US relationship (1947-1991), post-independent years which marked the first phase of Cold War (1947-1962) sparked an uneasy India-US relationship. This was because of Prime Minister Jawaharlal Nehru's refusal to join the American camp. To control Third World proliferation efforts, the United States proposed the Comprehensive Test Ban Treaty (CTBT) in 1994, which India refused to sign on grounds of nuclear discrimination. In May 1998, India and Pakistan tested their nuclear devices (Das 2012).

However, India refused to join the 1970 Nuclear Nonproliferation Treaty (NPT), arguing that it was discriminatory. The NPT defines a nuclear-weapon state as "one which has manufactured and exploded a nuclear weapon or other nuclear explosive device" prior to January 1, 1967. These states are China, France, Russia, the United Kingdom, and the United States. The treaty allows these states to retain their nuclear weapons, although they are also to pursue negotiations "in good faith" on nuclear disarmament by an unspecified date. All other parties to the NPT, are non-nuclear-weapon states (Kerr 2012).

Although India conducted a "peaceful" nuclear test in 1974 and tested nuclear weapons in 1998, it is not a recognized nuclear-weapon state<sup>1</sup>.

India and the US knew that there could be no real partnership without resolving differences on non-proliferation that had so severely poisoned the bilateral relations from the early 1970s. If India's nuclear test in May 1974 angered America and invited ever expanding atomic sanctions on India, the then Prime Minister Atal Bihari Vajpayee seemed to intensify the anger once again when he conducted five nuclear tests in May 1998 (Mohan 2015). In this

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<sup>1</sup> The final document from the 2000 Review Conference stated that India and Pakistan's 1998 tests "do not in any way confer a nuclear-weapon-State status or any special status whatsoever."

era, the US was diplomatically hostile to India, denying it economic aid and nuclear technology. It was also a time when India's economic development was restricted and slow. Despite the Indian nuclear tests in 1998, that adversely affected the post cold war transformation of these relations, subsequent dialogue somewhat mitigated the impact. A new era in Indo-US relations began with President Clinton's successful visit to India in March 2000 (Vijayalakshmi 2015). It showed that it now regarded India as an important factor in world affairs and that it accepted that the US was powerless to reverse India's nuclear advancement. The two countries pledged to deepen their partnership and later the same year the Indian Prime Minister Vajpayee visited Washington and issued a joint statement with President Clinton agreeing to co-operate on arms control, terrorism and Aids (Ninian 2011). Vajpayee's vision for restructuring India's relations with America and the advent of the Bush Administration in Washington in January 2001 provided the basis for exploring a new approach to the nuclear dispute. The visit of President Clinton to India in 1999 and the Next Steps in Strategic Partnership<sup>2</sup> which were announced during the Indian Prime Minister Atal Bihari Vajpayee's visit to the US in 2004 also laid the foundation for a dramatic upswing in Indo-US ties. In his 2004 statement, Vajpayee announced an agreement with the USA to expand cooperation in three specific areas: civilian nuclear activities, civilian space programmes, and high technology trade, with, in addition, an agreement to expand the dialogue on missile defense.

Manmohan Singh, who succeeded Vajpayee in May 2004, seemed to share his predecessor's passion for reinventing the American partnership. The real objective of the initiative was to end decades of alienation between the world's largest democracies and build a genuine strategic partnership (Mohan 2015). The new President, George W. Bush, in November 2001 agreed to expand co-operation on a wide range of issues including regional security, space and scientific matters, nuclear safety, and economics (Pant 2007).

India would figure prominently in the Bush administration's global strategic calculus was made clear by Condoleezza Rice in her Foreign Affairs article before the 2000 presidential elections, in which she argued that 'there is a strong tendency conceptually [in the US] to connect India with Pakistan and to think only of Kashmir or the nuclear

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<sup>2</sup> The Joint US-India Statement on 'Next Steps in Strategic Partnership' is available at <http://www.whitehouse.gov/news/releases/2004/01/20040112-1.html>, accessed 15 February 2007.

competition between the two states' (Rice 2000, 56). She made it clear that India has the potential to become a great power and US foreign policy would do well to take that into account. The Bush administration, from the very beginning, refused to look at India through the prism of non-proliferation and viewed India as a natural and strategic ally (Blackwill 2002).

## **Indo-US Nuclear Deal**

In July 2005, the US State Department announced the successful completion of the NSSP, and discussions moved to a higher political plane of forging a civil nuclear agreement. By 2005, the US had taken notice of Indian confidence on the world stage based on its fast economic growth rate and its nuclear and military power. On, 18 July 2005, our former Prime Minister, Manmohan Singh and former President of USA, George Bush, had signed a historic Joint Statement on future strategic partnership between the two countries that included economic, energy and strategic components. In the Joint Statement, USA not only recognized India as a state with advanced nuclear technology, but also committed to achieve full civil nuclear energy cooperation with India. The United States also stated its intention to work with friends and allies to adjust international regimes to enable full civil nuclear energy cooperation and trade with India, including but not limited to expeditious consideration of fuel supplies (Paul and Shankar 2007-08).

This decision signified 'the recognition of India's growing role in enhancing regional and global security and that international institutions are going to have to adapt to reflect India's central and growing role'<sup>3</sup>

The Joint Statement was followed by a formal Civil Nuclear Cooperation Agreement, signed by the same two dignitaries on 2 March 2006 in New Delhi (Ramamurthy 2016).

On 9 December 2006, Congress passed an amendment to a US law to allow the deal to go ahead and on 18 December 2006, President Bush signed into law a new Act referred to as the Henry J. Hyde United States–India Peaceful Atomic Energy Cooperation Act, 2006 which

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<sup>3</sup> 'Indo-US Joint Statement', 18 July 2005, available at [http://www.indianembassy.org/press\\_release/2005/July/21.htm](http://www.indianembassy.org/press_release/2005/July/21.htm).

establishes the legal framework of the proposed nuclear cooperation with India. The US and Indian authorities are currently negotiating the operational part of the cooperation on the basis of the new Act (Ntoubandi 2008).

Under the new civil nuclear agreement, India has agreed to separate its civilian and military programs and to put two-thirds of its existing reactors, and 65% of its generating power under international safeguards for verification. In return, United States will supply nuclear fuel and technology to India. This deal is very vital for India, because one of the great challenges of its fast-growing economy is the shortage of electricity. India has, therefore, perceived the agreement as a means of achieving its basic energy needs. By acquiring high technology from US will end India's feeling of isolation, and reduce its dependence Persian Gulf's oil and other oil-rich regions of the World. The main objective of USA is to support India's quest for Great Power Status in regional and global politics. More important, the deal signifies US desire and ambitions to get a reliable and trustworthy ally in order to accomplish its geo-political and strategic interests in Indian Ocean, Persian Gulf, and to counterweight the growing influence of China (US' principal economic adversary) in the region (Khan 2013).

The US showed a reversal in its position. Prime Minister Manmohan Singh conveyed that India "would take the same responsibilities on NSG and practices and acquire the same benefits and advantages as other leading countries with advanced nuclear technology, such as the United States" (Ibid). Both sides decided to take reciprocal steps to materialize their nuclear cooperation. India agreed to:

- identify and separate civilian and military nuclear facilities and programs in a phased manner and to file a declaration of civilian facilities with the International Atomic Energy Agency (IAEA) voluntarily placing civilian facilities under the IAEA safeguards;
- signing of an Additional Protocol for civilian facilities;
- continuation of its unilateral nuclear test moratorium;
- refraining from transferring enrichment and reprocessing technologies to states that do not have them, as well as to support global efforts to limit their spread;

- working with the US to conclude a Fissile Material Cut Off Treaty (FMCT); and working to secure nuclear materials and technology through comprehensive export control legislation and through harmonization and adherence to Missile Technology Control Regime (MTCR) and NSG guidelines (Albright and Basu).

This agreement removed thirty years old technological sanctions and provided multi-layered cooperation of powerful economy of the world. It also offered energy options in nuclear area and made it a viable source for Indian flourishing economy. The US amended its domestic laws and tried to accommodate India by persuading the members of the NSG to resume nuclear cooperation and trade with India (Jabeen & Ahmed 2011).

The US Congress passed in 2006 a India-specific act, the Hyde Act, modifying the requirements of the US Atomic Energy Act to permit civilian nuclear cooperation agreement with India. On 28 September 2008, the US House of Representatives formally passed the bill to approve the US–India Civil Nuclear Cooperation Agreement, often referred to as the Indo-US Nuclear Deal. India on its part started working on a separation plan that identifies facilities to be placed under safeguards (Ramamurthy 2015).

In the long run, the deal provides India with an opportunity to strengthen its nuclear weapons program by building higher capacity reactors and enhancing the targeting efficiency of its nuclear arsenals. Furthermore, the de-facto legitimacy also allows India to proceed with its controversial nuclear program under the cover of legitimacy. As a non-signatory to the NPT, India cannot have an access to nuclear plants and nuclear fuel and technology. Thus, India succeeded to convince the US to give more or less the same privileges that are enjoyed by signatories of the NPT. The deal further provided India with an opportunity to continue its nuclear testing moratorium, strengthen its nuclear arsenal's security, and continue its exceptional track record in non-proliferation. Thus, India will get the advantage of dual-use of nuclear technology, both know-how and equipments, which can provide India with enriched uranium to be used in its nuclear weapons program (Pan 2006).

The NSG, at the behest of the Bush Administration, agreed in September 2008 to exempt India from some of its export guidelines. That decision has effectively left decisions regarding nuclear commerce with India almost entirely up to individual governments. Since

the NSG decision, India has concluded numerous nuclear cooperation agreements with foreign suppliers. However, U.S. companies have not yet started nuclear trade with India and may be reluctant to do so if New Delhi does not resolve concerns regarding its policies on liability for nuclear reactor operators and suppliers. Taking a step to resolve such concerns, India signed the Convention on Supplementary Compensation for Nuclear Damage, which has not yet entered into force, October 27, 2010. However, many observers have argued that Indian nuclear liability legislation adopted in August 2010 is inconsistent with the Convention.

### **Civil Nuclear Liability Bill**

India's Civil Liability for Nuclear Damage (CLND) Act of 2010 appears to allow lawsuits to be brought against suppliers for nuclear reactor accidents, which the U.S. Government and U.S. companies, as well as many governments and companies around the world, regard as inconsistent with existing international norms particularly the Convention for Supplementary Compensation for Nuclear Damage – that channel liability to nuclear plant operators. Despite protests from foreign governments and reactor vendors as well as from Indian equipment suppliers, the Indian government reflecting domestic sensitivity over the 1984 Bhopal disaster, has refused to alter the liability law (S i d h u & E i n h o r n 2015).

India's unique nuclear liability laws of 2010 that talk of compensation in the event of nuclear accidents in a plant. As India is not self-sufficient in nuclear fuel and technology, it has to import them from outside. The universal practice is that in the event of an accident, it is the NPP that gives the compensation. No nuclear exporting country or firm undertakes the responsibility of safety, operations and maintenance of the NPP it has sold fuel and technology to. There has to be a national law or bilateral arrangement or international liability regime — such as the Vienna-based Convention on Supplementary Compensation (CSC) for Nuclear Damage or Paris Convention on Third Party Nuclear Liability in the Field of Nuclear Energy for the exporter and importer to manage liability in case any nuclear accident takes place affecting a third party or the country.

Based on this principle, India passed a Liability Act in Parliament in 2010 that places responsibility for any nuclear accident with the operator, as is standard internationally, and limits total liability to around \$450 million “or such higher amount that the Central

government may specify by notification”. Operator liability is capped at Rs 1,500 crore (\$285 million) or such higher amount that the Central government may notify, beyond which the Central government is liable. However, after compensation has been paid by the operator (or its insurers), clause 17(b) of the Indian Act allows the operator to have legal recourse to the supplier for up to eighty years after the plant starts up if in the opinion of an Indian court the “nuclear incident has resulted as a consequence of an act of supplier or his employee, which includes supply of equipment or material with patent or latent defects or sub-standard services”. This clause giving recourse to the supplier for an operational plant is contrary to international conventions and undermines the. Obviously, all potential nuclear suppliers to India were unhappy. They wanted the law to be suitably amended, even though the fact remains that the stringent provision of 17(b) was incorporated under the pressure of the BJP, then in Opposition. The then Opposition leader in Rajya Sabha Arun Jaitley was literally on a warpath for this stringent clause (Nanda 2016).

### **Continuity and Change: The Modi Era**

The rhetoric and the substance of the India-US strategic partnership was expanded during Prime Minister Narendra Modi’s visit to the USA in September 2014. The joint statement extolled the broad strategic and global partnership between the USA and India, with Prime Minister Modi emphasizing “the priority India accords to its partnership with the United States, a principal partner in the realization of India’s rise as a responsible, influential world power”. President Obama recognized that “India’s rise as a friend and partner is in the United States’ interest”. They endorsed the first “Vision Statement for the Strategic Partnership” as a guide to strengthen and deepen cooperation in every sector over the next ten years (Sibal 2015).

After Prime Minister Modi’s groundbreaking visit to the US in September 2014, the speed with which new initiatives were begun and old ones revived is remarkable (Bhattacharya 2015). The President Barack Obama and Prime Minister Narendra Modi announced during Obama’s visit to India that they had reached a “breakthrough understanding” on implementing the 2008 nuclear cooperation agreement between the two nations. The two leaders “welcomed the understandings reached on the issues of civil nuclear liability and administrative arrangements for civil nuclear cooperation, and looked forward to U.S.-built

nuclear reactors contributing to India's energy security at the earliest." Under the plan readied by state-run reinsurer General Insurance Corporation of India **GIC Re**, insurance would be bought by the companies contracted to build the nuclear reactors who would then recoup the cost by charging more for their services. Alternatively, the Nuclear Power Corporation of India (NPCIL) would take out insurance on behalf of these companies.

So, within a few months, President Obama and Prime Minister Modi held their first summit in Washington in September 2014. The two reportedly became close personal "friends." Addressing the issue of the stalled deal as a high priority, the two leaders announced issue. In their second summit a year later, they declared that a solution had been found through the creation of a state insurance pool to cover supplier liability the formation of a "contact group" to tackle, among other things, the nuclear liability. India also agreed to join the UN Convention on Supplementary Compensation for the Nuclear Damage, which will soon enter into force (Nanda 2016).

The Modi government has ratified the Convention on Supplementary Compensation for Nuclear damage (CSC) that the Manmohan Singh-led government had signed in 2010. The CSC, a free standing international nuclear liability regime, will give India access to international funding, beyond those available through national resources, to pay for damages in the event of a nuclear accident as per international practices. Nationally, the government has been working towards forming a nuclear insurance pool to cover the nuclear facilities (Nanda 2016).

One major challenge, however, that is pending is India's membership of the NSG (Nuclear Suppliers Group). This task is quite significant not only from the Indian perspective, but also the most contentious from the perspective of the non-proliferation community. New Delhi presented its application for membership to the NSG in May 2016. It came up for the consideration at the June 2016 NSG plenary meeting, but despite a majority of members being in favor of India's inclusion, the consensus-based decision making process was stymied largely by China (Sethi 2015).

Recently, India and the United States (US) said they have agreed to build six American nuclear power plants in India, in a boost to bilateral civil nuclear energy cooperation including the establishment of six US nuclear power plants in India.

Since 2014, India has actively pursued its goal of joining the NSG to establish itself as a norm-setter in the global nuclear order, instead of being a passive actor. Prime Minister Modi undertook numerous international visits to key stakeholders of the order to garner their political support to India's inclusion in the group. While countries like New Zealand, Austria and Turkey are yet to support India's entry to the group, the opposition has primarily been led by China. In the past five years, the Indian government has spent significant diplomatic capital in getting China on-board, but every effort is in vain.

### **Conclusion**

The recent successive summits have imparted confidence and optimism in the relationship. The policy articulation signals a greater convergence between India and the US on nuclear related issues, ranging from dealing with nuclear liability bill or membership of India in NSG. Global terrorism and piracy to addressing China's assertiveness. The nuclear pact is not an end in itself for either India or the US. It is about the need to evolve a strong strategic partnership between the world's biggest and most powerful democracies at a time when democracy promotion is at the centre piece of the US foreign policy agenda. To be sure, non-proliferation is an important goal for the US but by making India part of the global non-proliferation architecture the US will only be strengthening the broader regime. The US and India are both trying to adjust to the emerging new realities and the US-India nuclear deal is an attempt to craft a strategic partnership that can serve the interests of both states in the coming years. The US-India civilian nuclear cooperation agreement is just a first step towards a future realignment of global power.

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