

AVIATION LAW - AN OVERVIEW

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INTRODUCTION

Aviation law is the branch of law that governs the legalities and business aspects of flight and air transport, such as air traffic rights, aviation safety and security, economic regulations of airlines, and the operation of airports. It is one of the most complex branches of law and has become more complex after globalisation of economy. For smooth operation of aviation industry countries have signed various protocols under the umbrella of United Nations Organisation (UNO). International Civil Aviation Organization (ICAO), the International Air Transportation Association (IATA). ICAO deals with international laws pertaining to international air navigation, flight inspections, development of air transport standards, prevention of unlawful interference by member countries, and facilitate border-crossing and also regulates the procedures for air accident investigations whereas, IATA looks into business regulations among member countries. Federal Aviation Administration (FAA) of USA and the European Aviation Safety Association (EASA) in Europe are important world associations which make guiding principles for aviation industry.

Each member country formulates its own aviation laws and Acts based on guiding principles set by world bodies vis-a-vis changing needs of the country.

In India Domestic Air law have been formulated broadly in three fields covering all aspects of aviation industry. These are (a) Indian Air Craft Act 1934, (b) Anti Hijacking Act 1982 and (c) Carriage by Air Act 1972. These Acts had been amended several times since their inception to address the concurrent needs of the country.

Analysis of each Aviation Act of India is as under:-

INDIAN AIRCRAFT ACT

Indian Aircraft Act, 1934 was promulgated during British rule to serve the needs of British Empire. The act covered all the visible fields of that time including manufacturing, ownership, operations and other aligned activities. After attainment of Independence in 1947 Act has been amended several times to serve the interest of Independent India in pre-globalisation and post globalisation era to foster socio economic development of the country.

Indian Aircraft Act has 19 Sections. This Act is being implemented by Government of India (GOI) or the statutory bodies created under this Act.

Overview of Indian Aircraft Act

Section 1 and 2 of the act define jurisdiction of this Act, various definitions and its applicability on different entities associated with Aviation Industry in India.

Section 3 deals with exemption of different provisions of Indian Aircraft Act available to an Aircraft or an individual.

Section 4 & 4 A empowers GOI to make rules and regulations for implementation of International treaties and protocols for Safety of Aircraft and its operations. DGCA and other statutory bodies were formed under this section

Section 5 & 5A empower GOI to make rules and regulations for manufacturing, possession, use, operation, sale, import or export of any aircraft or class of aircraft and also for securing the safety of aircraft operation, it also includes the concept of tariff. Economic regulation of civil aviation, air transport services and associated tariff.

Section 6 empower GOI to make rules and regulations to overcome any emergency for smooth operations of aircraft and safety of general public

Section 7 empowers GOI to frame rules and regulations to carry out investigation of any accident in aviation industry.

Section 8A & 8B empowers GOI to frame rules and regulations to check public health by controlling spread of diseases through aircraft or any associated object. This section also empowers GOI to make rule and regulation for prevention of spread of disease in normal course or in any emergency. Section 8C empowers GOI to frame rules and regulations for dealing with un-identified object in the Aircraft or in the premises administered by Aviation ministry

Section 9 empowers GOI to empower to make rules and regulations to deal with wreck and salvage of Aircraft if these are not covered under Part 13 of Merchant Shipping act, 1958. Section 9A deals with framing rules and regulation for dealing with construction and plantations activities surrounding the Airport. Section 9B deals with compensations if any arising under section Section 9A and methodology for reimbursement of compensation. Section 9C and 9D deals with methodology for dealing with dispute under section 9A & 9B.

Section 10, 11,12, 13 deal with penalty provisions to deal with violations occurred under the act

Section 14 deals with procedure for framing rules and regulations under the Act and its procedure for placing in the house of parliament

Section 15 deals patented invention on aircraft not registered in India.

Section 16 deals with powers to apply customs procedure

Section 17, 18 and 19 deal with immunity clauses and its applicability

Review of Indian Aircraft Act

From the above it may be noted that the Indian Aircraft Act is full-fledged Act. It covers all the aspects required for smooth operations of Aviation industry in India. The Act was amended last in the year 2007 to address the socio-economic requirement of the time.

Since 2008 there had not been any significant policy decision to make aviation industry of the country to match with growing global requirement particularly in the field of tourism. Due to slow pace of changes in Indian Aviation laws, US Federal Aviation Administration has downsized it to Category 2 under US International Aviation Safety Assessment (IASA). This implies that India's safety oversight administration does not meet worldwide security norms. India is presently one of 16 nations appraised as Category 2, out of a sum of 88 that have been surveyed under IASA.

In the recent past there has been paralysis in the reforms process for future growth in the aviation industry vis-s-vis changing global economic order. This has led to slow down in this sector. For sustainably growth more reforms/guidelines are required to be drafted and introduced to bring it at par with the other jurisdictions.

The need of the hour to provide an impetus to the aviation sector could be in the form of a relaxation of tax rates and reduction in airport infrastructure charges, which will in turn go a long way in bettering the profitability of Indian air carriers.

New draft aviation policy, after implementation will give boost to aviation industry and make Indian aviation sector at par with US aviation laws.

Anti- hijacking act, 1982

Hijacking may be defined as seizing or exercising control of an aircraft, unlawfully, by force or threat of force or by any other way of intimidation on board an aircraft in flight. Indian Aircraft Act covered operational and regulatory provisions for operations of Aircraft, it does not have any specific provisions to deal with hijacking activity, hence Anti- hijacking act, 1982 was enacted to tide over any such eventuality. This act was based on international treaties and agreements signed by India in respect of such eventuality. India has been signatory of (a) Convention on Offences and Certain Other Acts Committed on Board Aircraft signed at Tokyo in 1963, (b) Convention for the Suppression of Unlawful Seizure of Aircraft, Hague signed in 1970, (c) Montreal 'Convention for the Suppression of Unlawful Acts against Safety of Civil

Aviation (Sabotage) signed in 1971 for tackling situations such as attack against a person on-board a civilian aircraft in flight or an attack which would endanger the aircraft.

India's Anti- hijacking act, 1982 has three chapters dealing with various provisions to overcome such situations.

Overview of Indian Anti- hijacking act, 1982

Chapter 1 deals with applicability, definitions and jurisdiction under this Act.

Chapter 2 has three sub-sections dealing with provisions for tackling hijacking activity, provisions for punishment, scope and nature of punishment, investigation procedure for carrying out hijacking incident

Chapter 3 has four sub- sections deal with provisions for extraditions, international convention, sanctions and immunity provisions.

Review of Indian Anti- hijacking act, 1982

Indian Anti- hijacking act, 1982 was enacted based on various conventions, agreements treaties and practical experience gained based on hijacking events. With passage of time and changing strategies and operational activities by hijackers change in the Act was necessitated. After the hijacking of Indian Airlines Flight IC-814 in December, 1999, it was felt necessary for providing the award of death penalty to perpetrators of the act of hijacking. The incident of 9/11, where aircrafts were used as weapons, also created the need to further amend the existing Act.

According to the anti-hijacking act, 1982 the hijacker would be punished with life imprisonment and fine. The need of the hour is to frame stringent law either through amendment of existing Act or through promulgation of new act. The Act should have the following:-

- To immobilize an airplane or keep its take-off

- Permit the Indian Air Force to scramble its warriors to capture a seized air ship and force it to land.
- A hostile plane could be shot down if there is confirmation that it could be utilized as a rocket to hit a vital establishment.
- Strict action to person associated in the act
- Death penalty to abettors and plotters conferring any demonstration characterized as capturing.

THE CARRIAGE BY AIR ACT, 1972

The liability limits of the air carrier's for damages occurred towards Indian citizens were governed mainly by Warsaw Convention, 1929 and subsequently by Hague Protocol, 1955 until 1972. Indian citizens were facing liability claim issues with the carriers. In order to overcome such eventualities, The Carriage by Air Act, 1972 was promulgated to deal with rights and liabilities of air carrier by incorporating provisions available under treaties and protocols in vogue. This Acts is applicable to all the citizens of India involved in either domestic or international carriage by air, irrespective of the place of registration of aircraft performing the carriage act. This Act has covered rules and regulations governing liability of the air carrier and extent of compensation for damages in international and national carriage. This Act has three schedules to deal with liability limits upto which a carrier is liable,

The Carriage by Air Act, 1972 has well laid procedure for quantifying the limit of damages for domestic as well as international carriers.

OVERVIEW OF THE CARRIAGE BY AIR ACT, 1972

Carrier liability in context to International civil aviation

From 1972 to 2009, India functioned under very low carrier liability regime as set forth in the provisions of the 1929 Warsaw Convention reflected in First Schedule to the Act and the Hague Protocol, 1955 carrier liability regime as reflected in Second Schedule to the Act. After

ratification of the Montreal Convention 1999 and amended of the carriage by Air Act, 1972, and the third Schedule to the Act as per Montreal convention 1999, Indian carrier liability in international civil aviation has been brought up to speed with international norms.

Land mark judgement in the field of compensation was *The Geetha Jethani v. Airport Authority of India and Ors*¹ In this case the judgement was as under

Quote

The Supreme Court upheld the order of the National Consumer Disputes Redressal Commission striking down provisions of section 33 AAI Act in terms of which the AAI was claiming protection from prosecution. The Supreme Court held that because AAI was collecting user fees from passengers, it came within the ambit of the CPA, thus making it liable to pay compensation to the complainants for the deficiency in service which had resulted in the death of Geetha Jethani. Second, in context to award of quantum of damages, the Court upheld the Consumer Commission that directed an amount as per First Schedule of 125,000 french francs consisting of 65.5 miligrams of gold of millesimal fineness of nine hundred converted into INR value to be paid to the decedent's family. Thus, section 6 of the Carriage by Air Act, 1972 that delinks the compensation payout from the gold standard and pegs it to the currency exchange rate applicable as on the date of payment was struck down by the Court. Finally, the significance of the decision also lies in the fact that the Court established the vicarious liability of AAI even though it was only one of the defendants to the suit; the complainants had filed the suit primarily against Air India.

Unquote

Carrier liability in context to domestic civil aviation:

Section 8 (1) and (2) of the Act entitles the Central Government, by notification in the official gazette to apply the rules contained in the First Schedule read with section 3, 5 or 6 and Second Schedule read with section 4, 5 and 6, respectively to carriage by air which is not international. Presently, the Act articulate a liability regime for air carrier performing domestic carriage by

¹ *Geetha Jethani v. Airport Authority of India and Ors* 2004 (3) CPJ 106 (National Consumer Disputes Redressal Commission).

air in terms of the quantum of damages payable to a claimant in the event of death of a passenger, or bodily injury or wound suffered by a passenger resulting in permanent disablement incapacitating him from engaging in or being occupied with his usual business or occupation vide Notification issued by the Ministry of Tourism and Civil Aviation, Government of India, S.O. 186(E), 20th January 1998

Thus compensation as on date is Rs. 7, 50,000 in the event of death or any bodily or wound suffered by a passenger which results in a permanent disablement incapacitating him from engaging in or being occupied with his usual duties or business or occupation for a person above the age of 12 years and Rs. 3, 75,000 if the passenger is below the age of 12 years on the date of accident.

In the event of wounding of a passenger or any bodily injury suffered by the passenger which results in a temporary disablement entirely preventing an injured passenger from attending to his usual duties or business or occupation, the liability of the carrier for each passenger shall be limited to a sum calculated at the rate of Rs.750 for every day during which the continues to be so disabled or a sum of Rs.1, 50,000, whichever is less.

Review of the Carriage by Air Act, 1972

With the 2009 amendment, the Carriage by Air Act, 1972 has been able to address the liability of carriers for International aviation and compensations are at par with world standards. This needs to be on routine basis and amount of compensations to be revised at regular interval for domestic passengers involved in domestic carriage by air through issuing appropriate notification in the Official Gazette