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# INTERNATIONAL PERSPECTIVE ON AIR AND SPACE LAWS IN INDIA

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## ABSTRACT

One of the critical components of Air and space laws is the evolution of international cooperation between states. As the nomenclature mandates cooperation between two countries geographically the response under changes in the economic and Social environment hampered global competition which persuaded the aviation and space policies to be more accountable and responsive to aerospace technology with synchronous efforts at a national level.

The principal difference between space law and Air law is that space law is not an extension of air law as the legal regimes governing air space and outer space is that air space above a states territory is subject to exclusive sovereignty of the respective state.

The need to emphasis the move on international cooperation has added significance in the present diplomatic and commercial transactions between international countries to succour the security, solidarity and integrity between nations strengthening bilateral and multilateral relationships which clearly envisaged twice in the preamble which states its added significance predominantly.

It is vivid to understand that it is vested as a legal obligations to ensure multilateral in space divisions which is fanned with augmenting nuclear weapons, space based nuclear missiles and to bring confidence and trust between nations.

The lack of economic stability was added tremendous heed when life was thrown out of gear during the wake of the pandemic, when Covid sprawled in the country, the move to take flights were under severe restriction which imposed economic and social deprivation on mobility which was ditched hit on the aircraft manufacturers, business man and stakeholders across the world.

The lack of financial strength was under dire straits and they took a toll on the debt payment obligations on the manufacturers or the owners declaring

to be bankrupt and insolvent with reduction in progression of human resources, manpower, material and machinery.

It was statistically estimated that Airlines were affected with 25% loss on economic and commercial losses and the entire saga went mired with confusions and skirmishes between peoples. The maxim corpus juris caeli which deals with the subject matter of air laws, usually air laws is a part and parcel of public international law and civil aviation it is governed by customary rules of international law but it is highly diversified but the regulation of aerial navigation and Paris convention was the prominent instrument which dealt with airspace sovereignty and Warsaw convention which focused on national product liabilities including carriages, goods and luggage's.

Rationalization of corporate travel, drop in commercial revenue, market distortions were some of the factors which lead to the constraints towards the loss of Equilibrium in airlines during Covid 19.

But certain enterprises such as MSMEs had a differential strategy to mitigating challenges during pandemic even with spatial heterogeneity they have gained better leverage on attaining a marketable position on global scales. They intelligently use their strategies to serve opportunities' even in economic dilemmas in spike of global deprivation.

US and china works amicably on diplomatic, civilian and maintains stellar bilateral relationships but the US legislation bars National aeronautic and space administration their trade relationship on Airline or military dealings.

It was mulled to toy an idea to introduce the European code of Conduct in 2008 which proponent to introduce security issues in airline and space but severe repercussions manifested tensions escalating the fraught Environment to face strong ripples of disapproval and mounting criticisms which claimed the code as non-binding and ineffective in revoking non-weaponizing space and air race in outer space. The idea was jettisoned with deadlock dashing excitement from the public in general.

### **Transparency on Air India loss during Covid 19**

Air India's debt of 2700 Crore imposed the government with extreme liability, we know that the sale of an asset is different from the sale of an enterprise the seller has an opportunity either to retain it within himself or transfer to Air India Asset holding ltd or a special purpose vehicle. The Sale on loss on Air India to the Tata group was a mixed controversy when the national asset was thrown for a price without any transparency.

India as a mixed economy, private participation is welcomed with applauses and cheers but government cannot make compromises on social obligations.

The role air India signifies today with repatriation of Indians during social interventions through wars and weapons need to be kept in mind.

According to Art 1 of the Indian constitution states A union of states and the idea of India as union lies with states which are owners of land and responsive to maintain infrastructure in the country.

Any disruption results in lack of mistrust between Union and sates. India as a free market is government with social ideology and welfare principles.

Air India asset transaction sale need examination in the light of National monetization Pipeline(NMP) when it is monetized via outright or even sale. When a sovereign undertakes private sale transactions apart from corporate private transactions they need be diligent they need to keep themselves aware on keeping checks and balances, selling regulatory and statutory approvals, authority from creditors or promoters and stakeholders. The key need to understand the urgency is to ensure financial institutions or organizations towards which the government is legally bound to repay debt obligations, banks dies not keep checks and balances either directly or indirectly to acknowledge or intimate their repayment deadline or settlements of transactions.

The legal framework for citizens India's space program me has a hierarchical structure and is headed by the Office of the Prime Minister, governing all operations and exercising control over India's space programmed through the Space Commission. By divesting the assets of Air India the government has stripped the assets and nationalized debts to be serviced by citizens.

The Space Commission is in charge of framing India's space policy; the Research and development in the space sector are primarily realized through the ISRO.

The primary aim of India's space program me is to 'harness space technology for national development, while pursuing space science research and planetary exploration'.

This is evident from the various programmer of the ISRO, which ensure that developments from activities in space can be used and made accessible to the Indian population. The Indian

National Centre for Ocean Information Services is used by fishermen in coastal parts of the country to determine areas rich for fishing.

### **ISRO RECOMMENDATIONS TO INTRODUCE NSIL 2019**

The commercialization of outer space, and it also acts as a point of contact between the private industry and the ISRO in relation to the transfer of technology. The New Space India Limited (NSIL), facilitate international collaboration as it can form a consortium with other commercial entities in the space industry. NSIL a public-sector enterprise that was incorporated as a commercial arm of the ISRO was established to commercially exploit the benefits of the research and development carried out by the ISRO, with the aim to move space activities from a supply-driven model to a demand-driven model. It mandated to own and operate satellites, develop launch vehicles, provide launch services and allow the transfer of technology to the Indian private space industry with the latest space technology so that the space industry as a whole can grow as an emerging market within the global space industry

### **Do we have regulations on Air and space laws? (Introduction of Space activities bill)**

The proposal of the government to introduce National Aviation plan in 2018 realizes the use of spectrum in India but the requirements to grant right to spectrum mandates completion of licensing and formalities from the wireless planning and coordination wing of ministry of communication.

It was evident to understand that, there were loopholes in regulatory uncertainty for commercial companies in the Indian space industry. Although the Indian government formulated different policies to provide regulatory guidance on various commercial space activities, the policies were in immediate need in order to bring a robust regulatory framework.

A recommendation on introducing **Space activities bill 2017** gave in a new outlook in dealing with draft policies on satellite navigation, space-based communication, technology transfer humans in space<sup>12</sup> for comments by various stakeholders and the general public since 2020.

### **Features of Space Activities Bill, 2017**

The application Of the SPAB is well comprehensive and covers all vessels, aircraft and airborne vehicles registered in India. Further, it also applies to space objects of 'Indian origin'

that are registered in the National registry of space objects, which is maintained by the Indian government.

### **Definition of commercial activities in the SPAB, 2017**

Section 2(a) of the Bill defines 'commercial space activity' as any activity that generates or is capable of generating profits. Thus, even if a space activity is not generating profit (e. g. , a scientific research mission for education purposes) but, in the opinion of the government, it can generate profit, such activity could theoretically be regarded as a commercial space activity.

Licensing criteria in regard to constitutional principles and penal provisions attracted for violations.

The space activities bill generates the formal requirements for commercial space activities to grant licensing to entities or operations in India. The factor that conceptualizes licensing is the need for insurance or financial guarantees. Granting licensing as a formal requirement to activate the commercial transactions is restrictive to public order, decency and morality, if it is evident to be known that the conduct of activities is likely to prejudice or travail the public in general considering their health and safety jeopardized or if the entity interferes to compromise Indian sovereignty, security and integrity license can be strictly prohibited.

Speaking about the liabilities under the SPAB It requires the licensee to indemnify the Indian government against any claim that is brought against the government in respect of any loss or damage arising out of the licensee's commercial space activity. If there is no limit to the licensee's liability, it could severely hamper the growth of the private space sector. If the amount of liability of the licensee is not fixed, it could lead to stalled participation by the private sector as this would create unlimited liability, leading to an uncompetitive regulatory environment.

### **Penal provisions attracted for illegal or unauthorized commercial activities**

If any person is involved in illegal commercial space activity, such person may face imprisonment for up to three years along with a fine, which cannot be less than 10 laths rupees.

The SPAB deals with legal actions for polluting the environment. Any person who causes damage or pollutes the environment of the Earth, airspace, outer space or other celestial bodies shall be punished with imprisonment, which may extend to three years. The polluter may also be required to pay a fine, which cannot be less than 10 Lakhs rupees.

The Bill imposes a fine in cases of contravention of any direction issued by the government. In such cases, the Bill proposes a minimum fine of 10 million rupees, which may extend up to 500 million rupees. Incidental to this punishment, publication or concealment of false information from the government which is likely to dupe the government furnished by a licensee, the Bill imposes one year's imprisonment.

The development of international air law began during the period of 1910 when German balloons flight over French territory with no authorized approval. The introduction of the Paris convention brought solution to space flight and flight regulation. The most attractive feature of this convention is its innocent passage to other countries aircraft and objectives to maintain solidarity, peace and integrity, the Paris conventions propagated the first flight between London and Paris. The concept of aerial navigation was initiated by Havana convention and Chicago convention. There was numerous criticism in air and space laws is the militarization of space and is flourishing exponentially with convention and the biggest challenges with respect to this dilemma is accumulation of space debris and compensation is paid for kind of destruction caused by country's space debris but they did not mention the quantum of compensation.

The concept of air and space laws reveals certain rules, principles and standard with 5 principles of UN. It mitigate matters concerning space and earth environment it reassures astronauts and share information regarding danger in space, freedom of use and space materials indiscriminately.

The concept about air navigation and matters concerning extradition provided that offense is deemed as extraditable which have an effect of considering Aircraft hijacking which is a national criminal matter. The principle for air laws deals with air transport, rules that govern aerospace, for aviation benefits for general public and nation. The concept of brining space legislations is to ensure benefits and advantages for maintenance of peace and international solidarity. Space exploitation was in rise by stressed, militarization of space natural resources.

The evolution of international space laws is that first artificial satellite named as sputnik I launched by soviet union where it aimed to get harmonious and conflict free outer space.

The conflict between bilateral relationship between India and Japan signed their bilateral agreement on air and space law transactions they ignited the concept in satellite navigation, space industry and promotion, Japan was at injustice due to several drawbacks in conventions and China, Russia and India did not have a robust foundation to address domestic and legislative pressures.

Russia and USA have been in great achievements in terms of technology, military dominance, which was seen as an outcome of international solidarity, integrity and prosperity in promoting Air and space. Recently India and US have signed into a bilateral agreement for space situational awareness arrangement, adding a new dimension to the growing defense relationship between the two countries. US and India extended their cooperation in sharing partnership which takes a decisive turn in building new defense space exchanges to bring out technological innovation and cooperation.

The maxim embodied in *cujus est solum ejus est usque ad coleum et ad infernos* which states that he who owns the land owns what is above and below it. The maximum is well accepted by napoleon code accepted by Swiss and German civil code that adopted a functional approach to the right on the owner to use height and such as depth for his enjoyment of land.

Prime Minister Narendra Modi has been apprised of the agreement between India and Algeria on Cooperation in the field of Space Sciences, Technologies and Applications. The Agreement shall enable bilateral enhancement between nations to promote space science, technology and applications including remote sensing of the earth; satellite communication and satellite based navigation; Space science and planetary exploration, spacecraft and space systems and ground system; and application of space technology.

The principle of airspace sovereignty is the basis of upholding Chicago convention accordingly the international civil aviation organization stated each state has total and exclusive sovereignty over air space. The principle of *res nullius* and *res communis* questions sovergenity in outer space.

It is evident to note that the involvement in terrorism by aircrafts the Hijack policy when government brought the approval of the cabinet committee on security and the introduction of anti hijack policy in 2005 when the aircraft hijack on India and foreign aircraft, if an Indian aircraft was hijacked it will forced to land in India and prevented from taking off. The discretion of taking decision regarding involvement of aircraft in antiterrorist activities shoot the aircraft apex body and minister of IAF ministry of defense empowerment to take decision

The principle of *aut dedere aut judicare* which provides the state liability to prosecute an aircraft hijacker hijacking of civil aircraft.

Evolution of air and space laws the history of aviation and space arrived as competition challenge in July 1909, the monsieur Bleriot crossed English channel and was first to dover England.

The professor Daniel goeshes was appointed to teach air laws leieden university his teaching gained academic attention first satellite sputnik in outerspace by USSR momentum in field of study. Permission to fly aircrafts in territorial waters covered by sovereignty mandate protection aircraft in international space must have nationality and registration marks. As hijacking means seizing aircraft for unlawful activities the crimes rates have augmented to 1960 to 1970. In order to eradicate aircraft hijacking by hague hijacking of civil aircraft.

If the aircrafts needs to cross borders then need permission from state authorities if it is a civil aircrafts or from the president of civil aviation militarily operational commander. Under aircraft sovereignty every country can hold protect and regulate air space they can safeguard international airspace like the pacific ocean needs international approval.

Space law synchronizes government and private organizations in outer space. Air Law is a part of public international law which needs to attest economic interest of nations. The concept of the *corpus juris* is concerned with civil aviation it existence in the form of international convention agreement supplied by customary rules of international law subject law. Air law in depth study convention relating to regulation of aerial navigation, the invention of Paris convention the first international instrument which deal with sovereignty over airspace.

Article 17 of the Chicago convention states that an aircraft must have a nationality of the state where it is registered. According to art 18 of the Chicago convention, an aircraft cannot be

registered more than in one state. The Chicago convention regulates international civil aviation organization which states each state has a total and exclusive sovereignty.

The airport noise and capacity act 1990 maintain a sustainable environment to address matters concerning domestic policies to prevent air pollution. no specific legislation to control aviation pollution the environment protection act, 1986 limited.

### **Case laws:**

India vs Pakistan; the court of the international court of justice held that International civil aviation organization dealt with cases of branch of convention.

The Hague hijacking convention prohibited and punish aircraft hijacking of civil aircraft. Aut Dedere aut judicare state can prosecute an aircraft hijacker if no state request extradition of hijacker for persecution of crimes.

The United Kingdom vs Albania called as Corfu channel case put by principle by international court of justice the misappropriate use of force against civil aircraft,

Manyasad vs Stison aircraft the case law focuses on product liability of manufacture processor, non-manufacturer seller for injury to a third party for the product sold was put forward by the house of lords. As the Montreal convention deals with issue of compensation by accident during international carriage.

Compensation for air crashes and accidents a. direct correlation between the injury and operation of the vehicle. must be well established. The res nullius and res communis questioned sovereignty in outer space. The commercialization and militarization of space brought benefit such as satellite navigation, space tourism

### **India and Japan air space agreements**

The former prime minister of Japan Shinzo Abe was a man of caliber who was well engaging, assertive and committed to maintaining diplomatic relationship between India and Japan for bilateral connectivity, an open sky agreement between India and Japan which allowed carriers to mount now an unlimited number of flights to the selected cities of each other's countries

which was an outcome of national civil aviation policy. He was a person with an excellent commitment to maintaining a stellar bilateral relationship between Japan and India.

India signed open sky agreements among other countries. The agreement will not only encourage connectivity and passenger travel between the two countries, but will also result in a reduction in airfares on these routes. Japan's commitment was to work in coordination to the rule of law with a resolution to remove dispute by complying with provisions of international law. The progression in security and defense policies by joining as a global partner by promoting amicable relationships with zero threats, and force without altering the status quo of the affairs of the nations.

### **India and Pakistan air space agreements**

India and Pakistan signed their air space agreements on 6<sup>th</sup> April 1991 which aimed to prevent airspace exploration and the aim was to attain military and commercial objectives. Indigo which is India's domestic airline couldn't fly its first flight from Delhi to Istanbul as due to the shutdown of Pakistan airspace, which caused greater loss to Indian flights and aircraft.

### **India and China airspace agreements**

India and China signed an airspace agreement to avoid airspace violations through the line of actual control, India and china decided to maintain peace, tranquillity along the line of actual control in the border area of 1996 and to build measures to understand airspace issues between each other. There have been different rounds of military talks to discuss the threat of airspace violation and the breach of the 1996 agreement and to discuss the dedicated talks on air violations which escalated tensions and repercussions across the state. The provocative behaviour by Chinese fighters flying close to the line of actual control maintained talks with a high level of confidentiality, and secrecy in order to maintain solidarity and maintaining harmonious connections for future generations.

The operation of flight aircraft and armed helicopters was restricted to the line of actual control. the confidence building measure on neither side shall force or threaten or use force against each other. Both sides must read with conciliation and too with courtesy

### **Airspace agreement between USA and India**

The USA and India entered into an agreement to promote international air transport opportunities and intended to bring out international air transportation, bring out matters concerning threat to jeopardizing safety and property.

### **Airspace between India and Russia**

When Russian authorities started refraining Air India from flying over their territory it was found that both airlines were misusing their flight right than permitted considering the bilateral agreement. India argue and contradicted that the Russians misused the flights by violating the line of actual control.

### **International case laws concerning air laws**

The Cleveland vs piper aircraft the case discussed the principle of public international law which discussed the states liability with respect to flight of aircrafts and machinery.

#### **The Sunbird Airspace Vs Beech Aircraft Corporation**

The duty of the common law which raised a cause of action against the manufacture to ensure the fitness of the pilot before air flight. The provisions of the federal aviation act did not bring solutions to the existing dilemma

#### **The Margolis vs U Airlines**

The plaintiff influenced by falling overhead luggage causing personal injury with state guidelines regarding the airline fare advertising were exempted by s. 1305 of the airline deregulation act.

#### **The Heller vs Delta Airlines**

The US district court decided the issue of federal exemption of the personal injuries claims from overhead compartments. A states negligence claim for personal injuries due to baggage falling upon head of passenger was too remote trifling and subject to federal preemption.

The Morales vs Transworld Airlines The plaintiff filed suit for compensation due to denied

bonding and overbooking, the matters concerning booking reservations and tickets etc.

### Belgaurd Vs United Airlines

The issue of federal presumption of state laws relating to employment practice involving discrimination against handicapped persons prohibition of aircraft flight for employee who underwent myopia.

### **French vs Panam Express**

The decision is involving a state regulation against racial discrimination not enforced by state. The physical handicapped very concept of handicapped damaged recordable firm convention.

The national law ships and aircraft is a part of territory of state the nationality the failure of states to extent their criminal laws to their aircraft outside national territory was a problem. The convention gives the aircraft commander power to ensure law and order an board his aircraft and to disembark any offender in contracting state in which aircraft lands.

In bayard case the awarding of damages as compensation it was held that aircraft can be allowed to flyover private properties in accordance with aeronautical regulation. this applies to mere passage of aircraft and do not exceed to damage to use and enjoying the land.

### **CONCLUSION**

The space sector in India was predominantly owned and controlled by the government. However, with the entry of the commercial private sector into the space industry, companies can now reach out to the global finance industry for funding, and in future, we might see the growth of the spacecraft or space equipment-leasing industry. A critical aspect of the space sector that deserves significant attention is private space financing. Therefore, it is important for the Indian government to have a regulatory framework to foresee unprecedented crisis in wake of today's global fluctuations and economic demands. The future of air and space law is a result of technology advancement with a new scientific discovery there is new conceptual ideas on interpreting the traditional knowledge and legal concept in the modern world.