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LEGAL FRAMEWORK, CHALLENGES AND CONSTITUTIONAL IMPLICATIONS IN AVIATION

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ABSTRACT

This research provides a whole picture of the legal framework that governs aviation, emerging challenges in unruly passengers and also the constitutional implications arising within Indian Aviation context. Aviation legal structure includes international agreements such as Warsaw Convention, Hague Convention, Chicago Convention, Montreal Convention and Cape Town Convention, and bilateral treaties that regulate air transport services. Also, paper points out need for zero-tolerance policy towards unruly passengers in line with ICAO's standards and guidance on prevention and de-escalation of incidents. Nevertheless, implementation of these regulations pose constitutional concerns under Article 21 of Indian Constitution which guarantees right to life and personal liberty including freedom of movement. The paper depicts these constitutional issues through cases like Kunal Kamra v. IndiGo which articulate that even though aviation law tries to prohibit unruly passenger conduct, it must at least adhere to constitutional precepts. Therefore, strict rules against disruptive passengers must be balanced by inherent human rights in Indian aviation field. Moreover, this paper states that the continuous transformation of aviation law which results from the economic, social and political changes as well as increasing incidents of unruly passenger behavior calls for a multi-stakeholder approach with regard to tackling these intricate legal and regulatory issues.

KEYWORDS

Aviation Law, Constitutional Challenges, Global Legal Framework, Indian Aviation, International Treaties, Legal Regulations, Unruly Passengers, Air Transport Services, Chicago Convention, Montreal Convention

INTRODUCTION

Every nation's transportation and economic growth depend on its aviation sector. India, as a developing nation that is on the path to becoming a global economy, has a transport industry that is rapidly growing. The liberalisation of the air industry in India has enabled the growth of domestic and foreign air carriers. The

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development schemes and their execution depend largely on the efficient transport and communication sources available in the country. India is the seventh largest country in terms of geographical area which stands at 3.27 million square kilometers¹ and also happens to be the most populous country on earth²; this fact has resulted into diverse social customs, cultures, languages and geographical environments. The Indian Aviation Law studies enable one to have a grasp on various legal aspects pertaining to aviation industry that may help any stakeholder in air transport sector.

The entire air travel domain including cargo and passenger transportation, recreational flying and airspace protocol are considered under a country's aviation law. In India both military aviation and civil aviation have shown significant increase in their operations over time. At present, India's domestic civil airline market ranks third worldwide; however there are a number of challenges that face this industry. During 2022-23 passenger traffic in India rose by 16.52 percent to reach 308.75 million.³ Domestic passenger traffic increased by approximately 18.28 percent to reach 293 million in 2022-23 and is expected to increase to 342 million during FY24.⁴ International passengers registered a rise of 10.43 percent, reaching about 76 million in 2022-23, and estimated to surge up to 89 million during FY24. These numbers demonstrate how much civil aviation services are demanded by people in India and how paramount it is for India to have strong aviation laws together with a very strict military aviation system also being necessary in today's world. 2023 is likely to be a significant one for the aviation sector. It will see some key milestones and developments taking place therein.

EVOLUTION OF THE AVIATION SECTOR IN INDIA

The political, economic and social growth of India has been shaped primarily by transportation and communication challenges throughout its history. The economic prospects for aviation in India were not realized during the colonial period. Monseigneur Piguet, a French pilot achieved the first commercial flight in India on February 18th, 1911, from Allahabad to Naini Junction, covering a distance of ten kilometers in thirteen minutes. The next Indian flight that was launched was from Delhi to Karachi in 1912. On September 19th 1927 "Royal Aero Club of India & Burma Ltd" opened as the first flying school in India with an aim of promoting air sports and providing training for commercial aviation. In this manner some members started off "Delhi Flying Club" in May 1928 which eventually expanded into areas such as Karachi, Allahabad, Bombay and Calcutta. The first international passenger flight to India was started by Imperial Airways, a British company, from London to Karachi in 1929. It issued its initial license (also the country's first commercial license) on February 10th 1929 to Mr. JRD Tata; often referred to as 'Father of Indian Aviation'. JRD Tata set up the first licensed commercial airline in India. It flew from Mumbai and it was the first carrier to operate a

¹ Govt. of India. India: Pocket Book of Economic Information, 5th Ed. (Government of India, Ministry of Finance, Department of Economic Affairs: India, 1965) 16.

² United Nations Department of Economic and Social Affairs Policy Brief No. 153: *India overtakes China as the world's most populous country*.

³ NDTV, "NDTV explainer: The Challenges India's Aviation Industry Is Facing," retrieved from <<https://www.ndtv.com/india-news/ndtv-explainer-the-challenges-indias-aviation-industry-is-facing-4543020>> visited on 05.11.2023 at 07:00 p.m.

⁴ Forum Gandhi, "Skill deficit evident in Indian aviation sector, says Mahanta of TeamLease," retrieved from <<https://www.thehindubusinessline.com/economy/logistics/skill-deficit-evident-in-indian-aviation-sector-mahanta-of-teamlease/article67485911.ece>> visited on 05.11.2023 at 07:00 p.m.

flight carrying both mail and passengers across the country with JRD Tata himself flying on its inaugural flight. The first Indian airline was the Tata Airlines. In 1932, India saw its maiden domestic flight from Bombay to Trivandrum. For its initial year of operation, Tata Airlines flew a total distance of 2.5 lakh kilometers. As such, in 1946 it changed its name to Air India.

After India gained independence in 1948, Air India operated its first international flight from Bombay to London as a weekly service, under the name of 'Malabar Princess'. In 1953, the Indian Government acquired 49% of the company and fully nationalized Air India. Indian Airlines was created for the domestic sector and Air India was assigned to the international sector. These airlines were both owned by the state.⁵ After JRD Tata took over as the Chairman of Air India, it became one of the finest airlines worldwide. It was the first airline at a global level to enter 'Jet Era' in 1960. He continued to be at the helm of Air India until 1977 when he retired officially. Both airlines had a monopoly over Indian aviation for almost four decades.

The new era of aviation industry began in the 1990s, after liberalization of the economy. On the other hand, this was a period when private airlines began operating in India. In this regard, GoAir, IndiGo, AirAsia and SpiceJet among others were established as low-cost carriers operating both locally and globally. As airport infrastructure continues to develop at a high pace, the number of air carriers is expected to increase even more than it is currently projected.⁶ Similarly, liberalization policies have in turn led to greater private investments and enhanced aviation growth. Additionally, India's tourism and business travel sectors have experienced rapid expansion leading to the growth of Indian aviation sector. India's aviation sector constitutes a key element for its developing economy; moreover, it is also anticipated that it will keep growing increasingly with time. Nevertheless, there are still several setbacks that this industry undergoes including poor infrastructure development, high fuel costs plus regulatory bottlenecks. These can only be solved through joint efforts between all stakeholders in the industry.

LEGAL FRAMEWORK AND INSTITUTIONS OF AVIATION

Development of aviation law is driven by the increasing interconnection of people across the seas, the air and the outer space, as well as by the phenomenon of globalization. Aviation law is defined as those laws which are made to control and govern aircrafts alongside airports. The aviation sector continues to evolve and this means that many aspects of aviation law have to be taken into consideration such as air traffic control, pilot certification and training, accidents and incidents liability among others like aircraft design and maintenance. Civil aviation plays a significant role for India though out our world it is an important mode of transportation. Therefore, aviation law is essential for shaping the social and economic life and the public order of India and the international community.⁷ The scope of aviation law covers the air travel, including the carriage of goods

⁵ Dr. K.C. Khurana. *Aviation Management: Global Perspectives* (Global India Publications: New Delhi, 2009) 296.

⁶ Justin, "Aviation in India: History," retrieved from <<https://indiaairports.com/history/aviation-in-india/>> visited on 28.10.2023 at 12:10 p.m.

⁷ Prime Legal, "Regulation of Domestic Aviation in India," retrieved from <<https://primelegal.in/2023/07/30/title-regulation-of-domestic-aviation-in-india/>> visited on 28.10.2023 at 01:00 p.m.

and passengers, recreational flying, and airspace management. There are two sectors within the aviation industry:

1. **Military Aviation:** All the aircraft that are flown by air force and other branches of the military. Its use does not extend to commercial purposes.
2. **Civil Aviation:** This falls into two categories:
 - a) Domestic flights, which transport passengers within the same country.
 - b) International flights, which move from one country to another.⁸

AN OVERVIEW OF THE MINISTRY OF CIVIL AVIATION AND ITS REGULATORY BODIES: LEGAL AND POLICY IMPLICATIONS

MCA⁹ is the apex body for civil aviation development and control in India. It oversees the Aircraft Act, 1934, the Aircraft Rules, 1937 and other allied laws relating to aviation. The ministries further control several attached or autonomous bodies such as Commission of Railway Safety which ensures safety of rail travel and operations under Railways Act, 1989.¹⁰

In India there are three regulators under MCA namely Directorate General of Civil Aviation (DGCA), Airports Authority of India (AAI) and Aircraft Accident Investigation Bureau (AAIB).

- i. **Regulatory role:** DGCA is India's main regulatory body for civil aviation. It requires airlines to meet safety and security standards and to provide fair treatment to its customers. Additionally, DGCA also regulates pilot issuance and certification; aircraft maintenance engineering; aircraft design – manufacture – maintenance oversight.
- ii. **Air Traffic Management:** AAI is engaged in air traffic management in India including procedures for developing air traffic rules and regulations using navigation aids such as radar and GPS aiding safe movement of aircraft.
- iii. **Investigation:** Investigation and determining of accidents and incidents' causes and liabilities involving Indian civil aircrafts are AAIB's responsibilities. Recommendations as well as findings are published by AAIB too. While promoting aviation industry's economic growth, safety and security, the Air Transport Agreement Act, 2020 enacted by the government regulates and develops air transport services.¹¹

DOMESTIC AVIATION AND LEGAL FRAMEWORK

Aviation sector in India is undergoing a remarkable transformation. Various factors such as low cost airlines, FDI¹², modern airports, regional connectivity and application of Information Technology have led to a great transformation in the Indian aviation sector. These changes mean that there must be safe and efficient operation

⁸ Libertatom Magazine, "An overview of the various aviation laws in India," retrieved from <<https://libertatem.in/articles/an-overview-of-the-various-aviation-laws-in-india/>> visited on 28.10.2023 at 02:30 p.m.

⁹ The Ministry of Civil Aviation.

¹⁰ Ministry of Civil Aviation, retrieved from <<https://www.civilaviation.gov.in/>> visited on 28.10.2023 at 07:50 p.m.

¹¹ Chandockrohit, "Impact of Aviation Laws," retrieved from <<https://www.legalserviceindia.com/legal/article-10111-impact-of-aviation-laws.html>> visited on 28.20.2023 at 3:10 p.m.

¹² Foreign Direct Investment.

of domestic and international flights and airports in India which are regulated by various legislations on air law. The aviation legal framework in India is guided by the following legislations:

I. The Indian Airships Act, 1911

The first law introduced in India regarding air navigation was this Act. It was aimed at regulating the ownership, manufacture, importation and exportation of aircrafts. However, this Act did not meet the requirements under the International Convention for the Regulation of Aerial Navigation which was ratified in 1919. Consequently, the Aircraft Act, 1934 was enacted.¹³

II. The Aircraft Act, 1934

This statute was enacted with a view to altering completely the existing legal framework governing aviation industry in India. Some rules were put in place under it to ensure proper regulation and security of aerial navigation systems. This also included maintenance, construction and operation of airports like Greenfield airports etc. The objective behind this act is to provide better provisions for controlling, manufacturing, possession, use, operation, sale, importation or exportation of any kind of aircraft.

III. The Air Corporations Act, 1953

This legislation provided for creation and control over public sector undertakings dealing with civil aviation as a whole. This thus granted exclusivity rights on domestic scheduled routes to Indian Airlines with no other operator allowed on such route.

IV. The Carriage By Air Act, 1972

This Act was enacted to implement the Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air. It also regulated the rights and liabilities of the passengers, air carriers, and parties to air carriage. It also complied with the amendment made to the Warsaw Convention.

V. The Airport Authority of India Act, 1994 and Rules

The act established an authority for management of airport infrastructure. By the provisions of this act AAI¹⁴ came into force. It is a regulatory body in India responsible for administration, management and development of airports, aeronautical and telecommunications stations serving civil aviation. AAI has various statutory functions. It manages airports, civil enclaves, evicts unauthorized occupants from airport premises, provides air traffic services and air navigation services at an airport.

VI. The Aircraft (Carriage of Dangerous Goods) Rules, 2003

These rules regulate the transport of dangerous substances by air. These regulations control air transportation of explosive materials and radioactive elements. They also allow for shippers of dangerous goods, operators, ground handling agencies, freight forwarders to develop training programs and agencies responsible for screening passengers and cargo baggage.

¹³ Akash Rajiv, "Aircraft Act 1934: History, Purpose, Objectives and Case Laws," retrieved from <https://www-lawyersclubindia-com.cdn.ampproject.org/v/s/www-lawyersclubindia-com/amp/articles/aircraft-act-1934-history-purpose-objectives-and-case-laws-15014.asp?amp_gsa=1&_js_v=a9&usqp=mq331AQIUAKwASCAAGM%3D#amp_tf=From%20%251%24s&aoh=16984215523871&referrer=https%3A%2F%2Fwww.google.com&share=https%3A%2F%2Fwww-lawyersclubindia-com%2Farticles%2Faircraft-act-1934-history-purpose-objectives-and-case-laws-15014.asp> visited on 28.10.2023 at 01:20 p.m.

¹⁴ Airport Authority of India.

VII. The Director General of Civil Aviation Act, 2011

This legislation creates the regulatory authority DGCA to oversee civil aviation sector in India. The Act gives DGCA powers to grant licenses, certificates, permits clearances, and authorizations necessary for various activities related with civil aviation. It also specifies its functions including adherence to international standards and conventions; encourage safety as well as efficiency in air transport; investigating any matter connected with civil aviation.

VIII. The Aircraft Accidents Investigation Bureau (AAIB) Act, 2017

This law establishes AAIB¹⁵ as a state agency. It has an oversight over liability investigations following any incident or accident involving a civil aircraft in India. It is setting out the qualifications, pay, powers and duties of Director and other officers of the AAIB. The act provides for the procedure and manner of investigation, reporting on and publication of findings and recommendations by AAIB. It also provides for the cooperation and coordination with other authorities and agencies in relation to the investigation of aircraft accidents.

IX. The Airports Economic Regulatory Authority of India Act, 2008

This Act establishes AERA¹⁶ as the regulatory body for the regulation of tariffs and charges for the various services rendered by airports in India. The tribunal established by it on appeal from AERA's orders resolves conflicts resulting from those orders. It also gives details regarding composition, qualifications, appointment and functions of AERA as well as appellate tribunal. It also lays down factors & principles to be kept in mind while calculating tariffs & rates for airports by AERA. This provision provides that performance standards for airports shall be monitored & enforced & interests of users & service providers shall be protected.

X. The Anti Hijacking Act, 2016

This law is aimed at implementing the Hague Hijacking Convention which suppresses unlawful seizure of aircraft and the 2010 Beijing Protocol on the same. It defines hijacking as well as what constitutes this crime. Additionally this law punishes not only those people who have actually committed their offences but also those who pretend to be involved in it, thereby scaring others. In this regards, it provides for death sentence or life imprisonment if someone commits or tries to commit a hijack. The act further outlines how jurisdiction should be exercised, offenders investigated, prosecuted and extradited.

XI. The Air Transport Agreement Act, 2020

It promotes safety, security and economic growth of air transport in India by regulating the air transport services that are provided within and outside India. This guarantees that there is Central Government authority to support bilateral or multilateral agreements on air transportation with other countries or international organizations for facilitation of air travel between India and other nations. Moreover, it provides for effecting such agreements as well as resolving any disputes arising from them. It also offers

¹⁵ Aircraft Accidents Investigation Bureau.

¹⁶ Airports Economic Regulatory Authority of India.

mechanisms for safeguarding the rights and interests of passengers, airlines etc., engaged in provision of aviation services both locally through domestic carriers and foreign through international ones like Emirates Airlines.

SIGNIFICANT JUDICIAL PRECEDENTS IN INDIAN AVIATION LAW

The “Air Deccan” 2007 case: Air Deccan was an Indian regional airline which started in 2003 and closed on 2008. It offered tickets at one rupee to three million Indians. But financial difficulties faced by Air Deccan were as a result of high costs of operation. In 2007, Capt. Gopinath sold his company to Kingfisher Airlines owned by Vijay Mallya who re-instated the name Kingfisher Red for Air Deccan. DGCA cancelled Air Deccan’s operating license for safety violations. This case revealed the problems of safety oversight and regulation in the Indian aviation industry.

The “Air India Express” 2010 case¹⁷: Air India Express Flight 812 was a scheduled international flight from Dubai International Airport to Mangalore International Airport. On 22 May 2010, the flight crashed during landing at Mangalore after captain performed an unstabilized approach despite three calls from first officer to initiate “go around”. Of the, 166 passengers and crew on board, only eight survived while others perished. This accident brought up the topic of airlines’ responsibility in case aircraft crash accidents occur. The court opined that the airline was not only answerable for paying compensations to the families of victims but also provided framework to be used in quantifying such compensations.

The IndiGo Airlines v. Indian Oil Corporation Ltd. 2018 case¹⁸: A certain disagreement between IndiGo Airlines and Indian Oil Corporation regarding Aviation Turbine Fuel (ATF) prices is what this particular case entailed. IndiGo Airlines sued IOC for overcharging it on ATF. It was an important case that pointed out high fuel costs and their consequences on India’s aviation sector.

Nee Ghose v National Aviation Company of India Ltd. case¹⁹: In this case, the appellant was an airhostess who was formerly a cabin crew for the respondent company but later became permanent. She was put out of service due to her excess weight in September 1997. The writ petition impugns the termination of her service. The court found that the order of termination was against the principles of natural justice. It is worth noting that the problem was not really about her weight but, according to her; she had been suffering from “phobic anxiety syndrome in relation to flying.” Hence, whether or not these facts were enough reason for the maintainability of the writ petition and legality issues connected therewith became a point in contention here. In conclusion, it can be observed that this writ petition is maintainable as per law and moreover there is violation of Articles 21 and 14 of Indian Constitution by such action. As a result, since it lacks legal validity, the termination order has been invalidated and set aside.

¹⁷ S. Abdul Salam vs Union of India, WP(C). No. 32550 of 2010.

¹⁸ M/S Indian Oil Corporation vs M/S NEPC India Ltd., & Ors., Appeal (Crl.) 834 of 2002.

¹⁹ Smt. Nipa Dhar (Nee Ghosh) vs National Aviation Company Of India Limited and Others, 2010.

GLOBAL LEGAL FRAMEWORK FOR AVIATION

1. **Warsaw Convention, 1929²⁰**: The Convention signed on 12th October 1929 at Warsaw and entered into force on 13th February 1933. It was formally called the “Convention for the Unification of Certain Rules Relating to International Carriage by Air”. It has grown to be one of the key instruments of private international law. The Warsaw Convention is an international convention that governs liability in case of accidents arising from international carriage by air of passengers, baggage or cargo for reward. It also became the first comprehensive treaty providing a legal framework governing aviation at international level thus contributing immensely to its growth as well as establishing a number of still valid fundamentals that form modern aviation law. This treaty provided the necessity for carriers to make passenger tickets; necessitates airlines to produce baggage checks upon checked luggage being carried; gives a period within which a claim must be commenced; and limits carrier’s liability. On September 28th, 1955 it was amended by Hague Protocol.
2. **Hague Convention, 1970²¹**: The Hague Hijacking Convention, which is also known as the 1970 Convention for the Suppression of Unlawful Seizure of Aircraft, is a multilateral treaty that binds states together in prohibiting and punishing hijacking. It acknowledges that when a crime has been committed on an aircraft registered with them, states have jurisdiction and a duty to exercise it. States may also claim nationality over certain offenses by their citizens no matter where they were perpetrated in the world. Another type of jurisdiction called protective-principal jurisdiction provides for criminal justice over crimes against national interest. This convention does not apply to aircraft used for customs or law enforcement purposes or military aircraft but applies only to civilian aircrafts. Unlike others it refers to those situations whereby an airplane either takes off from or lands at different places other than its home country airport. Under this treaty if no other state has requested his extradition for that same offense then the member state may prosecute an airplane hijacker.
3. **Chicago Convention, 1944²²**: The Convention is also referred to as the convention on International Civil Aviation. The Chicago Convention was signed by 52 States on December 7, 1944. On March 1, 1947, India ratified the Chicago Convention and therefore governed by the general principles of it. Among them are: safe and peaceful operation and development of international air travel. It requires that any aircraft registered in one Contracting State does not fly above another’s territory or that the aviation services of a particular Contracting State do not interfere with those of another. This can be seen in many Indian aviation laws including some Civil Aviation Requirements issued by DGCA. Under this treaty, India also became

²⁰ International Civil Aviation Organization, “The Warsaw System on air carriers liability,” retrieved from <https://applications.icao.int/postalhistory/the_warsaw_system_on_air_carriers_liability.htm> visited on 29.10.2023 at 10:10 a.m.

²¹ Britannica, “Convention for the Suppression of Unlawful Seizure of Aircraft 1970, air law,” retrieved from <<https://www.britannica.com/topic/Convention-for-the-Suppression-of-Unlawful-Seizure-of-Aircraft>> visited on 28.10.2023 at 10:30 p.m.

²² International Civil Aviation Organization, “Convention on International Civil Aviation,” retrieved from <<https://www.icao.int/publications/pages/doc7300.aspx>> visited on 28.10.2023 at 10:50 p.m.

one of the original members of ICAO²³ that consist of rules and practices developed under the Chicago Convention.

4. **Montreal Convention, 1999²⁴**: This is also known as Convention for the Unification of Certain Rules for International Carriage by Air, 1999. On 1st May 2009 India ratified the Montreal Convention. This is an international agreement that formally sets out airline's liability in respect of death or injury to passengers and loss destruction or damage to baggage and cargo, and it applies if carriage is "international" as defined in Article 1(3) of MC99. Since MC99 was intended to be one global convention governing airline liability worldwide. The incorporation of Montreal Convention into Carriage by Air Act, 1971 in India has been done through the Carriage by Air (Amendment) Act, 2009.²⁵
5. **Cape Town Convention, 2001²⁶**: It is also known as the Convention on International Interests in Mobile Equipment, 2001. Primarily it is aimed at achieving uniformity of laws governing transactions that relate to movable properties. The Convention and the Protocol mainly aim at addressing difficulties associated with obtaining security and enforcement measures over valuable assets in the aviation industry such as airframes, aircraft engines and helicopters which always have no fixed location. It contains rules on how to register ownership, security interests, leases, conditional sales as well as legal remedies available for defaults under financing agreements including repossession and effect of insolvency laws of some particular states. The Protocol to the Cape Town Convention deals with aircraft objects. On 31th March 2008 India acceded to both the Convention and the Protocol.

BILATERAL TREATIES ON AIR TRANSPORT SERVICES

Several bilateral air services agreements have been concluded by India with different countries on the world. India also follows an "Open Skies Policy" with a number of countries as well. In the framework of this agreement, both contracting states allow unlimited flight and seat quotas to each other's carriers. In 2005, India entered into Open Skies Agreement with United States.²⁷ US and Indian airlines also engaged in code-sharing under this agreement. Additionally, India has concluded Open Skies Bilateral Agreements with Sri Lanka and Thailand. The Government aims to liberalize the bilateral ASA regime under the NCAP 2016 to facilitate international operations and harness global passenger market opportunities; it is therefore committed to entering into reciprocal open sky bilateral pacts within SAARC nations as well as member states that are located entirely further than 5000 km from New Delhi concurrently. Only five airlines namely: Air India, Air India Express, Jet Airways, Indigo and Spice Jet possess licenses for overseas flights at present; however, now that the NCAP 2016 has eliminated the 5/20 Rule, there are likely going to be more airline operators taking

²³ International Civil Aviation Organization.

²⁴ International Air Transport Association, "The Montreal Convention 1999 (MC99)," retrieved from <<https://www.iata.org/en/programs/passenger/mc99/>> visited on 28.10.2023 at 11:10 p.m.

²⁵ Carriage by Air Act, 1972, Section 4A.

²⁶ International Civil Aviation Organization, "Cape Town Convention and Protocol," retrieved from <<https://www.icao.int/sustainability/Pages/Capetown-Convention.aspx>> visited on 28.10.2023 at 11:00 p.m.

²⁷ CAPA-Center for Aviation, "India, US sign 'Open Skies' aviation agreement," retrieved from <<http://centreforaviation.com/analysis/india-us-sign-open-skies-aviation-agreement-8>> visited on 28.10.2023 at 12:10 p.m.

advantage of India's ASA. This action may equally improve conditions in favor of Foreign Direct Investment (FDI) in domestic aviation companies.

GLOBAL LEGAL FRAMEWORK FOR DEALING WITH UNRULY AND DISRUPTIVE PASSENGERS

In Annex. 17 to the Chicago Convention, which is an ICAO document, a disruptive passenger has been defined thus: "a passenger who fails to respect the rules of conduct at an airport or on board an aircraft or to follow the instructions of the airport staff or crew members and thereby disturbs the good order and discipline at an airport or on board the aircraft." Also, Tokyo convention 1963 forbids commission of 'Acts which, whether or not they are offences [against the penal law of a State], may or do jeopardize the safety of the aircraft or of persons or property therein or which jeopardize good order and discipline on board.'

Disruptive behavior as identified by the International Air Transport Association (IATA) includes:

- i. Consumption of own alcohol on board,
- ii. Illegally consuming narcotics,
- iii. Smoking cigarettes in the flight,
- iv. Refusing to follow the safety guidelines,
- v. Failure to fasten seatbelts when instructed,
- vi. Any act of sexual assault/abuse,
- vii. Verbal abuse with crew members or passengers,
- viii. Making threats to the passengers or crew members,
- ix. Any other reckless behaviour in the aircraft.

TWO-PILLAR STRATEGY

The need for a zero-tolerance approach to unruly behaviour necessitates a two-pillar strategy consisting of the following elements:

1. **Regulation:** This means that governments must have legal authority in relation to prosecuting unruly passengers, regardless their nationalities and capable to impose range of enforcement measures commensurate with gravity of the incident. Such powers are conferred by the Montreal Protocol 2014 (MP14), which the IATA is urging all states to ratify as soon as possible. As of now, 45 nations that account for 33% of international passenger traffic have ratified MP14.
2. **Guidance to prevent and de-escalate incidents:** This involves preventing incidents through cooperation with industry partners on the ground, including awareness campaigns on the repercussions of unruly behaviour. Furthermore, it includes sharing best practices, such as training, for crew to de-escalate incidents when they occur. A new guidance document was published at the outset of 2022, compiling best practices for airlines and offering pragmatic solutions to governments on public awareness, spot fines, and jurisdictional gaps etc. In light of the escalating numbers of unruly incidents, governments and the industry are taking more stringent measures to curb unruly passenger incidents. States are ratifying MP14 and

revising enforcement measures, conveying a clear message of deterrence by demonstrating that they are prepared to prosecute unruly behaviour. For the industry's part, there is increased collaboration.

OTHER STRATEGIES

First and foremost, all airlines' employees need to unite under one goal: preventing and managing unruly passenger behaviour from the moment the passenger enters the terminal. These procedures are important in recognizing a passenger who exhibits disruptive signs that could compromise safety and security of the airplane, flight attendants and other passengers.

1. Check-in

For instance, check-in personnel should be able to recognize intoxicated passengers or those suspected to be on drugs, as well as other defiant persons who may cause disturbance during a flight. These individuals should not be allowed into planes without further scrutiny.

2. Security screening

Apart from that, security screeners must also have knowledge or skill necessary for dealing with ill-behaved people on board flights. They ought to be familiar with Canadian Airport Transport Security Authority's (CASTA) Zero Tolerance Unruly Passenger Policy created after an upsurge in this behavior at the gate.

3. Boarding gate

The gate for boarding is another chance to identify and report passengers who might have taken excess amounts of alcohol or are annoyed by flight delays. The cabin crew should be monitoring and informing the ground supervisor of any risk they spot in passenger's behavior and condition.

4. Ahead of departure

The cabin crew has a vital role to play in ensuring that safety and convenience of passengers as well as crew are maintained. They must be able to pick out a fussy, drunken or otherwise intoxicated passenger at any stage of this process. A cooperative passenger may therefore not be prevented from further traveling. On the contrary, an uncooperative or dangerous one calls for being escorted out of the airplane by a member of ground staff.

5. In the flight

If a passenger gets unruly aboard then it is up to the cabin crew members to handle such cases. They should have relevant communication techniques plus conflict management expertise that can enable them intervene into such behaviors accordingly, while seeking guidance from a senior officer aboard if necessary.

LEGAL FRAMEWORK FOR DEALING WITH UNRULY PASSENGERS

Government of India has enacted CAR²⁸ to regulate the issue of unruly passenger behaviour. It mandates MHA²⁹ to maintain a no-fly list of such passengers. The meaning of 'unruly passenger' in the CAR is given by Annex. 17 of the Chicago Convention. Moreover, the CAR categorizes the unruly behaviour into three levels:

- a) **Level 1:** This includes acts such as making inappropriate physical gestures, verbally harassing fellow passengers or the crew, being intoxicated or smoking.
- b) **Level 2:** This involves physically abusive behaviour such as pushing, hitting, grabbing, touching inappropriately, kicking, etc.
- c) **Level 3:** This encompasses life-threatening behaviour, such as eye gouging, damaging the aircraft, attempting or actually breaching the flight crew compartment, etc.

Procedure for Determining the Unruly Behaviour

In cases where pilot-in-command has complained about an on board unruly conduct; those complaints should be referred to an internal committee. The airlines constitute such a committee, which consists of the following members:

1. **Chairman:** Retired District & Sessions Judge
2. **Member:** A representative from a different scheduled airline
3. **Member:** A representative from the consumer or a passenger association or a retired officer of Consumer Dispute Redressal Forum

This committee has to decide the matter within 30 days along with the level of the passenger's behaviour. Based on that, the internal committee will decide the duration for which the passenger will be banned from flying. The decision of the committee is binding on the concerned airline. If the committee fails to give a decision within the period of 30 days, then the passenger will be free to fly.

Ban on Flying

The passengers who are placed on the no-fly list according to the decision of the internal committee may be banned by the other airlines from flying to/from/within India for the following duration based on the level of their behaviour:

Level 1: Three months

Level 2: Six months

Level 3: Two years or more

While informing them about their inclusion in blacklist along with reasons for ban and its duration, it is important to tell passengers this information. Recent developments in May 2023, plea sought directions from

²⁸ Civil Aviation Requirement.

²⁹ Ministry of Home Affairs.

Supreme Court of India against Government of India and others regarding mandatory Statement of Purpose and “zero tolerance” rules for bad onboard passengers.³⁰

CONSTITUTIONAL CHALLENGES IN REGULATING UNRULY PASSENGERS

The regulation of unruly passenger behaviour by imposing a flying ban raises a constitutional conflict with Article 21 of the Indian Constitution. Several decisions have interpreted Article 21 which guarantees right to life and personal liberty expansively to include the right to travel within and outside the country and consequently even by air as part of it.

In **Maneka Gandhi v. Union of India, 1978**³¹, the Supreme Court affirmed that freedom of movement is a fundamental facet of personal liberty. This includes the right to go abroad also. Therefore, Indian Constitution in Article 21 safeguards both freedom of movement as well as freedom to go abroad.

In the case of **Priya Parameshwaran Pillai v. Union of India, 2015**³², the Court stated that a citizen has constitutional right to travel abroad under Article 21. Moreover, it held that any order which restricts free movement should not be arbitrary.

In the recent case of **Kunal Kamra v. IndiGo, 2020**³³, an incident involving an Indian comedian Kunal Kamra heckling his co-passenger on board where subsequent action taken by airlines banning him from their flights. This was an example of an arbitrary order. The IndiGo airline imposed a six-month ban on Kunal Kamra without constituting an internal committee or providing any valid grounds. As a result, a legal notice was issued to IndiGo for taking arbitrary actions against the comedian. These incidents show that the Rules grant arbitrary powers to the airlines. Although the objective of the Rules is to prevent the incidents of unruly passenger behaviour, any arbitrary order made by the airlines can be challenged in the Courts on reasonable grounds, and the Supreme Court or any of the High Courts can declare such arbitrary orders as unconstitutional.

CONCLUSION

Aviation law covers various legal issues affecting aircraft and airport operations, such as aircraft navigation and maintenance, air traffic control safety, and pilot licensing requirements. The Indian aviation law is mainly derived from two traditional sources: statutory enactments and subordinate legislations. The statutes do not provide the practical details of the law but delegate them to the executive branch of the Central Government. Therefore, most of the laws are found in the notifications issued by the Central Government from time to time. A third source of law is the judicial decisions. Nonetheless, in India, this resource is insignificant since there are very few aviation cases that have ever been litigated in the Indian courts. FAA³⁴ is the main body within

³⁰ mint, “SC issues notice to Govt. on ‘zero tolerance rules’ for unruly airline passengers,” retrieved from <<https://www.livemint.com/news/india/ai-pee-gate-supreme-court-issues-notice-to-indian-govt-on-zero-tolerance-rules-for-unruly-airline-passengers/amp-11683537666780.html>> visited on 29.10.2023 at 07:10 p.m.

³¹ Maneka Gandhi vs Union of India, 1978, AIR 597, 1978 SCR (2) 621.

³² Priya Parameshwaran Pillai vs Union of India And Ors., 2015, WP(C) 774/2015.

³³ Kunal Kamra vs Directorate General of Civil Aviation & Ors., 2020, WP(C) 2052/2020.

³⁴ Federal Aviation Administration.

the federal government that deals with aviation laws, implementing most of them. TSA³⁵ is another agency concerned with passenger's safety, while NTSB³⁶ investigates aviation accidents. International flights are subject to international law and laws of countries over which the flights pass. The Indian aviation law has not changed much since it was given a new direction and purpose. Due to the increased emphasis on economic development and the adoption of the political philosophy of direct State participation in the development process, India enacted the nationalization legislation in 1953 and brought the airlines under a significant degree of governmental control. Since then, the civil aviation infrastructure has remained almost stagnant. Although the Indian Aircraft (Fourth Amendment) Rules, 1965 have, in theory, removed the disability of independent operators to run scheduled air services, the Government has not taken any steps to make the amendment effective in practice. In India, until recently, aviation law has been primarily concerned with the technical and safety aspects. The economic considerations of air transport have been largely ignored. Even after independence, the basic law has not been modified. The Indian air transport industry needs to further expand and modernize urgently in order to meet new social, political and economic challenges. In addition, the unruly behavior instances have been on rise. A coordinated effort by all industry stakeholders is necessary to prevent these events from happening and minimize their impacts. This is not only an airline problem but it affects every authority that governs civil aviation. Precautionary measures should be taken as well as preparation for the unexpected outcome. Thus, aviation law is a complex and dynamic discipline playing a vital role in ensuring safety and efficiency of global aviation sector. It deals with various legal issues concerning operation and regulation of the airline business including safety, liability, environment issues together with international agreements. As such, the scope of aviation law will continue to grow with the development of the aviation industry thus making it an important area of law in future years. Therefore there is need for legislations that ensure air travel remains safe and secure thereby protecting interests of all parties involved in this sector.

³⁵ Transportation Security Administration.

³⁶ National Transportation Safety Board.