LEGAL FRAMEWORK, CHALLENGES AND CONSTITUTIONAL IMPLICATIONS IN AVIATION

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ABSTRACT
This research provides a comprehensive overview of the legal framework governing aviation, the emerging challenges in dealing with unruly passengers, and the constitutional implications that arise within the Indian aviation context. The aviation legal framework comprises international conventions such as the Warsaw Convention, Hague Convention, Chicago Convention, Montreal Convention, and the Cape Town Convention, as well as bilateral treaties regulating air transport services. The paper also highlights the need for a zero-tolerance approach to unruly passengers, in accordance with the ICAO’s standards and guidance for prevention and de-escalation of incidents. However, the implementation of such regulations raises constitutional concerns under Article 21 of the Indian Constitution, which guarantees the right to life and personal liberty, including the right to travel. The paper illustrates these constitutional challenges through cases such as Kunal Kamra v. IndiGo, which emphasize that while aviation law aims to prevent unruly passenger behaviour, it must respect constitutional principles. The paper concludes that the Indian aviation landscape requires a balance between stringent regulations for unruly passengers and the protection of fundamental rights. The paper also suggests that the constant evolution of aviation law in response to economic, social, and political changes, as well as the increasing incidents of unruly passenger behaviour, necessitates a multi-stakeholder approach to address these complex 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
The aviation sector is crucial for the transportation and economic development of every country. India, as a developing country that is emerging as a global economy, has a rapidly expanding transportation domain. The liberalisation of the air industry in India has enabled the growth of domestic and foreign air carriers. The development schemes and their execution depend largely on the efficient transport and communication sources available in the country. India, being the seventh largest country in the world with a geographical area of 3.27 million square kilometres1 and the most populous country in the world2, has diverse social customs, cultures, languages and geographical environments. The study of India’s Aviation Law provides information on the various aspects of the laws governing the aviation industry and serves as a useful guide for all stakeholders involved in the aviation industry.

Aviation law of a country considers the entire domain of air travel, including cargo and passenger transportation, recreational flying, and airspace protocol. Both the military aviation and civil aviation sectors of the aviation industry are growing significantly in India. The Indian civil aviation industry is currently the third largest domestic civil aviation market in the world, but the industry faces several challenges. India’s passenger traffic increased by 16.52 percent year on year to reach 308.75 million in 2022-23.3 Domestic passenger traffic increased by around 18.28 percent to reach 293 million in 2022-23 and is projected to reach 342 million in 2023-24.4 International passengers increased by 10.43 percent to reach 76 million in 2022-23, and traffic is projected to reach 89 million in 2023-24. These figures indicate the demand for civil aviation in India and the necessity for robust aviation laws in India. Along with civil aviation, stringent military aviation is also essential in the present times. The year 2023 is expected to be an important year for the aviation industry of India, as it will witness several milestones and developments.

EVOLUTION OF THE AVIATION SECTOR IN INDIA
The development of India’s political, economic and social spheres has been largely influenced by the challenges of transportation and communication throughout its history. The economic potential of aviation in India was neglected during the colonial era. The first commercial flight in India was operated by a French pilot named Monseigneur Piguet on February 18, 1911, who flew from Allahabad to Naini Junction, covering a distance of ten kilometers in 13 minutes. The subsequent Indian flight was launched from Delhi to Karachi in 1912. The

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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.
“Royal Aero Club of India & Burma Ltd” was established on 19 September 1927 as the first flying school in India, with the aim of promoting air sports and providing training for commercial aviation. The club founded the first ‘Delhi Flying Club’ in May 1928 and later expanded to Karachi, Allahabad, Bombay and Calcutta. The first international passenger flight to India was introduced by Emperial Airways, a British company, from London to Karachi in 1929. The club issued its first license, which was also the first commercial license in India, to Mr. JRD TATA on 10th February 1929. JRD TATA, known as the ‘Father of Indian Aviation’, established the first licensed commercial carrier in India. Tata Airlines operated from Mumbai and transported both mail and passengers across India, with JRD TATA himself flying the first flight of the airline. Tata Airlines became the first airline in India. In 1932, India witnessed its first domestic flight from Bombay to Trivandrum. In its first year, Tata Airlines flew for a total of 2.5 lakh kilometers. In 1946, Tata Airlines was renamed as 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. Both these airlines were state-owned enterprises. JRD TATA was appointed as the Chairman of Air India and under his leadership, it became one of the world’s best airlines. In 1960, Air India became the world’s first airline to enter the ‘Jet Era’. JRD TATA remained the head of Air India until 1977. For about four decades, both these airlines enjoyed a monopoly over India’s aviation industry.

The new era of Indian aviation industry began in the 1990s, after the liberalization of the economy. The aviation sector underwent a significant transformation as private airlines were permitted to operate in the country. Several private airlines emerged in India, including low-cost carriers such as GoAir, IndiGo, AirAsia and SpiceJet, which operate both domestically and internationally. The number of airline operators is expected to increase further due to the rapid development and improvement of airport infrastructure. The liberalization policy also encouraged private investments and growth of the aviation industry. The tourism and business travel sectors in India have also witnessed a rapid growth, which has contributed to the expansion of Indian aviation. India’s aviation sector plays a major role in the economic development of the country and is projected to grow even more in the future. However, this sector still faces a number of challenges, such as infrastructure, high fuel prices and regulatory hurdles, which require the cooperation and support of the stakeholders of the aviation industry.

### LEGAL FRAMEWORK AND INSTITUTIONS OF AVIATION IN INDIA

The 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 can be defined as the branch of law that governs the operation and regulation of aircraft and airports. The aviation sector is constantly evolving and aviation law encompasses a wide range of issues such as air traffic control, pilot training and certification, liability for accidents and incidents, and aircraft design and maintenance. India has a prominent role in the civil

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aviation industry and aviation is a vital mode of transportation in the contemporary world. Therefore, aviation law is essential for shaping the social and economic life and the public order of India and the international community. The scope of aviation law covers the air travel, including the carriage of goods and passengers, recreational flying, and airspace management. There are two sectors within the aviation industry:

1. **Military Aviation:** Aircraft operated by a nation’s air force and other military branches. It is not intended for commercial purposes.

2. **Civil Aviation:** Civil Aviation is divided into two categories:
   a) Domestic flights, which transport passengers within the same country.
   b) International flights, which move from one country to another.

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

The Ministry of Civil Aviation (MCA) is the central authority for the formulation and implementation of national policies and programmes for the development and regulation of the civil aviation sector in India. The MCA administers the Aircraft Act, 1934, the Aircraft Rules, 1937 and various other statutes pertaining to the aviation sector. The MCA also exercises administrative control over several attached and autonomous organizations, including the Commission of Railway Safety, which is responsible for ensuring safety in rail travel and operations as per the Railways Act, 1989.

The MCA oversees three main regulatory bodies in India: the Directorate General of Civil Aviation (DGCA), the Airports Authority of India (AAI) and the Aircraft Accident Investigation Bureau (AAIB).

i. The DGCA is the primary regulatory body for civil aviation in India. It is responsible for ensuring that airlines comply with safety and security standards, as well as providing fair and reasonable service to their customers. The DGCA also regulates the licensing and certification of pilots and aircraft maintenance engineers, as well as the oversight and regulation of aircraft design, manufacturing and maintenance in India.

ii. The AAI is responsible for the development and management of air traffic control procedures and the use of navigation aids, such as radar and GPS, to ensure the safe and efficient movement of aircraft in India.

iii. The AAIB is responsible for investigating and determining the causes and liabilities of accidents and incidents involving civil aircraft in India. The AAIB also publishes reports on its findings and recommendations. The Air Transport Agreement Act, 2020, which was enacted by the Indian

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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.
9 Ministry of Civil Aviation, retrieved from <https://www.civilaviation.gov.in/> visited on 28.10.2023 at 07:50 p.m.
government, regulates and develops air transport services in India, while promoting the economic growth and safety and security of the aviation industry.\textsuperscript{10}

### LEGAL FRAMEWORK OF DOMESTIC AVIATION IN INDIA

The Indian aviation sector is undergoing a remarkable transformation, driven by various factors such as low-cost carriers, modern airports, foreign direct investments, information technology applications, and expanding regional connectivity. These developments necessitate the safe and efficient operation of domestic and international flights and airports in India, which are governed by a number of laws and regulations pertaining to aviation law. The key aviation laws that regulate the Indian aviation industry are as follows:

I. **The Indian Airships Act, 1911**

This Act was the first legislation enacted in India in the aviation sector. It aimed to regulate the ownership, production, import, export, use, and sale of airships. However, when India ratified the International Convention for the Regulation of Aerial Navigation in 1919, the Act proved to be inadequate to fulfill India’s obligations under the convention. Consequently, the Aircraft Act, 1934 was enacted.\textsuperscript{11}

II. **The Aircraft Act, 1934**

This Act was enacted to fundamentally change the existing legal framework governing the Indian aviation industry. It provided for the adoption of various rules to ensure a robust regulatory framework and security for aerial navigation. It also addressed the maintenance, development, and operation of all kinds of airports, including Greenfield airports. The main objective of the Act was to provide better provisions for the control of the manufacture, possession, use, operation, sale, import, and export of aircraft.

III. **The Air Corporations Act, 1953**

This Act provided for the establishment and regulation of public sector undertakings in the field of civil aviation. It also conferred the monopoly power to Indian Airlines to operate on domestic scheduled routes, excluding any other operator.

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**

This Act was enacted to constitute and formulate the framework for the establishment of an authority for the management of airport infrastructure. It established the Airport Authority of India (AAI), which is the regulatory body for the administration, management, and development of airports and aeronautical


communication stations in India. AAI has the statutory function of managing the airports, civil enclaves, eviction of unauthorized occupants of airport premises, and providing air traffic services and air transport services at an airport.

VI. **The Aircraft (Carriage of Dangerous Goods) Rules, 2003**
These rules regulate the air carriage of dangerous goods such as explosives, radioactive material, etc. They also provide for the establishment of training programs by or on behalf of shippers of dangerous goods, operators, ground handling agencies, freight forwarders, and agencies involved in the security screening of passengers, their baggage, and cargo.

VII. **The Director General of Civil Aviation Act, 2011**
This Act provides for the establishment of the regulatory body DGCA for the regulation and supervision of the civil aviation in India. It empowers the DGCA to issue licenses, certificates, permits, approvals, and authorizations for various activities related to civil aviation. It also prescribes the duties and functions of the DGCA, such as ensuring compliance with international standards and conventions, promoting safety and efficiency of air transport, and conducting investigations and inquiries into any matter affecting civil aviation.

VIII. **The Aircraft Accidents Investigation Bureau (AAIB) Act, 2017**
This Act establishes the Aircraft Accidents Investigation Bureau (AAIB) as the regulatory body for the investigation and determination of liability in the event of an accident or incident involving civil aircraft in India. It defines the terms and conditions of the appointment, powers, and functions of the Director and other officers of the AAIB. It also lays down the procedure and manner of conducting investigations, reporting, and publishing the findings and recommendations of the 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 the Airports Economic Regulatory Authority of India (AERA) as the regulatory body for the regulation of tariffs and charges for the various services rendered by airports in India. It also establishes an appellate tribunal for the adjudication of any disputes arising from the orders of the AERA. It defines the composition, qualifications, appointment, and functions of the AERA and the appellate tribunal. It also specifies the factors and principles to be considered by the AERA while determining the tariffs and charges for airports. It also provides for the monitoring and enforcement of the performance standards of airports and the protection of the interests of the users and service providers.

X. **The Anti Hijacking Act, 2016**
This Act replaces the Anti Hijacking Act, 1982 and is enacted to give effect to the Hague Hijacking Convention for the suppression of unlawful seizure of aircraft and the 2010 Beijing Protocol supplementary to the convention. It defines the offence of hijacking and the acts that constitute hijacking. It also provides for the punishment of not only the actual hijacking but also the false threat of hijacking which appears to be real. It prescribes the death penalty and a life imprisonment for the actual hijacking or attempt of hijacking. It also provides for the jurisdiction, investigation, prosecution, and extradition of the offenders.
XI. **The Air Transport Agreement Act, 2020**

This Act provides for the regulation and development of air transport services in India, promoting safety, security, and economic growth of the aviation sector in India. It empowers the Central Government to enter into bilateral or multilateral air transport agreements with other countries or international organizations for the purpose of facilitating air transport services between India and other countries. It also provides for the implementation and enforcement of such agreements and the resolution of any disputes arising from them.

It also provides for the protection of the rights and interests of the passengers, air carriers, and other parties involved in air transport services.

**SIGNIFICANT JUDICIAL PRECEDENTS IN INDIAN AVIATION LAW**

The “Air Deccan” 2007 case: Air Deccan was an Indian regional airline that commenced operations in 2003 and ceased operations in 2008. It offered tickets at one rupee to three million Indians. However, Air Deccan faced financial difficulties due to the high costs of operation. In 2007, Capt. Gopinath sold his company to Kingfisher Airlines, owned by Vijay Mallya. Mr. Mallya rebranded Air Deccan as Kingfisher Red. The Indian Directorate General of Civil Aviation (DGCA) suspended the operating license of Air Deccan for safety violations. This case underscored the challenges of safety oversight and regulation in the Indian aviation industry.

The "Air India Express” 2010 case: 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 on landing at Mangalore due to the captain’s unstable approach, despite three calls from the first officer to initiate a “go-around”. Of the 166 passengers and crew on board, 158 perished, only eight survived. This accident raised the issue of liability of airlines in the event of an aircraft accident. The court held that the airline was liable to compensate the victims’ families and laid down guidelines for determining the quantum of compensation.

The IndiGo Airlines v. Indian Oil Corporation Ltd 2018 case: This case involved the dispute between IndiGo Airlines and Indian Oil Corporation over the pricing of Aviation Turbine Fuel (ATF). IndiGo Airlines filed a case against Indian Oil Corporation (IOC) for overcharging on ATF. The case was significant because it highlighted the issue of high fuel prices and their impact on the Indian aviation industry.

Nee Ghose v National Aviation Company of India Ltd. case: In this case, the appellant was an airhostess working as a Cabin Crew, who later became a permanent employee of the respondent Company. She was grounded due to her overweight in September 1997. The writ petition challenged the order of termination of service. The court held that the order of termination was passed in violation of the principles of natural justice. It was contended that the weight was not the real problem, but the petitioner was actually sick and she was suffering from “Phobic anxiety syndrome in relation to flying”. The issue raised was whether the writ petition was maintainable based on the stated factual premises and the legal questions raised. The court found that the

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12 S. Abdul Salam vs Union Of India, WP(C). No. 32550 of 2010.
13 M/S Indian Oil Corporation vs M/S Nepc India Ltd., & Ors., Appeal (crl.) 834 of 2002.
writ petition was maintainable, and held that there was a violation of Articles 14 and 21 of the Indian Constitution. Consequently, the termination order was set aside and quashed as it was not legally valid.

GLOBAL LEGAL FRAMEWORK FOR AVIATION

1. **Warsaw Convention, 1929**\(^\text{15}\): This Convention was signed on 12 October 1929 at Warsaw and entered into force on 13 February 1933. This Convention, formally titled Convention for the Unification of Certain Rules Relating to International Carriage by Air, has become one of the most important instruments of private international law. The Warsaw Convention is an international convention that regulates liability, in the event of an accident, for international carriage of passengers, luggage, or goods performed by aircraft for reward. It was the first comprehensive legal framework governing aviation at the international level. It played a vital role in supporting the development of the sector and establishing a set of principles, most of which are still effective and constitute the basis of modern aviation law. This Convention requires carriers to issue passenger tickets; mandates carriers to issue baggage checks for checked luggage; creates a limitation period of 2 years within which a claim must be brought; and limits a carrier’s liability. The Warsaw Convention of 1929 was amended on 28 September 1955 by the Hague Protocol.

2. **Hague Convention, 1970**\(^\text{16}\): The Hague Hijacking Convention, also known as Convention for the Suppression of Unlawful Seizure of Aircraft (1970), is a multilateral treaty by which the states agree to prohibit and punish aircraft hijacking. It recognizes that states have the right and the obligation of jurisdiction with respect to any crime committed upon aircraft registered in their state. Most nation-states also claim nationality jurisdiction over certain crimes committed by their nationals, even when they were committed in other countries. A third jurisdictional basis is known as protective-principal jurisdiction, which gives criminal jurisdiction over offenses committed against national interest. The convention does not apply to customs, law enforcement, or military aircraft, and applies only to civilian aircraft. The convention only addresses situations in which an aircraft takes off or lands in a place different from its country of registration. It allows the member state of the treaty to prosecute an aircraft hijacker if no other state requests his or her extradition for prosecution of the same crime.

3. **Chicago Convention, 1994**\(^\text{17}\): It is also known as Convention on International Civil Aviation. This Convention was signed on 7 December 1944 by 52 States. India ratified the Chicago Convention on 1 March 1947 and therefore bound by the principle tenets of the Convention. These include the safe and peaceful operation and development of international air travel. The Convention binds the Contracting States to ensure that their aircraft do not cross their jurisdictions and that one Contracting State’s aviation services do not interfere with another’s. These broad principles are reflected in many Indian aviation rules and statutes, such

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\(^{15}\) 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.


as the DGCA’s Civil Aviation Requirements. Pursuant to this Convention, India also became one of the founding members of the International Civil Aviation Organization (ICAO), which codifies the principles and techniques set forth in the Chicago Convention.

4. Montreal Convention, 1999\(^\text{18}\): This is also known as Convention for the Unification of Certain Rules for International Carriage by Air, 1999. India ratified the Montreal Convention on 1 May 2009. The Montreal Convention 1999 (MC99) establishes airline liability in the case of death or injury to passengers, as well as in cases of delay, damage, or loss of baggage and cargo. MC99 is designed to be a single, universal treaty to govern airline liability around the world. The Montreal Convention has been incorporated into the Carriage by Air Act, 1971 through the Carriage by Air (Amendment) Act, 2009 in India.\(^\text{19}\)

5. Cape Town Convention, 2001\(^\text{20}\): This is also known as Convention on International Interests in Mobile Equipment, 2001. It harmonizes transactions involving movable property. The main objective of the Convention and the Protocol is to address the problem of securing and enforcing rights to high-value aviation assets, such as airframes, aircraft engines, and helicopters, which, by their nature, have no fixed location. It establishes standards for registration of ownership, security interests, leases, and conditional sales, and various legal remedies for default in financing agreements, including repossession and the effect of particular states’ insolvency laws. The Protocol to the Cape Town Convention applies these provisions to aircraft objects. India ratified both the Convention and the Protocol on 31 March 2008.

**BILATERAL TREATIES ON AIR TRANSPORT SERVICES**

India has concluded several bilateral air services agreements with various countries. India has also adopted an “Open Skies policy” with certain countries. Under this policy, both contracting States agree to allow unlimited flight and seat quotas to the other contracting State. In 2005, India entered into an Open Skies agreement with the United States.\(^\text{21}\) This agreement also enabled code-sharing between US and Indian airlines. India has also concluded Open Skies bilateral agreements with Sri Lanka and Thailand. Pursuant to the NCAP 2016, the Government intends to liberalize the bilateral ASA regime to provide greater ease of conducting international operations and tapping into the global passenger market. To this end, the Government has committed to enter into Open Skies bilateral agreements on a reciprocal basis with SAARC countries and countries that fall entirely beyond a 5000km radius from New Delhi. Currently, only Air India, Air India Express, Jet Airways, Indigo, and Spice Jet are authorized to fly overseas; however, the fact that the NCAP 2016 has abolished the 5/20 Rule, India is likely to witness more airline operators taking advantage of India’s ASA. This move may also enhance the conditions for foreign investment in domestic airlines.

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\(^\text{19}\) Carriage by Air Act, 1972, Section 4A.


GLOBAL LEGAL FRAMEWORK FOR DEALING WITH UNRULY AND DISRUPTIVE PASSENGERS

The definition of a disruptive passenger is given in Annex 17 to the Chicago Convention of the International Civil Aviation Organization (ICAO) as follows: “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.” Moreover, the Tokyo Convention 1963 prohibits the 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.”

The International Air Transport Association (IATA) has identified some specific acts that fall under the category of disruptive behaviour, such as:

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 entails ensuring that governments have the legal authority to prosecute unruly passengers, irrespective of their state of origin, and to apply a range of enforcement measures that correspond to the severity 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 METHODS

The prevention and management of unruly passenger behaviour requires the collaboration of the airlines and their employees from the moment the passenger enters the terminal. The following procedures are critical for identifying and reporting any passenger who exhibits signs of disruptive actions that may jeopardize the safety and security of the aircraft, the crew, and the other passengers.

1. Check-in

   The check-in staff should be trained to detect and notify the ground supervisor of any passenger who appears to be intoxicated or under the influence of drugs, or who displays any other form of unruly behaviour. Such passengers should not be allowed to board the flight without further assessment.

2. Security screening

   The security screening personnel should also be equipped with the skills and knowledge to handle unruly passengers. They should be aware of the Zero Tolerance Unruly Passenger Policy developed by the Canadian Airport Transport Security Authority (CASTA) in response to the increasing incidents of such behaviour at the screening point.

3. Boarding gate

   The boarding gate is another opportunity to identify and report passengers who may have consumed excessive amounts of alcohol or who are frustrated by flight delays. The boarding staff should monitor the passengers’ behaviour and condition, and inform the ground supervisor if they notice any potential risk.

4. Ahead of departure

   The cabin crew has a vital role in ensuring the safety and comfort of the passengers and the crew. They should be able to identify and communicate with any passenger who is loud, intoxicated, or inebriated during boarding. If the passenger is cooperative, they may be allowed to continue the flight. However, if the passenger is uncooperative or poses a threat, they should be removed from the flight with the assistance of the ground staff.

5. In the flight

   If a passenger becomes disruptive during the flight, the cabin crew is responsible for dealing with the situation. They should have the necessary communication and conflict management skills to intervene and restrain the passenger’s behaviour. They should also seek the support of any senior crew member or the pilot if needed.
The Government of India has enacted the Civil Aviation Requirement (CAR) to regulate the issue of unruly passenger behaviour. The CAR mandates the Ministry of Home Affairs (MHA) to maintain a no-fly list of such passengers. The CAR also adopts the definition of ‘unruly passenger’ as given in 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

A complaint received from the pilot-in-command about the unruly behaviour of a certain passenger is to 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

The passenger is to be informed about their inclusion in the no-fly list along with the reasons and the duration of their ban. Recent Developments

In May 2023, the Supreme Court of India issued a notice to the Government of India and others over a plea seeking directions to the Directorate General of Civil Aviation (DGCA) and all airlines to frame mandatory Statement of Purpose and “zero tolerance” rules to deal with unruly passengers and onboard sufferers.22

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CONSTITUTIONAL CHALLENGES TO THE REGULATION OF UNRULY PASSENGERS IN INDIAN AVIATION

The regulation of unruly passenger behaviour by imposing a flying ban raises a constitutional conflict with Article 21 of the Constitution of India, 1950. Article 21, which guarantees the right to life and personal liberty, has been interpreted broadly by various judicial precedents to include the right to travel within and outside the country. Therefore, the right to travel by air is also a part of Article 21.

The Supreme Court in the landmark case of Maneka Gandhi v. Union of India, 1978\(^{23}\) affirmed that the right of free movement is an essential component of personal liberty. This right encompasses the right to travel abroad as well. Hence, Article 21 of the Indian Constitution protects the right to free movement and the right to travel abroad.

In the case of Priya Parameshwaran Pillai v. Union of India, 2015\(^{24}\), the Court held that the right to travel abroad is a Fundamental Right and is derived from Article 21. The Court also ruled that any order that restricts the right of free movement of a person must not be arbitrary in nature.

In the recent case of Kunal Kamra v. IndiGo, 2020\(^{25}\), an Indian comedian Kunal Kamra was banned from various airlines for heckling another passenger. 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

You have asked me to rewrite your text in a legal academic tone. Here is my attempt:

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. However, this source is not very significant in India, as the number of aviation cases litigated in Indian courts is very low. Aviation law mostly operates at the federal level, with the Federal Aviation Administration (FAA) enforcing most of the aviation regulations and standards. The Transportation Security Administration (TSA), which ensures airline passenger safety, and the National Transportation Safety Board (NTSB), which investigates aviation accidents, also regulate aviation safety.

\(^{23}\) Maneka Gandhi vs Union Of India, 1978, AIR 597, 1978 SCR (2) 621.
\(^{24}\) Priya Parameshwaran Pillai vs Union Of India And Ors., 2015, WP(C) 774/2015.
\(^{25}\) Kunal Kamra vs Directorate General Of Civil Aviation & Ors., 2020, W.P(C) 2052/2020.
International flights are also subject to international law and the laws of the individual countries that the flight passes through. 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. There is an urgent need for further expansion and modernization of Indian air transport services to meet the challenges of the new social, political and economic necessities of the country. Moreover, the instances of unruly behaviour are constantly on the rise. All the industry stakeholders should make coordinated efforts to prevent these incidents and mitigate their effects. This problem affects every authority involved in civil aviation and not just the airlines. It is important to take preventive measures but the airline should also be prepared to manage the incident. Thus, aviation law is a complex and dynamic field that plays a vital role in ensuring the safety and efficiency of the global aviation industry. It covers a broad range of legal issues related to the operation and regulation of the aviation industry, including safety, liability, environmental concerns, and international treaties and agreements. With the growth of the aviation industry, the scope of aviation law will continue to expand, making it an important area of law in the years to come. It is essential to have laws and regulations in place to ensure the safety and security of air travel and protect the rights of all stakeholders in the industry.