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Emerging Legal Issues on Civil Aviation in India

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Abstract

In the present scenario, the jurisdiction of airspace is being limited at present where the outer space begins after the airspace ends. This principle has now been accepted by almost all states. International aviation law has developed highly in the air technology. Frequently, the most controversial questions arise before the settlement mechanisms regarding insurance, airport management, crimes on board etc., These are national and international issues for legal fraternity in the past and present. The most controversial questions that often arise before the settlement mechanisms are regarding insurance, airport management and crimes on board. Though, the international agencies have adopted various legal measures at national and international levels to resolve the disputes, inadequacy of legal regimes of the enforcement agencies could not find accurate solution effective solutions or reliable solutions to resolve the issues. This paper focuses on how to solve the issues of civil aviation in the existing legal frame work and how to protect civil aviation at the international, regional and national levels.

Intex Terms – Aviation, airspace, dispute, jurisdiction, technology

I. INTRODUCTION

At the beginning of the twentieth century, aviation has been subject to the general law both International and Domestic levels. After the Wright brothers' invention of aircraft, the Paris Peace Conference, 1919, was convened and their important issue of putting together an international air law code was entrusted to a special Aeronautical Commission of the Conference¹. Neither international conventions nor customarily accepted principles have established a generally acceptable boundaries of demarcation between the air space and the outer space. Although, the debate was continued about where the outer space begins after airspace ends and, the issue of whether or not sovereignty may be asserted in outer space has been generally settled by customary practice². Treaty Law encompasses all international treaties in which the multilateral conventions are the primary sources of air law. It is important to note that the rights of participants like the state, the owner, the operator, the passengers, the owner of the on-board goods, the mortgage holders, etc. are best safeguarded by the achievement of the important elements of the Air Law. The provisions relevant to the implementations are also found in the international agreements and conventions. Other classifications relevant for the Air Law are bilateral instruments, such as the national Law, contracts between the states and the airline companies, or contracts between the airline companies, and the

¹R.S. Jakhu, T.S. Gobba, P.S. Dempsey (eds.), THE NEED FOR AN INTEGRATED REGULAR REGIME FOR AVIATION AND SPACE, Springer Wien N.Y.E.S.P.I.V7, www.tfhs.lu.se/fileadmin/tfhs/doc/The_Multi-crew_Pilot_License.pdf (visited on July 31, 2025).

² Delbert R. Terrill, THE AIR FORCE ROLE IN DEVELOPING INTERNATIONAL OUTER SPACE LAW, ed.11 1999, p 18

common principles of International Law³. Since much of air navigation is taking place internationally, many legal norms governing the technical aspects of air navigation have been developed internationally and are implemented by national legislation.

II. INTERNATIONAL LEGAL FRAMEWORK ON CIVIL AVIATION

Modern airways constantly traverse into the international boundaries for private and commercial purposes. While the safety measures and ease of air transportation make international travel comfortable, it sometimes, things become complex, when it comes to legal issues at a global level. Swift science and technological development have enhanced the transcontinental and inter-oceanic aviation. But they raise certain challenges in civil aviation including landing rights for international airlines. The developed as well as developing countries are operating regular international airlines and they have landing in other countries. While, the least developed countries have no convenient airstrips. There existing problems of allocation of air traffic.

2.1 Chicago Civil Aviation Convention, 1944

The Chicago Convention on International Civil Aviation gave some inspiration to the civil aviation to solve the territorial issues but it is inadequate, also as this convention is only applicable to the civil aviation not applicable to the military, custom and police services. The state aircraft has no right of overflying and landing without prior permission of the concerned State by Special agreement⁴. But this convention discussed five freedoms of the air, namely,

The freedom of right to fly over a foreign State without landing.

The freedom of right to land for non-traffic purposes.

The freedom of right to set down traffic originating in one's own country.

The freedom of right to take on traffic destined for one's own country.

The freedom that has caused much controversy and trouble, is the right to carry traffic between two foreign countries situated on one's route⁵

Most of the member states have widely accepted the first two freedoms to each other. These two freedoms are generally called as The International Air Services Transit Agreement or the two Freedoms Agreement. The international transport agreement or the five freedoms agreement on the other hand has had a little adherence and its effects are minimal at best⁶.

2.2 Commercial Rights and Non-scheduled operators

The civil aircraft operators have proposed to run a scheduled service; their task under the Convention is more complicated, for there, they run into the specific provision that no scheduled international air service may be operated into another territory of a contracting State except with the special permission of that State. Under prevailing practice, such rights would not be obtained directly by the operators themselves, but would be negotiated on their behalf by their governments. Any sort of scheduled operation is subject to this jurisdiction, regardless of whether traffic has to be taken on or not. The framers of the Chicago Convention had earnestly taken a long time to find a formula by which the exchange of commercial rights in international air transport could be written into the Convention, and thereby the international civil aviation will be brought nearer to its last achievements of unrestricted service on a worldwide basis⁷. In the field of commercial aviation, two main considerations affect the rights of the operators. The first consideration is whether they contemplate operating a scheduled service, for if they do, the Convention specifically provides that they may not operate over or into

³ I.H. Ph. Diederiks- Verschoor, AN INTRODUCTION TO AIR LAW, Kluwer Law and Taxation Publishers, Deventer, 1988, p3-4

⁴ K.C. Joshi, "INTERNATIONAL LAW & HUMAN RIGHTS", 4th ed. 2019, p 179.

⁵ *Ibid*

⁶ Edward Collins, INTERNATIONAL LAW IN A CHANGING WORLD, first ed.1969. p 173

⁷ Dr. S.K. Kapoor, INTERNATIONAL LAW AND HUMAN RIGHTS, 17ed. 2009. P 315.

the territory of any foreign contracting State except with the special permission or other authorization of that State. The distinction between a scheduled international air service and a non-scheduled commercial operation is not always easy to draw, and the need for clarification on this point has prompted the International Civil Aviation Organization to spend considerable time in developing the express of a scheduled service this contains two essential elements “where the first one is to be scheduled, which points that the service must be both accessible to the public and be performed with systematic regularity. The other one is that it is to be the operators who contemplate on making a stop for traffic purposes in a foreign territory, for it is generally true that the rights to operate non-stop or with stops for technical purposes only are accorded with considerably more freedom than traffic rights”⁸

2.3 International Civil Aviation Organization (ICAO)

On May 13, 1947, the International Civil Aviation Organization became a specialized agency of the United Nations. The main purpose of the ICAO was to develop the principles of international civil navigation in the member states. It has regularized the safety of civil aviation and formulated recommendations to the members states, and also acts as a dispute resolving mechanism of international civil aviation. The ICAO is very well structured to meet the essential requirements for such developments in the future by simply extending its mandate to cover this aspect of the flights. Although, there was no reference in the Chicago Convention to civil aviation security and environment, these two items, together with safety, are top priority in the ICAO program and are well combined in the ICAO activities. The ICAO has already developed two Annexes, one for the Environmental protection and another one for Security, again another issue comes before the ICAO to add the new Annexes which could be developed to cover suborbital flights and space flights. An amendment is needed to cover the suborbital and ultimately, the outer space civil flights, which could be done but it may take a long time for the amendment to enter into force⁹.

2.4 International Jurisdictional Issues

Both the Paris and the Chicago conventions recognized the absolute and exclusive sovereignty of every state over its air space. In *Nicaragua* dispute the International Court of Justice has held that Article-1 of the Chicago convention recognized customary principle of international law¹⁰.

III. LEGAL STATUS OF SAFETY OF CIVIL AVIATION IN INDIA

Safety and protection are one of the most important things in civil aviation. It is considered by the Union Government while framing the draft for its development. In India, civil aviation industries are organized but it becomes questionable sometimes. However, the legal framework in India is very extensive. Though there are a lot of legal issues, the air safety legislative framework in India is set up under the standards of International Civil Aviation Organization to provide sustainable solutions. Further, The Union Government conferred power to the Directorate General of Civil Aviation authority to implement the standards in the legal framework concerning civil aviation.

The Aircraft Act, 1934 in its preamble stated that the purpose of the act was to make a better regime for the control of the manufacture, possession, use, operation, sale, import and export of aircraft. The Union Government is empowered to make rules under this act but some power transferred to the subordinate authority to frame rules related to safety and oversight in civil aviation. It is not a fully accepted provision because it makes some bias towards those preferred by them. So, in accordance with the provision of this act, the Central Government makes adequate provision for securing the safety of aircraft operation. It is further stated that the registration of the aircraft, certification and license must be carried out by relevant authorities within the ambit of law¹¹.

“The Aircraft Rules” 1937 defined the term safety which means the risks of harm to passengers or their property damage are being reduced. It provides acceptable level of safety assured by a system in actual

⁸ *ibid*

⁹ K.C. Joshi, “INTERNATIONAL LAW & HUMAN RIGHTS”, 4th ed. 2019, p 180.

¹⁰ *Nicaragua v. United States of America*, 1986 ICJ Rep. 14.

¹¹ Section 5 (a), The Aircraft act 1934.

practice. It prohibited dangerous flying, assaulting and other acts of endangering safety. The act prohibited any damage to the safety of the aircraft or its passengers or crew by interfering with the pilot or with a member of the operating crew of the aircraft or by tampering with the aircraft or any of its equipment. Moreover, the rules cover requirements for flying conditions, registration, airworthiness and licenses, among other things. If an aircraft is registered in a foreign country, the regulations of that country will apply, provided that their underlying standards are based on those established by the Chicago Convention and the extent of application usually depends on the agreement between the two countries¹².

Airport Authority of India

The maintenance of airport is a statutory function of the Airport Authority of India and “to manage airport, to provide air traffic services, air transport services”. Likewise, it grants air safety services to regulate” and regulates the to regulate entry and exit of passengers and visitors at the airport, provides transport facilities for the passengers traveling by air and performs for the safety of such services. Moreover, Airport Authority of India has the authority to impose penalty on the basis of some other provisions of the law the specific laws including Airport Authority of India Act, 1994, and the Airports Authority of India Management of Airports Regulations, 2003. In *Geeta Jethani v. Airport Authority of India* case¹³, the National Consumer Dispute Redressal Commission held that the “Airport Authority of India” is liable for deficiency in service and a complaint was maintainable under the consumer protection act 2019.

IV. CONTEMPORARY ISSUES ON CIVIL AVIATION IN INDIA

There are various legal issues with regard to the aspect of safety in civil aviation. In India civil aviation industry is historic and well developed, but the safety facilities are hold promising opportunities for review and advancement. The existing legal framework relating to safety in civil aviation in India reveals the pivotal challenges demanding further investigation in association with aircraft collisions, crew information problems and runway overshoot all are insufficient to manage the air safety. However, apart from the these, the aviation companies not properly maintain the air craft.

4.1 Over burden of Air Traffic Control Officers

The air traffic Controllers’ function is one of the most crucial and underrated. Generally, the importance of the role of pilots and crew members is recognized in the civil aviation industry, but the role of air traffic controller is not given the importance it deserves. In India, after adopting Liberalization, Privatization, and Globalization & LGP policy, there came up a lot of projects concerning privatization of airport. Yet, the air traffic controllers posting not roles are scarcely been enhanced.

4.2 Runway Incursions and excursion

There have been many accidents in the present and past due to runway incursion, runway excursions, and loss of control. In the context of the Indian airport, the Airport Authority of India is spending a considerable sum for the expansion of air fields in India. However, inadequacy on the part of the airport authorities has leads to runway incursions. In Calicut airport, two incidents arose on August 4, 2017 and August 7, 2020 which were as a result of runway excursions. Both cases are similar where pilots requested permission to land on another runway but due to the rain over the airfield led to causing the runway excursion.

4.3 Airport License issuing

License issuing has a major problem relating to aerodrome. All airports of member states of Chicago convention are declared to obtain a license for their operation and functioning. This license should be given after completion of all the formalities of infrastructure. No authority is issue license before the completion of all formalities. The director general of civil aviation is authorized to give license only when it is satisfied on proper inspection and investigation that the airport satisfies the safety basket of rules and regulations as laid down by ICAO.

¹² Mahesh Kumar – Simran Soni, (eds), AVIATION IN INDIA, <https://www.lexology.com/library/detail.aspx?g=c1856642-5358-432a-a956-b6bcffda941f> (visited on 13 August,2025).

¹³ *Geeta Jethani v. Airport Authority of India*, decided on 14 August, 2012.

4.4 Airport Safety Audit

Every aerodrome and runway of the Country should undergo a process of safety audit. This audit should be conducted occasionally, the parameters relating to aircraft, ground movement, aircraft handling and maintenance, baggage handling, load control etc. But the authorities have skipped this process because of overburden. Recently, Air India Boeing flight 171 was a scheduled passenger flight from Ahemathabad airport in India to London Gatwick Airport in the United Kingdom that crashed 32 seconds after take-off on 12 June 2025. All but one of the 230 passengers and all 12 crew members died. The Aircraft Accident Investigation Bureau released its preliminary report, stated that, The revealed dramatic cockpit voice recordings of one pilot realizing the fuel had been cut off to both engines during takeoff, with his colleague denying he had initiated the action.

V. Conclusion

The international legal regimes for safety in civil aviation work is under the control of Inter National Civil Aviation Organization. It has emphasized strict safety measures and standards of civil aviation throughout the world. The contracting states also act within the ambit of the ICAO. In India, the Union Government has constituted statutory body for regulating and maintaining the civil aviation industry. It acts under the guidance of IACO and domestic laws. However civil aviation industry faces lot of issues due to the lack of statute. Further many civil aviation industries are being run without valid license. So, we want a proper legislation to curb civil aviation industries at the international and national level.

V. Acknowledgement

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