



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS



Megha Middha

Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

AVIATION ACCIDENT: DISPUTE & LIABILITIES

AUTHORED BY - KISHORI GOSWAMI

Abstract:-

India aviation industry is its one of the fastest growing industry which is controlled and maintained by Ministry of civil aviation. The MoCA is further classified into four parts, that is, Director General of Civil Aviation¹, Airport authority of India², Airport Economic Regulatory Authority of India³, and Bureau of Civil Aviation Security. Because of the existence of this industry at massive level some commercial and non-commercial dispute arises. Some of the common causes of aeronautical dispute are restriction or dominance in an airline market or in ticket selling or in currency remittance. Dispute also arises because of dumping in airline transport services, restricted access, anti-competitive charges and reservation system, discriminatory charges for Air traffic Control and Air traffic Navigation. Liability in case of any air accident is determined through various conventions and agreement which prima facie country is signatory. Majority of act in any country are governed on the basis of Warsaw convention, Guadalajara Protocol of 1961. The act which governed the liability in case any aviation accident happened is the **carriage of good act, 1937**. the principles on the basis of which liability is decided are principle of absolute liability⁴, strict liability⁵, vicarious liability⁶, negligence⁷, battery⁸, assault⁹, breach of contract¹⁰, fiduciary relationship¹¹ between passenger and owner of

¹ Responsible for enforcing air safety, transport service and air standard

² Responsible for building and upgrading infrastructure related to aviation both on ground and air

³ Responsible for determination of tariff of aeronautical services and Passenger service fees and assess the standard based on performance relating to quality and continuity of that service.

⁴ The Principle of Absolute liability makes the individual absolutely liable for damage caused by the escape of a hazardous substance without any exceptions irrespective of the individual's intent in causing such damage or harm

⁵ When a defendant is liable for committing an action, regardless of what his/her intent or mental state was when committing the action.

⁶ Vicarious liability, or imputed liability, is a legal rule that holds a person or company responsible for actions committed by others or by their employees

⁷ According to Winfield and Jolowicz, Negligence is the breach of a legal duty of care by the plaintiff which results in undesired damage to the plaintiff.

⁸ Purposely touching or applying force on other persons or things related to the person without his consent with the

aircraft. For the settlement of any dispute countries are provided both legal and non-legal mechanism.

Objectives:-

- To understand about the present state of Indian Aviation market.
- To know about the law making nodal authority of Indian Aviation sector.
- To know about some major causes of dispute in aeronautical sector.
- To decide the liability in case of any aviation accident occurs.
- To learn't about any grievances redressal mechanism of aviation dispute

Key words:-

Aviation, ICAO, liability, Airline, Dispute, Accident

Introduction:-

India as developing country is growing in each and every sector whether it is information technology, railways, communication, navigation, railway, agriculture, manufacturing and processing etc. Aviation industry is one of the fastest growing sectors during last three year. It is further distinguished into schedule transport service through air¹² and non- schedule transport service through air¹³. India has become third largest country in domestic aviation market. India's domestic traffic contributes around 69% of total airline traffic in South Asia. Around 137 airports are presented in country. As per the data released by Department of Promotion of Internal Industry, Foreign Direct Investment in India's air transport sector reached to US\$3.61 billion in

intention to harm the person is known as a battery

⁹ an act of the defendant that gives the plaintiff reasonable fear of the defendant inflicting a battery on him.

¹⁰ A breach of contract is a failure, without legal excuse, to perform any promise that forms all or part of the contract.

¹¹ :a relationship in which one party places special trust, confidence, and reliance in and is influenced by another who has a fiduciary duty to act for the benefit of the party

¹² Domestic and international airlines

¹³ Air transport service, air cargo and air taxi operator.

September 2022. India has allocated Rs. 3224.67 crore to Ministry of civil aviation in its budget 2023-24. Given that air travel is still prohibitively expensive for the bulk of the country's population, including roughly 40% of the upwardly mobile middle class, India's aviation business is mostly unexplored with enormous growth potential¹⁴. The government has been instrumental in adopting policies to help the aviation industry. The government has created the UDAN-RCS scheme, which aims to expand air connectivity by offering inexpensive, economically feasible, and lucrative travel on regional routes.

Ministry of civil aviation is the nodal body in India to implement policy and programmes and handles governance and administration of aviation industry. The work of MoCA was scheduled into 4 principle regulatory authority Director General of Civil Aviation¹⁵, Airport authority of India¹⁶, Airport Economic Regulatory Authority of India¹⁷, and Bureau of Civil Aviation Security¹⁸. The aviation industry based on the need is regulated by multiple acts. The major act which determines the parameter of air worthiness, standard of flying in air, safety protocols and registration and maintenance of aircraft is The Aircraft Act 1934. This act also regulates manufacturing, use, export, procession and sale and purchase of aircraft. This act also stated about code of conduct¹⁹ for passenger. But the problem is it is silent about punishment on violation of this code of conduct. Because of this reason court refers to Indian Penal code to grant punishment. According to rule 134 of Aircraft rule, no person is allowed to hold scheduled commercial flight except establishing permission from central government. According to section 22 of this act no person who is on board of aircraft is allowed to involved in physical or verbal, intentional or unintentional, assault or criminal intimidation or threatening with any crew member whereas section 23 strictly prohibits any person to jeopardies or damages the property of any person or crew or to use any narcotics substance or alcoholic beverages in flight.

¹⁴ Ministry of Civil Aviation, Government of India, civilaviation.gov.in

¹⁵ Responsible for enforcing air safety, transport service and air standard

¹⁶ Responsible for building and upgrading infrastructure related to aviation both on ground and air

¹⁷ Responsible for determination of tariff of aeronautical services and Passenger service fees and assess the standard based on performance relating to quality and continuity of that service.

¹⁸ Responsible for ensuring that country is following international standards and international policies to which it is signatories.

¹⁹ Here code of conduct refers to those disruptive act

Major Causes of aviation accident:

Broadly, causes regarding aeronautical disputes are classified into two parameters commercial and non-commercial. **Chicago convention** only handles commercial disputes whereas non-commercial dispute was left on the decisions of bilateral agreement. Some common causes of dispute are as follows:-

- a) Restrictions in airline marketing, ticket selling and currency remittance- this type of restriction generates when country impose restriction on airline marketing and selling. Transparency and fair competition can help in creating effective air market. Government should be prohibited from determining market flow
- b) Dumping of air transport services- Dumping refers to selling a product internationally lower than nominal rate, sometime even lower than home country. Some common example of dumping is Singapore airline that provide fare at lower rate than US airline in America.
- c) Restricted access to travel agents and computer reservation systems- computer is the primary source of registration space availability, scheduling carrier, listing of flights. Incorrect information or misuse of data result in unfair and unreasonable restriction in market
- d) discrimination concerning frequency and capacity and other operating restrictions- state often do violates the International Air Transport Agreement and the International Air Transit Agreement to have unrestricted access to sky. According to the universal principles of reciprocity and equal opportunity everyone has freedom of the air.
- e) discriminatory charges for air traffic control (ATC) and Air Traffic Navigation (ATN)- as per the ICAO's Future Air Navigations Systems (FANS) Committee established in 1983 there are several like Advanced Automation System (AM) which encompasses the Automated en-route Air Traffic Control (AERA) as well as the Terminal ATC Automation (TATCA) to control air traffic with regional implementation.
- f) Discriminatory taxes- different countries have different jurisdiction result in variance in taxes imposed on aviation industry.

Liability in case of air accident:-

The liability in case of international air accident is determined through various agreements signed among countries. The, prima facie, agreement that governed the liability is **Warsaw convention** signed among 152 countries in 1929. According to article 17 of this convention aircraft carrier is liable for any damage, injury or death suffered to passenger in course of its operation of embarking and disembarking. As per article 18 of this convention if any harm, destruction, damage or loss has been done to passenger registered carriage, carrier is liable. However there is certain exception is available to the carrier that can save the carrier from liability like damage is done by negligence of passenger himself or by any act of third party. Carrier can save itself as per article 20 if it is able to prove that he has taken all reasonable care or measures to avoid accident. The airline is not responsible if it is able to prove that damage was occurring due to negligent handling or negligent pilotage.²⁰ The carrier is liable to each passenger. a sum of 125,000 Francs or USD 12,000. For damaged good liability is limited to 250 Francs or USD 25 per kg. as per article 28 the suit will be brought by plaintiff where it have jurisdiction²¹. As per article 29 a suit can be brought after 2 year of arrival to destination of aircraft. Furthermore **Guadalajara Protocol of 1961** make subcontractor of aircraft liable in case of air accident. Later on in 2003 Montreal convention was enacted and signed by 132 states which increase the liability for injury or death of passenger to USD 170,000 according to article IV of Montreal convention, carrier is not liable if death or injury resulted solely because of health of passenger. This convention allows the passenger to file complaint at the place of his domicile. This convention also makes provision for insurance of carriage. Similarly, the **carriage of good act, 1937** determines the liability under air accident in India. In the carriage of passenger liability is limited to 1, 25,000francs per passenger, whereas in carriage of luggage and good it is limited to 250 francs per kilograms, 5000 per passenger. Any contract putting a lower limit than mentioned under act on a liability of carrier is null and void for that part. The person must complain for luggage within three day of receipt and for good within 7 day of receipt. In case of delay the complaint must be done within 14 day of its disposal. In case of death his legal representative of estate can lodge complain in court having jurisdiction where carrier is resident or where carrier's place of business or where contract is signed. The right to

²⁰ As per article 22 of Warsaw convention

²¹ A court will have jurisdiction provided that the carrier is an ordinary resident, carries on business, or has an establishment in that area

damage is extinguished in case within 2 year the complaint is not filed from the date of arrival of destination, from the date carriage ought to arrive, or date when carrier is stopped. In case contract of such nature that carrier can be sued, and then the first carrier is liable. Any clause contained in the contract and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Schedule, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void. The parties who can be liable for accident are aircraft manufacture, contractor, air traffic control, air, owner of plane, government, companies etc. these liabilities are decided on the principle of absolute liability²², strict liability²³, vicarious liability²⁴, negligence²⁵, battery²⁶, assault²⁷, breach of contract²⁸, fiduciary relationship²⁹ between passenger and owner of aircraft.

Dispute settlement mechanism

ICAO has its 7 principal organ³⁰ to implement policy and adjudicate dispute. From the origin of Chicago convention as per article 84, there have been only 5 disputes. The very first dispute occurred was occurred between India and Pakistan in 1952 regarding interpretation of Chicago Convention. The dispute settlement solution adopted by Chicago convention covered under Article 84 to 88 (chapter XVIII) of Chicago Convention. There is various method of dispute settlement adopted by countries, but most common is political and legal solution:-

1. Political solution: - political solution basically includes negotiations, good offices, mediation, inquiry and conciliation. The Chicago convention, in its charter first and

²² The Principle of Absolute liability makes the individual absolutely liable for damage caused by the escape of a hazardous substance without any exceptions irrespective of the individual's intent in causing such damage or harm

²³ When a defendant is liable for committing an action, regardless of what his/her intent or mental state was when committing the action.

²⁴ Vicarious liability, or imputed liability, is a legal rule that holds a person or company responsible for actions committed by others or by their employees

²⁵ According to Winfield and Jolowicz, Negligence is the breach of a legal duty of care by the plaintiff which results in undesired damage to the plaintiff.

²⁶ Purposely touching or applying force on other persons or things related to the person without his consent with the intention to harm the person is known as a battery

²⁷ an act of the defendant that gives the plaintiff reasonable fear of the defendant inflicting a battery on him.

²⁸ A breach of contract is a failure, without legal excuse, to perform any promise that forms all or part of the contract.

²⁹ :a relationship in which one party places special trust, confidence, and reliance in and is influenced by another who has a fiduciary duty to act for the benefit of the party

³⁰ General assembly, Council, Air Navigation commission, Air transport committee, Legal Committee, joint support committee, air navigation service and sectoriat.

foremost step suggest to resolve dispute is negotiation. Under the negotiation the mediator is appoints by ICAO which raised issue and then parties are free to discuss. As per the rule 14 of Settlement of dispute resolution, it appoints ICAO council to establish good offices for its parties to dispute. According to article 26 of Chicago convention, on the basis of ICAO recommendation the state in which accident occurs will institute inquiry³¹.in advance to inquiry, assistance from Conciliation commission was provided to resolve international dispute as per the Hague Convention of 1809 and 1907³².

Example:- a) *US and Cuba (1988)*

In this case, U.S. refuses to allow Cuban aircraft to flies in its territory heading toward Canada. In this case President of council act as conciliator to resolve dispute.

b) US and European states

In this case, again President of ICAO council act as conciliator and repealed the hush kit regulation. The issue was how the EU directives can be applied on noise of aircraft regulation (hush Kit)

2. Legal solution:- When the dispute arises between countries in regard to death, injury or other non- commercial matter legal solution is most commonly opted. As per the article 16 of Hague convention 1899 suggest arbitration as most peaceful and efficacious means to resolve dispute. In regards article 38 of Hague convention 1907 the Permanent council of arbitration is established. The united states vs. France(1963), united states vs. Italy(1965), Belgium vs. Ireland(1981), united states vs. France(1978), are some common example of dispute solved through arbitration. The only court established internationally to resolve dispute is International Court of Justice

Example-a) *Pakistan v India 1971 (I.C.J. Reports 1972, p. 46)*--India suspended all Pakistan's over flight in Indian Territory and denied the council's decision. Later

³¹ For example inquiry has been conducted by Korea when the accident occurs to its Air Line flight KE007.

³² The Pact of Bogota provides Commissions of Investigation and Conciliation which must be convened by the Council of Organization of American States at the request of either Party involved in the dispute. Thus conciliation may be defined as a 'method for the settlement of international disputes of any nature according to which a commission set up by the parties, either on a permanent basis or on an ad hoc basis to deal with a dispute, proceeds to the impartial examination of the dispute and attempts to define the terms of a settlement susceptible of being accepted by them, or of affording the parties, with a view to its settlement, such aid as they may have requested

apply, to the International Court of Justice which confirms the council decision.

Air France v Saks 470 U.S. 392. 405 (1985)-- In this case U.S. Supreme Court held that Article 17 holds the passenger liable if the passenger's death or injury is caused by an unexpected or unusual incident or happening that occurs outside of the passenger's control. Given the rarity and magnitude of such events, an airplane accident is one example.

b) *Eastern Airlines v Floyd* (499 U.S. 530 (1991))-Allowing for emotional and psychological injuries, according to the United States Supreme Court, would result in undetermined culpability. The case of *Jack v. Trans World Airlines* (854 F. Supp. 654 (N.D. Cal. 1994)) makes it apparent that psychological damages unrelated to physical injuries cannot be obtained. Relatives of the deceased in an airline crash may only sue for emotional distress if they witness the crash and know their relative was on board.

Conclusion:-

With the growth of technology and modernization, the roots of aviation industry are also increasing. Aviation industry with the aspect of war, economy and politics is very crucial. Countries are also spending hefty amount on their aviation business. With growing roots, the disputes are also increasing. It can be between parties in a nation or outside the nation. With this purpose Chicago and Montreal convention tries its best to frame the rule and regulate the policies in its signatory countries. ICAO and ICJ is principal organ to solve the dispute. Some methods are legal and some are bilateral. These solutions are handling and resolving the disputes till now effectively to create a harmonious industry.

References:-

1) Online references:-

- (IBEF)(<https://www.ibef.org/industry/indian-aviation>)(18/7/23)
- (Ministry of civil aviation) (<https://www.civilaviation.gov.in/en/aboutus/orgsetup>) (18/7/23)

- (ICLG.com) (<https://iclg.com/practice-areas/aviation-laws-and-regulations/india>) (6/7/23)
- (Vanshika Sharma) (International civil aviation dispute settlement) (legal service India e-journal) (<https://www.legalserviceindia.com/legal/article-334-international-civil-aviation-dispute-settlement.html>) (18/7/23)
- (STA law firm) (Worldwide: Airplane Crash Liability In International Law) (mondaq: connecting knowledge and people) (<https://www.mondaq.com/aviation/903784/airplane-crash-liability-in-international-law>) (18/7/23)

2) Statue:-

- The carriage of good act, 1937
- Chicago convention, 1944
- Monetral convention, 1999
- *Guadalajara Protocol of 1961*