

ISSN: 2582-6433



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

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, Lakshmanagarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmanagarh, 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



14th, 2019

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

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



methodology and teaching and learning.

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

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.

IJLRA

DOMESTIC IMPLEMENTATION **OF AVIATION LAW IN INDIA**

AUTHORED BY - ADEEBA FAHEEM

(ADVOCATE)

ADEEBFAHEEM025@GMAIL.COM

Abstract

Aviation law is the branch of law that concerns flight, air travel, and associated legal and business concerns. The purpose and need for aviation law occurs from the globalization and expanding nature of human interaction as we move from the seas to the air and beyond our atmosphere. Air law may be defined as " the body of rules governing the use of airspace and it's benefits for aviation, general public and nations of the world." Air law is concerned with the smooth management of global airspace.

Introduction

International law has developed to have an impact on our daily life, including economic, social, and cultural components. With the advancement and growth of international relations in many regions of the world, India's interest in international law has always been significant. This is apparent, for example, in a number of recent Supreme Court of India rulings in which it has been forced to refer to changes in international law. As a result, it is critical that not only attorneys, politicians, administrators, and academics have a solid grasp of the issue, but that the Judiciary become aware of the interaction between international law and local law and harmonise the application of both laws.¹

In this era of globalisation, the norms of international law apply to all governments, large and small, rich and poor, weak and powerful. Many of the structural changes that have occurred in the global economy since the early 1980s have resulted in the liberalisation of capital, labour, intellectual property rights, and other areas, which has strengthened dependency.

Previously, we solely dealt with national problems brought before several Indian courts, including the Supreme Court, as well as High Courts and District Courts. However, the comfort of dealing with merely Municipal Laws is quickly vanishing for our Courts in the future, as we now have to deal with problems that have worldwide aspects.

¹ Domestic implementation of international air law EU,UK, and USA by B Balakista Reddy

What Is Aviation Law?

Aviation law is simply law of air. Well, don't mingle it with the laws of physics, air laws here are being addressed as the law that deals with flight and with all the legal issues that go along with it. The rationale and significance for aviation law stems from the globalisation and growing nature of human contact as we travel from the seas to the skies and beyond. The corpus of regulations controlling the use of airspace and its advantages for aviation, the general public, and governments throughout the world is known as air law. Air law is concerned with the control of the world's airways. Air law encompasses a wide variety of legal issues, ranging from liability for harm caused during air carriage to tax and environmental legislation. The aviation industry is the only one that is not subject to the WTO.²

In simple words, air law is "the system of regulations controlling the use of airspace and its advantages for aviation, the general public, and states throughout the world. Air law is concerned with the control of the world's airways. Air passenger and freight transportation contributes to the growth of the national economy and tourism. In most regions of the world, aviation is now a significant national industry.

Historical Background

The first commercial aircraft in India flew between Allahabad and Naini on February 18, 1911. The first commercial international flight in India, operated by the former Imperial Airways, took place in 1912, connecting Delhi to Karachi and beyond. J.R.D. Tata flew an air postal service aeroplane in 1932, following which Tata Airlines began scheduled air transport services. At the time of India's independence in 1947, the country had nine air transport businesses that carried both freight and people. To further enhance the national aviation industry, the Government of India and Air India — Tata Airlines was renamed Air India in 1946 - established Air India International Ltd. as a joint venture. To address the poor financial health of India's civil aviation sector, the Government of India approved the Air Corporations Act of 1953, which nationalised all carriers operating in India's civil aviation business. The Airports Economic Regulatory Authority of India Act of 2008 established the Airports Economic Regulatory Authority of India (AERA). Tariffs and other aeronautical costs are regulated by AERA, and airport performance criteria are monitored. AERA considers the following factors in the Indian context of airport regulation: Airports are natural monopolies;

² Section 3. The Airports economic regulatory authority of india act,2008

airports are public goods; in the case of both Brownfield and Greenfield airports, the Government of India has made land available for purchase to airport developers at a very cheap cost, frequently under the Land Acquisition Act.³

India's Aviation Ties with Other Nations:

India now has bilateral Air Service Agreements (ASAs) with 108 nations. While 72 international airlines travel into and out of India, four private domestic carriers - Jet Air, IndiGo, SpiceJet17, and Kingfisher - fly to 35 destinations in 25 countries. Air India, the national airline, operates a number of overseas routes, including seven in North America, nine in Europe, 12 in the Gulf, two in the Middle East, two in Africa, and 13 in West and East Asia.

With a vast fleet of aircraft, India has a prominent role in the civil aviation market. In all, 56 airlines provide scheduled air flights to and via India, including 22 international carriers flying over Indian territory. The nation has about 450 airports and 1091 registered aircraft. In addition to the three public sector airlines - Air India, Indian Airlines, and Alliance Air - two private operators - Jet Airways and Sahara India Airlines - operate in India. In addition, there are 41 non-scheduled air transport providers. In addition, the Ministry of Civil Aviation has given NOC to 34 applicants for the establishment of non-scheduled air transport operations. India has not been exempted to global trends. The liberalisation of the aviation sector began in 1986 and is still ongoing. Private airlines now have access to both international and domestic routes. Within the framework of bilateral air services agreements, India is liberalising its policies by providing international carriers increased traffic rights. India has proposed an open skies policy to ASEAN. In addition, India gave extra frequencies and landing places to SAARC countries. The open skies policy for international freight is still in effect. The rules governing foreign tourist charter flights has been relaxed.⁴

Importance Of Implementation Of Aviation Law

You may be wondering, what areas does aviation law affect?

If you answer this by saying the pilots and airports, they you are definitely not looking on the other side of the coin. Aviation law outlines every facet of the industry, from how close to a pilot may land to how many air traffic controllers must operate in a tower at any given time.

³ AIR 2006 Delhi 46

⁴ SCC Online

On the commercial and security fronts, the Transportation Security Administration (TSA) guidelines^[iii] are a crucial impact in airline customers' flying experiences. Aviation legislation affects more than just pilots and airports. It discusses freight transportation, passenger behaviour, business regulation, and airline and charter structure.

It enables the ICAO member nations' obligations and rights. Above all, air law is profoundly concerned with modern civilizations' economic activity. Air law also provides a method for nations to collaborate based on sovereign equality, fairness, and equal opportunity. When nations sharing a border need to collaborate or reach an agreement concerning the use of airspace or airports, they usually do so through ICAO, the International Civil Aviation Organization. The International Civil Aviation Organization (ICAO) is a United Nations body. When military aircraft from multiple nations must collaborate or discuss mobilisation, the governments or armed forces involved normally work directly with one another. Aviation Incidents That Pose Legal Issues:

The question at hand is generally who or what caused the accident and who is accountable for paying for the damages. However, this is frequently a difficult issue in aviation since virtually every significant disaster follows an "accident chain" in which numerous factors combine to generate the incident's circumstances.⁵

Despite the fact that there are a lot of laws and regulations protecting the aviation sector in India, there are still a number of issues that require prompt action. Despite all of this, the Indian aviation sector is one of the wealthiest in the world, and the Indian government must make a concerted effort to enforce different international conventions.

Important Cases:

International Airport A.I. Officers Association v Union of India and Another, 2005

A writ petition confronted the legal standing of Section 12(3)(r) of the Airport Authority of India Act, 1994 (subsequently referred to as 'AAI Act', as being contrary to the provisions of Sections 12(1) and 12(2) of the said AAI Act, whilst being ultra vires of Articles 14 and 12 of the Indian Constitution. The issues addressed were that whether the government is consider privatising some of the country's airports. The Court stated: "The rule of construction is well known that when there are two provisions in an enactment that cannot be reconciled with one

⁵ Civil aviation in india by Rk Yadav

other, they should be read in such a way that, if feasible, effect is given to both." This is known as the harmonic construction rule. The idea of harmonized construction is to give both provisions effect. With these principles in mind, it is legitimate to hold that Section 100(4) prescribed a one-year limitation period in regard of a scheme proposed under the relevant provisions Act, whereas in the case of a scheme proposed under Section 68-C of the old Act that was pending on the date of enforcement of the new Act, namely, July 1, 1989, the timeframe of one year prescribed under Section 100(4) should be computed from the date of commencement of the new Act. This reasoning would give full effect to both parts of the new Act, Section 100(4) and Section 217(2)(e).⁶

The Act must be read as a whole, and one provision of the Act must be interpreted in light of other sections in the same Act in order to create a consistent enactment of the whole statute. The clauses of the statutory provision should be construed well together so that the provisions of one section do not defeat those of another, unless reconciliation between the two sections is inconceivable.

Conclusion:

There have been several flight accidents that do pose as a question to the flight safety in India. DGCA is primarily responsible to deal with all the safety issues. DGCA has been targeted many times for lack of expertise and less training centres for the trainees. The majority of DGCA safety audits (ICAO-December 2012; FAA-September 2013) have identified the same problems .

According to me, these issues are required to be addressed. So may it be direct or not , aviation law does have an impact on our lives and this sector has much scope of growth in it.

We hope that our readers make the best out of the information provided and strive for something productive as to their sky there's no need for a flight permit.

⁶ SCC Online