

Domestic Air Laws in India: An Overview

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Why Indian has to Regulate Civil Aviation?

- What is Regulations and Why India has to regulate its Civil Aviation?
- to provide for the transport requirements of foreign commerce
- To promote tourism sector
- to provide employment and earn foreign exchange
- to meet the needs of the postal system
- to create the conditions for a viable, healthy air transport sector
- to aid in national development
- to serve national defence.
- to meet disaster assistance needs etc.

Legislative component (making of laws, policies, rules and regulations, and these rules for granting or denying of permission etc.)

Organizational Component, Ministry of Civil Aviation and various other agencies like DGCA, Air India, Indian, other private airlines and AAI provides infrastructure

Air Laws in India

- India is party to all important treaties on Int. civil aviation and to implement most of these treaties it also made enabling legislations which include:
- Air Ships Act 1911
- Aircraft Rules (Custom) 1920
- Aircraft Act, 1934
- Aircraft Rules, 1937
- Air Corporations Act 1953
- Aircraft Public Health Rules 1954
- Carriage by Air Act, 1972
- Tokyo Convention 1975
- Anti-Hijacking Act, 1982
- Unlawful Seizure against the Safety of Civil Aviation 1982
- Air Corporations (Transfer of Undertakings and Repeal) Act 1994
- The Aircraft (Demolition of obstructions caused by Buildings and Trees etc.) Rules, 1994
- Airport Authority Act 1994
- The Aircraft (Carriage of Dangerous Goods) Rules, 2003
- The AERA 2008
- Carriage by Air Act (Amended) 2009
- Domestic Implementation of Annexure 17 to Chicago convention

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28-Mar-19

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How India Regulate Civil Aviation?

- The Ministry of Civil Aviation (**MCA**) is the nodal Ministry responsible for the formulation of policy and regulation of civil aviation in India.
- The MCA oversees the planning and implementation of schemes for the growth and expansion of civil air transport, airport facilities, air traffic services and carriage of passengers and goods by air.
- The following are the principal regulatory authorities functioning under the authority of the MCA:
 - -DGCA-
 - - AAI
 - - BCAS
 - - Metrology
 - Airlines
 - -Scheduled operators
 - -non scheduled operators

Indian Regulations- DGCA

- The Directorate General of Civil Aviation (**DGCA**) enforces civil air regulations, regulates air transport services, air safety and airworthiness standards.
- The DGCA draws its authority from the Aircraft Act and Rules and performs functions like issuance of licences, approvals, certificates and permits.
- Over all control of civil aviation in India
- Power to issue directions
- Power to Issue CAR
- Power make specifications
- Power to Issue licenses- persons, aircrafts, aerodromes,
- Power to approve schedules
- Power to issue investigate Accidents and incidents

Indian Regulations- DGCA Cont..

- Administration Directorate
- Aerodrome Standards Directorate (AD)
- Air Safety Directorate (DAS)
- Air Transport Directorate (AT)
- Airworthiness Directorate (DAW) (which is also responsible for registering drones in India)
- Flight Standards Directorate (FSD)
- Information & Regulation Directorate (DRI)
- Aircraft Engineering Directorate (AED)
- Directorate Of Flying Training (DFT)
- Medical Section
- Directorate of Training & Licensing (DTL)
- Directorate of Airspace and Air Navigation Services Standards (ANSS)

Indian Regulations- AAI

- The Airports Authority of India or AAI is a statutory body (created through the Airports Authority of India Act, 1994) working under the Ministry of Civil Aviation is responsible for creating, upgrading, maintaining and managing civil aviation infrastructure in India.
- It provides Communication Navigation Surveillance / Air Traffic Management (CNS/ATM) services over Indian airspace and adjoining oceanic areas.
- It also manages a total of 126 Airports, including 11 International Airports, 11 Customs Airports, 89 Domestic Airports and 26 Civil enclaves at Military Airfields.
- AAI also has ground installations at all airports and 25 other locations to ensure safety of aircraft operations.
- AAI covers all major air-routes over Indian landmass via 29 Radar installations at 11 locations along with 700VOR/DVOR installations co-located with Distance Measuring Equipment (DME).
- 52 runways are provided with Instrument landing system (ILS) installations with Night Landing Facilities at most of these airports and Automatic Message Switching System at 15 Airports

The Airport Economic Regulatory Authority (AERA)

- Why AERA?
- Airports Economic Regulatory Authority (AERA) of India Act was passed in 2008, to establish an independent aeronautical regulatory authority.
- The authority was to work for the protection of the interest of airports, airlines and passengers and also regulate traffic for aeronautical services.
- Aeronautical services primarily include navigation, surveillance and supportive communication for air traffic management and landing facilitation.
- To determine the amount of the Development Fees in respect of major airports.
- To determine the amount of the Passengers Service Fee levied under rule 88 of the Aircraft Rules, 1937 made under the Aircraft Act, 1934.
- To monitor the set Performance Standards relating to quality, continuity and reliability of service as may be specified by the Central Government or any authority authorized by it in this behalf.
- To perform such other functions relating to tariff, as may be entrusted to it by the Central Government or as may be necessary to carry out the provisions of this Act.

Aircraft operation

- Rules 134 and 134A of the AR1937 permit the operation of the following types of air transport services upon fulfilment of minimum requirements laid down in the relevant CAR (Series C, Section 3, Air Transport) issued by the DGCA:
- Scheduled Air Transport Service (Passenger).
- Scheduled Air Transport Service (Cargo).
- Non-Scheduled Air Transport Service (Passenger).
- Non-Scheduled Air Transport Service (Cargo).
- The aforesaid permit is equivalent to the Air Operator's Certificate that is required to be issued by an ICAO Member State.
- Besides other requirements, the issuance of a permit shall depend on the applicant demonstrating adequate organisation, method of control and supervision of flight operations, a training programme and maintenance arrangements consistent with the nature and extent of the operations specified.
- The CAP 3100 Air Operators Certification Manual provides guidance to an applicant seeking an air operator's permit on the systematic procedures to be followed during a certification process

Aircraft operation Cont..

- Clearance from DGCA for the operation
- Valid licenses
- Approval of BCAS
- Approval of flight plan
- Fueling
- ATC clearances
- security clearance
- ATC control till landing.
- Disembarking
- Parking, housing of Aircraft
- Clearance of all dues
- Types of Airline operations: Scheduled air transport services Permit
- Non scheduled airlines Permits (NSOP) - For Chartered operations -
For Occasional private use (Private aircraft operations)

Indian Regulations- BCAS

- The main responsibility of BCAS are lay down standards and measures in respect of security of civil flights at International and domestic airports in India.
- ORGANISATION: BCAS is the regulatory authority for civil aviation security in India. It is headed by an officer of the rank of Director General of Police and is designated as Commissioner of Security (Civil Aviation).
- Commissioner of security (CA) is the appropriate authority for implementation of Annexure 17 to Chicago convention of International civil aviation organization (ICAO). Commissioner of security (CA) is responsible for the development, implementation and maintenance of the National Civil Aviation Security Programme.
- Functions: Laying down Aviation Security Standards in accordance with Annex 17 to Chicago Convention of ICAO for airport operators, airlines operators, and their security agencies responsible for implementing AVSEC measures.
- Monitoring the implementation of security rules and regulations and carrying out survey of security needs.
- Ensure that the persons implementing security controls are appropriately trained and possess all competencies required to perform their duties.
- Planning and coordination of Aviation security matters.

Air Law in India- General Regulations

Aviation Regulation before 1934 Act

- Aircraft Act, 1934 and various recent Amendments
- Aircraft Rules, 1937
- The Aircraft (Demolition of obstructions caused by Buildings and Trees etc.) Rules, 1994
- Air Corporations Act 1994
- The Aircraft (Carriage of Dangerous Goods) Rules, 2003
- Air Corporations Act 1994
- Civil Aviation Regulations

The Indian Airships Act, 1911

- Heavier-than-air craft started flying in the initial years of the twentieth century and when the whole world was still amazed at the 'uniquity' of the invention by Wright brothers and was intently watching further development of the machine, India had already enacted an Act to regulate possession, export and operations of aircraft
- *Act No XVII of 1911*. Received assent of the GG on the 23rd September, 1911.
- The Indian Airships Act, 1911 was passed "to control the manufacture, possession, use, sale, import and export of airships" and authorised the Governor General to issue appropriate licenses for respective purpose and empowered the government to prohibit its use and operations.
- Later, Aircraft Rules, 1920 were framed under powers of the Act and some rules of that vintage, particularly "Rules Governing the Arrival and Departure of Aircraft" are still operative in India.
- This Act later got substantially absorbed into The Aircraft Act, 1934.
- Applied to whole British India
- Sec 3- defines the power and function of the Governor General in Council including those for making Rules for licensing of Manufacture, Possession , Use ,Sale, Import and Export of Ship.
- Sec 4 –GG power to prohibit – Import or Export for public good
- Sec 5- GG power to Cancelled or suspend licenses & to acquire airships for public services

The Indian Aircraft Rules (Customs)1920

- Each country has its own laws and regulations for the import and export of goods into and out of a country, which its customs authority enforces.
- The import or export of some goods may be restricted or forbidden.
- A customs duty is a tariff or tax on the importation (usually) or exportation (unusually) of goods.
- The rates of customs duties are either specific or on ad valorem basis, that is, it is based on the value of goods Part 9 from 53-64-Rules governing arrival and departure of Aircraft
- 53 Custom Aerodromes & Customs Officers
- 54 Arrival and Departure
- 55 import and Export of goods
- 56 Procedure on arrival in India
- 57 Delivery of Log Books, manifest , Declaration of goods and stores carried in A/C
- 58 unloading of goods on airport
- 59 Procedure on export
- Prohibition of signals in certain cases
- Forced landings
- Examination of aircraft by customs
- Provision of Sea Customs Act VIII of 1878 to be deemed to apply to import and export by air

GST and Civil Aviation

- The implementation of Goods and Services Tax (GST) as an indirect tax in India has affected almost every major and most minor business sectors of the country. Indian Aviation is one such industry which was affected by the launch of GST
- The major impact of GST on international and domestic flights was in the form of revised tax rates of airfares. After the launch of GST, the tax rates on both economy and business class airfares were changed. Whereas the tax on Economy class air travels was reduced, the rate on Business class airfares is now higher.
- In the pre-GST regime, both service tax and VAT were applicable on aircraft repair services, however, this is being treated as a pure service transaction under GST, thus reducing the tax burden by removing the cascading of taxes.
- Import of aircrafts on lease is tax-free under GST, so it has become cheaper to import aircrafts and spare parts from outside of India.

1934 Act - Preamble + 19 Sections

- The objective – to make better provision for the control of the manufacture, possession, use, operation, sale, import and export of aircraft.
- 1. Short title and extent
- 2. Definitions
- 3. Power of Central Government (CG) to exempt certain aircraft.--Dynamic-Technical character of the subject – Aviation Subordinate or delegated legislation
- 4. Section Rules to implement the convention 1944- including annex thereto relating to SARPS
- 4A. Safety oversight functions
- 5. Power of Central Government to make rules.-to make rule regarding use, operation etc of A/c , licensing, aerodrome, , air routes tariff w.r.t AAI aerodromes etc
- 5A. Power to issue directions.
- 6. Power of Central Government to make orders in emergency.
- 7. Power of Central Government to make rules for investigation of accidents.-
- 8. Power to detain aircraft.
- 8A. Power of Central Government to make rules for protecting the public health.-
- 8 B. Emergency powers for protecting the public health.
- 8 C. Power of CG to make rules for securing safe custody and re-delivery of unclaimed property.-
- 9. Wreck and Salvage.-

Aircraft Act, 1934

- 9 A. Power of CG to prohibit or regulate construction of buildings, planting of trees etc.
- 9 B. Payment of compensation.-
- 9C. Appeals from awards in respect of compensation.
- 9D. Arbitrator to have certain powers of civil Courts.
- 10. Penalty for act in contravention of rule made under this Act.
- 11. Penalty for flying so as to cause danger.
- 11A. Penalty for failure to comply with directions issued under section 5A.
- 11B. Penalty for failure to comply with directions issued under section 9A.
- 12. Penalty for abetment of offences and attempted offences.
- 13. Power of Court to order forfeiture.
- 14. Rules to be made after publication.
- 14A. Laying of rules before Parliament.
- 15. Use of patented invention on aircraft not registered in India.
- 16. Power to apply customs procedure.-
- 17. Bar of certain suits.-
- 18. Saving for acts done in good faith under the Act.-
- 19. Saving of application of Act.-

Aircraft Rules, 1937

- Consisting of 14 parts- 161 rules & 12 schedules
- The Aircraft Act and Aircraft Rules covers the general conditions of flying, general safety conditions, registrations and marking of aircraft, investigations of accidents, regulatory provisions, air transport services etc.
- Power to Make Rules
- U/s 5 and 7, S/s (2) of section 8 of the Aircraft Act, 1934
- U/s 4 of the Indian Telegraph Act, 1885 (XIII of 1885),
- Indian Aircraft Rules, 1920, with the exception of Part IX thereof

- PART I Preliminary (1 - 3B)
- PART II General Conditions of Flying (4 - 20)
- PART III General Safety Conditions (21 - 29D)
- PART IV Registration and Marking of Aircraft (30 - 37A)
- PART V Personnel of Aircraft (38 - 48)

Aircraft Rules, 1937

- PART VI Airworthiness (49 - 62)
- PART VII Radio Telegraph Apparatus (63 - 64)
- PART VIII Aeronautical Beacons, Ground Lights and False Lights (65 - 66)
- PART IX Log Books (67 - 67B)
- PART X Omitted vide GSR 536(E) dated 5th July 2012
- PART X-A Omitted vide GSR 536(E) dated 5th July 2012
- PART XI Aerodromes (78 - 92)
- PART XII Personnel Of Air Traffic Services (93 - 118)
- PART XII-A Aeronautical Telecommunication (119 - 132)
- PART XII-B Regulatory Provisions (133A)
- PART XII-C Engineering, Inspection and Manual Requirements for Organisations other than Operators (133B 133C)
- PART XIII Air Transport Services and Aerial Work (134 - 153)
- PART XIII-A Engineering, Inspection and Manual Requirements Owners or Operators (154 - 155A)
- PART XIV General (156 - 161)

The Aircraft Public Health Rules 1954

- This rules are made as Sec 8A of the Aircraft Act 1934
- 6 Parts
- Part 1 Introduction and definitions
- Part 2- Aircraft Arrivals when diseases like Yellow fever, Plague, cholera , smallpox etc.,,,
- Part 3 – Aircraft Departure procedure for passenger and flight
- Part 4- Carriage of dead bodies
- Part 5- Miscellaneous health Provisions
- Part 6- offences and Penalties

CIVIL AVIATION REQUIREMENTS (CARs)

- CAR- Comprehensive technical rules and requirements, Issued by DGCA
- CAR describes the procedure for issue and revision of Civil Aviation Requirements and their dissemination to various organizations
- Section 4 of the Aircraft Act, 1934 enables the Central Government to make rules to implement the Convention relating to International Civil Aviation signed at Chicago on the 7th day of December, 1944 including any Annex thereto relating to SARP as amended from time to time.
- Section 5 of the Aircraft Act 1934 empowers the Central Government to make rules regulating the manufacture, possession, use, operation, sale, import or export of any aircraft or class of aircraft and for securing the safety of operation.
- Rule 29C of the Aircraft Rules 1937 enables DGCA to lay down standards and procedures not inconsistent with the Aircraft Act, 1934 and the rules made thereunder to carry out the Convention and any Annex thereto referred to above
- In accordance with rule 133 A of the Aircraft Rules, 1937, the Director General may issue, inter alia, Civil Aviation Requirements not inconsistent with the Aircraft Act, 1934 and the rules made thereunder.

Purpose of CAR

Broad principles of law in Aircraft Rules, 1937, CAR specify the detailed procedures so as to

- a) meet the duties and obligations of India as a Contracting State under the convention
- b) harmonize the requirements with the rules and regulations of other regulatory authorities such as FAA/EASA etc.
- c) implement the recommendations of the Court of Inquiry or any other committee constituted by the Central Government/ Director General.
- CARs are promulgated under the following sections:-
- Section 1 - General
- Section 2 - Airworthiness
- Section 3 - Air Transport
- Section 4 - Aerodrome Standards and Air Traffic Services
- Section 5 - Air Safety
- Section 6 - Design standards and Type Certification
- Section 7 - Flight Crew Standards, Training and Licencing
- Section 8 - Aircraft Operations

CAR-Compliance

- CARs shall be complied with by the person or organization to whom such direction is issued, in compliance with Rule 133A (3).
- It is the responsibility of the operator, owner, organization and service provider ensure that the implementation procedures for the requirements are duly reflected in the related Manuals required as per the applicable Rules and CAR
- Appeals:
 - Rule 3B of the Aircraft Rules, 1937
 - Against an order passed by an officer Appeal can be preferred to the next higher officer within 60 days
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 - Against an order passed by an officer Appeal can be preferred to the next higher officer within 60 days

AERONAUTICAL INFORMATION CIRCULARS (AICs)

- Published by DGCA – Available on website
- All major orders, rules, amendments affecting civil aviation in India are published from time to time
- 01/2009 05.01.2009 Checklist of current A.I.C.s (Updated up to 31st Dec.2008)
- 02/2009 28.02.2009 Collection of User Development Fee - DIAL
- 03/2009 24.03.2009 Collection of User Development Fee - HIAL
- 04/2009 20.05.2009 Quality Assurance of approved training organisations in ICAO contracting States
- 05/2009 29.05.2009 Surveillance of operations by a foreign operator
- 06/2009 30.06.2009 Grant of permission for providing ground handling services at airports other than those belonging to the Airports Authority of India.
- 07/2009 02.07.2009 Collection of User Development Fee - BIAL
- 08/2009 17.07.2009 Guidelines for grant of permission to Indian Air Transport Undertakings for operation of Scheduled International Air Transport Services.

AICs Cont..

- 09/2009 30.10.2009 Requirements for grant of Operating Authorisation to Foreign Airlines under Bilateral Air Services Agreements.
- 10/2009 10.11.2009 Guidelines for grant of Permission to Foreign Airlines to operate Additional Capacity to/from India
- 03/2019 28.01.2019 Issue of AIC in respect of Aeronautical Tariffs at Vishakhapatnam Airport, for the 1st Control Period (01.04.2018 To 31.03.2023)
- 08/2019 14.03.2019 Effective Implementation of Cape Town Convention – Issuance of revised Standard Operating Procedure for Export of Aircraft
- 03/2018 27.02.2018 Levy and collection of Aeronautical Charges at Chaudhary Charan Singh International Airport, Lucknow for the second control period 01.04.2016-31.03.2021
- 05/2018 12.04.2018 Economic Regulation Of Aeronautical Services Provided By Airport Operators/Service Providers Of Cargo Facility, Ground Handling And Supply Of Fuel To The Aircraft-Interim Arrangement To Continue The Levy Of Existing Tariffs Beyond 31.03.2018 For The Second Control Period
- 05/2017 13.04.2017 In the matter of economic regulation of Aeronautical Services provided by Airport Operators/Service Providers of cargo facility, ground handling and supply of fuel to the Aircraft-Interim arrangement to continue the levy of existing tariffs (as on 31.03.2016), till determination of tariffs for the second control period

The Air Corporations Act, 1953

- Why Nationalization Aviation Sector?
- Prior to 1953 Air Transport in India was provided by private airlines
- Aviation was not developed and air routes were not profitable and companies were in loss
- Aviation Safety and Security was also problem
- Therefor the Nationalization was an inevitable
- The preamble of the Act stats `` better provisions for the operation of air transport services by the establishment of air corporations in the public sector
- The two corporations i.e. Air India and Indian air lines were established
- The Act comprised of VII Chapter and 45 sections

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Nationalization Era and Problems in Aviation Industry

- The early years of Indian aviation industry and especially 1949-1950, witnessed soaring prices of aviation fuel, mounting salary bills and disproportionately large fleets.
- The result was shown in the declining financial health of the airline companies inspite of a slightly favourable and liberal patronage by the government and an increasing trend in air passenger traffic.
- The Nationalization era witnessed excessive governmental control, lack of a strategic vision, cumbersome procedures characterized by the infamous 'red-tape' and delayed decision making led to a decline in the standards and efficiency of both the corporations and they were unable to meet the growing demands of the aviation market.
- Similarly, the airports management and development was sluggish and was far behind the actual requirements. The inefficiency caused in the aviation industry by nationalization not only hampered the growth of aviation but also severely hampered tourism, trade and commerce and employment generation.
- Airline industry in India is plagued with several problems. These include high aviation turbine fuel (ATF) prices, rising labor costs and shortage of skilled labor, need for rapid fleet expansion, and infrastructure constraints and need for up gradation
- The Tata Committee Recommendations and the establishment of IAAI, NAA later on merging these two into AAI

The Air Corporation (Transfer of Undertakings and Repeal) Act 1994

- Post Nationalization Era- 1960s.
- Developments in 1970s and 1980s including De-regulations, Globalization, Liberalization and Privatization
- Indian's response to the above global developments
- India's Open Sky Policy for Cargo sector
- India's Open Sky Policy relating to Passengers
- India's Liberalization Policy of 1990s and its Impact on Civil Aviation
- The Need for repealing of the 1953 Act.

Overview of Act, 1994

- Preamble +12 Sections
- 1. Short title and Commencement
- 2. Definitions
- 3. Undertaking of corporations to vest in companies
- 4. General effect of vesting of undertakings in the companies
- 5. Licenses ,etc. to be deemed to have been granted to companies
- 6. Tax exemption or benefit to continue to have effect
- 7. Guarantee to be operative
- 8. provision in respect of officers and other employees of corporations
- 9. Power of Central Govt to give directions
- 10. Power to remove Difficulties
- 11. Repeal of Act 27 of 1953 and corporations to cease to exist
- 12. Repeal and Saving

Overview of Act, 1994

- In its objectives the act says “ An Act to provide for the transfer and vesting of the undertakings of Indian Airlines and Air India respectively to and in the companies formed and registered as Indian Airlines Ltd. and Air India Ltd. and matters connected therewith or incidental thereto and also to repeal the Air Corporations Act 1953.”
- The Act also defined important terms like ‘appointed day’ ‘company’ ‘corporations’ etc. Under Section 3 of the Act undertakings of corporations to vest in the companies. And there shall be transferred to, and vest in (a) Indian Airlines Ltd., the undertakings of Indian Airlines . and (b) Air India Ltd., the undertakings of Air India.
- Under Section 4 the General effect of vesting of undertakings in the companies. The undertakings of a corporation which is transferred to, and which vests in a company under Section 3 shall be deemed to include all assets including movable & immovable. Licenses etc. to be deemed to have been granted to companies (Section 5).
- Other important provisions of the act includes tax exemption or benefit to continue to have effect, Guarantee to be operative, provisions in respect of officers and other employs of corporations, power of Central Government to give direction, powers to remove difficulties etc.

Domestic Air Laws Relating to Aviation Liability, Safety and Security

Carriage by Air Act, 1972

The Carriage by Air (Amendment) Act, 2009

Notification regarding application of the Carriage by Air Act, 1972, to carriage by air which is not international

■ **Air Safety and Security**

Tokyo Convention 1975

Anti-Hijacking Act, 1982

Unlawful Seizure against the Safety of Civil Aviation 1982

1994 Amendments to the above Acts

Recent Developments

Warsaw System and Aviation Liability

- The Primary objectives of the Warsaw System:
- To create and limit the liability of air carriers
- To define and establish uniform rules arising out of international air transportation.
- Warsaw system consisting of -
- The Warsaw Convention 1929
- The Hague Protocol, 1955
- Guadalajara supplementary convention of 1961
- The Guatemala City Protocol in 1971
- The Montreal Protocols of 1975
- IATA Inter-carrier Agreement (IIA) 1996
- IATA Measures of Implementation Agreement (MIA) 1996
- The Montréal Convention 1999

The Carriage by Air Act, 1972

- The Indian Carriage by Air Act 1934- repealed To give effect to the Warsaw convention 1929 Amended as per Hague protocol 1955
- The carriage by Air Act, 1972, purports to give statutory status and the force of law to the Warsaw Convention 1929 and that amended by the Hague Protocol, 1955.
- The act also empowers the government to extend its application to non-international carriage matters connected therewith.
- The objective of this Act is to ensure enforcement of this uniform code in relation to international carriage by air, regulation of contracts concerning such carriage and to serve as common law for adjudication of actions arising within the contracting parties to avoid conflict of laws and other legal problems.
- The Act extends to the whole of India and it come into with effect from 15 May, 1973 superseding and repealing the Carriage by Air Act, 1934 (Article 1). The Act defined amended convention and convention.

The Carriage by Air Act, 1972 Cont..

- The provisions of the convention relating to the rights and liabilities of carriers, passengers, consignees, consignors and other persons shall, subject to the provisions of this Act, have the force of law in India in relation to any carriage by air to which those rules apply irrespective of the nationality of the aircraft performing the Carriage 3(1).
- According to section 4 of the Act, the Warsaw Convention 1929 as amended by the Hague Protocol 1955 has been incorporated in the Second Schedule to the Act and applies mutatis mutandi to the respective High contracting parties to the Protocol, and regulates international Carriage by air as performed under its provisions, irrespective of nationality of the aircraft performing the carriage.

The Carriage by Air Act, 1972 Cont..

- Section 5(1) mentions the liability in case of deaths. According to it “Notwithstanding anything contained in the Fatal Accident Act, 1855 or any other enactment or rule of law, enforce in any part of India, the rules contained in first scheduled and in the Second Scheduled shall, in all cases to which those rules apply, determine the liability of a carrier in respect of the death of a passenger.
- It further says the liability shall be enforceable for the benefit of such of the members of the passengers family as sustained damage by reason of his death.
- Section 9 repealed the Indian Carriage by Air Act, 1934.
- The act bears two schedules which embody the operative provisions of the Warsaw Convention 1929, and the amended Convention incorporating the Hague Protocol, 1955 in the First and Second Schedules respectively.

New Aviation Liability in India

- Montreal Convention- Amendment of 2009-w.e.f 1.7.2009
- Montreal Convention- 3rd Schedule of Carriage by Air Act 1972
- India has acceded to the Montreal Convention.
- In order to incorporate the Convention's provisions into Indian Law, the Carriage by Air (Amendment) Act 2008 amending the Carriage by Air Act 1972 was enacted by Parliament in February 2009 and notified in March 2009.
- India has become the 91st Member of the Montreal Convention on Civil Aviation that imposes STRICT PENALTIES ON CARRIERS for the DEATH OF PASSENGERS due to negligence and fixes higher Insurance Premium towards air disasters
- The Carriage by Air (Amendment) Act, 2009
- Notification regarding application of the Carriage by Air Act, 1972, to carriage by air which is not international

Importance of Air Safety and Security

- The priority for aviation administrations and airlines is the safety and Security of passengers, the general public, ground personnel, and property.
- Indeed, the improvements in technology, which restored safety to modern aircraft, have also contributed to a great risk of loss to passengers as evident in a number of disasters in recent years
- Air safety is the basis of public confidence in the air transport industry, and public confidence is a necessary condition for the continued growth and prosperity of industry and the world economy. Thus the aircraft designer, the manufacturer, the operator and government - all strive to achieve greater air safety.

What is Air Safety?

- The phrase "air safety" generally connotes the minimisation of dangers, risks and hazards during aircraft operations, bearing chiefly on safety standards established by aviation technology and the competence of personnel involved in aircraft operation.
- In other words, air safety presupposes precautions against accidents of any kind, either by preventing their recurrence or by trying to minimise their effect.

Air Safety Regulations in India

- A phenomenal rise in aerial navigation, globalisation of air transport, privatisation of government air services, liberalisation of economic regulations and increasing environmental controls has significant implications for safety and security
- Added to these, profound changes in aircraft design, engineering and speed, and the surging competition among airlines all point to an inexorable need for legal and other measures for safety in the air
- Every country has its own legislation to regulate and codify different facets of civil aviation.
- Air safety and security regulations covered in India include the Aircraft Act 1934, the Aircraft Rules 1937, the Constitution of India 1950, the Incorporation of the International Standards and Recommended Practices of the Chicago Convention 1944

Government Initiatives

- The Government of India, despite the claims that airspace is safe with advanced ATC, has presumably realised the existing weakness in the air safety system.
- It recently appointed several committees to overhaul air security in flights. The wider terms of reference for the committees include:
 - the review of the DGCA organisational structure;
 - the overhaul of the Aircraft Act 1934, the Aircraft Rules 1937, and existing safety regulations;
 - the development of aviation manpower and working conditions at various airports; the revamp of air navigation and air traffic control system; and
 - the creation of safety awareness

Committees on Air Safety

- The Kanungo Committee has been constituted to ensure a comprehensive appraisal of the existing air safety regulations and machinery and probe their effectiveness.
- The Bimal Julka Committee has strongly criticised the state of working conditions at airports and recommended the modernisation of air traffic systems.
- The Justice R.C. Lahoti Commission calls for the introduction of separate corridors at Delhi and Mumbai airports for incoming and outgoing flights and of the latest radar system.
- The Seth Committee report recommends *inter alia* autonomy for the DGCA, the setting up of a civil aviation board to act as an appellate authority for representations against the decisions of the DGCA, the AAI and the BCAS; the creation of an independent body to investigate accidents; the overhaul of aviation training infrastructure; the strengthening of safety regulations; more stringent methods of licensing for personnel; the modernisation of satellite-based air navigation systems; and the safety audit of aviation agencies

Committees Cont..

- In February 2000 the government has entrusted the R.C. Jain Committee to look into the security aspect at all important airports across the country in past-hijacking scenario.
- The Jain Committee was constituted on December 22, 1999 to go into the reasons for the death of 13 year old Jyosna Jettini on an escalator at the IGIA.
- The committee, which is already involved in looking into various issues concerning airport functioning, will include recommendations for systematic improvements on airport maintenance, co-ordination between various agencies at the airport, preparedness and sensitisation of personnel at the airport in case of emergencies and accidents.

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DGCA and Air Safety

- The Directorate of Air Safety is one of the agencies functioning under the DGCA.
- It investigates air accidents/incidents and keeps their records and statistics. It also has regulatory functions over safety requirements.
- The inspector of the directorate conducts investigation into accidents/incidents if ever an inspector's probe is ordered by the DGCA.
- In actual practice, the DGCA appoints an inspector whenever an accident occurs. If a commission of enquiry is set up, the inspector reports to the commission and follows its directions.
- The Air Safety Directorate presently depends heavily on the operator's know-how, or equipment, for the analysis of accidents/incidents.
- The directorate has very meagre resources of its own for the analysis of data and deciphering of recordings.
- It is also tremendously handicapped in its investigations for lack of pilot experience - this is vital for the analysis of flight handling techniques, control inputs, and recordings

Aviation Security Regulations in India

- A phenomenal rise in aerial navigation, globalisation of air transport, privatisation of government air services, liberalisation of economic regulations and increasing environmental controls has significant implications for security
- Added to these, profound changes in aircraft design, engineering and speed, and the surging competition among airlines all point to an inexorable need for legal and other measures for safety in the air
- Every country has its own legislation to regulate and codify different facets of civil aviation.
- Air safety and security regulations covered in India include the Aircraft Act 1934, the Aircraft Rules 1937, the Constitution of India 1950, the Incorporation of the International Standards and Recommended Practices of the Chicago Convention 1944.

Security Regulations Cont..

- India's national civil aviation security regulations are based on the Annex 17 of the Chicago Convention 1944.
- Under the Annex 17, the contracting states shall ensure the security of international passengers through well-trained officers, supporting facilities, safeguard of airport and ground facilities at all international airports, and effective implementation of national civil aviation training programmes.
- A national civil aviation exercise was introduced in India after the passage of the Tokyo Convention Act 1975. Later, the Anti-Hijacking Act, and the Suppression of Unlawful Acts Against Safety of Civil Aviation Act were passed in 1982. The latter two Acts were amended in 1994.

Tokyo Convention Act 1975

- The Tokyo Convention Act 1975 was passed by the Indian Parliament as the Act 20 of 1975 and came into force on 1 January 1976.
- This Act was passed to give effect to the Convention on Offences and Certain Other Acts Committed on Board Aircraft, adopted in Tokyo on 14 December 1963.
- The Act comprises four chapters: preliminary, definitions, offences and miscellaneous.
- Section 2 of the Act defines important terms like aircraft, appropriate authority, commander, convention country, Indian registered aircraft, military aircraft, operator, pilot-in-command, the Tokyo Convention, and aircraft in flight.
- Chapter III of the Act elaborating on "offences" is the core subject of the Tokyo Convention as implemented in India.
- The "offences" covered in this chapter are
 - (a) the application of criminal law to aircraft;
 - (b) provisions of the Extradition Act 1962;
 - (c) the powers of an aircraft commander;
 - (d) jurisdiction;
 - (e) provisions of evidence in connection with aircraft; and
 - (f) provisions of documentary evidence

Anti-Hijacking Act 1982

- The Anti-Hijacking Act of 1982 was passed by the Indian Parliament to give effect to the Convention for the Suppression of Unlawful Seizure of Aircraft adopted in the Hague on 16 December 1970.
- The Act has three chapters: preliminary, hijacking and connected offences; and miscellaneous.
- Section 2 of the Act defines aircraft, aircraft registered in India - convention country, the Hague Convention, and military aircraft.
- Section 3 of the Act, dealing with hijacking, says: "Whoever on board an aircraft in flight, unlawfully, by force or threat of force or by any other form of intimidation, seizes or exercises control of that aircraft, commits the offence of hijacking of such aircraft."
- Para 2 of section 3 of the Act covers attempt to commit or abatement of hijacking.

Punishments for Hijackings

- The punishment for hijacking under section 4 of the Act is stated thus: "Whoever commits the offence of hijacking shall be punished with imprisonment for life and shall also be liable to fine." Section 5 of the Act clarifies that such acts are punishable under the Indian Law if these acts have been committed in India.
- The question of jurisdiction is elaborated by Section 6 of the Act: An Indian court shall take cognisance of an offence of hijacking or related act of violence committed outside India only under the following five circumstances:
- (a) such offence is committed on board an aircraft registered in India;(b) such offence is committed on board a dry leased aircraft, the lessee having his principal place of business in India, or - where he has no such place of business - his permanent residence is in India;(c) the alleged offender is a citizen of India;(d) the alleged offender is on board the aircraft in question when it lands in India; or(e) the alleged offender is found in India.

Anti-Hijacking Amendment Act 1994

- The miscellaneous provisions of the Act include those relating to extradition, the certification of convention parties by the Union Government, the notification of an act registered in a convention country, the securing of previous sanction for prosecution, and the protection of an action taken in good faith.
- Under section 5A of the Anti-Hijacking Amendment Act 1994, the Union Government may, by notification in the official gazette, confer on any officer of the Central Government the powers of arrest, investigation and prosecution exercisable by a police officer under the code of criminal procedure (CPC) 1973.
- The insertion of new Sections 6A, 6B and 6C provides for the specification of designated courts by state governments for speedy trial and disposal thereof and shift the burden of proof on the accused in specified circumstances. Furthermore, the inclusion of Section 7A has made the grant of bail more stringent.

Suppression of Unlawful Acts against the Safety of Civil Aviation Act 1982

- This Act was passed by the Indian Parliament to give effect to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, adopted in Montreal on 23 September 1971.
- This Act also carries identical provisions with the Anti-Hijacking Act, except for Sections 2(2) 3 and 4.
- Section 2 of the Montreal Convention Act, identical with Section 2 of the Anti-Hijacking Act, embodies the definitions of aircraft, aircraft registered in India, convention country, military aircraft, and the Montreal Convention.

Punishments

- Chapter II of Section 3 of the Montreal Convention Act incorporates, in identical terms, the offences enumerated in Article 1(1) (A), (B), (C) and (D) of the Montreal Convention, and also attempts to commit them as well as their abetment as offences under the Act, and prescribes for each of these offences a punishment of life imprisonment and simultaneous liability to fine
- Section 4 of the Act incorporates the offence of destruction, damage to and interference with the operation of air navigation facilities "as offences" under the Act, and prescribes a punishment of imprisonment for life and simultaneous liability to fine

Amendments of 1994

- The Suppression of Unlawful Acts against Safety of Civil Aviation (Amendment) Act 1994 inserts a new Section 3A, which spells out offences at airports. It says whoever at any airport unlawfully and intentionally, using any device substance or weapon -
 - (a) commits an act of violence which is likely to cause grievous hurt, or death of any person; or
 - (b) destroys or seriously damages any aircraft or facility at an airport, or disrupts any service at the airport, endangering or threatening to endanger safety at that airport shall be punished with imprisonment for life and shall also be liable to fine.
- Whoever attempts, it adds, to commit, or abet the commission of, any offence under sub-section (1) shall also be deemed to have committed such offence and shall be punished as provided for such offence.



Aircraft Act, 1934 and Air Safety

- Under Section 5 of the Aircraft Act 1934, the DGCA lays down the conditions under which an aircraft may be flown, or may carry passengers, mail, or goods.
- The DGCA may issue directions consistent with the Aircraft Act 1934 and the rules framed thereunder with respect to measures to be taken and the equipment to be carried out for ensuring the safety of life.
- In the interest of public safety or tranquility, the Union Government has the power to make orders in emergency to enforce rules for the investigation of accidents, and to prohibit or regulate the construction of buildings, planting of trees, etc, for safe aircraft operations.

Airports Authority of Indian Act, 1994

- Why and How AAI Came?
- The nodal authority controlling all airports in India is the AAI, which was established under the AAI Act, 1994, later amended by the AAI (Amendment) Act, 2003 providing a legal framework for airport privatisation.
- The aforesaid legislation provides the functions of the AAI, which includes the efficient management of airports, civil enclaves and aeronautical communication stations.
- Further, the legislation states that it is the duty of the AAI to provide an air traffic service and air transport service at any airport and civil enclave.
- In the discharge of its functions, the AAI shall have due regard to the development of the air transport service and to the efficiency, economy and safety of such service.

Aircraft (Carriage of Dangerous Goods) Rules, 2003

- Regulate air carriage of dangerous goods (hazard to health, safety, property or environment) and prescribe the training procedure for shippers, operators, ground handling agencies and/or freight forwarders involved in the transportation of such dangerous goods.
- **Section 3 in The Aircraft (Carriage of Dangerous Goods) Rules, 2003**
- (1) No operator shall engage in the carriage of dangerous goods unless it has been certified by the aeronautical authority of the State of the operator to carry the dangerous goods. (2) No operator shall carry and no person shall cause or permit to be carried in any aircraft to, from, within or over India or deliver or cause to be delivered for loading on such aircraft any dangerous goods, except in accordance with and subject to the requirements specified in the Technical Instructions

Thank You