

Domestic Implementation of International Air Law EU, UK and USA

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Scheme of Discussion

- Linking up of other Relevant Papers to Domestic Implementation of Air Law in India.
- Domestic Implementation of International Air Laws in other parts of the world, mainly EU, UK and USA
- Globalization and its Positive and Negative Impacts on Global Governance
- LPG and Its Impact on Civil Aviation
- Regionalism and Regional Civil Aviation Regulations Pre and post Liberalization Era
- Implementation Civil Aviation Regulations in EU
- Implementation Civil Aviation Regulations in UK and USA

Paper on International Air Law

- **Module – I** covers Introduction to International Law including Definition, Nature Scope, Sources, Subjects, Relations between International Law and Municipal Law.
- **Module-II** Covers Introduction to International Air Law including Definition, Sources, Theories and Subjects of Air Law. This module also briefly covers the Development of Air Law before the Chicago Convention including the Paris Convention 1910, Paris Convention 1919 and other International Air Law Treaties
- **Module-III** Covers Chicago Conference and Chicago Convention. It briefly touches the historical evolution of Chicago Convention and the outcome of the Chicago Conference including interim agreement, Two freedoms agreement, Five freedoms agreements, Standard Form of Bilateral Air Service Agreement and various annexes to the Chicago Conference.
- **Module-IV** focuses on the Structure and Functioning of the International Civil Aviation Organisation (ICAO). Its role in making International Air Law including the recent Aviation Treaties.
- **Module-V** covers the recent developments in International Air Law including Deregulation and its impact on Aviation Industry. It also further covers Globalization, Liberalization, Privatization of International Civil Aviation.

Paper on Domestic Air Laws in India

Module I: Domestic implementation of International Air Law in India, EU, UK and USA- Why and How Domestic Implementation of International Law, Domestic Implementation of International Treaties and Customary practices, Indian Constitution, Indian Judiciary and International Law, Domestic Implementation in EU, UK and USA–

Module II: Aircraft Act, 1934 and Aircraft Rules, 1937- Aviation Regulation before 1911. Airships and Aircraft Act, 1911 and Aircraft Rules, 1920, Aircraft Act, 1934, Aircraft Rules, 1937 and Various Amendments, The Aircraft (Demolition of obstructions caused by Buildings and Trees etc.) Rules, 1994, The Aircraft (Carriage of Dangerous Goods) Rules, 2003, Civil Aviation Regulations and Important Cases

Module III: Domestic Implementation of Air Safety and Security Regulations in India--ICAO, India and Air Safety Regulations, DGCA and Air Safety Regulations, Air Safety Regulations and Recent Developments, Aviation Security Regulations in Indian including, Tokyo Convention 1975, Anti-Hijacking Act, 1982, Unlawful Seizure against the Safety of Civil Aviation 1982, 1994 Amendments to the above Acts , Recent Developments, Civil Aviation Regulations (CAR) and Important Cases

Module IV: Aviation Liability in India- Civil and Criminal Liability in India Carriage by Air Act, 1972, The Carriage by Air (Amendment) Act, 2009, Mangalore crash and Implementation of Montreal Convention of 1999.

Module-V: Civil Aviation and Contemporary Issues in India- Globalization, Liberalization and privatization (GLP) of aviation sector and Indian Responses , Airport Privatization Legal Issues, The Airports Authority of India Act, 1994 and various amendments, Airport Infrastructure Policy 1997, Joint Airlines Privatization Legal Issues, Mergers and Acquisition: Legal Issues, Competition Issues in Aviation Issues, Leasing and Financing in Airlines , FDI in Aviation Sector Consumer protection and Civil aviation and Important Cases

Paper on Aviation Safety, Security and Liability Laws

- The objective of the paper is to highlight the various difficulties in regulating air safety and security and the measures taken by international organisations, particularly the ICAO, in this direction. Further, the paper will study the causes of aircraft accidents, their investigations, liability issues involving air disasters and evolution of security law through various international conventions.
- **MODULE I:** Global air safety regulations including the concept of air safety, the role of ICAO, various annexes to the Chicago Convention.
- **MODULE II:** Global air security regulations including concept of security, annex 17 of Chicago Convention, various international conventions on security, Tokyo, Hague and Montreal Convention and recent developments.
- **MODULE III:** Anti hijacking, aviation terrorism and Global Regulations including the role of United Nations, the ICAO and other institutions in protecting Anti-Hijacking activities.
- **MODULE IV:** Aviation Liability and the Warsaw System including the Warsaw Convention, The Hague Protocols, Montreal conventions etc

Globalization and Civil Aviation

What is Globalization? Globalization is the term used to characterize the processes of growing interconnection and interdependence among the different nations of the world. It offers to the increased flow of trade, people, investment, technology, culture, ideas among countries and creates a more integrated and interdependent world

- World Bank: Globalization is the growing integration of economies and societies around the world.
- Globalization is often understood as the dissemination, transmission, and dispersal of goods, persons, images, and ideas across national boundaries
- Globalization of markets involves the growing interdependency among the economies of the world; multinational nature of sourcing, manufacturing, trading, and investment activities; increasing frequency of cross-border transactions and financing; and heightened intensify of competition among a larger number of players

Impact of Globalization

- On the positive side, it generated by growing international economic, cultural, and political cooperation and solved many global problems.
- Promotes intense competition among multinational corporations (MNCs) and also makes local companies to be more competitive internationally.
- Makes governments more aware of the global impact of poor environmental policy.
- Promotes ethical behavior by MNCs in the area of wages, working conditions and pollution abatement, since they are vulnerable to global media coverage of their operations, and fear loss of market share resulting from negative publicity.
- It generated by growing international economic, cultural, and political cooperation and solved many global problems.

Arguments Against Globalization

- On the negative side, globalization also has profound implications for states such as the autonomy and policy-making capability of states are being undermined by economic and cultural internationalization.
- Shift of sovereignty from political to economic
- Role of States have Changed from Law-maker to Law-takers
- Role of States are changing from regulator to facilitators
- Many governments see their role as not to regulate markets but to facilitate their expansion.
- Globalization and regional interactions are wiping out national borders and weakening national policies.
- Concept of Law has changed from sovereign to science of social adjustment

LPG and Civil Aviation

- With the increasing globalisation of economies, liberalisation of aviation policies, new technological developments in civil aviation, private participation in airlines and airports, liberal and “open skies” bilateral agreements, are the some of the new trends.
- Deregulation and intensified global competition are forcing airlines to become responsive, competitive and efficient by focusing more closely on their customers and operations.
- The technological, infrastructural, institutional, economic and human challenges have prompted those in charge of airlines and aviation-related agencies to effect a shift in their policies and approaches pursued for years.
- The attitude of the government and industry towards the regulation of air transport has undergone a profound change over the past few decades in almost all parts of the world.

LPG and Civil Aviation Cont....

- The worldwide impact of deregulation, privatization and globalization forced all parties to rethink the ground rules by which the airline industry had been regulated since the Chicago Convention 1944.
- Even many countries in Asia and Africa, which once adopted a defensive position against liberalization, have recognized powerful pressures for changes in the regulatory system
- The global economic forces are compelling the governments and airlines everywhere to redefine their respective roles in air transport Management

Regionalism and Civil Aviation

- Growing Importance of Regionalism

Regional organization

- **European Union – East Europe and west Europe. Treaty of Rome created in 1957 EEU- objective was political that Europe should not stand between two super powers.**
- **NAFTA – North American Free Trade Area.**
- **ASEAN – it is the most successful regional organisation outside Europe.**
- **SAARC – not proved to be that efficient.**
- **OAo organisation of African .**
- Growing Importance of Regionalism in Civil Aviation
- Regional Civil Aviation Regulations in the European Union
- Regional Civil Aviation Regulations in the North America
- Civil Aviation Regulations in the SAARC Region

Regionalism

- Regionalism is a conscious effort on the part of the countries to be called as one region. Some of the countries having sense of commonality and togetherness.
- Certain issues are common to region like cultural, political, economic, legal and variety of other reasons.

Why countries belonging to a region came together?

- Political security
- Economic reasons
- International identity

Pre-Liberalisation

- More regulations
- Trade Barriers
 1. Tariff Barriers and Non-Tariff Barriers
 2. Technical Barriers to Trade
- More Taxes
- Domestic Laws
- Conflict of Laws
- Infringements
- Conflict Resolutions

Post-Liberaliation

- De regulations
- Elimination of Trade Barriers
- Harmonisation of Laws

Aviation Industry:

- Contribution of technology - lower the cost of air travel.
- Fuel-efficient engines
- Low maintenance
- An improved materials have progressively allowed airlines to lower air fares and
- Allowing more and more people to use air transportation on a routine basis.

Introduction about EU

The European Union (EU) is an economic and political union of 27 member states, located primarily in Europe. It was established by the Treaty of Maastricht on 1 November 1993 upon the foundations of the pre-existing European Economic Community.

- ◎ The **Treaty of Rome** are two of the treaties of the European Union signed on March 25, 1957.
- ◎ The first established the European Economic Community (EEC) and the second established the European Atomic Energy Community (EAEC or Euratom).
- ◎ They were the first international organizations to be based on supranationalism, after the European Coal and Steel Community (ECSC) established a few years prior.

EU and Rome Treaty of 1957

- Objective of EC Treaty : to establish a common market;
- remove obstacles to the free movement of goods, persons, services & capital between Member States (MS)
- Harmonise the laws of MS as required to ensure proper functioning of common market, avoiding distortion of competition and increasing trust in cross-border economic relationships.
- A unique institution – Member States voluntarily cede national sovereignty in many areas to carry out common policies and governance.
- As a result, **people, goods, services, and capital** today move freely across the Union.
- Since the creation of the EU half a century ago, Europe has enjoyed the longest period of peace in its history.
- European political integration is unprecedented in history.

European Union Cont..

- EU enlargement has helped overcome the division of Europe – contributing to peace, prosperity, and stability across the continent.
- A single market and a common currency conditions for companies and consumers
- Shared values: liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law.
- Largest economic body in the world.
- A unique institution – Member States voluntarily cede national sovereignty in many areas to carry out common policies and governance.
- Not a super-state to replace existing states, nor just an organization for international cooperation.
- World's largest & most open market for goods and commodities from developing countries.

European Union

- **EU Parliament** – Currently 785 MEPs. Based in France, Belgium and Luxembourg
 - Passes laws, monitors budget, monitors EU institutions
- **EU Council** – Ministerial representations from each member state
 - Passes laws, approves EU budget, co-ordination of economic policies, develops foreign policy, co-ordinates anti-crime strategies
- **EU Commission** – Commissioners appointed by each member state every 5 years
 - Proposes legislation, implements EU policies, law enforcement, international co-ordination
- **Court of Justice** – one judge from each member state
 - Interprets and applies EU legislation

European Union (EU) and Civil Aviation

- EU and Air Transport Regulations
- EU Third Package Regulation of 2407, 2408 and 2409 and Their Impact on Aviation
- EU Bilateral Air Services Agreements of Liberal and Open Skies

Developments in EU

- A major landmark was the decision of the European Court of Justice in the *Nouvelles Frontières* case in April 1986, that air transport agreements are subject to the competition rules of the Treaty of Rome, Signed in 1957 by six European Countries.
- The implications of this judgment put considerable pressure upon the European Community (EC), presently European Union (EU, to develop and agree upon an air transport policy. In December 1987, the Council of Ministers adopted a package of legal instruments put to them by the Commission and thus took the first step toward a general liberalization of the European air transport industry

EU Conti..

- In addition, the European Civil Aviation Conference (ECAC), currently comprised of thirty-three European States, developed two International Agreements on intra-European airfares and capacity sharing.
- The EC and ECAC liberalization measures adopted in 1987 were followed by other regulatory changes, covering further reductions in capacity and tariffs control and additional provisions for freer market process, prior to the completion of a single European market by the end of 1992.
- The EU third package on air transport regulations became effective on 1 January 1993. There are three different regulations:

Liberalization and OPEN SKIES

- Carriers from the European Union are now free to operate any route within the Union, without restriction on price or capacity, including cabotage.
- In addition, all restrictions on airline ownership have been removed for its citizens (e.g. an air carrier operating from France can be 100% owned by investors from the UK; however, investment by non-EU citizens is restricted to 49%).
- Open Skies agreements also allow partner carriers to coordinate airline operations, including pricing, scheduling, market strategy, fleet structure, and networks.

EU Liberalization Conti.

- **Open skies air services agreements, which although limited in their overall effect, are becoming increasingly common as countries seek to maximise the economic benefits that air services can provide.**
- **Experience has shown that 'Open Skies' policies with regard to cargo and passenger, lead to expanded growth for international aviation services and create new business for international air carriers.**
- **Growth in services results in increased travel and trade, productivity, high quality job opportunities and economic growth.**
- **Therefore, deregulation by Open Skies Policy reduces government interference in the commercial decisions of air carriers, thereby freeing them to provide market oriented affordable, convenient and efficient air services to the consumers.**

SAARC- origin and objectives

- The South Asian Association for Regional Cooperation (SAARC) was established when its Charter was formally approved on **8 December 1985** by the Heads of State or Government of Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka.
- Afghanistan became a member of SAARC during the Fourteenth SAARC Summit held in Delhi, India in **April 2007**.
- Vision for **SAARC** in 1998, which envisaged the **establishment** of a South Asian Free Trade Area by 2010, a Customs Union by 2015 and an Economic Union by 2020. - Mr. Vajpayee even advocated that the culmination of this process should be the **establishment** of a **SAARC** Monetary Union.

SAARC Objectives

- The objectives of the Association as defined in the Charter are:
- to promote the welfare of the peoples of South Asia and to improve their quality of life;
- to accelerate economic growth, social progress and cultural development in the region and to provide all individuals the opportunity to live in dignity and to realize their full potential;
- to promote and strengthen collective self-reliance among the countries of South Asia;
- to contribute to mutual trust, understanding and appreciation of one another's problems;
- to promote active collaboration and mutual assistance in the economic, social, cultural, technical and scientific fields;
- to strengthen cooperation with other developing countries;
- to strengthen cooperation among themselves in international forums on matters of common interest; and
- To cooperate with international and regional organisations with similar aims and purposes.

SAARC and Civil Aviation

- While stating that tourism, culture and **civil aviation** constitute important areas of cooperation in the **SAARC** process, the **Secretary General** particularly emphasized the need to improve intra-regional **air** connectivity by early finalization of **SAARC Air Services Agreement**, for the promotion of economic relations, people-to-people contacts and tourism.
- May 10, 2018 · While stating that tourism, culture and civil aviation constitute important areas of cooperation in the SAARC process, the Secretary General particularly emphasized the need to improve intra-regional air connectivity by early finalization of SAARC Air Services Agreement, for the promotion of economic relations, people-to-people contacts and tourism.
- Mar 24, 2018 · Airports Authority of India has offered GPS-aided Geo Augmented Navigation (GAGAN) to **SAARC** and Southeast Asian countries. A two-day workshop was organised by AAI on March 15 and 16 for **civil aviation** representatives from **SAARC** and Southeast Asian nations to demonstrate the performance and benefits of GAGAN.

UK – Origin and development of Air Transport Regulations

- The CAA was established in 1972, under the terms of the Civil Aviation Act 1971, following the recommendations of a government committee chaired by Sir Ronald Edwards
- The CAA's responsibilities include:
- Flight Crew, Aircraft Engineer and Air Traffic Controller licensing;
- Medical regulation of safety-critical aviation personnel;
- Licensing of aerodromes and other aviation facilities;
- Maintaining the UK register of aircraft;
- Licensing of aircraft;
- Regulation of aircraft airworthiness and related engineering functions.

USA– Origin and development of Air Transport Regulations

- The Federal Aviation Act of 1958 was an act of the United States Congress that created the Federal Aviation Agency (later the Federal Aviation Administration or the FAA) and abolished its predecessor, the Civil Aeronautics Administration (CAA).
- The act empowered the FAA to oversee and regulate safety in the airline industry and the use of American airspace by both military aircraft and civilian aircraft.
- The Airport and Airway Development Act of 1970 placed the agency in charge of a new airport aid program funded by a special aviation trust fund and made FAA responsible for safety certification of airports served by air carriers.

De Regulations and its Impact

- The liberalisation of the air transport was heralded by Airline Deregulation Act 1978 in USA.
- Before deregulation of the airline industry began, the Civil Aeronautics Board controlled both the routes airlines flew and the ticket prices they charged, with the goal of serving the public interest.
- With deregulation, any domestically owned airline that was deemed “fit, willing, and able” by the Department of Transportation (DOT) could fly on any domestic route.
- The US deregulation of its domestic markets for airfreight and passengers, combined with subsequent commitment to an ‘open skies’ approach to international aviation since 1979, have affected the way Air Transport business is conducted across the world.

De Regulations Conti..

- Many European countries have liberalised their own domestic markets, while the European Union has since 1988, brought in many initiatives to liberalise air transport.
- The creation of a single European market since 1993 resulted in deregulated market, with full cabotage (i.e., domestic air travel with a member state) of member states being allowed from 1997.
- Carriers from the European Union are now free to operate any route within the Union, without restriction on price or capacity, including cabotage.
- In addition, all restrictions on airline ownership have been removed for it's citizens (e.g. an air carrier operating from France can be 100% owned by investors from the UK; however, investment by non-EU citizens is restricted to 49%).

Globalization in Different Regions

- Since the passing of the De Regulation Act of 1978 in the United States of America, the international air transport is undergoing the most dramatic changes in its history.
- Globalization, deregulation, liberal bilateral air transport agreements, international alliances, privatization of airlines and airports, and economic constraints are some of the factors challenging established management and business practices.
- Globalization process, each region plays variations on a common theme. In North America, air travel is the normal way of moving people, mail and increasingly freight.
- In the European Union, we have liberalization, consolidation, concentration and decentralization.
- Civil aviation in Eastern Europe and the Former Soviet Union is being restructured and needs strengthening –while adjusting to a free market economy.
- Impressive Aviation expansion is happening in China and India

LPG and Its Impact on Civil Aviation

- Privatization, cross-border acquisitions, market alliances, merger and restructuring of airlines in the wake of liberalization of air transport and deregulation are all leading towards market oriented international aviation environment.
- Airlines of many countries are in various stages of privatization.
- Airports Privatization is happening in many parts of the world including developing countries.
- The Asia/Pacific region offers abundant opportunities as the fastest growing aviation region in the world.
- The reasons for this optimism includes the strong economic expansion, significant ethnic ties with various countries, increase in leisure time, moves towards air transport liberalization and vigorous efforts to promote tourism to/from the region.

LPG and Its Impact on Civil Aviation

- New operating environment , Bankruptcy and shut downs of Airlines
- Regulation vs. Liberalization vs. Deregulation
- Rising costs (fuel, labor, maintenance, security)
- New generation airlines vs. legacies (tiers)
- Restructuring and alliances , Excessive capacity , Competition (transport and technology) Customer (target, loyalty)
- Air carrier ownership and control, Sustainability of air carriers and safeguards , Physical and environmental constraints
- Air transport and the global trade mechanism , Consumer protection and passenger rights Impact of technology (aircraft, e-commerce, CRSs and GDSs, Internet) on liberalization process
- Future approaches to regulatory reform etc are the future trends in international air Law