

Aviation Security Regulations: An Overview

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Scheme of Discussion

- Concept of Aviation Safety and Security
- Aviation Security after 9/11
- Aircraft Hijackings and Security Challenges – Lessons to Learn
- International Legal Regime on Aviation Security including the Tokyo Convention 1963, the Hague Convention 1970, the Montreal Convention 1971, the Montreal Protocol 1988, and the Convention on the Marking of Plastic Explosives for the Purpose of Detection 1991.
- Beijing Convention 2010 and Beijing Protocol 2010
- Charkhi Dadri Disaster and Aviation Security
- Kandahar Hijacking and Lessons we learned
- Domestic Security Regulations in India including the 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 and the New Anti Hijacking Act, 2016 also in force.

What is Air Safety?

- **Air Safety, Security and Aviation Industry** :Air safety and Aviation Security are 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 (controlling authority) - all strive to achieve greater air safety and Security.
- 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.

What is Aviation Security?

- Aviation security involves the protection of persons and cargo in carriage by air including the facilities and related auxiliary support activities.
- Civil aviation has been greatly affected by social unrest since 1960s in various forms, which includes:
- hijacking, shooting down, sabotage - like explosions in aircraft, missile attacks against aircraft, armed attacks on airports, passengers and aviation property and bombings.
- The motives range from political ideology to extortion and murders.
- The targets, besides aircraft themselves, include "aviation facilities" - air terminals, cargo buildings, maintenance hangars, passenger buses, airline offices and travel agencies.
- These acts are committed by individuals, organisations, groups, or members of a community.

Aviation Security after 9/11

- The 9/11 attacks were a rude awakening for many countries around the world and revealed many deficiencies in existing aviation security systems.
- ICAO played its leading actor role in the transformation that included the most comprehensive changes ever to aviation security in terms of magnitude: security measures were overhauled, aviation security authorities were put in place in many countries, new treaties were signed, new screening equipment was deployed, and more funds were allocated for security measures.
- Other leading actors also responded very quickly. In commenting on the UN's actions it is said the UNSC Resolution 1373 as the “most important instrument agreed upon” since 9/11, because it instituted a stand-alone obligation to prevent transnational terrorism.
- The events of 9/11 also resulted in the US making important strides towards overhauling its methods and ensuring a better security net against terrorist acts.

UN Security Council resolution 1373

- UN Security Council resolution 1373 (2001) imposes a legally binding obligation on all states to establish appropriate legislative, regulatory and institutional frameworks, including, to:
- Refrain from providing any form of support, active or passive, to entities or individuals involved in terrorist acts;
- Prevent and suppress the financing of terrorism;
- Suppress the recruitment of members of terrorist groups;
- Eliminate the supply of weapons to terrorists;
- Prevent the movement of terrorists or terrorist groups;
- Deny safe havens to those who finance, plan, support or commit terrorist acts, or provide safe havens;
- No one should participate in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts.

Aviation Security : Need for Regulations

- From the onset of the jet age, terrorists have tried, tested and improved various methods for attacking civil aviation.
- They initiated a wave of aviation terrorism with a series of aircraft hijackings in the 1960s, introduced a long cycle of airport and ground attacks in the 1970s, instigated a short but deadly mid-air sabotaging stage in the 1980s, and prompted a phase of suicide missions in the 1990s, which culminated in the 11 September 2001 (9/11) attacks that killed thousands of people with hijacked aircraft
- The targets, damage, scope, and sophistication of the 9/11 attacks have all contributed to turning international terrorism into an immediate, tangible, and existential danger to the entire world
- ICAO security-related legal instruments, i.e. Conventions, Protocols, Resolutions, Standards and Recommended Practices (SARPs), which form the international legal and regulatory framework.

Air Safety and Security Regulations Cont..

- Its efforts to enhance aviation security, ICAO Members ratified five Conventions and two Protocol between 1963 and 2010.
- It is important to reiterate that these legal instruments were always introduced in reaction to specific attacks against civil aviation.
- The 9/11 attacks highlighted that, despite the legal instruments already adopted, there were still possibilities to improve the international civil aviation legal and regulatory framework. Henceforth, ICAO needed to follow suit and transform itself.
- The platform for launching the beginning of a new age for ICAO was the Diplomatic Conference on Aviation Security, held in Beijing in September 2010.
- At this venue, ICAO introduced a new forward-thinking approach to aviation security.

Aviation Security Regulations

- The basic aim of the ICAO is to ensure a safe and orderly growth of international civil aviation throughout the world and promote flight safety.
- The ICAO has formulated aviation security policies and implemented relevant programmes with the full support of its contracting states.
- Its aviation security programme was developed by its Assembly as well as by the Council, its standing committee on unlawful interference created in 1969, the Air Navigation Commission, the Air Transport Committee, the ICAO legal committee and its sub-committees, and ICAO diplomatic conference convened by the ICAO Council.
- The ICAO's main function is to effect standardisation -the establishment of international SARPs and procedures covering the whole technical needs of civil aviation.
- The SARPs prescribed by the ICAO are enforced by each member state, which makes its own regulations. Annex 17 on security is discussed below at some length.

ICAO and Aviation Security

- ICAO responded to the problem with two types of actions: legal and technical.
- Legally, it initiated the preparation of a legal and regulatory framework (LRF) aimed at harmonizing a legal response dealing with illegal acts threatening the security of international civil aviation.
- Five Conventions and two Protocols were developed to address a series of criminal acts and terrorist attacks committed against civil aviation.
- Technically: (1) it created a Committee on Unlawful Interference of Aircraft to develop preventive measures and procedures to enhance aircraft security;
- (2) it adopted Annex 17 and its standards and recommended practices;
- (3) it promoted better cooperation with Member States; and
- (4) it created committees to deal with specific problems.

Aviation Security and International Conventions

- The safeguards for international civil aviation against acts of unlawful interference have been a matter of grave concern to the governments and the ICAO all over the world.
- The costs resulting from unlawful interference in terms of loss of human lives, disruption of air services and adverse economic impact are incalculable.
- These incidents occurring as they do over the frontiers of more countries then one raise the important issue of jurisdiction also.
- This called for specific undertakings by states through various conventions, agreements, declarations and national legislation.
- The important conventions adopted by ICAO are the Tokyo Convention 1963, the Hague Convention 1970, Montreal Convention 1971, Montreal Protocol 1988, and Convention on the Marking of Plastic Explosives for the Purpose of Detection 1991,
- Beijing Convention 2010 and Beijing Protocol2010

The Tokyo Convention, 1963

- ICAO Diplomatic Conference was called in Tokyo from 20 August to 14 September 1963 to solve the problem of crimes committed on board aircraft in flight.
- Tokyo Convention 1963 determined the following recurrent themes: (1) the scope of the convention; (2) the status of the aircraft; (3) the jurisdiction, powers, and duties of states; (4) the powers of the aircraft commander; (5) the particularities of the offense; and (6) extradition. Eventually, all these themes were either better defined, enhanced, or complemented by later conventions and protocols.
- Art 10 immunity to commander ,crew members, passenger from the proceeding of suits Convention also mentions acts of interference, seizure of or other wrongful exercise of control of an aircraft, implying its concern over hijacking.

The Hague Convention, 1970

- The *Convention for the Suppression of Unlawful Seizure of Aircraft* adopted in The Hague in 1970 (also known as the Hijacking Convention or Unlawful Seizure Convention) aimed to solidify the provisions of the Tokyo Convention 1963 and to augment its reach.
- It defined three fundamentals of the offense of unlawful seizure of aircraft:
- (1) the perpetrator must be on board an aircraft in-flight when the act is committed;
- (2) there must be the use of force, threat to use force, or any other form of intimidation in order to seize or exercise control of the aircraft; and
- (3) the aircraft must be in “in-flight status” according to the Convention’s specifications.⁵⁷³ Additionally, Article 1(b) expanded the notion of “offender” to include any accomplice participating in or aiding someone in carrying out unlawful acts.

The Hague Convention Cont..

- Article 4 of the Convention explained that jurisdiction to act against the offender:
 - (1) the state of registration of the aircraft;
 - (2) the state of landing if the alleged offender is still on board;
 - (3) in the case of a leased aircraft, the state of business or residence of the lessee; and
 - (4) the state where the alleged offender is present in its territory, once that state decides not to extradite the offender.
- Article 8 Discussed the Legal basis for extradition.
- Article 10 emphasized that Member States ought to cooperate in connection with criminal proceedings related to the offense.

Montréal Convention 1971

- The Hague Convention 1970 left many gaps unfilled and created an uproar in the industry. ICAO responded to these failings in 1971 by introducing the Montréal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation
- (1) it refined the vague definition of acts of unlawful interference (Art. 1(1); (2) it addressed acts of sabotage of aircraft (Art. 1(1)(b) and (c); (3) it introduced the notion of attacks against civil air navigation facilities (Art. 1(d); (4) it criminalized the communication of false information endangering the safety of an aircraft (Art. 1(e); and
- (5) it included attempts to commit an unlawful act against civil aviation as well as all conspirators involved in an attack in the list of perpetrators (Art. 1(2)).
- The new instrument also extended its reach by introducing the notion of aircraft-in-service, which included operations around aircraft before departure and after landing (Art. 2(b),) to offer better aircraft protection at airport

Tokyo-Hague and Montreal Conventions

- The major points of distinction between the Tokyo, the Hague and Montreal Conventions are:
- (a)The Tokyo Convention targets offences committed on board an aircraft in flight under national laws, whereas the latter conventions focus on acts against the safety of civil aviation;
- (b)The Tokyo Convention is still haunted by the ghost of traditional extradition law, i.e. the political offences exception, which most certainly renders its practical utility almost marginal.
- (c)The Hague-Montreal regime attempts for the first time in the history of international law to create an obligation on the part of a state to prosecute or extradite an offender or a person accused of an offence. There is a clear obligation for the state to take effective steps to prosecute him if it decides not to extradite him. There is no such provision in the Tokyo Convention.
- (d)The ICAO Council under the Hague-Montreal regime is given a supervisory role, perhaps in view of its overall responsibilities in civil aviation, pursuant to Article 44 of the Chicago Convention. The Tokyo Convention lacks such explicit organizational link.
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Montréal Protocol 1988

- In 1988, ICAO adopted the *Montréal Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation* (Montréal 1971) (also known as the Airport Protocol).
- The Protocol expanded the reach of the Montréal Convention 1971 to extend beyond aircraft in-flight or in-service and to include acts of violence against people and facilities where air passengers are assembled before and after traveling at airports serving international civil aviation.
- Airport attacks of this type normally receive comprehensive media coverage and generally create a lasting effect on the collective imagination.

Montréal Convention 1991

The Montréal *Convention on the Marking of Plastic Explosives for the Purpose of Detection*, March, 1991(also known as the Plastic Explosives Convention or MAX).

It addressed the manufacturing and control of new marked explosives, and the destruction of unmarked ones.

According to Milde, the general concept of the Convention was very simple: plastic explosives could be made detectable by a “marker”—a substance added to them.

Article II directed Member States to prohibit and prevent the manufacture of unmarked explosives;

Article III related to the movement of unmarked explosives, and Article IV touched on the strict and effective control over the possession, transfer, and destruction of explosives.

Despite the high number of casualties caused by sabotage attacks, the new Convention only entered into force seven years later, on 26 June 1998.

Beijing Convention 2010 and Beijing Protocol 2010

- ICAO's new proactive approach was exemplified by the adoption in 2010 of two new legal instruments for securing international civil aviation:
- (1) the *Beijing Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation*, and
- (2) the *Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft*.
- The Beijing Convention 2010 and Protocol significantly strengthen and broaden the international civil aviation legal and regulatory framework, and facilitate the prosecution and punishment of offenders.
- The Beijing Convention 2010 corrects the flaws of the framework developed in the past half a century.

Beijing Convention 2010 and Beijing Protocol 2010

- The Beijing Protocol 2010 updates The Hague Convention 1970 by expanding it to cover different forms of aircraft hijacking.
- According to Gjemulla and Weber, these new legal instruments retained the important principle of “prosecute or extradite” while expanding jurisdiction and reinforcing extradition mechanisms included in previous conventions, namely by creating a number of new international offences.
- The authors also highlighted the innovative and proactive initiative of ICAO pertaining to the provision for unlawful acts using or transporting any biological, chemical, or nuclear substances (BCN); Van der Toorn offers more precisions and explains that the new offences created by the Beijing legal instruments include: the use of aircrafts as weapons, the use of weapons of mass destruction on an aircraft, and the transport of dangerous materials
- Both the Convention and the Protocol were meant to modernize the Montréal Convention 1971 and its Supplementary Protocol 1988 by giving Member States the capacity to criminalize “a number of acts constituting new and emerging threats against civil aviation”

Lockerbie case- Background

- On December 21, 1988, Pan American Flight 103, on its way to New York's John F. Kennedy Airport, exploded over Lockerbie, a town in southern Scotland. All 259 passengers on board were killed. Eleven Lockerbie residents also were killed as the shattered civilian carrier crashed to the ground.
- The investigation that followed indicated that Libya and Libyan agents were almost exclusively responsible for the bombing.
- A combination of events had led Libya to challenge the imposition of sanctions in the ICJ. The Libyans refused to surrender the individuals and then brought the Lockerbie Incident Cases before the ICJ for three reasons.
- First, Libya was concerned that to surrender Al-Megrahi and Fhimah would be tantamount to admitting guilt, a proposition the Libyan government was probably unwilling to face.
- Second, the refusal to surrender the men and the following application to the ICJ were attempts to stall the prosecution and the sanctions.
- Finally, according to Libya, it could not surrender Al-Megrahi and Fhimah because Libyan domestic law prohibits the extradition of nationals.

Lockerbie case

- The facts involved the attempt of the United States to bring to justice 2 Libyan nationals who had allegedly put a bomb aboard Pan Am flight 103 that exploded over Lockerbie, Scotland.
- The Montreal Convention required Libya either to prosecute or extradite those committing an offence that destroys civil aircraft (*Aut dedere aut judicare*).
- Libya contended that it was prosecuting the alleged perpetrators under its domestic law. It relied on Article 14 of the Convention which provided that any dispute over the interpretation and application of the Convention that cannot be settled by negotiation should be submitted to arbitration.
- The United States and the United Kingdom were insisting that Libya promptly surrender the suspects for trial to British authorities, disclose all it knew about the crime and pay appropriate compensation.

Lockerbie case

- Libya approached the International Court of Justice petitioning before it to promptly take provisional measures to preserve the rights of Libya and to order the United States to cease and desist in its violations of the Montreal Convention and in its threats of the use of force against Libya.
- The Americans were convinced that the Libyan Government was involved in the criminal act, and would not accept its willingness to prosecute the suspects.
- The United States was able to persuade the UN Security Council to intervene, and the Security Council issued a couple of resolutions which concerned with the persistence of acts of international terrorism and second requesting Libya to cooperate during the process.
- The ICJ examined American behaviour in light of these two resolutions and found that under Article 25 of the UN Charter, both Libya and the United States were obligated to carry out the decisions of the Security Council.
- The Court found that these obligations “prevail over their obligations under any other international agreement, including the Montreal Convention, thus the relief requested by Libya was denied.

India and International Civil Aviation

- Why and How Domestic Implementation of International Hijacking and Terrorism Laws in India?
- Domestic Implementation of International Law and International Air Law in India
- India is party to all important treaties on Int. civil aviation and to implement most of the above treaties it also made enabling legislations
- E.g. Tokyo Convention Act 1975, the Carriage by Air Act, 1972, Anti- Hijacking Act 1982, Suppression of Unlawful Acts against the safety of civil Aviation act 1982 amendments to the later two added in 1994, the Anti-Hijacking Act, 2016

Aircraft Hijackings – Lessons to Learn

- The story of hijacking of Indian aircraft started way back in the early 1970s.
- The first hijacking in India, as well as in Asia, took place when the Indian Airlines Fokker Friendship was hijacked by two Jammu & Kashmir National Liberation Front (JKNLF) members on 30 January 1971. It was diverted to Lahore, as it was about to land in Srinagar, with 28 passengers and four crew members on board. The passengers and crew were released, but the aircraft was blown up.
- Airline security became a major issue in the 1980's, especially after the bombing of the Air India Boeing 747 Kanishka and the loss of 329 lives over the Atlantic Ocean

Cont...

- Since the first hijacking around 20 Indian aircraft have been hijacked, in which five were forced to land in Amritsar as permission to land in Lahore was not granted.
- Five more of these hijacked planes actually landed in Lahore, which seems to be a favourite destination of hijackers of Indian Airlines aircraft.
- Rest of the Hijacking were happened in other parts of the world
- These hijackings have confused governments and exposed an indifferent judiciary, and there has not been a policy on how to handle this kind of situation.

Charkhi Dadri Disaster and Aviation Security

- The fast-track nature of life is taking a heavy toll due to safety collapse in air transport. In civil aviation, the high costs of travel are no guarantee for safe travel, or the reach of destination on time without delay, or obstacle.
- Frequent collision in the skies is another aspect of deep concern, as revealed by the Charkhi Dadri disaster of 12 November 1996 in Haryana (India), resulting in the loss of nearly 350 lives.
- 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.
- Govt. 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

Kandahar Hijacking

- The hijacking of the Indian Airlines IC-814 aircraft by Islamic fundamentalists on 24 December 1999 from Kathmandu to New Delhi ended at Kandahar airport in southern Afghanistan on 31 December 1999, with the release by the hijackers of 158 passengers and crew held hostage.
- This hijacking is the thirteenth such incident in India since 1971 and has generated enormous interest and comment.
- This hijacking was distinct from other hijackings for a variety of reasons, which include not only information flow about the event but also national and int. security implications of the incident. The media has played active role in influencing the containment of such terrorism.

Kandahar Hijacking Cont..

- The manner in which the hijacking story has been treated suggests a degree of hyperbole that warrants introspection into the event. At the international level, this is the first major hijacking after the highly acclaimed post-Cold War consensus among major powers that any form of terrorism is unacceptable
- Given its high-profile operation, the airline hijacking is not just a threat to passengers, but as the recent event showed the country's security concern as well.
- Despite losing thousands of lives to terrorism and facing a record number of hijackings, security at Indian airports is often visibly lacking and the attitude of the authorities ranges from apathy to indifference

Kandahar Hijacking Cont..

- This hijacking has also led to various debates and raised several questions relating to the government's handling of the issue.
- The first question – why did the government not act quickly on the several warnings that it received of a possible terrorist attack at that time?
- Why did the government allow the hijacked plane to leave Amritsar and Indian territory?
- What culpability did Nepal have in this event?
- And was the government right in giving into the hijackers?
- The hijacking has also highlighted the dangerous dimensions of the situation in the Kashmir Valley, with home-grown militancy now substituted by a much more ominous variety of terrorism.

Kandahar Hijacking Cont..

- The eight-day hijacking drama ended in an exchange of 158 hostages for three prisoners released by India, among them Maulana Masood Azhar, a Pakistani and top Kashmir cleric of the separatist group-Harkat-ul Mujahideen.
- At the end of the day, however, the Khandahar crisis compelled public and government attention. One fallout of modern-day international terrorism which uses hijacking as easy weapon is to invite media attention, pressure governments into making policy changes and secure the release of terrorist prisoners across the world.
- India should consider putting a mechanism in place by which the protection of the country is not confined to secure the borders alone.
- It must acknowledge that its civilians are equally at the forefront – that national security can be endangered any time anywhere.

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 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.

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 and the New Anti Hijacking Act, 2016 also in force.

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

Tokyo Convention Cont...

- Section 3(1) of the Act states: "Any act or omission taking place on board an Indian registered aircraft while in flight elsewhere than in or over India which, if taking place in India, [*sic*] would constitute an offence under any law in force in India...
- ." Section 4 of the Act, facilitating the application of the Indian Extradition Act 1962, provides: "...any aircraft registered in a convention country shall, at any time while that aircraft is in flight, be deemed to be within the jurisdiction of that country, whether or not it is for the time being also within the jurisdiction of any other country." The Act reflects the recognition of the jurisdictional claim of the state of aircraft registration.
- Section 5 of the Act deals elaborately with the powers of the commander of an aircraft, including the safety of the aircraft, or persons, or property on board the aircraft, or the good order and discipline on board the aircraft. Moreover, the same section empowers the aircraft commander to disembark or deliver a person.
- Section 6 of the Act is conferred with the jurisdiction in respect of piracy committed on the high seas.
- Section 10 of the Act confers on the Central Government the power to certify which countries are the contracting parties to the Tokyo Convention

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.

Cont...

- The other provisions of the Montreal Convention Act, including the Suppression of Unlawful Acts against Safety of Civil Aviation (Amendment) Act 1994, are identical with those of the Anti-Hijacking Act, and the above analysis of the Anti-Hijacking Act and its amendment apply here *mutatis mutandi*
- On the domestic front, India should adopt and implement the International Standards and Recommended Practices of the Chicago Convention of 1944 from time to time.
- The implementation of the ICAO's CNS/ATM technology in India is also another issue concerned with the safety and security regulations in India. In the long term, however, the country needs to evolve a more coherent policy to tackle blackmail by terrorists who want to achieve their political ends through violence

The Anti-hijacking Act, 2016

Anti- Hijacking Act, 2016, came into force in 2017. India also signed the Beijing Protocol 2010 which deals with unlawful acts against the Civil Aviation by new types of threats.

This new law Consisting twenty- one (21) sections.

The first chapter Sections 1 and 2 deals with the definition of hijacking and other terms like Agency, aircraft, hostage, military aircraft, etc. The new Act broadens the definition of hijacking to include any attempt to seize or gain control of an aircraft using "any technological means", which accounts for the possibility that the hijackers may not be physically present on board the aircraft

CHAPTER II: HIJACKING AND CONNECTED OFFENCES from sections 3-10 deals with the punishment for the accused. Notably, the provisions of the Code of Criminal Procedure, 1973 has been enabled. Chapter 2 also describes the powers of the central government. It also defines the jurisdiction of the law.

The third chapter Sections 11-21 contains the miscellaneous provisions such as the power to treat certain aircraft to be registered in Convention countries. The persons acting in good faith and doing anything required under their duties under this Act are protected under this act against any suit and repeal of 1982 Anti Hijacking Act.

The Anti-hijacking Act, 2016

The Second chapter in the Act is really very important as it is providing for the various Hijacking and other connected offences and also deals with the punishments for commission of such offences.

The maximum punishment in this Act can be awarded up to death, i.e. the capital punishment.

For the purpose of the arrest, investigation and prosecution, the Central Government is empowered in this Act to confer powers to any officer from National Investigation Agency, or to any officer from the Central Government.

Also, the provisions as to designated court are also contained in this Act and for process, the provisions of the Code of Criminal Procedure, 1973 are made applicable.

Provision of capital punishment and Role of Central Government

- Section 4 of the Act provides that in case of hijack, if the accused has conducted any act of violence which may result in death of any of the passengers or crew members and the security personnel or any such other person not involved in the offence present in the aircraft, he may be liable for death penalty.
- The accused will still be charged with life imprisonment and fine, along with confiscation of his movable and immovable properties in case the accused is charged only of hijack.
- Section 5 of the Act of 1982 had provisions of the death penalty for the accused however only in case killing of hostages such as passengers and crew members directly.
- The Section 6(2) of the Amendment Act also empowers the Central Government for investigation, arrest, and prosecution of any officer of the Central Government or National Investigation Agency (NIA) in the case of suspicion.

The Anti-hijacking Act, 2016

- Section 7 Jurisdiction and Section 8 Designated Court.
- Another important amendment included in the Anti-hijacking Act, 2016 is the change of jurisdiction of the law. The law now covers provisions against highjacking of aircraft's registered in India or consisting of Indian passengers or highjack committed by an Indian anywhere in the world
- Section 8 Offences triable by Designated Court.
- Section 20 of the Anti-hijacking Amendment Act empowers the Central Government to lay down new rules if required and present before both the Houses of Parliament for discussion and approval before implementation.

The Anti-hijacking Act, 2016

- According to the law, if the hijacker is a resident of India, or if the hijacked aircraft is registered in India or if any foreign registered aircraft lands in India with the alleged offender still on board or when the aircraft is hijacked anywhere in the world, and an Indian citizen is on board, proceedings under Anti-hijacking Act may be applicable upon the hijacker.
- It has been mentioned in Section 7 of the amended act.
- The Anti-hijacking Amendment Act, 2016 covers a considerable amount of improvements compared to the act of 1982 or the amendments made in 1994.

Birju Kishor Salla Case

- The life sentencing of Mumbai businessman Birju Salla for placing a hoax hijack note on a Jet Airways plane to force his girlfriend to shift to Mumbai from Delhi as the first trial under India's Anti-Hijacking Act, 2016, has set a new precedent for air travel safety violations.
- Salla was sentenced to life imprisonment and was slapped with a fine of Rs 5 crore by a special NIA court for leaving the hijack note in Urdu and English in a tissue paper box of the toilet on a Mumbai-Delhi flight on October 30, 2017.
- The court of special NIA judge K M Dave said the fine amount submitted by the convict, businessman Birju Salla, will be distributed among the crew members and passengers on board the affected plane.
- The NIA had in January last year filed a charge sheet against him under sections 3(1), 3(2)(a) and 4(b) of the Anti-Hijacking Act, 2016

What we need to do further?

- If India is to evolve a consistent and credible position against hijacking, it needs to do much more than rhetoric.
- First, it needs to build up domestic support for hardline strategies.
- Second, India needs to strengthen its role in multilateral efforts at anti-terrorism.
- Finally, the government needs a more comprehensive anti-terrorism policy drummed into the domestic security apparatus; above all there is a need for a strict implementation mechanism.

Conclusion

- The new legislation is a welcome move as India tightens its stand on dealing with hijacking incidents. Hijacking has become a significant area of international aviation law causing great concern globally. India has showed its concern by updating its legislative machinery and by establishing an effective means of combating hijacking
- Implementation of these laws will impact India's strong stand against incidents like hijackings.
- There are still certain points to be covered to make this law even stronger such as to allow the security forces to shoot down an aircraft which may be used as a missile or the power to concerned authorities or security forces to prevent take off for suspected flights.