

Aviation Law Certificate Course

(Free Reading Material)

Evolution of Aviation Law: Global Perspective

We live in a world where every facet of our lives is governed by legal rules. Laws are required so that there are no conflicts between people. It also establishes the rights and duties of the individuals within the society. Without laws, the progress of mankind would not be a reality.

Have you ever wondered what will happen if any wrong is committed during a flight? Which laws will be applicable? Law are made to cover these aspects too! All the aviation activities, be it embarking of the flight by the pilot or selling of aircrafts and its equipments etc. are regulated by set laws and rules known as Aviation Law. To know more about it, let us first delve into the evolution and origin of the law regarding aviation.

What is Aviation Law?

Aviation law is the branch of law that relates to the legal and business aspects of flight and air travel. It deals with air traffic rights, safety and security during air transport, economic rules of airways, as well as operation of airports.

Air law is a part of International Law that governs civil aviation and includes international institutions, but it does not include the military aircrafts, customs and police services.

Aviation Law is an autonomous discipline which consists of rules and principles that are applicable on domestic as well as international aviation. It not only governs the relation between states, passengers and service providers, but also regulates its impact on inclusive environment. Moreover, it enables the governmental bodies to formulate rule regarding export, import, manufacturing, as well as the protection of aircrafts.¹

To put it simply, Aviation law deals with every aspect related to flights, airspace, and its management.

Need of Aviation Law: Its scope and purposes

We can all agree that it is quite impossible to imagine a life without airplanes crisscrossing all the states regardless of their sovereignty claims. In the contemporary world, aviation plays a major role in shaping a nation's economy. Trade and commerce are being carried out by the aircrafts and their networks.

In the contemporary scenario, with the fast advancement of technology relating to aircrafts and jet engines, the safety issue is gaining major concern.

¹ Ronald I. C. Bartsch, *International Aviation Law* 3-4 (Routledge, New York, 2012).

With a global point of view, the governments of each country must be robust enough to formulate rules and regulations regarding aviation that could meet the international standards. This role of formulating and developing air laws and their proper execution, implementation as well as regulation ensure safety and reliability.

Further, eminent British jurist H. Lauterpacht highlighted the need of aviation law. He stated that a solution to the problems relating to international civil aviation was a matter of future.² In the aviation law, the overarching goal of the air relations is security and safety.

The scope of aviation law is very wide. It is a multi-dimensional branch of study. It is dependent on various factors viz.

- The knowledge about the aviation technology,
- Private air law,
- Public air law,
- Law making aspects,
- Safety and security laws,
- Air space management concept,
- Punishment and liability aspects,
- Rules and regulations of air services,
- Air agreements between countries.

² H. Lauterpacht (ed.), International Law 529 (1963).

The purpose of aviation law can be gathered from the fact that it is closely connected with the economic development of the states. Aviation law provides equality of opportunity among various states. It ensures cooperation and helps in facilitation of competing claims between countries. Thus, the aviation law is applied to day to day problems in the aviation sector.

Evolving Aviation Industry: Global Perspective

The world's escalating globalisation and regionalisation has dramatically increased interactions between the countries and has caused considerable increase in the international travel, especially air travel.³ Aviation industry performs a multidisciplinary role in the development of different countries and aids in maintaining the international, social as well as economic connections.

Globally, the aviation industry has ushered an era of rapid development and expansion. The globalisation and the economy have resulted in circumstances that have compelled the nations to create uniform strategies and to make important linkages between the aviation law and the international trade and commerce for inclusive economic growth.

In an analysis, Dr. Griselda Capalda states that: "International civil aviation transports 2.5 million passengers each year and 35% of the value of all the

³ B. Derudder and F. Witlox, "Mapping world city networks through airline flows: context, relevance, and problems" 16 (5), *JTG* 305–312 (2008).

international trade, producing an estimated impact on the global economy of around USD 3.65 billion, equivalent to 7.5% of Gross World Products.”⁴

Origin of Aviation Law

Before 1910, the very first attempt to codify aviation law at international level was carried out when German balloons made several air flights above the territory of the French.⁵ For safety reasons, the French government decided to resolve the problem through an agreement between the two countries.

Therefore, in 1910, Paris Conference was held and it did not hold the idea of freedom of the air but it vouched for the sovereignty of states in the air and space above the country's territory.

However, after the First World War, on 8th February 1919, the first scheduled air service between Paris and London was started. In a convention, the existing rules and regulations were discussed and considered. Further, the selection had to be done among the free airspace along with the regulations of maritime law and airspace administered by the states. Air Law was to be subjected to the functional rules of other modes of transportation.

⁴ Impact of Aviation Law on International Trade, *available at*: http://ariaslaw.com/boletines/Newsletter%20Mayo%202015/ENG_CR_MAY2015.pdf (last visited on June 6, 2020).

⁵ The International Declaration Prohibiting the Discharge of Projectiles and Explosives from Balloons, (The Hague, 29 Jul 1899), *available at*: <https://www.loc.gov/law/help/us-treaties/bevans/m-ust000001-0739.pdf> (last visited on June 6, 2020).

Situations where Aviation Law is applicable

Let me ask you a question. An aircraft belonging to U.S.A. carrier meets with an accident in France, then which law will apply? Will it be governed by U.S.A. law or the law of France?

All such matters fall under the purview of Aviation Law.

Aviation Law covers cases of families who have suffered any loss or injury due to a flight tragedy. Moreover, any harm incurred upon the environment by the aircrafts in any way is also dealt in accordance with the laws of aviation. The issues relating to any fraudulent act in import or export are reconciled as per the norms of aviation law.

Aviation law also safeguards the rights of the state, owner, passengers, operators, etc. Furthermore, Aviation law also governs the air space management and various other factors involved in it like the laws on air traffic control, air routes planning, airport administration, and laws relating to search and rescue.

Important International Conventions

To regulate the aviation and the aerial navigation, a number of international conventions have been formulated. They are as follows:

1. Convention Relating to the Regulation of Aerial Navigation (Paris Convention), 1919

On 13th October 1919, the first convention relating to regulation of aviation was signed. This Paris convention was initially signed by twenty-six countries. In this convention the member states agreed to recognise the sovereignty of the space above the territory to the state to which it belongs.

2. Pan American Convention on Commercial Aviation (Havana Convention), 1928

From March 25th to May 3rd, 1923, the 5th International Conference of American States was held at Santiago, Chile, which adopted a crucial resolution for the formation of an Inter-American Commercial Aviation Commission to be followed by the Governing Board of the Pan-American Union to resolve the concerns regarding aviation.

3. Convention for the Unification of Certain Rules relating to International Carriage by Air (Warsaw Convention), 1929

In Warsaw on October 12th, 1929 this convention was signed and the convention was known as Warsaw Convention. The terms of the convention apply to all international carriage of persons, luggage or goods performed by aircraft for reward. It is also applicable equally to gratuitous carriage by aircrafts performed by an air transport dealing.

4. Chicago Convention on International Civil Aviation (Chicago Convention), 1944

Signed by 53 States, this convention entered into force on 14th April, 1947. The Chicago Convention on International Civil Aviation, 1944 was a significant convention relating to air navigation industry. This convention concluded on 7th December, 1944.

5. Convention for the Unification of Certain Rules for International Carriages by Air (Montreal Convention), 1999

Held in 1991 in Montreal, this convention addressed issues relating to transport, cargo, transit, the delivery of passengers and export and import of materials. This convention is a multilateral treaty and was adopted in 1999 by ICAO member states. The Montreal Convention 1999 amended significant rules of the Warsaw Convention relating to the victims of air disasters.

Evolution of Aviation Law: Indian Perspective

Having emerged as one of the fastest growing industries in India, the civil aviation sector has been at its boom during the last three years. Currently, India is holding the position as the third largest domestic civil aviation market globally. And in terms of air passenger market, it is expected to overtake UK to become the third largest by 2024.

All of these developments are possible only when India has set rules and laws governing its aviation policies. To understand the aviation laws regarding the aviation in India it is imperative to first explore the various developments that took place in Aviation sector.

Its Origin in Colonial Time

On February 18, 1911, a French pilot Henri Pequet flew the world's first air mail from the industrial and agricultural exhibition ground of Allahabad to Naini which is at a distance of 8 miles. This incident led to the beginning of commercial aviation in India. Subsequently, on January 24, 1920, the Royal Air Force started regular air mail services with only one-night stop at Rajkot between Karachi and Bombay. However, after six weeks, the operations got terminated due to the losses sustained.

The Government of India on October 1, 1915, decided to set up a central flying school under the control of Army Headquarters at Sitapur, a city in Uttar Pradesh. An 'Air Board' was formulated after the conclusion of the First World War to render advice on the process of assisting and encouraging civil aviation. In 1920, detailed rules were promulgated regarding registration of aircraft and the licensing of personnel etc. Thereafter, in the year 1924, civil aerodromes were constructed at Calcutta, Allahabad and Bombay. In April 1927, a separate department for civil aviation was formed.

Further, Tata Sons, an entirely Indian owned company submitted its plan for air services operations between Karachi and Bombay before the government in 1929. Their operations commenced from October 15, 1932.

From the period between 1933-34, numerous airlines emerged, expansion of aviation activities was carried out, and introduction of new routes took place. The ongoing conflicts of the Second World War led the aircraft manufacturers to seek prospects in India. Walchand Hirachand, in December 1940, established the 'Hindustan Aircraft.' A single engine aircraft 'Harlow Trainer' was the first aircraft of India and it conducted its first test flight in 1941.

Furthermore, on 29 July, 1946, Tata Airlines was renamed as Air India International Ltd. and was made a public limited company. In India, the aviation sector escalated after the termination of Second World War. Civil Aviation department operated around forty-four airports at the time of independence.

Development Since Then: Major Amendments

In this section, let's try to understand the development in aviation sector that took place in India and the various factors that led to the present-day aviation law.

- The Indian Parliament passed the Air Corporations Act, 1953, which nationalised the India's airline industry. Further, eight domestic private airlines that were operating at that time were merged into two national carriers- Indian Airlines and Air India.⁶
- The International Airports Authority of India (IAAI) was constituted in 1972 to look after India's international airports and in 1986 National Airports Authority (NAA) was formed to manage the domestic airports.⁷
- In 1986, private companies were once again granted permission to provide air taxi service.
- Government monopoly was further eradicated by the India's Open Sky Policy of 1990 and the Air Corporations (Transfer of Undertakings and Repeal) Act, 1994.
- On first April 1995, The Airports Authority of India (AAI) was formulated by the amalgamation of the International Airports Authority of India and the National Airports Authority.

⁶ The Air Corporations Act, 1953, *available at*: <https://indiankanoon.org/doc/979883/> (last visited on June 10, 2020).

⁷ Airports Authority of India, *available at*: <https://www.aai.aero/en/corporate/organization/> (last visited on June 10, 2020).

- Air Deccan was set up in 2003 and it was a new kind of air service. It was known as a low-cost carrier (LCC) or the no-frills air service that gave new strength to the aviation sector of India.
- Further, mergers and acquisitions in 2007 became popular in civil aviation sector in India.
- The Airports Economic Regulatory Authority Act of India Act, 2008 was introduced to form a regulatory authority to regulate the economic aspects of the airports.

Major Incidents Which Highlighted the Need of Stricter Laws

Are you aware of the 1999 plane hijacking incident? Indian Airlines Flight 814 was hijacked on 24th December, 1999. Air safety is one of the paramount issues in India. Thousands of innocent lives are lost due to the fatal accidents that have occurred from time to time. There is an imminent requirement for making stringent laws in order to avoid such incidents. Below are some examples of the incidents that have occurred in the past:

Hijacking Incidents

- An Indian Airlines flight, on 30th January 1971, was flying from Srinagar to Jammu and was hijacked by persons belonging to the National Liberation Front.
- From Palam Airport, Delhi, Indian airlines plane Boeing 737 was hijacked on 10th September, 1976 by six terrorists. All the hijackers were caught and were taken into custody and the 83 passengers were sent back to India.
- In 1978, two hijackers on a domestic Indian plan hijacked the plane. They wanted the release of Indira Gandhi and withdrawal of cases against Sanjay Gandhi. The hijackers surrendered after keeping 132 passengers as hostages for a few hours.
- Indian Airlines IC-423 plane, on 29 September, 1981, was hijacked by some extremists. Their plan was to go from Srinagar to Delhi.
- On 6th July, 1984, an Indian Airlines jet was hijacked. The plane was flying from Srinagar to New Delhi and was carrying 225 passengers.
- An aircraft was hijacked on 24th April, 1993. The hijacker demanded to take the aircraft to Lahore but the authorities of Pakistan refused the permission.
- Indian Airlines Flight 814 was hijacked on 24th December, 1999. The aircraft was flying from Kathmandu to Delhi, but was taken to Kandahar,

Afghanistan by the hijackers. India agreed after a long stand-off to release three Kashmiri militants in exchange of freeing the hostages.

Negligence

- 9W122 flight on August 25, 2018 was carrying 337 passengers and was ready to take off. It was running at high speed but it stopped at the New Delhi airport. Boeing 777 jet pilots had no appropriate clearance from the Air Traffic Controller.
- 9W523 Jet airways plane skidded on the runway on 3rd August 2018. It was operating from Riyadh to Mumbai and was carrying 141 passengers and 7 crew members. Fortunately, all the passengers were safely evacuated.
- Air India 747-200 plane crashed on 1st January 1978 shortly after take-off. The accident was due to the failure of an attitude detector. All the 190 passengers and 23 crew members died in this accident.
- On June 23rd, 1985, Air India plane 747-200 flying from Bombay to Canada had a bomb explosion. The bomb exploded near the Irish coast and the plane broke up and crashed into the sea. All 307 passengers lost their lives.
- Air India Express 737-800 flight 812 on 22nd May, 2010 crashed. The plane was flying from Dubai to Mangalore. The aircraft landed on the runway at Mangalore airport but it failed to stop and eventually crashed into a gorge. The pilots on the plane were heard snoring heavily in the cockpit recorder

before the incident took place. It ended up killing 152 passengers and six crew members.

These are a few instances which highlighted the call for making stricter aviation laws in India and they also show the importance of having effective regulatory agencies to implement the regulations in order to minimise air accidents.

Important Aviation Legislations in India

Since its independence, India has a prolonged and well-established precedent through its specific national laws of the implementation of international laws and conventions. India is a member of the International Civil Aviation Organisation and to make its laws at par with various international civil aviation conventions, India has made its domestic laws in conformity with the international conventions. Brief introductions of various Indian laws are given below:

1. The Aircraft Act, 1934

The object of this Act is to make a better provision for the control of the manufacture, possession, use, operation, sale, import and export of aircrafts.⁸

⁸ The Aircraft Act, 1934, *available at*: http://legislative.gov.in/sites/default/files/A1934-22_0.pdf (last visited on June 10, 2020).

2. The Carriage by Air Act, 1972

This Act was enacted in order to give effect to the Warsaw Convention signed on the 12th day of October, 1929 as amended by the Hague Protocol and the Montreal Convention.⁹

3. The Anti-Hijacking Act, 2016

This Act was promulgated in order to give effect to the Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Hijacking Convention) and for matters connected therewith.

The Act received the President's assent on 13th May, 2016. Further, the Act repeals the old Anti-Hijacking act of 1982 without affecting certain rights, privileges, obligations or any actions taken in pursuance of the said act or any legal proceedings and remedy, penalty, forfeiture and any such investigation, penalty, forfeiture or remedy that may be imposed as if the said Act had not been repealed.¹⁰

⁹ The Carriage by Air Act, 1972, *available at*: http://legislative.gov.in/sites/default/files/A1972-69_0.pdf (last visited on June 10, 2020).

¹⁰ The Anti-Hijacking Act, 2016, *available at*: <https://www.civilaviation.gov.in/sites/default/files/Anti-hijacking%20Act%2C%202016.pdf> (last visited on June 10, 2020).