

LEGAL REGULATIONS OF AERIAL HIJACKING: INDIAN PERSPECTIVE

Dr. Jitender Loura

Assistant Director, DGCA, Govt. Of (India)

ABSTRACT

India is a developing country and it has a remarkable journey in Aviation industry in recent decades. Different terrorist group target this industry to put pressure on the government by hijacking the flights. There are several past incidents that can show the real picture of flight hijacking in India. The Government of India started Bureau of Civil Aviation Security (BCAS) to protect the industry from the terrorist attacks. The Government enacted Anti-hijacking Act, 1982 to penalize the offender severely. The Act was amended to enable stricter and wide provisions to provide strength to the criminal justice system of India for taking firm action against the hijacking.

Keywords: *Anti Hijacking, Bcas, Regulations*

I. INTRODUCTION

India is a developing country and like other countries in the sub-continent, India's economy is also growing in a noticeable range. Since independence, India is trying to enhance the industrial output in various sectors and Aviation is one among them. In the recent decades aviation sector in India has shown some great commitment towards the achievements. In many surveys, it is noticed that in the recent times, India has the fastest growth rate in Asia in the aviation sector. But for India, good gift came in bad packet. The remarkable growth of aviation sector attracted the attention of the terrorists. For fulfilling their undesirable demands and to hurdle the growth of Indian economy, they target the aviation industry through mala-fide activities like hijacking.

II. RESEARCH AIM AND OBJECTIVES

This particular study aims to explore the legal regulation of areal hijacking with reference to India as the case country. Therefore, the objective is to find out the present situation in terms of hijacking as well as to the analyze response of the Indian government.

II. BACKGROUND

Terrorist groups considered hijacking as the most efficient way to put pressure upon the government and annoying the human society and by doing this, they wanted to fulfill their unlawful desires. Lot of instances regarding hijacking has been shown to the world at large. Since seven decades, the aviation sector is the target of terrorist attacks against the country, of whose's, flag is carried by the aircraft. The incident of September

2001 has refocused the mind of the world towards the areal activity of terrorism in the field of aviation¹. The incident which happened on 30th January, 1971 may be considered as one of the most shameful incident for human society and international relations, an aircraft of Indian Airlines had been hijacked by Hashim Quereshi and Ashraf Quereshi, who took it to Lahore. The foreign minister of Pakistan went to Lahore to meet the hijackers that gave huge publicity in international society. The government of India asked Pakistan government for a permission to replace the crew of the aircraft but the Pakistan government has denied and supplied petrol to the hijackers to burn the aircraft and thereafter the hijackers were taken into a procession like heroes from Lahore airport². Another similar kind of incident happened in the year 1981, again when an aircraft of Indian airlines has been hijacked and taken to Lahore³. Followed by another incident in the year 1982, in which a single person with a pistol and hand grenade, hijacked a flight carrying 69 passengers. Fortunately that person was killed by the personnels of Indian armed forces and rescued the passengers⁴. In the same year, another aircraft of Indian airlines had been hijacked and was forced to land in Amritsar. And there are many more incidents with planes of Indian registration, like the incident of 1984, where an Indian airlines flight carrying 255 passengers was hijacked and forced to land in Lahore⁵, and in the very next month of this incident, another incident took place, where seven young people hijacked a flight of Indian jetliner, and forced it to land in Lahore once again⁶. In the year 1993, another hijacking incident took place, involving a flight of Indian airline which was hijacked and forced to land in Lahore but the Pakistan government did not give permission to land and the hijacked plane, for that reason had to land at Amritsar and the hijackers were killed⁷. In the year 1999, another Indian airlines aircraft has been hijacked and diverted to Kandahar, then after a week, the Indian government decided to release the militants in exchange for the hostages⁸.

¹ Heinonline.org, '41 Columbia Journal of Transnational Law 2002-2003 Aviation Security: The Role of Law in the War against Terrorism', in , , 2003,
<<http://heinonline.org/HOL/LandingPage?handle=hein.journals/cjtl41&div=32&id=&page=>> [accessed 12 February 2015].

² D Sharan & S Chowdhury, *Flight into fear*, in , New Delhi, Penguin Books, 2000.

³ Heinonline.org, '41 Columbia Journal of Transnational Law 2002-2003 Aviation Security: The Role of Law in the War against Terrorism', in , , 2003,
<<http://heinonline.org/HOL/LandingPage?handle=hein.journals/cjtl41&div=32&id=&page=>> [accessed 12 February 2015].

⁴ P Taylor, *India and Pakistan: Thinking about the Unthinkable*, in , Ft. Belvoir, Defense Technical Information Center, 2001.

⁵ A Bhaṭṭācārya & S Bhaṭṭācārya, *Sāta dina Kandhāra meṃ*, in , Dillī, Hinda Pôkeṭa Buksa, 2000.

⁶ R Belzer, G Noory & D Wayne, *Someone Is Hiding Something*, in , New York, Skyhorse Publishing, 2015.

⁷ 'Fight or flight?', in *Strategic Direction*, vol. 23, 2007, 12-15.

⁸ A Jaggia & S Shukla, *IC814 hijacked!*, in , New Delhi, Lotus Collection, 2000.

III. PRESENT SITUATION

After the Kanishka tragedy the Ministry of civil aviation in India has introduced Bureau of Civil Aviation Security (BCAS) as a security regulating body in the aviation sector. Bureau of Civil Aviation Security (BCAS) is empowered to deal with each and every part in respect of the security issue pertaining to Civil Aviation. A statute known as Anti hijacking Act, 1982 has been enacted by the legislature but the provisions of the statute are not such comprehensive in nature and the implementation of the law is not up to the desirable mark⁹. Indian government has taken many important steps to prevent hijacking, the security of the aerodromes has been increased, and India is trying to adopt the global aspects and the international standards which are specified in various international conventions regarding the hijacking of aircrafts. Developing countries like India must emphasize on the appropriate governance and enactment of law regarding the aviation sector as this is the present day's biggest menace, relevant statutory provisions and powerful as well as disciplined executing authorities must be introduced to reduce this problem¹⁰.

Security agencies shall have the power to restrict and prevent the hijacked aircrafts which are within Indian Territory. Indian Air force shall have the power to take necessary steps to force any hijacked aircraft for landing on any Indian airports. Previously punishment for hijacking was imprisonment and fine now it is amended to death penalty. Subsequent to the Kandahar incident and the 9/11 tragedy, the Indian government has made some strict decisions for preventing any further event of that kind. The cabinet has drafted a new bill for a strict Anti-Hijacking statute¹¹. In the incident of 1999, 5 hijackers hijacked the aircraft, all of them were belonging to Harkat-ul-Mujahideen, an Islamic militant group of Pakistan. This group was very active in the Indian controlled Kashmir, each of them were addressing each other in code names, they destroyed the security measures of Kathmandu airport to smuggle ammunitions inside the plane, in respect of that the security staffs of the Kathmandu airport made very reluctant conduct as well as negligence. The hijackers did not want the flight to be land within the jurisdiction of Indian Territory but the pilot of the flight made them agree to land it in Amritsar for refueling. After such landing the crisis management group handled the entire situation. But the pilot had to take off the flight towards Lahore just after the landing because of their humiliation upon the passengers¹².

Hijacking is not only an important matter of concern in aggregate but it also violates the human rights of the individuals. The rights conferred by the international summits and U.N. charter for human beings are

⁹ Indiacode.nic.in, in , , 1982, <<http://indiacode.nic.in/fullact1.asp?tfm=198265>> [accessed 12 February 2015].

¹⁰ P van Krieken, 'Hijacking and Asylum: Some remarks on the hijacking problem and its repression, with respect to the law on asylum', in *NLR*, vol. 22, 1975, 3.

¹¹ DNA, 'Hijacked plane on terror path will be shot down, says govt. | Latest News & Updates at Daily News & Analysis', in , , 2010, <<http://www.dnaindia.com/india/report-hijacked-plane-on-terror-path-will-be-shot-down-says-govt-1360837>> [accessed 12 February 2015].

¹² Police One, 'Case study: Indian Airlines Christmas Eve hijacking', in , , 2015, <<http://www.policeone.com/terrorism/articles/3295096-Case-study-Indian-Airlines-Christmas-Eve-hijacking/>> [accessed 12 February 2015].

devastatingly violated by executing hijacking plans. In India protection of human rights is a very important subject matter, the Indian government had to take some measures to comply with the human rights laws irrespective of the circumstances and present scenario of the society¹³. Hijacking and frequent disturbance by terrorism, makes the growth of Indian economy into a slow one, the government would not be able to concentrate in field of development due to frequent terrorist activities. This may be the actual plan of the terrorist groups to exert pressure and make Indian government to retard the development of the country¹⁴.

IV. RESPONSE OF THE GOVERNMENT

The government of India has taken many strict steps towards hijacking; the cabinet has amended Section 4 of the Anti-Hijacking Act, 1982. Now it imposes imprisonment for life and death penalty too. The government is willing to make further amendments in successive periods of parliament in respect of the hijacking issues¹⁵. A fresh move was taken in the year 2005 to ensure legal sanction of the Anti-Hijacking Act, 1982, new enacted policies says that if a hostile plane is to be blow up to destroy strategic establishments by the hijackers then necessary precautions are to be adopted¹⁶. The Indian government described in their policies that if any plane is hijacked and converted into a hostile plane then it must be surrounded by Indian fighter planes in the aerospace¹⁷. The new policies states that the security authorities shall have special powers to made some very important amendments and introduced some major policies regarding hijacking after the event of 9/11. BCAS has specified hijacked aircrafts into three group, those are rogue, doubtful and threat. The aircrafts falling under the classification of threat only be shot down, and which aircraft will be shot down can be decided by a committee comprising of the Prime Minister, Home Minister, Defence Minister and an air force officer not below the rank of assistant chief of air staff.

The amendment bill of anti-hijacking was introduced in August, 2010 in the Rajya Sabha and it was referred to the standing committee of the tourism and culture, transport, it has submitted the report in October of the same calendar year. The main object of the bill was to amend the Anti Hijacking Act, 1982 and to introduce strict penalties for the offences in relation to any activity of hijacking. The amended Act says that if any person attempts to hijack any aircraft then such person shall be treated as hijacker and shall be punished in accordance. Abetment of hijacking shall also be considered as hijacker¹⁸. In the amended bill the government also suggests

¹³ S Pandey, 'Institutional Approach to Human Rights Protection: Indian Experience', in *SSRN Journal*.

¹⁴ R Chandra, 'Growth and development', in *Indian J Pediatr*, vol. 37, 1970, 496-496.

¹⁵ R Desai, 'Complications and precautions of sclerotherapy for chyluria', in *Indian Journal of Urology*, vol. 21, 2005, 27.

¹⁶ M Shetty & K Shenoy, 'A modified technique for preparation of guiding planes for removable partial dentures', in *The Journal of Indian Prosthodontic Society*, vol. 6, 2006, 120.

¹⁷ 'THE NEW POLICIES OF THE INDIAN BUREAU', in *Science*, vol. 69, 1929, 514-514.

¹⁸ Prsindia.org, 'PRS | Bill Track | The Anti-Hijacking (Amendment) Bill, 2010', in , 2015,

<<http://www.prsindia.org/billtrack/the-anti-hijacking-amendment-bill-2010-1248/>> [accessed 13 February 2015].

that if any Indian is hijacked in any flight across the world then the government shall take initiative to rescue that person in along with the concern government of that country flag of which the flight is carrying. The bill expanded the concept of hijacking by adding a word 'in service' in the definition of hijacking in the statute.

V. CONCLUSION

Previously the definition was limited into the word 'in flight'. After amendment the scope and sphere of the Anti-Hijacking Act has been increased and it includes the total activities in respect of a complete flight plan. The bill has changed the present scenario regarding the trial of the cases relating to the offences of hijacking, it introduced speedy trial provisions which may be done by day to day process in the sessions court of the state with the permission of the Chief Justice of the High Court of that state¹⁹. A new section has been introduced, Section 5A, which says, apart from the Code of Criminal Procedure, the central government shall have the power to appoint central officers for investigation in relation to any activity of hijacking and those officers shall also have the power to arrest any suspect. Section 7A says that any person arrested under this act shall not be released on bail²⁰.

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¹⁹ <http://www.hindustantimes.com/>, 'New anti-hijack bill to include death penalty', in , , 2014, <<http://www.hindustantimes.com/india-news/new-anti-hijack-bill-to-have-more-teeth-death-for-crime/article1-1263793.aspx>> [accessed 13 February 2015].

²⁰ Bcasindia.nic.in, 'Welcome to Bureau of civil Aviation Security of India', in , , 1994, <<http://www.bcasindia.nic.in>> [accessed 13 February 2015].

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