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The Illusion of Statutory Authority: Legal, Liability, and Institutional Gaps in the Indian Space Policy (2023)

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ABSTRACT

India has opened its space sector to private enterprise without enacting a space statute. Regulatory work is instead carried out by the Indian Space Policy 2023, a Cabinet-approved executive instrument, and by norms issued under it by the Indian National Space Promotion and Authorisation Centre. By August 2026 that framework had produced 113 authorisations to fifty-two non-governmental entities, so the question whether it possesses the authority it appears to exercise is no longer academic. The article addresses that question through a doctrinal analysis of the Policy and its subordinate norms against the constitutional law of executive power, India's obligations under the Outer Space Treaty and the Liability Convention, and the licensing statutes of the United Kingdom and the United States. It finds the framework's authority illusory in three connected respects. First, executive power organises government but cannot support acts operating to the prejudice of private persons: conditioning a lawful occupation on official permission, revoking that permission, and levying a financial penalty each requires a law, and no law exists. The Policy's space-resources provision compounds the defect by reproducing the operative words of a United States statute in an instrument incapable of creating property rights. Secondly, the framework addresses absolute and unlimited international liability with a contractual indemnity and discretionary insurance; a contract cannot furnish the Union with recourse that survives an operator's insolvency, cannot cap the operator's own exposure, and cannot commit public money above the insured layer. Thirdly, promotion, authorisation, and authoritative interpretation are concentrated in a single department that also owns the principal market participants, with no appeal or dispute forum. These are three faces of a single defect: the absence of a legislative source. The article concludes by identifying the minimum content Indian space legislation must carry, including a provision validating the authorisations already granted.

Keywords: *Indian Space Policy 2023, IN-SPACe, executive power, Article 73, Outer Space Treaty, Liability Convention, space resources, space law, authorisation, delegated legislation*

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I. INTRODUCTION

India runs one of the world's larger space programmes without a space law. The reforms of 2020 opened the sector to private participation, and the Indian Space Policy 2023 ("the Policy") was framed to give that opening an "overarching, composite and dynamic framework";¹ in May 2024 the Indian National Space Promotion and Authorisation Centre ("IN-SPACe") issued Norms, Guidelines and Procedures ("the NGP"), an instrument of eleven chapters containing conditions, prohibitions, grounds of revocation and financial penalties.² Neither is made under an Act of Parliament, because there is none. A draft Space Activities Bill circulated in 2017 was never introduced, and a fresh draft reported as finalised in 2025 had not reached Parliament at the time of writing.³

For some years this could be treated as transitional untidiness. It can no longer. In August 2026 the Government informed Parliament that IN-SPACe had granted 113 authorisations to fifty-two non-governmental entities.⁴ Authorisation is now the precondition for lawful commercial activity across launch, satellite operations, the ground segment, planned re-entry, and high-resolution Earth observation.⁵ An instrument that decides who may trade, on what conditions and at what risk is doing the work of law. Whether it carries the authority of law is a different question, and it is the question pursued here.

The question is not only domestic. Article VI of the Outer Space Treaty provides that the activities of non-governmental entities in outer space "shall require authorization and continuing supervision by the appropriate State Party to the Treaty".⁶ Article VII makes a launching State internationally liable for damage caused by its space object; the Liability Convention elaborates that liability, rendering it absolute for damage caused on the surface of the earth, without limit of amount and jointly and severally with any co-launching State.⁷ The domestic lawfulness of India's authorisation machinery therefore bears directly on whether

¹ DEP'T OF SPACE, GOV'T OF INDIA, *Indian Space Policy – 2023*, ¶ 1 (Apr. 2023), https://www.isro.gov.in/media_isro/pdf/IndianSpacePolicy2023.pdf [hereinafter *Indian Space Policy*].

² IN-SPACe, *Norms, Guidelines and Procedures for Implementation of Indian Space Policy-2023 in Respect of Authorization of Space Activities*, No. IN:ISP2023:NGP2024/V1.0 (May 2024), https://www.inspace.gov.in/sys_attachment.do?sys_id=5d532e37877102503b0fd060cbb35cf [hereinafter *NGP*].

³ *Draft Space Activities Bill, 2017* (India), https://prsindia.org/files/bills_acts/bills_parliament/1970/Draft%20Space%20Activities%20Bill%202017.pdf.

On the 2025 redraft, see Gaurav Saini, *A New Draft for the Space Activities Bill: Amidst a Sea-Change in India's Space Sector*, COUNCIL FOR STRATEGIC & DEF. RSCH. (June 9, 2025), <https://csdronline.com/blind-spot/a-new-draft-for-the-space-activities-bill-amidst-a-sea-change-in-indias-space-sector/>.

⁴ *113 Space Activity Approvals Granted to 52 Non-Government Entities: Jitendra Singh*, TELANGANA TODAY (Aug. 12, 2026), <https://telanganatoday.com/113-space-activity-approvals-granted-to-52-non-government-entities-jitendra-singh> (reporting the Minister's written answer in the Lok Sabha).

⁵ *Indian Space Policy*, *supra* note 1, ¶¶ 5(1)(a)–(i).

⁶ Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies art. VI, Jan. 27, 1967, 610 U.N.T.S. 205 [hereinafter *Outer Space Treaty*].

India discharges an international obligation of supervision, and on whether it can recover from a private operator what that obligation may one day cost the exchequer.

Scholarship has approached the surrounding terrain from two directions. The older literature, written before commercialisation, urged India to legislate as a matter of prudence and treaty compliance.⁸ The newer literature, responding to the Policy itself, has observed that conferring authorisation and fixing liability are legislative rather than executive functions,⁹ and has catalogued the weaknesses of a regulator without statutory powers.¹⁰ Neither body of work attempts what follows: to press the constitutional doctrine of executive power far enough to identify which particular acts of the present regime are legally unsupportable, and what consequences follow for operators, claimants and the State; and to read the Policy's space-resources provision as what it is, a statutory text transplanted without its statutory carrier. The international literature, for its part, continues to debate what Article VI's authorisation requirement demands of States,¹¹ a debate that presupposes a domestic legal order in which authorisation is a recognisable legal act.

Three questions follow. First, what is the legal character and source of the Policy and of the authorisations issued under it, and where does executive power run out? Secondly, does the framework's treatment of liability discharge India's obligations and protect the fiscal interests of the Union? Thirdly, what institutional consequences follow from regulating without a statute, and what is the minimum content that a space statute must carry?

The method is doctrinal. The Policy and the NGP are read as legal texts against the Constitution, against Indian authority on executive action, and against the treaties binding India, interpreted in accordance with Article 31 of the Vienna Convention on the Law of Treaties.¹² Comparison with the United Kingdom's Space Industry Act 2018 and the United States' launch-licensing statutes is functional rather than exhaustive: those regimes are used to show what a statute can do that an executive instrument cannot, not as models for transplantation. Defence and dual-use activity, spectrum pricing, and the merits of the Policy's economic strategy lie outside the scope.

⁷ Convention on International Liability for Damage Caused by Space Objects arts. I(c), II, V(1), Mar. 29, 1972, 961 U.N.T.S. 187 [hereinafter *Liability Convention*].

⁸ See generally Ranjana Kaul & Ram S. Jakhu, *Regulation of Space Activities in India*, in NATIONAL REGULATION OF SPACE ACTIVITIES 153 (Ram S. Jakhu ed., 2010), https://doi.org/10.1007/978-90-481-9008-9_8.

⁹ Sandeepa Bhat B., *Outlining Inconsistencies in the Indian Space Policy 2023*, CTR. FOR AVIATION & SPACE LAWS, NUJS (May 1, 2023), <https://nujs.edu/casl/outlining-inconsistencies-in-the-indian-space-policy-2023/>.

¹⁰ Saini, *supra* note 3.

¹¹ Charles Stotler, *Interpretation as Creation: Article VI of the Outer Space Treaty*, 26 CHI. J. INT'L L. 133, 133 (2025), <https://chicagounbound.uchicago.edu/cjil/vol26/iss1/5/>.

¹² Vienna Convention on the Law of Treaties art. 31, May 23, 1969, 1155 U.N.T.S. 331.

Part 2 addresses the source of authority, Part 3 the allocation of liability and Part 4 the institutional architecture; Part 5 concludes.

II. THE SOURCE OF AUTHORITY

A. A statute in everything but pedigree

The Policy is drafted as legislation. It opens with a definitions clause assigning stipulated meanings to “Authorisation”, “Space Activity” and “Space Object”;¹³ it uses the imperative throughout; it creates a permitting authority, enumerates the classes of activity requiring permission, and contemplates the review, revocation and modification of permissions granted.¹⁴ The NGP supplies what, under a statute, would be the rules. The resemblance is not accidental: it is what any regulator must produce in order to regulate. But resemblance is not pedigree.

The Policy is an executive instrument approved by the Cabinet, and IN-SPACE is described in it as an autonomous Government organisation within the Department of Space. Its constitutional footing is Article 73, under which the executive power of the Union extends to matters with respect to which Parliament may legislate, here space activity, for which the Union’s competence rests on the residuary entry of the Union List.¹⁵ On the authority of *Rai Sahib Ram Jawaya Kapur v. State of Punjab*, the Union needs no prior statute merely to act: the executive may organise itself, allocate functions among its own agencies, and conduct a programme, provided that expenditure is authorised by appropriation.¹⁶ So far as the Policy distributes work between the Department of Space, ISRO, NewSpace India Limited and IN-SPACE, it is unimpeachable.

B. Where executive power stops

The difficulty begins where the instrument turns outward. The governing principle was restated in *Bishambhar Dayal Chandra Mohan v. State of U.P.*: “Every act done by the Government or by its officers must, if it is to operate to the prejudice of any person, be supported by some legislative authority.”¹⁷ Three features of the present regime operate to the prejudice of persons, and none is so supported.

The first is the requirement of prior permission itself. To make the carrying on of a lawful occupation conditional upon an official’s consent restricts the right under Article 19(1)(g),

¹³ *Indian Space Policy*, *supra* note 1, Definitions ¶¶ 1, 11–12.

¹⁴ *Id.* ¶¶ 5(1), 5(22).

¹⁵ INDIA CONST. art. 73, cl. (1); *see also id.* art. 246, cl. (1), sch. VII, List I, entry 97. On the constitution of IN-SPACE, *see Indian Space Policy*, *supra* note 1, ¶ 5; *NGP*, *supra* note 2, Preface.

¹⁶ *Rai Sahib Ram Jawaya Kapur v. State of Punjab*, AIR 1955 SC 549, ¶¶ 14, 17–18.

¹⁷ *Bishambhar Dayal Chandra Mohan v. State of U.P.*, (1982) 1 SCC 39, [1982] 1 SCR 1137, 1161 (*quoting State of Madhya Pradesh v. Thakur Bharat Singh*, AIR 1967 SC 1170).

which Article 19(6) permits to be restricted only “by law”, an expression never read to embrace executive instructions.¹⁸ The second is revocation: the NGP reserves to IN-SPACe the right to terminate or suspend an authorisation, including on national security grounds.¹⁹ The third, and the clearest, is punishment. The NGP provides that IN-SPACe may impose a financial penalty where an authorised operator unilaterally discontinues service.²⁰ The power to fine is the paradigm of a power that exists only if a statute creates it. The one alternative characterisation, that the penalty is a term of the bargain on which the authorisation was accepted, is worse rather than better, for it would subject the sanction to section 74 of the Indian Contract Act and would concede that what presents itself as regulation is in substance a contract of adhesion between the State and its licensees.²¹ The same objection reaches the control of earth-observation data, where dissemination of imagery finer than a stated ground sampling distance is made conditional on authorisation:²² a restriction on the communication of information must likewise be imposed by law.

C. A transplant without its carrier

The sharpest illustration concerns space resources. The Policy provides that a non-governmental entity engaged in the commercial recovery of an asteroid resource or a space resource “shall be entitled to possess, own, transport, use, and sell” the resource obtained, in accordance with applicable law, including India’s international obligations.²³ With the substitution of one State’s name for another, that is the operative language of 51 U.S.C. § 51303.²⁴ In the United States, the entitlement is conferred by statute; in Luxembourg, the equivalent step was taken by an Act whose opening article declares that space resources are capable of being owned.²⁵ Each of those States understood that to create a novel proprietary entitlement in a thing previously outside the law of property is a legislative act.

India has attempted the same step by policy. The NGP then requires a separate authorisation for extraction and directs the applicant to refrain from asserting sovereign claims over the resources extracted.²⁶ IN-SPACe is thus licensing an entitlement that the instrument creating IN-SPACe

¹⁸ INDIA CONST. art. 19, cl. (1), sub-cl. (g); *id.* art. 19, cl. (6); see also *Bishambhar Dayal Chandra Mohan, supra* note 17.

¹⁹ *NGP, supra* note 2, ch. III, cl. 21.

²⁰ *Id.* ch. III, cl. 27.

²¹ The Indian Contract Act, No. 9 of 1872, INDIA CODE (1872), § 74.

²² *Indian Space Policy, supra* note 1, ¶ 5(20).

²³ *Id.* ¶ 4(13).

²⁴ 51 U.S.C. § 51303 (2018).

²⁵ Law of July 20, 2017 on the Exploration and Use of Space Resources art. 1 (Lux.), translated at <https://space-agency.public.lu/en/support/industry-portal/legal-framework/law-of-july-20th-2017.html>.

²⁶ *NGP, supra* note 2, ch. III, cl. 25.

has no power to confer. Property rights in India are creatures of law. Article 300A's guarantee that no person shall be deprived of property save by authority of law presupposes as much,²⁷ and a policy paragraph cannot generate a title good against third parties, a security interest capable of registration, or an asset a court could vest in a liquidator. For an industry whose financing depends upon the bankability of precisely such rights, the provision promises what it cannot deliver.

III. THE ALLOCATION OF LIABILITY

A. The exposure

India's international exposure is broad and uncapped. It is a launching State not only for objects launched from its territory but for those it procures to be launched;²⁸ it is absolutely liable for damage caused on the surface of the earth or to aircraft in flight, irrespective of fault;²⁹ and where a launch is joint, liability is joint and several.³⁰ Article VI is generally read as attributing the private activity to India as a national activity, so that an operator's default is the State's breach. The Registration Convention, to which India acceded in 1982, adds a duty to maintain a national registry of the objects for which India is the launching State.³¹

B. What the framework provides

The Policy's entire response is a single line delegating to IN-SPACE the task of prescribing guidelines to address liability arising out of potential damage caused by space activities.³² The NGP discharges the delegation by requiring applicants to adhere to a third-party liability chapter and to the Liability Convention itself,³³ insurance being required where the regulator considers it necessary.³⁴

Three difficulties follow. The first is formal: a delegation presupposes a delegating power, and there is no parent enactment from which authority to legislate upon liability could descend. The ordinary doctrine of delegated legislation has nothing on which to operate.

²⁷ INDIA CONST. art. 300A.

²⁸ *Liability Convention*, *supra* note 7, art. I(c); *Outer Space Treaty*, *supra* note 6, art. VII.

²⁹ *Liability Convention*, *supra* note 7, art. II.

³⁰ *Id.* art. V(1).

³¹ Convention on Registration of Objects Launched into Outer Space art. II, Jan. 14, 1975, 1023 U.N.T.S. 15. India acceded on 18 January 1982. U.N. TREATY COLLECTION, *Status of Multilateral Treaties Deposited with the Secretary-General*, ch. XXIV.1, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXIV-1&chapter=24 (last visited Sept. 18, 2026).

³² *Indian Space Policy*, *supra* note 1, ¶ 5(18).

³³ *NGP*, *supra* note 2, ch. III, cl. 12.

³⁴ *Id.* ch. X, cl. 1(i) (third-party liability insurance to be maintained by the launch operator "if found necessary by IN-SPACE"); see also Ashwath Chelladurai, *From Policy to Protection: Third-Party Liability and Insurance in Indian Space Exploration*, LIVE LAW (Oct. 2, 2025), <https://www.livelaw.in/lawschool/articles/third-party-liability-and-insurance-in-indian-space-exploration-305717>.

The second is that the instrument of recovery is a contract. An indemnity binds only its parties; it is worth only the operator's solvency; it ranks with other unsecured claims in liquidation; and it does not extend to a foreign co-venturer, supplier, or launch customer outside privity. Against that, a claim under the Liability Convention is made State to State, is unlimited in amount, and is not answered by pointing to an operator's balance sheet. The Antrix–Devas litigation is instructive precisely because it shows how swiftly a single satellite arrangement may generate winding-up proceedings, a commercial award, and treaty claims enforced against sovereign assets abroad.³⁵

The third difficulty runs the other way. Because the framework cannot cap liability, the operator faces unlimited exposure to a recourse claim of uncertain scope. That is a poor foundation for the foreign investment the Government has invited: the liberalised policy of March 2024 permits substantial foreign holdings in satellite and launch ventures,³⁶ yet no instrument in force can tell an investor what its maximum downside is.

C. What a statute does

The comparative material shows that each limb of a workable regime requires legislation. The United Kingdom's Space Industry Act 2018 makes the operator strictly liable for injury or damage caused by its spacecraft;³⁷ it permits regulations to specify, in the licence itself, a limit on the licensee's liability;³⁸ and it imposes a duty to indemnify the government against claims, expressly subject to that limit.³⁹ Liability, cap and recourse are created together by one Act. The United States proceeds differently to the same end: a licensee must demonstrate financial responsibility calculated by reference to maximum probable loss, subject to statutory ceilings,⁴⁰ above which Congress has provided for the payment of excess third-party claims from public funds.⁴¹

The point is not that India should choose one model. It is that imposing strict liability, limiting it, creating a right of recourse and committing public money above the insured layer are four distinct things, and each requires an Act. The fourth is constitutionally impossible by any other route, since no executive instrument can charge the Consolidated Fund, from which money may

³⁵ See Prabhash Ranjan, *Devas v. Antrix: Lessons for India in Navigating Bilateral Investment Treaty Disputes*, OBSERVER RSCH. FOUND., Issue Brief No. 537 (Aug. 14, 2023), <https://www.orfonline.org/research/devas-v-antrix-lessons-for-india-in-navigating-bilateral-investment-treaty-disputes>.

³⁶ DEP'T FOR PROMOTION OF INDUS. & INTERNAL TRADE, GOV'T OF INDIA, *Press Note No. 1 (2024 Series): Review of Foreign Direct Investment (FDI) Policy on Space Sector* (Mar. 4, 2024).

³⁷ Space Industry Act 2018, c. 5, § 34(2) (UK).

³⁸ *Id.* §§ 34(5), 12(2).

³⁹ *Id.* § 36(1), (3).

⁴⁰ 51 U.S.C. § 50914(a) (2018).

⁴¹ *Id.* § 50915.

be appropriated only in accordance with law.⁴² India's framework attempts the first two by contract and cannot attempt the last two at all.

IV. THE INSTITUTIONAL ARCHITECTURE

A. Promoter, authoriser, interpreter

The Policy mandates IN-SPACe to promote, hand-hold, guide and authorise space activities.⁴³ Combining promotion with authorisation is a design choice a legislature may deliberately make; the difficulty is that it is made here without any of the safeguards a legislature would attach. IN-SPACe must also prioritise access to facilities funded by public expenditure, and its decisions on this matter are declared binding on the operators of those facilities.⁴⁴ Those operators include ISRO and NewSpace India Limited, which sit in the same Department as IN-SPACe and, in the market the Policy creates, are participants.⁴⁵ The Department of Space is, in turn, directed to ensure that stakeholders do not overlap with one another's domains and to interpret and clarify any ambiguities arising during the implementation of the Policy.⁴⁶ The regulator's constitutive text is therefore construed, authoritatively and without appeal, by the department that owns the principal regulated incumbents. Under a statute, the functions would be fixed by Parliament and the ambiguities resolved by a court.

B. No appeal and no forum

The NGP provides no appeal. A rejected applicant may submit a revised application, and IN-SPACe does not guarantee its acceptance.⁴⁷ There is no internal review, no appellate tribunal and no standard against which a refusal might be tested. Appendix-I to the NGP does provide that a dispute arising under a granted authorisation goes first to mediation before a committee constituted by the IN-SPACe Board and then to arbitration, but that route is contractual and is not open to an applicant who has been refused.⁴⁸ The Policy's answer to disputes is to direct the Department of Space to create an appropriate mechanism to resolve any dispute arising out of space activity, "as per the extant laws".⁴⁹ The formulation is circular, for the extant laws are precisely what is absent.

⁴² INDIA CONST. art. 266, cl. (3).

⁴³ *Indian Space Policy*, *supra* note 1, ¶ 5.

⁴⁴ *Id.* ¶ 5(7).

⁴⁵ *Id.* ¶¶ 6, 7.

⁴⁶ *Id.* ¶ 8(1), (3).

⁴⁷ *NGP*, *supra* note 2, ch. III, cl. 16.

⁴⁸ *NGP*, *supra* note 2, Appendix-I, cl. 11(b), 14.

⁴⁹ *Indian Space Policy*, *supra* note 1, ¶ 8(10).

Judicial review survives,⁵⁰ but it is a thin remedy here. Review tests a decision's legality against a legal standard; where no statute supplies criteria, time limits, or grounds of refusal, the court is left with an arbitrariness review alone. That is not nothing: the allocation of scarce public resources has repeatedly been held to attract the discipline of Article 14.⁵¹ But it converts every substantive question about orbital resources, launch manifests and data thresholds into a bare rationality inquiry conducted without a yardstick.

C. The dispensing clause

The Policy closes by reserving to the Government, notwithstanding anything contained in it, the right to grant exemptions from its provisions on a case-to-case basis.⁵² A reservation of that width would be difficult to reconcile with Article 14 if the instrument were law, since an unguided power to exempt particular persons from a general regime is the classic form of arbitrariness.⁵³ It is intelligible only on the footing that the instrument is not law at all, which is, in the end, the candid position. The Telecommunications Act 2023 supplies the contrast: where Parliament wished satellite spectrum to be assigned administratively rather than by auction, it said so in a statute and in a schedule to it.⁵⁴ Where Parliament has not spoken, the executive has been writing schedules of its own.

V. CONCLUSION

The three gaps examined here are three faces of one defect. The Policy's authority is illusory, not because its content is misconceived, for much of it is capable administrative design, but because it has no legislative source, and the acts it directs are acts that only a legislative source can support.

To the first question: the Policy is valid as an internal allocation of governmental functions and invalid so far as it conditions, revokes or punishes the exercise of private rights. Its space-resources provision is the starkest instance, reproducing the operative words of a foreign statute while lacking the single quality that made those words effective. To the second: the framework protects neither the fisc, because a contractual indemnity is not a right of recourse, nor the operator, because no executive instrument can cap a liability that treaty law leaves unlimited. To the third: concentrating promotion, authorisation and interpretation in one department,

⁵⁰ INDIA CONST. art. 226.

⁵¹ See generally *In re Natural Resources Allocation*, Special Reference No. 1 of 2012, (2012) 10 SCC 1 (considering the constitutional discipline, principally that of Article 14, upon the alienation of scarce natural resources); *Centre for Pub. Interest Litigation v. Union of India*, (2012) 3 SCC 1.

⁵² *Indian Space Policy*, *supra* note 1, ¶ 9.

⁵³ INDIA CONST. art. 14.

⁵⁴ The Telecommunications Act, No. 44 of 2023, INDIA CODE (2023), § 4(4), sch. I, entry 16.

without appeal and with no forum other than a contractual one, leaves those affected with rationality review and nothing besides.

Legislation is therefore required, and its minimum content can be stated. It must create the power to authorise, with enumerated grounds, published criteria and time limits, and an appeal to an independent forum. It must impose liability on the operator, cap that liability, create a statutory right of recourse for the Union, and provide for claims above the cap. It must place the national registry on a statutory footing and settle the consequences of in-orbit transfer for jurisdiction and control. It must decide, as a matter of law, what an Indian operator owns upon recovering a space resource. And because 113 authorisations have already been granted, it must validate what has been done under the Policy, since, on the argument made here, acts done without power would not be cured by the later conferment of power unless the conferring Act said so.

Until that is done, India will continue to operate a regulatory system whose instruments read like law, whose officials act like regulators and whose subjects behave as though bound by a workable arrangement only for so long as no one has occasion to ask the question this article has asked.
