

**INTERNATIONAL JOURNAL OF LAW  
MANAGEMENT & HUMANITIES**  
**[ISSN 2581-5369]**

---

**Volume 4 | Issue 1**  
**2021**

---

© 2021 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

---

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at [submission@ijlmh.com](mailto:submission@ijlmh.com).

---

# Aircraft Amendment Act 2020: A Legislative Comment

---

AMRUTH ANAND<sup>1</sup>

## ABSTRACT

*The aircraft amendment bill, 2020 was passed on Sep 15, 2020 and notified in the gazette on the 20th September. The bill heralds in changes in the regulatory framework in the aviation sector in India. The aircraft act of 1934 is the primary legislation that governs the Indian aviation sector and is the principal legislation for the enforcement of the Convention on International Civil Aviation, 1944. The 2020 amendment act brings in further changes to primarily strengthen the regulatory framework in the country, enhance the punishments for the offenses prescribed under the act among other changes. The present legislative comment attempts to contextualise the amendments made to the situations and challenges faced by the aviation industry. The author attempts to provide an analysis of the effects and necessary implications that these amendments are poised to have on the aviation sector in India. In conclusion, the author brings up the future that this amendment is to address and the situations that the amendment might have helped address*

## I. INTRODUCTION

The Aircraft act, 1934 is the principal legislation India that governs aircraft. It provides the power for the central government to make rules that regulate the sale, purchase, operation, use and safety of aircraft used for Civil aviation. The aircraft amendment bill, 2020 comes at a time which has been unprecedented for the aviation industry. the Covid crisis has resulted a reduction of over 90% passenger numbers and over 60% reduction in overall capacity of airlines. The Indian aviation market, like most others in the world has also suffered the consequences.

The amendment may be divided into 5 major subsets that it brings in changes to the existing framework, namely, authorities under the act, power of the central government to make rules, adjudicating officers, offenses and penalties and exemptions to armed forces.

---

<sup>1</sup> Author is a student at School of law, Christ university, India.

## II. THE AIRCRAFT AMENDMENT BILL, 2020

### A. AUTHORITIES UNDER THE ACT

A major change brought in by the 2020 amendment is the conversion of 3 existing bodies under the erstwhile act into statutory bodies. The sole principal administrative authority under the central government is the Directorate General of Civil Aviation. Under section 5A<sup>2</sup> of the 1934 act, the DGA is the nodal authority for implementation of rules and international conventions in India<sup>3</sup>. The following are the primary functions that it performs in order to fulfil the above:

- Regulation of air transport services in India
- Safety guidelines for airworthiness, registration and certification of aircraft
- Licensing to pilots, aircraft maintenance engineers and flight crews

The DGCA also issues a Civil Aviation requirement, which mentions detailed requirements and compliance procedures to the above. The DGCA is therefore the chief regulator<sup>4</sup> in all matters in Indian airspace and is therefore akin to the FAA and the EASA. The Agency is therefore responsible for the safety and oversight in the Indian aviation industry.

The BCAS set up in the aftermath of the Indian Airlines Hijacking in 1976<sup>5</sup> is the principal agency responsible for the implementation Annex 17 of the Chicago convention<sup>6</sup> and is the principal aviation safety regulator in India. The Aircraft Accidents Investigation Bureau (AAIB) was set up in 2012<sup>7</sup> and functions under the Aircraft (Investigation of Accidents and Incidents) Rules, 2012. the organisation is modelled after the NTSB of the united states and performs the function of investigating accidents and incidents involving aircraft and aviation infrastructure.

The 2020 amendment makes the DGCA a statutory body, along with its sister agencies, the Bureau of Civil Aviation Security (BCAS), and the Aircraft Accidents Investigation Bureau (AAIB). The justification provided for the same is that this will provide a greater safety oversight to the aviation sector.

This comes at a time when regulators across the world, chiefly the FAA has been under

---

<sup>2</sup> 5A, THE AIRCRAFT ACT, 1934, Power to issue directions. — (1) *The Director General of Civil Aviation or any other officer specially empowered in this behalf by the Central Government may.....securing the safety of aircraft operations it is necessary so to do.*

<sup>3</sup> This is primarily the Chicago convention

<sup>4</sup> Section 4A, THE AIRCRAFT ACT, 1934

<sup>5</sup> Indian Jet Is Hijacked to Pakistan; Motives for Incident Are Unknown by William Borders Special to The New York Times Sept. 10, 1976 <https://www.nytimes.com/1976/09/10/archives/indian-jet-is-hijacked-to-pakistan-motives-for-incident-are-unknown.html>

<sup>6</sup> Security: Safeguarding International Civil Aviation Against Acts of Unlawful Interference, ICAO

<sup>7</sup> No. AV. 11012/01/2011 - DG Government of India Ministry of Civil Aviation, 11 ' July, 2012

scrutiny for the lax oversight it has had over certification of aircraft, chiefly the 737 max incidents.<sup>8</sup> further criticisms such as those of ‘regulatory capture’<sup>9</sup> where governments have had extensive control over the agency and has led to the various allegations of the agency favouring certain manufactures over others<sup>10</sup>. It must be noted here that the FAA is a regulatory body established under the Federal Aviation Act of 1958<sup>11</sup> and the agency is statutorily accountable to the extent mentioned in the act.

The fatal crash of Pakistan International Airlines Flight 8303, revealed flaws in the system of certification of pilots<sup>12</sup> that led to the airline being banned from flying into the American and European aviation markets.<sup>13</sup> The need becomes more apparent when one looks at the ICAO USOAP for the year 2018, where despite retaining a high rating in other sectors, India has had consistent issues with licencing.<sup>14</sup>

The national regulator therefore has a paramount duty to ensure that safety and certification standards are being met. The safety audit conducted by The International Civil Aviation Organisation (ICAO) in 2012 had identified safety concerns and the FAA in its audit, as part of the International Aviation Safety Assessment in 2013, reaffirmed these findings. This led to India being downgraded to a category-2 status in overall safety<sup>15</sup>. Further During the period 01.04.2015 to 30.11.2015 a total of 1509 occurrences were reported. The situation has however seen a drastic improvement, as in 2018-2019, only 22 total occurrences were reported, thus resulting in the Category 1 status being restored<sup>16</sup>.

India has also been the witness of two fatal air accidents in the last 10 years, Air India Express Flight 812 and Air India Express Flight 1344.<sup>17</sup> The AAIB’s role has therefore seen a greater

---

<sup>8</sup> U.S. Senate to hold crash hearing as lawmakers urge grounding Boeing 737 MAX 8, MARCH 12, 2019, REUTERS/Aaron P. Bernstein, [reuters.com/article/us-ethiopia-airline-usa/u-s-senate-to-hold-crash-hearing-as-lawmakers-urge-grounding-boeing-737-max-8-idUSKBN1QT1WR](https://www.reuters.com/article/us-ethiopia-airline-usa/u-s-senate-to-hold-crash-hearing-as-lawmakers-urge-grounding-boeing-737-max-8-idUSKBN1QT1WR)

<sup>9</sup> Niles, Mark C. "On the Hijacking of Agencies (and Airplanes): The Federal Aviation Administration, "Agency Capture," and Airline Security." *American University Journal of Gender Social Policy and Law* 10, no. 2 (2002): 381-442.

<sup>10</sup> Id.

<sup>11</sup> 49 U.S. Code § 106

<sup>12</sup> Pakistan International Airlines grounds 150 pilots over "bogus" licenses after deadly crash, JUNE 25, 2020 / 9:39 AM / AFP <https://www.cbsnews.com/news/pakistan-international-airlines-grounds-150-pilots-bogus-license-s-deadly-crash-flight-8303-karachi/>

<sup>13</sup> E.U. Bans PIA from Airspace for Six Months, *Newsweek Pakistan* June 30, 2020, <https://www.newsweekpakistan.com/e-u-bans-pia-from-airspace-for-six-months/>

<sup>14</sup> Universal Safety Oversight Audit Programme Continuous Monitoring Approach Results SAFETY REPORT 1 January 2016 to 31 December 2018, [https://www.icao.int/safety/CMAForum/Documents/USOAP\\_REPORT\\_2016-2018.pdf](https://www.icao.int/safety/CMAForum/Documents/USOAP_REPORT_2016-2018.pdf)

<sup>15</sup> DGCA REPORT OF 2015

<sup>16</sup> DGCA-2018-19

<sup>17</sup> Accident Bulletin 23 19-Aug-2020 12:35 PM AIR INDIA EXPRESS LIMITED, <http://www.airindia.in/dark-site-info.htm?2>

emphasis. NTSB, the American equivalent of the AAIB, after grappling with issues of conflict with the agency, was made an independent statutory organisation under the Independent Safety Board Act, 1975 to further its effectiveness.<sup>18</sup> It is poised, that with similar powers being given to the AAIB, the overall effectiveness of the accident investigation board will become more effective. With the Agencies being made statutory entities, they will be able to perform their functions with greater oversight than was previously possible.

## **B. POWER OF THE CENTRAL GOVERNMENT TO MAKE RULES, ADJUDICATING OFFICERS AND PENALTIES**

The power to make rules has been provided under the aircraft act, 1935 under section 5 of the act, to make rules that regulate the sale, use, export or import of aircraft. The 2020 amendment has widened this ambit of rulemaking to include the

*“regulation of air navigation services, that is, aeronautical information services, aeronautical charting and cartography services, aeronautical meteorological services, search and rescue services, procedure for air navigation services and aircraft operations other than those referred to in clause (gb) and any other matter relating to air navigation services;”<sup>19</sup>*

The rulemaking power has been further extended under section 5A of the 1934 act to give powers to *person or persons using any aerodrome, or engaged in the aircraft operations, air traffic control, maintenance and operation of aerodrome, or safeguarding civil aviation against acts of unlawful interference, in any case where the Director General of Bureau of Civil Aviation Security or such other officer is satisfied that in the interests of the security of India or to ensure security of civil aviation operations, it is necessary so to do.*<sup>20</sup>

The Air Space and Air Navigation Services Standards Directorate, which has been constituted under the DGCA issued vide the Rule 133A of Aircraft Rules, 1937<sup>21</sup> is responsible for oversight for Air navigation services and requirements for Air traffic services in India. It is pertinent to note here that the Airport Authority of India (AAI) is tasked with the responsibility to provide air traffic control services<sup>22</sup> and hence operates all the ATC facilities in airports across India. An express exemption has been made in the above clause that the same does not apply to services that are referred to under clause (gb) which provide *for the certification,*

---

<sup>18</sup> National Transportation Safety Board. 2005. We Are All Safer: Lessons Learned and Lives Saved 1975-2005. 3rd ed. Safety Report NTSB/SR-05/01. Washington, DC

<sup>19</sup> Section 5(2) (gd), THE AIRCRAFT (AMENDMENT) BILL, 2020

<sup>20</sup> Section 5A, THE AIRCRAFT (AMENDMENT) BILL, 2020

<sup>21</sup> CIVIL AVIATION REQUIREMENTS SECTION 9 – AIR SPACE AND AIR NAVIGATION SERVICES STANDARDS SERIES 'X', PART I, Issue II, 8th January 2010, OFFICE OF THE DIRECTOR GENERAL OF CIVIL AVIATION

<sup>22</sup> Section 12(2) THE AIRPORTS AUTHORITY OF INDIA ACT, 1994 NO. 55 OF 1994

*inspection and regulation of communication, navigation and surveillance or air traffic management facilities;*

Clause g(d) therefore may include regulation relating to on board radar, which may include airborne collision avoidance system (ACAS) as prescribed by the ICAO,<sup>23</sup> and other on-board system certification.

Annex 12 of the ICAO<sup>24</sup> provides for regulation of Search and rescue operations, the same is being followed in India by the Airports authority of India in conjunction with the ministry of defence.<sup>25</sup> The importance of Search and rescue cannot be understated and now, with explicit rulemaking powers, it will become imprimitive to ensure a robust standard to ensure that timely action will result in lives being saved.

It must be further remembered that the DGCA is the primary organisation that is responsible for the overall air safety, and hence certain adjudicatory control paced with it will ease out certain aspects of ensuring safety at both the aircraft and aerodromes. Incidents of air safety are grave in nature and the national regulator is report the same, as and when they occur to the ICAO<sup>26</sup>. Incidents are uncommon, but do happen from time to time and it has been up to the national regulator to interfere in these instances. the case of an indigo crew labelling a disabled passenger as unruly was considered am 'unlawful interference' and the licence of the pilot was suspended by the DGCA.<sup>27</sup> Such incidents coupled with incidents of interference from<sup>28</sup> Unmanned ariel vehicles (UAVs), it becomes imperative that strict action needs to be taken by the aviation regulator. The 2020 amendment gives the DGCA to further ensure that such incidents are adjudicated effectively. The punishments for offenses under the act also stand increased vide the amendment from rupees 10 lakh to 1 crore

### **C. EXEMPTION FOR ARMED FORCES**

The aircraft act, 1934 provided for '*any aircraft belonging to or exclusively employed in b [the naval, military or air forces of the Union]*'<sup>29</sup> to be exempted from the application of the aircraft

---

<sup>23</sup> Airborne Collision Avoidance System (ACAS) Manual, International Civil Aviation Organization, First Edition 2006 Doc 9863 AN/461

<sup>24</sup> ANNEX 12 to the Convention on International Civil Aviation Search and Rescue- [https://www.icao.int/safety/airnavigation/nationalitymarks/annexes\\_booklet\\_en.pdf](https://www.icao.int/safety/airnavigation/nationalitymarks/annexes_booklet_en.pdf)

<sup>25</sup> ICAO ANNEX MANAGEMENT MANUAL, Office of the Director General of Civil Aviation, 2018

<sup>26</sup> ICAO Aviation Security Manual (Doc 8973 – Restricted), Annex 17, Chicago convention

<sup>27</sup> DGCA bans IndiGo pilot for 'threatening' passenger, the Hindu, FEBRUARY 10, 2020 <https://www.thehindu.com/news/national/dgca-suspends-indigo-pilot-for-three-months/article30783608.ece>

<sup>28</sup> Drone menace hits London's Heathrow airport, flights briefly suspended 9 Jan 2019, 12:31 PM IST Benjamin Katz and Irene Garca Prez, Bloomberg, <https://www.livemint.com/Politics/dZORHBuxrfrVpu8ZBwdYMJ/Drone-menace-hits-Londons-Heathrow-airport-flights-briefl.html>

<sup>29</sup> Section 19, THE AIRCRAFT ACT, 1934

act. This has the possibility to create a unique set of challenges. The definition of 'aircraft', as per the aircraft act is said to be

*"aircraft" means any machine which can derive support in the atmosphere from reactions of the air, a [other than reactions of the air against the earth's surface] and includes balloons, whether fixed or free, airships, kites, gliders and flying machines;*<sup>30</sup>

It must be noted, that the above definition does not make a distinction between a civilian aircraft and a military aircraft. However, when the above is read in conjunction with sections 4<sup>31</sup> and 4A<sup>32</sup> of the Act, it becomes clear that the Aircraft act is primarily to be a regulation that governs civilian aircraft. Considering that aircraft that are not part of the armed forces as mentioned under section 19 can undertake activities that are not entirely civilian in nature, it becomes imperative to ensure that there is clarity in the legislation.

The Chicago convention in its application expressly excludes military, customs and police aircraft as part of its definition under Article 3.<sup>33</sup> The aircraft amendment act 2020, by adding the words "'or other armed forces of the Union constituted by any law for the time being in force"<sup>34</sup>, has provided for aircraft owned and operated by other armed forces to form part of exceptions to the aircraft act. Agencies such as the Border security forces (BSF)<sup>35</sup> and Indian Coast guard (which use aircraft as part of its mainstay operations) can now be exempted from the application of the act, as the role performed by these agencies is military in nature and cannot be brought under the aegis of the DGCA. This has been done after repeated request from the BSF<sup>36</sup> to be exempted from Rule 160 of the Aircraft Rules, 1937.<sup>37</sup> A further proviso has been added vide the 2020 Amendment where the already existing regulations made to the above shall remain in force unless expressly repealed. It must be noted in this regard, that nonmilitary state aircraft continues to be governed by the Aircraft act. State aircraft defined as *"State aircraft" includes military aircraft and aircraft exclusively employed in the service of the Government such as posts, customs, police;*<sup>38</sup>

---

<sup>30</sup> Section 2(1), THE AIRCRAFT ACT, 1934

<sup>31</sup> Section 4 Power of Central Government to make rules to implement the Convention of 1944

<sup>32</sup> 4A. Safety oversight functions

<sup>33</sup> Michel Bourbonniere et al., Military Aircraft and International Law: Chicago Opus 3, 66 J. Air L. & Com. 885 (2001) <https://scholar.smu.edu/jalc/vol66/iss3/2>

<sup>34</sup> Amendment of section 19, THE AIRCRAFT (AMENDMENT) BILL, 2020

<sup>35</sup> BSF Air Wing, Border security force, <http://bsf.nic.in/en/air-wing.html>

<sup>36</sup> STATEMENT OF OBJECTS AND REASONS, THE AIRCRAFT (AMENDMENT) BILL, 2020

<sup>37</sup> 60. General Power to exempt- The Central Government may, by general or special order in writing, exempt any aircraft or class of aircraft or any person or class of persons from the operation of these rules, either wholly or partially, subject to such conditions, if any, as may be specified in such order.

<sup>38</sup> Rule 52 THE AIRCRAFT RULES, 1937, DEPARTMENT OF INDUSTRIES AND LABOUR NOTIFICATION New Delhi, the 23rd March, 1937

Exemptions for such aircraft may be made on a case to case basis under section 3 of the Aircraft Act, 1937 and the Rule 160 of the Aircraft Rules, 1937

### **III. CONCLUSION**

The Aircraft (Amendment) Bill, 2020 is therefore an attempt to reform the Indian aviation sector. The Indian aviation market is one that is poised to be among the largest in the world, and until recently, the nodal agencies that regulated the industry had left a lot to be desired. The amendment act has attempted to iron out some of the issues that have existed with the regulator, especially safety concerns that have plagued the subcontinent in recent years.

The amendment however is far from perfect. Even with organisations such as the FAA being statutory organisations, they have been plagued with problems including regulatory hurdles and certification issues. These issues have been multiplied with the US congress calling for a greater accountability of the FAA. Although it must be noted that the DGCA's scope and application is far more restricted when compared to the FAA, these issues might continue to plague the regulator.

The issue of safety has been a universal concern in the Indian subcontinent. However, The DGCA has, in the recent past assumed a more proactive role in ensuring safety, as was seen in the recent suspensions of executives from Air Asia for flaunting safety norms.

In the post 9/11 world, aviation security has been placed at top priority for most countries, and the fact that there have been no major security incidents has stood testament to this very fact. However, the industry, and safety regulators such as the BCAS has to gear up a whole new generation of threats such as those in the cyber and UAV domain.

The role of the central government and the regulatory agency at a time when the entire aviation industry has been plunged to crisis cannot be understated. It will become imperative for the organisations to assume a proactive role in ensuring that the aviation industry has the best chances of returning to normalcy.

The aircraft amendment act therefore is certainly a step in the right direction, to ensure that Indian aviation is better placed to tackle a post Covid future in civil aviation.

\*\*\*\*\*