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SOVEREIGN STRATOSPHERE: THE EVOLUTION OF INDIAN AVIATION LEGISLATION

- Swasti Jain

The story of the Indian aviation industry is one of progress, globalization, and rapid technological advancement. Aviation has evolved into one of the nation's largest economic employers, becoming entirely indispensable for millions of passengers traveling for business or for leisure every single year. But if we look closely through the cockpit window of any commercial airline flying at thirty five thousand feet over the Indian subcontinent, it reveals a complex reality. Behind the imposing facade of aesthetic airport terminals and ever expanding aircraft fleets lies an industry constantly involved in intense legal battles. The business of flying is today, more than ever before, an active arena for legal battles involving passenger rights, environmental liabilities, insolvency disputes, legislative changes, and emerging technologies.

As India positions itself as a dominant player in the global aviation market, its underlying regulatory architecture is undergoing its most significant structural transformation since the dawn of commercial flight. One major transformation that was brought forth recently to combat this issue is the introduction of the Bharatiya Vayuyan Adhiniyam, 2024, which completely replaced the Aircraft Act of 1934.¹ While the new framework undoubtedly represents a welcome, modernized reform, it also serves to highlight the rapidly increasing complexity of Indian aviation law. To trace this legislative evolution is to watch a massive sector demanding highly predictable frameworks move away from colonial-era systems to support both explosive commercial growth and fundamental public rights

¹ Bharatiya Vayuyan Adhiniyam, 2024, No. 16 of 2024, INDIAN KANOON, <https://indiankanoon.org/doc/125237578/> (last visited May 23, 2026).

1. CONSTITUTIONALISM AND THE SOVEREIGN SKY

Domestic airspace management structurally revolves around the distribution of powers among states, an idea firmly entrenched in Indian constitutional law. In India, such a distribution is inherently centralized in order to maintain uniformity across an internally diverse federation. Through the provisions of Article 246 of the Constitution of India, legislative power over civil aviation rests solely with the federal Parliament in designated entries of the Seventh Schedule.²

Entry 29 of the Union List consolidates the regulation of airways, air navigation, aircraft, aerodromes, and technical aeronautical training into federal hands.³ This is supplemented by Entry 30 of the Union List, which puts the carriage of persons or things by air in the purview of the federal Parliament as well.⁴ It is done in such a way that state legislatures cannot enact disparate laws governing the management of air space. Whether an airliner passes over the coast of Kerala or the hills of Himachal Pradesh, it is subject to a single federal body.

Positively speaking, the above-mentioned centralized structure of the constitution offers tremendous regulatory certainty to international parties, which protects international business dealings from any change in the local political environment. As far as negatives go, sometimes the absolute centralization of the above-mentioned constitution leads to friction between the federal government and the individual state governments, who have to address matters concerning ground-level politics, such as the acquisition of land for construction of airports, displacement due to local environmental concerns, and security concerns at a regional level.

2. REGULATORY ENFORCEMENT AND THE DUAL FACES OF THE DGCA

The main body responsible for enforcing this centralized constitutional provision is the Directorate General of Civil Aviation, also referred to as the DGCA. In its capacity as the top civil aviation authority in the country, the DGCA is mandated with ensuring compliance and licensing, as well as certification of airline worthiness. For many years now, it has been noted

² India Const. art. 246, sch. VII, list I, <https://indiankanoon.org/doc/237570/> (last visited May 23, 2026).

³ India Const. sched. VII, list I, entry 29.

⁴ India Const. sched. VII, list I, entry 30.

that the DGCA has always punished domestic airlines for compliance issues, particularly concerning air safety and operations.

However, in a highly competitive and notoriously low profit margin business such as Indian aviation, it has become an uphill task for the authorities to balance strict regulatory enforcement against pressing commercial interests. The positive aspect of the DGCA's uncompromising regulatory posture is the preservation of an excellent domestic safety record, forcing cash-strapped airlines to adhere strictly to international best practices rather than cutting operational corners.

Conversely, the negative aspect lies in the immense financial strain these rigid, sometimes bureaucratically slow compliance mandates impose on the liquid capital of domestic carriers. Grounding and the resultant safety inspections and punitive policies often exacerbate the financial weaknesses of weak airlines. In addition, consumer interest bodies routinely castigate the regulatory body for failing to take prompt action against commercial airlines when they violate their scheduled practices, resulting in a continuing conflict between consumer interest organizations, commercial airlines, and the national regulatory bodies.⁵

3. INTERNATIONAL TREATIES: THE CAPE TOWN CONVENTION AND THE LEASING CONUNDRUM

Beyond domestic borders, Indian aviation law functions as an extension of cross-border financial treaties, the most critical of which is the Convention on International Interests in Mobile Equipment, signed in Cape Town in 2001.⁶ Formally acceded to by India in 2008, the Cape Town Convention was designed to standardize international aircraft leasing and financing agreements. Because the vast majority of commercial jets operating within India are leased from global aircraft leasing firms rather than owned outright by local carriers, the domestic market relies completely on stable international asset protection rules. When an airline faces a financial default, international financiers expect to rely on standard global repossession

⁵ Directorate General of Civil Aviation, Civil Aviation Requirements, Section 3, Air Transport, Series M, Part. IV, <https://www.dgca.gov.in/digigov-portal/?dynamicPage=CivilAviationReqContent/6/211/viewDynamicRuleContLv2/html&maincivilAviationRequirements/6/0/viewDynamicRulesReq> (last visited May 23, 2026).

⁶ Convention on International Interests in Mobile Equipment, Nov. 16, 2001, 2307 U.N.T.S. 285, <https://www.unidroit.org/instruments/security-interests/cape-town-convention/> (last visited May 23, 2026).

mechanisms, specifically the right to issue an Irrevocable De-registration and Export Request Authorisation (IDERA) to reclaim their planes.

For years, however, a severe legal contradiction existed within the Indian legal framework. While international treaty commitments dictated fast asset repossession, Section 14 of India's domestic Insolvency and Bankruptcy Code (IBC), 2016, mandated an immediate, blanket moratorium upon a declaration of corporate bankruptcy, freezing all assets within the jurisdiction to facilitate corporate restructuring.⁷ This structural contradiction caused immense friction during several high-profile domestic airline insolvencies, most notably the collapse of Go First Airline. Lessors faced massive hurdles getting physical possession of their high-value aircraft, which sat deteriorating on tarmacs while the legal battle played out in courts.

The positive side of the domestic IBC moratorium was that it protected the distressed domestic airline from being stripped of its core operational assets immediately, allowing a window for potential corporate revival and safeguarding thousands of local jobs. The negative side, however, was catastrophic for the broader industry: it damaged the reputation of the Indian aviation sector in the global market, leading international leasing bodies to downgrade India's compliance ratings. This increased risk, causing leasing costs for surviving Indian carriers to spike significantly higher than the global average. To remedy this, the legislature enacted the Protection of Interest in Aircraft Objects Act, wherein repossessions under the Cape Town Convention take precedence over bankruptcy provisions and thus restore investor confidence internationally.⁸

4. CONSUMER WELFARE AND PASSENGER RIGHTS

Passenger rights have long been one of the most volatile and publicly visible arenas in Indian aviation law. Flight delays, sudden cancellations, overbooking, and bitter disputes related to ticket refunds are becoming an everyday phenomenon in Indian aviation, a trend that escalated significantly after the disruptions of COVID-19. This friction has been amplified by the fact

⁷ The Insolvency and Bankruptcy Code, 2016, No. 31 of 2016, § 14, INDIAN CODE, <https://indiankanoon.org/doc/119173698/> (last visited May 23, 2026).

⁸ The Protection of Interest in Aircraft Objects Act, 2025, No. 12 of 2025.

that awareness among everyday passengers regarding their legal rights has significantly risen over the last decade.

The positive aspect of the current legal regime is that the DGCA's Civil Aviation Requirements (CARs) on passenger compensation have created clear liabilities for operational disruptions, ensuring that passengers receive alternative transport, meals, or financial restitution during extended delays or cancellations.⁹ Indian consumer forums and courts have become deeply proactive, protecting passengers from predatory corporate behaviour.

The negative aspect, however, is that these provisions are often seen by legal scholars to be inconsistently applied and logistically complex for the average consumer to enforce without entering a prolonged legal battle. In addition, there have been instances where airlines claim that such litigations by customers overlook the inevitabilities of flight operations, including unfavourable weather and congestion of air traffic control, which force airlines to take action through legal defence on account of being absolutely necessary.

5. CONCLUSION: FLYING THROUGH THE REGULATORY STRATOSPHERE

While there may be plenty of air traffic in the skies of India today, it is important to note that what makes them chaotic and difficult is not atmospheric turbulence but regulation. The Indian legal apparatus now needs to make a high-flying turn, which involves offering absolute asset protection to draw global aircraft leasing money into the country while at the same time protecting the basic rights of its domestic flyers. For a business sector that has been predicted to serve as the pillar for India's future economy, this is the only way forward.

⁹ Directorate General of Civil Aviation, Civil Aviation Requirements, Section 3, Air Transport, Series M, Part. IV, <https://www.dgca.gov.in/digigov-portal/?dynamicPage=CivilAviationReqContent/6/211/viewDynamicRuleContLvl2/html&maincivilAviationRequirements/6/0/viewDynamicRulesReq> (last visited May 23, 2026).