

AIRCRAFT AMENDMENT ACT 2020: A STEP TOWARDS INDIA'S RISING STATURE IN THE GLOBAL AVIATION COMMUNITY

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INTRODUCTION:

The Aircraft (Amendment) Act, 2020 (“**Amendment Act**”) received the Presidential Assent on September 19, 2020 and was notified in the Official Gazette on the September 20, 2020 thereby according it the status of an enforceable law. The Amendment Act seeks changes in the regulatory framework in the aviation sector in India. The aviation sector in India is principally governed by the Aircraft Act, 1934 (“**Aircraft Act**”), which provides for the control of manufacture, possession, use, operation, sale, import and export of aircrafts and licensing of aerodromes. The Amendment Act brings in changes to primarily strengthen the regulatory framework and enhance the punishments for the offences prescribed under the Aircraft Act among other changes.

The need to amend the Aircraft Act surfaced after the spike in the number of air safety violations or breaches in the recent past. Infact, in its audit in the years 2012 and 2015, ICAO¹ also recommended a need to amend the Aircraft Act to give proper recognition to the regulators under the Act. The Amendment Act 2020 has provisions for securing the safety of aircraft operations in India and carrying out civil aviation operations as per standards, procedures and practices laid down by ICAO. The Amendment Act has brought in a number of changes to strengthen the aviation laws and make aircraft operations in India more secure.

KEY CHANGES

1. Statutory Organisations

- a. The key change is the statutory formation of three central bodies i.e. Directorate General of Civil Aviation [**“DGCA”**]ⁱⁱ, Bureau of Civil Aviation Security [**“BCAS”**]ⁱⁱⁱ and Aircraft Accidents Investigation Bureau [**“AAIB”**]^{iv} which promises a robust system to address various security issues.
- b. While DGCA will now be responsible for carrying out safety oversight and regulatory functions over matters specified in the Act, the BCAS will oversee the same in matters related to civil aviation security.
- c. The AAIB on the other hand will be responsible for matters related to the investigation of aircraft accidents or incidents. Earlier, DGCA conducted such investigations.
- d. The Central government will have superintendence over the three bodies i.e. DGCA, BCAS and AAIBs, and the power to review their orders in public interest^v.
- e. Section 5A of the Act has also granted powers to the Central Government to review any order passed by the Director General of DGCA or the Director General of BCAS and issue directions to them to rescind or modify their orders if it considers it necessary and expedient to do so in the public interest^{vi}.

2. Penalties:

- a. A major change in the Amendment Act is an increase in penalty for contraventions of the Aviation laws and Rules thereof which seeks to further deter violation of the laws. For example, carrying arms, ammunition, and explosives or other banned goods on board, and developing illegal construction around the airports will attract fines up to ₹1 crore.
- b. Earlier the penalty for contravention of rules made under Sub Section 2 of Section 5 of the Aircraft Act as stated in Section 10 was imprisonment upto 2 years or fine upto Rs. 10 Lac or both. The Amendment Act has enhanced the penalty to a sum of Rs. 1

crore. The enhanced penalty is over and above penalties and punishments provided in other prevailing laws and are not limited to carrying explosives on an aircraft. The Amendment Act has enhanced the penalty to 1 crore for other contraventions such as contravention of any Rules notified under the Act, Construction of building or structures within the specified radius around an aerodrome reference point, carrying arms, explosives or other dangerous goods in the aircraft, flying any aircraft to cause danger to any person or property and others.

- c. Under the Amendment Act, the Central Government has also been empowered to cancel the license, certificate or approval issued to any person under the Act if such person contravenes any provision of the Act or the rules made thereunder. Such licenses may include those given for the establishment of air transport service, the establishment of aerodromes and operation, repair and maintenance of the aircraft.
- d. The enhancement of the penalty may act as a deterrent however, the need of the hour is strict implementation of the penalty provisions of the Act to avoid aircraft incidents.

3. Designated officers for adjudicating penalties

- a. Section 10 of the Amendment empowers the Central Government to appoint a designated officer, not below the rank of Deputy Secretary, to adjudicate and compound penalties under the Act. The designated officer can by an order in writing, impose a penalty on a person found to be in contravention of the Act by providing such person a reasonable opportunity of being heard.
- b. Persons aggrieved by an order of a designated officer may appeal to an appellate officer (being an officer who is next higher in rank to the designated officer who has passed the order) within 30 (thirty) days from the date of such order.

4. Sanction required from the Director General

The Amendment Act by way of Section 12B provides that the courts in India cannot take cognizance of any offence punishable under the Act except on a complaint by or with the previous sanction in writing by the Director General of DGCA, BCAS or AAIB as the case may be. Only a court of law which is equivalent or higher to that of a Metropolitan Magistrate or Magistrate of first-class can try the offences under the Act.

MY VIEW

As can be analysed from the available data, it can be concluded that the DGCA already is in a good position when compared to other countries falling under the similar slab. The DGCA has been awarded ICAO president's award in 2019 for achieving effective implementation of relevant laws. It has also been placed in Category I by Safety agency of Europe as well as by the U.S. Regulators. The data also reflects that the accidents recorded per million flights in the year 2019 was as low as 0.82. The amendments brought in vide the Amendment Act will clearly place India at an even better position in the global aviation community.

Having dealt with various aviation cases in the past years, I can say that the Amendment Act was the need of the hour. The statutory status given to DGCA, AAIB and BCAS will not only improve India's safety ranking by ICAO and other international organisations but also enable the three regulatory bodies to become more effective. This will definitely result in enhancement of safety and security of aircraft operations in India. Importantly, the Amendment Act will allow segregation of the powers of the statutory bodies i.e. segregation of aircraft accident investigation from aircraft regulation.

ENDNOTES

ⁱ International Civil Aviation Organization

ⁱⁱ Section 4A of the Amendment Act

ⁱⁱⁱ Section 4B of the Amendment Act

^{iv} Section 4C of the Amendment Act

^v Section 4D of the Amendment Act

^{vi} Section 5A of the Amendment Act