

LAW GOVERNING OFFENCES AND ACTS BY UNRULY PASSENGERS ON BOARD AIRCRAFT

1. INTRODUCTION

The instances of misbehaviour on aircraft have been increasing lately, primarily due to lifestyle and ego issues. The recent incidents in India include misbehaviour by a senior parliamentarian and alleged heckling of a well-known television reporter by a stand-up comedian. In this blog, the author summarizes international and national provisions governing offences and acts by unruly passengers onboard aircraft and explain the procedure behind the No-Fly List.

2. CONVENTION ON OFFENCES AND CERTAIN OTHER ACTS COMMITTED ONBOARD AIRCRAFT (TOKYO CONVENTION)

The Tokyo Convention is an international convention which deals with the offences against penal law and any acts jeopardising the safety of persons or property onboard civilian aircraft and engaged in international air navigation. It was signed on 14 September, 1963. It entered into force on 4 December 1969.

The Convention seeks to address legal issues surrounding criminal jurisdiction where emerge for the transnational operation of aircraft over high seas. For example, in case of a particular offence, which State would have jurisdiction to try the accused or how or how to establish jurisdiction when it is

difficult to point out the exact physical location due to the nature of the act.

While the Convention covers all civilian flights during international air navigation, all domestic flights have been excluded except when the point of departure or intended landing lies outside the State where the aircraft is registered or when it enters into the airspace of another State during domestic air navigation.

Article 3 of the Convention deals with the jurisdiction of the State of Registry (State where the aircraft is registered), State of Landing and Territorial State (State in whose airspace the offence or an act takes place). All these would have concurrent jurisdiction. However, the jurisdiction of a Territorial State is restricted to the following cases:

- When the offence has effect on the territory of such State
- When the offence has been committed by an or against a national of such State
- When the offence is against the national security of such State
- When the offence consists of a breach of rules/regulations relating to the aircraft of such State
- When the exercise of criminal jurisdiction is necessary to meet the international obligations of such State

Article 5-8 of the Convention deals with the duties and rights of the aircraft commander, flight crew and passengers. The Aircraft commander is empowered with appropriate powers to detain unruly passengers, deboard them on the nearest airport and issue necessary instructions to the flight crew and passengers. Article 9 gives immunity to various stakeholders including aircraft commanders and flight crew with respect to actions taken to prevent offences and unlawful acts abroad the aircraft. Article 10-11 lays down the rights and obligations of the Contracting States.

In case of hijackings, each State is under an obligation to return a hijacked aircraft to its lawful owner and to detain hijackers to be tried under a court of law of competent jurisdiction.

3. AIRCRAFT ACT, 1934 AND AIRCRAFT RULES,1937

Aircraft Act, 1934 and Aircraft Rules, 1937 govern all matters related to international and domestic flights. These Act and Rules extend to (unless the contrary intention appears) the whole of India and applies also to citizens of India, to and to the person on aircraft registered in India, to and to the persons on aircraft registered outside India but for the time being in or over India and aircrafts operated by a person having his principal place of business or permanent residence in India. Section 5 of the Act empowers the Central Government to make rules for the measures to safeguard civil aviation against acts of unlawful interference. Section 7 of the

Act authorises the Central Government to prescribe rules for the investigation if any accident or incident arising out of or in the course of navigation of any aircraft registered in India or over India. Various ancillary provisions of the Act authorise to make rules for the safety of the aircraft and people on board.

In pursuance of rule-making powers under the Act, the government notified Aircraft Rules, 1937. Rule 22,23 and 29 deals with unlawful acts abroad an aircraft. Rule 22 prohibits assault and other acts of interference against a crew member, whether physical or verbal. It also makes it mandatory to follow instructions of the aircraft commander or any flight member authorised by him. Rule 23 prohibits acts endangering the safety or jeopardising good behaviour, including consuming of drugs and alcoholic beverages. The jurisdiction of India with respect to violations under Rule 22 and 23 shall also apply to any offence if the act constituting the offence took place onboard any aircraft in flight outside in India provided the State of Landing is India and the aircraft commander has delivered the accused to the airport authorities. Rule 29 deals with acts likely to imperil the safety of aircraft.

To ensure effective implementation of these and provide for an adequate mechanism for cases of unruly passengers, Civil Aviation Requirements (CAR) Section 3- Air Transport Series M Part VI Issue II were notified on 8th September 2017.

4. Civil Aviation Requirements (CAR) Section 3- Air Transport Series M Part VI Issue II

The provisions contained in CAR apply to both domestic and international air aviation (subject to the provisions of the Tokyo Convention) with respect to the handling of unruly passengers. Unruly passenger is defined as a passenger who fails to respect the rules of conduct at an airport or onboard an aircraft or to follow the instructions of the airport staff or crew members and thereby disturbs the good order and discipline at the airport or onboard the aircraft.

A Standard Operating Procedure (SOP) must be established to deal with unruly/disruptive behaviour. The duty of airlines would start from the time of check-in, and they must ensure that signs of unruly behaviours are detected early. All efforts must be made to diffuse the situation in case of genuine grievances of the passengers.

A passenger who fails to respect the rules of conduct at an airport or onboard an aircraft or to follow the instructions of the airport staff or crew members and thereby disturbs the good order and discipline at an airport or onboard the aircraft. It is permissible for the flight crew to use restraining devices when other efforts to diffuse the situation have failed. The passengers should be made aware that in case of serious offences like unruly behaviour due to consumption of drugs or alcohol, physically abusive behaviour and endangering the safety of the aircraft, they could be arrested on arrival or where the aircraft commander chooses to land the plane.

All cases of unruly behaviour are categorized into the following categories:

- Level 1- Unruly behaviour, physical gestures, non-verbal intimidation, etc.
- Level 2- Physically abusive behaviour, sexual harassment, pushing, etc.
- Level 3- Life-threatening behaviour such as damaging aircraft systems, physical violence, assault, etc

If the flight crew is unable to deal with such instances or if the aircraft commander considers it necessary, the aircraft may be taken to the nearest airport where the airline representative shall lodge FIR with the concerned security agency. After receiving the complaint of unruly behaviour, an airline must establish an Internal Committee to decide on the level of such behaviour and duration of banning the unruly passenger. The Internal Committee must give its decision in 30 days, pending which it may debar the unruly passenger from flying. However, the duration of the ban cannot be more than the prescribed period under these provisions.

The airlines also have to maintain a database of all unruly passengers and inform the same to DGCA/other airlines (No-Fly List). The Ministry of Home Affairs may direct DGCS/airlines to include names of persons considered to be a threat to national security in the No-Fly List. All passengers included in the No-Fly List shall have right to be informed and appeal to the Appellate

Committee (to be headed by a Retired Judge of a High Court) within sixty days from the date of issue of such order banning him from flying. The decision of the Appellate Committee shall be final, and any further appeal shall lie with the concerned High Court.

5. CONCLUSION

Needless to say, dealing with unruly passengers has become a headache for airlines all over the world. While the intent of the government to sternly deal with rowdy passengers must be appreciated, the actual implementation of CAR is yet to be seen as only a few cases have been officially reported by the airlines.

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