

# LEGALFOXES LAW TIMES

## SCRUTINY OF THE ANTI HIJACKING ACT 2016

By Keith Emmanuel D'silva

### ABSTRACT

The principle object of the 2016 Act was to enhance the previous Act of 1982 with regards to the offence of hijacking; hence the new Act is added with significant changes by imbining stringent provisions pertaining to punishment, penalties, investigations, services etc. The need for a new Act was due to the insufficient provisions in the old Act of 1982. The Act seeks to provide sufficient provisions and ensure full-fledged laws with regards to hijacking, thus the Anti-Hijacking Act, 2016 was introduced.

### INTRODUCTION

The Indian government enacted the Anti-Hijacking Act, 2016 as an amendment to the Anti-Hijacking Act of 1982 where the Government felt that the old act was not adequate enough to deal with the current catastrophes and consequences; hence the 1982 Anti-Hijacking Act was not capable enough to prevent any sought of offences by the offenders.

Furthermore well renowned incidents such as the Hijack of Indian Aircraft IC-814 in 1999 by terrorist who guided the aircraft to land in Kandahar, Afghanistan and demanded the release of a terrorist leader and the 9/11 attack which took place in the U.S in 2001 was an incident talked even today where the aircraft was hijacked and used as a missile to attack the World Trade Centre's North Tower. Thus this brought the need for a new Act with stringent penalties and punishments. Therefore the Indian Parliament introduced and enacted the Anti-Hijacking Act, 2016 with the assent of the of the President of India on 13<sup>th</sup> march 2016

The Indian government was a signatory and enacted the old Act to uphold the Hague Conventions Which was enacted to suppress Unlawful Seizure of Aircraft, but due to insufficient provisions the Indian Government enacted the Anti-Hijacking Act, 2016 in accordance with the Protocol Supplementary to the conventions of Beijing in the year 2010, where India is a Signatory.

### **The Beijing Protocol Supplementing the Conventions of Unlawful Seizure of Aircraft:**

The introduction and the significance of the Beijing Protocol in the year 2010, was to furthermore enhance the Hague convention which was signed on 16<sup>th</sup> December 1970. The Hague convention was modified and added with more stringent punishments, investigations and prosecution and also provided criminal liability for principle of second degree offenders.

The protocol also added the various forms of hijacking which involved modern technologies as well and also expanded the jurisdiction of offence.

The protocol ensures the principles of justice, equity and good conscience and also affirms that no state shall refuse conviction because it's political in nature. [1]

### **Changes Made In the New Act**

The new Act made changes within section 3 which involved the use of technologies and the offender taking control of an aircraft while not present at the time of offence and furthermore added that even a slightest threat would be declared as hijacking, in the case of **Birju**

**Kishorekumar Salla vs. State Of Gujarat on 9 May, 2018:** The convict was a business man in Mumbai who wrote a letter stating that Bomb has been planted in the Jet Airways Flight, the crew members after been aware of the threat letter made an emergency landing , according to the JCP of Ahmedabad Crime branch, it was stated that the bomb threat letter was planted in the toilet of the aircraft by the convict and after investigation found that the convict performed such an act for ridiculous reasons and the case was given to the National Investigation Agency for

investigation under the new Act, hence the said convict was sentenced for life imprisonment under the new anti-hijacking law.

If the offender commits an act which results in death of a person during hijack, the new Act provides capital punishment in such offences and upon mercy the said capital punishment may be turned into life imprisonment and the Act also provides provisions for maintaining the aircraft and keeping it in service before landing and after landing.[2]

The anti-hijacking act 2016 provides the introduction and ensures the jurisdiction of this act to the whole of India and acts committed outside India by any persons; furthermore the new Act consists of about 21 sections.

### **Key Features of the New Act**

- **Offense of Hijacking**

Under chapter 2 section 3(1), States that if any person Unlawfully and intentionally seizes or takes control of an aircraft in service by force or threat, by coercion, or by any other forms of intimidation, or by any technologies; commits the offence of hijacking.[3].

Section 3(2), provides criminal liability on a person who's making threat, who may or may not commit such offence or who's unlawfully making such an act in order to create fear among the victims and also persons who are organizing and assisting other person to commit such threats or the offence of hijacking.[4]

- **Punishments in the Offense of Hijacking**

Under chapter 2 section 4 and section 5, lays down punishments for a person committing the offence of hijacking, section 4 includes death, if the offender's act leads to death of an hostage, officials, security personnel's or any one not involved with the offence of hijacking.

An alternative for capital punishment would be life imprisonment which means imprisonment for the remainder of the offender's natural life with fine and the movable and immovable property of such person shall be confiscated.

Section 5, states that any person committing the offence of hijacking of an aircraft and such act resulting in violence against any passenger or crew member, shall be punished with the same punishment under any punishable law for the time being in force in India if such act had been committed in India.[5]

- **Delegating powers with regards to investigations**

Under chapter 2 Section 6(1), lays down that the Central Government may by notification, confer any Officer of the Central Government or any Officer of the agency, power of arrest, investigation and prosecution controlled by the police officer under the said Code

(2) All Officers of Police and Officers of Government are hereby required and empowered to guide the officers Central Government referred in sub section (1).

- **Jurisdiction of Offence**

Under chapter 2 section 7(1), lays down that subject to the provisions of sub-section (2), where an offence under section 3 and under section 5 is committed outside India, the person committing such offence may be dealt with in the same respect thereof as if such offence had been committed at any place within India at which he may be found.[6]

- **The Applicability of Criminal Procedure code**

All though there are provisions for the punishment for the unlawful commission of the offender with regards to hijacking, the procedure before the Court of law would remain the same and the Code of Criminal Procedure would be followed, since the offender is of criminal liability regardless of the hijack.

- **Shortcomings**

The 2016 Act been improved and well furnished with provisions, it's yet to be specific about multiple provisions, i.e., the definition of aircraft under section 2(b) of the Act identifies any aircraft as aircraft whether it is registered in India or not. It also excludes aircrafts which are used by Government officials which are likely to be hijacked and also hoax calls are not been specified which are prone to create stress and panic among the

victims and crew members, hence the 2016 Act needs to be more specific and include all areas of aviation into the Act.[7]

### **Conclusion**

The Anti-Hijacking Act 2016 is way more broadened and explicitly added with significant provision which was missing in the 1982 Act. In the current decade the 2016 Act would be efficient enough to deal and face any challenges with regards to hijacking, it not only deals with hijack by offenders present but also deals with hijacks using technological means, although the new Act might need a change in the future, because noting in this world can be permanent, furthermore the new Act has enhanced the strict punishments and penalties which might create any offender to think twice before executing the offence of hijacking. To be very surprised the offence of hijacking has not happened in India after the proposal of the Anti-Hijacking Act 2016.

### **References**

- [1] I.C.A.O, CONVENTION FOR UNIFICATION OF CERTAIN RULES (June 24, 2021, 18:30 IST) [http://www.icao.int/secretariat/legal/List%20of%20Parties/Beijing\\_Prot\\_EN.pdf](http://www.icao.int/secretariat/legal/List%20of%20Parties/Beijing_Prot_EN.pdf)
- [2] Deeptiman Tiwary Explained: Hijacking Act; why a hoax led to a life term (June 13, 2019, 21:02 IST) <https://indianexpress.com/article/explained/hijacking-act-why-a-hoax-led-to-a-life-term-5777795/>
- [3] Diganth Raj Sehgal, An Overview of the Anti-Hijacking Act, 2016 (September 12, 2020) <https://blog.ipleaders.in/overview-anti-hijacking-act-2016/#:~:text=The%20new%20Act%20has%20introduced,the%20landing%20of%20the%20aircraft>
- [4] Ministry of Civil Aviation Notification, (July 5, 2017) [https://www.indiacode.nic.in/show-data?actid=AC\\_CEN\\_36\\_56\\_00011\\_201630\\_1517807328179&sectionId=28913&sectionno=3&orderno=3](https://www.indiacode.nic.in/show-data?actid=AC_CEN_36_56_00011_201630_1517807328179&sectionId=28913&sectionno=3&orderno=3)
- [5] Gunman Hariramani, Analysis: The Anti-Hijacking Act, 2016 (June 14, 2020) <https://bnwjournal.com/2020/07/14/analysis-the-anti-hijacking-act-2016/>
- [6] By Editor, Anti-Hijacking Act, 2016 (May 21, 2106) <https://www.sconline.com/blog/post/2016/05/21/anti-hijacking-act-2016-no-30-of-2016/>

[7] By LEXLIFE, Explained: Anti-Hijacking Act, 2016 (November 27, 2019)

<https://lexlife.in/2019/11/27/explained-anti-hijacking-act/>

