

The Anti-Hijacking Act, 1982

UNION OF INDIA

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Act 65 of 1982

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Statement of Objects and Reasons.-In recent years, there has been an increase in offences by way of unlawful seizure of aircraft or hijacking. A Convention for the Suppression of Unlawful Seizure of Aircraft was drawn up at the diplomatic conference held at The Hague in December, 1970 for adoption by States, by the representatives of 77 Governments. For dealing more effectively with offences involving unlawful seizure of aircraft or hijacking, it is proposed that India should ratify this Convention. The ratification of the Convention involves obligation for making necessary legal provisions for giving effect thereto.² The salient features of the Convention are:- (a) Nature of acts to which the Convention applies.-The Hague Convention has created a new international offence, the offence of unlawful seizure of aircraft alias, hijacking. The Convention covers offences committed by any person on board an aircraft in flight. A person who unlawfully, by force or threat thereof, or by any other form of intimidation, seizes or exercises control of the aircraft, commits the offence of hijacking, whatever his nationality and whatever the State in which the aircraft is registered and whether the aircraft is in India or elsewhere. The Convention applies equally to attempts made and to accomplices who are on board the aircraft. The Convention calls for the offences to be made punishable by severe penalties. (b) Aircraft to which the Convention does not apply.-The Convention does not apply to military aircraft or to aircraft belonging to customs or police service. (c) The Convention is applicable only to aircraft in flight that is to say, from the moment when all its external doors are closed following the embarkation until the moment when any such door is opened for disembarkation, or "in the case of forced landing-until the competent authorities take over the responsibility for the aircraft and for persons and property on board". Any pre-flight or post-flight attempt at hijacking will primarily be the concern of the territorial State and not within the scope of the Convention. (d) The prime purpose of the Convention is to ensure the punishment to hijacker so as to deter hijacking. To this end, the Convention obliges every contracting State in whose territory an alleged hijacker is found either to extradite him or to punish

him.(e) Jurisdiction.-In respect to offences and acts committed on board an aircraft, the Convention without prejudice to the exercise of jurisdiction by the State over whose air-space the offence was committed confers jurisdiction on the State of registration of the aircraft, the State of residence of the lessee of a leased aircraft who has its principal place of business or when the lessee has no such place of business, his permanent residence in that State and any State where the offender is found. Thus a limited principle of universality has been introduced in the convention so that a hijacker should not be able to find a haven of immunity at least among the contracting States.³ Though The Hague Convention does not apply to hijacking of an aircraft when both the place of take off and the place of landing are situated in the country in which the aircraft is registered, it is proposed to avail of the present opportunity to cover such cases also in respect of aircraft registered in India.Amendment Act 39 of 1994-Statement of Objects and Reasons.-The Anti-Hijacking Act, 1982 was enacted to deal with offences against civil aviation and to give effect to international conventions in this matter to which India is a party. A review of the existing law was undertaken by a Task Force appointed by the Ministry of Civil Aviation and Tourism to make it more effective. The Task Force was of the view that certain changes are required to ensure prompt and professionally oriented investigation, quick trial and early pronouncement of verdict. It is, therefore, proposed to make the necessary changes in the Anti-Hijacking Act, 1982.² The salient features of the Bill are:-(a) incorporation of enabling provisions empowering Central Government to authorise any of its officers to investigate, etc., cases of hijacking;(b) to provide for the specification by notification of Designated Courts by State Governments for speedy trial and disposal of cases;(c) to shift the burden of proof on the accused in specified circumstances;(d) to make the grant of bail more stringent.An Act to give effect to the Convention for the Suppression of Unlawful Seizure of Aircraft and for matters connected therewith.Whereas a Convention for the Suppression of Unlawful Seizure of Aircraft was, on the 16th day of December, 1970, signed at The Hague;And whereas it is expedient that India should accede to the said Convention and make provisions for giving effect thereto and for matters connected therewith;Be it enacted by Parliament in the Thirty-third Year of the Republic of India as follows:

Enforced from 15.11.1982.

Chapter I

Preliminary

1. Short title, extent, application and commencement

(1)This Act may be called The Anti-Hijacking Act , 1982.(2)It extends to the whole of India and, save as otherwise provided in this Act, it applies also to any offence thereunder committed outside India by any person.(3)It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions

.In this Act, unless the context otherwise requires,(a)aircraft means any aircraft, whether or not registered in India, other than a military aircraft or an aircraft used in customs or police

service;(b)aircraft registered in India means an aircraft which is for the time being registered in India;(c)Convention country means a country in which The Hague Convention is for the time being in force;(d)Hague Convention means the Convention for the Suppression of Unlawful Seizure of Aircraft signed at The Hague on the 16th day of December, 1970;(e)military aircraft means an aircraft of the naval, military, air force or any other armed forces of any country and includes every aircraft commanded for the time being by a person in any such force detailed for the purpose.

Chapter II

Hijacking And Connected Offences

3. Hijacking

(1)Whoever on board an aircraft in flight, unlawfully, by force or threat of force or by any other form of intimidation, seizes or exercises control of that aircraft, commits the offence of hijacking of such aircraft.(2)Whoever attempts to commit any of the acts referred to in sub-section (1) in relation to any aircraft, or abets the commission of any such act, shall also be deemed to have committed the offence of hijacking of such aircraft.(3)For the purposes of this section, an aircraft shall be deemed to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation, and in the case of a forced landing, the flight shall be deemed to continue until the competent authorities of the country in which such forced landing takes place take over the responsibility for the aircraft and for persons and property on board.

4. Punishment for hijacking

.Whoever commits the offence of hijacking shall be punished with imprisonment for life and shall also be liable to fine.

5. Punishment for acts of violence connected with hijacking

.Whoever, being a person committing the offence of hijacking of an aircraft commits, in connection with such offence, any act of violence against any passenger or member of the crew of such aircraft, shall be punished with the same punishment with which he would have been punishable under any law for the time being in force in India if such act had been committed in India.[5-A. Conferment of powers of investigation, etc [Inserted by Act 39 of 1994, Section 2 (w.e.f. 1.10.1996.)](1)Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), for the purposes of this Act, the Central Government may, by notification in the Official Gazette, confer on any officer of the Central Government, powers of arrest, investigation and prosecution exercisable by a police officer under the Code of Criminal Procedure, 1973 (2 of 1974).(2)All officers of police and all officers of Government are hereby required and empowered to assist the officer of the Central Government referred to in sub-section (1), in the execution of the provisions of this Act.]

6. Jurisdiction

(1) Subject to the provisions of sub-section (2), where an offence under section 4 or section 5 is committed outside India, the person committing such offence may be dealt with in respect thereof as if such offence had been committed at any place within India at which he may be found. (2) No Court shall take cognizance of an offence punishable under section 4 or section 5 which is committed outside India unless (a) such offence is committed on board an aircraft registered in India; (b) such offence is committed on board an aircraft which is for the time being leased without crew to a lessee who has his principal place of business or where he has no such place of business, his permanent residence in India; or (c) the alleged offender is a citizen of India or is on board the aircraft in relation to which such offence is committed when it lands in India or is found in India. [6-A. Designated Courts [Inserted by Act 39 of 1994, Section 3 (w.e.f. 1.10.1996.)] (1) For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify a Court of Session to be a Designated Court for such area or areas as may be specified in the notification. (2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), a Designated Court shall, as far as practicable, hold the trial on a day-to-day basis. [6-B. Offences triable by Designated Court [Inserted by Act 39 of 1994, Section 3 (w.e.f. 1.10.1996.)] (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), (a) all offences under this Act shall be triable only by the Designated Court specified under sub-section (1) of section 6-A; (b) where a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2-A) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate: Provided that where such Magistrate considers, (i) when such person is forwarded to him as aforesaid; or (ii) upon or at any time before the expiry of the period of detention authorised by him, that the detention of such person is unnecessary, he shall order such person to be forwarded to the Designated Court having jurisdiction; (c) the Designated Court may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), in relation to an accused person in such case who has been forwarded to him under that section; (d) A Designated Court may, upon a perusal of a complaint made by an officer of the Central Government or the State Government, as the case may be, authorised in this behalf, take cognizance of that offence without the accused being committed to it for trial. (2) When trying an offence under this Act, a Designated Court may also try an offence other than an offence under this Act, with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

6.

-C. Application of Code to proceedings before a Designated Court [Inserted by Act 39 of 1994, Section 3 (w.e.f. 1.10.1996.)]. Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply to the proceedings before a Designated Court and the person conducting a prosecution before a Designated Court shall be deemed to be a Public

Prosecutor.]

Chapter III

Miscellaneous

7. Provisions as to extradition

(1)The offences under section 4 and section 5 shall be deemed to have been included as extraditable offences and provided for in all the extradition treaties made by India with Convention countries and which extend to, and are binding on, India on the date of commencement of this Act.(2)For the purposes of the application of the Extradition Act, 1962 (34 of 1962) to offences under this Act, any aircraft registered in a Convention country shall, at any time while that aircraft is in flight, be deemed to be within the jurisdiction of that country, whether or not it is for the time being also within the jurisdiction of any other country.[7-A. Provision as to bail [Inserted by Act 39 of 1994, Section 4 (w.e.f. 1.10.1996.)](1)Notwithstanding anything in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond unless(a)the Public Prosecutor has been given an opportunity to oppose the application for such release; and(b)where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.(2)The limitations on granting of bail specified in sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.(3)Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 (2 of 1974).]

8. Contracting parties to Convention

.The Central Government may, by notification in the Official Gazette, certify as to who are the contracting parties to The Hague Convention and to what extent they have availed themselves of the provisions of the Convention, and any such notification shall be conclusive evidence of the matters certified therein.

9. Power to treat certain aircraft to be registered in Convention countries

.If the Central Government is satisfied that the requirements of article 5 of The Hague Convention have been satisfied in relation to any aircraft, it may, by notification in the Official Gazette, direct that such aircraft shall, for the purposes of this Act, be treated as registered in such Convention country as may be specified in the notification.

10. Previous sanction necessary for prosecution

.No prosecution for an offence under this Act shall be instituted except with the previous sanction of

the Central Government.[10-A. Presumptions as to offences under sections 4 and 5 [Inserted by Act 39 of 1994, Section 5 (w.e.f. 1.10.1996.)].In a prosecution for an offence under section 4 or section 5 if it is proved(a)that the arms, ammunition or explosives were recovered from the possession of the accused and there is reason to believe that such arms, ammunition or explosives of similar nature were used in the commission of such offence; or(b)that there is evidence of use of force, treat of force or any other form of intimidation caused to the crew or passengers in connection with the commission of such offence, the Designated Court shall presume, unless the contrary is proved, that the accused had committed such offence.

11. Protection of action taken in good faith

(1)No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act.(2)No suit or other legal proceeding shall lie against the Central Government for any damage caused or likely to be caused for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act.