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## An Analysis on Anti-Hijacking Act, 2016

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*This paper discusses about the Anti-Hijacking Act, 2016. The first segment begins with a brief description of the Anti-Hijacking Act, 2016, how this Act was introduced, the need for the amendment of the previous Act, i.e., Anti-Hijacking Act, 1982. The next segment briefly explains the Hague Hijacking Convention as India being a signatory to the Convention. The next segment deals with the Anti-Hijacking Act, 2016 where it includes the sections under which the offences related to hijacking are considered and the punishments and penalties for those commissions under the sections of the Act. Also, the jurisdiction part, miscellaneous provisions like application of Criminal procedure Code (CrPC), extradition, presumption, and good faith were discussed. Later segment deals with the flaws in 2016, Act. The next segment deals with differentiation between the old Act and the new Act. Finally, it deals with the first case, which was booked under this 2016 Act. Eventually, it was concluded that though this Act provided protection and made the punishments and penalties stringent, it has flaws that should be amended in order to make the Act more effective one.*

**Keywords:** aircraft, act, hijack, offender, punishment, threat.

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## INTRODUCTION

The aged law, i.e., the Anti-Hijacking Act, 1982<sup>1</sup> was replaced by Anti-Hijacking Act, 2016<sup>2</sup>. On 17 December 2014, a Bill was introduced in Rajya Sabha by Ashok Gajapathi Raju, Civil Aviation Minister, in order to repeal the Anti-Hijacking Act, 1982.<sup>3</sup> The parliamentary panel referred to it after a few days, where it gave its report in March 2015.<sup>4</sup> The Bill was passed in Rajya Sabha and Lok Sabha on 4 May 2014 and 9 May 2014, respectively.<sup>5</sup> After the government's notification, this new Anti-Hijacking Act came into force which states that there will be capital punishment in case if there is the death of "any person."<sup>6</sup> In this new Act, the definition has been expanded where it also includes the death of "ground support staff" or "security personnel on board."<sup>7</sup> The guilty will be punished with a fine and life imprisonment along with the confiscation of movable and immovable property held by him in case of other hijackings.<sup>8</sup>

Besides, this Act also includes several other acts within the hijacking definition, which includes 'making a threat, attempt or abetment in order to commit the offence.'<sup>9</sup> The person will be considered to have committed the offense of hijacking in case if the person directed or arranged others to commit such kinds of offences. At the same time, this Act also allows the Central government to confer the powers of arrest, investigate, and prosecution on any Central government officer or officer of the National Investigation Agency (NIA).<sup>10</sup>

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<sup>1</sup> Anti-Hijacking Act 1982

<sup>2</sup> Anti-Hijacking Act 2016

<sup>3</sup> PTI, 'New anti-hijacking law that prescribes capital punishment comes into force' (*Hindustan Times*, 6 July 2017) <<https://www.hindustantimes.com/india-news/new-anti-hijacking-law-that-prescribes-capital-punishment-comes-into-force/story-UE4CrqEOiegWiqTR55oYqI.html>> accessed 18 July 2021

<sup>4</sup> *Ibid*

<sup>5</sup> PTI, 'India's tough anti-hijacking law comes into force' (*Economic Times*, 22 July 2021) <<https://economictimes.indiatimes.com/news/politics-and-nation/indias-tough-anti-hijacking-law-comes-into-force/articleshow/59478978.cms>> accessed 23 July 2021

<sup>6</sup> Capital punishment (n 3)

<sup>7</sup> *Ibid*

<sup>8</sup> Anti-hijacking law (n 5)

<sup>9</sup> *Ibid*

<sup>10</sup> PTI, 'Death for hijackers; Centre notifies new anti-hijacking law' (*Deccan Chronicle*, 19 May 2016) <<https://www.deccanchronicle.com/nation/crime/190516/death-for-hijackers-centre-notifies-new-anti-hijacking-law.html>> accessed 18 July 2021

So, in order to maintain the functions of Civil aviation smoothly, the Anti-Hijacking Act, 2016 has laid down rigid punishments for the offenders.<sup>11</sup> However, India has to modify its laws as being a part of few conventions. Also, in order to provide effect to the Hague Hijacking Convention.<sup>12</sup> (also known as Convention for the Suppression of Unlawful Seizure of Aircraft, 1970) and the 2010 Beijing Protocol Supplementary to the Convention,<sup>13</sup> the 2016 Act was enacted.

## HAGUE HIJACKING CONVENTION

The member states of the Convention agree to prohibit and punish the hijack of the aircraft as this Hague Hijacking Convention is a multilateral treaty.<sup>14</sup> This convention specifically applies in the case of civilian aircraft, where it excludes law enforcement, customs, and military aircraft. As it is an international convention, it only deals with the situations where if an aircraft lands or takes off in a particular place where that place is not a part of that aircraft's registration country.<sup>15</sup> The principle of '*aut dedere aut judicare*' was laid by the convention, where it states that under the public international law, the states will have a legal obligation in order to prosecute those persons who are accused of committing such kind of serious international crimes, as in this case, hijacking an aircraft, when no other state has asked for the extradition of that accused person.<sup>16</sup>

## ANTI-HIJACKING ACT, 2016

The Anti-Hijacking Act, 2016 mentions the ingredients in case if there is any kind of attempt or commission of offences of hijacking, and at the same time, it also provides the trial procedure if such kinds of offences are committed.<sup>17</sup> According to Section 3 of the Act,<sup>18</sup> a person will be considered to have committed the offence of hijacking in case if he:

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<sup>11</sup> *Ibid*

<sup>12</sup> Hague Hijacking Convention 1970

<sup>13</sup> Beijing Protocol Convention 2010

<sup>14</sup> Hague (n 12)

<sup>15</sup> *Ibid*

<sup>16</sup> Diganth Raj Sehgal, 'An overview of the Anti-Hijacking Act, 2016' (*iPleaders*, 22 July 2021)

<<https://blog.iplayers.in/overview-anti-hijacking-act-2016/>> accessed 23 July 2021

<sup>17</sup> *Ibid*

- unlawfully and intentionally seizes or takes control over the aircraft 'in-service' either by force or by threat; or
- uses any kind of intimidation; or
- commits the offence by coercion; or
- uses any technological means.

Along with the acts which are mentioned above, a person will also be considered to be liable for committing the offence of hijacking if:<sup>19</sup>

- the person commits the offence of hijacking by threatening or causing a person to receive such kind of threat where the recipient has the reason to find credible; or
- if the person abets, attempts, or commits the offence of hijacking; or
- if the person is in case directing or arranging other people to hijack an aircraft; or
- if a person is a partner in the offence of hijacking; or
- if a person provides unlawful and intentional assistance to evade a person from prosecution, investigation, or punishment while possessing the knowledge, then that assisted person has committed the offence of hijacking and will be considered as a hijacker.

The offender will only be liable for hijacking when either the act or threat takes place while the aircraft is 'in-service'.<sup>20</sup> According to Section 3(4) of the Act,<sup>21</sup> it states that the Act considers an aircraft to be 'in-service' as from the preparation of pre-flight by the crew or the general personnel starts and till the 24 hours after the aircraft lands.

According to Section 4 of the Act,<sup>22</sup> in case if any hostage or any security personnel who is not a part of the offence of hijacking dies as a result of direct consequences of the hijack, then the offender who has caused the death shall be punished either with a death sentence or with life

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<sup>18</sup> Anti-Hijacking Act 2016, s 3

<sup>19</sup> Sehgal (n 16)

<sup>20</sup> *Ibid*

<sup>21</sup> Anti-Hijacking Act 2016, s 3(4)

<sup>22</sup> Anti-Hijacking Act 2016, s 4

imprisonment along with fine and confiscation of the offender's movable and immovable property.

Section 5 of the Act<sup>23</sup>, deals with the punishments in case if there is a violation of acts that are related to hijacking, where it states that if a person who is a member in the offence of hijacking commits an act of violence against either a crew member or a passenger of the aircraft, then that person will be liable and will be punished for the offence which he committed. For example, if a hijacker slaps a crew member or a passenger, he will be liable for battery, and as per the provisions for battery ad mentioned in the Indian Penal Code, 1860,<sup>24</sup> the hijacker will be punished.

Sections 3<sup>25</sup> and 5<sup>26</sup> of the Act deals with the offences of hijack which took place outside India, whereas Section 7 of the Act<sup>27</sup> states that the offender who has committed the offence of hijacking will be dealt with in the same manner as if the offender committed the offence within the Indian territory. Courts in India got the power to take action against the offence committed under Sections 3<sup>28</sup> and 5<sup>29</sup> only under the below-mentioned conditions:

- if the offence is committed within the Indian territory;
- if the offence is committed against an onboard aircraft which is registered in India;
- if the offence is committed on an onboard aircraft that is hijacked and lands in India and still having the offender who has committed the offence onboard;
- if the offence is committed against on an onboard aircraft in case if the aircraft is leased to Indians;
- if the offence is committed by a person who is stateless but resides in Indian territory;

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<sup>23</sup> Anti-Hijacking Act 2016, s 5

<sup>24</sup> Indian Penal Code 1860

<sup>25</sup> Anti-Hijacking Act 2016, s 3

<sup>26</sup> Anti-Hijacking Act 2016, s 5

<sup>27</sup> Anti-Hijacking Act 2016, s 7

<sup>28</sup> Anti-Hijacking Act 2016, s 3

<sup>29</sup> Anti-Hijacking Act 2016, s 5

- if the offence is committed by a hijacker, an Indian citizen but is not expelled according to the provisions mentioned under Section 11 of the Act<sup>30</sup>.

This Act deals with a detailed explanation of the acts which amount to the offences related to hijacking. Furthermore, while the commission of the offence of hijacking, the hijackers usually commit acts that leads to criminal liability irrespective of the hijack. This Act especially deals with hijacking, but before the courts, the procedure would remain the same majorly. In case if the Act doesn't mention the procedure for the trial of a hijacker, or if the Act is kept silent in some situations, then Section 10 of the Act.<sup>31</sup> provides that such kinds of situations will be governed by the application of the Criminal Procedure Code (CrPC)<sup>32</sup> before a designated court.

In case of extradition, it is provided under Section 11 of the Act<sup>33</sup> Where this section mentions that the offences which are committed and are mentioned under Sections 3 and 5 of the Act will be considered in order to include them under 'extraditable treaties' and 'extraditable offences' categories. The Extradition Act, 1962<sup>34</sup> can be applied on those offences which are mentioned under the Anti-Hijacking Act, 2016, if any aircraft is registered in a country and that country being a signatory to the Convention is considered to be within the member country's jurisdiction in case if the plane is in service. Even if an aircraft is within the other country's jurisdiction, it is immaterial.

Sections 3<sup>35</sup> and 5<sup>36</sup> of the Act deals with some offences and if those offences are committed and in case if it is proved that the offender was in possession of ammunition, explosives, or guns and if there is a reason which exists in order to believe that these explosives or guns were utilized in committing the offences, or in case if there is evidence regarding the usage of force, threatening with the help of force, or causing intimidation to either the crew members or the

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<sup>30</sup> Anti-Hijacking Act 2016, s 11

<sup>31</sup> Anti-Hijacking Act 2016, s 10

<sup>32</sup> Criminal Procedure Code 1973

<sup>33</sup> Anti-Hijacking Act 2016, s 11

<sup>34</sup> Extradition Act 1962

<sup>35</sup> Anti-Hijacking Act, 2016, s 3

<sup>36</sup> Anti-Hijacking Act, 2016, s 15

passengers of the hijacked aircraft. In this situation, the court will declare the hijacker to be guilty unless the offender's innocence is proved.

Section 17 of the Act<sup>37</sup> states that this section provides protection to an individual from any kind of lawsuit, proceedings, or any other legal proceedings in case if the act is committed in good faith or it is intended to be accomplished in pursuance of the provisions of the 2016 Act. At the same time, the Central government is also provided with this provision in case of any damage is caused or likely to be caused while committing an act in good faith or pursuance of the provisions of the 2016 Act.

### **FLAWS IN THE ANTI-HIJACKING ACT, 2016<sup>38</sup>**

1. The Act mentioned the term 'aircraft,' which is identified as any aircraft whether it is registered in India or not. This Act excluded those aircraft that are used by customs or military, whereas this can be included in the Act.
2. This Act would be more effective if there is a provision for 'hoax calls' with an appropriate punishment. These hoax calls create panic situations among the passengers, and in some situations, it also leads to serious complications.
3. This Act didn't mention the definition of the term 'hostage' and 'security personnel.' These definitions can be added to the Act.
4. This Act doesn't provide protection for the security personnel and ground staff at the airport. In case of an aircraft is on the ground and is getting ready for its departure and at that time if the hijacker commits an act of violence against the security personnel and the ground staff, in that case, there is no appropriate punishment for the offenders, but this Act provided punishments if the hijacker commits an act of violence against the crew member or a passenger. Even the security personnel and the ground staff can also get harmed due to violent acts committed by the hijackers. They should be considered equally, and the Act should include protection for them in such kinds of situations.

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<sup>37</sup> Anti-Hijacking Act, 2016, s 17

<sup>38</sup> Satvik Verma & Vikrant Panchnanda, 'The Anti-Hijacking Act, 2016: An Explainer' (*The Wire*, 23 July 2021) <<https://thewire.in/law/the-anti-hijacking-act-2016-an-explainer>> accessed 24 July 2021

5. This Act didn't provide extra-territorial status or immunity from jurisdiction for the benefit of the crew members or the passengers in the country where the hijack of an aircraft took place. This kind of provision should be applied for all cases of unscheduled landings, in case if it is needed urgently, especially in case if an aircraft is unlawfully seized.

## **DIFFERENTIATION BETWEEN THE OLD ACT AND THE NEW ACT**

There was a narrow scope in the 1982 Act for the offences related to hijacking as it only considers the physical appearance of the hijacker in the aircraft. In the year 2016,<sup>39</sup> Act the hijacking definition has been broadened by including an attempt to seizure or get control over an aircraft through any technological means. It has been broadened in such a manner that if in the aircraft which has been hijacked and the physical appearance of the hijacker is not present, then the hijacker would not be set free from being prosecuted for an attempt or commission of hijacking an aircraft where such kind of technology can be used by the hijacker in order to hijack an aircraft without their physical presence.<sup>40</sup>

In the 1982 Act,<sup>41</sup> the penalties and the punishments for the offences were weak. Also, it has considered an aircraft 'in-service' as from the time where the doors of the aircraft were closed till the moment when all the passengers move out of that aircraft. In case of attempting or committing hijack, the 2016 Act has introduced life imprisonment and death penalties.<sup>42</sup> This Act considered an aircraft to be 'in-service' as from the preparation of pre-flight by the crew or the general personnel starts and till the 24 hours after the aircraft lands.<sup>43</sup>

In situations like forced landings, it is the aircraft which is supposed to continue until the responsibility for the aircraft is taken over by a competent authority. However, this new Act can still be applied in such situations like if the hijacking offences take place outside India in an aircraft which is either leased to Indians or is registered in India, or in case if the hijacker is

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<sup>39</sup> Capital punishment (n 3)

<sup>40</sup> *Ibid*

<sup>41</sup> Anti-hijacking Act 1982

<sup>42</sup> Capital punishment (n 3)

<sup>43</sup> Deeptiman Tiwary, 'Explained: Hijacking Act; why a hoax led to a life term' (*Indian Express*, 23 July 2021) <<https://indianexpress.com/article/explained/hijacking-act-why-a-hoax-led-to-a-life-term-5777795/>> accessed 25 July 2021

an Indian citizen, or if the offender is stateless but resides in India, or in the case when the offence is committed against Indian citizens.<sup>44</sup>

### FIRST CASE AGAINST AN INDIVIDUAL UNDER THE ANTI-HIJACKING ACT, 2016

On 30 October 2017, Salla was accused of creating a hijack threat in the plane by keeping a threat note on a tissue paper box of the aircraft's toilet where the note is written in both English and Urdu.<sup>45</sup> The English text in the threat note was written as "Flight no 9W339 covered by Hijackers and aircraft should not be land and flown straight to POK. 12 people on board. If you put on landing gear you will hear the noise of people dying. Don't take it as a joke..."<sup>46</sup>

Following this incident, Salla became the first person to be listed under the "National no-fly list," and this was the first case booked under the Anti-Hijacking Act, 2016. Under sections 3(1)<sup>47</sup>, 3(2)(a)<sup>48</sup>, and 4(b)<sup>49</sup> of the Act, NIA filed a charge sheet against Salla. The NIA stated that Salla had written a 'threat note' which is in both English and Urdu, where the English text was translated exactly into Urdu using Google Translator, and this note was 'intentionally' kept in the tissue box of the toilet near to business class of Mumbai-Delhi Jet Airways flight number 9W339 on 30 December, thereby threatening the safety of the crew members and passengers in the flight.<sup>50</sup>

Later, an emergency landing was made by the plane at Ahmedabad airport, and Salla was arrested. He then confessed that he had performed this act with the hope that it will force the Delhi office of the Airlines to get closed so that his girlfriend returns to Mumbai, who worked

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<sup>44</sup> Anti-hijacking law (n 5)

<sup>45</sup> Ashish Chauhan, 'Hijack hoax on Jet flight lands Mumbai jeweller in jail for life' (*Times of India*, 12 June 2019) <<https://timesofindia.indiatimes.com/city/ahmedabad/nia-court-convicts-mumbai-businessman-in-plane-hijacking-threat-case/articleshow/69738309.cms>> accessed 23 July 2021

<sup>46</sup> News Desk, 'Man Gets Life Imprisonment, Rs 5 Cr Fine For Planting Hijack Letter in Delhi-Mumbai Flight' (*india.com*, 23 July 2021) <<https://www.india.com/news/india/man-gets-life-imprisonment-rs-5-cr-fine-for-planting-hijack-letter-in-delhi-mumbai-flight-3685905/>> accessed 24 July 2021

<sup>47</sup> Anti-Hijacking Act 2016, s 3(1)

<sup>48</sup> Anti-Hijacking Act 2016, s 3(2)(a)

<sup>49</sup> Anti-Hijacking Act 2016, s 4(b)

<sup>50</sup> Chauhan (n 45)

in the Airline's Delhi office.<sup>51</sup> A special National Investigation Agency (NIA) court imposed a fine of Rs.5 crore and also awarded life imprisonment to a Mumbai-based businessman, Birju Salla, for keeping a hijack note and threatened the safety of the crew members and the passengers on a Jet Airways plane in October 2017.<sup>52</sup> Judge K.M.Dave stated that the fine paid by the convict would be distributed among the passengers and the crew members of the plane.<sup>53</sup>

## CONCLUSION

After enforcing the Anti-Hijacking Act, 2016, this Act made the dealings related to hijacking offences tighten. 'Hijacking' became a specific area under the International Aviation Law as it is causing a major concern across the world. India made law related to hijacking offences previously, i.e., Anti-Hijacking Act, 1982 but in 2014, the government of India felt that there were flaws in the Act, and furthermore, it was believed that the 1982 Act lacked stringent punishments and penalties. Thus, Anti-Hijacking Bill was introduced in 2014, and it was passed in the year 2016. Therefore, the Anti-Hijacking Act, 2016, came into force. This Act includes stringent punishments and penalties as it also introduced death sentences. By making the punishments and penalties stringent, it will control those individuals who play pranks with the aviation sector. Though this Act provided protection to the passengers, security personnel, crew members, and ground staff, it lacked providing protection in some situations to the ground staff and the security personnel. There are some flaws in the 2016 Act that should be amended in order to make the Act more effective. India, by updating and amending its legislation related to hijacking offences showed its concern and is also trying to establish an effective means in order to combat hijacking.

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<sup>51</sup> *Ibid*

<sup>52</sup> Life Imprisonment (n 46)

<sup>53</sup> PTI, 'Life imprisonment for Mumbai businessman who created hijack scare on Jet plane' (*Mint*, 23 July 2021) <<https://www.livemint.com/news/india/life-imprisonment-for-mumbai-businessman-who-created-hijack-scare-on-jet-plane-1560262377134.html>> accessed 26 July 2021