

Legislative Brief

The Bharatiya Vayuyan Vidheyak, 2024

The Bill was introduced by the Minister for Civil Aviation in the Lok Sabha on July 31, 2024.

The Bill was passed by the Lok Sabha on August 9, 2024, and is pending before Rajya Sabha

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Highlights of the Bill

- ◆ The Bill seeks to replace the Aircraft Act, 1934. It retains most of the provisions of the Act.
- ◆ The Act sets up: (i) DGCA for overseeing safety and performing regulatory functions, (ii) BCAS for overseeing security, and (iii) AAIB for investigating accidents. The central government will exercise superintendence over these bodies. It may review or modify their orders. The Bill retains these provisions.
- ◆ The Act regulates activities related to aircrafts including manufacturing, possession, use, and trade. The Bill retains these provisions and also provides for regulation of aircraft design.
- ◆ Offences include flying an aircraft dangerously, carrying arms or explosives in an aircraft, and depositing rubbish or slaughtering animals near airports. These are punishable with imprisonment of up to three years, a fine up to one crore rupees, or both.
- ◆ The Bill introduces a provision for a second appeal against decisions related to the imposition of penalties for violating Rules under it.

Key Issues and Analysis

- ◆ The civil aviation sector was opened to private airline operators in 1994. In other sectors such as telecom, electricity, and insurance, private sector participation was allowed since 1991. These sectors have an independent regulator. Unlike them, DGCA is not independent of government control.
- ◆ The Bill empowers the government to appoint an arbitrator for determining compensation in certain cases. The Supreme Court has held that power to unilaterally appoint an arbitrator for one party is violative of right to equality under Article 14 of the constitution.
- ◆ The Bill gives discretion to the central government to specify criminal penalties for violation of certain Rules. This may go against the principle of separation of powers.

PART A: HIGHLIGHTS OF THE BILL

Context

The following key laws govern the civil aviation sector in India: (i) The Aircraft Act, 1934, and (ii) The Airports Economic Regulatory Authority of India (AERA) Act, 2008. The 1934 Act regulates various activities related to civil aviation, and licensing of airports. The 2008 Act set up an independent authority to regulate tariffs for aeronautical services delivered at airports and monitor the performance standards of airports.

The 1934 Act was amended in 2020 to grant statutory recognition to the: (i) Directorate General of Civil Aviation (DGCA) which performs regulatory functions and oversees safety, (ii) Bureau of Civil Aviation Security (BCAS) which oversees security, and (iii) Aircraft Accidents Investigation Bureau (AAIB) which investigates aircraft accidents. In August 2013, the Civil Aviation Authority of India Bill, 2013 was introduced to set up an independent regulator for safety.¹ However, the Bill lapsed with the dissolution of the 15th Lok Sabha. The Bharatiya Vayuyan Vidheyak, 2024 was introduced in Lok Sabha on July 31, 2024, and passed by Lok Sabha on August 9, 2024. It seeks to replace the 1934 Act. It retains the regulatory structure under the Act.

Key Features

- **Authorities:** The Act sets up three authorities: (i) DGCA for performing regulatory functions and overseeing safety, (ii) BCAS for overseeing security, and (iii) AAIB for investigation of aircraft accidents. The central government exercises overall superintendence over these bodies. The government may issue directions to these bodies and review their orders. The Bill retains these provisions. It adds that appeals against orders of DGCA or BCAS will lie before the central government. No further appeal is permitted.
- **Regulation of design of aircraft:** The Act regulates activities related to aircrafts including manufacturing, use, operation, and trade. The Bill retains these provisions. It adds powers to regulate design of aircrafts.
- **Powers to make Rules:** The Act empowers the central government to make Rules on matters including: (i) regulation of specified activities related to aircrafts and matters on licencing, certification, and inspection, (ii) regulation of air transport services, and (iii) implementation of Convention on International Civil Aviation, 1944. The Bill retains these provisions. It adds that the central government may also make Rules on radio telephone operator certificate and licences under the International Telecommunication Convention.
- **Offences and Penalties:** The Bill specifies several offences and penalties. Following offences will be punishable with imprisonment up to two years, a fine up to one crore rupees, or both: (i) violating rules on carriage of certain prohibited goods in aircrafts such as arms and explosives, (ii) flying aircraft in a manner to cause danger to a person or property, and (iii) failure to comply with directions of DGCA and BCAS. Violation of Rules prohibiting slaughter and deposit of rubbish near airports will be punishable with imprisonment up to three years, a fine up to one crore rupees, or both.
- The Bill gives discretion to the central government to specify civil or criminal penalties for violation of Rules concerning: (i) regulation of activities related to aircrafts such as design, manufacturing, use, and trade, (ii) implementation of international convention, (iii) investigation of accidents, (iv) protection of public health, and (v) powers to detain aircraft. Civil penalty may be up to one crore rupees. Criminal penalty will be imprisonment up to two years, a fine up to one crore rupees, or both.
- **Adjudication of penalties:** The Act allows the central government to impose penalties for contravention of Rules. It empowers the central government to appoint an officer for adjudication of penalties. This officer must be of the rank of the Deputy Secretary to Government of India or above. Decisions of the Adjudicating Officer may be appealed before an Appellate Officer, who must be of a higher rank than the Adjudicating Officer. The Bill retains this and adds an additional level of appeal. The appeal against the decisions of the First Appellate Officer will lie before the Second Appellate Officer. The Second Appellate Officer must be an officer of a higher rank than the First Appellate Officer.

PART B: KEY ISSUES AND ANALYSIS

DGCA remains under direct government control

The Act establishes the Directorate General of Civil Aviation (DGCA) for performing regulatory functions and overseeing safety.² DGCA will be headed by an officer appointed by the central government.² The central government will exercise superintendence over DGCA.² It may modify or cancel DGCA's orders, and its directions to DGCA will be binding.² The Bill retains these provisions. Similar to the Act, the Bill does not specify: (i) the qualifications for the Director General, (ii) the manner of his selection, or (iii) the tenure of his service. That is, the DGCA is similar to a government department and is not independent from the government for making decisions. This regulatory structure is different from other sectors of the economy with significant

Act:
Section
4A(1)

Bill:
Clause
3(1)

private sector presence such as telecom, electricity, and insurance. With respect to airlines, both passenger and cargo segments are fully serviced by private carriers.³

Similar to civil aviation, sectors such as telecommunications, electricity, and insurance that were erstwhile government monopolies, have also been opened up to private participation after 1991. These changes have been accompanied by the establishment of an independent sectoral regulator created by law.^{4,5,6} These regulators determine: (i) necessary conditions for obtaining licences, (ii) guidelines for pricing of services, (iii) method of recourse to the consumer, and (iv) a fair system for the private operators. To ensure independence, technical qualifications, terms, and tenure of service of members of these bodies are defined by law.^{4,5} Appeals against the decisions of the regulators lie with an Appellate Tribunal.^{4,5} OECD (2016) observed that independent regulators are set up to prevent market failures due to: (i) bureaucratic influence, (ii) lack of technical expertise, and (iii) conflicting interests between government and non-government entities.⁷ It noted that security of tenure allows them to shield the sector from fluctuations in political and economic business cycles.⁷

In the civil aviation industry, tariffs for aeronautical services and performance standards at major airports are regulated by an independent regulator, the Airport Economic Regulatory Authority of India (AERA).⁸ Appeals against the orders of the AERA are heard by an independent tribunal – the Telecom Disputes Settlement and Appellate Tribunal.⁸ AERA was set up under an Act passed in 2008.

Arbitration for determining compensation amount

Act:
Section 9B
Bill:
Clause 22

The Act empowers the government to issue directions for demolition or modification of buildings, structures, or trees within a specified distance from an airport.² The affected owners are eligible to receive compensation, which will be determined by mutual agreement.² If an agreement is not reached, the government may appoint an arbitrator.² The arbitrator must be a person who is or is qualified to be a High Court Judge.² The Bill retains these provisions. We discuss issues with these provisions below.

Power for government to unilaterally appoint Arbitrator may violate right to equality

Bill:
Clause
22(b)

The Supreme Court (2024) has held that unilateral appointment for arbitration by one party is violative of the right to equality under Article 14 of the Constitution.⁹ It observed that a clause allowing one party to unilaterally appoint a sole arbitrator may raise doubts about the independence and impartiality of the arbitrator.⁹ It noted that it amounts to appointing judge to one's own cause.⁹ Under the Arbitration and Conciliation Act, 1996, arbitrator is appointed as mutually agreed by the parties.¹⁰ The Bill specifically states that the Arbitration and Conciliation Act, 1996 will not apply to arbitrations under the Bill.

The Bill exempts application of Arbitration and Conciliation Act, 1996, which is different from other laws

Bill:
Clause
22(g)

The Railways Act, 1989 and the National Highways Act, 1956 provide for a similar compensation determination process.^{11,12} They also empower the central government to appoint an arbitrator in case of disagreement on compensation amount.^{11,12} However, they state that 1996 Act will apply to every arbitration under the Act.^{11,12} In case of Metro Railways, the Metro Railways (Construction of Works) Act, 1978 originally provided for appointment of an arbitrator in case of disagreement on the compensation amount.¹³ It was subsequently amended in 1982 to replace the arbitration process with an appeal to an appellate authority.¹³ Under all three Acts, compensation is determined by an authority appointed by the government instead of mutual agreement as under the Bill.^{11,12,13}

Criminal penalties through Rules may go against separation of powers

Bill:
Clause
25(4)

The Bill provides that breaching rules notified under certain provisions may be penalised by the central government through criminal penalties. The punishment will be imprisonment of up to two years, with a fine up to one crore rupees, or both. These Rules pertain to a wide range of activities including: (i) regulation of activities related to aircrafts such as design, manufacturing, use, and trade, (ii) implementation of international convention, (iii) investigation of accidents, (iv) protection of public health, and (v) powers to detain aircraft. Thus, the Bill gives discretion to the central government on deciding which violations constitute a criminal offence and will attract criminal penalties. Delegating these powers to the Executive may violate the principle of separation of powers. This raises the question whether Legislature should decide criminal offences and penalties for them instead of delegating them to the government.

For violation of certain rules, penalties have been specified in the Bill itself. These include violating rules on: (i) carrying arms, explosives, or other dangerous goods in an aircraft and (ii) depositing rubbish within a radius of ten kilometres of airports. Under laws on Railways and Metro Railways, all offences and penalties are listed in the Act.^{11,14}

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14. Chapter XI, The Metro Railways (Operation and Maintenance) Act, 2002, <https://www.indiacode.nic.in/bitstream/123456789/2008/3/2002-60.pdf>.

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