



LEGISLATIVE GOVERNANCE OF SPACE ACTIVITIES IN INTERNATIONAL SPACE LAW

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Abstract

The Space Technology advancement achieved by sovereign must be shared for the intergenerational equity. Countries like the USA, Luxembourg and UAE have enacted domestic laws to regulate or rather facilitate space resources exploitation. The Legislations are instrument to validate and regulate space activity within national territory and foreign territories. International agreements are instrument to link International Space Law with national Space Activity Laws.

In the above backdrop, this study on desirability of Space legislation for international concerns and their adequacy in dealing with technical and legal challenges associated with the subject. India's position and future approach are outlined in the paper. A new model for international collaboration is also to be further explored.

Key Words: Space Activities, Regulation, Rules and international cooperation.



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Introduction

“space science, like nuclear science and all technology, has no conscience of its own. Whether it will become a force for good or ill depends on man.” — JOHN F. KENNEDY

The international agreements are instrumental for international cooperation to built-up a soft legal framework among space faring States necessity of a Legislation on Space Activities. Besides that, it is desirable to have an effective regime of subordinate legislations in the form of Rules & Regulations. Further, the draft Space Activities Bill-2021 is much meaningful in terms of technical representation of a public policy. A progressive Space legislation must promote and regulate all the space activities by settling policies and procedures on the matters connected therewith and incident thereto. The legislations passed



by the legislature is treated as legislative policy. In order to understand Indian space programme and role of other autonomous bodies working to support any space activity may branded for commercialization and public purpose utility of the space technology and application of said technology for national scientific advancements, agricultural development, defence related technical collaborations and societal & educational needs by establishing the necessary space and ground infrastructure and space application programme.

The role of Space Technology is achieving Sustainable **Development Goals** Space technology applications play an central role in supporting the growth of commercial opportunities for space activities and space based services in various applications for Digital India and emerging application services in various sectors with the participation of non-governmental sector and Indian industry, a need has arisen to encourage for augmentation of space infrastructure and associated services in India. In addition to aforesaid, the Government of the Republic India under its obligation to the international treaties on outer space activities to make sustainable mechanism to protect the outer space environment and use it for peaceful purposes. Since, Indian Space Programme funded by the Central Government therefore, the liability for any damage to person, territory or environment during course of any space activities a suitable liability sharing mechanism is desirable in the best interest of the Indigenous Space Activities and interest related thereto. national interests.

I. Indian Space Activities Governance Legislation

There is tendency to believe that Indian Space business is unregulated whereas the same is funded and administered by the Department of Space Govt. of India for ISRO as per Allocation of Business Rules, 1961(1). “space activity” means the launch, use, operation, and guidance, of space object and reentry of space object from outer space, related to inter alia communication, earth observation and navigation activities, and all functions for performing the said activities including the procurement of the space objects for the said purposes or as may be prescribed.

II. INDIAN LEGISLATION ON SPACE ACTIVITIES

In preliminary examination of the draft Bill-2017(2) available in public domain for comments, it is found that the same has been proposed with the objectives to promote and regulate the space activities of the Country. The draft Bill contains 32 Clauses divided in 06 Chapters, we have further examined the Bill and following preliminary comments/suggestions subject to final vetting from the legal/legislative and Constitutional permissibility angle, are offered namely:

(ii) In the definition clause section 2 (b) it is mentioned that

1. See, Allocation of Business Rules, 1961, page 158,159.



License means a licensee granted under s. 7(i) but in that section no such provision exists;

(iii) In definition clause there is no general clause for implied inclusion of other terms used in the Bill;

(iv) In the previous Bill there is no provision for empowering the appropriate body as per Clause 5 to enter in to any contract, agreement/ memorandum of agreement. Therefore, a new CHAPTER IV be inserted as under;

“CHAPTER IV

CONTRACT, AGREEMENT AND ENFORCEMENT

As from the commencement of this Act, all the commercial space activity shall be granted by an instrument of agreement or contract in consonance the international obligation mentioned in Outer Space Treaty except for inventions and secret know-how which in the opinion of the Central Government are useful for the advancement of Space Technology for societal and strategic requirements. Government is also empowered to carrying on Space business including any trade or business and the acquisition, merger, maintaining property rights and disposal of property and the making of contracts for any such purpose. (3)

(i) Any contract, memorandum of agreement or memorandum of understanding with or without financial implications or assurance made or being executed to promote, develop or regulate the space activities shall be in conformity with the broad objectives of this Act and the business allocated to the Department of Space/Indian Space Research Organisation.

2. See, <https://www.isro.gov.in/update/21-nov-2017/seeking-comments-draft-space-activities-bill-2017-stake-holders-public-regarding>.

3. *Supra note 1.*

(ii) In order to incur contractual liability under any aforementioned contract or agreement etc. must be concluded and enforceable through an approved legal entity incorporated under applicable laws including the mode and manner provided under the provisions of Article 299 of the Constitution;

(iii) All the contracts or agreement made prior to enactment of this Act shall be deemed to be validated, unless otherwise agreed by the party to contract or agreement to further the object of this Act as the case may be.

(iv) Notwithstanding anything contained in this Act or any document related thereto any dispute arising out of the activities performed in terms of contract, memorandum of agreement or memorandum of understanding with or without financial implications related with any subject matter of Intellectual Property Rights including know-how and space business confidentiality/secret the same shall be subject matter of public policy, at the first instance, be settled by the mutual discussions/deliberations by the parties.”



5. Further, in the Clause 30 titled “Power to make rules” only title is mentioned but subject detail is not given as per legislative practice.

6. The fact that atmospheric pollution as a negative externality resulting from human activities into the global commons is accepted universally. This idea should be developed for damage caused by space activities through a fund should be contributed to by all space faring States/Countries based on the capacity of the state and their level of space activity. In the said backdrop, the proposed Bill under Chapter IV deals with the registration of space objects and liability for damage arising out of space activities and there is no specific provision, which deal with the specific issues of space activities causing damage to environment such as the ozone layer, damage caused by the activities associated with space stations and solar satellites. UN Space Debris Mitigation Guidelines came up with the first internationally accepted definition of space debris, i.e. “all man-made objects, including fragments and elements thereof, in Earth orbit or re-entering the atmosphere, that are non-functional. Space debris is considered a problem because of its potential to cause damage on the ground and its potential to damage other space crafts that still have a mission to fulfil and are functional. Although the UN guidelines speak of “a prudent and necessary step towards preserving the outer space environment for future generations at international level. Therefore, regulation of space activities towards prevention and protection from environment pollution the Ministry of Environment, Forest and Climate Change be consulted as a stakeholder regarding adoption of appropriate international cooperation on the issue of environment.

7. The proposed Bill for enactment, which provided for a procedure to deal with criminal implications, on account of the violation of the provisions of ‘the Space Act/Bill including unauthorised use of space facilities any similar occupation thereof.

8. As regards, the Authorization Process for Space Activities in India is concerned the Central Government has constituted one body as INSPACE. Whereas, legal, scientific and regulatory issues related thereto to be ascertained only under the process of extensive deliberations on each issue subject to comments of all the stakeholders including the space industry. Besides that, it is desirable to have an effective regime of subordinate legislation in the form of Rules & Regulations. (4)

Further also, that the interrelation of the Indian Space activities with the obligations of international conventions/treaties concerning the Space Activities should be kept in perspective and need to be further studied and discussed during Rule making process. The Rule to be made under Sections of the Bill/Act will ultimately create an enabling environment to promote and regulate all the space activities in Indian territory in consonance with the policies and procedure for the functioning of regulatory mechanism including and regulation and implementation of international agreement& contracts. It is pertinent to refer here the



following statement of law in Halsbury's Laws of England (5)"Where a statute provides that subordinate legislation made under it is to have effect as if enacted in the statute such legislation may be referred to for the purpose of construing a provision in the statute itself. Where a statute does not contain such a provision and does not confer any power to modify the application of the statute by subordinate legislation, it is clear that subordinate legislation made under the statute cannot after or vary the meaning of the statute itself where it is unambiguous, and it is doubtful whether such legislation can be referred to for the purpose of construing an expression in the statute, even if the meaning of the expression is ambiguous."

4. See, <https://www.isro.gov.in/indian-national-space-promotion-and-authorization-center-space>

5. (3rd Edn.) Vol. 36 on page 40]

III. JUDICIAL POLICY OF NATURAL RESOURCES: INDIAN PERSPECTIVE

It is pertinent to consider the following observations passed in the judgments by Hon'ble Supreme Court relevant for drafting and interpretation of any bill or policy on space resources exploration:

- a. The matter of Natural Resources Allocation, has concluded by the Hon'ble Supreme Court (6) that the *policy of allocation of natural resources for the public good can be defined by the legislature as a matter of legislative policy and rules of application for use and sharing of natural resources.*
- b. *spectrum is a scarce resource and clearly promulgated the principle. (7)*
- c. *The State is empowered to distribute spectrum like natural resources Spectrum has been internationally accepted as a scarce, finite and renewable natural resource that is susceptible to degradation in case of inefficient utilization. It has a high economic value in the light of the demand for it on account of the tremendous growth in the telecom sector. Although it does not belong to a particular State, the right of use has been granted to the State as per international norms.*
- d. *as per provisions of Articles 38,39, 48, 48 A and 51A (g), for protection and proper allocation/distribution of natural resources and have repeatedly insisted on compliance of the constitutional principles in the process of distribution, transfer and alienation to private persons. (8)*

7. (2012) 3 SCC 1, para 75 to para 79.

8. See, Gwalior Rayon Mills Mfg. (Wing.) Co. Ltd. V. Asstt. Commissioner of Sales Tax, AIR 1974 SC 1660 (1667). In Ministry of Information & Broadcasting, Govt, of India v. Cricket Assn. of Bengal, (1995) 2 SCC 161. 10. Air India Ltd. V. Cochin International Airport Ltd. (2002) 2 SCC 617. Ministry of Information & Broadcasting, Govt. of India v. Cricket Assn. of Bengal, (1995) 2 SCC 161. State of Haryana V. Lal Chand, (1984) 3 SCC 634, on page 644), Sterling Computers Ltd V United Database (India) Pvt. Ltd, AIR 1996 SC 51). Asif Hameed V State of J&K (AIR 1989 SC 1899)



IV. Administration Licensing, Authorisation of Space Activities and Dispute Settlement: - In the policy matter regarding the functioning of IN-SPACE & corporate governance of NSIL in view of the future contracts, there can be no doubt that a contract that executed in beyond provisions of Article 299 (1) is in nullity there is no question of estoppels or ratification in such cases. Nor can there be any implied contract between the Government and another person and there is no question of estoppels or ratification in such cases. Nor can there be any implied contract between the Government and another person (9).

(i) Dispute Settlement: - Dispute Resolution on the matter connected with space technology business of Indian Research Organisation usually resolved by mutual consultation and arbitration mechanisms in India. The scope of dispute cannot be defined but for instance all the agreements, memorandum of understandings, framework agreements there is a dispute settlement clause and a clause on governing laws. The aforesaid two clause are decisive regarding jurisdiction and applicable laws. Otherwise as per provisos of Arbitration and Conciliation Act, 1996 as amended (10) has sufficient provisions for settlement all kind of disputes. Besides that, one party could follow, World Intellectual Property Mechanism, the PCA Space Arbitration rules and other Institutional Arbitration.

(ii) Administrative Mechanism for settlement of Disputes between government departments and Ministries including their respective Public Sector Enterprises

09. See, <https://www.isro.gov.in/indian-national-space-promotion-and-authorization-center-space>, Article 298 and 299 Constitution.

10. Arbitration and Conciliation Act, 1996 as amended.

In case of any dispute or difference of opinion or interpretation of the agreement between two or more Govt. Departments/Ministries/PSUS , arising out of the space activities performed under the provisions of licensing agreement or related document not amicably resolved completely as per provisions agreed by the party by mutual discussion or consultation between the parties, the entire matter shall be referred to the Administrative Mechanism for Resolution of CPSEs Disputes (AMRCD) for settlement of any such commercial disputes and the procedure mentioned in the Office Memorandum Dated 22nd May, 2018 and others OM subsequently issued by Department of Public Enterprises, Ministry of Heavy Industries & Public Enterprises shall apply in consonance with applicable Indian laws and public policy. Further, notwithstanding anything contained in above para, in case of any dispute or difference of opinion falling under the exception to the ambit of Administrative Mechanism for Resolution of CPSEs Disputes (AMRCD) or due to non-applicability of AMRCD, the party to this agreement/MOU with mutual consent may take recourse of any alternative dispute settlement mechanism including arbitration for settlement of



such disputes as per applicable law and procedure.” Further, also that all the differences or disputes including publication related disputes concerning intellectual property rights arising out any activities performed under this agreement/MOU shall be in first attempt settled through mutual deliberations, failing which shall be further settled in terms of applicable laws and procedure. However, it is not out of context to mention that aforementioned administrative mechanism has no statutory sanction to enforce its settlement in case of either Government entity refuse to execute the settlement further.

The role of Science and Technology in national security and matters relating to Research Organizations of other countries and with Inter-governmental agencies, particularly those which concern themselves, inter-alia, with the scientific and technological aspects of national security is vital. Commercialization of Space and the Development of Space Infrastructure, cooperation among States and, where appropriate, in collaboration with other international organizations, and for the administration of various treaties dealing with intellectual property. establishment of international norms and standards in the field of intellectual property and administration of treaties. (11)

Conclusion

The interrelation of the Indian Space activities with the obligations of international conventions concerning the Space Activities should be kept in perspective and need to be studied and discussed during Rule making process. The Rule to be made under the Bill/Act will ultimately create an enabling environment to promote and regulate all the space activities in Indian territory in consonance with the polices and procedure for functioning of regulatory mechanism including and regulation and implementation of international agreement& contracts. Therefore, above factual and legal matrix is in indication to adopt and enact space activity legislation concerning international regulations, administration of properties and utilization of Space Activities. Every sector of a Indian Nation/State has well understood and interested that, the space activities in India need to be framed through international public policy perspectives and regulated through the legal

11. See, https://www.wipo.int/export/sites/www/patent-Law/en/developments/pdf/ip_space.pdf

mechanism established under a Statute. Further also, that the interrelation of the Indian Space activities with the obligations of international conventions/treaties concerning the Space Activities should be kept in perspective for adopting a Space Legislation to compete at International Space Law Framework.