

LIABILITY UNDER THE DRAFT SPACE ACTIVITIES BILL, 2017: AN ANALYSIS

Kaustubh Shailesh Bam*

Abstract

The Government of India is a signatory to the five main international treaties governing space law. The Indian constitution provides for implementation of international treaty obligations, vide Articles 51 and 253. In pursuance of these provisions, and due to the expansion of the domain of space research and allied activities, the Draft Space Activities Bill was introduced in the year 2017. However, the bill is fraught with ambiguous provisions and legal voids, which need to be addressed. One such provision dealing with liability of the concerned parties in a commercial space activity is the highlight of this article.

Keywords: Space Activities Bill, Indian Constitution, Article 51, Article 253, Space law

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* 8th Semester student of law at MAHARASHTRA NATIONAL LAW UNIVERSITY-MUMBAI

Introduction

The Department of Space (DoS), headquartered at Bengaluru, is primarily responsible for promoting development and application of space science and technology, which would in-turn aid the holistic development of scientific fervour in the nation. As per the information available on the official site of the Indian Space Research Organization (ISRO)¹, towards fulfilling the above- mentioned goal, the DoS has evolved the following programmes namely:

- Launch Vehicle programme having indigenous capability for launching spacecrafts.
- INSAT Programme for telecommunications, broadcasting, meteorology, development of education etc.
- Remote Sensing Programme for application of satellite imagery for various developmental purposes.
- Research and Development in Space Sciences and Technology for serving the end of applying them for national development.

As per the Budget 2018, the DoS has been allocated Rs. 8,936.97 crore for its

operations, in addition to specific targets allotted to it by the government. Further, as per an economic survey tabled in the parliament off late, the country's share in the global satellite launch services revenue went up to 1.1 per cent in 2015-16 from 0.3 per cent in 2014-15.² Although these indicators depict a positive picture, the formidable task of drafting a comprehensive legislation to support the development has been attempted by the government in the form of the draft 'Space Activities Bill, 2017'³, which was unveiled on 21st November, 2017. The bill is fraught with legal uncertainties and unanswered queries on the part of the government, that have created voids, which need to be scrutinized.

DRAFT SPACE ACTIVITIES BILL, 2017: RELEVANT PROVISIONS

In its explanatory note, two pointers deserve more attention than the others with reference to this article:

- In point II (5), it is stated that, "The obligations of a State Party under international treaties on outer space activities are expected to be complied/ discharged through national mechanisms, namely

¹ Isro.gov.in. (2018). Department of Space and ISRO HQ - ISRO. [online] Available at: <https://www.isro.gov.in/about-isro/department-of-space-and-isro-hq> [Accessed 28 Oct. 2018].

² Budget 2018: Department of Space gets Rs 8, 9, (2018). Budget 2018: Department of Space gets Rs 8,936.97 crore for various projects. [online] The New Indian Express. Available at:

<http://www.newindianexpress.com/nation/2018/feb/03/budget-2018-department-of-space-gets-rs-893697-crore-for-various-projects-1767751.html> [Accessed 28 Oct. 2018].

³ Prsindia.org. (2018). [online] Available at: <http://www.prsindia.org/uploads/media/draft/Draft%20Space%20Activities%20Bill%202017.pdf> [Accessed 28 Oct. 2018].

domestic space legislations. Basic tenets of treaty obligations, namely, 'bearing International responsibility' and 'liability for damages caused by space activities and space objects' are more applicable to a State Party, where space activities are performed by non-governmental/ private sectors. Hence, non-governmental space activities are required to be licenced/ authorized and continuously supervised by a State in order to comply with treaty obligations."⁴

- Secondly, in point III (9), it is stated that, "... Commercial opportunities in space activities and services, nationally and internationally demand higher order of participations by private sector agencies. This situation demands for a necessary legal environment for orderly performance and growth of space sector."⁵

The two points mentioned above, along with certain other premises, have been used to safely arrive at the conclusion that India

requires a national space legislation. Therefore, the Space Activities Bill was unveiled in the previous year.

However, the bill suffers from several shortcomings. One such provision is enshrined in chapter IV, dealing with 'Registration of Space Objects and Liability', under section 12⁶, which is a liability provision for damage arising out of commercial space activity⁷. As per this provision, it is upon the licensee to indemnify the central government in case of any claims against it, arising out of either a commercial space activity or in relation to a space object. Moreover, sub-section 2⁸ provides that the quantum of the penalty would be determined by the central government, which would be imposed upon the licensee. The two points mentioned above, would be referred to at a later point of time, in this article. However, section 12 of the bill needs to be viewed from the existing matrix of international law, governing the sphere of outer space.

ANALYSIS AND CONCLUSION

It is rightly pointed out by the drafters of the bill, in the explanatory note that initially, outer space was an area, which was

the quantum of liability to be imposed upon the licensee, in the manner as may be prescribed.

⁷ Commercial Space Activity as defined in section 2(a) as "commercial space activity" means a space activity which generates or is capable of generating revenue or profit;

⁸ (2) Notwithstanding anything contained in sub-section (1), the Central Government shall determine the quantum of liability to be imposed upon the licensee, in the manner as may be prescribed.

⁴ Id. at page 2 of 4.

⁵ Id. at page 3 of 4.

⁶ 12. (1) A licensee under this Act shall indemnify the Central Government against any claims brought against the Government in respect of any damage or loss arising out of a commercial space activity or in relation to a space object covered under the licence.

(2) Notwithstanding anything contained in sub-section (1), the Central Government shall determine

completely controlled by the state and its agencies. Subsequently, due to the available opportunities and potential for generating marginal profits, private players entered into this field. As far as the Indian context is concerned, Subhash Chandra led Essel Group's Agrani Satellite Services Limited applied for a license to operate a geostationary satellite. Unfortunately, it fell apart after the project ran into export licence issues under US munitions restrictions imposed after India's nuclear tests.⁹ The primary document referred to in the context of liability of states is the Liability Convention of 1972, along with the Moon Agreement of 1984. It is to be acknowledged that India is a signatory to the two treaties mentioned above. The Liability Convention distinguishes between the types of liabilities imposed upon the states, by categorizing them into:

- Absolute liability towards the launching state, for compensating for damages caused by space objects on the surface of the Earth.¹⁰

- Fault liability, in the case of compensating for damages caused by space objects other than the surface of the Earth.¹¹

As per the research paper of Dr. Sandeepa Bhat B. and Dr. P. Ishwara Bhat, titled, 'Legal Framework of State Responsibility and Liability for Private Space Activities'¹², the significant distinction between State Liability and State Responsibility has been elaborately examined. It is stated that the very objective behind the state liability is to strike a balance between the interests of States carrying on legitimate activities and that of the innocent victims in the process.¹³ It is further corroborated by articles VI¹⁴ and 14(1)¹⁵ of the Outer Space Treaty and the Moon Agreement respectively, that State Parties to the treaty must bear international responsibility for all their national activities in outer space. The evident contradiction between the two treaties lies in the fact that they impose two different liability regimes on the State Parties. The Outer Space Treaty fails to appreciate the categorization done by the Liability Convention, into absolute and

⁹ The Wire. (2018). Why You Should Care About India's New Private Sector Space Activities Bill. [online] Available at: <https://thewire.in/law/care-indias-new-private-sector-space-activities-bill> [Accessed 29 Oct. 2018].

¹⁰ The Liability Convention Article II.

¹¹ The Liability Convention Article III.

¹² B. Bhat Sandeepa, 2010. Space Law in the Era of Commercialisation, pp.131-149.

¹³ Id pp. 136.

¹⁴ States Parties to the Treaty shall bear international responsibility for national activities in outer space, including the Moon and other celestial bodies,

whether such activities are carried on by governmental agencies or by non-governmental entities, and for assuring that national activities are carried out in conformity with the provisions set forth in the present Treaty.

¹⁵ States Parties to this Agreement shall bear international responsibility for national activities on the Moon, whether such activities are carried on by governmental agencies or by non-governmental entities, and for assuring that national activities are carried out in conformity with the provisions set forth in this Agreement.

fault liability, depending upon the location of the space object.

Often, several reasons are cited in favour of shifting the liability towards the state from the private participants. For instance, it is argued that the risk factor involved in the process is huge. Secondly, the state alone is empowered to deal with the magnitude of the loss which could result from such a transaction. Moreover, Thomas. G. White Jr., a member of the New York City Council from Queens, relates the vicarious or blame attribute process to the legitimacy of the government, as it, being the custodian of rights and interests of the people, is necessary element.¹⁶ These traditional notions are facing challenges due to the change in the dynamics of the current system, brought about by the increasing dominance of private entities into the market. Article VII¹⁷ of the Outer Space Treaty for instance, imposes liability on each party, which launches or procures the launching of an object and on the party whose territory or facility is used for the launching of that object into outer space.

¹⁶ B. Bhat Sandeepa, 2010. Space Law in the Era of Commercialisation, pp. 139.

¹⁷ Each State Party to the Treaty that launches or procures the launching of an object into outer space, including the Moon and other celestial bodies, and each State Party from whose territory or facility an object is launched, is internationally liable for damage to another State Party to the Treaty or to its natural or juridical persons by such object or its component parts on the Earth, in air space or in outer space, including the Moon and other celestial bodies.

¹⁸

Obligation to indemnify government against claims.

(1) ..A person to whom this Act applies shall indemnify Her Majesty's government in the United

The obvious intention of such a provision is to collectively obligate the parties to the transaction in an appropriate manner. The Outer Space Act, 1986 of United Kingdom, in section 10¹⁸, that deals with 'Obligation to indemnify government against claims', contains a provision similar to that of section 12 of the Space Activities Bill, 2017. The difference lies in sub-section 2, which states that the section would not apply to either the agent or employee of another person, and further exempts damage or loss resulting from anything done on the instructions of the Secretary of State. It is essential at this point, to refer to the explanatory note of the bill, which was briefly discussed in the introductory section of this article. Albeit, it is stated in the two pointers of the note that there is a necessity to issue a license to non-governmental entities, as liability for actions is upon the state, and secondly, due to the growth of commercial opportunities in space, there is a need of a legal environment for orderly growth, the actual draft depicts an ambiguous picture. This is due to the absence

Kingdom against any claims brought against the government in respect of damage or loss arising out of activities carried on by him to which this Act applies.

[F1(1A)

Subsection (1) is subject to—

(a) any limit on the amount of a person's liability that is specified in a licence, and

(b) any order made under section 3(3).]

(2) This section does not apply—

(a) to a person acting as employee or agent of another; or

(b) to damage or loss resulting from anything done on the instructions of the Secretary of State

of a clear-cut procedure for indemnifying the Central Government, by the licensee. Furthermore, the provision is silent as to vicarious liability, concerning specific activities, as opposed to a blanket provision.¹⁹ In the absence of a nodal agency to regulate the same, it would pave the way for a lot of litigation. The notion of *cumul*,²⁰ developed by the French courts, which involves sharing of responsibility needs to be utilized for achieving a higher rate of distributive efficiency. As far as the international tenet of state responsibility is concerned, the bill gives immense power to the central government, in

order to carry out its responsibility in the right spirit. However, further clarification is required on the part of the government, on the provision of liability under the act. An amendment, deriving its force from the Outer Space Act, 1986, needs to be introduced to section 12, with the insertion of the following sub-section 3 as per this article:

(3) This section does not apply to damage or loss resulting from anything done on the instructions of the central government.

¹⁹ The Wire. (2018). Why You Should Care About India's New Private Sector Space Activities Bill. [online] Available at: [https://thewire.in/law/care-](https://thewire.in/law/care-indias-new-private-sector-space-activities-bill)

[indias-new-private-sector-space-activities-bill](https://thewire.in/law/care-indias-new-private-sector-space-activities-bill) [Accessed 29 Oct. 2018].

²⁰ B. Bhat Sandeepa , 2010. Space Law in the Era of Commercialisation, pp. 146.