NEED OF REFORMING THE AVIATION SECURITY AND AIRPORT SECURITY MEASURES IN INDIA— A COMPARATIVE ANALYSIS

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Introduction

In earlier days, there were not much security issues in aviation. The threats started increasing along with the increase and development of aviation business. And when it became more accessible to the larger number of people, it became one of the main targets of the criminals. Curbing such criminal activities taken place in aircrafts and the airports are the main objective of aviation security. Now, by the term 'such criminal activity' we mean hijacking aircrafts with the demand of heavy ransom or release of some criminal, putting the passengers' under the threat of life by placing explosives in the airport etc. It also includes assaulting the passengers and airlines or airport employees. For the developing threat upon aviation security, now a days, it has become a common concern. Previously, there were very less number of people who showed concern about such security issues as this threat did not act upon their life. But, in today's scenario, because of the availability of cheaper flights, the number of people directly connected has increased thus increasing the concern among them.

To get into the history of the same, we must bring into light some important facts in this regard. The first hijacking of aircraft took place in the year 1931, 21st February. Byron Rickards, the pilot of the said aircraft denied taking the hijackers who were revolutionaries. They hijacked the Pan American Mail plane to spread their propaganda leaflet in Lima.[1] But, unfortunately no record of such hijacking were recorded till 1947. During 1948-57, there were 15 incidents of hijacking throughout the world which took place in different parts of the world. Later during 1958-67 this number soared up to 48. Gradually it became one of the most easily accessible weapons used by the criminals. The number of such mishaps went on increasing. It reached the highest of 8 hijacking in one month and i.e. January 1969 in Cuba.[2] During 1968-77, there were 414 plane hijacking cases which took place. The urgent need to increase security of the aircrafts was felt throughout the world as this was a question of civilians' right to life. The biggest such hijacking took place on 11th September, 2001 when, 2 al-Qaedan-affiliated Islamists hijacked American Airlines Flight 11 and United Airlines Flight 175 and crashed them into the Twin Towers of the World Trade Canter.

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Such terrorism directed towards aircrafts and airports form the major chunk of threat in aviation. Sometimes terrorists do it to spread terror in the public. Sometimes they do it because they are influences politically or economically. But in some cases the terrorists do it just to get fame or publicity. Also in some cases they are just mentally not stable. One Jack Graham had placed a bomb in the luggage of his mother in the year 1955 when she was travelling in an U.S. Airliner. He had hoped to get the compensation from the insurance company if his mother was killed in an accident. Instead, when he was caught and the reason came out, he was sentenced to death for mass killing as by putting the bomb in his mother's luggage he caused death to all the members at board.

International aviation community could figure out the seriousness of the threat of air piracy. In 1963 Tokyo Convention was drafted to bring the hijacked aeroplanes and its passengers back. Later Hague and Montreal Convention strengthened the previous convention. With the rising concern throughout the world, there were researches sponsored by the Federal Aviation Administration to find out new technologies in order to detect bombs and other weapons and also to improve aviation security which included screening of luggage before boarding and also personnel at airports. The result of such research included banning of various hazardous materials in aeroplanes.

On 8th October, 2010, the US President Barack Obama has adopted the declaration on aviation security. This declaration was an effort by the ICAO (International Civil Aviation Organization) in order to increase security and bring a universal set up for the same. According to the US President, this declaration will help protecting the world from increasing threat of terrorism in aviation.

In India, the threat in aviation was not felt so prominently previously. After the Kandahar Hijacking incident took place in the year 1999, it gave a shock to the security measures followed in Indian aviation. The main responsible body for the same is Central Industrial Security Force, which is a Parliamentary body working under the Bureau of Civil Aviation. This body created another body called Airport Security Group and given the duty of protecting Indian Airports. As part of their function, almost all Indian airports are now equipped with Airport Security Unit. Other than these regulatory bodies, airliners keep departments to look after the security issues.

To proceed further, this paper will initially deal with the US and UK laws on civil aviation safety and security. Then the paper will deal with the security issues from Indian perspective. Also security mechanisms in India are extensively dealt with.

US Laws

The threat of terrorism against the United States has increased to a great extent. The intelligence community and the experts believe that aviation is likely

to remain an attractive target for terrorists in the foreseeable future. Until the early 1990s, the Federal Bureau of Investigation (FBI), the State Department, FAA, the Department of Transportation (DOT), and airline officials contended that the threat of terrorism was far greater overseas than in the United States. However, the World Trade Centre bombing and the recent convictions of individuals charged with plotting to bomb several landmarks in the New York area clearly showed that the international terrorist threat was far more serious than what was believed. There have been various laws and conventions governing the aviation safety and security, before the WTC bombing.

International Civil Aviation Organisation (ICAO) was established in 1944 by the Chicago Convention on International Civil Aviation. It establishes security standards and recommended practises and requires member states to establish civil aviation security programs. Based on these initiatives various conventions and laws were passed in US.

The Tokyo Convention of September 1963 treaty recognizes the inviolability of a hijacked aircraft and passengers, regardless of where the aircraft may be forced to land. *The Hague Convention of December 1970* provides that every signatory state in which a hijacker is located must either extradite him to the state whose aircraft he hijacked or prosecute the hijacker and impose severe penalties.

The Montreal Convention of September 1971 provides for the application of principles of The Hague Convention to all crimes committed on board commercial aircraft and to take all practical measures to prevent them. It includes violence against individuals aboard on aircraft, damage to or destruction of an aircraft, placing devices or substances on an aircraft that could damage or destroy the aircraft, and other crimes. *The Montreal Protocol of 1988* provides procedures for dealing with acts of violence against civil aviation at airports and ticket offices. This agreement came into existence because of the terrorist attacks at the Rome and Vienna airports in 1987. *The Bonn Agreement, July 1978*, was signed by the leaders of Britain, Canada, France, West Germany, Italy, Japan and the United States. It provides that if the country in which hijacker is located refuses to extradite or legally prosecute the offender then the heads of state and government can take immediate action to cease all incoming and outgoing flights from that country.

For the civil aviation security and safety various Acts have been passed. It includes the Antihijacking Act (1974),[3] Air Transportation Security Act (1974),[4] Aircraft Sabotage Act (1984),[5] International Security and Development Cooperation Act (1985),[6] Air Traveller Protection Act (1985),[7] Foreign Airport Security Act (1985),[8] Aviation Security Improvement Act (1990),[9] Federal Aviation Administration Reauthorization Act (1996),[10] Omnibus Consolidated Appropriations Act (1997),[11] Airport Security Improvement Act (2000).[12]

These Acts were passed before the 9/11 event. However US civil aviation force was incapable of stopping the occurrence of the 9/11 event. This

demonstrated the weaknesses in the aviation safety and security. United States received a "shot in the arm" with the bombing of the World Trade Centre. After receiving this blow, United States geared up and strengthened its aviation security system. Various laws have been passed to achieve the same.

The Aviation and Transportation Security Act (2001),[13] was enacted by the 107th United States Congress in the immediate aftermath of the September 11, 2001 attacks. The Act created the Transportation Security Administration (TSA) within the U.S. Department of Transportation to regulate security in all modes of transportation. This Act federalizes the airport screening function which was previously responsibility of airlines, with the actual duties of operating the screening checkpoint contracted-out to private firms such as Wackenhut, Globe, and ITS.[14] The legislation also enhances baggage screening procedures and imposes more stringent personnel qualifications on security employees.[15]

The Air Transportation Safety and System Stabilization Act (2001),[16] is also one of the statute which was the result of the 9/11 event. This does not address aviation security per se though it aims to improve the devastating legal and financial impact of the events of 9/11.

With the enactment of *Homeland Security Act (2002),*[17] twenty-two agencies including TSA were consolidated and transferred to the Department of Homeland Security. It has jurisdiction over transportation security, customs, immigration and agricultural inspections.

Some aviation responsibilities also vests with Federal Aviation Administration (FAA). It is responsible for the security of its air traffic control and other computer systems and of its air traffic control facilities. It also administers the Airport Improvement Program (AIP) trust fund, which is used to fund capital improvements to airports, including some security enhancements, such as terminal modifications to accommodate explosives detection equipment.

Initially TSA worked on establishing its organization and focused primarily on the deadlines provided by ATSA. It deployed federal passenger screeners at airports across the nation by hiring, training, and deploying over 40,000 individuals to screen passengers as well as baggage screening at 429 commercial airports. It has been using explosives detection systems or explosives trace detection equipment to screen the baggage. It has made substantial progress in expanding the Federal Air Marshal Service.[18]

TSA is undertaking initiatives that make greater use of technology and information in order to increase the control over access to secure areas of airports and other transportation facilities. It uses layers of security to ensure the security of travelling public and the Nation's transportation system. There are various security layers in place today. Because of their visibility to the public, they are most associated with the airport checkpoints that the Transportation Security Officers operate. But these checkpoints are only on security layer of the many.

Others include intelligence gathering and analysis, checking passenger manifests against watch lists, random canine team searches at airports, federal air marshals, federal flight deck officers and more security measures both visible and invisible to the public. These layers are lone capable of stopping a terrorist attack. By the combination of these layers, a stronger formidable system is created.[19]

The different Security layers are:

- Visible Intermodal Prevention and Response (VIPR)
- Travel Document Checker
- Behaviour Detection Officers (BDO)
- Secure Flight
- Federal Air Marshals (FAMs)
- Federal Flight Deck Officer (FFDO)
- Employee Screening
- Checkpoint Screening Technology.

From the past 9 years after the 9/11 event, TSA has been working effectively to strengthen the aviation security and airport safety. In June 2010, the Department of Homeland Security (DHS) issued a progress report on its efforts to meet the 9/11 commission report.

The report states that TSA has fulfilled one of the key 9/11 commission recommendations by implementing Secure Flight for 100 percent passengers flying domestically and internationally on U.S. airlines in June of 2010. It has taken over passenger vetting from U.S. airlines, accounting for 90 percent of all travel to, from, and within the United States. Under Secure Flight, TSA pre screens passengers directly against government watch lists, a function previously performed by individual air carriers. In addition to facilitating secure travel for all passengers, Secure Flight helps prevent the misidentification of passengers who have names similar to individuals on government watch lists. TSA expects to vet all passengers on international carriers by the end of the year.[20]

DHS has also deployed full-body scanners known as Advanced Imaging Technology machines for ensuring that baggage are safe, into the nation's airports, with plans to deploy 1,000 by the end of next year. They have even said that they are also on the track to meet the August deadlines for screening 100 percent of cargo onboard domestic flights within and out of the United States.

Homeland Security Chief Janet Napolitano said "By working with our partners across the globe, we have achieved historic advances in international aviation security – including bolstering explosives detection, strengthening the vetting of passengers against terrorist watch lists, refining passenger screening techniques and deploying tens of thousands of trained aviation security personnel—that make air travel safer for everyone". [21]

UK Laws

United Kingdom has enacted various laws which govern the aviation safety and security in to act as a counter to the terrorism.

The Aviation Security Act (1982) is a statute consolidating certain enactments relating to aviation security. Part I of the Act basically deals with offences against the safety of the aircraft and addresses the issue of hijacking among others and prescribes the form and nature of trial and punishment in an event where there is a breach of airport or aircraft security. It also deals with protection of aerodromes[22] and air navigation installations against acts of violence.

Section 21A to Section 21E of this Act deal with topics such as false statements related to baggage and cargo and identity documents; unauthorised presence in on board aircraft and restricted zone; and offences relating to unauthorized persons. These sections only act as an enforcement mechanism after the offence has been committed plausibly like a deterrent. They do not provide any details relating to the subject they are addressing. Thus these sections though prima facie substantial and procedural are actual punitive in nature.[23]

The Airports Act (1986) although relates to airport in UK, the enactment is not authoritative in terms of the law with respect to airport security. The only mention in this Act relating to the airport security is under a section titled "Directions to airport operators in the interests of national security".[24]

The British Airport Authority was established by the passing of this Act to take responsibility of three state-owned airports-London Heathrow Airport, London Gatwick Airport, and London Stansted Airport. Later on they took control over Glasgow International Airport, Edinburgh Airport, Southampton Airport and Aberdeen Airport. This Act also mandated the creation of BAA plc as a vehicle by which stock market funds could be raised.

Aviation and Maritime Security Act (1990) gives effect to the Montreal Protocol (1988).[25] This statute is also substantive, procedural and punitive in nature, and borrows in part from the Aviation Security Act (1982), majorly from Section 21A through 21E.

Terrorism Act (2000) was enacted to make temporary provisions for prosecution and punishments of certain offences, and for maintenance & preservation of peace and order in Northern Ireland. It should be noted that the contents of Section 53 read with Schedule 759 of the said legislation as they together deal with, *inter alia*, the power to stop, question and detain; searches; detention of property; embarkation and disembarkation; carding and provision of passenger information.

Now there is Terrorism Act 2006 and Terrorism (Northern Ireland) Act 2006.

Aviation (Offences) Act (2003) was established to make provisions for the enforcement of 'certain offences' related to aviation. This Act does not

specifically address airport security related offences; it may be used in a supplementary manner-when and where the need arises- to fill any gaps in existing laws. An Amendment to this Act was made in 2004

Civil Aviation Act (2006) does no relate to airport security. It basically deals with noise, vibrations and emissions of aerodromes, also deals with funding and policing of airports. Section 8 of this Act provides that it is the duty of the Secretary of the State to organize, carry out and encourage measures for safeguarding the health of persons on board aircraft.

The Department for Transport (DFT) is the heart of airport security in the United Kingdom.[26] DFT has put in place a long-term framework that balances the delivery of social and economic benefits from aviation, with the need to reduce and mitigate the environmental impacts of air transport and airport development.[27] DFT and Civil Aviation Authority's Safety Regulation group recognize that aviation safety needs constant vigilance by regulators and industry alike. There endeavour is to improve safety levels and reduce the risk of harm arising from air transport. The Transport Security and Contingencies team (TRANSEC) has a responsibility to ensure the security of passengers, workers and cargo in airports and during transit.[28]

The security alerts inn 2006 at Heathrow and in 2007 at Glasgow have alerted the airport security all over the world. As a result there were 2006 alert new restrictions on hand baggage and EU- wide limits restrictions were imposed on liquids and gels that can be taken through airport security.

On 25th December 2009 again there was an attempted attack on Northwest flight 253 to Detroit. This led to an abrupt rise in airport security measures including the introduction of the first body scanners in the UK, the introduction by the end of 2010 of explosive trace detection equipment, more passengers being searched by hand and more sniffer dogs. The passengers going to US are subject to extra security checks prior to boarding.[29]

Because of the extra checks there has been increase in delays suffered by the passengers. In an effort to reduce the delay and speed up the security process most of the airports have increased the number of security staff. Some of the airports are using new technology and improved process such as automated tray handling system at Gatwick. Other airports have come up with extra passenger search facilities to handle the issue of security.

Aviation Security Issues In India

The 9/11 incident left chilling memories in the minds of the people throughout the world. It had put a question on the security measures taken up by the airports. But in India, we had instances of threat upon civil aviation from a long time though they were never of such a great extent. An Indian Airlines aircraft was hijacked in the year 1971 at the time of the Indo-Pakistan war broke out. Later in 1976, Pande Committee was established to look into the hijacking of another

aircraft of the same airlines. Now, this was the time when separate body to look into such matters were felt strongly. In the year 1985, Air India Boeing 747, Emperor Kanishka was bombed and as a result of the same it crashed on the Irish coast. In this incident, investigation report said the bomb responsible for the said explosion was concealed in the baggage and it killed all its 329 passengers on board along with its crew members. As a result of this incident, the Bureau of Civil Aviation was established, which was now free from Director General of Aviation. This incident also resulted in constitution of Kirpal Committee which brought out the gaps in the procedures of aviation security. Almost at the same time there were more terrorist attacks in Rome and Vienna in the year 1985. As a result there was a conference held which was for the adoption of Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (also known as Montreal Supplementary Protocol) and India was a party to it. This was the time when India started actively participating in the ICAO Council. Aviation Security mechanism was created by the ICAO with the help of members including India. ICAO is the international body for safety and security of civil aviation. It gives its members to choose their own organizational structure. These should not contravene the stated mandatory standards enumerated by ICAO. India also participated in the proposed international legal instrument of Marketing of Plastic Explosives for Detection. On 22nd July, 1975, India also ratified Tokyo Convention, 1963 which is the Convention for offences and certain other Acts committed on board aircraft. In furtherance with this ratification of this Convention, Indian Parliament came up with the Tokyo Convention Act, 1935. Other than that there are few domestic laws which help India curbing civil aviation security issues. To name some of them- Anti-Hijacking Act (1982), Suppression of Unlawful Acts against Security of Civil Aviation Act (1982), Aircraft Act (1934), Aircraft Rules (1937), National Airports Authority Act (1985), Airports Authority of India Act (1994). As a result of Kanishka incident, ICAO inserted Model Aviation Security Clause in the Bilateral Air Services Agreement with UK (1988) and with Canada (1991). There was prominent time lag between the domestic laws and international conventions adopted by India to curb the evil.

After all these still the threat remains. As an instance for the same the recent incident at Thiruvananthapuram Airport can be highlighted. A 'crude' (bomb like device) was found in the cargo hold of an ATR aircraft (IT 4731) of the Kingfisher airlines on March 21, 2010 at Thiruvananthapuram Airport. Media report said that the device responsible for the same did not contain a detonator which would amount to explosion. Now, it can be easily held here that if exposition was not the intention of the perpetrators and at the same time it was a deliberate act on their part. People who were directly responsible for the security checking of the said Kingfisher aircraft were the security personnel of the air carrier. They are the ones who are responsible for anti-sabotage check before taking off and also screening and monitoring loaders. To justify their acts, they have to establish how the said material entered the restricted area where even the authorised staffs need to undergo screening properly through metal detectors. To enter into the said

restricted are all materials has to pass through x-ray checking. Identifying weaknesses in the system and taking remedial measures is an urgent imperative.[30]

Like all other countries in the world, providing civil aviation security is a responsibility which is undertaken by Government, agencies (in case of India it is Central Industrial Security Force) and airliners. The Bureau of Civil Aviation which works under the ministry of Civil Aviation works as the coordinator among the various such bodies. These are given separate segment of security job. The initiative of segmenting security function was first felt after 1999 Kandahar incident which involved hijacking of IC 814 aeroplane. The bodies responsible for the aviation security must work as if every incident in this field is a challenge for them and they should figure out their weakness and try to curb them with modern technologies. As already stated, it is not the Government only who alone can do it. There should be helping hands stretched from other stakeholders. To bring out the required standard of uniform and systematic security mechanism, everyone has to be dedicated, committed and professional. Integrity shall be shown by the parties who generally tend not to take up much responsibility sufficiently.

Security Mechanism In India

As a result of 1976 Indian Airlines plane hijacking, an investigation Committee was appointed named as Pande Committee. As per the recommendation of the said committee, on January 1978, the Bureau of Civil Aviation Security was established as a cell of Directorate General of Civil Aviation. This new cell had to look into the coordination, monitoring, inspect and train stuffs to develop civil aviation security. This is an attached office of the Ministry of Civil Aviation. For the sake of the discussion, we will call this bureau as BCAS from now on. This bureau became an independent body on 1st April, 1987 as an aftermath of Kanishka Tragedy in June 1985. The main function of the body is to come up with security measures for international and domestic civil aircrafts and airports in India. This BCAS is headed by Commissioner of Security (Civil Aviation). He is in charge of implementing Annexure 17 of the Chicago Convention of International civil aviation organization (ICAO). He is also duty bound to look into the implementation and development of National Aviation Security Programme. The BCAS has got four Regional Offices located at International airports i.e. Delhi, Mumbai, Kolkata and Chennai. The Regional Office is headed by an officer of the rank of Deputy Commissioner of Security (CA).[31] For assisting the Commissioner of Security (Civil Aviation), the bureau has posts such as Additional Commissioner of Security (Civil Aviation), Deputy Commissioner of Security (Civil Aviation) and Assistant Commissioner of Security (Civil Aviation). Other than these commissioners, this office also has Security Officers of different rank. Such as- Sub-Inspector, Assistant Sub-inspector, Head Security Guard, Head Constable and Security Guard. With the help of all these personnel the BCAS basically tries to implement rules for achieving the goal of aviation security. For this purpose they sometimes go for

dummy checks and mock exercise of professional efficiency. They also bring up suggestions for safe travelling, list of prohibited materials, transporting special items, tips for travelling with children or disabilities or medical assistance when required and above all awareness about security. In order to provide these services to the passengers, BCAS trains its employees in various different manners. To name some of these trainings- Basic Avsec Course, Avsec Instructor's Course, Avsec Management Course, Auditor's Course, Avsec Air Cargo Course, Crisis Management Course, Avsec Supervisor's Course, Avsec Profile Screening, Sky Marshall Awareness, X-Ray BIS, Screener's Certification.[32]

Actual enforcement of the security measures of aircrafts and airports are upon the police of respective States or Union Territories. As its own responsibility BCAS has established Bomb Detection and Disposal Squads (BDDS) in the 4 international airports (viz. Delhi, Mumbai, Calcutta, and Chennai). These BDDSs are having high technology devices to detect explosives and the stuffs are well trained about their way of working at any such alarming condition. To give one more level of security, the bureau has established sniffer dog squads in those 4 metros and Srinagar, one of the most threatened airports. Airport Authority of India and Airport Operators use different equipments like X-ray BSI, Metal Detectors (both door framed and handheld). The standards of these equipments are laid down by the BCAS. As a helping hand, the Bureau is planning to establish Control Rooms in every airport. This Control Room comes into action as soon as there is an emergency. It basically acts when an aircraft is seized or threats of explosives are received. A Central Committee is there to assist the Commissioner of Security (Civil Aviation) in such situations. At the same time there is an Aerodrome Committee to be contacted by the Central Committee and it issues required guidelines for such an emergency condition. In today's India, there are Control Rooms available in almost all the airports of the country. The Bureau introduced the Computerised system of Photo Identity Card (PIC) in August, 1988.This plan has to extend to international as well as domestic airports. Practically this has been implemented in almost all the airports now. This bureau is also equipped with Staff Grievance Cell for better working and enhancing the integrating of the employees.[33]

Indian Civil Aviation or its security programmes were subject to the ICAO Audit. As a practical implementation of the same, Indira Gandhi International Airport was visited by the ICAO Audit team in the year 2005.

Indian Aviation security increases from cross-border terrorism and infiltration activities. There should thorough checking of the personnel entering the aviation sector. Their background has to kept in mind before allowing them in. Otherwise they might impose threat upon civil aviation to a large extent. Also because of democratic demands, the workings of aviation sector are mandatorily transparent. But one negative side of the same is, the line between public sector and private domain gets blurred and becomes easily accessible to terrorists as well. Also because of modern communication technology, it has become easy to impose

threat upon civil aviation in India. India should be more active in international forums addressing this issue. ICAO also has a very important role to play here.

Conclusion

In order to protect the airports and aircrafts from the threat of terrorism, the urgent need of laws for curbing the same has been felt by India along with many other countries. There are some basic points which are needed to be considered to promote civil aviation security. Such as- Airport and Airline authorities should at a greater level place plain clothed security and first aid personnel who are trained for emergency services. These security personnel should be present throughout the airport and observe the passengers. In case there is anything suspicious, immediate actions can be taken by them. Also the staff must be trained to broadcast seemingly innocuous messages on the public announcement system which can alert the security personnel and by this way the person(s) under suspicion will not be able to come know about the message and might as a result keep his guard down.

At the same time it is also to be noted here that a passenger is subject to different checking by different security agencies, which may give rise to the thoroughness of the same. Along with this, no type of preferential treatment should be given to any category of passengers like diplomats, delegates, and heads of the state, physically challenged. All passengers must be equal irrespective of their age, category of travel, gender and race. The paper also suggests that Airports should not be converted into shopping hubs. The sterile areas of the airport should be kept sterile and efforts must be made to allow only the legitimate passengers and denying the entry of the others.

To conclude here, we must state that there are laws present in India, but the lack of implementation makes Indian Civil Aviation vulnerable to threats of terrorism. There should be stronger resistance system for such kind of terrorism. The strength of the chain can be determined by measuring its weakness at the first place. Thus if priority is given to the airport security then there will be a lesser need to maintain the array of cumbersome security laws which are presently deployed.

Thus, the question still remains what is India waiting for?

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