**AN INSPECTION OF SPACE POLICY IN INDIA: A CALL FOR DOMESTIC SPACE LAWS IN INDIA**

***ABSTRACT***

*India is one of those countries which depend heavily upon its Air transport and in order to have a good and efficient air transport the country must have an efficient and hardworking management as well as the management. India is a signatory of many international treaties which talks about the international treaties, and in order to implement those laws to Indian subjects there has to be a domestic legislation which deals with the specific offence. With the help of this paper the author will analyze the current status of India with regard to Space laws. The author will also try to establish the need for the specific domestic legislation in line with the international commitments in order to safeguard the public interest and National interest as a whole.The author will focus on the need of exploration of outer space by the developing countries for their own benefit.*

## **Indian Legal and Institutional Stance**

The Indian Space Commission and Department of Space were set up in 1972. Presently, the Indian Space Programme is administered directly by the Office of the Prime Minister.[[1]](#footnote-2) Within this framework the Indian Space Commission establishes national space policy which is implemented by the Department of Space through four agencies:

* The Indian Space Research Organization (ISRO)[[2]](#footnote-3)
* The National Remote Sensing Agency (NRSA)[[3]](#footnote-4)
* The Physical Research Laboratory (PRL)
* The National Mesosphere-Stratosphere-Troposphere Radar Facility (NMRF)

The Antrix Corporation was established in 1992 as Government Corporation ‘to facilitate commercialization of space activities and to accelerate export of space launch services as a means of recovering part of the budget expenditures in this sector by the government’.[[4]](#footnote-5) In view of an increasing demand for space launch facilities and services, India’s next step is to permit and encourage private operators to engage in these activities. A Government statement on Space Policy in 1999 outlined how India intended further to develop various commercial uses of outer space. Through ISRO the India maintains several launch facilities within the country so there is no competition between Indian Launch Facilities. ISRO also builds appropriate launch vehicles. India operates a significant number of satellites for communications, educational, medical and military purposes. It has also become a reliable national and international supplier of remote sensing data.[[5]](#footnote-6) Commercial space activities are subject to the guidelines and regulations issued by the Department of Space and other relevant government agencies.

India relies mainly on the four space law treaties in its regulation of commercial space activities. It has signed, but not ratified the Moon Agreement. The Indian Government has the power to implement its rights and obligations under international treaties without further national legislation. However, national legislation would be required if India were to incur a financial liability under the Liability Convention, since an Act of Parliament would be necessary to authorize the supply of required funds. Additionally, the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005, implements UN Security Council Resolution 1540 (2004)[[6]](#footnote-7) and Art. IV of the OST.

It is possible for private operators to obtain a launch license in India. In 2002 the Government of India issued such a license for the launch of a communications satellite. Private commercial operators lease capacity from or through ISRO. For their guidance, in 2005 ISRO issued ‘Norms, Guidelines and Procedures for Implementation of a Policy Framework for Satellite Communications for India’.[[7]](#footnote-8)

Space Commerce is considered a vital part of the economy. In formulating its national laws and regulations for private operators, India not only considers its own unique economic, social and political circumstances but also evaluates the experiences of other countries which have already established national regulation of private commercial space services operators. The US, Russian and Australian regulatory experiences are useful precedents for India in this regard.

India discourages investments from ‘unfriendly countries’ and as such its space policy is strongly influenced by national security concerns. New legislation is being drafted to prevent foreign high-technology companies doing business in India should that endanger national security.[[8]](#footnote-9) Indian space policy is therefore developing towards allowing greater private enterprise in space activities and appropriate national legislation is under preparation.

**AN OVERVIEW OF INDIAN LAWS RELEVANT TO SPACE**

Although India has been a "Space Power" having been initiated into space technology, as early as 1961, the legal matrix relevant to space and space activities are as varied as the lawsthemselves. The following is the scenario of Indian laws applicable to the field of space activities.

1. ***Constitution of India, 1950*** - Articles 51 (to implement internationalobligations), 73 (executive power to exercise jurisdictionresulting from a treaty), 246 [Items 10 (foreign relations),12 (United Nations), 13 (participation in international conferences),14 (entering into treaties and implementing treaties),16 (foreign jurisdiction), 21 (piracies and crimes in theair - should this include outer space?), 97 (residuary item) ofList I (Union List) of the 7th Schedule, and 253 (Parliament'spower to make law to implement "any treaty, agreement orconvention with any other country or any decision made atany international conference, association or other body."].[[9]](#footnote-10)

2. ***Arbitration and Conciliation Act 1996*[[10]](#footnote-11)**

3. ***Atomic Energy Act 1962[[11]](#footnote-12) and the Atomic Energy (Controlof Irradiation of Food) Rules of 1996[[12]](#footnote-13)***

***4. Cable Television Network (Regulation) Act 1995[[13]](#footnote-14)***

***5. Cinematograph Act 1952[[14]](#footnote-15)***

***7. Commercial laws such as those relating to contracts, saleof goods, partnership, companies banking, and trusts, such as the Export Act,[[15]](#footnote-16) the Foreign Trade (Development &Regulation) Act,[[16]](#footnote-17) and the Banking Regulations Act[[17]](#footnote-18)***

***8. Consumer Protection Act 1986[[18]](#footnote-19)***

***9. Copyright Act 1957[[19]](#footnote-20)***

***10. Criminal laws, substantive and procedural, such as the IndianPenal Code[[20]](#footnote-21) and the Criminal Procedure Code[[21]](#footnote-22)***

***11. Customs Act 1962[[22]](#footnote-23)***

***12. Cyber Regulations Appellate Tribunal (Procedure) Rules 2000[[23]](#footnote-24)***

***13. Environment (Protection) Act 1986[[24]](#footnote-25)***

***14. Information Technology Act 2000[[25]](#footnote-26)***

***15. Insurance Act 1938[[26]](#footnote-27)***

***16. Insurance Regulatory and Development Authority Act***

***1999[[27]](#footnote-28)***

***17. Patents Act 1970 (Amendment 1999)[[28]](#footnote-29)***

***18. Revenue laws relating to investment and taxation, such asthe Securities and Exchange Board of India Act,[[29]](#footnote-30) the IncomeTax Act,[[30]](#footnote-31) and the Companies Act[[31]](#footnote-32)***

***19. Technology Development Board Act 1995[[32]](#footnote-33)***

***20. Telecom Regulatory Authority of India Act, 1997[[33]](#footnote-34)***

***21. Telecommunications Convergence Bill 2001[[34]](#footnote-35)***

***22. Telegraph Act, 1885[[35]](#footnote-36)***

***23. Trade Marks Act 1999[[36]](#footnote-37)***

***24. Wireless Telegraphy Act, 1933[[37]](#footnote-38)***

Except in the field of telecommunications, India has not enactedspace-specific laws. Despite the fact that India has been aparty to many of the space treaties, and despite the enablingprovision in Article 253 of the Constitution of India,[[38]](#footnote-39) no attempthas been made so far to enact any law to implement the obligations under taken by India under the various treaties.Further, set up in early 1960s, the Space Commission andthe Department of Space have been making significant contributionsto India's strides into space and space technology; thereis no broad-based legal framework to formalize their existenceand operations. Should any litigation arise within India, thissituation will perhaps leave the Courts to look for a legal basis,ultimately in the State's Sovereignty. This is certainly not adesirable situation.

**NEED FOR A SPACE POLICY AND A SPACE LAW FOR INDIA**

Although many of the basic policy norms underlying India'sspace activities are by and large well known, and policies havebeen declared on various space segments - such as telecom policyand broadband policy - the Government of India is yet todeclare formally a coherently formulated space policy. A wellformulatedand proclaimed policy is important for a number ofreasons. First, it would formally commit the government of theday and the future governments to its goals and principles, untilfurther review. Second, it would ensure government commitment and support to the national space programme on a continuous and stable basis. Third, it would also support endeavors in furtherance of its goals and principles in international negotiations. It would equally provide an often-necessary diplomatic shield to ward off possible influences towards any drastic deviation. Fourth, it would help educate the legislators, alarms of government and of course the people of the country, ofthe contributions and potentials of the national space programme.Fifth, it would facilitate better coordination among various government departments in promoting better utilization of the benefits of space science and technology in planning national developmental strategies. (It is submitted that at present there is a discernible underutilization of the national achievements in space in this sphere). Finally, a formally proclaimed space policy is likely to contribute greatly towards dispelling the suspicion entertained in some countries of the diversion of peaceful use technology to military purposes in India and in reaffirming India’s commitment to the principles of peaceful uses of outer space.[[39]](#footnote-40)

From this point of view, a proclamation of aspace policy is more essential now than ever before.Equally, India needs some space-specific legislation as well, again for a number of reasons. First and foremost, the role oflaw is not merely to regulate rights and obligations of subjects, italso provides for norms and institutional mechanisms to promotethe policy goals of the community. Thus a well thought outspace law would go hand in hand with a well thought out spacepolicy. Second, the fact that there has so far been no situationrequiring a special law to tackle it is no guarantee that such a position will continue ad infinitum. We have just been lucky notto face the problem of no-law yet. "Murphy's Law" that is, whatevercan go wrong, will go wrong, cannot, however, be ignored.

In the area of liability involving use of high technology, the timelag for problems to "break out" may be mainly due to the delay in discovery of evidence of damage and, more importantly, due to the time lag in the spread of information about the technology and about the availability of grounds of legal claims. Third, Indian space activities have become vastly diversified and have come of age. Having successfully demonstrated its application capabilities (the latest example being Chandrayaan ), India now needs to define and formalize, if necessary, the existing set up of institutional mechanism and to facilitate inter-departmental coordination, making it a legal obligation. Fourth, in view of this expansion and diversification of space activities and increasing involvement of private industry with the onset of commercialization and liberalization, there is an urgent need to clarify applicable legal norms and rules of both public and private law, as demonstrated by the experiences of other space faring nations. Often the general law is ill-equipped to address special problems of space industry. Complex legal issues such as those of legal competence of authorities; exercise of control over space related activities and industries; issues relating to quality standards; security aspects; unfair trade practices; private law ramifications of space activities such as intellectual property rights, trade secrets, insurance, and indemnity; secured transactions and security of international interest (UNIDROIT) has evolved an international convention and operational protocols on this, keeping in view space objects as well); liability limits in case of damage caused to private individuals; and so on may need to be addressed. Fifth, it is desirable to have a domestic law, rather than leave matter to be decided by the Judiciary[[40]](#footnote-41). Finally, andmost importantly, Article 51 of the Constitution of India mandates and directs the State to respect international law including treaty obligations undertaken by it.[[41]](#footnote-42) Many of the treaty obligations require implementation through domestic law. Article 253of the Constitution specifically empowers Parliament to make law for domestic implementation of treaties to which India is aparty and decisions of international conferences that India accepts.5" Given the facts that India is a party to many of theabove-mentioned space-related treaties some of which (such as the Liability Convention[[42]](#footnote-43) and Registration Convention[[43]](#footnote-44) ) requiredomestic legislation for implementation, and an expanding framework of legal relationships is in the making for spacerelatedactivities involving the government agencies and nongovernmental entities, both Indian and foreign. Sagacity demandsthat a suitable legislative framework is put in place. Indeed, in many countries, domestic legislation is also pressed intoservice to promote the cause of the national entrepreneurs in international trade and commerce.[[44]](#footnote-45)

## **Special needs of Developing Countries**

The situation in the developing countries regarding outer space activities and their benefits deserves a special reference. Using outer space is a right for all nations[[45]](#footnote-46), but the exercise of this right is difficult and expensive in actual practice involving expenditure which most developing countries cannot afford. Despite the problem the developing countries are beginning to get actively involved, like the countries India and Indonesia. It is desirable if a large number of developing nations would become closely involved, and it would be valuable asset for them and to avail to the opportunities.

Area where the developing countries would be interested is in preventing and reducing environmental damage that is being caused and will be caused in the outer space.

On 13th December 1996 the UN General Assembly adopted the ‘Declaration on International Cooperation in the Exploration and Use of Outer Space for the Benefit and in the Interest of All States, Taking Into Particular Account the Needs of Developing Countries’[[46]](#footnote-47). The Declaration had been based on Article I of the Outer Space Treaty to which a special accent to the needs of the developing countries had been added. In principle, it reflects and confirms that ‘States are free to determine all the aspects of their participation in international cooperation on an equitable and mutually acceptable basis’. The Declaration also calls for particular attention which is to be given to the benefit and interest of developing countries with incipient space programmes stemming from international cooperation conducted with countries having advanced space capabilities.

**CONCLUSION**

It can be seen thatalthough many of the essential policy norms underlying India's space activities are well known, and policies have been declared on various space segments like telecom policy and broadband policy etc. the Government of India is yet to speak out formally a rationally and coherently formulated space policy. It is noteworthy that require Indian regime requires specific domestic legislation for implementation, and an expanding framework of legal relationships is in the making for space related activities involving the government agencies and nongovernmental entities, both Indian and foreign. Keeping in mind that India is a party to many of space-related treaties, like Liability Convention and Registration Convention and even the Indian constitution supports this contention through Art. 51 thereby there is an urgent call for Specific Indian space laws so as to make sure that field of Indian space law can match the international norms and touchstones. We would also like to mention that apart from research and technology need of new space laws in India is also required, as there has been use of space for arms race or any related military activities by other States, especially those most advanced in space technologies. So we would like to conclude that introduction and compliance with international Space laws and regime has become a need of the hour and instant effort should be initiated.

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4. Antrix Corporation Limited: <http://www.antrix.gov.in> last visited on 14th April 2012 [↑](#footnote-ref-5)
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6. Security Council Res. 1540 (2004) 14 April 2004: ‘Non-proliferation of Weapons of Mass Destruction’. [↑](#footnote-ref-7)
7. *See* http://www.isro.gov.in/programmes/html [↑](#footnote-ref-8)
8. ‘Commentary Paper on National Space Legislation’, ISRO-IISL Space Law Conference, Bangalore, 2005. [↑](#footnote-ref-9)
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10. Arbitration and Conciliation Act, No. 26 of 1996, *available at* <http://www.ficciarbitration.com/htm/acts.pdf>( Last Accessed on 5/03/2012) [↑](#footnote-ref-11)
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38. IndianConstitution., at Art. 51. [↑](#footnote-ref-39)
39. *V. S. Mani,* SPACE POLICY AND LAW IN INDIA ANDITS RELEVANCE TO THE PACIFIC RIM, 35 J. Space L. 615 2009 [↑](#footnote-ref-40)
40. The Supreme Court of India drew rules from certain maritime law treaties to which India was not a party, transported them into the Indian common law and readily applied them to a situation which was not adequately covered by the Indian Merchant Shipping Act. Should similar fate befall space situations under Indian domestic law?. [↑](#footnote-ref-41)
41. Constitution of India., at art. 51. [↑](#footnote-ref-42)
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