NEED OF SPACE LAW IN INDIA

kaushik dhar, mr, NALSAR University of Law, Hyderabad
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Space legislation in India is the ultimate need of the nation, especially because India is progressively looking forward to privatise and commercialise space assets, expand and develop capability in space exploration and scientific discovery, commercialise its competence to build satellites and offer launch service from its launch vehicles. The pace at which India is developing and expanding in the space and space related matters it can be argued that a national space law should be legislated with the principle of creating clear and transparent regulatory guidelines for domestic industry with the intention of accelerating investment and to make certain the growth and advancement in this capital intensive - high return strategic sector. It is well known that it the duties of the countries that they have to establish their own national legislation which is embedded in the treaty provisions contained in the corpus of international law of outer space. As a result of those legitimate principles in the treaties that this paper urges India to legislate a national space legislation at the earliest, not just to accomplish the treaty obligations but for the sole reason that the growth and expansion of space activities and space industry in the country have reached a level that makes a compelling case for legislative action.

Space law can be described as that branch of law which is applicable to and governing the space law related activities. The space law is that area of law which includes all the national and international conduct in the outer space. All the beginning of the activities in space law began with the launching of the world’s first artificial satellite by the Soviet Union in the year of 1957. The satellite which was launched was named Sputnik which was part of the International Geophysical Year. The International Geophysical Year was an international scientific project which started from 1 July, 1957 and lasted till 31 December, 1958. In the beginning of 1957, all the nations started talking about system to ensure the peaceful use of the outer space. The bilateral discussion which happened between the United States and the former USSR in the year 1958 has caused the staging of issues to the United Nations for debate. In the year 1959, the United Nations created the United Nations Committee on the Peaceful Uses of Outer Space (UNCOPUOS). The UNCOPUOS in turn created two sub-committees, the Scientific and Technical sub-committee and Legal sub-committee. It can be said that the UNCOPUS has been a primary forum for discussion and negotiate of international agreements on outer space. There were five international treaties which have been negotiated and drafted in the UNCOPUOS.

i. The Outer Space Treaty
ii. The Rescue Agreement
iii. The Liability Convention
iv. The Registration Convention
v. The Moon Treaty

The interesting fact to note is that India is a party to all the above significant space treaties which consecutively structure the most important body of the international space law,
namely the Outer Space Treaty of 1967, the Rescue Agreement of 1968, the Liability Convention of 1972, the Registration Convention of 1975 and the Moon Agreements of 1979. India is also participating actively in a variety of international forum like United Nations Committee on Peaceful uses of Outer Spaces (UNCOPUS), International Council of Scientific Unions (ICSU), International Astronautical Federation (IAF) etc. in shaping global space and law policy. But even though India is a member to all these treaties but still then India has got no comprehensive legislation on space and space related matters.

As far as India is concerned, India has a tremendous heritage in the field of scientific research. In this juncture, we must thank our Prime Minister, Pandit Jawaharlal Nehru for his vision relating to the space law in India. The space revolution in India began with the launching of small sounding rockets from the Thumba Equitorial Rocket Launching Station (TERLS) in the year 1963 under the support of the United Nations. In 1975, India entered into the space age by the launching of the first scientific satellite namely Aryabhatta on 19 April 1975 from the former Soviet Cosmodrome at Baikanur. The launching of SLV-3 in July 1980 brought India more close to the dream of achieving indigenous satellite launch capability. With the launch of Polar Satellite Launch Vehicle (PSLV) on 15 October 1994, India achieved the indigenous satellite launch capability. India has now specially made PSLV and Geosynchronous Satellite Launch Vehicle (GSLV). We must thank our two scientists, Vikram Sarabhai and Homi Bhabha for their well thought space research.

The space and space related matters in India are regulated by legal rules belonging to domestic laws. This is because India does not have any legislation on space and space related matters. At present the position in India is that space industry is legally determined by the Indian Constitution, 1950. Articles mentioned in the constitution of India foster respect for International Law such as Article 51 of the Indian Constitution imposes on the state obligation to strive for the promotion of international peace and security, including maintaining just and reasonable relation between nations, respect for international law and treaty obligation, and settlement of international dispute by arbitration. Under Art 73 the executive power of the union extends a) to the matter relating to which parliament has power to make laws, b) to exercise of such rights, authority and jurisdiction as one exercisable by the Government of India by virtue of any treaty or agreement.

It is inherent obligation on the part of all the nations to correspond international treaties. It is thus the harmonisation which represents the essential physical link, as it were, a nation’s unanimously acknowledged stand in the international arena on outer space and its national application. Therefore, harmonising treaty obligations with the state laws exhibit the continuing determination of a nation to support the urgent need for collective measures to deal with international affairs in such a way as to make sure that outer space does not become yet another battleground for nations. Moreover, according to the 1968 Vienna Convention on the law of the treaties Article 26 every state, in international law, has to carry out all the

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1 Mani,V.S., Bhatt,S., Reddy,V.B., 1997, **Recent trends in international space law and policy**, p 116
2 Indian Space Research Organization (ISRO); www.isro.org
international obligations in good faith, regardless of whether or not it harmonises those obligations with its nationalized laws. It is of great use to harmonise international convention with national laws as it provides a states a rational or basis to legislate domestic laws in such a manner which is in consistence with the national laws and needs, but retaining the right to amend, enact and amend new laws. The main reason why space and space related matters carried on to be controlled by government is the anxiety of losing upper hand over expansion development and trend of space policy activities. Indeed the same thing is happening in the developing countries in the Asia-Pacific region among which a few are, across the world famous for their tremendous accomplishment and upcoming prospective of space development. Only Australia, Japan and South Korea are the only Asia-Pacific regions and no other countries which have implemented international conventions through nationalized laws. Indonesia, Pakistan, Singapore and Thailand have space applications and no launch capability but no space legislation. Unfortunately same is the story for China and India who are considered to be the space powers with indigenous commercial launch potential. China has already begun working on its national space law. If India keeps on overlooking the matter of a space legislation it would surely have adverse affect as because the fact that accelerated civilian commercial applications of space technology will essentially necessitate full involvement of the private sector including greater transitional, bilateral and multilateral activities. For that reason the need of a space legislation become very important. If the country still expects to bring in lucrative returns from the nationalized space economy then it is important to bring a clear, transparent and user friendly legal regime based on easily accessible information.

There are also some of the contemporary issues which have to be given special importance like space debris issue, space insurance matters and intellectual property in space. Space debris is nothing but collection of objects around the earth that were created by human but no longer serve any useful purpose. It can be anything from useless rocket to non-operational satellites to paint flakes. These space debris posses a huge danger like if they collides with any spacecraft and damage is unavoidable, then the question which arises is that who’s going to take the responsibility? Space insurance matters are still dealt with domestic insurance regulations which has till now proved to be inadequate. Intellectual property in space is also a vital issue as which needs to be looked in to separately for the Indian space programme has been encouraging transfer of technologies to Indian industry to support various space projects. A number of space technologies have been transferred to the Indian industries in the areas of electronics, communication, optical and remote sensing data utilisation. In this regard the protection of intellectual property is important safeguard. The ISRO produces a variety of IP rights like patents, trademarks, data rights, copyrights, etc.

Therefore, we necessitate having a legislation which will be broadly covering all these contemporary issues and matters related to space. Our space legislation should incorporate (i) the legal issues connected to launch services (space transportation systems); (ii) the legal issues connected to satellite telecommunications, including satellite broadcasting; (iii) analyze issues associated to earth observation services as well as data processing and distribution; (iv) satellite navigational systems and (v) analyzes the intellectual property.
rights (IPR) regime and transfer of technology. There should be national treatment for issues including (i) Funding of space activity; (ii) Safety of space activity; (iii) Insurance; (iv) Licensing; (v) Certification of space technology; (vi) Liability for damage (vi) Responsibility; (vii) Dispute resolution; (viii) Protection of IPR consequent to space activity; (ix) Promotion and financial support to development of space sciences; (x) Protection of environment and ecology and (xi) International cooperation. India which is developing at such a great pace in space and space related matters cannot afford to neglect a space legislation and if not, we will experience an enormous loss.