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**SPACE TOURISM AND ITS TRYST WITH LEGALITY**

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## **SPACE TOURISM AND ITS TRYST WITH LEGALITY**

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### **SPACE TOURISM AND ITS TRYST WITH LEGALITY**

Any recreational activity in space, which directly or indirectly enriches experience of customer with space travel, is Space Tourism.<sup>1</sup> In other words it is personal space flight. A Space Tourist is a person who has paid loathsome money to have through space and Celestial Bodies for the purpose of fun, enjoyment and recreation.<sup>2</sup>

The history of Space Tourism went back to initial era of two thousands, where Dennis Tito was the first Space Tourist who as guest of Russian Government visited

International Space Station.<sup>3</sup> But that was not considered ideally as Space Tourism because there was ample amount of control of Government was involved, but due to exploration in this field of Space and Celestial bodies and with increasing interest of people in sightseeing for Space, Space Industry has a booming future in terms of tourism specifically. Space Industry has opted a new method nowadays to increase its profit margin; they keep flights in sub orbits and provide a range of cheaper flights. Now begins the question that whether the use of Spacecraft is necessary or aircraft is required, then raises the question of Jurisdiction also, whether Space law will have its applicability or Air law will apply.

The researcher in this paper has tried to work upon the issues as to application of laws as to Space law or Air law, the area of Jurisdiction, by determining the altitude, use of vehicle for space activities. Since if

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<sup>1</sup> A Ferreira Snyman, Legal Challenges Relating to the Commercial Use of Outer Space With Special Reference to Space Tourism

<sup>2</sup> ibid

<sup>3</sup> PJ Blount , Jurisdiction in Outer Space; Challenges of Private Individuals in Space

use of vehicle is differs the area of authorization will differ automatically, now this applicability of legal regime derives its origin from registration, since to exercise Jurisdiction and Control by State, registration is pre-dominantly required. After determining the registration what is the Status of Space tourist, What will be the extent of Criminal Jurisdiction involved, Which State will have exercise its Jurisdiction at place where there is undetermined Jurisdiction, What will be the liability of passenger and what if any third party liability arises. The researcher has tried to analyze the scope of Space tourism in present scenario with its evolution in future, also the researcher has tried to analyze the issues which may arise in future looking into aspect of increasing charm and inclination of people towards this new aspect.

To determine the applicability of legal regime on Space tourism activities, first it needs to be identified that which law will have its applicability, Space law or Air law. Though there is no determined clear physical delimitation for air and space law, the area of outer space is considered to be above 110 km from sea level. In the present context there is issue between areas of 80 to 110 km since it is maximum altitude for suborbital space flight. Though there are two approaches to address the issue of boundary, first is Functional approach

according to which concept of delimitation of boundary is irrelevant. According to this approach nature or purpose of space activities will determine the legal regime. While Spatial approach is the one, which believes in delimitation of boundary, though exact determination is a controversial factor, but it is considered that nearly up to 84 kilometers, a point where the lift of aerodynamics exceeds by Centrifugal force.

At present the status is not clear as to limitation of boundary, but in future there arises probability to adopt commonly some practice by States and will accept a range between 84-110 km.

For resolution of this ambiguity at present States have opted a different method and that is launching of space object, first way to launch a space vehicle is suborbital flight launched from ground at the time of its separation from capsule and launched via Rocket. Second method can be launching of Suborbital flight from airplane. Next thing, which can help to resolve out application of law, is Space Object. It will determine the actual implication of outer space law or air law. Any object that is attempted to be launched successfully in outer space implies the term Space Object. It demarcates the difference clearly between as to air law and space law. Then raises the question as to application of Space law

begins at what point and what is the criteria to determine that on this space object there will be application of Space law and on this Air law will apply.

Space tourism activities are carried out with Space ship, two things are required to be differentiated, firstly aircraft and secondly the aircraft which remains attached to the Space Vehicle till the time of separation. So will that Space vehicle still considered to be part of aircraft after separation also and is it well thought-out part of aircraft earlier also, before separation.

Definition of Aircraft as per German Air Traffic Code as “Any machine which draws its support from air-reactions going in atmosphere is termed as Aircraft”.<sup>4</sup> Chicago Convention also uses the term Aircraft in its annexure. Since the vehicle, which is launched in Space, is of combined nature, combined vehicle comprises of aircraft as well as Space Vehicle. Before separation, space vehicle has no separate identity and no important role to play, it is the Aircraft, which holds technical functions and characteristics, and Space vehicle occupies merely an extra cabin.

It has complete dependence on Aircraft; it cannot even help in propulsion. Taking into consideration the dependability of Space Vehicle on aircraft and risks associated at

the time of launching of air vehicle, so air law needs to be applied to both aircraft and space vehicle, After getting launched a Space Vehicle doesn't derive its support from reactions of air, so will not be termed as aircraft after separation. It can be termed as Space Object, which qualifies for zone between 80 and 110 kilometers. Even though the objective of space vehicle or suborbital vehicle is to reach outer space law and it merely touches the lowest perigee of satellite then also it will be classified as Space object and application of Outer Space law after its separation from aircraft. Another illustration can be of Space Capsule and Rocket, if Rocket becomes propellant for Space Capsule and their point of destination also remains lowest point of perigee of Satellite, then after separation Space law will have its applicability on both rocket as well as on Space Capsule.

After deciding the applicability of distinguished law another question rises over here is what will be the scope of jurisdiction and accordingly the enforcement of laws. Space law itself has no well-developed version, no proper articulate form but it derives its source from International law, as per Article 2 of Outer Space Treaty states that State parties will act in accordance with International law

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<sup>4</sup> Article 1 of German Air traffic Code

including the Charter of United Nations. Space law has its applicability from the treaties signed between the countries and general international law in space. As per Article 4 of International Court of Justice, these are the four sources considered to be the sources of International law: -

- International Conventions, whether general or particular establishing rule expressly recognized by contesting State
- International Custom, as evidence of general practice accepted as law
- On general principles of law recognized by civilized nations
- Judicial decisions and teachings of highly qualified publicists of various Nations as subsidiary means for determination of law<sup>5</sup>.

Though binding sources are International Conventions, International Customary law and general principles recognized by civilized nations, Judicial Precedents are merely holding persuasive value.

Now what will be the civil and criminal Jurisdiction as in nature to impose liability on an individual? Space law is bringing the involvement more of private enterprises as because with increasing attraction of Space tourism, more involvement of tourism and travelers, in other words there is no liability aspect of

State when an individual is travelling to Moon or other celestial bodies for his own recreational purposes, not for any research or State oriented activities then arises liability on individual basis. So if illegal activities are carried out in Space what will be the Criminal liability of an individual and Jurisdiction of which Court will come into picture, will it be Municipal Courts which will have Jurisdiction or will International Criminal Court can impart it's Jurisdiction over there.

Criminal Jurisdiction is a sensitive issue, crime committed palpably, there needs to be essentially required a body to punish and prosecute it. The researcher has tried to elaborate via means of Customary International law and Treaty law and decide the principles, which can be applied for deciding the Jurisdiction.

There are five basis for International Customary law to decide Criminal Jurisdiction, they are:-

- Territorial Nationality
- Passive Personality
- Protective
- Passive Personality
- Universal

And an essential feature other than this five bases for Jurisdiction are a State which is

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<sup>5</sup> Malcom Shaw

prosecuting needs to have these bases or base on which State is prosecuting needs to be essential part of its domestic law.

First principle is Territorial nationality, which is the most invoked principle because it is associated principle with protection of State and it is the basic duty of State. It is applied when criminal conduct occurs in territory of State, wholly or partly. The basic inquiry required is whether essential component of crime occurred in State. It involves principle of *lax loci*, so a person can be convicted of act if criminal in nature in other state being not criminal in nature in home state. But the other question is whether any activity occurring outside the State, but leaving its impact in territory of prosecuting State, then in that case whether State can exercise its Jurisdiction. The answer to this question lies in Primary Effect rule i.e. only the country where primary effect is felt can claim Jurisdiction. In Space law, the relevance derived is in form that if any crime committed in space and had its impacts on territorial borders of State,

Second Basis is of Nationality, which permits a State to exercise its Jurisdiction over its Nationals even if they commit crime outside State, because of their Nationality. But this type of Jurisdiction has its limited scope, when any injured party requests Jurisdiction then only prime

accused can be convicted not accomplices along with him or conspirators.

Third basis is Protective principle, it again has wider Jurisdiction, if any activity of alien is threatening to State it can impose its Jurisdiction, though the rule of Primary effect will be taken into consideration again to prevent its misuse. A State exercising its Jurisdiction must have to prove that activity of accused was primarily threatening to State

Next base is Universal Jurisdiction which can be invoked primarily and solely on the nature of Crime. This type of Jurisdiction can be invoked when Principles of *Jus Cogens* gets infringed, like war crimes, torture, and genocide. Universal Jurisdiction can be invoked looking into the magnitude of crime and gravity associated with it. Outer Space law has been evolved for peaceful objectives and it is Customary International Law too. Utilization of Space only for peaceful purposes, gives it a status of *Jus Cogens* in itself.

Lastly the Principle of Passive Personality, which gives access to State to catch hold of criminal committing act outside the territory of State against it's Nationals, leading a step ahead of Protective Principle, where activities conducted for threatening of State is required but here a threat against a National of State living abroad is sufficient.

These were all the bases State uses in Customary International Law, other basis can be treaty law where for Space law, there are four treaties signed, and they are: -

- Outer Space Treaty
- The Registration Convention
- The Moon Agreement
- ISS Agreement

Space Exploration was the basis of Outer Space Treaty. This treaty was passed by United Nations; it acknowledges the Jurisdiction of State merely on the Objects launched into Outer Space. As per the terms of Treaty it does not give an affirmative right to any State to exercise its Jurisdiction over space, Moon, or any Celestial Body, by merely occupying it or using it for purpose of Space research, no State has claim of Sovereignty over Space, it is prefecture of human kind as a whole. Though States have right to exercise jurisdiction on human also but merely on personnel on Outer space or celestial body.<sup>6</sup>

Then comes Registry Act, which gives authority to State to exercise its Jurisdiction only if the Space Objects they are launching are registered in appropriate registry. But in case where there are Multiple States launching the Satellite, what will be the Status of Registration, then it will depend

on the signed agreements between States launching the Satellites.

In Moon Space Treaty, the Jurisdictional aspect is that, Moon is neither a private property of any individual nor of any State. Moon Treaty is based on use of Moon and other Celestial bodies only for peaceful rationale. No any Military base of State can be established on Moon or any other Celestial bodies.

Lastly the ISS Agreement, which is more of form of general treaty. It covers the International Space Stations of Russian Federation, European Union, Japan, Canada and USA. This agreement targets nationality principle. The State has right to exercise Jurisdiction on their Nationals in or any flight element. So parallel it raises the principle of Passive Personality along with it. Because all the States has right to exercise Jurisdiction over its Nationals, and during the Space Journey if due to act of one State, individual of Other State gets injured, and then in that case what will be the case.

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<sup>6</sup> Article 6 and 8 , conjoint reading