

61st IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
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Author: Mr. Jai Sanyal
Other, India

LEGISLATING SPACE - INDIA'S 2021 SPACE ODYSSEY

Abstract

In recent years the Indian space industry, led by the efforts of the Indian Space Research Organization (ISRO), has risen to prominence owing to its efficient space program. The one shortcoming, however, that has been apparent for some time now, is the fringe role private players have had to play till today. The inability of the law to develop in time for the involvement of the private-sector and start-ups has severely hindered India's space potential both in terms of research, and financial opportunities. Fortunately, the draft 'Space Activities Bill' was tabled by the Department of Space (DoS) mere months ago on the 21st of November, 2017. Since the laws currently applicable exist in the form of 'state-centric' treaty obligations, the bill intends for the domestic legislation to create specific obligations for the private sector, and to regulate its entry and dealings in the Indian space industry. While the draft reveals that the basic tenets of space law have been adapted for the Indian context, it is the regulatory framework proposed in the bill that comes across as counter-intuitive. Two features of this draft bill stand out in particular. The first is the Central Government's control over licenses and its unfettered power to check the books of accounts of all those affiliated to a license holder. Secondly, it stipulates that any intellectual property rights that may be created while undertaking 'space activities' shall be deemed to be the property of the Central Government. Admittedly, a sector as sensitive as space warrants several precautions. However, if India is serious about her space program's promise as a legitimate contributor to her economy and development, then those precautions must be consistent with the objective of the proposed legislation. Surely the objective to incentivize the entry of private market players would be challenging to achieve with the bill in its current form. In this regard, perhaps what's needed is a 'paternalistic nudge'. Essentially, a legislation which would allow for financial independence while simultaneously laying down strict punishments in case of non-compliance, something that's lacking in the current bill. Conversely, this monopoly over the licenses could operate to India's advantage both domestically and internationally. An increase in transparency domestically and a stronger negotiating position internationally could prove to be a worthwhile bargain. In any event, India needs a space law, what remains to be seen, however, is the shape this law takes in the near future.