Chapter 15

INDIA

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I INTRODUCTION

The Indian civil aviation industry is a promising sector owing to increased demand from upper middle-class, higher disposable incomes, favourable demographics and rapid economic growth. It has the prospect of becoming the third-largest aviation market by 2020 and reaching the zenith by 2030. The industry is following a progressive trajectory, paving the way for a new wave of growth and expansion with a substantial focus on low cost carriers, modern airports, foreign direct investment (FDI) in domestic airlines, information technology developments and regional connectivity. The Indian civil aviation industry is among the top 10 in the world with a value of around US $16 billion², which only forms a fragment of the latent potential and capabilities of the industry. With the National Civil Aviation Policy 2016, which came into effect on 15th June 2016, it is necessary to analyse the current framework of the aviation sector.

The Ministry of Civil Aviation (MoCA) is responsible for the administration of the aviation industry in India. It plays a significant role in the formulation of national policies and programmes for development and regulation of civilian aviation, and for devising and implementing schemes for methodical and efficient growth of civilian air transport. The MoCA also ensures the implementation of the Aircraft Act 1934.

The following are the principal regulatory authorities of the civil aviation industry functioning under the authority of the MoCA in India: Directorate General of Civil Aviation (DGCA); Airports Authority of India (AAI); and the Airport Economic Regulatory Authority (AERA).

The DGCA is the principal establishment tasked with the responsibility of regulating civil aviation in India, including air transport services, enforcement of civil air regulations, air safety and airworthiness standards. It also coordinates all regulatory functions with the International Civil Aviation Organisation (ICAO).³

The AAI is a nodal organisation entrusted with the responsibility of creating, upgrading, maintaining and managing civil aviation infrastructure, both on the ground and in the country’s air space. Its responsibilities include passenger services, air navigation services, security services and managing aerodrome facilities.⁴

AERA was established in 2008 to regulate the tariff for aeronautical services rendered at major airports in India. The authority also monitors the performance standards of the established airports as set out by the central government or any other body authorised by it.⁵ Its primary responsibility is to set aeronautical charges on a five-year cycle, taking

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³ For the functions of the DGCA, see the Organisation Manual of the Office of the Director General of Civil Aviation (8 December 2015); http://dgca.nic.in/dgca/func-ind.htm.
⁴ Organisation, Airports Authority of India; www.aai.aero/public_notices/aaisite_test/orign.jsp.
⁵ Objectives and Functions, The Airports Economic Regulatory Authority; http://aera.gov.in/content/innerpage/objective-
into account the economic viability of an airport, in line with ICAO principles of transparency, cost-relatedness, non-discrimination and user consultation.\textsuperscript{6}

Some of the prominent features of the civil aviation sector in India include a large number of consumers (passengers and cargo), a relatively small number of airlines with significant market share, high cost barriers to market entry, differentiated services and competitive firms affecting each other’s business decisions. These market characteristics indicate that India’s civil aviation sector has an inherent oligopolistic market structure.\textsuperscript{7}

\section{LEGAL FRAMEWORK FOR LIABILITY}

\textbf{i.} International carriage

The Carriage by Air Act 1972 embodies the provisions of the Warsaw Convention 1929 and the Warsaw Convention as amended by the Hague Protocol 1955. While a large number of countries incorporated suitable amendments to Conventions with the passage of time, India continued to abide by the archaic Conventions to establish the liability of the carrier. It was finally realised that the obsolete protocols would not address the problems pertaining to liabilities and, consequently, India became the 91st country to ratify the Montreal Convention 1999 (MC99), which is a watershed in the history of the aviation industry. The application of MC99 is elucidated in Article 1(2) of the Convention.\textsuperscript{8} Further, MC99 does not provide for damages in the events of mental anguish or psychiatric injury unless such injury has a close nexus to physical injury.\textsuperscript{9}

\textbf{ii.} Internal and other non-convention carriage

Section 8 of the Carriage by Air Act 1972 entails application of the said Act to carriage by air which is not international and provides that The Central Government may, by notification in the Official Gazette, apply the rules contained in the Schedules of the Act and any provision of the sections provided therein to such carriage by air, not, being international carriage by air as defined in the First Schedule, as may be specified in the notification subject to such exceptions, adaptations and modifications if any specified in this behalf.\textsuperscript{10}

\textbf{iii.} General aviation regulation

The Carriage by Air Act 1972 extends to the entire territory of India, it is applicable to Indian citizens irrespective of the nationality of the aircraft performing the carriage.

In the contemporary world where the use of air transport is a part of modern life, the safety of people is the

\textsuperscript{6} Vital Role for the Airports Economic Regulatory Authority, Centre for Asia Pacific Aviation (April 2009); www.capaindia.com/PDFs/AERA per cent20April per cent202009.pdf.

\textsuperscript{7} Report of the Committee constituted for the examination of the recommendations made in the study report on the Competitive Framework of Civil Aviation Industry in India, MoCA (June 2012); http://civilaviation.gov.in/sites/default/files/moca\_001870\_0.pdf.

\textsuperscript{8} According to Article 1(2) of the Montreal Convention 1999, international carriage means ‘any carriage in which place of departure and place of destination are situated either within the territories of two States Parties, or within the territory of a single State Party if there is an agreed stopping place within the territory of another State, even if that State is not a State Party. Carriage between two points within the territory of a single State Party without an agreed stopping place within the territory of another State is not international carriage for the purposes of this Convention’.

\textsuperscript{9} MC99, Article 17.

\textsuperscript{10} The Carriage by Air Act 1972, section 8.
primary concern for the aviation industry. Consequently, a two-tier compensation system under the Act is established where the carrier is strictly liable up to the first 100,000 Special Drawing Rights (SDR) or 8.8 million rupees. For any claim of damages in excess of 100,000 SDR, the airline operator is not liable if it is shown that such damage was not caused by the negligence or other wrongful act or omission of the carrier or its servants or agents, or such damage was solely the result of the negligence or other wrongful act or omission of a third party. However, nothing prevents the carrier and the passenger from entering into an agreement to fix a higher limit of damages. Additionally, any provision to absolve the carrier from liability or fix a lower limit than that which has been laid down in these rules shall be null and void. Further, if the carrier proves that the damage was caused by the negligence of the injured person, or the actions of said person contributed to the damage, the court may exonerate the carrier wholly or partly from its liability.

III LICENSING OF OPERATIONS

i Licensed activities

Carrier

Registration of aircraft

A scheduled service operator in India that provides services using an aircraft with a take-off mass of 40,000 kg or more must necessarily purchase or lease a minimum of five aircraft with start-up equity requirement of 500 million rupees. Additionally, as the airline fleet increases to five planes, equity requirements grow by 200 million rupees. With respect to an aircraft with a take-off mass of less than 40,000 kg, the start-up fleet minimum remains at five aircraft – purchased or leased – with a minimum equity requirement starting at 200 million rupees and growing by 100 million rupees with every five additional aircraft.

For non-scheduled operators, the fleet requirements are nominal, namely, they require possession of only one aircraft and equity requirements exist based on the number of aircrafts owned or leased by the operator, which create an additional financial barrier to entry. An aircraft may be registered in either of the following two categories:

a Category ‘A’, where the aircraft is wholly owned either by citizens of India; or by a company; or a corporation registered and having its principal place of business within India; or by the central government or any state government, or any company or corporation owned or controlled by either of the said governments; and

b Category ‘B’, where the aircraft is wholly owned either by persons resident in or carrying on business in India who are not citizens of India; or by a company or a corporation registered outside India but carrying on business in India.

In a case where the usual station of an aircraft and its area of operation are not situated in India, the DGCA may decline to accept an application for registration of the aircraft in India, or, as the case may be, to permit the aircraft to remain registered in India, if, in its opinion, the aircraft could more suitably be registered in some other country.

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11 The Carriage by Air Act 1972, Schedule III, Article 21(1).
12 The Carriage by Air Act 1972, Schedule III, Article 23(1).
13 MC99, Article 21.
14 Civil Aviation Requirement Section 3, Series C, Part II, Section 3.2.1, 3.2.3.
15 See footnote 1, supra.
16 Civil Aviation Requirement Section 2, Series F, Part I, Section 3.1.
17 Civil Aviation Requirement Section 2, Series F, Part I, Rule 3.3.
Deregistration of aircraft

The deregistration of an aircraft registered in India shall be effected in accordance with the provisions of the Cape Town Convention. The substantial right of deregistration prevails over any claims made by any authority in India, such as tax or airport authorities, who may collect damages within the terms of their statutory powers. However, such deregistration does not preclude any entity or authority from realising their dues in respect of any services rendered by it. A controversy had arisen in respect of deregistration of foreign aircraft carriers subsequent to the termination of lease agreement in India, which raised concerns in the global aviation market. This point of controversy has now been settled by the Delhi High Court in Corporate Aircraft Funding Company LLC v. Union of India and Awan 39423 Ireland Ltd and Ors v. Directorate General of Civil Aviation and Ors. It held that the DGCA is necessarily required to render assistance to the aircraft in the process of deregistration. Although there may be dues that have to be recovered under the Customs Act, it is no impediment to the process of deregistration and there is no authority conferred under the Customs Act to prevent the DGCA from deregistering the aircraft.

Ownership Rules

An aircraft carrier has to necessarily obtain permission from the central government to operate any scheduled air transport service from, to, in or across India in accordance with the Aircraft Rules 1937. A scheduled operator’s permit can be granted to any person who is a citizen of India; or a company or a body corporate provided that it is registered and has its principal place of business within India and a chairman and at least two-thirds of its directors who are citizens of India, with its substantial ownership and effective control vested in Indian nationals. Further, before a schedule operator’s permit is issued, a certain prerequisite is that the applicant shall have a paid-up capital for new applicants for which the applicant shall submit a certificate from the banker or chartered accountant to confirm the paid-up capital of the company.

Foreign carriers

Pursuant to the DGCA Circular on Operation of Scheduled International Air Transport Services, the domestic carriers that wish to engage in international carrier service needed to fulfill the following conditions (‘5/20 Rule’): they must possess a valid permit of operation; have leased or purchased at least 20 aircrafts; and must have a minimum of five years’ domestic scheduled transport experience. However, the 5/20 Rule has now been replaced with 0/20 Rule and the need of 5 years of domestic scheduled transport experience has been done away with.

Furthermore, the Open Sky policy of India allows foreign airlines to perform their operations in India provided they

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20 2015 SCC OnLine Del 8177. This case based its ruling on the amendment brought in the Aircraft Rules, 1937 via G.S.R. No. 78(E) dated 9 February 2015.
21 The Aircraft Rules, 1937, Schedule XI.
22 Civil Aviation Requirements, Section 3, Air Transport Series C, Part II, Rule 3.
24 Guidelines for Grant of Permission to Indian Air Transport Undertakings for Operation of Scheduled International Air Transport Services, Aeronautical Information Circular (17 July 2009); http://dgca.nic.in/aic/aic08_09.pdf.
act in accordance with the safety regulations in India and are licensed by their home country, which may not provide for requirements such as a minimum fleet size of 20 aircrafts and five years’ operational experience.25

iv  Passenger rights

The Civil Aviation Requirements, Series ‘M’ Part IV, which was issued by Office of the DGCA on 6th August 2010 and came into force on 15th August 2010, prescribes the facilities to be provided to passengers by airlines due to denied boarding, cancellation of flights and delay in flights.26

According to the revised compensation norms, which became effective from 1st August, 2016, an airline will be liable to pay compensation to a passenger in the case of delay/cancellation of a flight beyond the specified hours, and also in cases specified therein where passengers are denied boarding.

For example: Airline in case the scheduled flight gets cancelled must inform the passenger of the cancellation at least two weeks before the scheduled time of departure and arrange alternate flight/refund as may be acceptable to the passenger. In case the passengers are informed of the cancellation less than two weeks before and up to 24 hours of the scheduled time of departure, the airline has to offer alternate flight allowing them to depart within two hours of their booked scheduled time of departure. Passengers who are not informed as per the provisions the airlines are to be provided compensation in addition to the refund of air ticket in accordance such as INR 5,000 or booked one-way basic fare plus airline fuel charge, whichever is less for flights having a block time of upto and including 01 hour or ₹ 7,500 or booked one-way basic fare plus airline fuel charge, whichever is less for flights having block time of more than 01 hour and up to and including 02 hours. or INR 10,000 or booked one-way basic fare plus airline fuel charge, whichever is less for flights having a block time of more than 02 hours.27

v.  Other legislation

The Competition Act, 2002 empowers the Competition Commission of India (CCI) to act as a watchdog and regulate the aviation sector in India. CCI penalized travel agents who were found guilty of cartelization and in breach of section 3 under the Competition Act, 2002.28

Other such legislations which may impose liability with respect to the aviation sector are the Environment (Protection) Act of 1986 and the Civil Aviation Requirements which regulate the aviation environment protection in India; the Prevention of Corruption Act, 1988 (No. 49 of 1988); the Consumer Protection Act 1986, etc.

IV  SAFETY

The new Anti-Hijacking Act has introduced some radical changes to the legislation, but falls short on certain specifics, such as provisions for the protection of ground staff or immunity for passengers and crew in the state to which an aircraft may be hijacked. The lingering threat of aircraft hijacking by militant organisations compelled our lawmakers to review our existing legislation and preparedness towards such exigencies. The new Anti-Hijacking Act, 2016, passed by the Lok Sabha on May 9, gives effect to The Hague Convention of 1971 and the Beijing Protocol of 2010. It has introduced some radical changes to the legislation, which were outdated.

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The aim of the act is to broaden the scope of the term ‘hijacking’ by including in its definition even the making of a threat to commit an offence of hijacking.\textsuperscript{29} It is now also an offence to unlawfully and intentionally cause any person to receive a threat under circumstances that indicate that the threat is credible. The act goes a step forward by even defining the term ‘in service’.\textsuperscript{30} An aircraft is considered in service from the beginning of the pre-flight preparation by ground personnel or by the crew for a specific flight until 24 hours after landing.

From a punishment perspective, the act prescribes the death penalty where the offence results in the death of a hostage or security personnel, and life imprisonment in all other cases. For the first time, the act provides for the confiscation of moveable and immoveable property of a person convicted under its purview.\textsuperscript{31}

The global aviation safety and security standards for the aviation sector are provided by standards and recommended practices laid down by the ICAO. The ICAO puts the onus on the contracting states to devise and formulate a state safety programme (SSP). The programme is an integrated set of regulations and activities with the objective of improving safety. The DGCA has responsibility for regulating aviation safety. An SSP and safety management systems (SMS) division has been established to ensure the management of the SSP and implementation of requirements of SMS by stakeholders.\textsuperscript{32}

The following are the obligations of authorities engaged in aviation to ensure proper implementation of safety programmes.

i Accident investigation and incident reporting
All events of accident and incident investigation are governed by Aircraft (Investigation of Accidents and Incidents) Rules 2012. Under these rules, the central government is under an obligation to institute an investigation into events of accidents with respect to aircrafts weighing a maximum of 2,250kg or a turbo jet plane; in all other events, it is the DGCA that is responsible for initiating an enquiry into such events.\textsuperscript{33} The Rules provide for the Aircraft Accident Investigation Bureau of India to inquire into the occurrence of accidents or incidents.\textsuperscript{34} Further, where it appears to the central government that any new and material evidence has become available after completion of the investigation, it may, by order, direct the reopening of the same.\textsuperscript{35} It also has the responsibility to apprise the Bureau of any accident or incident within 24 hours of the occurrence of such accident or incident.\textsuperscript{36}

ii SSP responsibilities and accountabilities
India has recognised the responsibilities and accountabilities pertaining to the establishment and maintenance of SSPs. This comprises the directives to plan, develop, maintain, control and constantly improve the SSP. The DGCA is the central authority entrusted with the responsibility for overseeing the implementation of SSPs and carrying out various activities with the aviation organisations covered under SSP safety oversight.\textsuperscript{37}

\textsuperscript{29} Section 3(2)(a), The Anti-Hijacking Act, 2016.

\textsuperscript{30} Section 3(4), The Anti-Hijacking Act, 2016.

\textsuperscript{31} Section 4, The Anti-Hijacking Act 2016.

\textsuperscript{32} State Safety Programme India, DGCA (November 2010); http://dgca.nic.in/sms/ssp-india.pdf.

\textsuperscript{33} Aircraft (Investigation Of Accidents And Incidents) Rules 2012, Rule 5.

\textsuperscript{34} Aircraft (Investigation Of Accidents And Incidents) Rules 2012, Rule 8.

\textsuperscript{35} Aircraft (Investigation Of Accidents And Incidents) Rules 2012, Rule 15.

\textsuperscript{36} Aircraft (Investigation Of Accidents And Incidents) Rules 2012, Rule 18(2).

\textsuperscript{37} See footnote 27, supra.
iii Airworthiness

Airworthiness is the assessment of an aircraft’s suitability for safe flight. Rule 50 of the Aircraft Rules 1937 stipulates that there shall be a certificate of airworthiness for operation of aircraft in India. Such certification of airworthiness is initially conferred by a national aviation authority and maintained by performing the required maintenance actions. The application of airworthiness defines the condition of an aircraft and forms the basis for evaluation of the suitability for flight of that aircraft, namely, that it has been designed with engineering rigour, constructed, maintained and expected to be operated in accordance with the approved standards and limitations, by competent and approved individuals.

When an airworthiness directive is issued by the DGCA to correct the unsafe condition, the holder of the type certificate, restricted type certificate, supplemental type certificate, major repair design approval, ITSO authorisation or any other relevant approval deemed to have been issued under this Regulation, shall:

a propose the appropriate corrective action or required inspections, or both, and submit details of these proposals to the DGCA for approval; and

b following the DGCA’s approval, make available to all known operators or owners of the product, part or appliance and, on request, to any person required to comply with the airworthiness directive, appropriate descriptive data and accomplishment instructions.

Rule 52 of Aircraft Rules, 1937 describes the requirement for approval of modification or repair affecting safety of any aircraft in respect of which there is a valid certificate of airworthiness. ICAO Annex 6 requires that all modification and repair on an operating aircraft shall comply with airworthiness requirements of the State of Registry (DGCA) and procedures shall be established to ensure that substantiating data supporting compliance with the airworthiness requirements are retained.

Electronic Nicotine Delivery System (ENDS), also called e-cigarettes, personal vapourizers etc, are products that produce an aerosolized mixture containing flavoured liquids and nicotine that is inhaled by user. According to International Airport Transportation Association (IATA), several incidents have been reported involving electronic cigarettes overheating by the way of their heating element being accidently activated, resulting fire in checked baggage. Since such products are a potential health hazard therefore, electronic, simulated smoking materials (cigarettes, pipes, cigars) are prohibited from use by both passengers and crew at all times. They can be accepted on board in the passengers carry on baggage, for passenger use at destination, provided they remain stowed and unused at all times in the passenger’s carry on baggage.

Many instances have come to the notice wherein cockpit crew has indulged in photography in the cockpit. In few instances, both pilots were away from the aircraft controls when the photographs were taken. On few occasion

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38 The Aircraft Rules 1937, Rule 50.


40 The Aircraft Rules 1937, Rule 15, Rule 50; Certification Procedures for Aircraft and Related Products and Parts, DGCA; http://dgca.nic.in/misc/draft per cent20cars/CAR21/CAR per cent2013.pdf.


42 ENDS on Board an Aircraft or in an Aircraft area, Cabin Safety Circular (November 1, 2016), http://dgca.nic.in/circular/csa/CSC_022016.pdf

43 Photography in flight & visit to cockpit, Air Safety Circular (October 25, 2016), http://dgca.nic.in/circular/ASC02_2016R1.pdf
crew have also allowed people to enter cockpit and take photographs even though their entry was not covered under AIC 3 of 1997.

Taking photographs during flight is source of distraction, which may lead to error and resultant reduction in safety. In a recent case one of the pilots was engaged in photography during training flight, which eventually resulted into an accident. In view of such negligent acts, all the air operators are required to ensure that crew do not indulge in photography during any phase of flight, passengers do not indulge into photography while embarking/dismounting from the aircraft and provision of AIC 3 OF 1997 and operation Circular 4 of 2011 on the said subject are unscrupulously followed.

V INSURANCE

The DGCA mandates that the aircraft operator shall maintain current insurance for an amount adequate to cover its liability towards passengers and their baggage, crew, cargo, hull loss and third-party risks in consonance with the provisions of the Carriage by Air Act 1972. In case of death or bodily injury of a passenger, the aircraft is strictly liable to pay 100,000 SDR for each passenger and the carrier cannot exclude or limit its liability in such circumstances. The liability of the carrier in the case of destruction, loss, damage or delay with respect to baggage shall be limited to 1,000 SDR for each passenger. In the carriage of cargo, the liability of the carrier in the case of destruction, loss, damage or delay is limited to a sum of 17 SDR per kg. Further, the central government may give effect to the revised limits of liability, under Rule 24 of Chapter III of the Third Schedule to the Carriage by Air Act 1972 for the purposes of determining the liabilities of the carriers and extent of compensation for damages.

VI COMPETITION

The Competition Commission of India (CCI) is the premier body of the central government responsible for enforcing the Competition Act 2002 throughout the territory of India and to prevent activities that have an appreciable adverse effect (AAEC) on competition in India. The purpose of the commission is to establish a competitive culture in order to promote fair, competitive and innovative business practices and eliminate all impediments to the establishment of such environment.

Cartelisation is one such impediment to competitive culture, which is presumed to have an AAEC on competition under Section 3 of the Competition Act. Cartel behaviour in the aviation industry is not unusual in India. A significant level of investments and liquidity to cover start-up and high operational costs are certain prerequisites that impose barriers to entry owing to that limit entry and thereby, protect the functioning of a cartel. Further, regulations pertaining to fleet and financial requirements, and slot allocations preclude entry and may escalate the likelihood of cartel behaviour.

Recently, the CCI penalised three carriers – Jet Airways, InterGlobe Aviation Ltd and Spice Jet – for ‘concerted action in fixing and revising fuel surcharge for transporting cargo’. The CCI imposed a penalty of 1,516.9 million rupees on Jet Airways, 637.4 million rupees on IndiGo and 424.8 million rupees on Spice Jet for cartelisation. The CCI said that the allegations of ‘connivance’ by airline companies to introduce a fuel surcharge were founded on concrete grounds and such a practice was without any legal basis, which warranted imposition of penalties.

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45 The Carriage by Air Act 1972, Section 4A(6); see also the Carriage by Air Act 1972, Schedule III, Chapter III.

In the case of Uniglobe Mod Travels Ltd\(^*\) relating to ticket booking segment, the Commission found the existence of cartelisation of travel agents and penalised them for breach of Section 3 of the Competition Act. The case pertains to a boycott call made by trade associations of the travel agents in India against a few international airlines where one of the members did not submit to the boycott call, which resulted in its expulsion from the association. The CCI held that the travel agents, through their tacit agreement, were involved in the boycott and had therefore violated Section 3 of the Competition Act.\(^{48}\)

**VII  WRONGFUL DEATH**

The Carriage by Air Act 1972 incorporates the provisions of MC99 pertaining to liability and compensation to be paid in case of wrongful death. According to Article 21 of MC99,\(^{49}\) in case of death of passengers, the airline is liable to pay up to 100,000 SDR. If there is demand for compensation higher than this limit, the airline can contest it. If it is proved that such damage was not the result of the negligence or other wrongful act or omission of the airline, its staff or agents, or if such damage was solely the result of the negligence or other wrongful act or omission of a third party, then the airline is not liable to pay the higher amount.

The approach of the courts in India in relation to liability in case of death is clearly visible from the case of *National Aviation Company of India Ltd v. Abdul Salam and others*\(^{50}\) where an Air India Express on an international flight from Dubai crashed on landing at the Bajpe International Airport at Mangalore on 22 May 2011 causing the death of 158 people and injury to the remaining 10 people on board, including crew. The cause of the air crash was found to be a pilot error and the Kerala High Court accordingly ruled in favour of the victims. The Court observed that the Third Schedule to the Carriage by Air Act 1972 does not provide any minimum compensation for the death or injury of a passenger. The carrier is liable to pay any actual damages proved by the claimants in the case of death or injury. In the event where the damages claimed is above 100,000 SDR, the carrier can contest the claim in excess of 100,000 SDR by proving that the cause of accident was not on account of any negligence of the carrier or their servants or agents, or that the accident was caused by the negligence or other wrongful act or omission of a third party.\(^{51}\)

**VIII  ESTABLISHING LIABILITY AND SETTLEMENT**

The rules contained in the provisions of MC99 relating to the rights and liabilities of carriers, passengers, consignors, consignees and other persons, shall, subject to the provisions of the Carriage by Air Act 1972, have the force of law in India in relation to any carriage by air to which those rules apply, irrespective of the nationality of the aircraft performing the carriage. The carrier is liable in the following circumstances as provided under the Carriage by Air Act 1972:

\[\text{a} \quad \text{Personal injury: the carrier is liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident that caused the damage sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.}^{47}\]


\(^{\text{48}}\) *Uniglobe Mod Travels Pvt Ltd v. Travel Agents Association of India & Ors* 2011 Comp LR 400 (CCI).

\(^{\text{49}}\) The provisions of MC99 shall be enforced subject to the provisions of the Carriage by Air Act 1972.

\(^{\text{50}}\) 2011 (3) Kerala High Court 761.

\(^{\text{51}}\) Id. at Paragraph 14.

\(^{\text{52}}\) *The Carriage by Air Act 1972, Schedule III, Chapter III, Rule 17(1).*
one action shall be brought in India in respect of the death of any one passenger, and every such action by
whomsoever brought it shall be for the benefit of all such persons so entitled as aforesaid as either are
domiciled in India or not being domiciled there express a desire to take the benefit of the action.53

b Damage to luggage or goods:

- the carrier is liable for damage sustained to any checked-in baggage or any goods, if such damage occurred
  on board the aircraft or during any period within which the checked-in baggage was in the change of
  carrier; and
- the passenger shall be entitled to enforce contractual rights of carriage if the carrier admits the loss of the
  checked baggage, or in case of non-arrival of the baggage within twenty-one days from the date on which it
  ought to have arrived.54

c Compensation: in the carriage of passengers, the liability of the carrier for each passenger is limited. In case
of damage caused by delay in carriage of person the liability of carrier for each passenger is limited to 4150
SDR.55 Where damages may be awarded in the form of periodical payments, the equivalent capital value of
the said payments shall not exceed 1, 25,000 francs. Nevertheless, the carrier and the passenger may agree to
a higher limit of liability by entering into a special contract regarding the same.56

The carrier shall not be liable for damages to the extent that they exceed for each passenger 100,000 SDR if
the carrier proves that such damage was not the result of any wrongful act on the part of the carrier; its
servants/agents; or solely of a third party.57

In the event of any destruction, loss, damage or delay, the liability of the carrier shall be limited to 1,000 SDR for
each passenger unless the passenger has made a special declaration of interest in delivery at the destination and has
paid a supplementary sum. In that case, the carrier shall be liable to pay a sum not exceeding the declared sum,
except if it is proved that the sum is greater than the passenger’s actual interest in delivery at destination.58 The
liability of the carrier arises when any destruction, loss, damage or delay is caused during the carriage of cargo and
such liability is limited to a sum of 17 SDR per kg, unless the consignor has made a special declaration of interest in
delivery at destination and has paid a supplementary sum. In that case, the carrier shall be liable to pay a sum not
exceeding the declared sum, unless it proves that the sum is greater than the consignor’s actual interest in delivery at
destination.59

IX VOLUNTARY REPORTING

The fundamental purpose of the voluntary reporting mechanism is to improve the standards of aviation safety
through the collection of reports on actual or potential safety deficiencies, which may not be reported through the
established channels. Therefore, a voluntary reporting system has been established to address the lack of reporting
under the mandatory reporting system.

53 The Carriage by Air Act 1972, Section 5(3).
54 The Carriage by Air Act 1972, Schedule III, Chapter III, Rule 17 (2), 17(3).
55 The Carriage by Air Act 1972, Schedule III, Chapter III, Rule 22(1).
56 The Carriage by Air Act 1972, Schedule I, Chapter III, Rule 22(1).
57 The Carriage by Air Act 1972, Schedule III, Chapter III, Rule 21(2).
58 The Carriage by Air Act 1972, Schedule III, Chapter III, Rule 22(2).
59 The Carriage by Air Act 1972, Schedule III, Chapter III, Rule 22(3).
The Indian voluntary and confidential reporting system is already defined in the Aeronautical Information Circular 03 of 2015. Under the current framework of voluntary reporting, a number of persons belonging to categories provided in the circular can be instrumental in promoting and maintaining aviation safety by reporting on occurrences or potential threats in the aviation system.

The ambit of voluntary and confidential reports comprises the following areas:

- flight operations including departure, en route, approach and landing, aircraft cabin operations, air proximity events, weight and balance and performance, heavy landings when structural limits are not exceeded, unstabilised approaches;
- aerothed operations including aircraft ground operations, movement on the aerothed, fuelling operations, aerothed conditions or services, cargo loading;
- air traffic management including air traffic control (ATC) operations, ATC equipment and navigation aids, crew and ATC communications comprising read-back or hear-back errors;
- aircraft maintenance, including aircraft, engines, components maintenance and repair activities;
- design and manufacturing, comprising of aircraft, engines, components design or production activities;
- approved training organisations that carry out training activities involving flight operations and maintenance; and
- passenger handling operations related to safety or any other area that has an impact on aviation safety.

**X YEAR IN REVIEW**

Some of the remarkable achievements of the aviation industry are outlined below.

The National Civil Aviation Policy came into effect on 15 June last year. The scheme of the Civil Aviation Policy, the first such integrated policy in India, ensures security and affordable air travel while providing access to various parts of India and the world. It strives to achieve the goal of enhanced regional connectivity coupled with ease of doing business and promoting the entire aviation sector chain from cargo, general aviation, aerospace manufacturing to skill development.

Passengers carried by domestic airlines during January-October, 2016 were 81.37 million as against 66.06 million during the corresponding period of previous year thereby registering a growth of 23.18%.

The guidelines for foreign direct investment have been amended and consequently, foreign direct investment by foreign airlines has been permitted under the consolidated FDI policy, for up to 49 per cent in scheduled air transport service or domestic scheduled passenger airline or regional air transport service, 100 per cent in non-scheduled air transport services and 100 per cent in helicopter services or seaplane services.

The much controversial 5/20 rule has been replaced by 0/20 rule for starting foreign operations, meaning

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61 Id.

62 Id.


airlines can start international operations provided they deploy a total of 20 aircrafts or 20% of total capacity (in terms of average number of seats on all departures put together), whichever is higher for domestic operations.

XI OUTLOOK

The outlook for 2017 for the aviation industry in India is positive. It is widely perceived that the nation will record close to 7.3 per capita growth in 2017. Further, the proposal of the central government to make large-scale investments in the sector for the development of regional airports is expected to be propitious for the industry. However, considering that the cost of choosing air transport still proves to be exorbitant for a majority of the population, it is suffice to say that the sector is yet to be properly explored. Specific attention should be directed to the following events:

a The National Civil Aviation Policy (NCAP) came into effect in June 2016, aims to fortify the aviation sector, which has the prospective of growth in the future. It has proposed tax incentives for airlines; the setting up of no-frills airports; maintenance and repair works of aircraft; increasing FDI limit for foreign airlines; and providing viability gap funding for carriers to strengthen the regional air connectivity.

b The fixing of fare price on the basis of travel time as provided in the National Civil Aviation policy is a welcome proposal. The central government should take further initiatives towards this end to extend the reach of the airlines to the common masses.

c The Route Dispersal Guidelines, which mandate all airlines to direct the loss-making flights to remote parts of India, also need revaluation since they create a stringent environment for carrying out business in India.

d The current brooding presence of governmental control in the aviation sector tends to impede the growth and exploration of the sector. Therefore, the central government should consider restricting its presence in the field of aviation and yield to the organisations that have expertise in the field.

Overall participation and collaboration of the stakeholders with the policymakers to implement efficient and rational decisions is imperative to boost India’s civil aviation industry. With appropriate policies and persistent focus on quality, cost and passenger interest, the well-formed vision of India becoming the third-largest market by 2020 and the largest by 2030 will be successfully realised.

http://pib.nic.in/newsite/PrintRelease.aspx?relid=155129
Appendix 1

ABOUT THE AUTHORS

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Ravi Singhania is the managing partner of Singhania & Partners LLP (established 1999) headquartered in Delhi with branch offices in Hyderabad and Bangalore and associate offices in prominent cities across India.

Ravi has been bestowed with innumerable legal accolades and has been consistently rated as India’s top corporate M&A, dispute resolution, project finance and aviation law expert by Chambers and Partners, The Legal 500, Chambers Asia and Asialaw. He is counted amongst top legal luminaries of India in independent surveys conducted by Lexis Nexis Publications and Indian Corporate Counsels Association.

Ravi is a board member of CRISIL Ltd and Asset Care Enterprise. He is also present on the board of Indian subsidiaries of numerous Fortune 500 companies such as McGraw-Hill, AOL, American Bureau of Shipping and National Instruments.

In his illustrious practice, he has advised on cross-border transactions, compliances under SEBI Takeover Regulations, M&A, investment structuring, corporatisation, debt and equity offering, and dispute resolution. His clients include numerous Fortune 500 companies, domestic and foreign businesses, and public-owned enterprises.

He frequently speaks at national and international conferences and has to his credit a number of publications in reputed legal journals. Ravi is also a governing board member of the Indian Council of Arbitration and a board member of TerraLex Inc, which is a global network of 160 law firms, with more than 15,000 attorneys in 100 countries. His areas of practice are arbitration, M&A, project finance, industry sectors, automotive, defence, food, highways and power.

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