



THE
LAW
DESK

AVIATION LAW COMPENDIUM

PREFACE



Aviation Law is that branch of law that concerns matters related to flights, air travel, and associated legal and business concerns. It is that body of law directly or indirectly concerned with civil aviation. Aviation in this context extends to both heavier than air and lighter than air aircraft. Air-cushion vehicles are not regarded as aircraft by the INTERNATIONAL CIVIL AVIATION ORGANIZATION (ICAO), but the practice of individual states in this regard is not yet settled. The earliest legislation in air law was a 1784 decree of the Paris POLICE forbidding balloon flights without a special permit. 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 the 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. 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. In this compendium, we have discussed different areas in aviation law and aspects covered under it.

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INDIAN AVIATION LEGAL REGIME



The Ministry of Civil Aviation (MoCA) is the nodal ministry which is in charge for the formulation of policy and regulation of civil aviation in India. It oversees the planning and implementation of schemes for the growth and expansion of civil air transport, airport facilities, air traffic services and carriage of passengers and goods by air.

The principal regulatory authorities of the civil aviation industry that are functioning under the authority of MoCA are as follows:

- **DIRECTORATE GENERAL OF CIVIL AVIATION INDIA (DGCA)**

It 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 Organization (ICAO).

- **THE AIRPORT AUTHORITY OF INDIA (AAI)**

It is the principal organization entrusted with the responsibility of creating, upgrading, maintaining and managing civil aviation infrastructure, both on the ground and in the country's airspace. Its responsibilities include passenger services, air navigation services, security services and managing aerodrome facilities.

- **THE AIRPORT ECONOMIC REGULATORY AUTHORITY OF INDIA (AERA)**

It was established in 2008 to regulate tariff for aeronautical services rendered at major airports in India. It also monitors the performance standards of the established airports as set out by the central government or any other body authorized by it.

Based on the field of the activity concerned within the aviation sector, the applicability of regulatory laws may also differ. The law sets out regulations related to different fields in aviation law. It is that branch of law that is related with flights, air travels and associated legal and business concerns.

LEGAL FRAMEWORK UNDER AVIATION LAWS



Main laws related with aviation laws are as follows:-

THE CARRIAGE BY AIR ACT, 1972

This Act embodies the provisions of the Warsaw Convention 1929 and after that India adopted the Montreal Protocol 1999. Section 8 of the Carriage by Air Act, 1972 entails the application of the said Act to carriage by air that is not international.

Applicability

It extends to the entire territory of India and is applicable to the Indian Citizens irrespective of the nationality of the aircraft performing the carriage. The Act applies to carriage performed by State or legally constituted public bodies.

Key Features of the Act

In the contemporary world where the use of air transport is a part of modern life, the safety of people is the primary concern for the aviation industry. The primary feature of this act is that it provides for the strict compensation system and puts the liability on the carrier in case of damage or death of the passenger due to carrier's negligence.

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 in part from its liability.

The Act embodies its principle in first, second and third schedule wherein:

- First Schedule entails the rules regarding the applicability of International carriage of persons, luggage or goods performed by aircraft for reward. They apply also to such carriage when performed graciously by an air transport undertaking.
- The Second Schedule of the Act embodies the rules to apply to all international carriage of persons, baggage or cargo performed by aircraft for reward.
- The Third Schedule of the Act states that the carriage to be performed by

several successive air carriers shall be deemed for the purpose of these rules.

THE AIRCRAFT ACT 1934 AND AIRCRAFT RULES 1937

This act was adopted on 19.08.1934 and the major amendment of this Act is to add the provision of Power of DGCA to issue directions vide amendment in 1972. The objective behind the implementation of this Act is to make better provision for the control the manufacture, possession, use, operation, sale, import and export of Aircraft.

Applicability

It extends to the whole of India, to the citizens of India, to the persons on aircraft registered in India, accounts operated by an Indian firm, but not applicable to military aircrafts.

Key Features of the Act

Section 4 to 10 of this Act empowers the Central Government to make rules such as rules regarding use, operation of account, licensing, aerodrome, air routes, registration and to make rules for investigation and incidents and protecting public health etc. The rule further stipulates the parameters for determining airworthiness, maintenance of aircraft, general conditions for flying and safety, registration of aircraft and the conduct of investigations.

Adjudicating Authority under the Act

Payment of compensation is awarded by the arbitrator appointed by the Central Government under Section 9-B where any person sustains any loss or damage. Appeal from the decision can be made under Section 9-C to the High Court.

THE AIRPORTS AUTHORITY OF INDIA ACT, 1994

The Airports Authority of India Act, 1994 provides for the constitution of the airports authority of India and for the transfer and vesting of the undertakings of the International Airports Authority of India and the National Airports for better administration and cohesive management of airports and civil enclaves whereat air transport services are operated or are intended to be operated and of all aeronautical communication stations for the purposes of establishing or assisting in the establishment of airports and for the matters connected thereto.

Applicability

This Act applies, where air transport services are operated or are intended to

be operated, other than the airports and airfields belonging to, or subject to the control of, any armed force of the Union, all private airports in so far as it relates to provide air traffic service, all civil enclaves, all aeronautical communication stations, and, all training stations, establishments and workshops relating to air transport services.

Adjudicating Authority

The Central Government by virtue of Section 28-I established the tribunal known as Airport Appellate Tribunal to exercise the jurisdiction, powers and authority conferred by it under this act. According to Section 28-L, the Tribunal shall not be bound by the provisions of the Code of Civil Procedure. The Appeals from the Tribunal can be made under Section 28-K.

AIRPORTS ECONOMIC REGULATORY AUTHORITY OF INDIA ACT, 2008

Airport Economic Regulatory Authority (AERA) was set up to regulate the growing competition in the airline industry, and to provide a level playing field among different categories of airports. Under the Act, AERA is responsible for determining the tariff for aeronautical services every five years, the development fee, the passenger service fee.

Before the formulation of AERA, the Airport Authority of India fixed the aeronautical charges for the airports under its control and prescribed performance standards for all airports and monitored them. It determines the tariff for aeronautical services and passenger service fees to monitor performance standards relating to quality, continuity and reliability of service.

Applicability

The Act applies to all airports where air transport services are operated or are intended to be operated, other than airports and airfields belonging to or subject to the control of the Armed forces and Parliamentary forces of the Union, all private airports and leased airports, all civil enclaves and all major airports.

Authority under the Act

Section 3 of the Act states the Establishment of the Authority to be known as Airport Economic Regulatory Authority by the Central Government. Section 13 of the Act embodies the functions of the authority such as to determine the tariff for the aeronautical services, development fee in respect of major airports, determine the amount of the development fee of major airports etc.

THE ANTI -HIJACKING ACT, 2016

The Beijing Protocol, 2010, to which India is a signatory, brought out new offences, enlarging the scope of hijacking, expanding the jurisdiction and strengthening extradition and mutual assistance regimes. The present law has insufficient penalties to deal with these new situations and is not deterrent enough to offenders and therefore, it necessarily covers all aspects of hijacking by offenders and conspirators and to make the law more stringent by award of death penalty for such offences.

Applicability

This Act extends to the whole of India and also applies to any offence thereunder committed outside India by any person. As per Section 7 of the Act, where the offence is committed outside India, the person committing such offence may be dealt as if such offence had been committed at any place within India at which he may be found.

THE SUPPRESSION OF UNLAWFUL ACTS AGAINST SAFETY OF CIVIL AVIATION ACT, 1982

This Act came into force after India signed the Convention for the Suppression of Unlawful Acts against the **Safety of Civil Aviation Act, 1971, at Montreal.**

Applicability

It extends to the whole of India and also some of the offences mentioned under Section 3 of the Act be applied to persons outside India.

Provisions

The Act of 1982 embodies the offences related to committing violence on board an aircraft in flight or destruction of, or damage of air navigation facilities.

Adjudication

According to **Section 5 of the Act** which states Jurisdiction that empowers the court to try the case where the offence has been committed within India or which the person may be found, if the aircraft is registered in India or any other conditions mentioned therein.

Section 5-C of the Act states that the offences can be put to be trial by the Designated Court which as per this Act where the person is accused of committing an offence it will be forwarded to the magistrate.

GOVERNMENTAL BODIES THAT REGULATE AVIATION INDUSTRY AND THEIR POWERS



The following government bodies regulate the aviation industry in India:

- The Ministry of Civil Aviation administers the Aircraft Act and the Aircraft Rules, and various other aviation-related legislations. It is responsible for formulating national policies and programmes that help in developing and regulating the Indian civil aviation sector. It exercises administrative control over entities such as the Directorate General of Civil Aviation (DGCA), the Bureau of Civil Aviation Security (BCAS) and the Airports Authority of India (AAI), and has the authority to enter into air service agreements with other countries.
- The DGCA primarily deals with safety and operational issues. Its role and functions include:
 - Registration of civil aircraft;
 - Formulation of standards of airworthiness for civil aircraft registered in India and granting certificates of airworthiness to such aircraft;
 - Granting air operator certificates to Indian carriers and regulation of air transport services operating to, from, within and over India by Indian and foreign operators, including clearance of scheduled and non-scheduled flights of such operators;
 - Investigating accidents and incidents and taking accident prevention measures, including formulating implementation of safety aviation management programmes;
 - Monitoring aircraft noise and engine emissions and collaborating with the environmental authorities; and
 - Safety oversight of all entities approved, certified or licensed under the Aircraft Rules.
 - Licensing of pilots, aircraft maintenance engineers and flight engineers, and conducting examinations and checks for that purpose.
 - Licensing of air traffic controllers.

- Carrying out amendments to the Aircraft Act, the Aircraft Rules and the Civil Aviation Requirements for complying with the amendments to ICAO Annexes.
- The Bureau of Civil Aviation Security (BCAS) sets and monitors standards and measures with respect to the security of civil flights at international and domestic airports in India for airport and airline operators and security agencies.
- The AAI was formed with a view to accelerate the integrated development, expansion and modernisation of the operational, terminal and cargo facilities at airports in India in conformity with international standards. Its main functions include:
 - the design, development, operation and maintenance of international and domestic airports and civil enclaves;
 - the expansion and strengthening of operation areas (eg, runways, aprons and taxiways);
 - the control and management of Indian airspace extending beyond the territorial limits of the country; and
 - the provision of communication and navigation aids

AVIATION AND CONSUMER DISPUTES



Unlike the law of torts which is not codified in India, there are certain legislations that have been formulated for the protection of interests of consumers. Some of the significant enactments that are aimed at protection of such interests of the consumers include the Sale of Goods Act, 1930, the Drugs and Cosmetics Act, 1940, the Indian Standards Institution (Certification Marks) Act, 1952, the Food Safety and Standards Act, 2006, the Essential Commodities Act, 1955, the legal Metrology Act, 2009, etc.

Similarly, the Consumer Protection Act (CPA), is an Act that provides for effective protection of interests of consumers and as such makes provision for the establishment of consumer councils and other authorities that help in settlement of consumer disputes and matters connected therewith.

The CPA seeks to protect the interests of individual consumers by prescribing specific remedies to make good the loss or damage caused to consumers as a result of unfair practices. The provisions of Consumer Protection Act are often resorted to by the consumers in case of any harm or legal injury caused to them by the practices of Aviation sector. The relevant forums under the CPA act are:

- *District Commission when value of goods or services paid as consideration does not exceed one crore rupees;*
- *State Commission when value of goods or services paid as consideration exceeds one crore rupees but does not exceed ten crore rupees;*
- *National Commission when value of goods or services paid as consideration exceeds ten crore rupees.*
- *Supreme Court (if any person aggrieved by the order of National Commission)*

NOTE: Section 69 of CPA Act, 2019

(1) The District Commission, State Commission or the National Commission shall not entertain any complaint if filed after two years of from the date on which cause of action arise.

(2) Notwithstanding anything contained in sub-section (1), a complaint may be entertained if the Commissions are satisfied that sufficient cause existed for not filing the complaint.

CASE LAW

1. CONSUMER FORUMS ARE COURT AS PER THE CARRIAGE BY AIR ACT

- TRANS MEDITERRANEAN AIRWAYS V. UNIVERSAL EXPORTS & ANR¹.

The use of the word “court” in Rule 29 of the Second Schedule of the CA Act has been borrowed from the Warsaw Convention. We are of the view that the word “court” has not been used in the strict sense in the Convention as has come to be in our procedural law. The word “court” has been employed to mean a body that adjudicates a dispute arising under the provisions of the CP Act. The CP Act gives the District Forums, State Forums and National Commission the power to decide disputes of consumers. The jurisdiction, the power and procedure of these forums are all clearly enumerated by the CP Act. Though, these forums decide matters after following a summary procedure, their main function is still to decide disputes, which is the main function and purpose of a court. We are of the view that for the purpose of the CA Act and the Warsaw Convention, the consumer forums can fall within the meaning of the

EXTENT TO WHICH CONSUMER LEGISLATION IS APPLICABLE

The Consumer Protection Act, 1986 provides that a consumer as defined in **section 2 (d) of the Consumer Act** can file a complaint in relation to a dispute with manufacturer or service provider. A key area regulated by the Consumer Act is deficiency in services provided by the service providers. Service providers such as airline and airports can be covered and have been covered by these provisions.²

The relevant provisions of the Consumer Protection Act which are required to determine the applicability of Consumer Protection Act are Section 3 and Section 21 of the Act which reads as:

“3. Act not in derogation of any other law. – The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

¹Trans Mediterranean Airways v. Universal Exports & Anr, (2011) 10 SCC 316

²Air Deccan (Deccan Aviation Ltd.) v. Dinesh B.V. & Anr., Revision Petition No. 2401 of 2008 (National Consumer Disputes Redressal Commission, New Delhi), Decided on 01.10.2

The Hon'ble Supreme Court while discussing this aspect in the case of **Thirumurgan Coop. Agricultural Credit Society V. M. Lalitha**³ has observed that *"As per Section 3 of the Act, as already stated above, the provisions of the Act shall be in addition to and not in derogation of any other provisions of any other law for the time being in force. Having due regard to the scheme of the Act and purpose sought to be achieved to protect the interest of the consumers better, the provisions are to be interpreted broadly, positively and purposefully in the context of the present case to give meaning to additional/extended jurisdiction, particularly when Section 3 seeks to provide remedy under the Act in addition to other remedies provided under other Acts unless there is a clear bar."*

Further, the definition of 'consumer' in the Consumer Protection Act is apparently wide enough and encompasses within its fold not only the goods but also the services, bought or hired for consideration. The comprehensive definition aims at covering every man who pays money as the price or cost of goods and services. However, by virtue of the definition, the person who obtains goods for resale or for any commercial purpose is excluded, but the services hired for consideration even for commercial purposes are not excluded.⁴

Hence, considering the above factors, the Indian Courts in catena of judgements recognized the applicability of the Consumer Protection Act in cases related to aircraft's liability. While rejecting the contention of the Appellant that the compensation to Complainants has to be determined under the Air Act and not under the Consumer Protection Act the Hon'ble Supreme Court in the case of **Ethiopian Airlines v. Ganesh Narain Sahoo**,⁵ held that "the protection provided under the Act (CPA, 1986) to the consumers is in addition to the remedies available under any other statute. It does not extinguish the remedies under another statute but provides an additional or alternative remedy". Moreover, in a **Trans Mediterranean Airways v. Universal Exports & Another**⁶, that *"the protection provided under the Consumer Protection Act to consumer is in addition to the remedies available under any other statute and does not extinguish the remedies under another statute declared that National Commission for redressal mechanism under the Consumer Protection Act, can be considered a competent court within the territory of a High Contracting party for the purpose of Rule 29 of the Second Schedule to the Carriage Act and the Warsaw Convention"*.

Henceforth, the dispute redressal agency provided for in the Consumer Protection Act will have the jurisdiction to entertain complaints in which claim is for loss or damage of goods entrusted to a carrier.⁷

³Thirumurgan Coop. Agricultural Credit Society v. M. Lalitha, (2004) 1 SCC 305 (India).

⁴Kishore Lal v. ESI Corpn., (2007) 2 SCC (L&S) 1 (India).

⁵Ethiopian Airlines v. Ganesh Narain Sahoo, (2011) 8 SCC 539

⁶Trans Mediterranean Airways v. Universal Exports & Another, (2011) 10 SCC 316 (India).

⁷Patel Roadways Ltd. v. Birla Yamaha Ltd., (2000) 4 SCC 91 (India).

However, in case of *Air France v. O.P. Srivastava*⁸ it was observed that even the consumer courts cannot award compensation beyond the limit prescribed under the Carriage by Air (Amendment) Act. Since the Act is a special law and the Supreme Court has held in many cases that a special law prevails over a general law, the National Consumer Disputes Redressal Commission has made it clear that consumer courts cannot award damages exceeding the limitation placed under the Carriage by Air Act. Hence, provisions of the Carriage by Air Act, being a special Act, must prevail over the Consumer Protection Act and the compensation has to be determined accordingly.

DEFICIENCY OF SERVICES

With the development in civil aviation in the first half of the twentieth century, one of the concerns to emerge early in the field was liability for damage caused to the parties due to the deficiency of services in the transit. Since the aviation sector was in its rudimentary stage of development, mishaps are most likely to happen like loss of baggage, death of passenger etc. In the Indian legal regime, the aircraft liability due to deficiency of services relates to both person and of baggage. The deficiency of service can be in the form of:

- Death of passenger;
- Loss of baggage;
- Cancelling and delay of flights;
- Over boarding of flights.

The terms 'deficiency' and 'service' are not defined under the Indian Aviation regime. However both the terms are defined under **Consumer Protection Act, 1986** wherein 'deficiency' is defined **section 2(1) (g) of the Act**⁹ which reads as "any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service" and **section 2 (42) of the Act defines 'service'**¹⁰ which states that "*service means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, telecom, boarding or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service.*"

⁸Air France v. O.P. Srivastava, 2018 SCC OnLine NCDRC 548 (India).

⁹The Consumer Protection Act, 1986, No. 68, Acts of Parliament, 1986 (India), § 2 (1) (g).

¹⁰The Consumer Protection Act, 1986, No. 68, Acts of Parliament, 2019 (India), § 2.

In relation to the deficiency of service the Hon'ble apex court in case of **Ravneet Singh Bagga v. KLM Royal Dutch Airlines & Another**¹¹ has observed that *"the deficiency of services cannot be alleged without attributing fault, imperfection, shortcoming or inadequacy in the quality, nature of performance which is required to be performed by a person in pursuance to a contract or otherwise in relation to any service. The burden of proving the deficiency in service is upon the person who alleges it". Further, the apex court also observed that "if on facts it is found that the person or authority rendering service had taken all precautions and considered all relevant facts and circumstances in the course of transaction and that the action was in good faith, then it cannot be said that there had been any deficiency in service. The rendering of deficient service has to be considered from the surrounding circumstances and no hard and fast rule can be laid down for determining the deficiency. However, inefficiency, lack of due care, absence of bona-fides, rashness, haste or omission are the like factors to ascertain the deficiency in service".*

The Indian Courts has inclination towards the advantage of the consumer as can be inferred from the apex court case **National Insurance Co. Ltd. v. Hindustan Safety Glass Works Ltd.**¹², wherein it was stated that *"in a dispute concerning a consumer, it is necessary for the Courts to take a pragmatic view of the rights of the consumer principally since it is the consumer who is placed at a disadvantage vis-a-vis the supplier of services or goods."* However, the courts while saving the interests of the airline operator observed that deficiency of services due to factors outside the control and scope of the airline operator, authorities and employees would not make them liable and no compensation cannot be granted to the consumer merely on the grounds of delay or hardship or on grounds of sympathy in such cases.¹³

LIABILITY IN CASE OF DEATH OR INJURY TO PASSENGER

Carrier's liability for passenger death or injury during transportation by air has become a major area of controversy in India. The Carriage by Air Act 1972 dealing with carriers' liability in India incorporates Warsaw Convention, Hague Protocol and Montreal Convention, the instruments ratified by the India.

The Air carriers are liable for death or injury sustained by the passenger during transportation by air is under Section 5 and all three schedule of Carriage by Air Act, 1972¹⁴. While First and Second Schedules refer to death, wounding and bodily injury, the Third Schedule makes a reference only to death and bodily injury. Limits of liability of carrier under the three schedules

¹¹(2000) 1 SCC 66 (India).

¹²National Insurance Co. v. Hindustan Safety Glass Works Ltd., (2017) 5 SCC 776 (India).

¹³Interglobe Aviation Ltd. v. N. Satchidanand, (2011) 7 SCC 463 (India).

¹⁴Rule 17 of First and Second Schedules, and Rule 17(1) of Third Schedule.

are different.

Under First Schedule, the maximum limit of liability for passenger death and injury is fixed at 1,25,000 francs¹⁵. However, there can be a special contract between the passenger and the carrier to increase the limit. In addition, if there is wilful misconduct or a default equivalent to wilful misconduct by the carrier which causes the damage, the limit of liability is lifted to expose the carrier to unlimited liability¹⁶. Second Schedule increases the limit of liability for passenger death or injury to 2,50,000 francs.¹⁷ Similar to First Schedule, the limit can be increased by a special contract. Finally, an intentional act or omission of the carrier to cause damage or his reckless act or omission with the knowledge that damage would probably result would lift the limit of liability of carrier, if the damage is resulting from such act or omission.¹⁸

Third Schedule introduces a different scheme of liability consisting of two tiers. Under the first tier, carrier is strictly liable up to 1, 00,000 SDR¹⁹. He cannot avail the defences or limits of liability except the defence of contributory negligence of the victim.²⁰ Under the second tier, carrier is liable over and above 1, 00,000 SDR on the basis of fault liability. If the carrier wants to escape liability under the second tier, he has to prove either the absence of negligence or other wrongful act or omission on his part, or that the damage is solely caused by third party's negligence or other wrongful act or omission²¹. Contributory negligence of the victim stands as a defence available to the carrier under all three schedules regarding passenger death or injury.²² This defence has got the effect of either complete or partial exoneration from liability depending on the extent of contributory negligence.

In addition, First and Second Schedules provide the defence of taking all necessary measures to avoid damage or impossibility of taking such measures by the carrier, which is not available under Third Schedule in case of passenger death or injury.

Jurisdictional Concerns

The First and Second Schedules provide four jurisdictions in which the plaintiff can file a case seeking compensation. The jurisdictions include the ordinary residence of the carrier, principal place of business of the carrier, place of business of the carrier wherein the contract of carriage is made and the place of destination²⁴.

¹⁵Rule 22 (1), First Schedule

¹⁶Rule 25 (1), First Schedule

¹⁷Rule 22 (1), Second Schedule

¹⁸Rule 25 (1), Second Schedule

¹⁹Rule 21 (1), Third Schedule

²⁰Rule 20, Third Schedule

²¹Rule 21 (2), Third Schedule

²²Rule 21 First and Second Schedule and Rule 20 Third Schedule

²³Rule 20(1) First Schedule and Rule 20 Second Schedule

²⁴Rule 28, First Schedule and Rule 29 (1), Second Schedule

The Third Schedule adds fifth jurisdiction in the form of place of principal and permanent residence of the plaintiff to or from which the carrier operates services for the carriage of passengers by air²⁵. The fifth jurisdiction under Third Schedule gives due consideration to victims' interest by allowing the victims to choose the most advantageous jurisdiction of their own respective State²⁶. It is of added advantage to those victims and their families who are handicapped to move out of their country to seek compensation from carriers. This would ensure that Indian residents can claim in the Indian courts against any airline as long as such journey is ratified by the Convention.

Consumer Forums

Another question that has arisen on the jurisdiction under the Carriage by Air Act is, whether the consumer forums are courts of competent jurisdiction under the Act to entertain the cases? In other words, the question is about the possible overlap between the Consumer Protection Act and Carriage by Air Act²⁷. This question was contested in many cases, finally reaching the Supreme Court for determination in **Trans Mediterranean Airways v. M/s. Universal Exports and Another**²⁸. While answering the question in affirmative, the Supreme Court held that "**Section 3 of the Consumer Protection Act**²⁹ gives an additional remedy for deficiency of service and that remedy is not in derogation of any other remedy under any other law." Thus, the consumer forums are the courts of competent jurisdiction under Carriage by Air Act.

However, by virtue of Section 5 of **Carriage by Air Act**³⁰, the above logic is not applicable in case of death of the passengers' consequent to aviation accidents. Section 5 has the effect of excluding the liability of carrier for death under the Fatal Accidents Act 1855 and any other enactment or rule of law in force in India except the three schedules of Carriage by Air Act. Hence, the consumer forums are not competent to deal with the cases involving the death of passengers.

Computation of Compensation

International instruments on carriers' liability do not provide guidelines for computation of compensation for passenger death or injury. In general liability cases, domestic courts have a more or less uniform policy of calculating the amount of compensation by considering multiple factors like, age, income, earning capacity, family status, loss of future prospects etc. of the plaintiff.

²⁵Rule 33 (2), Third Schedule

²⁶Devendra Pradhan, The Fifth Jurisdiction under the Montreal Liability Convention: Wandering American or Wandering Everybody?, 68(4) J. AIR L. & COM. 717, 720 (2003).

²⁷Bharat S. Modi v. British Airways, 2001 SCC OnLine NCDRC 23 (India).

²⁸Trans Mediterranean Airways v. M/s. Universal Exports and Another, (2011) 10 SCC 316 (India).

²⁹The Consumer Protection Act, 1986, No. 68, Acts of Parliament, 1986 (India), § 3.

The Hon'ble apex court while analysing the nature of aircraft's liability in case of **Patel Roadways Limited v. Birla Yamaha Ltd.**,³¹ held that *"the liability of a carrier in India is like that of an insurer and is an absolute liability subject to an Act of God and a special contract which the carrier may choose to enter with a customer. In this regard, the specifically provides that in case of claim of damage or loss to or deterioration of goods entrusted to a carrier, it is not necessary for the plaintiff to establish negligence. It was further held that even assuming that the general principle in cases of tortious liability is that of the party who alleges negligence against the other must prove the same, the said principle has no application to cover the case under the Carriers Act."*

In the event of an Airplane crash the liability of the Airways is for the injury and death of the passengers. However, the term 'passenger' is not defined under the Carriage by Air Act and not in any other relevant acts and rules. The term passenger was defined widely in the case of **Namrata Singh v. Director General Civil Aviation**³², where the Hon'ble Court observed that *"the ordinary meaning of the word passenger, should apply. In common parlance, when a person says that a vehicle is a four passenger car, it include not only those who are carried but also the operator of the vehicle. In other words, both the occupants as well as the operator of the vehicle are compendiously included under the term "passenger". There is nothing in the 1972 Act, which would have me hold, that the word "passenger", should be given a restricted meaning".* Hence, unless expressly excluded by the statute, the word "passenger" ought to include all those who are on board the aircraft i.e. travellers, crew, pilots and other operators on board.

Further, in case of **Air France v. O.P. Srivastava**³³, the National Consumer Dispute Redressal Commission laid down the list of illustrative broad factors which may be considered while scrutinizing claims for compensation/damages include:

- (a) *"Background of the parties, both the injured and the negligent or defaulting party;*
- (b) *The degree of negligence or these verity of the defaulting act that caused the injury to the complainants;*
- (c) *The degree of proximity or causation of defaulting acts resulting in the injury; and*
- (d) *Consideration of alternative modes of redressal of the Complainant's grievance like restitution, general and specific damages, other means of non -monetary compensation, etc."*

³¹(2000) 4 SCC 91

³²Namrata Singh v. Director General Civil Aviation, 2016 SCC OnLine Del 477 (India).

³³Air France v. O.P. Srivastava, 2018 SCC OnLine NCDRC 548 (India).

For the assessment of compensation as the Hon'ble apex court in the case of **Sarla Verma v. Delhi Transport Corporation**³⁴ observed that *"the Court is required to consider not only the income which the deceased was earning on the date of the accident, but the Court is also required to ascertain what would have been the future income of the deceased had he not lost his life in the accident in question."* For such assessment the apex court after considering the leading judgements has prepared a table for determining the income multiplier. The multiplier table made by the apex court is:

AGE OF THE DECEASED	MULTIPLIER SCALE
Up to 15 years	-
15 to 20 years	18
21 to 25 years	18
26 to 30 years	17
31 to 35 years	16
36 to 40 years	15
41 to 45 years	14
46 to 50 years	13
51 to 55 years	11
56 to 60 years	09
61 to 65 years	09
Above 65 years	05

Thus , the determination of the quantum must answer what contemporary society "would deem to be a fair sum such as would allow the wrongdoer to hold up his head among his neighbours and say with their approval that he has done the fair thing". The amount awarded must not be niggardly since the "law values life and limb in a free society in generous scales".³⁵ Further,

³⁴Sarla Verma v. Delhi Transport Corporation, (2009) 6 SCC 121(India).

³⁵General Manager, Kerela State Road Transport Corporation v. Susamma Thomas & Others, (1994) 2 SCC 176 (India).

the apex court in the case of **United Insurance Co. Ltd. v. Satinder Kaur @Satwinder Kaur & Ors .**,³⁶ observed that *"loss of love and affection cannot be a separate head for compensation"*. All this means that the sum awarded must be fair and reasonable by accepted legal standards.

Further in case of **S. Abdul Salem v. Union of India**³⁷, while declaring that in the event of death of the passenger the Carrier cannot limit its liability upto a limit of one lakh SDR as provided under the Act for no fault liability and ruled that it will be for the claimants to substantiate the position as to have higher amounts and it will, of course, be open to the Carrier as well, to put forth their defence as to the absence of negligence and the lack of liability to pay any amount over and above 'One lakh SDR'.

Persons Entitled to Claim

Section 5 of the Carriage by Air Act, 1972 provides the family members of deceased Right to claim compensation. With respect to the question who should be included in the term family members, the Hon'ble Court in the case of **Indian Airlines Corp. now as National Aviation Co. Ltd. v. Manubhai Ranchodbhai Patel**³⁸ observed that *"The expression "member of a family" has been defined in the explanation as spouse, wife or husband, parent, grand-parent, brother, sister, half-brother, half-sister, child, step-child and grandchild. But, the in-laws i.e. father-in-law or the mother-in-law of the deceased passenger are not included in the definition of expression "member of a family"*.

Set-off of Compensation from Personal Insurance

In **Kandimallan Bharathi Devi and Others v. The General Insurance Corporation of India**³⁹, the Andhra Pradesh High Court had to decide on the question, whether the benefit received out of the personal accident insurance policy has to be set-off in computing the compensation under the Carriage by Air Act? The Hon'ble Court *"While answering this question in negative, ruled that compensation under Rule 22 (1) is the minimum compensation in case of death subject to the higher limit under special contract between the carrier 38 and passenger. Hence, the Court did not base the computation of compensation for death on any extrinsic factor, rather went by the logic that death of passenger, irrespective of his/her status, would result in reaching the full limit of compensation set forth under Rule.*

³⁶United Insurance Co. Ltd. v. Satinder kaur & Others, 2014 SCC OnLine 1787 (India).

³⁷S. Abdul Salem v. Union of India, 2011 SCC OnLine Ker 1880 (India).

³⁸Indian Airlines Corp. now as National Aviation Co. Ltd. v. Manubhai Ranchodbhai Patel, 2009 SCC OnLine Guj 9765 (India).

³⁹Kandimallan Bharathi Devi and Others v. The General Insurance Corporation of India, AIR 1988 AP

LOSS OF BAGGAGE

Carriage by Air Act regulates both carriage of person and carriage of baggage. In case of baggage, the Act imposes liability for both registered (checked) and unregistered baggage (unchecked). Respective Schedules of the Act prescribe different amount of compensation payable in case of loss, destruction and damage to the baggage. A carrier can be made to pay compensation on the ground of actual loss in case of wilful misconduct⁴⁰ and intentional recklessness⁴¹.

Carriage of Baggage

India is a party to the Hague Protocol and the Montreal Convention, which set out airlines' liabilities. An airline is liable for damages sustained because of loss, damage, or destruction of any registered luggage or any goods, if the damage so sustained took place during the carriage by air. Passengers usually file complaints under the Consumer Protection Act 1986 on the ground of 'deficiency of service' for cases ranging from delayed flights and lost baggage to death.

Baggage Check

Carrier must deliver baggage ticket for registered baggage. The requirement of making separate baggage ticket is mandatory only under First Schedule while, under Second and Third Schedule baggage ticket may be combined with a passenger ticket as per Rule 4(1). So, now a single baggage ticket with all information regarding liability for passenger and his baggage can be issued. Baggage ticket is only required for registered luggage which carrier takes into his custody for transportation. Personal objects carried by a passenger do not need such tickets.

Relevant Laws

- Carriage by Air Act, 1972
- Consumer Protection Act, 2019
- Indian Contract Act, 1872

The liability of the air carrier in relation to the baggage is mentioned under three schedules of the special act i.e. **Carriage by Air Act, 1972**. Before discussing, the specific provisions relating to air carrier liability, it is relevant to note that it is the obligation of the air carrier to issue a baggage ticket for

⁴⁰Rule 25, First Schedule.

⁴¹Rule 25, Second Schedule

charge by the carrier.⁴² The relevant provisions mentioned under different schedules relating to the aircraft's liability are as follows:

First Schedule

- **Rule 18(1) of the First schedule** imposes liability upon the aircraft carrier in the event of the destruction, loss or damage to any registered luggage or where damage was sustained during the carriage by air. The carriage by air means the period during which the luggage or goods are in charge of the carrier, whether in aerodrome, on board or in case of landing outside the board⁴³;
- **As per Rule 22 (2) of the First schedule**, the liability of the carrier in relation to the registered luggage or goods is limited to sum of 250 francs per kilogram. However, upon a declaration by the passenger, the compensation will be payable as per the declared sum.
- **As per Rule 22 (3) of the First schedule**, the liability of the carrier for personal baggage taken charge by passenger himself i.e. unchecked baggage is 5000 francs.

Second Schedule

- **Rule 18(1) of the Second schedule** imposes liability upon the aircraft carrier in the event of the destruction, loss or damage to any registered luggage or where damage was sustained during the carriage by air.
- **As per Rule 22 (2)(a) of the First schedule**, the liability of the carrier in relation to the registered luggage or goods is limited to sum of 250 francs per kilogram. However, upon a declaration by the passenger, the compensation will be payable as per the declared sum.
- **As per Rule 22 (3) of the First schedule**, the liability of the carrier for personal baggage taken charge by passenger himself i.e. unchecked baggage is 5000 francs.

Third Schedule

- **Rule 17(2) of the Third schedule**, imposes liability on the air carrier for registered baggage and cargo. Rule states that the carrier shall be liable for loss or destruction of baggage during period within which the checked baggage was in the charge of the carrier. However, in case of checked baggage carrier shall not be liable if the damage is caused due to the inherent defect or quality of baggage. Further, In case of unchecked baggage the carrier is liable only if the damage results from its faults or that of its servants.

⁴²Rule 4(1) of First and Second Schedule

⁴³Rule 18 (2) Second Schedule

- Third Schedule does not quantify compensation separately for unchecked baggage.
- **Rule 22(2) of the Third Schedule**, declares the liability of the carrier in the case of destruction, loss, or damage of baggage shall be limited to **one thousand Special Drawing Rights** for each passenger unless the passenger has made a special declaration of interest in delivery at destination and has paid a supplementary sum, if so required. 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 passenger's actual interest in delivery at destination.
However, 2016 amendment to the third schedule has increased the liability of carrier to 1131 Special Drawing Rights for baggage.

Note: Rule 1(2) of the Third Schedule defines baggage wherein it is clearly stated that the term 'baggage' includes both checked baggage and unchecked baggage.

The Schedules fail to address problems arising in case of multiple carriers. Each carrier has its own norms on carriage of personal luggage. Say, Air India allows 23 Kg of luggage during air travel while successive air carrier allows only 20 kg. The difference, i.e. 3 kg is not treated as registered baggage. Either passenger will have to pay extra charges or leave his baggage. This situation is mental harassment and monetary loss to the passenger. Air carrier gains through extra charging. In case, passenger wants to insure his luggage, it will be even more problematic.

Further, The Third Schedule makes no mention of any declaration of value of unchecked baggage. It is quite possible that a passenger might want to insure it. In such cases, the passenger has no remedy beyond the prescribed limits. As of now, there is no clarity as to whether unchecked baggage would be treated as registered baggage in case of a special declaration being made. The problem can be further aggravated if the damage is only to the unchecked baggage. This becomes even murkier as in case of damage to unchecked baggage, as per Third Schedule, passenger has to prove that his unchecked personal baggage was damaged due to fault of air carrier or its servant or agents⁴⁴.

Liability for checked baggage: Limited Liability

The Act envisages two-tier liability of the carrier- limited and unlimited liability. First and Second Schedule under Rule 22 (2) and 22 (2) (a) respectively prescribe compensation of 250 francs/KG. As per Rule 22 of the First and Second Schedule, the weight of the registered baggage or luggage will be taken into consideration.

⁴⁴Rule 17(2), Third Schedule

But as already mentioned under the third Schedule the liability is not calculated per franc/kg but is limited to per person. The air carrier's liability for baggage under the Third Schedule has been increased to 1134 SDR by the 2016 amendment.

According to Indian courts, the liability of air carriers under First and Second Schedule is absolute and uniformly applicable as per weight of the baggage irrespective of its content. Interpretation of Third Schedule is unclear since compensation is per passenger.

Case Laws

1. SPECIAL VALUE DECLARATION

- **Air India Limited v. Arvind Pandalai**⁴⁵

Consumer Forum held that unless there is a contract between the parties to indemnify loss by declaring value of the contents of baggage and air carrier agrees to the liability, air carrier is not liable to indemnify loss of contents of the baggage claimed by the passengers/ consigner. If air carrier starts compensating passengers as to the actual value of the contents of the registered baggage which are tampered with or lost then the contractual obligation would stand wiped out and everybody would start claiming compensation.

- **Ajay Khanna v. Luftansa German Airlines**⁴⁶

Consumer Forum held that if consumer declares value of the baggage and intimates the service provider, service provider is liable to pay the declared amount. However, in the absence of any intimation, liability of carrier is limited as per Rules of Carriage by Air Act.

- **Air Deccan v. K. Venkata Swamy**

Unless value is declared, court will calculate damage/compensation as per respective Schedules.

- **G.N. Gauhar v. The International Airlines of Emirates**⁴⁷

Consumer Forum held that, even in case of willful misconduct of employees, passenger will not get actual compensation in the absence of value declaration. This is because there was no contract between the parties at the time of booking of the baggage. If it is allowed, passenger can claim exorbitant compensation giving frivolous list of valuables.

⁴⁵Air India Limited v. Arvind Pandalai, 2015 SCC OnLine NCDRC 1252 (India).

⁴⁶Complaint Case No. C-52/2000, Date of Decision: 02-09-2008, Para 18, 15.

⁴⁷State Consumer Forum, First appeal, 856/2006, Date of decision 31, January 2007, Para 4.

2. RULE OF LIMITED LIABILITY

- **Gargi Parsai v. K.L.M Royal Dutch Airlines**

A case before Delhi State Commission where the complainant made a claim for US \$ 2400 (equivalent to Rs.72000) for loss of one suitcase and damage to the other, Airlines offered only US \$ 360 @ US \$ 20 per kilogram for 18 kilograms weight of the suitcase on the basis of its limited liability. Reference is made to the provisions of the CA Act. It was submitted that the case was governed by rule 22(2) of the Second Schedule to the CA Act which lays down the general rule applicable in all cases where special declaration is not made and extra payment is not made at the time of checking in.

It was observed that the case is governed by Rule 22(2) which lays down the general rule applicable in all cases where special declaration is not made and extra payment is not made at the time of checking in and as the complainant made no declaration regarding the contents of the suitcase nor paid any extra amount in terms of Rule 22(2); the burden of proving the exception is on the complainant and the same has not been discharged under Rule 25 i.e. damage or loss due to airline faults or its servants and therefore the rule of Limited Liability being statutory in character and is binding on the parties. Further, carrier's liability being limited was an essential condition of the contract as it was one of the terms of printed on the jacket of the ticket.

- **M/S. Srilankan Airlines Ltd v. Permanent Lok Adalat**⁴⁸

The Hon'ble High Court in this case observed that the Rule of limited liability shall prevail in case no special declaration has been made by the passenger and the ingredients of Rule 25 of Second Schedule i.e. fault on part of airlines or their servant is proved.

- **Ajay Khanna v. Luftansa German Airlines**⁴⁹

Consumer Forum held that "liability of airlines to make payment of loss of baggage or delayed delivery of baggage under the Carriage by Air Act is limited liability and uniformly applicable".

- **Rajeev Malik v. M/S. KLM Royal Dutch Airlines**⁵⁰

NCDRC held that the liability of the carrier is restricted under Rule 22(2) of Third Schedule unless it falls under Rule 22(5) of Third Schedule. Rule 22(5) removes restriction on liability, if damage occurs due to carrier's intention to cause damage or perform its acts recklessly.

⁴⁸M/S. Srilankan Airlines Ltd v. Permanent Lok Adalat, MANU/KE/0688/2009 (India).

⁴⁹Complaint Case No. C-52/2000, Date of Decision: 02-09-2008, Para 18, 15.

⁵⁰Rajeev Malik v. M/S KLM Royal Dutch Airlines, MANU/CF/0624/2016,

3. ACTUAL LOSS ENTERTAINED EVEN WITHOUT MAKING SPECIAL DECLARATION

Note: These cases should be treated as exceptions and are applicable only in cases where the carrier has been grossly negligent and did not rebut the allegations of passenger.

- **B.Chandramaouleswara Rao And v. M/S. British Airways**

Actual compensation was awarded to passenger for missing registered baggage. The baggage was misplaced by air carrier on arrival so passenger requested that baggage to be delivered at Hyderabad. The baggage was found after two months and passenger was asked to collect the same from Mumbai airport. Meanwhile, Mumbai airport disposed of the baggage by auction without giving any notice or explanation to passenger. State consumer forum termed the act as “sheer negligence or callousness” and awarded Rs. 2, 89,400 as claimed by passenger. It was held that if the baggage was missing during transit, applicable liability of air carrier would be as per Second Schedule but in this case, the whole act amounted to negligence and deficiency of service.

- **Indian Airlines Ltd. v. Prakrithi Shetty⁵¹**

Facts: Passenger was traveling from Bangalore to Bombay and handover her baggage to air carrier at Bangalore airport. The baggage was missing at Bombay airport and once found, the passenger got to know that the baggage was tampered with. The suitcase was unlocked and zip of the sky bag has been torn off. A gold necklace, 2 ear rings, a finger ring, a bracelet, a ‘Mangalsutra chain’, two sarees, two T shirts, a canon camera and a pair of sandals were found missing. Air carrier employees were present when passenger was checking her luggage and a written complaint was given along with list of missing articles.

Observations: National Consumer Commission while upholding order of State Commission held that air carrier admitted that baggage was kept duly sealed before they were loaded to flight. If it is true, air carrier had to explain how it was damaged and tampered with. Records showed that Airlines staffs tampered with suitcase, broke open the lock and torn baggage resulted in pilferage²¹. In this case, air carrier did not contest the items which were missing; air carrier could not prove absence of negligence and did not give any evidence or counter evidence. Reasonable compensation was awarded in place of actual compensation since the passenger was also found to be at fault.

⁵¹Indian Airlines Ltd. v. Prakrithi Shetty, MANU/CF/0244/2007

- **Emirates Airline v. Mr. Jacob T Fernandez**⁵²

In this case actual damage was awarded to the passenger and the consumer forum observed that “Where there has been capricious or arbitrary or negligent exercise or non-exercise of power by an officer of the authority, the Forum has a statutory obligation to award compensation”. In this particular case passenger was entitled to be compensated for consequential loss which he incurred on failure of the air carrier to deliver the bags.

4. LIABILITY FOR LOSS OF BAGGAGE IS A SEPARATE LIABILITY

- **Alok Tandon v. Scandinavian Airlines System**⁵³

Commission observed that “Liability under Carriage by Air Act is limited liability and informally applicable as per weight of the baggage irrespective of valuables while the liability arising out of deficiency in service such as non-delivery, miss delivery or pilfered delivery is in addition to the limited liability remedy”.

5. LESS COMPENSATION DEMANDED THAN ENTITLED TO MORE

- **B.P. Maiti v. Air India**⁵⁴

In the present case, the Complainant was entitled to a total sum of Rs. 65,300 as compensation towards the loss of luggage when calculated from provisions of Carriage by Air Act. But the complainant only claimed Rs. 18,130, thereby entitled to Rs. 18,130 as it represents the actual amount of loss suffered by the Complainant for the loss of baggage.

- **C. Jagan Mohan v. Air Port Manager**⁵⁵

The above principle was reiterated in the present case that the Complainant is entitled to the demanded sum i.e. lesser sum irrespective of the higher sum as ascertained from the provisions of Carriage by Air

Liability for checked baggage: Unlimited Liability/ Second-tier Liability

Rule 25 of First and Second Schedule and Rule 22 (5) of Third Schedule provides the situations where second-tier liability is applicable. Second tier

⁵²Goa State Consumer Forum F.A No 19/2013, Date of order 8 October, 2013 . Para 7.

⁵³Delhi State Consumer Forum , Complaint no C-255/2002, Date of decision 22/09/2008, Para 5.

⁵⁴B.P. Maiti v. Union of India, (1993) 3 AP LJ 23(CC)(AP)

⁵⁵C. Jagan Mohan v. Air Port Manager(1993) 3 AP LJ 38(CC)(AP).

liability refers to these situations, wherein the air carrier is unable to take advantage of limits of liability. Under second-tier liability, air carrier has to compensate the actual loss to passengers and is applicable in the following circumstances: -

- Rule 25 of the First Schedule: If damage is caused by wilful misconduct of air carrier or by his agent;
- Rule 25 of the Second Schedule: If damage is caused by an air carrier or agent/s with intentional recklessness;
- Rule 4(4) of the First Schedule: Accepting baggage without baggage ticket, or not mentioning number of passenger ticket, number & weight of baggage and statement of rule relating to liability;
- Rule 4(2) of the Second Schedule: Accepting baggage without baggage ticket, or not mentioning number of passenger ticket, number & weight of baggage and statement of rule relating to liability;
- Rule 22(5) of the Third Schedule: Limit on liability will not be applicable if it is proved that "damage resulted from an act or omission of the carrier, its servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result"; and
- Where Carriage by Air Act does not apply.

Case laws

Helen Wallia v. Cathay Pacific Airways Ltd⁵⁶

National Consumer Forum held that limitation of liability for checked baggage will not apply if damage is done with intent to cause damage or recklessly and with knowledge that damage would probably result.

Specific Claim for Unlimited Liability

Air India Ltd v. India Everbright Shipping⁵⁷

For claiming unlimited liability, passenger has to specifically allege about loss or damage of baggage due to wilful negligence or recklessness of the carrier or its agent even if it is admitted by the air carrier.

⁵⁶Helen Wallia v. Cathay Pacific Airways Ltd., MANU/CF/0210/2001.

⁵⁷The Manager, Air India Ltd. v. M/S. India Everbright Shipping & Trading Co., 2001 SCC OnLine NCDRC 1 (India).

Notice of Claim For Loss and Damage to Luggage

In case of loss, damage or delay to baggage, passenger has to make a complaint to the carrier. **Rule 26 (2) of First Schedule, Rule 27 (2) of Second Schedule and Rule 31 (2) of Third Schedule** prescribe the limitation period within which complaint has to be made. **Rule 26 (3), Rule 27(3) and Rule 31 (3) of the First, Second and Third Schedule** respectively prescribe the manner in which complaint should be made.

All the three Schedules presume that delivery of goods and baggage is done in good condition in accordance with the document of carriage unless a complaint is made by the passenger or consigner⁵⁸. Second and Third Schedule specially mention that without complaint, it is prima facie evidence that at delivery, goods were in good condition and the same can be proved by the air carrier by showing of receipt or any document regarding delivery of goods by air carrier to the passenger.

As per the First Schedule, the following are the notice period:

- In case of damage to luggage – as soon as passenger discovers damage or within three days of receiving luggage.
- In case of delay of luggage – within 14 days from date on which luggage have been placed at his disposal.

As per the First Schedule, the following are the notice period:

- In case of damage to luggage – as soon as person discovers the damage or within seven days of receiving luggage.

The Act provides that notice for damage or **delay has to be in writing**. Usually, passenger will be filing a complaint as soon as loss, damage or delay of baggage comes to his notice. In **Indian Airlines Ltd. v. Prakrithi Shetty⁵⁹ and B.Chandramaouleswara Rao And v. M/S. British Airways**, it was held that while filing complaint, it would be appropriate to give list of articles contained in the baggage since in case of wilful misconduct or recklessness, compensation can be calculated as per the list of articles in the baggage.

Exoneration of Liability

Air carrier can claim exoneration from liability in certain circumstances. Express provisions excluding liability are provided under:

⁵⁸Rule 26 (1), 27 (1) and Rule 31 (1) of the first, second and third schedule respectively

⁵⁹Indian Airlines Ltd. v. Prakrithi Shetty, MANU/CF/0244/2007

First Schedule

- **Rule 20(1) states that** the carrier is not liable if he proves that he and his agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures.
- **Rule 20(2) states that** in the carriage of goods and luggage the carrier is not liable if he proves that the damage was occasioned by negligent pilotage or negligence in the handling of the aircraft or in navigation and that, in all other respects, he and his agents have taken all necessary measures to avoid the damage.
- **Rule 21 states that** if the carrier proves that the damage was caused by or contributed to by the negligence of the injured person the Court may exonerate the carrier wholly or partly from his liability.

Second Schedule

- **Rule 20 of the Second Schedule states that** the carrier is not liable if he proves that he and his servants or agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures.
- **Rule 21 of the Second Schedule states that** if the carrier proves that the damage was caused by or contributed to by the negligence of the injured person the Court may, in accordance with the provisions of its own law, exonerate the carrier wholly or partly from his liability.

Third Schedule

- **Rule 19 of the Third Schedule states that** the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.
- **Rule 20 of the Third Schedule states that** if the carrier proves that the damages was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he or she derives his or her rights, the carrier shall be wholly or partly exonerated from its liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage.

Case Laws

1. Force Majeure

- **Air India v. Suganda Ravi Mashelkar**⁶⁰

In this case, air carrier had asked for extension of time to find out papers concerning transportation of baggage. The papers were untraceable due to Gulf War. National Commission held air carrier not liable due to force majeure.

- **M/S Interglobe Aviation Ltd v. N. Satchidanand**⁶¹

The Hon'ble Supreme Court in this case affirmed that in case of extraordinary circumstances such as natural disaster, civil war, insurrection, riot, flood, explosion, government regulation or order affecting aircraft, strikes and labour disputes causing cessation, air carrier is not liable.

2. Burden of Proof

- **Surya Pharmaceutical Ltd. v. Air India Limited**⁶²

In this case it was held that for claiming exoneration of liability, burden on proof is on air carrier.

3. Contributory Negligence

- **Sudhir Kumar Rana v. Surinder Singh & Ors.**⁶³

The Hon'ble Supreme Court in this case held that "A contributory negligence may be defined as negligence in not avoiding the consequences arising from the negligence of some other person, when means and opportunity are afforded to do so".

- **Union of India v. United India Insurance Co. Ltd**⁶⁴

The Hon'ble Supreme Court has held that the principle of contributory negligence is confined to the actual negligence of the plaintiff or of his agents. It means contributory negligence is matter of fact. Rule 21 of First and Second Schedule provide that court may exonerate carrier if carrier proves that damage was caused or contributed by the injured person. Rule 21 of First and Second Schedule does not mention about baggage. However, scholars suggest that it may apply in all cases of carriage of person, baggage and goods.

⁶⁰Air India v. Suganda Ravi Mashelkar, 1992 SCC OnLine Del 501 (India).

⁶¹M/S Interglobe Aviation Ltd v. N. Satchidanand, (2011) 7 SCC 463 (India).

⁶²Surya Pharmaceutical Ltd. v. Air India Limited, 2008 SCC OnLine Del 943 (India).

⁶³Sudhir Kumar Rana v. Surinder Singh & Ors, AIR 2008 SC 2405 (India).

⁶⁴Union of India v. United Insurance Co. Ltd., (1997) 8 SCC 683 (India).

4. Not mentioning value of Articles as a Defence.

- **Pradeep Kumar Mathur v. Spice jet Limited**⁶⁵

The State Commission in this case despite recklessness of the air carrier, upheld orders of district forum and only Rs. 3000 compensation was granted on the basis of contributory negligence as complainant had not mentioned value of the articles of the baggage in the baggage irregularity report. Thus, not mentioning value of the baggage can be one of the defences towards contributory negligence. Carrier will also be exonerated in case of passenger's sole fault/negligence. Say, passenger is carrying something which is not permissible under law and is seized by authority; passenger cannot claim compensation from carrier.

Note: Compensation to be in Indian Rupees

- **Gururaj Joshi v. Gulf Air Co. & Anr.**⁶⁶

In this case grievance of the petitioner-complainant was that he does not want Indian rupees and rather gold or French francs as per the Warsaw Convention incorporated in the Carriage by Air Act, 1972. The Commission observed that we are unable to appreciate this submission that he should either be given gold or paid French francs or even the US dollar. He has to be compensated in terms of Indian rupees.

ACQUISITION, RETENTION, USE AND LOSS OF PASSENGER DATA

India does not currently have a separate data protection law. Until the Personal Data Protection Bill comes into force, following laws and rules shall be applicable to the aviation sector with regards to the personal data of the

- (a) The Information Technology Act, 2000 (IT Act); and
- (b) IT (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules 2011 (SPD Rules).
- (c) IT (The Indian Computer Emergency Response Team and Manner of Performing Functions and Duties) Rules, 2013

The transfer of personal data is currently governed by the SPD Rules which were issued under section **43A (Compensation for Failure of Protecting Data)** of IT Act. Sec. 43A holds a body corporate liable for compensation for

⁶⁵AP. State commission, F.A.No. 220 OF 2013, decided on 1 August 2013, Para 6,15.

⁶⁶Gururaj Joshi v. Gulf Air Co. & Anr, 2003 SCC OnLine NCRDC 28 (India).

any negligence in implementing and maintaining reasonable security practices and procedures. **Section 43A explicitly defines** the following for the purpose of aforesaid rules:

- (a) Body corporate;
- (b) Reasonable security practices and procedures; and
- (c) Sensitive personal data or information.

Under the **SPD Rules**, various conditions such as consent requirement, lawful purpose, purpose limitation, subsequent withdrawal of Consent, etc. have been imposed on the body corporate collecting such information.

SPD Rules mandate prior consent of the provider of the information while disclosing sensitive personal data to a third party. Transfer of sensitive personal data outside India is permitted under the same level of data protection which is applicable to body corporate under the SPD Rules.

The **IT (The Indian Computer Emergency Response Team and Manner of Performing Functions and Duties) Rules, 2013** are applied in cases of loss of data by the carrier/airline due to data breach related issues. It imposes an obligation on all corporate entities, including airlines, to notify the Indian Computer Emergency Response Team in case of a cyber security breach.

Adjudicating Authority

Under Section 46 of IT Act, 2000, disputes under IT Act and relevant rules, where the claim for injury or damage does not exceed Rs.5 Crore, shall be adjudicated by adjudicating officer appointed by the central government. Every adjudicating officer shall have the powers of a civil court which are conferred on the Appellate Tribunal under section 58(2) of the IT Act.

In the cases of disputes, where the claim for injury or damage exceeds Rs.5 Crore, the power to adjudicate such dispute shall vest with the competent court.

The Telecom Disputes Settlement and Appellate Tribunal established under Section 14 of the Telecom Regulatory Authority of India Act, 1997 shall be the Appellate Tribunal for the purposes of the disputes arising under this the IT Act and relevant Rules; and the said Appellate Tribunal shall exercise the jurisdiction, powers and authority conferred on it by or under the IT Act.

DENIAL OF BOARDING RIGHTS, CANCELLATION OF FLIGHTS AND DELAY IN DEPARTURE AND ARRIVAL OF FLIGHTS

Civil Aviation Requirements (CAR) issued by DGCA deals with the issues arising from denial of boarding rights, cancellation of flights and delay in departure and arrival of flights. CAR's **Section 3, Series M Part IV- (Facilities to be provided to the passengers by airlines due to denied boarding, cancellation of flights and delay in flights)**, comes into action in the cases involving abovementioned issues.

Denied Boarding

The CAR's Section 3, Series M Part IV provides for the refund of the ticket fare amount and compensation in the event of denied boarding, even though the passenger has been given a confirmed booking for travel on the flight and has checked in for the flight well within the specified time ahead of the departure of the flight.

In the case of overbooked flights, the airline may ask the passengers to voluntarily give away their tickets in exchange of such benefits/facilities as the airline, at its own discretion, may wish to offer. But, if the passengers are not willing to forego their seats in exchange of the terms offered by the airlines, the airlines may arrange for alternate flight or pay the passengers compensation under predetermined rules (CAR). In case alternate flight is arranged that is scheduled to depart within one hour of the original schedule departure time of the initial reservation, the airline shall not be liable for any compensation. Failing to do so, the airline shall compensate the passengers as per the following provisions:

- An amount equal to 200% of booked one-way basic fare plus airline fuel charge, subject to maximum of INR 10,000, in case airline arranges alternate flight that is scheduled to depart within the 24 hours of the booked scheduled departure.
- An amount equal to 400% of booked one-way basic fare plus airline fuel charge, subject to maximum of INR 20,000, in case airline arranges alternate flight that is scheduled to depart more than 24 hours of the booked scheduled departure.
- In case passenger does not opt for alternate flight, refund of full value of ticket and compensation equal to 400% of booked one-way basic fare plus airline fuel charge, subject to maximum of INR 20,000.

If a passenger has booked on connecting flights of the same airline or of the other airlines, he shall be compensated by the airline of the first flight for the first leg in accordance with the aforesaid provisions, when he has been

Cancellation of Flights

In case of the cancellation of the flight, airlines are mandated to inform the passenger of the cancellation at least two weeks before the scheduled time of departure and arrange alternate flight/refund as acceptable to the passenger. If 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 shall offer alternate flight, allowing them to depart within two hours of their booked scheduled time of departure or refund the ticket, as acceptable to the passenger.

In case the Passengers have not been informed as per the above-stated timeline, or missed the connecting flight booked on the same PNR, the airlines shall provide compensation in addition to the full refund of air ticket in accordance with the following provisions:

- INR 5,000 or booked one-way basic fare plus airline fuel charge, whichever is less for flights having a block time of up to and including 01 hour
- INR 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.
- INR 10,000 or booked one-way basic fare plus airline fuel charge,

Additionally, the airline shall provide them facilities at the airport in accordance with CAR's **Section 3, Series M Part IV** in the event they have already reported for their original flight and whilst they are waiting for the alternate flight.

No financial compensation would be provided by the airlines if the

- When passengers have not provided adequate contact information (email id or a phone number) at the time of making booking or when the ticket for firm travel on the selected flight is issued. In respect of such passengers the airlines will either refund the ticket prices or make reasonable endeavour to make alternate travel arrangements as per the choice of the passengers. Additionally, in respect of such passengers who elect to travel to their destination on an alternate flight, the airline shall provide them with reasonable facilities during the period that they are required to wait at the airport for the alternate flights in accordance with relevant provisions of CAR.
- When the cancellations occur due to extraordinary circumstances beyond the control of the airline even if all reasonable measures had been taken by the airline. Extraordinary circumstances include event(s) of

majeure, which are beyond the control of the airline, and circumstances attributable to Air Traffic Control (ATC), meteorological conditions, security risks, or any other causes that are beyond the control of the airline but which affect their ability to operate flights on schedule.

Delay in Flight

In the event of delay beyond the specified timeline, airlines are mandated to offer meals and refreshments during the waiting time and hotel accommodation free of charge to passengers. If it is expected that the delay would amount for more than 4 hrs. from the published scheduled time of departure or previously revised departure time (communicated more than 24 hours prior to original scheduled departure time), airlines shall offer an option of full refund of ticket to the passenger.

In case of delay of flight for more than 24 hrs. from the published scheduled time of departure and involves flight to fly the next day i.e. beyond 0000 hours, passenger shall be offered facility in accordance with the provisions of CAR.

In case of connecting flight booked on the same PNR, if the first flight is delayed due to airline's fault (excluding force majeure), the airline shall offer

- (a) More than 3 hours: INR 5,000
- (b) Between 4 and 12 hours: INR 10,000
- (c) More than 12 hours: INR 20,000

Note: The above compensation shall be paid only when the passenger has provided the information of connecting flight to the airline at the time of booking.

No facilities or compensation

If the delay in flight is caused due to extraordinary circumstances including force majeure events and circumstances attributable to Air Traffic Control (ATC), meteorological conditions, security risks, or any other causes that are beyond the control of the airline but which affect their ability to operate flights on schedule, the airline shall not be obliged to the facilities as mandated under CAR.

If the dispute arises over communicating the information for delay to the passenger, the **burden of proof** concerning the questions as to whether and when the passenger has been informed of the delay of the flight shall rest with the operating airline.

FACILITIES OFFERED BY AIRLINES TO THE PASSENGERS IN CASE OF DENIED BOARDING AND DELAY IN FLIGHT

Passengers shall be offered free of charge the following:

- (a) Meals and refreshments in relation to waiting time.
- (b) Hotel Accommodation when necessary (including transfers)

Airlines shall pay particular attention to the needs of persons with reduced mobility and any other person (s) accompanying them.

Adjudicating Authority

When affected by denied boarding, a cancellation or a long delay, the passenger may complain directly to the airline in the event the airline has not provided the compensation and/or reasonable facilities as specified in this CAR, the passenger may file the grievance on AirSewa App or Portal or with DGCA.

If the passenger is not satisfied with the resolution of grievance by airline and/or AirSewa/DGCA, the passenger has liberty to complain to any statutory body/court set up under relevant applicable laws.

ANTI- TRUST ISSUES IN THE AVIATION SECTOR



The aviation sector in India had been thoroughly limited to, government control of the airspace through the **Air Corporations Act, 1953** which established Indian Airlines as a statutory airline. Private players were prohibited in the aviation sector in order to keep up with the principles of socialism and a closed-market economy. The trend began to change in the late 1980's when the government started granting licenses to private players to operate as air taxi operators. Fast forward to 2018 and India is becoming a major player in the global aviation sector.

In the meantime, the law of competition has evolved from the Monopolistic Restrictive Trade Practices Act, 1969 to the Competition Act, 2002. This evolution of the jurisprudence of competition law in India has not led to the development of a comprehensive competition law policy purely for the civil aviation sector. There are many anti-competitive practices such as price-fixing, predatory pricing, cartelization, abuse of dominant position which is prevalent in the civil aviation sector. There are very few cases of alleged anti-competitive behaviour in the civil aviation sector which see the light of the day.

The aviation industry in India is regulated by the DGCA, which has the power to look into all aviation incidents and accidents in India. The DGCA also lays down regulations from time to time with a view to the proper functioning of the industry and implements the government policy regarding civil aviation. It is responsible for the ex-ante monitoring of the industry, while the CCI has the power to deal with anticompetitive practices in an ex-post manner. The CCI can thus investigate anticompetitive practices and impose penalties after such conduct has already taken place, but cannot bring in any structural changes which reduce the barriers to entry, such changes can be undertaken only by the DGCA.

COMPETITION LAW NORMS

The Competition Regulatory Authority as of today, the Competition Commission of India [CCI] which was established under the Act is the only regulatory authority that deals with competition related issues and disputes. The functions of the CCI are manifold, which include but are not limited to deliberating upon commercial aviation agreements as to their anti-competitive tendency. If the agreements are deemed to be anti-competitive in nature, then the CCI has the authority to not approve these agreements. The definition of an anti-competitive agreement was

elucidated in The Act as an agreement that “causes or likely to cause appreciable adverse effect on competition in India is prohibited” and is declared void. It does not define anti-competitive agreement or appreciable adverse effect on competition [AAEC] in the act.

RULES FOR DETERMINING APPRECIABLE ADVERSE EFFECT ON COMPETITION

It must be kept in mind that every kind of restraint is not necessarily baneful. Section 3 of the Competition Act declares void those agreements which shall have an AAEC in any particular market. The determination of appreciable adverse effect differs from case to case and no particular straight jacket formula can be applied while determining the AAEC of any agreement. When adjudicating, the CCI looks into the factors which are listed in Section 19(3) of the Act. This list is not exhaustive and the CCI can look into factors and issues which are not mentioned under this subsection. The CCI has the authority to look into various macroeconomic as well as microeconomic factors while adjudicating an agreement being anti-competitive in nature.

Abuse of dominant position is defined in The Act as an “activity pursued by an enterprise which directly or indirectly imposes unfair or discriminatory prices and other anti-competitive practices are dealt with”. In the Explanation clause of Section 4(a) dominant position means a superior economic position which enables its operation independent of competition in a specific sector and in turn it becomes a prevalent effect on the competitors in the sector to its own benefit.

THE PREVALENT ANTI-COMPETITIVE PRACTISES

It is a principal tenet of competition law that, any agreements or practices whose objective is to agree to fix prices are prohibited. Some of the practices are:

1. Parallel code sharing

Parallel code share agreements are based on a commissioned basis. In this kind of agreement, two airlines operate on its own code as well the code of the party to the said code share agreement. For instance, Spice Jet and Indigo both have flights to Delhi and Mumbai respectively, and these two airlines have entered into a code share agreement, then a person who books his flight from Mumbai to Delhi on a Spice Jet ticket can in a certain contingency fly in an Indigo aircraft albeit on a SpiceJet code. This model of business is a highly convenient one for the persons who have to travel frequently for business purposes. However, this kind of arrangement between airlines has been a cause of concern for the competition regulators as well; since this kind of arrangements prevents entry of new players into the market.

2. Slots (Landing Rights)

These are the rights of allocation of slots or time frames for the landing or departure of a flight belong to a specific airline company. This is indicative of the capacity to hold flights at an airport for an available period of time. Since the incumbent airlines, owing to their size and the period they have been in the market, are as a result in a position of controlling these slots. As a result, these traditional / incumbent airlines are in a dominant position and therefore there is a probability that this dominant position may be abused by these airlines by forming a cartel and indulging in anti-competitive practices such as price-fixing, bid rigging, and creating entry barriers to a new airline who wishes to acquire the landing rights. It further must be noted that monopoly in slot allocation creates a tremendous logistical nightmare when the airline enjoying the dominant position has to undergo insolvency owing to various debt defaults and other causes stated in the insolvency laws in that country.

3. Boarding Gates

Another entry barrier for a new airline are the rules relating to the lease of boarding gates, which are many a time reserved for the incumbent airlines in the same way the slots are controlled. The gate leasing agreements permit the usage of a single gate by an airline for an extended period of time close to 20 years. Therefore, as a result, the exclusive control of these gates leads to the creation of a dominant position for such airlines who have been the traditional players in the market. The control over the gates is one of the major factors which is looked into while entering into a code share agreement.

4. Marketing

The incumbent airlines resort to marketing strategies which makes them a dominant player. This is because; these marketing strategies are another barrier to entry in the market. One of the most important marketing strategies is of the frequent flyer programs wherein the airline customers accrue points corresponding to the distance flown on the airline. These points are then redeemed to travel for no airfare. Also, the airlines pay travel agents increased commissions to book passengers on their company's flights. However, this strategy is slow and almost out of use since the role of travel agents has now been occupied by online ticket booking websites.

5. Brand

There are certain sections of the population who are reluctant to travel by air and hence the airline's reputation and hence the brand(s) encourage a person to travel on that particular airline. Therefore, an incumbent airline that has developed its brand and reputation over the years stands at a natural position of dominance owing to their resultant increase in market share. As a result of its brand, the incumbent airlines attract passengers even

at higher prices. In essence, the brand value of the airline has a very good chance of making that airline the most dominant player which might lead to abuse of the said dominant position.

As a result of these anti-competitive practices and the factors which lead to the commission of abuse of dominant position, legal reforms and amendments are needed to the Airport Authority of India Act, 1994 and the Competition Act, 2002.

IMPORTANT CASES

1. Combination of Jet Airways and Etihad Airways

In 2013, Etihad, a UAE based company, proposed to acquire 24% in Jet Airways. The issue in question was whether it led to AAEC.

The Commission held that a relevant market in this case was that of International passenger based on the point of origin or point of destination. While ascertaining whether there would be an AAEC, the commission stressed on the relevancy of Trans boundary competition considering that routes were international. It was observed that there were 38 routes to/from India to other destinations where Etihad and Jet Airways fly and there was at least one competitor on each of such route.

Therefore, the Commission held that there is sufficient competition in the relevant market and hence, this transaction shall not lead to AAEC in the market.

2. Cartelization of Prices by Jet Airways, Indigo and Spice Jet.

Competition Commission of India imposed penalties totalling Rs 258 crore on Jet Airways, Indigo, and Spice Jet for cartelisation in fixing fuel surcharge for transporting cargo. The regulator found that the three airlines colluded in fixing FSC rates. Such conduct was found to have resulted in indirectly determining the rates of air cargo transport, thereby contravening Section 3 of the Competition Act. This section pertains to anti-competitive agreements, as alleged by CCI. Clamping down on unfair business practices in the aviation sector, the Competition Commission of India (CCI), slapped penalties totalling Rs 258 crore on Jet Airways, IndiGo, and SpiceJet for cartelisation in fixing fuel surcharge for transporting cargo.

However, it did not impose any penalty on national carrier Air India and private carrier Go Air, which were also named in a complaint filed by the Express Industry Council of India.

⁶⁷Combination Registration no. C-2013/05/122

DATA PROTECTION UNDER AVIATION SECTOR

In India, data privacy and protection are governed by the provisions of the Information Technology Act 2000, which provides legal recognition to transactions carried out by means of electronic data interchange. Sensitive personal data includes, information relating to: passwords, credit/debit card information, biometric information, and condition of physical, physiological and mental health, etc. The Personal Data Protection Bill 2018 in India follows the implementation of the General Data Protection Regulation. The Telecom Regulatory Authority of India has stated that each user owns his data and the entities processing such data are mere custodians. The transfer of personal data is governed by the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011. The SPD Rules were issued under Section 43A of the IT Act which holds a body corporate liable for compensation for any negligence in implementing and maintaining reasonable security practices and procedures while dealing with sensitive personal data or information. The SPD Rules expand on the scope of these reasonable practices and procedures. The SPD Rules also require the prior consent of the provider of the information while disclosing sensitive personal data to a third party. Transfer of sensitive personal data outside India is permitted on the condition that the same level of data protection is adhered to in the country, which is applicable to the body corporate under the SPD Rules. The draft Bill sets out certain rights of the data principal whose data is being processed. These include: (i) the right to obtain a summary of their personal data held with the data fiduciary; (ii) the right to seek correction of inaccurate, incomplete, or outdated personal data; (iii) the right to have personal data transferred to any other data fiduciary in certain circumstances; and (iv) the right 'to be forgotten', which allows the data principal to restrict or prevent continuing disclosure of their personal data. Under the draft, the Data Protection Authority may levy penalties on the fiduciary for various contraventions to the law. In the event that such body corporate that possesses or deals with sensitive personal data is negligent in securing such data, resulting in wrongful loss or gain to any person, such body corporate shall be liable for civil penalties and to pay damages by way of compensation to the person.

INTERNATIONAL CONVENTIONS



Aviation law is the branch of law that concerns flight, air travel, and associated legal and business concerns. Aviation law is considered a matter of international law due to the nature of air travel. Due to the wide scope of law, there are many international conventions which govern the Aviation law. These international conventions act as the rules and regulations which the states need to follow for proper implementation. These aviation law conventions are the primary sources of law on the basis of which social relations on the international legal scene are formed, unfolded, and stopped. Some of the international conventions in association with aviation law are explained below.

THE CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR, 1929

The Convention for the Unification of certain rules relating to international carriage by air, commonly known as the Warsaw Convention Originally signed in 1929 in Warsaw (hence the name), it was amended in 1955 at The Hague, Netherlands, in 1971 in Guatemala City, Guatemala and in 1999 in Montreal, Canada. As of 2015, the Warsaw Convention had been ratified by 152 states. The Protocol to the Convention had been ratified by 137 states.

Key features:

It specified the conditions under which airline could be liable for the death or injury to passengers, loss or damage to baggage and delay; sets limits to the amount of compensation that could be claimed; and excluded resort to national laws.

Applicability:

The provisions of the convention took effect through the Carriage by Air Act, 1972.

CONVENTION ON INTERNATIONAL CIVIL AVIATION, 1944

The Chicago Convention (also known as the Convention on International Civil Aviation), was signed by 52 states on 7 December 1944 in Chicago, Illinois, U.S., and came into effect on 4 April 1947. The Convention established the

International Civil Aviation Organisation (ICAO), a specialized agency of the United Nations charged with coordinating and regulating international air travel. India ratified the Chicago Convention on March 1, 1947.

Key features:

The Convention describes the rules of airspace, aircraft registration and safety, and explain in detail the rights of the signatories in relation to air travel; it also exempts air fuels from tax.

The Convention provides for the sovereignty of airspace above the territory of each state, together with nine freedoms which govern the freedom of states to operate air transport flights (including the carriage of passengers, cargo, and mail) across, into and within the airspace of other states. The Convention also concerns the issue and recognition of certificates (e.g. An aircraft's certificate of airworthiness (C of A) or an airline's air operator certificate (AOC) and licences (e.g. pilot licensing or controller licensing).

Applicability:

These broad principles are reflected in many Indian aviation rules and statutes like the DGCA's Civil Aviation Requirements.

THE CONVENTION ON OFFENCES AND CERTAIN OTHER ACTS COMMITTED ON BOARD AIRCRAFT, 1963

The Convention on Offences and Certain Other Acts Committed on Board Aircraft, commonly called the Tokyo Convention, is an international treaty, concluded at Tokyo on 14 September 1963. It entered into force on 4 December 1969, and as of 2015 has been ratified by 186 parties.

Key features:

The Convention applies to offences and other acts prejudicial to good order and discipline on board an aircraft, committed while the aircraft is in flight or on the surface of the high seas or of any other area outside the territory of any State. It does not apply to State aircraft, for example, aircraft used in military, customs and police services.

The purpose of the Tokyo Convention is to protect the safety of the aircraft and of the persons or property thereon, and to maintain good order and discipline on board. The aircraft commander, members of the crew and, in specific circumstances, even passengers on board, are empowered to prevent the commission of such acts and to disembark the person concerned. The aircraft commander may also disembark the offender or, if the offence is serious, deliver him to the competent authorities of a Contracting State when the aircraft lands. The Convention protects the aircraft commander and any

crew member or passenger assisting him in imposing the measures he finds necessary from any proceedings in respect of actions taken by them.

Applicability:

The principles of the Tokyo Convention 1963 have been included by the Indian government in Tokyo Convention Act 1975.

CONVENTION FOR THE SUPPRESSION OF UNLAWFUL SEIZURE OF AIRCRAFT, THE HAGUE, 16 DECEMBER 1970

The Hague Hijacking Convention (formally the Convention for the Suppression of Unlawful Seizure of Aircraft) is a multilateral treaty by which states agree to prohibit and punish aircraft hijacking. The convention was adopted by the International Conference on Air Law at The Hague on 16 December 1970. It came into force on 14 October 1971 after it had been ratified by 10 states. As of 2013, the convention has 185 state parties.

Key features:

The Convention defines the act of unlawful seizure of aircraft, and the Contracting States have undertaken to make such an offence punishable by severe penalties. Under the provisions of The Hague Convention a State is obliged, whether or not it is the State of registration, to take such measures as may be necessary to establish its jurisdiction over the offence in the case where the alleged offender is present in its territory and it does not extradite him. If there is no extradition treaty between the States concerned and the offender is in the territory of a Contracting State and that State refuses to extradite the offender, then it must submit the case to its competent authorities for the purpose of prosecution under its criminal law. The Convention requires any Contracting State in which the aircraft or its passengers or crew are present to facilitate the continuation of the journey of the passengers and crew as soon as possible and to return the aircraft and its cargo to the persons lawfully entitled to possession without delay.

Applicability:

The principles of the Hague Convention 1971 have been included by the Indian government in Anti-Hijacking Act, 2016.

CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF CIVIL AVIATION, 1971

The Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (sometimes referred to as the Sabotage Convention or the

Montreal Convention) is a multilateral treaty by which states agree to prohibit and punish behaviour which may threaten the safety of civil aviation. The Convention was adopted by the International Conference on Air Law at Montreal on 23 September 1971. On 24 February 1988 in Montreal, the Protocol for the Suppression of Unlawful Acts of Violence at Airports serving International Civil Aviation was signed as a supplement to the Convention.

Key features:

The Convention criminalises the following behaviour:

1. Committing an act of violence against a person on board an aircraft in flight if it is likely to endanger the safety of the aircraft;
2. Destroying an aircraft being serviced or damaging such an aircraft in such a way that renders it incapable of flight or which is likely to endanger its safety in flight;
3. Placing or causing to be placed on an aircraft a device or substance which is likely to destroy or cause damage to an aircraft;
4. Destroying or damaging air navigation facilities or interfering with their operation if it is likely to endanger the safety of aircraft;
5. Communicating information which is known to be false, thereby endangering the safety of an aircraft in flight.

Applicability:

The principles of the convention have been included by the Indian government in Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1982.

THE CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR, 1999

The Montreal Convention (the Convention for the Unification of Certain Rules for International Carriage by Air) is a multilateral treaty adopted by a diplomatic meeting of ICAO member states in 1999 in Montreal, Canada.

Key features:

The Montreal Convention empowered passengers to pursue, whenever an accident occurred on an international flight. It made it easier for passengers to establish they've been harmed in an accident during international flights. It did this by establishing the so-called strict liability. This means that the passenger does not have to prove what the pilot or airline did wrong. It is

presumed that aviation accidents are clearly not the passenger's fault. As a result, in case of accidents on international flights, the air carrier is deemed automatically liable.

The Montreal Convention, however also took away the right to compensation for some types of damages. Passengers cannot recover punitive damages or damages for purely psychological trauma.

The Montreal Convention applies to all international flights between countries that have signed the treaty. It also covers flights within a single State Party if there is a scheduled stopover in another country. According to Montreal Convention 1999, the carrier is responsible for damages in case of death or bodily injury if the accident that caused it occurred in-flight or during embarking/disembarking. The Convention also offers compensation in case of a flight delay leading to damages (additional expenses) and baggage problems. The convention states that carriers are liable for damages for delay in the carriage of passengers or baggage. The airline may free itself from this liability if it proves it took all reasonable measures to avoid damage.

Under Montreal Convention 1999, the carrier is liable for the inflicted damage in case of checked luggage destruction, loss or damage. The condition is that the damage occurs while the airline is handling your baggage. The airline is freed from this liability if the damage results from an inherent defect. For unchecked baggage, the carrier is liable if the damage resulted from its fault or its servants/agents.

Applicability:

The provisions of the convention took effect from June 30, 2009 through the Carriage by Air (Amendment) Act 2009 that India had enacted, covering the international carriage of passengers, baggage, or cargo by airlines.

REGULATION OF AIRFARES



In the present times, airfares charged by the airlines is the most controversial issue as sometimes the charges are exorbitant and sometimes the charges are quite low and also the airfares of the operators differ from each other while they provide the same facility.

In terms of Rule 135 of the Aircraft Rules 1937, airfares are established having regard to factors such as cost of operation, characteristics of service, reasonable profit and the generally prevailing tariff. The government has permitted services to be unbundled and charged separately on an opt-in basis, including:

- Preferential seating;
- Meal, snack and drink charges (except drinking water);
- Charges for using airline lounges; and
- Check-in baggage charges.

The relevant provision of Aircraft Rules, 1937 reads as:

(1) Every air transport undertaking, shall establish tariff having regard to all relevant factors, including the cost of operation, characteristics of service, reasonable profit and the generally prevailing tariff.

(2) Every air transport undertaking shall cause to be published the tariff established by him under sub-rule (1) in his website or two daily newspapers, and shall display such tariff in a conspicuous part of his office and in the office of his agent, if any.

(2-A) The tariff to be published under sub-rule (2) or advertised in any other way shall show the following particulars, namely:—

(a) The total amount payable by a passenger; and

(b) A complete break-up of the total amount, indicating the fare, tax, fees or any other charge, if any, separately.

(2-B) The particulars mentioned in sub-rule (2-A) shall also be mentioned in the passenger ticket.

(3) Every air transport undertaking] shall maintain all records relating to tariff established by him under sub-rule (1) in such manner and in such form as may be specified by the Director-General, and on demand by the Director-General shall produce such records before the Director-General for inspection.

(4) Where the Director-General is satisfied that any air transport undertaking has established excessive or predatory tariff under sub-rule (1) or has indulged in oligopolistic practice, he may, by order, issue directions to such air transport undertaking.

(5) Every direction issued under sub-rule (4) shall be complied with by such air transport undertaking.

At present, there is no pricing policy in India to govern the airfares charged by the airline operators. Only the power of supervisory nature is vested with the Director-General of Civil Aviation to issue directions when he/she is satisfied that the airfare charged by the air operators are excessive or predatory.

Case Laws

- **Federation of Indian Airlines & Ors. v. Director General of Civil Aviation & Anr.**⁶⁸

In terms of Rule 135(4), DGCA has been delegated the powers to issue directions. However, issue of such directions is contingent upon satisfaction of any of the three conditions, namely, (i) DGCA is satisfied that any air transport undertaking is charging excessive tariff; (ii) DGCA is satisfied that the air transport undertaking has established predatory tariff; and/or (iii) DGCA is satisfied that the air transport undertaking has indulged in oligopolistic practice. Thus, unless any of the three conditions are satisfied, DGCA cannot issue any directions under Rule 135 of the Aircraft Rules. Hence, if none of the above three conditions are satisfied than any circular so far it restricts the charges is unsustainable under Rule 135(4).

Further, it is to be noted that the DGCA as per the power conferred under Section 5 of the Aircraft Act cannot issue directions in relation to economic regulations of civil aviation which include tariff.

- **Mr. Manjit Singh Sachdeva, East Patel Nagar, New Delhi v. Director General, Directorate General of Civil Aviation Government of India, New Delhi**⁶⁹

⁶⁸Federation of Indian Airlines v. Director General of Civil Aviation & Anr., 2017 SCC OnLine Del 9969 (India).

⁶⁹Mr. Manjit Singh Sachdeva, East Patel Nagar, New Delhi v. Director General, Directorate General of Civil Aviation Government of India, New Delhi, 2013 SCC OnLine CCI 24: (2013) CCI 30 (India).

Complaint before Commission: Regulator of Aviation sector have not evolved a pricing policy of air tickets like Indian Railway and State Transport Corporations so as to fix MRP of air fares to be charged from the passengers for service offered by various airlines. Because of this, various airline operators were charging arbitrarily high airfares from the consumers. It is alleged that OP-1 gave an uncalled for liberty to airlines to fix their own fares and thus they were arbitrarily and whimsically fixing air fares from time to time. This was contrary to the known principles of law.

Observation by Commission: The forces of demand and supply govern the air fares. Whenever supply is more and demand is less, air fares fall and in lean season the airlines do decrease air fares. It is only when demand is more and supply is less that the airlines venture to increase the air fares. No competition issue has been raised by the informant.

- **Y.V. Sharma & Baldev Singh v. Union of India**⁷⁰

The High dismissed the Petition filed before them asking for issuing directions to regulate the airfares and observed that the petitioners should approach the Director General of Civil Aviation by making a representation regarding their grievances as the said authority is the competent authority and is bound to consider all aspects and is duty bound to prevent the exploitation or taking undue advantage.

⁷⁰2015 SCC OnLine J&K 48 (India).

ENVIRONMENTAL ISSUES AND OBLIGATIONS APPLICABLE TO THE AIR CARRIER OPERATIONS

Aviation is one of the fastest growing industries worldwide and the fastest growing transportation mode in India. Air transport brings substantial social and economic benefits and underpins the global economy, but it also has a local and global impact on the environment. For nearly five decades air transport has provided significant public benefits. It has brought work, prosperity, increased trade and new travel and tourism opportunities under the concept of liberalization, privatization and globalization. Air transport is now a massive and economically vital business, encompassing the manufacturers and operators of engines and aircraft, fuel suppliers, airports and air traffic control systems.

IMPACT

With increasing commercialisation and growth of the aviation industry, it is a hard fact that aviation is an unsustainable technology that it will not be a significant feature in humans' future, and it will eventually be abandoned. The main reason for this approach is that the impact of Aviation on the environment is so bad. The effects of aviation that are of concern to the

- Air Pollution;
- Noise Pollution;
- Water Pollution;
- The Green House Effect;
- Depletion of Ozone Layer; and
- Other Environmental hazards caused by Aviation.

AVIATION NOISE POLLUTION

Noise lexically means 'unwanted sound'. What is pleasant to some ears may be extremely unpleasant to others, depending on a number of factors. Pollution is a noun derived from the verb 'pollute', meaning to foul. It is now increasingly understood that pollution from noise is an important component of air

Noise has been the principal environmental issue for aviation. It remains high on the agenda of public concern, particularly the residents who live in the vicinity of Airports. The noise can arise from ground transport and other operational sources in addition to aircraft in the air and on the ground.

Aviation noise has become a big issue in developed countries. It is widely recognized that aircraft flying at a height of at least 10,000 feet above the ground do not usually produce 'significant' noise impact. But this is not an absolute rule. It is normal for aircraft noise to be associated with airports, because of the low height involved. In fact, the level of noise is varying from airport to airport.

Noise is generated by engine and the airframe of the aircraft. Arriving aircrafts are less noisy than on departure because high-level thrusts are used in departure. Aircraft also create noise on the ground when taxiing, queuing, testing engines and using the auxiliary power unit.

The most widely used unit for measuring noise levels is dB (A) – the A – weighted scale in decibels. The noise level of normal conversation is 50 – 60 dB. But a jet aircraft taking off 25 meters away gives 140 dB. The **World Health Organization (WHO) has fixed 45 dB as the safe noise level.** Experts believe that continuous noise levels in excess of 90dB can cause loss of hearing and irreversible changes in nervous systems. Metropolitan areas in India, usually registers an average of more than 90dB noise.

AVIATION WATER POLLUTION

Airports are known to be a major source of water pollution. They dump toxic chemicals – used to de-ice airplanes during winter storms – into waterways. Millions of gallons of glycols are used for aircraft de-icing at airports. Glycols are the most voluminous water pollutants from airports. During de-icing, the airlines mix 55% glycol and 45% water, heat the mixture to about 185°F, and spray the planes down with it. 50 – 80% of the glycols may end up in the local waterways. Ethylene glycol is more effective and more toxic than propylene glycol. Both consume high levels of oxygen during decomposition and this can deplete waterways of oxygen and kill fish.

AVIATION AIR POLLUTION

Aircraft fly overhead emitting toxic compounds in massive amounts and these emissions are spread generally over an area 12 miles long, 12 miles wide on take-off, 6-12 miles on landing. Critics charge that taxiing airplanes emit hundreds of tons of greenhouse gases. Emissions from aircraft below 1,000 feet above the ground are chiefly involved in influencing local air quality. These emissions disperse with the wind and blend with emissions of other sources from the surrounding domestic factory and transport pollution.

NOISE POLLUTION

There are no standards ascribed to noise pollution inside the airport or related to aircraft noise in India. It is a known fact that noise pollution is bound to be higher at airports than any other places. On the petition of the Indian Spinal Injuries Centre, a hospital, and the Bijwasan Gram Vikas Samithi, a nongovernmental organization, the Delhi High Court on March 3, 2010, directed the Directorate General of Civil Aviation (DGCA) with no deadlines fixed to implement measures to check the growing level of noise pollution near Delhi airport.

Although a regulatory environment has slowly been built up around many activities, these do not usually address noise pollution specifically. The laws usually confine themselves to other matters or do not adequately address noise issues. In the absence of an adequate regulatory framework specific to noise pollution, the status quo has been determined partly by the interpretation of other laws. Important among those have been Article 19 and 25 of the Indian Constitution. Unless the connections between noise and health are first judicially established, prohibition or control against their use are difficult to pass. The judiciary has nonetheless weighed in on questions of noise pollution.

The Noise Regulation Rules (2000) to Section 3 of the Environment Protection Act 1986, regulate noise levels in industrial (75dB), Commercial (65dB) and residential (55dB) Zones and also establish silence Zones (100 meters) near schools, courts, hospitals, etc. The rules are clearly a step forward, although they do not attempt to create comprehensive legislation on noise pollution and continue with the piece-meal approach to specific problems encountered over the years.

ENVIRONMENTAL REGULATIONS



1. International Positions

The International Regulatory Framework with respect to the environment is Kyoto Protocol. The Kyoto Protocol from 1997 linked to the United Nations Framework Convention on Climate Change (UNFCCC) aims to stabilize greenhouse gases in the atmosphere and distinguishes in its legal bindings between developed and developing nations. While domestic aviation emissions are included in national emission inventories and reduction targets, article 2.2 of the Kyoto Protocol states that emission limitations from international aviation shall be pursued through the International Civil Aviation Organization (ICAO).

The ICAO is a specialized United Nations agency, which was founded in 1944 at the Chicago Convention and currently has 190 contracting states. Its mission pursues to “set standards and recommended practices for the safe and orderly development of international civil aviation”, which includes strategic objectives that seek to enhance safety, security, environmental protection and sustainable development of air transport.

The 33rd ICAO Assembly adopted a Resolution for introducing the concept of a ‘balanced approach’ to noise management. The notion of ‘balanced

- Reduction of aircraft noise at source;
- Land use planning and management;
- Water Pollution;
- Noise abatement operational procedures; and
- Operating restrictions.

Case Law:

- **Griggs vs. Allegheny County:** the Court held that the Airport was responsible for acquiring sufficient land adjacent to the airport to reduce the impact of aviation noise and, if it failed to do so, was liable for resulting damages from aircraft noise.

2. Position in India

The Indian aviation sector has transformed from an over-regulated and under managed sector to a more open, liberal, and investment-friendly sector in recent years. The sector is undergoing significant development with the changing scenario in the country. India is gradually becoming a focal point in the global aviation map with the growing air traffic, route expansion followed by a major airport infrastructure developments.

Other General Provisions

There are no specific legislations in India on control of Aviation Pollution. However, the Indian Constitution clearly stated that it is the duty of the State to 'protect and improve the environment and to safeguard the forests and wild-life of the country.' Reference to the environment has also been made in the Directive Principles of State Policy as well as the Fundamental Rights.

The Constitutional provisions are backed by a number of Laws – Acts, Rules, and Notifications. The Environment Protection Act (EPA) 1986 was enacted under Article 253 of the Constitution and came into force soon after the Bhopal Gas Tragedy and is considered as umbrella legislation as it fills many gaps in the existing laws. Thereafter a large number of laws such as Water Act and Air Act came into existence as the problems began rising.

Further, the potential scope of the **Environment Protection Act** is broad, with "environment" defined to include water, air and land and the inter relationships which exist among water, air, and land and human beings and other living creatures, plants, micro-organisms and property.

According to Environment Protection Act "Environmental Pollution" means the presence in the environment of any environmental pollutant and "environment Pollutant" means any solid, liquid, or gaseous substance present in such concentration as may be, or tend to be, injurious to the environment.

Under **Section 15 of the Environment Protection Act**, whoever fails to comply with or contravenes any of the provisions of this Act, or the rules made or orders or directions issued thereunder, shall be punishable with imprisonment for a term which may extends to five years with fine which extend to one lakh rupees or with both in respect of each such failure or contravention.

Under **Section 17 of the Act**, where an offence under this Act has been committed by any department of Government, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly unless it is proved that the offence was committed without his knowledge or that he exercises all due diligence to prevent the commission of such offence.

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