

AVIATION LAW IN INDIA

Indian Civil Aviation completed 100 years in the year 2011. On February 18, 1911, the first commercial plane flew in India between Allahabad and Naini carrying mails. To commemorate this milestone, 'the year 2011-12' was declared and celebrated as the "Civil Aviation Centenary Year". Aviation in India has grown manifold and today India is the ninth largest aviation market in the world¹. The economic slowdown of the year 2008-09 had affected the airline industry as well. However, unfazed by the reverses of the year 2009 there has been robust growth in terms of aircraft movement and passengers handled in the year 2010.

The Indian civil aviation industry proves to be promising due to strong middle class of about 30 crore Indians and country has an ideal geographical location placed along right latitudes in between the Eastern and western hemisphere. It holds glowing prospects of becoming the third largest aviation market by 2020 and reaching the zenith by 2030. The industry is traversing on a progressive trajectory and has paved way for a new wave of growth and expansion with the focus on Low Cost Carriers (LCC), modern airports, Foreign Direct Investments (FDI) in domestic airlines, Information Technology (IT), a growing emphasis on No-Frills Airports (NFA) developments and regional connectivity². The Indian civil aviation industry is amongst the top ten in the world with a size of around 1600 crore (USD 16 billion)³. This is only a fragment of the potential and capabilities of the industry.

The vision for the Indian civil aviation industry for the 12th Plan period is: "To propel India among the top five civil aviation markets in the world by providing access to safe, secure and affordable air services to everyone through an appropriate regulatory framework and by developing world class infrastructure facilities."⁴ The 11th Plan period saw an increasing trend among domestic carriers to embrace the Low Cost Carrier (LCC) model. Total market share of LCCs including the low cost arm of Full Service Carriers has crossed 70% suggesting a significant shift in the business model of airline industry in India. Despite the phenomenal growth in traffic, most Indian carriers are reeling under losses. During the three year period between 1 Apr 2007 and 31 Mar 2010, Indian carriers incurred an accumulated operational loss⁵ in excess of Rs 26,000 crores, of which three large airlines accounted for nearly Rs 23,000 crores.⁵

Air traffic forecast for 12th Plan suggests that domestic passenger would grow at an average annual rate of around 12%. The number is expected to touch around 209 million by FY-17 from 106 million in FY-11. Similarly, international passenger count is estimated to grow at an average

¹ "Civil Aviation in India", Press Information Bureau, Government of India, 11/02/2011, Available at <http://www.pib.nic.in/newsite/erecontent.aspx?reid=69768>

² "Indian Aviation Industry", India Brand Equity Foundation, July 2016, <http://www.ibef.org/industry/indian-aviation.aspx>

³ "Indian Aviation Report by FICCI" - KPMG

⁴ "Report of Working Group Civil Aviation for Formulation of 12th Five year Plan", http://civilaviation.gov.in/sites/default/files/moca_001320.pdf

⁵ *Supra*.

annual rate of 8% during the 12th Plan period to reach 60 million passengers by FY-17 from 38 million in FY-11.

Among the major players in the industry Indigo was the biggest domestic airline in India in 2015. It carried 297.43 lakh passengers and commanded an overall annual market share of 36.69%. Jet Airways group comprising of Jet Airways and JetLite was second largest at 182.24 lakh passengers (22.48% market share), and national carrier Air India stood at third rank with 133.35 lakh and 16.45% market share.⁶

REGULATORY BODIES

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The Ministry of Civil Aviation is responsible for formulation of national policies and programs for the development and regulation of the Civil Aviation sector in the country. It is responsible for the administration of the Aircraft Act, 1934, Aircraft Rules, 1937 and various other legislations pertaining to the aviation sector in the country. The following are the principal regulatory authorities of the civil aviation industry functioning under the authority of Ministry of Civil Aviation in India:

1. Director General of Civil Aviation (DGCA)
2. Airports Authority of India (AAI)
3. Airport Economic Regulatory Authority (AERA)
4. Bureau of Civil Aviation Security (BCAS)

The Directorate General of Civil Aviation (DGCA)

It is the regulatory body in the field of Civil Aviation, primarily dealing with safety issues. It is responsible for regulation of air transport services in India and also for enforcement of civil air regulations, air safety, and airworthiness standards. The DGCA also co-ordinates all regulatory functions with the International Civil Aviation Organization (ICAO).⁷

Airports Authority of India (AAI)

The Airports Authority of India (AAI) was formed on 1st April 1995 by merging the International Airports Authority of India and the National Airports Authority with a view to accelerate the integrated development, expansion, and modernization of the operational, terminal and cargo facilities at the airports in the country conforming to international standards.⁸

⁶ “Indian Airlines’ 2015 Annual Review” 04/02/2016, <http://www.bangaloreaviation.com/2016/02/2015-annual-review-the-best-airlines-in-india.html>

⁷ “Organization Setup”, Ministry of Civil Aviation <http://www.civilaviation.gov.in/about-us/orgsetup>.

⁸ Supra.

Airport Economic Regulatory Authority

AERA regulates tariffs and other aeronautical charges, as well as monitors airport's performance standards. The Act also established the Appellate Tribunal which adjudicates disputes between the service providers inter se or between service providers and consumer groups.⁹

Bureau of Civil Aviation Security (BCAS)

The Bureau of Civil Aviation Security (BCAS) was initially set up as a Cell in the DGCA in January 1978 on the recommendation of the Pande Committee. The BCAS was reorganized into an independent department under the Ministry of Civil Aviation on 1st April, 1987. The main responsibilities of BCAS include laying down standards and measures with respect to security of civil flights at international and domestic airports in India.¹⁰

Key Legislations Governing Air transport in India

- **The Aircraft Act, 1934 and the Aircraft Rules, 1937**

These Acts were enacted to control the manufacture, possession, use, operation, sale, and the import and export of aircrafts. They stipulate parameters for determining airworthiness, maintenance of aircrafts, general conditions for flying and safety, registration of aircrafts and conduct of investigations.

- **The Civil Aviation Requirements**

They stipulate general guidelines regarding airworthiness, airport standards and licensing, aircraft design standards and type certification, flight crew standards and licensing, aircraft operations, air space and air traffic management, aviation environment protection etc.

- **The Aircraft (Carriage of Dangerous Goods) Rules, 2003**

It regulates air carriage of dangerous goods like explosives, radioactive material etc. and also provides for the establishment of training programs by or on behalf of shippers of dangerous goods, operators, ground handling agencies, freight forwarders and agencies involved in the security screening of passengers, their baggage and cargo.

- **The Airports Authority of India Act, 1994 ("AAI Act") and Rules**

It established the AAI to administer and manage airports and aeronautical communication stations. The AAI Act was enacted to constitute and formulate the framework within which an authority for governing the airport infrastructure would be established. The AAI Act vests the AAI with the mandatory function of managing the airports, civil enclaves, aeronautical communication stations, eviction of unauthorized

⁹“Objective and function”, Airport Economic Regulatory Authority of India.

¹⁰ Supra.

occupants of airport premises and to provide air traffic services and air transport services at any airport and civil enclave.

- **The Carriage by Air Act, 1972**

The act seeks to implement the provisions of the Warsaw Convention relating to international carriage by air, which affixes liability for international carriage of persons, luggage or goods performed by aircraft for reward.

- **The Anti-Hijacking Act, 1982**

The Anti-Hijacking Act implements the Convention for the Suppression of Unlawful Seizure of Aircraft and provides for punishment for the offence of hijacking.

- **The Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1982**

The Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1982 implements the above mentioned Convention and provides for punishment of various offences like committing violence on board an aircraft in flight, offences at airports, causing destruction of or damage to navigation facilities etc. The objective of the Convention is achieved through both these legislations.

PROCEDURE AND RULES FOR A NEW AIRLINE

- DGCA, under the provisions of Rule 134 of the Aircraft Rules, 1937 grants permission to persons to operate an air transport service to, within and from India. The air transport services offered are the:
 - **Scheduled Air Transport Services (Passenger)** (Civil Aviation Requirements Section 3 Series 'C' Part II)
 - **Non- Scheduled Air Transport Services (Passenger)** (Civil Aviation Requirements Section 3 Series 'C' Part III)
 - **Air Transport Services (Cargo)** (Civil Aviation Requirements Section 3 Series 'C' Part IV)
 - **Non-Scheduled Air Transport Services (Charter Operation)** (Civil Aviation Requirements Section 3 Series 'C' Part V)

OWNERSHIP RULES

There is a need of obtaining necessary permissions from the central government in the form of a requisite license to start a scheduled air transport service from, to, in, or across India. This is

guided under, and in accordance with, and subject to the provisions of Schedule XI of the Aircraft rules 1937.

This Civil Aviation Requirement contains the minimum airworthiness, operational and other general requirements for grant of permit for Scheduled air transport operations. This CAR is issued under provisions of Rule 133A of the Aircraft Rules, 1937. These requirements are complimentary to the requirements of ICAO Annex 6 Part I, as applicable to scheduled operations. A Scheduled Regional Air Operator's Permit for operating regional airlines can be granted only to a person who is a citizen of India or to a body cooperate or a company in the case that company is registered and has its principal place of business within India, its chairman and at least two-thirds of its directors have to be citizens of India and its substantial ownership and effective control is vested in Indian nationals. The person of the company who wishes to apply for the grant of operators licence has to fulfill some other eligibility conditions. The airline operator who wishes to provide the air transport service by operating an Aircraft with take-off mass equal to or exceeding 40,000 kg , the paid up capital required is Rs. 50 crores upto 5 aircraft i.e. he must necessarily purchase or lease minimum of 5 aircraft. In case of increase in the fleet size, an additional equity investment required is 20 crores with every 5 additional aircrafts. With respect to an aircraft with takeoff mass of less than 40,000 kg, the start-up fleet minimum remains at five aircraft – purchased or leased – with a minimum equity requirement starting at Rs. 20 crore and additionally growing by Rs 10 crore with every five additional aircrafts. For the paid up Capital for new applicants applicant is required to submit a certificate from the banker or chartered accountant to confirm the paid up capital of the company¹¹

But in order to facilitate the start of the operations, operators will be permitted to operate with one airplane/ helicopter and will be given one year's time from the date of securing operator's permit, to have the fleet size of five aircraft. Within this period of one year, the operator will be permitted to operate scheduled services if they meet all airworthiness, air safety and operational requirements for such operations, fulfill the route dispersal guidelines and all other requirements applicable to a scheduled operator.¹²

NON-SCHEDULED AIR TRANSPORT SERVICES

It includes Single or multi engine aero planes, seaplanes and helicopters duly certified/accepted by DGCA also Gliders, Hot-air balloons, Airships, and Micro light aircraft for purpose of joy rides. For the permit of NSOP the person should be in possession of at least 1 Aircraft – purchased or leased, which shall be registered in India. The paid up capital for it depends on the number of aircraft or helicopter it owns, like upto 2 airplanes/helicopters, 2 Crores; if between 3 and 5 airplanes/helicopters, 5 crores; between 6 and 10 airplanes/ helicopters, 10 crores and Above 10 airplanes/helicopters, 15 crores.¹³

¹¹ Civil Aviation Requirement Section 3, Series C, Part II, Section 3.1, 3.2.1. <http://dgca.nic.in/cars/D3C-C2.pdf>

¹² Civil Aviation Requirement Section 3, Series C, Part II, Section 3.2.3

¹³ Civil Aviation Requirement Section 3, Series C, Part III, Section 2.1, 4.2

AIR CARGO OPERATIONS

Air Cargo operations shall be dedicated only for the activities for air transportation of cargo and mail and strictly not for carriage of passengers. However the operations can be schedule or non-schedule. Air Cargo Operators shall operate services to destinations within India. For operations outside India, the operators shall have to take specific permission of the Government demonstrating their capability for conducting such operations and in accordance with the guidelines for international cargo operations for private Indian operators from/to India.¹⁴

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The cargo operation shall be carried out only by a citizen of India or a group of individuals of Indian nationality or a trust/society registered under the Societies Registration Act, 1860 or a Non-Resident Indian (NRI)/ Overseas Corporate Bodies (OCB); or a company registered under the Companies Act, 1956, having its principal place of business within India and with or without foreign equity participation (excluding NRI equity) as approved by Government from time to time; or the Central Government or a State Government or an Undertaking owned or controlled by either of the said Governments. In order to carry out operations of air cargo carrier services, it is required to have the aircraft registered in India, which may be leased or purchased outright. The aircraft shall have airworthiness in normal goods category. It shall have its own maintenance facility approved by DGCA. Subscribed Equity capital should not be less than of 1 crore for new company and for old company However, in the case of an old company, instead of subscribed equity, the net worth of Rs. 1 crore would be reckoned as the minimum requirement. NOC has to be taken by DGCA for air cargo and before NOC the approval of Foreign Investment Promotion Board (FIPB), if foreign investment is envisaged, and security clearance of the Directors and chairman of the firm shall be necessary¹⁵.

SCHEDULED REGIONAL AIR TRANSPORT SERVICE.

A Scheduled Regional Air Operator's Permit for operating regional airlines can be granted only to a citizen of India or a company or a body corporate provided that is registered and has its principal place of business within India also its chairman and at least two-thirds of its directors are citizens of India provided the ownership and substantial control has to be vested in Indian nationals¹⁶.

The operations for this will be permitted to start with one airplane or helicopter and the applicant shall acquire a fleet of minimum three aircraft either by outright purchase or through lease, within a period of two years. Provided at the end of five years, the airline shall be required to operate with a minimum five aircraft. The requirement for paid up Capital for the applicant, confirmed with a certificate from the banker or chartered accountant, shall be as follows:

- i. Airlines operating with aircraft take-off mass equal to or exceeding 40,000 kg.
 - a) Upto 3 aircraft – Rs 30 crores

¹⁴ Civil Aviation Requirement Section 3, Series 'C', Part IV, Section 2,

¹⁵ Civil Aviation Requirement Section 3, Series 'C', Part IV, Section 3.1, 3.3

¹⁶ Civil Aviation Requirement Section 3, Series 'C', Part VIII, Section 3.1

- b) For each additional aircraft, additional equity investment of Rs. 10 crores will be required, subject to a maximum of Rs. 50 crores after which no further equity enhancement is required.
- ii. Airlines operating with aircraft with take-off mass not exceeding 40,000 kg. a) upto 3 aircraft – Rs. 12 crores b) for each additional aircraft paid up capital of Rs. 4 crores will be required subject to a maximum of Rs 20 crores after which no further equity enhancement is required.¹⁷

The regional airlines shall not be permitted to operate on Category I routes as given in Annexure-VII of this CAR as they will not be allowed to trade off their AKSM on Category II, IIA and III routes with Scheduled Domestic Airlines Since scheduled regional airlines do not fall under the purview of Route Dispersion Guidelines¹⁸

Criteria for leasing of aircraft by Indian Operators

It is common practice in the airline business to take aircrafts on lease. Leasing not only helps in increasing the fleet size at a fairly quick rate, but also saving in a large portion of their capital which can be used in operation of the airline. There are different types of leases depending on the terms and conditions of the agreement.

Leasing of an aircraft is done with the prior permission of the DGCA Director General of Civil Aviation under CAR rules where no person is authorized to lease out or lease in an aircraft without the permission of the concerned authority.

There are primarily three types of leases:

- ACMI (Aircraft, Crew, Maintenance, and Insurance), or the wet lease;
- Dry lease – which includes operating and finance lease
- Damp lease- similar to wet lease except crew is not provided.¹⁹

Registration/ Deregistration of an Aircraft

An aircraft may be registered in either of the following two categories:

Category 'A', where the aircraft is wholly owned either by citizens of India; or by a company or a corporation registered and having its principal place of business within India; or by the Central Government or any State Government or any company or corporation owned or controlled by either of the said Governments; or by a company or corporation registered elsewhere than in India, provided that such company or corporation has given the said aircraft on lease to any person mentioned in Para 3.1(i),(ii) or (iii) above.

¹⁷ Civil Aviation Requirement Section 3, Series C, Part VIII, Section 3.2.1, 3.2.2

¹⁸ Civil Aviation Requirement Section 3, Series C, Part VIII, Note 1 , 3.

¹⁹ “Aircraft Leasing Manual” First Edition 2013, Approved by DGCA, Available at <http://dgca.nic.in/manuals/cap3200.pdf>

Category 'B', where the aircraft is wholly owned either by persons resident in or carrying on business in India, who are not the citizens of India; or by a company or a corporation registered elsewhere than in India and carrying on business in India.²⁰

No aircraft shall be registered in India if it is validly registered in some other country and in a case where the usual station of an aircraft and its ordinary area of operation are not situated in India, the DGCA may decline to accept an application for registration of the aircraft in India, or, as the case may be, to permit the aircraft to remain registered in India, if, in its opinion, the aircraft could more suitably be registered in some other country.²¹

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The deregistration of an aircraft registered in India shall be effected in accordance with the provisions of the Cape Town Convention. The substantial right of deregistration prevails over any claims that may be due to any authority in India such as tax or airport authority, who may collect it in terms of their statutory powers. However, such deregistration does not preclude any entity or authority from realizing their dues in respect of any services rendered by it²².

Foreign Operations by Domestic Airliners

The Domestic operators who wish to go international have to follow the mandatory requirement provided by the DGCA. Of all others the major one was Rule of 5/20 which can be interpreted as:

The Airlines must possess a valid permit of operation, and must have a fleet of at least 20 aircrafts which may be leased or purchased. ; b. They must have minimum of five years domestic scheduled transport experience. But this policy has been scrapped and the rule now is called no 0/20, which means the obligation of 5 years of experience is now dispensed off but has to maintain a fleet size of 20 aircrafts. The modified rule envisages that the airline needs to deploy 20 Aircrafts or 20% of the total capacity (in term of average number of the seats on all departures put together), whichever is higher for domestic operation. For this the published schedule of the airlines would be basis for monitoring. The open sky policy of government with the signing of Air Space Agreements (ASA) with 109 countries will help these airlines to expand to international routes easily. The signing of ASA on reciprocal bases with the SAARC countries and countries with territory located entirely beyond a 5000 km radius of New Delhi will allow the Airliners to fly unlimited number of flights .²³

Airworthiness Certificate

Airworthiness is the assessment of an aircraft's suitability for safe flight. Rule 50 of the Aircraft Rules, 1937 empowers the Director General of Civil Aviation (DGCA) to issue or validate the Certificate of Airworthiness of an Aircraft. Further, Rule 15 requires that every aircraft registered in India possess a current and valid Certificate of Airworthiness (C of A) before it is flown unless it is flown for the purpose of flight test in the close vicinity of an aerodrome or the place of its

²⁰ Civil Aviation Requirements, Section 2 Airworthiness, Series F, Part I Section 3.1

²¹ Civil Aviation Requirements, Section 2 Airworthiness, Series F, Part I Section 3.2, 3.3

²² Civil Aviation Requirements, Section 2 Airworthiness, Series F, Part I Section 9.2.

²³ “5/20 Requirement for International Operation”, National Civil Aviation Policy 2016.

departure. Such certification of airworthiness is initially conferred by a national aviation authority and maintained by performing the required maintenance actions. The application of airworthiness defines the condition of an aircraft and supplies the basis for evaluation of the suitability for flight of that aircraft. Each aircraft either manufactured in India or imported into India for which a Certificate of Airworthiness is to be issued or validated, shall conform to the design standards and be in a condition for safe operation.²⁴

Insurance

DGCA has made it mandatory for an airliner to have insurance policy. Any airline/ operating company operating in India needs to have a current comprehensive insurance policy covering the aircraft, crew, cargo and third party risks in accordance with the requirements. Further the operator shall maintain a current and adequate insurance coverage for liability in compliance with requirements set forth under the Carriage by Air Act, 1972.²⁵

Safety requirements

ICAO (International civil aviation organization) provides with the global safety standard under its Annexure 19- Safety Management. The ICAO mandates the contracting states to devise and formulate a State Safety Program (SSP). Each State should promote the establishment of safety information sharing networks among users of the aviation system and should also facilitate the free exchange of information on actual and potential safety deficiencies.²⁶

The DGCA has the responsibility of implementing these provisions for aviation safety in the country. For this reason two divisions have been established one is SSP which is an integrated set of regulations and activities describing as to how India manages and seeks the continuous improvement in aviation safety and another is SMS (safety management system) which provides a platform for parallel development of the SSP by the State and the Safety Management System (SMS) through its service providers. The State Safety Plan 2015-2016 in its handbook desired to reduce number of reported events for each SPI (safety performance indicator) by 5% every year.²⁷

Reporting of an incident/ Accident

The objective of incident/occurrence reporting and investigation is to contribute to the improvement of aviation safety by ensuring that relevant information on safety is reported, collected, analyzed, stored, protected and disseminated and not to attribute blame or liability. Incident/Occurrence reporting is an essential part of the overall monitoring function of the operator. The detailed objectives of the incident/occurrence reporting systems are:

²⁴Civil Aviation Requirements, Section 2 Airworthiness, Series F, , Part III, Issue II, Section 1, 2.1, available at <http://dgca.nic.in/ftppub/D2F-F3.pdf>

²⁵ Civil Aviation Requirements, Section 3 Air Transport services 'C' Part IV, Section 4.3 (e), 7.5

²⁶ Chapter 5, Annexure 19 Safety Management, ICAO Available at https://www.caa.govt.nz/ICAO/ICAO_Compliance.htm

²⁷ “Handbook on State Safety Plan” 2015-16, DGCA, available at http://dgca.nic.in/sms/Safety%20Plan_India.pdf

- a) To enable assessment of safety implications of each occurrence, including previous similar occurrences, so that any necessary action is initiated to prevent similar occurrences in future.
- b) To ensure dissemination of information.²⁸

Voluntary Reporting

The safety of the flight is jeopardized resulting from unavailability of reports of incidents occurred, which are only known to pilots or concerned airlines . However Failure to report such occurrence is usually attributed to reluctance in admitting personal errors to an employer or to the Regulatory Authority. In order to encourage the reporting of such occurrences, a confidential reporting system was introduced by all airlines/organizations by issuing of Aeronautical Information Circular 03 of 2015²⁹. ICAO also provides for voluntary reporting in its Chapter 5 of Annexure 19 on Safety management stating that it shall be shall be non-punitive and afford protection to the sources of the information.³⁰

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Legal liability of carrier

The rights and liabilities of air carriers are governed by The Carriage by Air Act, 1972. Since the Act extends to the entire territory of India, it is applicable to Indian citizens involved in domestic carriage by air and in international carriage by air, irrespective of the nationality of the aircraft performing the carriage. The Act embodies the provisions of Warsaw Convention 1929 and Warsaw Convention as amended by the Hague Protocol 1955. Due to these archaic provisions of the convention, India continued to be governed under very low liability regime by warsaw and Hague convention. According to which in case of any miss happening the compensation was paid according to the First schedule, or second schedule provided both countries have signed the convention. It was finally realized that the obsolete protocols would not address the problems pertaining to liabilities and consequently, India ratified the Montreal Convention 1999 and in 2008/09 & brought appropriate amendments to the carriage by Air Act, 1972. Thus finally, Indian carrier liability in context to international civil aviation has been brought up to speed with international norms by India becoming a party to Montreal convention in 1999. Furthermore, section 6A entitles the conversion of compensation denominated in SDR into INR at the prevailing rate of exchange.³¹

It may be noticed that the Montreal Convention 1999, does not allow for claims for damages for mental anguish and inconvenience caused to/suffered by a claimant. The compensation which is provided in a two tier manner. However, nothing prevents the carrier and the passenger to enter into an agreement to fix a higher limit of damages. Additionally, any provision to absolve the

²⁸ Civil Aviation Requirements, Section 5, Air Safety Series 'C' Part I Issue II, section 1.1

²⁹ “circular 3 of 2015”, Aeronautical Information Charts, DGCA, Available at <http://dgca.nic.in/rules/safety-ind.htm>

³⁰ Supra Note 26.

³¹ Note on Air Carrier Liability Law in India for Ministry of Civil Aviation, International Foundation for Aviation, Aerospace and Development (July 15,2011), www.iffaadindia.org/images/Air%20Carrier%20Laibility.doc

carrier from liability or fix a lower limit than that which laid down in these rules shall be null and void. Further, 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.³²

Liability of Carrier

The carrier shall be liable for the damages sustained in case of:

1. Death or bodily injury suffered by a passenger, if the accident which caused the injury occurred during' carriage or during embarking or disembarking.
2. Destruction or toss of, or damage to, and Registered luggage or any goods during the time they are in charge of the carrier, on the plane, in the aerodrome or elsewhere.
3. Delay in the carriage of passengers, luggage or goods.³³

Liability in case of Death

Sec. 5, Carriage by Air Act, 1972 mandates that the rules in Schedule I, II, III will determine the liability of the carrier in respect of the death of the passenger. But the schedules capped the maximum liability of the carrier to -1,25,U00 francs (by the Warsaw Convention as in the First Schedule to the Act) and 2,50,000 francs (by the Protocol of Hague, as stated in Second Schedule to the Act) and 1,00,000 SDR under MC,99.³⁴

It is also mentioned that the max liability is capped for the carrier but that doesn't meant that each claimant on behalf of the deceased would get the maximum amount, but it would be accordingly calculated. There is no set rule for calculating damages, but this solely depends on the economic worth of the person involved.³⁵

Liability for Other Damages

The carrier liability is extended for the damage sustained in case of a death, personal bodily injury or damage occasioned by delay, destruction or loss of, or of damage to, any registered luggage or any goods in the carriage by air. The quantum of damages may be reduced or waived off in the case if carrier is able to show contributory negligence by the claimant or no negligence on the part of the carrier, and its agents and servants took all measures that could reasonably be required to avoid damage.³⁶ The limits prescribed in rule 21 shall not prevent court from providing additional cost towards litigation; this provision shall not apply if the amount of compensation excluding the

³² Supra.

³³ The Carriage by Air Act, 1972, The Third Schedule, Chapter III, Rule 17(1), 17(2)

³⁴ The Carriage by Air Act, 1972, The first schedule Rule 21(1), The second Schedule Rule 22(1)

³⁵ Supra Note 31.

³⁶ The Carriage by Air Act, 1972, The Third Schedule, Chapter III, Rule 19, 20

curt fess does not exceed the amount which was given by the airliner within a period of 6 months from the date of occurrence of the damage.³⁷

Compensation

According to rule 21 of part III, the liability of carrier for each passenger is limited to 1 lakh SDR providing that the carrier shall not be able to exclude or limit its liability³⁸. In case the passenger and carrier with any special agreement have agreed to some higher amount of compensation regarding the same, then that would prevail.³⁹

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The carrier shall not be liable for damages to the extent that they exceed for each passenger one lakh SDR if the carrier proves that: (a) such damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents; or (b) such damage was solely due to the negligence or other wrongful act or omission of a third party.⁴⁰

In the event of any destruction, loss, damage or delay, the liability of the carrier shall be limited to 1000 SDR for each passenger. The liability of the carrier arises when any destruction, loss, damage or delay is caused during the carriage of cargo liability amounts to sum of 17 SDRs per kilogram, unless the consignor has made a special declaration of interest in delivery at destination and has paid a supplementary sum. In that case, the carrier shall be liable to pay a

sum not exceeding the declared sum, unless it proves that the sum is greater than the consignor's actual interest in delivery at destination.⁴¹

But Article 24 of the Montreal Convention which corresponds to rule 24 of the Third Schedule to the Carriage Act provides for review of the limits of liability of the air carriers for damages in relation to the carriage of passengers, baggage and cargo, prescribed in rules 21, 22 and 23 of the Carriage Act which corresponds to Articles 21 to 23 of the Montreal Convention, at five years intervals. The recent revised limits which Government of India has devised are given below.⁴²

Provision under Montreal Convention Limits	Old limits (SDRs)	Revise
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Damage sustained in case of death or bodily injury for each person (Article 21, paragraph 1)	100000	113100
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³⁷ The Carriage by Air Act, 1972, The Third Schedule, Chapter III, Rule 21(6)

³⁸ The Carriage by Air Act, 1972, The Third Schedule, Chapter III, Rule 21(1)

³⁹Supra 31.

⁴⁰ The Carriage by Air Act, 1972, The Third Schedule, Chapter III, Rule 21(2)

⁴¹ The Carriage by Air Act, 1972, The Third Schedule, Chapter III, Rule 22(2), 22(3)

⁴² THE CARRIAGE BY AIR (AMENDMENT) BILL, 2015, Lok Sabha, 28/07/2015, <http://www.prsindia.org/uploads/media/Carriage%20by%20Air%20/Carriage%20by%20Air,%202015.pdf>

2. Damage caused by delay in carriage for each person (Article 22, paragraph 1)	4150	4694
3. Destruction, loss, damage or delay with respect to baggage for each person (Article 22, paragraph 2)	1000	1131
4. Destruction, loss, damage or delay in relation to the carriage of cargo (Article 22, paragraph 3)	17	19

Facilities to passengers in case of Flight Disruption

In view of rapid expansion of air services within India and on international routes to/from India and with the increase in the volume of passenger traffic, it has become necessary for the Government to take appropriate action to ensure appropriate protection for the air travelers in case of flight disruptions.

In the case of Denied boarding if any alternate flight is made available within 1 hour of scheduled ETD, carrier is not liable for any compensation. In case of exceeding the time limit but which is less than 24 hours, compensation would be total of 200% basic fare of one side, fuel charge subject to maximum of Rs.10000. The amount of compensation is enhanced on the basis of crossing the time limit, but capped at maximum of INR 20000.⁴³

In case of cancellation of the flight, a passenger has to be informed 2 weeks prior to the scheduled flight; if not an alternate flight must to be arranged within 2 hours of scheduled departure. The compensation provided under these rule accordingly is as follows:

1. INR 5,000 or booked one-way basic fare plus airline fuel charge, whichever is less for flights having a block time of upto and including 01 hour.
2. 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 upto and including 02 hours.
3. INR 10,000 or booked one-way basic fare plus airline fuel charge, whichever is less for flights having a block time of more than 02 hours.⁴⁴

In case of a Delay- Provided that passenger has checked in on time, if the expected delay is for 2 hours or more for flight having block time upto 2.5 hrs, 3 hrs delay under block time of 2.5 to 5 hrs and 4 hrs or more in block time exceeding 5 hrs. The airline should provide passengers with meal and refreshments free of cost. Where the delay is expected to be greater than 24 hours from

⁴³ Civil Aviation Requirements, Section 3- Air Transport, Series ‘M’, Part IV, Rule 3.2

⁴⁴ Civil Aviation Requirements, Section 3- Air Transport, Series ‘M’, Part IV, Rule 3.3

the scheduled time of departure there passengers has to be provided with accommodation as well.⁴⁵

Conclusion

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The Indian Aviation Industry has shown tremendous growth potential in the past decade both in terms of volume as well as in quality of services rendered .There is a need of overall participation of the Government, policy makers and the stakeholders to boost civil aviation in India. The opening up of foreign investment up to 49% and permitting ECBs for meeting working capital needs in civil aviation has widened avenues for foreign investors to participate and benefit from the growth of the aviation industry. However, the Government through its New Civil Aviation Policy 2016 has tried to limit the uncertainty in the Aviation industry to make it sustainably profitable. The guidelines and reforms are to be drafted from time to time in order to meet the requirements of the industry. The need of the hour to provide an impetus to the aviation sector could be in the form of a relaxation of tax rates and reduction in airport infrastructure charges, which will in turn go a long way in bettering the profitability of Indian air carrier.

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The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

⁴⁵ Civil Aviation Requirements, Section 3- Air Transport, Series ‘M’, Part IV, Rule 3.4