Final Report

Minor Research Project

**A STUDY ON CIVIL AVIATION LIABILITY OF AIR CARRIER IN INDIA**

Submitted by

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 **INTRODUCTION**

Today, aviation is no longer reserved for the elite class. It has become a daily means of mass transportation. When passengers confine themselves to a limited space in the sky at the mercy of the aircraft operator, there is a natural sentiment to seek far more guarantees of safety. Secondly, the degree of fatality associated with aircraft accidents further intensifies such a fear. As man enters almost the second decade of the third millennium, concern over aviation safety is stronger than ever. Further, civil aviation has also become an attractive target for terrorist. For eg. An Air carrier might have carried thousands of passengers and cargo safely, but it takes only one hijacker or one of the billion pieces of baggage containing explosive to shake the public confidence in air travel, to undermine its global accessibility.

The global liberalization regime of the past two decades has fundamentally affected the operation of international air transport services. This process calls for reflection and analysis across a wide range of legal and policy areas, including but not limited to public international air law and policy, with special reference to safety, security and environmental concerns, liability, competition law regimes, company law, and the complex relationship between Municipal law and public international law.

In the present study the researcher shall critically examine developments around liberalization of air services internationally resulting in the establishment of Open Aviation Areas; the relationship between international organizations such as ICAO; the coming into force of unlimited liability regimes and related case law; the granting of antitrust immunity to international airline alliances; and cooperation between competition authorities. Study will also be done to topical safety and security issues, and the growing impact of aviation in relation to the environment, dictating the design of emission trade systems. Last but not least, commercially oriented subjects such as aircraft financing and leasing will be addressed, both from the perspective of national and international legal regimes, taking into account practical cases and case law.

The relevance of air passengers’ safety and security, their rights and the liabilities of the air carriers in the present context, the legal framework in various countries and the comparative novelty of the area, appeals me to take up the same for research. There are certain important untrodden areas in the safety and security liability of aviation safety. The questions like which Courts shall have jurisdiction in case of international flights, what happens in case of non signatory nations, do the passengers rights suffer are some points upon which the research may focus the study. Also, what is the binding effect of the International Conventions on the countries is under study. Also a detailed analytical and critical study regarding the safety and security provisions in the municipal laws of various countries and a comparative study with the Indian position shall be made.

International terrorism is one of the major threats to safety and security of civil aviation. ‘Terrorism’ is a Latin word, which means ‘great fear.’ According to the Webster’s Dictionary it is a systematic use of violence and intimidation to achieve some goals especially political. International Terrorism Includes those acts where two or more States are involved i.e the perpetrator and victim are of two different States or where the act is performed in whole or in part in more than one State. There is no particular form of air terrorism. Any act intended to create terror in minds of a particular person, or a group of persons, or the general public may be a form of terrorism. However, hijacking of Aircrafts, Attack on diplomatic Missions and taking of hostages are some of the known forms of international terrorism. There are seven Conventions and one protocol governing the legal control over international terrorism.

1. 1963 Tokyo Convention on Offences and Certain Other Acts committed on Board

1. 1970 Hague Convention for the Unlawful Seizure of Aircraft
2. 1979 Convention Against taking of Hostages

4. 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (Supplements the 1971 Montreal Convention)

5. 1991 Convention on the Marking of Plastic Explosives for the Purpose of Detection6.1997 Convention for the Suppression of Terrorist Bombings

7. 1999 Convention for the Suppression of Financing of Terrorism

8. International Convention for the Suppression of Acts of Nuclear Terrorism New York, 2005

The evolution of Air law dates back to the Paris Convention. Warsaw Convention and the Chicago Convention are the other two major breakthroughs in the evolution of air law. The Montreal Convention is the first major revision of the Convention Act since its inception in 1929. The act established international regulations for airline claims involving death, injury, or loss of or damage to cargo or baggage. The new accord, named after the ICAO's conference in Montreal, eliminates the act's fragmented procedures and low damage caps. The Montreal Convention eliminates the meager and arbitrary limits of liability currently applicable. For lost baggage, for instance, it replaces the current liability limit of Rs. 900 (US $ 20) per kg with a per passenger limit of 1000 SDRs (Special Drawing Rights). (SDRs are a currency conversion measure used by the IMF, where one SDR is equivalent to approximately Rs.70.)

The Carriage by Air (Amendment) Bill, 2007 has been introduced. The Bill proposes to update India’s legal regime by ratifying the Montreal Convention. The Bill introduces a two- tiered compensation regime for death or injury to passengers. If the accident is the fault of the carrier, then it has an unlimited liability. Otherwise, the carrier’s liability is limited to 100,000 SDRs, which is triple the limit under the earlier convention. In case of death or bodily injury of the passenger, the Bill provides for advance payment by the carrier to the passenger or passenger’s family to address immediate economic needs without lengthy litigation.

 Liberalization of the Indian civil aviation sector in the mid to late nineties has led to a large number of private players entering the sector in addition to the two established national carriers (Air India and the erstwhile Indian Airlines). Apart from the fact that liberalization of this sector came alongside the phase of rampant economic development in India, growth of the Indian tourism industry and the ever-increasing disposable incomes of `the Indian middle-class have contributed to the admirable levels of growth that the civil aviation sector has achieved in the last decade, in addition to the support provided in the form of structural reforms, airport modernizations, entry of private airlines, adoption of low fare model and improvement in service standards.

 During the implementation of the Eleventh Five-Year Plan (2007-2012), India has emerged as the ninth largest civil aviation market in the world with the total number of passengers handled at Indian airports, during the period growing at an annual average growth rate of 11.5% and cargo handled at Indian airports growing at an annual growth rate of over 11%.[1](http://www.nishithdesai.com/information/areas-of-service/industry/aviation.html#c438) The Indian aviation sector as a whole grew around 13.6% on a yearly basis in the FY 2010, which places it among the fastest growing aviation industries in the world.[2](http://www.nishithdesai.com/information/areas-of-service/industry/aviation.html#c438) It has been estimated by the Indian Government, that India has the potential to become one of the three largest aviation markets in the world by 2020.[3](http://www.nishithdesai.com/information/areas-of-service/industry/aviation.html#c438) However, this growth is not an indicator of profitability.

Airline losses approached USD 2 billion in the financial year ending March 2012, after losing USD 3.5 billion over the previous three years.[4](http://www.nishithdesai.com/information/areas-of-service/industry/aviation.html#c438) However, growth in FY 2012 is expected to slow down to less than 10%.[5](http://www.nishithdesai.com/information/areas-of-service/industry/aviation.html#c438) This can *inter alia* be attributed to high oil prices and other operational costs and poor capacity rationalization by the airlines.[6](http://www.nishithdesai.com/information/areas-of-service/industry/aviation.html#c438) All this coupled with other economic factors has brought the Indian aviation market to a tipping point.[7](http://www.nishithdesai.com/information/areas-of-service/industry/aviation.html#c438) FDI in the aviation sector alone cannot be a panacea for the cash-strapped industry but this has to be backed up by considerable reforms from the Government.

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 1 Report of the Working Group on Civil Aviation for the Twelfth Five Year Plan (Aug 31, 2011), [http://planningcommission.nic.in/aboutus/committee/wrkgrp12/transport/repor t/wg\_civil.pdf](http://planningcommission.nic.in/aboutus/committee/wrkgrp12/transport/repor%20t/wg_civil.pdf).

 2 Aviation in India (Jul. 30, 2012), <http://www.oifc.in/Sectors/Infrastructure/Aviation>.

3 India's domestic aviation market shows rapid growth in first half, CPA - Center for Aviation, available at[http://www.centreforaviation.com/analysis/indias-domestic-aviation-market-shows-rapid-growth-in-first-half-58687 (as on August 12, 2012)](http://www.centreforaviation.com/analysis/indias-domestic-aviation-market-shows-rapid-growth-in-first-half-58687)

4 Remarks of Tony Tyler at the Confederation of Indian Industry (Jul. 25, 2012),[http://www.iata.org/pressroom/speeches/pages/2012-07-25-01.aspx](http://www.iata.org/pressroom/speeches/pages/2012-07-25-01.aspx%22%20%5Ct%20%22_blank).

5 India domestic passenger growth slows to 8% in Dec-2011; 2012 growth to slow from 16.6% in 2011,[http://centreforaviation.com/analysis/india-domestic-passenger-growth-slows-to-8-in-dec-2011-with-growth-to-slow-from-2011-rate-of-166-66992](http://centreforaviation.com/analysis/india-domestic-passenger-growth-slows-to-8-in-dec-2011-with-growth-to-slow-from-2011-rate-of-166-66992%22%20%5Ct%20%22_blank)

6 Id.

7 Kingfisher Airlines shrinks to becomes India's smallest domestic carrier in Mar-2012, available at<http://centreforaviation.com/analysis/kingfisher-airlines-shrinks-to-becomes-indias-smallest-domestic-carrier-in-mar-2012-71975> (as on August 12, 2012) ("Kingfisher Shrinks")

 For example, the Ministry of Finance imposes a Service tax on air tickets, landing and navigation charges, which contravenes International Civil Aviation Organization's (ICAO) guidelines. India, as a longstanding ICAO member, had helped frame these policies. In addition, taxes on Aviation Turbine Fuel ("**ATF**") cause prices being nearly 60% higher than elsewhere in the world. This, combined with an excise duty of 8.2%, leads to fuel accounting for about 45% of the total operating costs of Indian air carriers, compared to a global average of 33%.[8](http://www.nishithdesai.com/information/areas-of-service/industry/aviation.html#c438) The Airports Economic Regulatory Authority (AERA) has effected a 346% increase for charges at Delhi's Indira Gandhi International Airport ("**IGIA**"), placing IGIA among the world's most expensive airports.

**1.4 Object of the Study**

1.To study evolution of aviation law and policy in the twenty first century.

2. To carry research on the core area of study on safety, security and liability in civil aviation with a comparative perspective.

3. To discuss on the liability of the air carriers for passengers, baggage and cargo, with special reference to Warsaw Convention and Montreal Convention. Along with the liability for damage caused by air craft other than to passengers, baggage and cargo will also be studied in detail.

4. To discuss the civil and criminal liability, along with the international norms, various Conventions and the legal position in India and other countries.

5. To make a comparative study of the civil and criminal liability of the air carriers and the remedies thereto available to air passengers and air cargo.

6. To study the global trends in this context.

7. To promote knowledge and understanding of aviation safety and aviation security.

8. To make a contribution to legal thinking on the multifaceted aspects of this important field of law.

**CONCLUSION**

With the changing economic scenario, factors such as globalization of markets, international economic integration, and removal of barriers to business and trade and increased competition have enhanced the need of transportation. It is one of the most important infrastructure requirements, which is essential for the expansion of opportunities and plays an important role in making or breaking the competitive positioning. In the commercial life of any country, the need for carrying goods from one place to another cannot be overemphasized. Also, goods are to be moved from one country to another. For these purposes, a contract of carriage is to be entered into. The persons, organizations or associations which carry goods are known as carriers

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. 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, for the aviation industry to grow and become sustainably profitable and prone to investment and growth, more reforms/guidelines are required to be drafted and introduced to bring it at par with the other jurisdictions. 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 carriers.

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19 Aviation ministry proposes abolition of service tax on air tickets & sales tax reduction on ATF (Jun. 4, 2012),<http://articles.economictimes.indiatimes.com/2012-06-04/news/32031727_1_aviation-hub-tax-on-air-tickets-atf>