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Aviation Laws and Air Carrier Liabilities in India

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Abstract

In this paper, we discuss the history of the established laws for carrier liabilities in India and explain the transition of the laws from being pro-carrier to pro-consumer through the enforcement of the concept of willful misconduct to break the monetary limits, with an essentially no-fault based system in place for damage claims under the new and higher limits, with a pure fault based system for claims over the established limits followed by an overview of the aviation sector in India, the information about the Regulatory bodies and the key legislations governing the Aviation sector in India. We would further look at different conventions and protocols and historic events that took place, in order to achieve the present day liability laws and limits accepted in India.

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Keywords: liability, legistlations, Warsaw Convention, Hague Convention, Montreal Convention

1. Introduction

Black et al., (1999) defines liable as "responsible or answerable". Any issue that an individual/enterprise faces during the air travel/baggage handling would hold the air carrier liable. Over the decade 2007–2016, baggage mishandling costed the air transport industry was over US$27billion. The legal liability of a company assures the costumer security. This also works in favor of the carrier as the customer's confidence in the carriers increased since the official unification of the liability laws. Since 1929, an international air carrier's liability for personal and cargo injury and damage, has been governed by the Warsaw Convention ("Convention"), officially referred to as the Convention for the Unification of Certain Rules Relating to International Transportation by Air. The Convention is a comprehensive international treaty governing the liability of carriers in "all international transportation of persons, baggage and goods". The Convention emerged due to the different liability laws in different countries with different languages, customs, and legal systems as stated in Lowenfeld and Mendelsohn (1967).The parties to the Convention

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desired to limit a carrier's liability in the event of any aircraft disasters, which might threaten the financial security of the then nascent industry.

2. Aviation Sector in India

Indian Civil Aviation completed 106 years in the year 2017. To commemorate this milestone, 'the year 2011-12' was declared and celebrated as the "Civil Aviation Centenary Year". India is the 9th largest aviation market in the world. On February 18, 1911, the first airmail service flew in India between Allahabad and Naini as pointed out by Sisodia (1994). The India Air Board, an advisory Committee of the senior official, made some recommendations to the Government of British India for the rapid development of civil aviation, both domestic and international. Consequently, the Department of Civil Aviation was created and Francis Shelmerdine was appointed as First Director of Civil Aviation in India in 1927. In 1932, the pioneer of Civil Aviation in India, JRD Tata, launched the first Indian Air- Carrier known as Tata Sons Ltd. Tata Sons Ltd., was nationalized and in 1953 came to be known as Air India which is now a well-known international Air Carrier. The Hindustan Aircraft Ltd., was established in 1940 by then Mysore Government. The Indian Government later took over its management. The first aircraft HT-2 Trainer aircraft was designed and manufactured in India informed by Sisodia (1994). India was represented in the Chicago Conference of International Civil Aviation which is an important event in the history of civil aviation transport in India. Besides giving effect to the Warsaw system through the Carriage by Air Act 1972, the Indian Parliament also passed the Tokyo Convention Act, 1972, The Anti-Hijacking Act, 1982, and Suppression of Unlawful Acts Act against the Safety of Civil Aviation Act, 1982, to ensure safety, security and growth of international air transport in India. In order to develop, the airports, suitable to serve international Carriers, India enacted "The International Airports Authority Act. 1971 ", with a view to providing for the constitution of an authority for the management of certain aerodromes where international air transport services are operated or are intended to be operated.

3. Key Legislations Governing Air transport in India

The earliest legislation in India was enacted as the Indian Airships Act, 1911, intended to regulate the manufacture, possession, use, sale, import and export of Airships. According to Sachdeva (1987) it was a presumptuous enactment because barring the Humber flights in 1911, there were no regular flying operation in India till the late twenties. Further, the regulation of manufacture of aircraft through this act appears equally ludicrous because such activity did not commence in India for another four decades as pointed out by Sachdeva (1987). Then followed the Aircraft Act, 1934.

3.1. The Aircraft Act, 1934 and the Aircraft Rules, 1937

India is a party to the Warsaw Convention; 1929, an international treaty governing the liability of the Air Carrier in respect of international carriage of passengers, baggage and cargo. In order to give effect to the provisions of the Convention for the Unification of Certain Rules relating to International Carriage by Air, India enacted the Carriage of Air Act, 1934 (20 of 1934) following a British enactment. The provisions of this Act have been extended to domestic carriage, subject to certain exceptions, adaptations and modifications, by means of notifications issued in this respect.

3.2. 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. This Act came into force on 15 May 1973(1973). There is no separate statute for domestic air carriage in India.

3.3. 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.

3.4. 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.

3.5. 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.

3.6. 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.

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

4. Regulatory Bodies

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:

4.1 Director General of Civil Aviation (DGCA)

This body primarily deals 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)

4.2 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 brought to light by Sachdeva (1987).

4.3. Airport Economic Regulatory Authority (AERA)

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 which was informed by Sachdeva (1987)

4.4. 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. It was recognized as 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 as explained by Sachdeva (1987)

5. Liabilities

The Air Carrier is liable, if it is a scheduled and international Carrier under this Act, according to the Warsaw Convention. It is neither covered under the Fatal Accident Act, 1855, nor by the Carriers Act, 1865 or Contract Act, 1872.

However, for domestic carriage, The Central Government by virtue of a notification issued on 17 December 1963, under the Carriage by Air Act, 1934, made it applicable to the domestic carriage and the presumption is that the said notification is deemed to have made applicable the Carriage by Air Act 1972. Hence, the limit on compensation for domestic flights is capped at Rs.20 lakhs in case of death of a passenger, value of compensation given by Gargi Rajvanshi (2015).

5.1. Liability in case of Death

Section 5 of the Carriage by Air Act 1972, stipulates:

1. Notwithstanding anything contained in the Fatal Accident Act, 1855 (13 of 1855) or any other enactment or rule of law in force in any part of India, the rules contained in the First Schedule and in the Second Schedule shall, in all cases to which these rules apply, determine the liability of a Carrier in respect of the death of a passenger.
2. The liability shall be enforceable for the benefit of such of the members of the passenger family as sustained damage because of his death.
3. An action to enforce the liability may be brought by the personal representative of the passenger or by any person for whose benefit the liability is under subsection (2) enforceable, but only one action shall be brought in India in respect of the death of any one passenger, and every such action by whomsoever brought, shall be for the benefit of all such persons so entitled as aforesaid as either are domiciled in India, or not being domiciled there express a desire to take the benefit of the action.
4. Subject to the provision of sub-section (5) the amount rewarded in any such action after deducting any costs not recovered from the defendant, shall be divided between the persons entitled in such proportion as the Court may direct.
5. The Court before which any such action is brought may at any stage of the proceedings, make any such order as appears to the Court to be just and equitable in view of the provision of the First Schedule or of the Second Schedule, as the case may be, limiting the liability of the Carrier and of any proceeding which have been or are likely to be commenced outside India in respect of the death of the passenger in question

5.2. Interpretation

In the above subsection, the expression "member of passenger family" means wife/husband, parent, stepparent, grandparent, brother, sister, half-brother, half-sister, child, step- child and grandchild. Any illegitimate person and any

adopted person shall be treated as being, or as having, been the legitimate child of the mother and respective father or as the case may be of his adopters.

6. Persons Entitled to Claim

A person who represents (could benefit from the claim) the passenger or is a member of family (refer to interpretation under section Liability in case of Death) is eligible for claim. The distribution of money amongst persons entitled to it in such proportion, as the Court may deem appropriate.

The SDR(special drawing rights)[1] shall converted in rupees at the rate of exchange prevailing at the date on which the Court taxes the amount of damage to be paid by the Carrier, as per The Gazette (1963).

7. The Warsaw Convention

After four years of long, careful discussion that had begun in Paris, 32 countries of the League of Nations had agreed to sign The Convention For The Unification of Certain Rules Relating To The International Carriage By Air Signed on 12 0ctober- 1929, a Treaty that is commonly referred to as the Warsaw Convention. Since United States had not joined the League of Nations until 1920[2], it had not signed the convention [3].The Warsaw convention couldn't take effect until it was ratified in at least 5 nations of the original signatory countries. It came into force on February 13, 1933, initially binding only Brazil, France, Latvia, Poland, Romania, Spain and Yugoslavia. With the further development of international air travel, at President Roosevelt's request the United States Senate decided to give its advice and consent to join the Convention and it came into force for the United States on October 29, 1934 informed by Rajvanshi (2015). Warsaw was the first Treaty to address international passenger rights and air carrier liabilities. It introduced the concept of Liability for most covered accidents subject to significant limitations on damages.

For example, the air carriers liability for personal injury or death was capped at 125,000 Poincare Goldfrancs[4] (approximately $8,300) per ticketed passenger(2016) unless the passenger could prove willful misconduct by the airline responsible, in which case the limit on damages would not apply(Convention, 1929); the limit on damages would not apply and full damages could be recovered under local law[5]. This meant that airline was not responsible for damage due to negligent conduct. Claims could be filed against the airline only in four jurisdictions and it need not necessarily be in the victim's permanent residence(Convention, 1929).

Another concept that has to be looked into is article 1(2) "to all international transportation performed by aircraft for hire". International transportation was defined as transportation between two contracting states or, where the origin and destination are in the same contracting state, transportation with an agreed stopping place outside that state. All determinations regarding applicability of the Convention are based on the ticket. If there are several legs on the journey but only one ticket is issued (through it may have several coupons), the determination depends solely on the first point of departure and the last place of scheduled arrival. The particular leg of the journey on which an accident occurs is not, as such, relevant to a determination of whether the Convention is applicable. The effect of these provisions can explained through an example. If countries A and B are both members of the Convention, then all flights between them, whether one way or round trip, are subject to the Convention.

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1. SDR aka XDR, are supplementary foreign-exchange reserve assets defined and maintained by the International Monetary Fund (IMF). See http://www.imf.org/external/np/fin/data/rms_five.aspx
2. This was due to political objection from the House of senate. Some notable ones were from Senator Henry Cabot Lodge (1920), Senator Borah's Objection on basis that joining the League of Nations would become America's permeant responsibility to keep check on the affairs of European continent from where most Americans had recently fled. (Why American politicians refused n.d.)
3. The limit of the Carrier Liability was considered to be very less and American delegates had demanded a very high price. This was one of the major reason why America did not adopt the Convention.
4. The **gold franc** (currency code: XFO) was the unit of account for the Bank for International Settlements from 1930 until April 1, 2003 which was 65 milligrams gold of millesimal fineness 900.
5. The United States Supreme Court has determined that Articles 17 and 24(2) of the Wesaw Convention provide "nothing more than a pass-through, authorizing us to apply the law that would govern in absence of the Warsaw Convention." Zicherman v. Korean Air lines Co., 516 I1.S. 217. 229 (1996) (applying Death on the High seas Act to calculate wrongful death damages in a wrongful death case arising out of the crash of Korean Air Lines Flight 007). See also Maddox v. American Airline Inc., 298 F.3d 694, 697 (8th Cir.

2002) ("thus, Article 17 is a 'pass-through' provision which, absent special federal legislation applicable to Warsaw Convention cases, provides nothing more than an authorization to apply whatever law would govern in the absence of the Warsaw Convention.").

If A is in the Convention and B is not, no one-way trip between the two can be covered; a round trip A - B - A will be covered, a round trip B - A - B will not. A flight wholly within country A, say from Visakhapatnam to New Delhi, will be covered by the Convention if the passenger holds a through ticket to a point in country B, say France, assuming either that B is a member country or that the ticket provides for a return to A.

Of course, on any given flight different passengers do different things - one will be starting a round trip from A to B and back, another will be completing a round trip back to B, still another will be on a one-way journey, and some may be on through voyages. But so long as most countries are in the Convention, these differences will have no practical effect as regards applicability of the Convention. It should be noted, further, that the applicability of the Convention depends entirely on the ticket, so that inquiry into the passenger's residence or nationality is irrelevant. Similarly, once the ticket has been issued, it makes no difference to applicability which airline performs the carriage - even if the airline belongs to a country which is not a member of the Convention.[6]

India was a delegate to the Warsaw conference and on the 29th of January 1970, declared itself bound by the Convention (before becoming independent, acceptance of the Convention was effected by the United Kingdom on 20 November 1934).

8. Application of the Warsaw Convention

According to the section 3 of the Convention:

1. The rules contained in the First Schedule being the provisions of the Convention relating to the rights and liabilities of Carriers, passengers, consigners, consignees and other persons shall be subject to the provisions of this Act, and have the force of law in India in relation to carriage by all to which these rules apply, irrespective of the nationality of the aircraft performing the carriage.

2. The Central Government may, by notification in the official gazette, certify as to who the High Contracting Parties to the Convention are in respect of what territories they are parties to and to what extent they have availed themselves of the provisions of Rule 36 in the First Schedule, and any such notification shall be conclusive evidence of the matters certified therein.

3. Any reference in the First Schedule to the territory of any High Contracting Party to the Convention shall be construed as a reference to all the territories in respect of which he is a party.

4. Any reference in the First Schedule to agents of the Carrier shall be construed as including a reference of servants of the Carrier.

5. Every notification issued under subsection (2) of Section 2 of the Indian Carriages and Air Act, 1934 (20 of 1934), and in force immediately before commencement of this Act, shall be deemed to have been issued under sub-section (2) of this section and shall continue to be in force until such notification is superseded.

9. From Warsaw Convention to Hague Protocol

The Warsaw Convention would become effective ninety days after ratification by five of the High Contracting Parties at the Warsaw Conference (Article 37). France, Poland, and Latvia all deposited their ratifications on November 15, 1932, joining Spain, Brazil, Yugoslavia, and Rumania, which had previously done so; and on February 13, 1933, the Convention entered into force(Convention, 1929). Great Britain and Italy deposited their ratifications on the following day, and by the end of 1933 twelve countries, including most of the European nations, were members. However, debates concerning revision of the Warsaw Convention began almost immediately. CITEJA discussed the question from 1935 on; the Provisional International Civil Aviation Organization (PICAO) had the Warsaw Convention on its agenda; and, after the International Civil Aviation Organization (ICAO) was established, its legal committee had the Convention under almost constant discussion. Conferences on the matter were held in Cairo in 1946, Madrid in 1951, Paris in 1952, and Rio in 1953.

6. E.g., Glenn v. Compania Cubana de Aviacion, 102 F. Supp. 63I (S.D. Fla. I952). In that case the accident occurred on a flight from Havana to Miami performed by Cubana Airlines. The round trip made the Convention applicable though Cuba was not a party.

10. Problems with the Warsaw convention

Various courts across the world had claimed that the language in the Convention were misleading. Many argued that the liability on carriers not being applicable on trips that originated or destined from a country that was not a signatory of the Convention, did not make sense. The argument was that if a claim arising out of an air accident is brought before an Indian court by a resident of India, should not make a difference whether the passenger was bound for a country, which had joined the Convention, or for one, which had not, or whether he had a one-way or round trip ticket.

Another issue was raised regarding the article 25 of the convention. Article 25, which deprived the carrier of the benefits of the limits of liability if the damage was caused "by his willful misconduct or by such default on his part as, in accordance with the law of the court to which the case is submitted, is considered to be equivalent to willful misconduct,"[7] was criticized as un clear(Drion, 2013). The language here was obscure, and had led to differing interpretations in different countries and different courts(Drion, 2013).

The rationale behind the article 25 of the convention came to question as the article had contributed neither to the objective of achieving international uniformity nor to the objective of minimizing litigation. Moreover, its rationale was in dispute.

The underlying and recurring theme of the argument was the value of the limits suggested. In developed countries like U.S.A, Britain and France, the awards in personal injury and death were much higher than the limits set by the Convention. With the Great Depression intervening even before the Convention came into force in 1933, all the States, dictated by the national economy, had abandoned the Gold Standard. These states started to fix the price of gold in currencies which was no longer freely convertible, at levels totally unrelated to golds market value. This caused the liability limits, in the Convention, to fall further and further behind their value if they were still linked to the market price of gold. Hence attempts to break the limit became extremely difficult and costly. Thus the Warsaw limit of 125,000 gold francs for passenger injury and death amounted to only US$8,292 when the official price of gold from 1934 to 1971, was fixed at US$35 an ounce. When the official price of gold was subsequently raised to US$42.2 an ounce, it was still no more than US$9,950, whereas on the assumption that the market price of gold was US$350 per ounce, it only amounted to US$82,923. To make matters worse for claimants, the legal costs were not separately awarded and come under the limit. Furthermore, because of the improvement in air safety, liability insurance could be obtained by the carriers at much lower cost per passenger mile than when the Convention was negotiated (Beaumont, 1947). In any event, it was argued, increased insurance costs would be a small part of the operating cost of air transportation and some persons suggested that there was no longer any reason to accord special protection to airlines, or at least the degree of special protection that was required in 1929 (Drion, 1954). Finally, after the Second World War, inflation and the rapid rise in the standard and cost of living, and the amount of compensation for death, especially personal injuries generally awarded, particularly among the industrialized nations, rendered the official Warsaw limit of passenger liability more and more unacceptable.

On the other side, it was said that in many countries the limits were considered satisfactory. Due to the worldwide departure from the gold standard and the widespread postwar devaluation, the value of the Warsaw amount (expressed in weight of gold) had actually increased in many countries. Some even contended that the limit was too high, thus discouraging a number of countries, notably in Latin America, from adhering to the Convention. Raising the limits, therefore, would only further impede the desired universality[8]. Finally, it was contended that higher limits would lead to increased insurance costs and hence to higher fares, so that the "'average passenger" would be subsidizing the few wealthy ones(Beaumont, 1947).

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7. United States translation, 49 Stat. 3000, at 3020. The official British translation is somewhat different. In French, the only official language of the Convention, the relevant words are "si le dommage provient de son dol ou d'une faute qui, d'apres la loi du tribunal saisi, est consideree comme iquivalente au dol." at Lacombe, Quelques problemes souleves par la revision de la convention de Varsovie, 12 REV. GE'N. DR L'AIR 764 (1949 3006, I37 L.N.T.S. at 23

8. Carriers were mostly state owned or heavily subsidized and was the root cause of the resistance to the higher carrier limits.(Clare, 1949)

11. Hague Conference

After ten years of debate, a diplomatic conference was convened at Hague on 28th September 1955. It had previously been decided to amend Warsaw rather than attempt to write an entirely new convention(1949), and the agenda at The Hague was based on a draft of a Protocol and on a report prepared by the 1953 ICAO Legal Committee meeting in Rio de Janeiro, which had recommended a 13, 000 dollar limit(2004). By a vote of 22-14, with Japan and Spain against, Great Britain and Italy abstaining, and the United States and most of the other major aviation countries in favor, the Conference adopted the proposal and the 250,000 franc limit(1954). Having thus cleared its principal hurdle, the Conference went on in very short order to adopt what became known as the Hague Protocol[9].

Although the United Stated was in favor of the rise of the limits on compensation, it was unsatisfied and issued a notice to denounce the Warsaw convention.

12. Events leading to the Montreal Conference

U.S.A, unsatisfied with the limits on the compensation and after it's denunciation from the Convention, had setup a special working group composed of representatives of the Department of State, the CAB, and the FAA, and this group held meetings and produced papers regularly from November to the eve of the Conference. CAB, pursuant to its authority under the Federal Aviation Act, sent out a questionnaire to each United States carrier, listing all accidents since January 1, 1958, and asking for exact information on all judgments and settlements for deaths and serious injuries to passengers aboard their aircraft during the seven-year period from that date to December 31, 1964.(1955a)

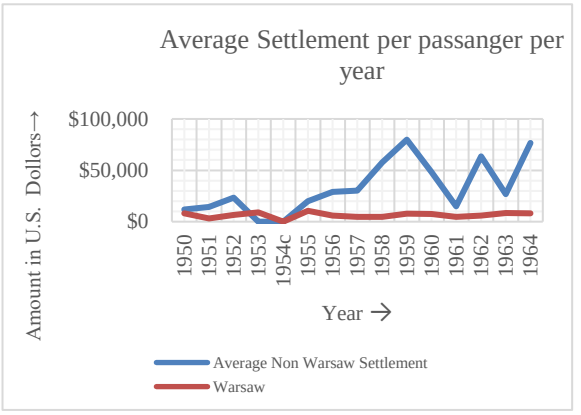

Figure 2: Passenger Recoveries (Settlements and

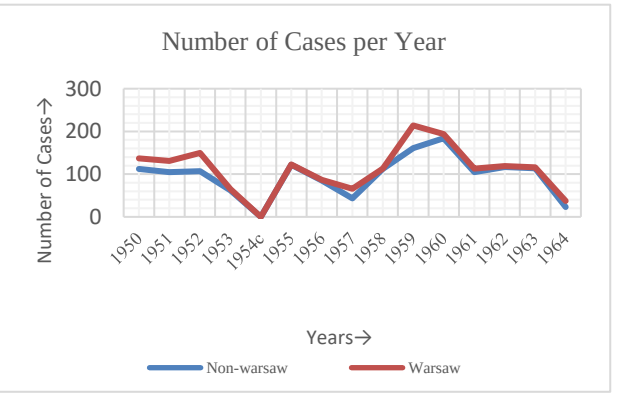

Figure 1: Passenger Recoveries (Settlements and Judgements) for both Warsaw and Non Warsaw (United States Carrier)

9. The members of the working group were Messrs, John Wanner and Peter Schwarzkopf (CAB), Robert P. Boyle and Charles Peters (FAA), and Leopold Gotzlinger and Lownfield and Mendelshon (Department of State). In addition, Mr. Robert Goodman from the staff on the CAB worked with the group

The above figure doesn't include the insurance costs and hence is not an accurate estimate. The insurance companies had shown reluctance to helping the body with the study. However, a few months later, major airlines have agreed to support and the following data was tabulated:

Table 1: Liability Insurance Cost(1955b)

Limit of Liability	Estimated Percentage Increase	Cost per Thousand Revenue Miles
$8,300		$0.64
16,600	5%	$ 0.68
25,000	9%	$ 0.71
50,000	25%	$0.81
75,000	38%	$0.9
100,000	48%	$0.96
200,000	72%	$1.12

With the completion of this statistical study, the working group could feel confident as to the validity of the economic case for a 100,000[10]dollar limit. For individual victims, the difference between that limit and a lower figure would in a large proportion of the cases be very significant. For the airlines, the impact would be slight[11].

13. Montreal Conference

The Montreal conference registered 59 countries, of these 28 were parties to Hague and Warsaw, 22 to Warsaw only, and 9 were present solely by virtue of membership in ICAO. Hungary and the U.S.S.R., which are parties to Warsaw but not to ICAO, were represented by observers(1966).

The major moto of the Montreal conference was to revise the limit value on the accident liabilities. U.S.A had announced that it would like the revised value to be 100,000[12]dollars. Some countries agreed with this limit but a few countries completely disagreed leading to major arguments with one argument prevailing the entire conference. The argument was that a person who's worth was 100,000 dollars, would take steps to insure himself. A Nigerian delegate also questioned that why should the poorer countries, the poorer airlines, and the poorer travelers pay as much as the rich countries. An exploratory voting was conducted and the number of countries against were higher for the limit suggested by U.S.A. Understanding the concerns raised by other countries, U.S.A had reduced its limits to 75,000$ with introduction of absolute limit as part of LIM-32[13]. However the concept of absolute limit had received a backlash with 27 against votes and 8 abstentions. The term absolute limit was not heard in the conference thereafter.

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10. These statistics, together with other countries responses to a questionnaire circulated by ICAO in preparation for the Conference, appear in 2 Montreal Proceedings 72-173
11. The working group also prepared studies on several other subjects relating to the Convention and Protocol. In addition, the Department of State commissioned Professor Willis L.M. Reese of Columbia Law School, Reporter for the Restatement (Second) of Conflict of Laws, to do a study on the conflict of law problems that could arise should the United States denounce the Convention. This study was later made available to a number of foreign delegations at Montreal
12. The rationale behind the value of the 100,000$ was the high litigation costs in the U.S.A. However later in the session, Germany proposed a revised plan on the limit of liability. See pg. 568 of SPECIAL ICAO MEETING ON LimiTs FOR PASSENGERS UNDER THE WARSAW CONVENTION AND THE HAGUE PROTOCOL (1966)
13. LIM-32, is the file name of the U.S.A's four level changes planned to be brought. This file had to be reported in the house of Senate

The following table summarizes the final proposals along with the number votes each has received:

Table 2: Final Proposals in Montreal

Proposals from Different Countries	Voting Status
Czech ($33,200 under Warsaw-Hague)	22 for, 11 against and 11 abstention
French ($50,000 under Warsaw-Hague)	32 for, 7 against and 5 abstention
Irish ($50,000/66,000)	25 for, 8 against and 12 abstention
LIM- 32 ($58,000/75,000, without absolute liability)	20 for, 16 against and 9 abstention

With this vote, the substantive work of the Conference came to a close. The Conference did vote to recommend to the ICAO Council that a diplomatic conference be called to Consider the four final proposals, and it expressed the hope that before such a diplomatic conference were held, the United States would agree to withdraw its notice of denunciation(1966).

14. Guatemala City Protocol

The deep malaise that the other countries developed towards the United states due to its denunciation lead to the conference at the city of Guatemala City in 1971[14] officially known as the Warsaw Convention as amended at The Hague, 1955, and at Guatemala City, 1971, which affected only the carriage of passengers and baggage. The basis of the carriers liability for death and injury in the carriage of passengers, except those which resulted solely from the state of health of the passenger (Article 17(1)), was changed from rebuttable presumed or simply presumed fault to absolute liability by amending Article 20(1) of the Convention. Checked (registered) baggage and objects of which the passenger himself has charge were dealt as one, the carriers liability for the destruction, loss, or damage of which, unless resulting solely from the inherent defect or vice of the baggage, was absolute (Article 17(2)). Liability for delay remained based on presumed fault. The carrier's liability in the carriage of both passengers and baggage was subject to the defense of contributory negligence, which no longer depended on the lex fori (Article 21). At the same time, the limit of Warsaw-Hague for passenger death and injury was increased six fold to roughly US$100,000 (Article 22(1(a))). The limit for the destruction, loss, damage or delay of baggage, whether checked or not, was changed to about US$1,000 per passenger (Article 22(1)(c)), when under Warsaw and Warsaw-Hague it is approximately US$17 per kilogram for checked baggage and about US$350 per passenger for objects of which the passenger himself had charge. Guatemala City is thus entirely carrier-oriented(1966). It subsequently metamorphosed into Montreal Additional Protocol No 3 (MAP3) in 1975.Neither Guatemala City nor the Montreal Additional Protocol has come into force, but some of their features have with modifications been absorbed into the Montreal Convention.

15. Montreal Convention (1999)

In October 1995 ICAO Council mandated to modernize the Warsaw System[18].Thereupon the Council set up a Study Group to assist the Legal Bureau which jointly developed a mechanism to modernize the convention[19]. The Council, on receipt of the first report of the Study Group which recommended the development of a new convention with a two-tier liability system for passenger death or injury,37 in March 1996 requested the Legal Bureau to do so, with assistance from the Study Group[20].

14. Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, Warsaw, 1929, as Amended by the Protocol Done at The Hague, 1955, Guatemala City, 1971, ICAO Doc 8932

The Secretariat Study Group had completed its task with great expedition and was able to submit its Report[39] and a Draft Convention[40] to the Council later that year, which immediately passed it on to the Legal Committee.
The Committee appointed Mr Vijay Poonoosamy as Rapporteur to report on the draft, and he submitted his Report in January 1997.41 The Legal Committee considered the draft at its 30th Session (28 April9 May 1997),42 at the end of which the text of a draft convention was approved.43 Having then circulated the draft to Member States for comment,44 the Council later that year established a Special Group on the Modernization and Consolidation of the Warsaw System (SGMW) to fine-tune the Legal Committee draft.

The low limits of the Warsaw System on compensation for passenger death or injury were what had been ailing it for some 50 years. Already at its First Meeting in February 1996, the ICAO Study Group recognized that those limits meant that the interests of the passengers were not sufficiently taken into account.77 At its Second Meeting in June, the Moderator, Dr Ludwig Weber, was able to sum up that the general consensus was that they should aim at a modernized legal framework ... responsive to increased concerns for effective consumer protection ... that is in form and substance acceptable to States.78 Consumer protection is thus the key to Montreal, plus ratifiability**.**

16. Jurisprudence of Indian Cases

The following section would provide the history of cases in India and the Judgments passed by the courts.

16.1. Deepak Wadhwa vs. Aeroflot

The Delhi High Court in this case held a decree passed by the Delhi District Court under the

Warsaw Convention, 1929, for loss of cargo, is a nullity because the claimant under Section 86 of the Code of Civil Procedure, 1908, which stipulates as under, obtained no prior permission from the Central Government:

No foreign state may be sued in any court otherwise competent to try the suit except with the consent of the Central Government certified in writing by a Secretary to the Government.

In view of the previously mentioned, the Court held:

There is no provision in the matter of sovereign immunity contained in the Act. The Code [i.e., CPC] deals with procedural matters, that is, the matters relating to the machinery for the enforcement of substantial rights. These substantive rights may be contractual or flowing from the statutory provisions, including the Act. The Act allows suits to be filed in a Civil Court relating to the matters under it, but the proceeding to be followed in such suit will be governed by the provisions of the Code. The Act does not confer jurisdiction on the Court or provide a special procedure in dealing with claims arising out of, or under the statutory provisions. The suit had to be determined according to the law of procedure laid down in the Code. No foreign state could be sued in any Court otherwise competent to try the suit except with the Consent of the Central Government Certified in writing by a Secretary of the Government.

The above judgement is not in adherence with the international private law as established by the Warsaw convention.

16.2. Sm. Mukul Dutta Gupta and Ors. vs Indian Airlines Corporation on 11 August, 1961

The plaintiffs are the widow and minor children of one Sanat Kumar Dutta-Gupta who was killed in an air crash. They have instituted this suit under the Fatal Accidents Act for the recovery of damages against the defendant Corporation. It is pleaded in the plaint that the deceased Sanat Kumar purchased a ticket as a passenger from Dum Dum Airport to Jorhat on the defendant's scheduled route known as the Calcutta-Mohonbari route. On March 21, 1956 at about eleven o'clock in the morning the aircraft crashed while landing at Salami Airport. Sanat Kumar was killed in the crash. The plaintiffs' case is that the death of Sanat Kumar was caused by the negligence of the defendant Corporation or its employees. The particular of negligence are set out in paragraph 5 of the plaint. Leave to furnish further particulars of negligence and/or misconduct however was reserved after discovery. Such further particulars were furnished at the time of the opening of the case by Mr. Dutt Roy the learned counsel for the plaintiff. It is to this effect, that there has been a breach of Rule 115 of the Rules framed under the Indian Aircraft Act. It is pleaded that the defendant is attempting to evade liability by setting up certain conditions of carriage. The

plaintiffs' case is that Sanat Kumar had no notice of the said conditions of carriage nor did he accept them and consequently the same are not binding. The validity of the said conditions has also been disputed. Sanat Kumar was only 44 years of age when he was killed. He was in the best of health and well placed in life. He held a permanent employment in Messrs. I. G. N. and Rly. Co. Ltd. a reputed British company and at the time of his death he was drawing a salary of Rs. 700/- per month with prospect of earning unto Rs. 1,500/-per month. The sum of Rs. 3, 00,000/- has been claimed as damages. The appeal had been filed with the Calcutta High Court.

The above case happened during the time of absence of a Statute on liability for domestic travel. The Carriage by Air Act (1934) doesn't regulate the rights and liabilities of **carriers** engaged in the business of internal transport by **air** either of passengers or of goods. The British common law was considered as a statue for this case but the issue was Britain had accepted the carriage by Air Act for both international and internal travel. The final judgement:

In my judgment, the rules of justice, equity and good conscience applicable to internal carriage by air in India are not the rules of common law carrier in England, but the rules to be found in Carriage by Air Act, 1934. The Indian legislature has indicated that it should be applied to non-international air carriage of course "subject to exception, adaptation and modification." The Central Government in exerc:sc of the delegated power of legislation cannot modify the principles embodied in the Rules affecting the liability of the carrier by air, by any notification under Section 4 of the Act.

Despite winning the case, the plaintiff could only claim a compensation of 125,000 gold francs as stated by the Carriage by Air Act (1934) which had amounted to Rs. 39,425(as per Treasury Department, Bureau Of Accounts Division Of Central Accounts And Reports, Foreign Currency Branch, May 21, 1964) thus proving the pro carrier nature of the Warsaw convention which on ratification came to be known as Carriage by Air Act (1934).

16.3. Air Carrying Corporation vs Shibendra Nath Bhattacharya on 25 March, 1964

In this case, the plaintiff's complaint against the defendant Cooperation over the loss of baggage due to negligence. The defense was that the loss was due to an act of God, or the accidental destruction of the air-craft by which the goods were being transported. It is the finding of the Courts that the loss of the plaintiff's goods has been occasioned by the negligence of the defendant Corporation and not an act of God, and the learned Advocate for the defendant-appellant has confined his argument to a question of law, namely, that even assuming that the loss of the goods was due to the negligence of the Corporation, it was not liable in view of the special contract, to wit, the terms of note 2 to the consignment from subscribed by the plaintiff, which exempted the defendant Corporation from any liability for the loss of the goods, whether due to accident, negligence or any other cause. This question of law was agitated before the court of appeal below but was rejected on the ground that Sections 151 and 152 of the Contract Act governed the liabilities of the defendant-Corporation and that even if the consignment form purported to contract out of the statutory liability laid down by the aforesaid provisions of the Contract Act, such contract, was invalid and inoperative.

However, the legislation had not taken measures to ensure that the carriage by Air Act 1934 would extend to domestic flights. The court had dismissed the case subject to the above observations.

This case is a reflection of the pro carrier nature of the air law prevalent in India during the early 60's with the Calcutta High court declaring that the legislative interference was necessary for avoiding such dismissal in future.

16.4. Mangalore Crash

The Mangalore crash is the first case dealing with liability of Carriage by Air Act as after the 2009 amendment. An Air India Express bound from Dubai to Bajpe International Airport, Mangalore, had crashed thereby killing 158 people and injuring remaining 1059. This lead to the claimants filing for a petition in Kerala High Court (under the Montreal convention, claim could be filed either in U.A.E. and India) as the insurers of Air India had offered Rs.10 lakhs for 128 deceased people and Rs.5 lakh61 for injured person.

The above settlement offer was less than the limit set by the Montreal Convention, which is 100,000 S.D.R, which was about Rs.75 lakhs at the time of the crash. The Kerala High Court issued a stay order on the judgement of single-

judge bench, directing Air India to work out an amicable settlement with the families. Since the decision does not follow the Montreal Convention, the claimants appealed the case in Supreme Court.

In January 2012, a division bench of the Apex court issued a notice that was laid down as landmark situation wherein the court has laid down the law about computation of the damages in case of international carriage. The final judgement was ruled out in favor of the plaintiff.

17. Conclusion

Holding a carrier liable through payment of compensations in case of death or injury to passenger, acts as a method of keeping the air carriers in check. In this modern era, where media has become a very powerful element, other ways of keeping carriers and its servants in line have emerged, but these methods are not affordable by everyone and hence the burden lies on the legislation to maintain a statute for protecting the interests of both carriers and passengers without compromising the needs of the other. The evolution of the Warsaw Convention, the most successful system of international uniform law, conceived with a vision to protect commercial aviation during its infancy. It mirrors fundamental changes in society that have taken place, from the age which made the buyer beware, to one of product liability, legislation on unfair contract terms, and numerous forms of consumer protection. From the beginning, in the best interest of the national economy governments had distorted the operation of the system. For about 50 years, for the sake of protecting their carriers which were government-owned or heavily subsidized, governments procrastinated the changes that could benefit passengers, with the result that the original regime proved more and more inadequate as the world moved on to the eve of the twenty-first century. Then as if to beat the arrival of the new millennium, radical changes started to take place. All the governments represented and all the individuals concerned deserve great credit for having, while replicating the basic structure of the original instrument, produced the Montreal Convention with remarkable dispatch, a modern instrument imbued with the new spirit of consumer protection, under which carriers provide passengers with practically absolute, unlimited, and assured liability in respect of death and injury, and consignors and consignees of cargo with a regime to which all sides have long been happily accustomed. Carriers, now mostly commercially owned, and governments too, have to be appreciated for readily accepting it. It is to be hoped that speedy ratification of Montreal by all concerned and wise counsel in its interpretation and application will ensure that the effects of the shortcomings are minimized and the new code will emulate and even surpass its distinguished predecessor in simplifying the solution of differences in international carriage by air throughout the world and providing justice and fairness to all involved.

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