

# PARLIAMENT OF INDIA

## RAJYA SABHA

### DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE ON TRANSPORT, TOURISM & CULTURE ONE HUNDRED AND TWENTY FOURTH REPORT

### ON THE CARRIAGE BY AIR (AMENDMENT) BILL, 2007 (PRESENTED TO THE HON'BLE CHAIRMAN, RAJYA SABHA ON THE 17<sup>TH</sup> OCTOBER, 2007)

### (FORWARDED TO HON'BLE SPEAKER, LOK SABHA ON THE 17<sup>TH</sup> OCTOBER, 2007)

RAJYA SABHA SECRETARIAT  
NEW DELHI  
OCTOBER, 2007/ASVINA, 1929 (SAKA)

---

#### C O N T E N T S

1. [COMPOSITION OF THE COMMITTEE](#)
2. [INTRODUCTION](#)
3. [REPORT OF THE COMMITTEE](#)
4. [OBSERVATIONS/CONCLUSIONS/RECOMMENDATIONS AT A GLANCE](#)
5. [ANNEXURE](#)
6. [MINUTES](#)

---

#### COMPOSITION OF THE DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE ON TRANSPORT, TOURISM AND CULTURE (2007-2008)

1. **Shri Sitaram Yechury** - *Chairman*

#### RAJYA SABHA

2. Prof. Ram Deo Bhandary
3. Shri Naresh Gujral
4. Shri Vedprakash P. Goyal
5. Prof. Alka Balram Kshatriya
6. Shri Janardhana Poojary
7. Shri M.V. Mysura Reddy

8. Shri Satish Kumar Sharma
9. Shri Shahid Siddiqui
10. Shri Shatrughan Sinha

## **LOK SABHA**

11. Shri Anandrao Vithoba Adsul
12. Shri Sukhbir Singh Badal
13. Shri Joachim Baxla
14. Shri Sartaj Singh Chhatwal
15. Shri N.S.V. Chitthan
16. Shri Adhir Chowdhury
17. Dr. K. Dhanaraju
18. Smt. Priya Dutt
19. Shri Dip Gogoi
20. Shri P. Karunakaran
21. Shri Vijay Kumar Khandelwal
22. Dr. P.P. Koya
23. Dr. Ramkrishna Kusmaria
24. Shri Samik Lahiri
25. Shri Alok Kumar Mehta
26. Shri Hemlal Murmu
27. Shri Madan Lal Sharma
28. Shri Akshay Pratap Singh
29. Shri Dushyant Singh
30. Shri Suraj Singh
31. Shri Pralhad Joshi

## **SECRETARIAT**

1. Shrimati Agnes Momin George, Joint Secretary
2. Shri Jagdish Kumar, Joint Director
3. Shri Swarabji B., Deputy Director,
4. Shrimati Subhashree Panigrahi, Assistant Director

(i)

---

## **INTRODUCTION**

I, the Chairman of the Department-related Parliamentary Standing Committee on Transport, Tourism and Culture, having been authorised by the Committee to present on its behalf, do hereby present this One Hundred and Twenty Fourth Report of the Committee on the Carriage by Air (Amendment) Bill, 2007\*.

2. The Bill was introduced in the Lok Sabha on the 4<sup>th</sup> May, 2007. In pursuance of rules relating to the Department-related Parliamentary Standing Committees, the Hon'ble Chairman, Rajya Sabha, referred\*\* the Bill to the Committee on 25<sup>th</sup> May, 2007 for examination and report within three months. On the request being made by the Chairman of the Committee, Hon'ble Chairman had granted

extension of time till the first day of last week of the Monsoon Session of the Parliament for the presentation of the report of the Committee on the aforesaid Bill.

3. The Committee took oral evidence of the Secretary and other officers of the Ministry of Civil Aviation at its meeting held on the 2<sup>nd</sup> July, 2007.

4. In order to get wider views on the subject, the Committee invited the views of individuals, organisations and institutions on the subject through advertisement in all major national dailies and vernacular newspapers all over the country. The Committee also heard the views of the representatives of National Aviation Company of India Limited, Jet Airways, Travel Agents Association of India, Travel Agents Federation of India and Air Cargo Agents Association of India at its meeting held on the 31<sup>st</sup> August, 2007. Under the mandate, the Committee has examined the Bill and finalised the Report.

5. The Committee also considered the draft Report on the subject and adopted the same on the 25<sup>th</sup> September, 2007.

6. The Committee wishes to express its thanks to the Secretary and other officers of the Ministry of Civil Aviation and Ministry of Law and Justice for the assistance and inputs provided during deliberations on the provisions of the Bill. The Committee also acknowledges the contribution of representatives of National Aviation Company of India Limited, Jet Airways, Travel Agents Association of India, Travel Agents Federation of India and Air Cargo Agents Association of India who submitted their valuable suggestions on the provisions of the Bill.

**NEW DELHI ;**

**October , 2007**

**Asvina , 1929 (Saka)**

**SITARAM YECHURY**

**Chairman**

**Department-related Parliamentary Standing  
Committee on Transport, Tourism & Culture.**

\* Published in the Gazette of India Extraordinary Part II, Section-2, dated 4.5.2007

\*\* Rajya Sabha Parliamentary Bulletin Part II, No.44123  
dated 25.05.2007.

(ii)

---

## **REPORT**

The Carriage by Air (Amendment) Bill, 2007 was introduced in the Lok Sabha on the 4<sup>th</sup> May, 2007. The Bill was referred to this Committee for examination and report. Under the mandate, the Committee has examined the Bill and finalised the Report after hearing the views of various stakeholders and the nodal Ministry *i.e.* Ministry of Civil Aviation. The Bill seeks to enable the Government to accede to the Montreal Convention for the unification of certain rules for international carriage by air so that India is at par with other major countries of the world. India has ratified two instruments, namely the Warsaw Convention, 1929 and the Warsaw Convention as amended by the Hague Protocol, 1955, and the same has been given effect to by the Carriage by Air Act, 1972.

2. The Statement of objects and reasons of the Bill states that as the limits of liability were

considered to be inadequate, the International Civil Aviation Organisation took the initiative and carried out a socio-economic study with a view to revising the levels of compensation and modernising the existing liability provisions. The deliberations in several meetings of the Legal Committee of the International Civil Aviation Organisation culminated in the adoption of the Convention for the unification of certain rules for International Carriage by Air (popularly known as Montreal Convention, 1999) at a Diplomatic Conference held on 28th May, 1999.

3. The statement of objects and reasons further states that the amount of compensation for death or injury has been enhanced to 1,00,000 Special Drawing Rights (SDRs) instead of Gold Francs which after conversion came to US \$ 20,000, choice of jurisdiction has been expanded to include the place of domicile of the passenger, provision for advance payment in case of death or bodily injury, provision for review of limits of liability based on inflation so that the need to amend the Convention is obviated, recognition of the use of electronic documents such as e-ticket, etc, to bring uniformity in the application of liability regime ending the multiplicity of international instruments.

4. The Ministry of Civil Aviation in their background note furnished on the 27<sup>th</sup> June, 2007 to the Committee has brought out the reasons for the introduction of the Bill.

5. There is an international legal regime governing the liability of air carriers for injury or death of their passengers, for destruction, loss or damage to baggage and cargo and for losses caused by delay in international carriage of passengers, baggage and cargo. The regime is set out in a number of international instruments collectively known as the "Warsaw Convention and the Warsaw Convention as amended by the Hague Protocol. The Carriage by Air Act, 1972 was enacted to give effect to these instruments.

6. The various instruments adopted by ICAO failed to receive the kind of universal acceptance as the parent Warsaw Convention and the Hague Protocol had received. Consequently, their coming into force was inordinately delayed due to which several States chose to go ahead with their unilateral decision to increase the liability limits. This resulted in a situation where several different combinations of liability regimes came into existence defying the much desired uniformity and unification of international law in the field.

7. The International Civil Aviation Organisation (ICAO) started a serious initiative in 1994 by carrying out a socio-economic study of the levels of compensation. A group was set up for studying the question of modernisation and consolidation of the Warsaw System, which produced the text of a new Convention. Finally, the Montreal Convention, 1999 for the Unification of Certain rules for International Carriage by Air was adopted on 28<sup>th</sup> May, 1999 at a diplomatic conference held in Montreal. It entered into force on 4<sup>th</sup> November, 2003, and aims to achieve the dual purpose of modernising as well as consolidating the various instruments comprising the Warsaw System.

8. In the Montreal Convention, 1999, the denomination for payment of compensation is the Special Drawing Rights (SDRs) as against 'Francs' mentioned in the Warsaw Convention, 1929 and the Hague Protocol, 1955. Whereas the value of Francs is expressed in terms of gold, the Special

Drawing Rights is a national currency based on a basket of currencies of several developed countries. It may be mentioned here that conversion of Francs into national currency was a very tedious and cumbersome process due to the variation in the market value and the official value of gold. On the other hand, the conversion of SDRs into national currencies is relatively easier task in as-much as it would be calculated in accordance with the method of valuation applied by the International Monetary Fund.

9. With respect to the accidental death or injury of passengers; the Montreal Conventional establishes a two-tier liability regime. For proven damage, which does not exceed 100,000 Special Drawing Rights (SDR) per passenger, the carrier is subject to strict liability regardless of fault. However, in the case of contributory negligence of the passenger, the carrier can be partly or wholly exonerated. For proven damage exceeding 1,00,000 SDR, the liability of the air carrier is based on a system of presumed fault, with no pre-specified limits of liability. However, the carrier shall not be liable for such damage if it proves that the damage was not caused by its negligence or other wrongful act or omission. The following Statement illustrates that the difference in liability limits under the existing Carriage by Air Act, 1972 and under the Montreal Convention which is proposed to be adopted by way of the Carriage by Air (Amendment) Bill, 2007:-

<b>S. No.</b>	<b>Subject</b>	<b>Rate under Warsaw System <i>i. e.</i> Warsaw 29 + Hague Protocol 55</b>	<b>Rate under Montreal 1999</b>
1.	Death or bodily injury	Proven damage subject to a maximum of 250,000 gold francs (equivalent to 20000 USD). The limit will not apply if negligence of the carrier is proved.	Proven damage subject to a maximum of 100,000 SDRs (140,000 USD). The limit will not apply if negligence of the carrier is proved.
2.	Checked baggage	Proven damage subject to maximum of 250 gold francs (20 USD) per kilogramme.	Proven damage subject to a maximum of 1000 SDRs(1400 USD) per passenger.
3.	Hand Baggage	Proven damage subject to a maximum of 5000 gold francs (400 USD).	Included within the limit set for checked baggage.
4.	Cargo	Proven damage subject to a maximum of 250 gold francs (20 USD) per kilogramme.	Proven damage subject to a maximum of 17 SDRs (24USD) per kilogramme.

10. The Warsaw System provides for four choices of jurisdiction for filing of a claim by a passenger or his legal heirs, namely, (1) the place where the ticket was issued or the contract of carriage was made, (2) the principal place of business of the carrier, (3) the place of destination of the passenger, and (4) the place of the domicile of the carrier. The Montreal Convention, 1999 adds a fifth

jurisdiction, i.e., the place of domicile of the passenger, provided the airline has a presence there. This would enable an Indian national to file his claim in India even if the journey was undertaken outside India and the ticket was purchased outside India, provided the carrier has a presence in India.

11. Another salient feature of the Montreal Convention is that it facilitates the use of simplified and modernized document of carriage (passenger ticket and waybill), thus enabling the utilization of electronic data processing in the air transport industry.

12. The Montreal Convention, 1999 seeks to establish much needed uniformity and predictability of the rules relating to the international carriage of passengers, baggage and cargo. It protects the interests of passengers by introducing a modern two-tier liability system and by facilitating the swift recovery of proven damages without the need for lengthy litigation. On the other hand, it would enable airline operators to achieve substantive operational savings through the use of electronically produced and simplified documents of carriage, and efficient risk management.

13. The Montreal Convention, 1999 has already been ratified by 78 countries, out of which 25 have direct air links with India, including routes having high traffic density such as USA, UK, UAE, Kuwait, Qatar, Bahrain, Saudi Arabia, Japan, Austria, France, Germany, Netherlands and Italy. In such a situation, non-accession of the Convention by India may give rise to a situation involving serious discrimination between the passengers of the same flight with regard to compensation. For example, those passengers whose journey originated in the USA or the UK will be entitled to much higher compensation compared to those whose journey originated in India. This will, by and large, go against the interest of Indian passengers. Moreover, if India does not accede to the Montreal Convention, our nationals would lose the benefit of the fifth jurisdiction.

14. In view of the foregoing, it has been proposed to accede to the Montreal Convention, 1999, and deposit the Instruments of Accession with ICAO. Before doing so, necessary legislative action is required to be taken in order to give effect to the provisions of the Convention in India. Accordingly, it has been proposed that the existing Carriage by Air Act, 1972 may be amended by including a new Schedule therein viz., Third Schedule. Just as the provisions of the original Warsaw Convention, 1929 are contained in the First Schedule and those of the Warsaw Convention as amended by the Hague Protocol in the Second Schedule, the provisions of the new Convention (Montreal Convention, 1999) shall be contained in the Third Schedule.

15. The rules contained in the First Schedule shall be applicable if the international carriage is between the Contracting Parties to the Warsaw Convention, those contained in the Second Schedule shall apply in respect of carriage between the Contracting Parties to the Warsaw Convention as amended by the Hague Protocol and the provisions of the Third Schedule shall be applicable for carriage between the States parties to the Montreal Convention, 1999.

16. In its meeting held on the 2<sup>nd</sup> July, 2007 the Committee heard the views of Secretary, Ministry of Civil Aviation on the Bill. The Committee also heard the views of various stakeholders such as,

National Aviation Company of India Limited (the newly formed company after the merger of Air India and Indian Airlines), Jet Airways, Travel Agents Association of India, Travel Agents Federation of India, and The Air Cargo Agents Association of India on 31<sup>st</sup> August, 2007.

17. The Ministry in their submission before the Committee stated that in order to deliberate on the implications of the Montreal Convention, 1999, several meetings were held with various airlines operating international air services viz. Air India, Indian Airlines, Jet Airways and Air Sahara. They were advised to carry out an in-depth analysis of various provisions of the Convention with particular reference to the financial burden they may have to bear in the event of its ratification. The general view of the airlines was that they were passing through a critical phase and the enhanced amount of insurance premium would entail another blow to their dwindling finances. Moreover, they were particularly concerned about the additional of fifth jurisdiction i.e. the place of domicile of the passenger. It means that the affected person may proceed against the airline in a Court situated at the place of domicile of the passenger provided the carrier operates air services for the carriage of passengers to/from that country either on its own aircraft or on another carrier's aircraft pursuant to a commercial agreement. The airlines were concerned about the litigation cost and logistics involved in defending such cases in the Courts where they do not operate but have only small representational offices and performs air carriage only through commercial agreement with other airlines. It was, therefore, decided to adopt the policy of wait and watch for some time. However, the airlines' concerns about higher cost of insurance premium and litigation were misplaced as after the coming into force of the Convention they would in any case be liable in respect of their operation to/from countries who have ratified the Convention.

18. The Ministry also stated that it takes time for the Governments to go in for ratification/ accession of the international instruments having far-reaching implications. Most of the major European countries ratified the Montreal Convention in 2004. China did so in 2005, Brazil and many Middle East countries in 2006 and Pakistan and Oman in 2007. Interestingly, Australia and some major Asian countries like Malaysia, Singapore and Thailand have yet to ratify the Montreal Convention.

19. On being asked about the consultation with stakeholders before bringing this Amendment, the Secretary stated as under:

"..... the Ministry had consulted the Airlines which operate internationally, for example, Air India, Jet Airways and Indian Airlines. I understand that the Jet Airways was not supportive of the proposal. Air India and Indian Airlines stated that they would like to wait and watch how this unfolds further and how the other countries respond to it".

20. However, the Chairman and Managing Director of National Aviation Company of India Limited categorically stated that the Ministry did not consult them before bringing this Bill while tendering his evidence before the Committee. The representatives of the Travel agents and Cargo agents also expressed the same view. This amendment Bill, if enacted, will definitely have a huge impact on the airlines, travel agents and cargo operators as all these stakeholders are mainly related to

this Bill.

21. The Committee in its meeting on 25<sup>th</sup> September 2007 considered the Carriage by Air (Amendment) Bill, 2007 clause-by-clause.

## CLAUSE 2

22. **Clause 2 reads -**

"In the Carriage by Air Act, 1972 (hereinafter referred to as the Principal Act), in the long title, for the words "and to make provision for", the words figures and letters "and also to the Montreal Convention signed on the 28th day of May, 1999 and to make provision for" shall be substituted."

23. This clause intends to amend the title of the Carriage by Air Act, 1972 by inserting the words "Montreal Convention signed on the 28<sup>th</sup> day of May, 1999 and to make provision for".

## CLAUSE 3

24. **Clause 3 reads -** "In section 2 of the Principal Act, after clause (ii), the following clauses shall be inserted, namely:—

‘(iii) "Montreal Convention" means the Convention for the unification of certain rules for international carriage by air signed at Montreal on the 28th day of May, 1999;

(iv) "Annexure" means the Annexure annexed to this Act.’"

25. This clause gives definition to the words Montreal Convention and Annexure which will be mentioned in the Act repeatedly.

## CLAUSE 4

26. **Clause 4 reads -** "In section 3 of the principal Act,—

(a) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) For the purpose of this Act, the High Contracting Parties to the Convention and the date of enforcement of the said Convention shall be such as are included in Part I of the Annexure.”;

(b) for sub-section (5), the following sub-section shall be substituted, namely:—

“(5) The Central Government may, having regard to the objects of this Act, and if it considers necessary or expedient so to do, by notification in the Official Gazette, add to, or, as the case may be, omit from, Part I of the Annexure, any High Contracting Party and on such addition, or as the case may be, omission, such High Contracting Party shall be or shall cease to be, a High Contracting Party.”.

27. This Clause intends to amend sub-section (2) of Section 3 of the Principal Act and defines the application of Convention in India. The Government by notification in the Official Gazette can add or omit any High Contracting Party from Part I of the Annexure through this amendment.

## CLAUSE 5

28. **Clause 5 reads -** "In section 4 of the principal Act, for sub-section (2), the following sub-



sections shall be substituted, namely:—

“(2) For the purpose of this Act, the High Contracting Parties to the amended Convention and the date of enforcement of the said amended Convention shall be such as are included in Part II of the Annexure.

(2A) The Central Government may, having regard to the objects of this Act, and if it considers necessary or expedient so to do, by notification in the Official Gazette, add to, or, as the case may be, omit from, Part II of the Annexure, any High Contracting Party and on such addition, or, as the case may be, omission, such High Contracting Party shall be or shall cease to be, a High Contracting Party.”.

29. This Clause intends to amend sub-section (2) of Section 4 of the Principal Act and defines the application of Convention in India. The Government by notification in the Official Gazette can add or omit any High Contracting Party from Part II of the Annexure through this amendment.

30. Clauses 4 and 5 deal with powers to Government to add or omit any High Contracting Party to the Part I and Part II of the Annexure which contain the list of countries who are signatory to the Warsaw Convention, 1929 and the Hague Protocol, 1955 respectively.

## CLAUSE 6

31. **Clause 6 reads** - "After section 4 of the principal Act, the following section shall be inserted, namely:—

“4A. (1) The rules contained in the Third Schedule, being the provisions of the Montreal Convention relating to the rights and liabilities of carriers, passengers, consignors, consignees and other persons, shall, subject to the provisions of this Act, have the force of law in India in relation to any carriage by air to which those rules apply, irrespective of the nationality of the aircraft performing the carriage.

(2) For the purpose of this Act, the State Parties to the Montreal Convention and the date of enforcement of the said Montreal Convention shall be such as are included in Part III of the Annexure.

(3) Any reference in the Third Schedule to the territory of any State Party to the Montreal Convention shall be construed as a reference to all the territories in respect of which he is party.

(4) Any reference in the Third Schedule to agents of the carrier shall be construed as including a reference to servants of the carrier.

(5) The Central Government may, having regard to the objects of this Act, and if it considers necessary or expedient so to do, by notification in the Official Gazette, add to, or, as the case may be, omit from, Part III of the Annexure, any State Party and on such addition, or, as the case may be, omission, such State Party shall be or shall cease to be, a State Party.”.

32. This Clause intends to insert a new Section after the Section 4 of the Principal Act and defines the application of Montreal Convention in India. The Government by notification in the Official Gazette can add or omit any High Contracting Party from Part III of the Annexure through this amendment. Part III of the Annexure contains the list of countries who are signatory to the Montreal

Convention.

### **CLAUSE 7**

33. **Clause 7 reads** - "In section 5 of the principal Act,—

(a) in sub-section (1), for the words "the First Schedule and in the Second Schedule", the words "the First Schedule, the Second Schedule and the Third Schedule" shall be substituted;

(b) in sub-section (5), for the words "the First Schedule or of the Second Schedule", the words "the First Schedule or the Second Schedule or the Third Schedule" shall be substituted".

34. This Clause intends to amend Section 5 of the Principal Act pertaining to determination of the liability of a carrier in respect of the death of passenger. The First Schedule and Second Schedule contain the deliberations of the Warsaw Convention, 1929 and the Hague Protocol, 1955 respectively. Through this amendment, the Government would determine the liability of a carrier in respect of the death of a passenger as per the Provisions in the Montreal Convention, 1999. The liability of the carrier in case of death or injury to the passenger due to accident has been discussed in detail in the subsequent paragraphs of the report.

### **CLAUSE 8**

35. **Clause 8 reads** - "After section 6 of the principal Act, the following section shall be inserted, namely:—

"6A. Any sum in Special Drawing Rights mentioned in rules 21 and 22 of the Third Schedule shall, for the purpose of any action against a carrier, be converted into rupees at the rate of exchange prevailing on the date on which the amount of damages to be paid by the carrier is ascertained by the Court in accordance with the provisions of rule 23 of the said Third Schedule."

36. This Clause intends to insert a new Section 6A pertaining to Conversion of Special Drawing Rights. The denomination of payment of compensation as per the Warsaw Convention, 1929 and the Hague Protocol, 1955 is 'Francs' whereas the Montreal Convention has introduced a new term for denomination for payment of compensation as Special Drawing Rights.

37. Through this amendment the Special Drawing Rights will be converted into rupees at the rate of exchange prevailing on the date on which the amount of damages to be paid by the carrier is ascertained by the Court.

38. Since the main objective of the proposed amendments in the Parent Act is to accede to the Montreal Convention for the unification of certain rules for international carriage by air, the Committee adopted Clauses 2-8 without suggesting any amendment therein.

### **CLAUSE 9**

39. **Clause 9 reads** - "In section 8 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) The Central Government may, by notification in the Official Gazette, apply the rules contained in the Third Schedule and any provision of section 4A or section 5 or section 6A to such carriage by air, not being international carriage by air as defined in the Third Schedule, as may be specified in the notification, subject, however, to such exceptions, adaptations and modifications, if any, as may be so specified.”.

40. This Clause intends to amend Sub-Section (3) of the Section 8 of Principal Act which deals with the issue of notification for application of Act to Carriage by air which is not international. The Government will apply the provisions of Montreal Convention for the domestic operation also.

41. To a specific query on the adoption of Montreal Convention for domestic carriage the Ministry replied that the Government will issue a notification after the proposed Bill is passed and the limits of liability in case of domestic carriers are likely to be revised upward. In this regard, the Secretary while tendering his evidence before the Committee stated as under:

"... while this regime is an international regime, the Act provides for its applicability even for domestic passenger. There is a provision in the Carriage by Air Act, 1972, Section 8 under which a notification has been issued making the same provisions applicable to even those passengers who are not international passengers. A similar provision, a parallel provision is included in Section 9 of the draft Bill."

42. The Amendment Bill has been introduced by the Government to accede the Montreal Convention for international carriage and will be subsequently applied to domestic carriage also. But the Bill has been introduced without having any consultation with stakeholders who include the domestic operators. The application of this Convention to domestic carriage will increase the liability of domestic carriers and the final result will be increase in the domestic fares. The Government have not stated anything about the implication of the application of Montreal Convention on the fares in domestic sector whether the enhanced liability will be borne by the operators or passed on to customers. The stakeholder also expressed similar sentiments while presenting their views before the Committee.

43. Clause 9 was adopted without suggesting any change therein. However, regarding the implementation of the Montreal Convention for domestic carriages at par with the other countries, the Committee desires that the Government should take the domestic air traveler into confidence before implementing the Rules for domestic carriage and give adequate time to them so that they can be well prepared and have idea of likely liability and make arrangements with insurers. The Committee also desires that the Government should ensure the domestic operators to adopt a transparent policy in fixing fare in the domestic sector so that the operators do not try to take benefit of the increase in liabilities to pass on the burden to the travelers disproportionately.

44. Clause 10, intends to insert Third Schedule and Annexure to provide the Rules in Chapters I-VI (as per annexure - I) which shall apply to all international carriage of persons baggage or cargo performed by aircraft for reward.

45. The Committee asked the Ministry about the benefits which will be accrued to passengers once India adopts the Montreal Convention for which the Ministry has stated that for application of the Montreal Convention, the nationality of the passengers or that of the aircraft is not at all relevant for performing air travel. The Montreal Convention shall apply if the carriage is between two States Parties to the Convention. It shall also apply if the carriage is between two points in a single State which is a Party to the Convention provided that there is an agreed stopping place in another State. The other State may or may not be a Party to the Convention. It may be pertinent to mention here that most of the passengers originating and terminating their journey in India are Indian nationals. Since India has not acceded to the Montreal Convention, these passengers would be deprived of the benefits or enhanced liability limits under the Convention. With the accession of the Montreal Convention by India, the benefits of the Convention will become available to passengers originating and terminating their journey in India.

46. The Ministry also stated that the Warsaw System provides for four choices of jurisdiction for filing of a claim by a passenger or his legal heirs, namely, (1) the place where the ticket was issued or the contract of carriage was made, (2) the principal place of business of the carrier, (3) the place of destination of the passenger, and (4) the place of the domicile of the carrier. The Montreal Convention, 1999 adds a fifth jurisdiction, i.e., the place of domicile of the passenger, provided the airline has a presence there. This would enable an Indian national to file his claim in India even if the journey was undertaken outside India and the ticket was purchased outside India, provided the carrier has a presence in India.

47. Secretary, Ministry of Civil Aviation during his evidence before the Committee also stated as under:

".... the Indian passengers or their next of kith and kin could also file the claims or pursue legal remedies in the place of the domicile of the passenger so that when something happens in Kenya and the person who has boarded the flight in India, then, he or his next of kith and kin can pursue the matter in the Indian court. Earlier the jurisdictions were the place of business of the carrier, the domicile of carrier, place of issue of the ticket and the place of destination of the passenger. Now, there is one more jurisdiction available. To that extent there could be greater benefit or flexibility for Indian passengers."

48. The Third Schedule also contains the two-tier liability regime in which for proven damages, which does not exceed 100,000 SDR per passenger, the carrier is subject to strict liability regardless of fault. However, in the case of contributory negligence of the passenger, the carrier can be partly or wholly exonerated. For proven damages exceeding 100,000 SDR, the liability of the air carrier is based on a system of presumed fault, with no pre-specified limits of liability. However, the carrier shall not be liable for such damage if it proves that the damage was not caused by its negligence or other wrongful act or omissions.

49. The Committee feels that the two-tier liability system should be a flexible one as it will not be

an easier task to assess the damages considering the magnitude of the accident. The Committee desires that a mechanism should be evolved by the Government to ensure that the passenger gets an adequate compensation once the Montreal Convention is adopted.

50. The Committee adopted all the six chapters under the head Rules under the Third Schedule without suggesting any change therein. The Committee also adopted the Title and the enacting formula of the Bill without any change.

## OVERALL RECOMMENDATION

51. The Committee feels that this amendment to the Principal Act is necessitated because of the international conventions and also to become part of the Montreal Convention. The Committee hopes that the enhanced liability of the air carriers after the accession to the Montreal Convention, will not further burden the travelers. The Committee hopes that the Government will ensure the carriers to follow electronic data processing like e-ticketing and electronic waybill for luggage fully. The Committee desires that the provisions of Montreal Convention is implemented in such a manner that any grey area in fixation of compensation for loss of life to passenger, determination of liability of the air carrier in case of lost/damaged luggage, uniformity in payment of compensation to legal heirs in case of death of a passenger are well addressed.

52. Civil Aviation Sector is developing very fast and more and more passengers are traveling by air. Some of them may not be having awareness and competence to understand the provisions of Montreal Convention and this legislation. The Committee therefore, also desires that once the Montreal Convention forms part of the legislation and notified for implementation, it may be given adequate publicity in such way that the same can be well understood by the common air passengers.

---

## OBSERVATIONS/CONCLUSIONS/RECOMMENDATIONS – AT A GLANCE

Since the main objective of the proposed amendments in the Parent Act is to accede to the Montreal Convention for the unification of certain rules for international carriage by air, the Committee adopted Clauses 2-8 without suggesting any amendment therein. (Para 38)

Clause 9 was adopted without suggesting any change therein. However, regarding the implementation of the Montreal Convention for domestic carriages at par with the other countries, the Committee desires that the Government should take the domestic air traveler into confidence before implementing the Rules for domestic carriage and give adequate time to them so that they can be well prepared and have idea of likely liability and make arrangements with insurers. The Committee also desires that the Government should ensure the domestic operators to adopt a transparent policy in fixing fare in the domestic sector so that the operators do not try to take benefit of the increase in liabilities to pass on the burden to the travelers disproportionately.

(Para 43)

The Committee feels that the two-tier liability system should be a flexible one as it will not be an easier task to assess the damages considering the magnitude of the accident. The Committee desires that a mechanism should be evolved by the Government to ensure that the passenger gets an adequate compensation once the Montreal Convention is adopted. (Para 49)

The Committee adopted all the six chapters under the head Rules under the Third Schedule without suggesting any change therein. The Committee also adopted the Title and the enacting formula of the Bill without any change. (Para 50)

The Committee feels that this amendment to the Principal Act is necessitated because of the international conventions and also to become part of the Montreal Convention. The Committee hopes that the enhanced liability of the air carriers after the accession to the Montreal Convention, will not further burden the travelers. The Committee hopes that the Government will ensure the carriers to follow electronic data processing like e-ticketing and electronic waybill for luggage fully. The Committee desires that the provisions of Montreal Convention is implemented in such a manner that any grey area in fixation of compensation for loss of life to passenger, determination of liability of the air carrier in case of lost/damaged luggage, uniformity in payment of compensation to legal heirs in case of death of a passenger are well addressed. (Para 53)

Civil Aviation Sector is developing very fast and more and more passengers are traveling by air. Some of them may not be having awareness and competence to understand the provisions of Montreal Convention and this legislation. The Committee therefore, also desires that once the Montreal Convention forms part of the legislation and notified for implementation, it may be given adequate publicity in such way that the same can be well understood by the common air passengers. (Para 54)

---

## ANNEXURES

---

### **Annexure - I** *(Vide Para 44 of the Report)*

#### **‘THE THIRD SCHEDULE**

*(See section 4A)*

#### **RULES**

#### **CHAPTER I**

#### **SCOPE OF APPLICATION**

1. (1) These rules shall apply to all international carriage of persons, baggage or cargo performed by aircraft for reward. They shall apply also to such carriage when performed gratuitously by an air transport undertaking.
- (2) In these rules, unless the context otherwise requires,—
  - (a) "baggage" means both checked baggage and unchecked baggage;
  - (b) "days" means calendar days and not working days;
  - (c) "depository" means the International Civil Aviation Organisation;
  - (d) "State Party" means a signatory or acceding State to the Montreal Convention whose instrument of ratification or accession has been deposited with the depository.
- (3) For the purposes of these rules, the expression, "international carriage" means any carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transshipment, are situated either within the territories of two State Parties, or within the territory of a single State Party if there is an agreed

stopping place within the territory of another State, even if that State is not a State Party. A carriage between two points within the territory of a single State Party without an agreed stopping place within the territory of another State shall not be deemed to be international carriage for the purposes of these rules.

(4) A carriage to be performed by several successive air carriers shall be deemed for the purposes of these rules, to be one undivided carriage if it has been regarded by the parties as a single operation, whether it has been agreed upon under the form of a single contract or of a series of contracts, and it shall not lose its international character merely because one contract or a series of contracts is to be performed entirely within the territory of the same State.

(5) These rules shall apply also to carriage as set out in Chapter V, subject to the terms contained therein.

2. (1) These rules shall apply to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in rule 1.

(2) In the carriage of postal items, the carrier shall be liable only to the relevant postal administration in accordance with the rules applicable to the relationship between the carriers and the postal administration.

(3) Except as provided in sub-rule (2), these rules shall not apply to the carriage of postal items.

---

## CHAPTER II

### DOCUMENTATION AND DUTIES OF THE PARTIES RELATING TO THE CARRIAGE OF PASSENGERS, BAGGAGE AND CARGO

3. (1) In respect of carriage of passengers, an individual or collective document of carriage shall be delivered containing—

(a) an indication of the places of departure and destination;

(b) if the places of departure and destination are within the territory of a single State Party, one or more agreed stopping places being within the territory of another State, an indication of at least one of such stopping places.

(2) Any other means which preserves the information indicated in sub-rule (1) may be substituted for the delivery of the document referred to in that sub-rule. If any such other means is used, the carrier shall offer to deliver to the passenger a written statement of the information so preserved.

(3) The carrier shall deliver to the passenger a baggage identification tag for each piece of checked baggage.

(4) The passenger shall be given written notice to the effect that where these rules are applicable it governs and may limit the liability of carriers in respect of death or injury and for destruction or loss of, or damage to, baggage, and for delay.

(5) Non-compliance with the provisions of sub-rules (1), (2) and (3) shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to these rules including those relating to limitation of liability.

4. (1) In respect of the carriage of cargo, an air waybill shall be delivered.

(2) Any other means which preserves a record of the carriage to be performed may be substituted for the delivery of an air waybill. If such other means are used, the carrier shall, if so requested by the consignor, deliver to the consignor a cargo receipt permitting identification of the consignment and

access to the information contained in the record preserved by such other means.

5. The air waybill or the cargo receipt shall include—

(a) an indication of the places of departure and destination;

(b) if the places of departure and destination are within the territory of a single State Party, one or more agreed stopping places being within the territory of another State, an indication of at least one of such stopping places; and

(c) an indication of the weight of the consignment.

6. The consignor may be required, if necessary to meet the formalities of customs, police and similar public authorities, to deliver a document indicating the nature of the cargo. This provision shall not create for the carrier any duty, obligation or liability resulting therefrom.

7. (1) The air waybill shall be made out by the consignor in three original parts. The first part shall be marked "for the carrier" and it shall be signed by the consignor. The second part shall be marked "for the consignee" and it shall be signed by the consignor and by the carrier. The third part shall be signed by the carrier who shall hand it to the consignor after the cargo has been accepted.

(2) The signature of the carrier and of the consignor may be printed or stamped.

(3) If, at the request of the consignor, the carrier makes out the air waybill, the carrier shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

8. When there is more than one package—

(a) the carrier has the right to require the consignor to make out separate air waybills;

(b) the consignor has the right to require the carrier to deliver separate cargo receipts when the other means referred to in sub-rule (2) of rule 4 are used.

9. Non-compliance with the provisions of rules 4, 5, 6, 7 and 8 shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to these rules including those relating to limitation of liability.

10. (1) The consignor is responsible for the correctness of the particulars and statements relating to the cargo inserted by it or on its behalf in the air waybill or furnished by it or on its behalf to the carrier for insertion in the cargo receipt or for insertion in the record preserved by the other means referred to in sub-rule (2) of rule 4. The foregoing shall also apply where the person acting on behalf of the consignor is also the agent of the carrier.

(2) The consignor shall indemnify the carrier against all damage suffered by it, or by any other person to whom the carrier is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements furnished by the consignor or on its behalf.

(3) Subject to the provisions of sub-rules (1) and (2), the carrier shall indemnify the consignor against all damages suffered by it, or by any other person to whom the consignor is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements inserted by the carrier or on its behalf in the cargo receipt or in the record preserved by the other means referred to in sub-rule (2) of rule 4.

11. (1) The air waybill or the cargo receipt shall be *prima facie* evidence of the conclusion of the contract, of the acceptance of the cargo and of the conditions of carriage mentioned therein.

(2) Any statements in the air waybill or the cargo receipt relating to the weight, dimensions and packing of the cargo, as well as those relating to the number of packages, are *prima facie* evidence of the facts stated therein; those relating to the quantity, volume and condition of the



cargo do not constitute evidence against the carrier except so far as they both have been, and are stated in the air waybill or the cargo receipt to have been, checked by it in the presence of the consignor, or relate to the apparent condition of the cargo.

12. (1) Subject to its liability to carry out all its obligations under the contract of carriage, the consignor has the right to dispose of the cargo by withdrawing it at the airport of departure or destination, or by stopping it in the course of the journey on any landing, or by calling for it to be delivered at the place of destination or in the course of the journey to a person other than the consignee originally designated, or by requiring it to be returned to the airport of departure. The consignor shall not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and shall reimburse any expenses occasioned by the exercise of this right.

(2) If it is impossible to carry out the instructions of the consignor, the carrier shall so inform the consignor forthwith.

(3) If the carrier carries out the instructions of the consignor for the disposition of the cargo without requiring the production of the part of the air waybill or the cargo receipt delivered to the latter, the carrier shall be liable, without prejudice to its right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air waybill or the cargo receipt.

(4) The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with rule 13. Nevertheless, if the consignee declines to accept the cargo, or cannot be communicated with, the consignor shall resume its right of disposition.

13. (1) Except when the consignor has exercised its right under rule 12, the consignee shall be entitled, on arrival of the cargo at the place of destination, to require the carrier to deliver the cargo to it, on payment of the charges due and on complying with the conditions of carriage.

(2) Unless it is otherwise agreed, it shall be the duty of the carrier to give notice to the consignee as soon as the cargo arrives.

(3) If the carrier admits the loss of the cargo, or if the cargo has not arrived at the expiration of seven days after the date on which it ought to have arrived, the consignee shall be entitled to enforce against the carrier the rights which flow from the contract of carriage.

14. The consignor and the consignee may respectively enforce all the rights given to them by rules 12 and 13, each in its own name, whether it is acting in its own interest or in the interest of another, provided that it carries out the obligations imposed by the contract of carriage.

15. (1) The provisions of rules 12, 13 and 14 shall not affect either the relations of the consignor and the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.

(2) The provisions of rules 12, 13 and 14 shall be varied only by express provision in the air waybill or the cargo receipt.

16. (1) The consignor shall furnish such information and such documents as are necessary to meet the formalities of customs, police and any other public authorities before the cargo can be delivered to the consignee. The consignor shall be liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier, its servants or agents.

(2) The carrier shall be under no obligation to enquire into the correctness or sufficiency of such

information or documents.

### CHAPTER III

#### LIABILITY OF THE CARRIER AND EXTENT OF COMPENSATION FOR DAMAGES

17. (1) The carrier shall be liable for damages sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking.
- (2) The carrier shall be liable for damages sustained in case of destruction or loss of, or of damage to checked baggage upon condition only that the event which caused the destruction, loss or damage took place on board the aircraft or during any period within which the checked baggage was in the charge of the carrier. However, the carrier shall not be liable if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage. In the case of unchecked baggage, including personal items, the carrier is liable if the damage has resulted from its fault or that of its servants or agents.
- (3) If the carrier admits the loss of the checked baggage, or if the checked baggage has not arrived at the expiration of twenty-one days after the date on which it ought to have arrived, the passenger shall be entitled to enforce against the carrier the rights which flow from the contract of carriage.
18. (1) The carrier shall be liable for damages sustained in the event of the destruction or loss of, or damage to, cargo upon condition only that the event which caused the damage so sustained took place during the carriage by air.
- (2) However, the carrier shall not be liable if and to the extent it proves that the destruction, or loss of, or damage to, the cargo resulted from one or more of the following:—
- (a) inherent defect, quality or vice of that cargo;
  - (b) defective packing of that cargo performed by a person other than the carrier or its servants or agents;
  - (c) an act of war or an armed conflict; and
  - (d) an act of public authority carried out in connection with the entry, exit or transit of the cargo.
- (3) The carriage by air within the meaning of sub-rule (1) comprises the period during which the cargo is in charge of the carrier.
- (4) The period of the carriage by air shall not extend to any carriage by land, by sea or by inland waterway performed outside an airport. If, however, such carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transshipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air. If a carrier, without the consent of the consignor, substitutes carriage by another mode of transport for the whole or part of a carriage intended by the agreement between the parties to be carriage by air, such carriage by another mode of transport is deemed to be within the period of carriage by air.
19. The carrier shall be liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.
20. If the carrier proves that the damages was caused or contributed to by the negligence or other

wrongful act or omission of the person claiming compensation, or the person from whom he or she derives his or her rights, the carrier shall be wholly or partly exonerated from its liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage. When by reason of death or injury of a passenger compensation is claimed by a person other than the passenger, the carrier shall likewise be wholly or partly exonerated from its liability to the extent that it proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of that passenger. This rule applies to all the liability provisions of these rules, including sub-rule (1) of rule 21.

21. (1) For damages arising under sub-rule (1) of rule 17 not exceeding one lakh Special Drawing Rights for each passenger, the carrier shall not be able to exclude or limit its liability.

(2) The carrier shall not be liable for damages arising under sub-rule (1) of rule 17 to the extent that they exceed for each passenger one lakh Special Drawing Rights 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.

22. (1) In the case of damage caused by delay as specified in rule 19 in the carriage of persons, the liability of the carrier for each passenger is limited to four thousand one hundred and fifty Special Drawing Rights.

(2) In the carriage of baggage, the liability of the carrier in the case of destruction, loss, damage or delay shall be limited to one thousand Special Drawing Rights for each passenger unless the passenger has made, at the time when the checked baggage was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum, if so required. In that case, the carrier shall be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the passenger's actual interest in delivery at destination.

(3) In the carriage of cargo, the liability of the carrier in the case of destruction, loss, damage or delay is limited to a sum of seventeen Special Drawing Rights per kilogramme, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum, if so required. In that case, the carrier shall be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the consignor's actual interest in delivery at destination.

(4) In the case of delay, destruction, loss or damage of part of the cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the delay, destruction, loss or damage of a part of the cargo, or of an object contained therein, affects the value of other packages covered by the same air waybill, or the same receipt or, if they were not issued, by the same record preserved by other means referred to in sub-rule (2), of rule 4, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

(5) The provisions of sub-rules (1) and (2) shall not apply if it is proved that the damage resulted from an act or omission of the carrier, its servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result:

Provided that, in the case of such act or omission of a servant or agent, it is also proved that such servant or agent was acting within the scope of its employment.

(6) The limits prescribed in rule 21 and in this rule shall not prevent the court from awarding, in accordance with its own law, in addition, the whole or part of the court costs and of the other expenses of the litigation incurred by the plaintiff, including interest. The foregoing provision shall not apply if the amount of the damages awarded, excluding court costs and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the plaintiff within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later.

23. The sums mentioned in terms of Special Drawing Right in these rules shall be deemed to refer to the Special Drawing Right as defined by the International Monetary Fund and its conversion into national currencies shall, in case of judicial proceedings, be made in accordance with the method of valuation applied by the International Monetary Fund, in effect at the date of the judgment, for its operations and transactions.

24. (1) Without prejudice to the provisions of rule 25 and subject to sub-rule (2), the limits of liability prescribed in rules 21, 22 and 23 shall be reviewed by the depositary at five-year intervals, the first such review to take place at the end of the fifth year following the date of coming into force of these rules. The measure of the rate of inflation to be used in determining the inflation factor shall be the weighted average of the annual rates of increase or decrease in the Consumer Price Indices of the States whose currencies comprise the Special Drawing Right mentioned in rule 23.

(2) If the review referred to in sub-rule (1) concludes that the inflation factor has exceeded ten per cent., the depositary shall notify State Parties of a revision of the limits of liability. Any such revision shall become effective six months after its notification to the State Parties. If within three months after its notification to the State Parties, a majority of the State Parties register their disapproval, the revision shall not become effective and the depositary shall refer the matter to a meeting of the State Parties. The depositary shall immediately notify all States Parties about the coming into force of any revision.

(3) Notwithstanding anything contained in sub-rule (1), the procedure referred to in sub-rule (2) shall be applied at any time provided that one-third of the State Parties express a desire to that effect and upon condition that the inflation factor referred to in sub-rule (1) has exceeded thirty per cent. since the previous revision or since the date of entry into force of the Montreal Convention if there has been no previous revision. Subsequent reviews using the procedure specified in sub-rule (1) shall take place at five-year intervals starting at the end of the fifth year following the date of the reviews under the provisions of this sub-rule.

25. A carrier may stipulate that the contract of carriage shall be subject to higher limits of liability than those provided for in these rules or to no limits of liability whatsoever.

26. Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in these rules shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of these rules.

27. Nothing contained in these rules shall prevent the carrier from refusing to enter into any contract of carriage, from waiving any defence available in these rules, or from laying down conditions, which are not contrary to the provisions of these rules.

28. Notwithstanding anything contained in any other law for the time being in force, where the aircraft accident results in death or injury of passengers, the carrier shall make advance payments without delay to a natural person or persons who are entitled to claim compensation in order to meet the immediate economic needs of such persons. Such advance payments shall not constitute a recognition of liability and may be offset against any amounts subsequently paid as damages by the carrier.

29. In the carriage of passengers, baggage and cargo, any action for damages, however founded, whether under these rules or in contract or in tort or otherwise, can only be brought subject to the conditions and such limits of liability as are set out in these rules without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. In any such action, punitive, exemplary or any other noncompensatory damages shall not be recoverable.

30. (1) If an action is brought against a servant or agent of the carrier arising out of damage to which these rules relate, such servant or agent, if they prove that they acted within the scope of their employment, shall be entitled to avail themselves of the conditions and limits of liability which the carrier itself is entitled to invoke under these rules.

(2) The aggregate of the amounts recoverable from the carrier, its servants and agents, in that case, shall not exceed the said limits.

(3) Except in respect of the carriage of cargo, the provisions of sub-rules (1) and (2) shall not apply if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with the knowledge that damage would probably result.

31. (1) Receipt by the person entitled to delivery of checked baggage or cargo without complaint is *prima facie* evidence that the same has been delivered in good condition and in accordance with the document of carriage or with the record preserved by the other means referred to in sub-rule (2) of rule 3 and sub-rule (2) of rule 4.

(2) In the case of damage, the person entitled to delivery shall make a complaint to the carrier forthwith after the discovery of the damage, and, at the latest, within seven days from the date of receipt in the case of checked baggage and fourteen days from the date of receipt in the case of cargo. In the case of delay, the complaint shall be made at the latest within twenty-one days from the date on which the baggage or cargo have been placed at his disposal.

(3) Every complaint shall be made in writing and given or dispatched within the period specified in sub-rule (2).

(4) If no complaint is made within the period specified in sub-rule (2), no action shall lie against the carrier, except in the case of fraud committed by the carrier.

32. In the case of the death of the person liable, an action for damages lies in accordance with these rules against those legally representing his or her estate.

33. (1) An action for damages shall be brought, at the option of the claimant of damages, in the territory of one of the State Parties, either before the court of the domicile of the carrier or of its principal place of business, or where it has a place of business through which the contract has been made or before the court at the place of destination.

(2) In respect of damage resulting from the death or injury of a passenger, an action may be brought before one of the courts mentioned in sub-rule (1), or in the territory of a State Party in which at the time of the accident the passenger has his or her principal and permanent residence and to or from which the carrier operates services for the carriage of passengers by air, either on its own aircraft, or

on another carrier's aircraft pursuant to a commercial agreement, and in which that carrier conducts its business of carriage of passengers by air from premises leased or owned by the carrier itself or by another carrier with which it has a commercial agreement.

(3) For the purposes of sub-rule (2)—

(a) "commercial agreement" means an agreement, other than an agency agreement, made between carriers and relating to the provision of their joint services for carriage of passengers by air;

(b) "principal and permanent residence" means the one fixed and permanent abode of the passenger at the time of the accident. The nationality of the passenger shall not be the determining factor in this regard.

(4) Questions of procedure shall be governed by the law of the court seized of the case.

34. (1) Subject to the provisions of this rule, the parties to the contract of carriage for cargo may stipulate that any dispute relating to the liability of the carrier under these rules shall be settled by arbitration. Such agreement shall be in writing.

(2) The arbitration proceedings shall, at the option of the claimant, take place within one of the jurisdictions referred to in rule 33.

(3) The arbitrator or arbitration tribunal shall apply the provisions of these rules.

(4) The provisions of sub-rules (2) and (3) shall be deemed to be part of every arbitration clause or agreement, and any term of such clause or agreement which is inconsistent therewith shall be null and void.

35. (1) The right to damages shall be extinguished if an action is not brought within a period of two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

(2) The method of calculating the period shall be determined by the law of the court seized of the case.

36. (1) In the case of carriage to be performed by various successive carriers and falling within the definition set out in sub-rule (4) of rule 1, each carrier which accepts passengers, baggage or cargo shall be subject to the provisions of these rules and shall be deemed to be one of the parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under its supervision.

(2) In the case of carriage of this nature, the passenger or any person entitled to compensation shall be entitled to take action only against the carrier which performed the carriage during which the accident or the delay occurred, except where, by express agreement, the first carrier has assumed liability for the whole journey.

(3) In respect of baggage or cargo, the passenger or consignor shall have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery shall have a right of action against the last carrier, and further, each may take action against the carrier which performed the carriage during which the delay, destruction, loss or damage took place. These carriers shall be jointly and severally liable to the passenger or to the consignor or consignee.

37. Nothing in these rules shall prejudicially affect the right of a person liable for damages to take recourse against any other person.

## **CHAPTER IV COMBINED CARRIAGE**

38. (1) In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of these rules shall, subject to the provisions of subrule (4) of rule 18, apply only to the carriage by air, provided that the carriage by air falls within the meaning of rule 1.

(2) Nothing in these rules shall prevent the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of these rules are observed with regard to carriage by air.

---

## **CHAPTER V**

### **CARRIAGE BY AIR PERFORMED BY A PERSON OTHER THAN THE CONTRACTING CARRIER**

39. The provisions of this Chapter shall apply when a person (hereinafter referred to as the contracting carrier) as a principal makes a contract of carriage under these rules with a passenger or consignor or with a person acting on behalf of the passenger or consignor, and another person (hereinafter referred to as the actual carrier) performs, by virtue of authority from the contracting carrier, the whole or part of the carriage, but is not with respect to such part, a successive carrier within the meaning of these rules. Such authority shall be presumed in the absence of proof to the contrary.

40. If an actual carrier performs the whole or part of carriage which, according to the contract referred to in rule 39, is governed by these rules, both the contracting carrier and the actual carrier shall, except as otherwise provided in this Chapter, be subject to the provisions of these rules, the former for the whole of the carriage contemplated in the contract, the latter solely for the carriage which it performs.

41. (1) The acts and omissions of the actual carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the contracting carrier.

(2) The acts and omissions of the contracting carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the actual carrier. Nevertheless, no such act or omission shall subject the actual carrier to liability exceeding the amounts referred to in rules 21, 22, 23 and 24. Any special agreement under which the contracting carrier assumes obligations not imposed by the provisions of these rules or any waiver of rights or defences conferred by the provisions of these rules or any special declaration of interest in delivery at destination contemplated in rule 22 shall not affect the actual carrier unless agreed to by it.

42. Any complaint to be made or instruction to be given under the provisions of these rules to the carrier shall have the same effect whether addressed to the contracting carrier or to the actual carrier. Nevertheless, instructions referred to in rule 12 shall only be effective if addressed to the contracting carrier.

43. In relation to the carriage performed by the actual carrier, any servant or agent of that carrier or of the contracting carrier shall, if they prove that they acted within the scope of their employment, be entitled to avail themselves of the conditions and limits of liability which are applicable under the provisions of these rules to the carrier whose servant or agent they are, unless it is proved that they acted in a manner that prevents the limits of liability from being invoked in accordance with the provisions of these rules.

44. In relation to the carriage performed by the actual carrier, the aggregate of the amounts recoverable from that carrier and the contracting carrier, and from their servants and agents acting within the scope of their employment, shall not exceed the highest amount which shall be awarded against either the contracting carrier or the actual carrier under the provisions of these rules, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to that person.

45. In relation to the carriage performed by the actual carrier, an action for damages may be brought, at the option of the complainant, against that carrier or the contracting carrier, or against both together or separately. If the action is brought against only one of these carriers', that carrier shall have the right to require the other carrier to be joined in the proceedings, the procedure and effects being governed by the law of the court seized of the case.

46. Any action for damages contemplated in rule 45 must be brought, at the option of the complainant, in the territory of one of the State Parties, either before a court in which an action may be brought against the contracting carrier, as provided under rule 33, or before the court having jurisdiction at the place where the actual carrier has its domicile or its principal place of business.

47. Any contractual provision tending to relieve the contracting carrier or the actual carrier of liability under this Chapter or to fix a lower limit than that which is applicable according to this Chapter shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Chapter.

48. Except as provided in rule 45, nothing in this Chapter shall affect the rights and obligations of the carriers between themselves, including any right of recourse or indemnification.

---

## **CHAPTER VI GENERAL AND FINAL PROVISIONS**

49. Any clause contained in the contract of carriage and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by these rules, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void.

50. State Parties shall require their carriers to maintain adequate insurance covering their liability under the provisions of these rules. A carrier may be required to furnish evidence that it maintains adequate insurance covering its liability under the provisions of these rules.

51. The provisions of rules, 3, 4, 5, 7 and 8 relating to the documentation of carriage shall not apply in the case of carriage performed in extraordinary circumstances outside the normal scope of a carrier's business.

52. The expression "days" when used in this Schedule means calendar days and not working days.

---

## **MINUTES**

---

### **EIGHTEENTH MEETING**

The Committee met at 2.30 P.M. on Monday, the 2<sup>nd</sup> July 2007 in Committee Room A, Ground Floor, Parliament House Annexe, New Delhi.

#### **MEMBERS PRESENT**

1. Shri Sitaram Yechury – *Chairman*

**RAJYA SABHA**



2. Prof. Ram Deo Bhandary
3. Shri S.S. Chandran
4. Prof. Alka Balram Kshatriya
5. Shri Janardhana Poojary
6. Shri Shatrughan Sinha

*LOK SABHA*

7. Shri Anandrao Vithoba Adsul
8. Shri Joachim Baxla
9. Shri Sartaj Singh Chhatwal
10. Shri N.S.V. Chitthan
11. Dr. K. Dhanaraju
12. Shri P. Karunakaran
13. Dr.P.P.Koya
14. Shri Samik Lahiri
15. Shri Alok Kumar Mehta
16. Shri Madan Lal Sharma
17. Shri Dushyant Singh

SECRETARIAT

Shri Shamsheer Singh, Joint Secretary

Shri J.G. Negi, Joint Director

Shri Jagdish Kumar, Deputy Director

REPRESENTATIVES OF THE MINISTRY OF CIVIL AVIATION:

Shri Ashok Chawla, Secretary

Shri Raghu Menon, Additional Secretary

Shri K.Gohain, Director-General (CA)

Shri R.K.Singh, Joint Secretary

REPRESENTATIVES OF THE MINISTRY OF LAW AND JUSTICE (LEGISLATIVE DEPARTMENT):

Shri N.L. Meena, Joint Secretary & Legislative Counsel

Shri K.V. Kumar, Assistant Legislative Counsel

2. At the outset, the Chairman briefed the Members about the Carriage by Air (Amendment) Bill, 2007 which has been referred to the Committee for examination and report. Thereafter, the Committee heard the views of the Secretary of the Ministry of Civil Aviation on the subject. The Secretary while presenting his views replied to the points raised by the Members.

3. A verbatim record of the proceedings of the Meeting was kept.

4. \* \* \* \*

5. \* \* \* \*

\* Relates to other matters

## **FIRST MEETING**

The Committee met at 3.00 P.M. on Friday, the 31<sup>st</sup> August 2007 in Committee Room A, Ground Floor, Parliament House Annexe, New Delhi.

### **MEMBERS PRESENT**

1. Shri Sitaram Yechury – Chairman

#### **RAJYA SABHA**

2. Prof. Ram Deo Bhandary

3. Shri Naresh Gujral

4. Shri Vedprakash P. Goyal

5. Shri Janardhana Poojary

6. Shri M.V. Mysura Reddy

7. Shri Shahid Siddiqui

#### **LOK SABHA**

8. Shri Adhir Chowdhury

9. Shri Samik Lahiri

10. Shri Hemlal Murmu

11. Shri Madan Lal Sharma

### **SECRETARIAT**

Shrimati Agnes Momin George, Joint Secretary

Shri Jagdish Kumar, Joint Director

Shri Swarabji B., Deputy Director

Shrimati Subhashree Panigrahi, Assistant Director

### **REPRESENTATIVES OF THE MINISTRY OF LAW AND JUSTICE (LEGISLATIVE DEPARTMENT):**

Shri S.R. Dhaleta, Joint Secretary & Legislative Counsel

Shri K.V. Kumar, Assistant Legislative Counsel

### **REPRESENTATIVES OF THE NATIONAL AVIATION COMPANY OF INDIA LTD. (NACIL):**

Shri V. Thulasidas, CMD

Shri S. Mukherjee, Executive Director-Corporate Affairs

Shri D.S. Kohli, Executive Director-Northern Region

Shri S.K. Kundra, Executive Director (F)

Shri H.S. Grover, Executive Director (Coop.)

### **REPRESENTATIVES OF THE JET AIRWAYS:**

Capt. K. Mohan, Vice-President, Flight Operations

Shri A.K. Sivanandan, Senior General Manager, PR

**REPRESENTATIVES OF THE TRAVEL AGENTS ASSOCIATION OF INDIA:**

Shri Jagdeep Rikhy, Managing Committee Member

Shri Sanjay Nirula, Managing Committee Member

**REPRESENTATIVES OF THE TRAVEL AGENTS FEDERATION ASSOCIATION OF INDIA:**

Shri Praveen Chug, President

Shri P. Sampath Kumar, Committee Member

**REPRESENTATIVES OF THE AIR CARGO AGENTS ASSOCIATION OF INDIA:**

Shri Vipin Vohra, President

Shri Deepak Dadlani, Past President

Shri Sunil Arora, Chairman, Northern Region

2. \* \* \* \*

3. Thereafter, the Committee heard the views of the above-mentioned stakeholders on the Carriage by Air (Amendment) Bill, 2007. The Members raised queries on various provisions of the Bill and the stakeholders explained their position thereon.

4. A verbatim record of the proceedings of the Meeting was kept.

5. The meeting of the Committee then adjourned at 4.15 p.m.

\* Relates to other matters

**SECOND MEETING**

The Committee met at 11.00 A.M. on Tuesday, the 25<sup>th</sup> September 2007 in Room No. '63', First Floor, Parliament House, New Delhi.

**MEMBERS PRESENT**

1. **Shri Sitaram Yechury – Chairman**

**RAJYA SABHA**

2. Shri Naresh Gujral

3. Shri Vedprakash P. Goyal

4. Prof. Alka Balram Kshtriya

5. Shri Shahid Siddiqui

6. Shri Shatrughan Sinha

**LOK SABHA**

7. Shri Joachim Baxla
8. Shri Sartaj Singh Chhatwal
9. Shri N.S.V. Chitthan
10. Dr. K. Dhanaraju
11. Shri P. Karunakaran
12. Dr. P.P. Koya
13. Shri Alok Kumar Mehta
14. Shri Madan Lal Sharma

SECRETARIAT

Shrimati Agnes Momin George, Joint Secretary

Shri Jagdish Kumar, Joint Director

Shri Swarabji B., Deputy Director

Shrimati Subhashree Panigrahi, Assistant Director

REPRESENTATIVES OF THE MINISTRY OF LAW AND JUSTICE (LEGISLATIVE DEPARTMENT):

Shri P.B. Singh, Joint Secretary & Legislative Counsel

Shrimati Akali, Assistant Legislative Counsel

REPRESENTATIVE OF THE MARINE ENGINEERING & RESEARCH INSTITUTE, KOLKATA:

Shri K.K. Moulik, Engineer Officer

REPRESENTATIVE OF THE INDIAN INSTITUTE OF PORT MANAGEMENT, KOLKATA;

Shri S.N. Chakrabartty, Director

REPRESENTATIVE OF THE SENSEA MARITIME ACADEMY, KOLKATA;

Capt. Arnab Sen, Dean

REPRESENTATIVE OF THE SEACOM MARINE COLLEGE, KOLKATA;

Shri Anish Chakraborty, Chairman

-  
REPRESENTATIVES OF THE ALL INDIA ASSOCIATION OF EMPLOYEES AND WORKERS OF INSTITUTE OF MARITIME STUDIES, KOLKATA;

Shri R.D. Patil, President

Shri Uttam Sarkar, General Secretary

Shri N.S. Rao, Organizing Secretary

Shri Suresh Sethi, Asstt. Secretary

-  
REPRESENTATIVES OF THE MERI MESS EMPLOYEE ASSOCIATION, KOLKATA;

Shri Pranab Roy, President

Shri Biplab Kumar Das, Assistant Secretary

-  
REPRESENTATIVES OF THE MERI GROUP-A OFFICERS ASSOCIATION, KOLKATA;

Shri A.K. Bakshi, Engineer Officer- President

Shri S. Varghese, Lecturer-Secretary

2. At the outset, the Committee took up consideration and adoption of the draft Report on the Carriage by Air (Amendment) Bill, 2007. After some discussion, the Committee adopted the Report. The Committee also authorized the Chairman to decide suitable date for presentation of the Report to the Parliament.

3. \* \* \* \*

4. \* \* \* \*

5. A verbatim record of the proceedings of the Meeting was kept.

6. The meeting of the Committee then adjourned at 3.50 p.m.

\* Relates to other matters.