

# Legislative Brief

## The Civil Aviation Authority of India Bill, 2013

The Bill was introduced in the Lok Sabha on August 20, 2013 by the Minister for Civil Aviation.

The Bill was referred to the Standing Committee on Transport, Tourism and Culture (Chairperson: Mr. Sitaram Yechury) on September 19, 2013. The Committee submitted its report on January 24, 2014.

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### Highlights of the Bill

- ◆ The Bill sets up a Civil Aviation Authority (CAA) to replace Directorate General of Civil Aviation (DGCA) as the civil aviation safety regulator.
- ◆ CAA shall discharge all the duties currently assigned to DGCA, including safety oversight, environmental regulation, licensing, international coordination, advising the government and industry development.
- ◆ CAA shall also be responsible for protection of consumer interests and training of civil aviation personnel including its own staff.
- ◆ Appeals against CAA's decisions may be made to the government.
- ◆ All funds received by CAA including central government grants and fees and charges shall be credited to the Civil Aviation Authority Fund.
- ◆ Non-compliance of CAA's directions carries a fine of Rs 1 lakh in the first instance, Rs 2 lakh in the second instance and up to Rs 4,000 per day for continued contravention.

### Key Issues and Analysis

- ◆ The Bill does not create an independent appellate tribunal to review CAA's decisions. The appellate body (Ministry) is also the administrative Ministry for Air India, Pawan Hans and Airports Authority of India. This may lead to a conflict of interest.
- ◆ Two of CAA's functions, i.e. checking anti-competitive air fares and consumer protection, may overlap with functions of the Competition Commission of India and consumer protection forums/courts.
- ◆ Like DGCA, CAA will need approvals from the government for creation of posts of officers and other employees. This may not bring about the intended acceleration in CAA's recruitment process.
- ◆ CAA's funding structure could be a move towards the regulator's costs being met by the users. There are arguments both for and against adoption of a self-funded model over the government-funded model.
- ◆ The Bill does not address some of the recommendations of high level committees regarding DGCA, like delegating oversight of air fares to the Competition Commission, creation of an Indian Civil Aviation Service and establishment of a separate body for vigilance.

## PART A: HIGHLIGHTS OF THE BILL<sup>1</sup>

### Context

In India, civil aviation is governed by various laws regarding safety, tariff regulation and security, among other issues. The Aircraft Act, 1934 is the primary law governing civil aviation safety. It empowers the Directorate General of Civil Aviation (DGCA), a part of the Ministry of Civil Aviation, to perform the safety oversight functions. The following table explains the role of various regulators for civil aviation.

**Table 1: Functions of various regulatory entities in civil aviation**

Entity	Functions
Directorate General of Civil Aviation (DGCA)	<ul style="list-style-type: none"> <li>- Conduct oversight of aviation safety and environmental protection</li> <li>- License aviation personnel, airlines, airports and aircrafts</li> <li>- International coordination</li> <li>- Prevent excessive or predatory airfares</li> <li>- Advise the government on aviation related matters including legislation and rules</li> <li>- Promote indigenous design and manufacture of aircrafts and aircraft components</li> </ul>
Airports Economic Regulatory Authority (AERA)	<ul style="list-style-type: none"> <li>- Determine the tariffs at major airports</li> <li>- Monitor the quality and reliability of service at major airports</li> </ul>
Bureau of Civil Aviation Security (BCAS)	<ul style="list-style-type: none"> <li>- Establish and enforce aviation security standards for airport operators, airlines and their security agencies</li> </ul>
Ministry of Civil Aviation	<ul style="list-style-type: none"> <li>- Administrative ministry for DGCA, AERA, BCAS, Airports Authority of India, Air India and Pawan Hans</li> <li>- Regulate air services between India and other countries</li> <li>- Determine tariffs and monitor service quality and reliability at non-major airports</li> </ul>

Sources: DGCA; AERA; BCAS; AAI; Ministry of Civil Aviation; PRS.

Several committees, like the Naresh Chandra Committee (2003), the M.K. Kaw Committee (2006) and the Standing Committee on Transport, Tourism and Culture (2011), have highlighted issues in DGCA's functioning including lack of adequate manpower and the need for administrative and financial flexibility.<sup>2</sup> The International Civil Aviation Organisation (ICAO) and the Federal Aviation Administration (FAA) of USA have highlighted similar concerns in their audits of DGCA.<sup>3</sup>

The Ministry of Civil Aviation introduced the Civil Aviation Authority of India Bill, 2013 in Lok Sabha on August 20, 2013, to establish a Civil Aviation Authority (CAA) as the civil aviation regulator to replace DGCA. The Standing Committee on Transport, Tourism and Culture presented its report on the Bill on January 24, 2014.<sup>4</sup>

### Key Features

The Bill proposes to establish CAA as an independent corporate body under the overall oversight of the Ministry.

#### Functions of CAA

- CAA shall discharge all the duties currently assigned to DGCA under the Aircraft Act, 1934, including establishing and enforcing safety standards for service providers (like airlines, airports, air traffic controllers etc), environmental regulation, licensing and certification, coordination of air space usage, international coordination, advising the government, checking anti-competitive fares and promotion of aviation industry.
- In addition, it shall also be responsible for ensuring quality, reliability and continuity of service, protection of consumer interests and training of civil aviation personnel including its own staff.

#### Composition of CAA

- CAA will consist of a Chairperson, a Director-General (DG) and seven to nine members. The DG and up to five members should be whole-time members. The DG shall serve as the Chief Executive Officer.
- The Chairperson should have knowledge and experience in civil aviation, engineering or management. The DG and whole-time members should be qualified and experienced in aircraft engineering, aviation management (including airworthiness, flight standards, safety, air space management, consumer protection and environment regulations), human resource and finance. They will be appointed by the government for a term of five years, on the recommendations of a Selection Committee.

## Powers of CAA

- CAA can create posts of officers and employees with prior government approval or engage external advisors, consultants or agents. It will have the power to select and appoint its personnel.
- CAA shall have the power to call for information, issue directions, conduct an inquiry and seize evidence relevant to an inquiry regarding any airline, Air Traffic Controller or other service provider.
- Appeals against CAA's orders or directions may be made to the central government. The matters entrusted to CAA shall be outside the jurisdiction of civil courts.

## Finances

- CAA may collect fees and charges currently collected by DGCA under the Aircraft Act, 1934. It may also levy fees/charges for safety oversight and surveillance functions, and for use of its facilities.
- All funds received by CAA including central government grants, and fees and charges shall be credited to the Civil Aviation Authority Fund. The Fund shall be used to pay the salaries and meet other expenses of CAA.
- CAA may create reserves for specific or general purposes, as per the limits fixed by the government.

## Offences and Penalties

- Non-compliance with an order or direction made by CAA, will attract a fine of up to Rs 1 lakh in the first instance, up to Rs 2 lakh in the second instance and up to Rs 4,000 per day for a continuing contravention.

## Powers of the government

- The government may issue policy directions to CAA in matters involving public interest.
- The government may supersede CAA for up to six months on account of: (i) a grave emergency, (ii) CAA's failure to comply with the government's directions or discharge its functions, and (iii) public interest.

## PART B: KEY ISSUES AND ANALYSIS

### Current vs. proposed regulator

The Bill proposes to replace DGCA with CAA. Some of the major differences are: (i) CAA will be established through an Act of Parliament, (ii) the Act specifies the procedure for appointment and removal of CAA's members, (iii) CAA may levy additional fees and charges, and (iv) CAA will maintain a separate fund.

**Table 2: Comparison of DGCA and CAA**

Parameter	DGCA (current regulator)	CAA (proposed regulator)
Nature	Part of the Ministry	Statutory body corporate under the Ministry
Composition	Director General	Chairman, Director General and 7-9 members
Selection of members	Director General appointed by the Ministry	By a Selection Committee
Removal of members	By the government	By the government after an inquiry
Appeals against regulator's decision	Government	Government
Government's power to issue directions	Specific orders in cases of emergency	On policy matters
Funding	Through government grants	Through government grants and fees and charges to be managed in a separate fund
Safety oversight, licensing, environmental regulation and industry development function	Yes	Yes
International coordination and advising the government	Yes	Yes
Ability to control airfares	Only excessive or predatory tariffs	Yes
Investigation function	Only incidents	All incidents and accidents*

Sources: DGCA; Aircraft Act, 1934; Civil Aviation Authority of India Bill, 2013; PRS.

\* Accident means an occurrence associated with the operation of an aircraft, where a person is fatally or seriously injured or the aircraft sustains major damage or structural failure. Incident means any other occurrence which could affect the safety of operation.

## Appeals against CAA's decisions

Clause 36 The Bill specifies that appeals against CAA's decisions shall lie with the central government. This is different from the regulatory framework for several other sectors, where an independent appellate tribunal hears appeals against the regulator's decisions. For example, appeals against decisions of TRAI, SEBI and Competition Commission of India are heard by Telecom Disputes Settlement and Appellate Tribunal, Securities Appellate Tribunal and Competition Appellate Tribunal, respectively.

Given that the appellate authority (Ministry) is also the administrative ministry for public sector undertakings that are air transport operators (Air India and Pawan Hans) and an airport operator (Airports Authority of India), this provision could lead to a conflict of interest.

## Overlap of jurisdiction

Clause 14(4)(a) and Clause 41 The Bill authorises CAA to perform all functions and duties of DGCA, under the Aircraft Act, 1934 and its Rules. These include the power to act against airlines indulging in excessive or predatory air fares or oligopolistic practices.<sup>5</sup> This function may overlap with the functions of the Competition Commission of India.

Clause 14(3)(d) The Bill entrusts CAA with the protection of consumer interests. This function may overlap with the functions of consumer protection and grievance redressal bodies established under the Consumer Protection Act, 1986.

## Composition and selection

Clause 4(3) The Bill states that the Chairperson should be an expert in civil aviation, engineering or management. The Standing Committee, in its report on the Bill, observed that it should be essential for the Chairperson to have knowledge and experience in aviation.<sup>4</sup> Some other Bills and Acts establishing safety regulators (such as for food safety, biotechnology, agricultural biosecurity and nuclear installations) require the Chairperson to have expertise in or be associated with the relevant field.<sup>6</sup>

Clause 4(1), Clause 4(2) and Clause 8(1)(f) The Bill provides that CAA shall have two to four part-time members. However, the eligibility requirement, age limit, selection process and functions for part-time members are not specified in the Bill. The Bill also mentions that the Chairperson or any other member can be removed if he engages in any other employment during his term of office. It appears that this provision shall apply to part-time members as well.

## Recruitment process

Clause 14(5) The Standing Committee's 2011 review of DGCA pointed out that it did not have adequate manpower.<sup>2</sup> The Committee noted that out of 525 sanctioned posts, 381 were vacant as on February 15, 2010. Whereas the Bill seeks to empower CAA to select and appoint its personnel, it will still need approvals from the government for creation of these posts. The Standing Committee in its report on the Bill, highlighted that this provision is similar to the current requirement of prior approvals from the Ministry of Finance and the Department of Personnel and Training. This may not bring about the intended acceleration in CAA's recruitment process.<sup>4</sup>

## Financing of CAA

Clause 21 The CAA will have a fund which will receive fees and charges in addition to government grants. This could be a move towards the cost of the regulator being met by the users of the regulated sector.

There are arguments both for and against adoption of a self-funded model (followed by the UK) over the government-funded model (followed by the USA). A self-funded model could provide CAA with financial flexibility and match its financial resources with the growth in the aviation sector. On the other hand, such a model could burden the aviation sector participants and passengers with additional costs and make CAA's finances vulnerable to a slowdown in the aviation sector.

## Unified regulator versus separate regulators

The CAA, in addition to conducting safety oversight of civil aviation, may regulate airfares. Economic regulation of airports is entrusted to a different body, AERA. In most countries, air fares are deregulated. Whereas in some countries the safety regulator also serves as the economic regulator, some other countries have separate regulators for each of these functions.

The benefits of having a unified regulator are lower regulatory costs, better coordination and information-sharing between different regulatory functions and providing stakeholders with a single-window interface.<sup>7</sup> On the other

hand, having multiple regulators eliminates the potential for conflict between safety and economic regulation and allows respective regulators to focus on their specific functions.

**Table 3: Comparison of CAA with aviation safety regulators in select countries**

Parameter	CAA	European Union	USA	UK	Australia	Singapore
Selection of members	By a Selection Committee	By the European Commission and member states	Appointed by the President with Senate's consent	(i) Chairman, Chief Executive and non-executive members: by the Minister, and (ii) Executive members: by the Chairman and non-executive members	By the Minister	By the Minister
Appeals against regulator's decision	Central government	Board(s) of Appeal appointed by the Management Board	National Transportation Safety Board	Minister, Competition Commission and Competition Appeal Tribunal	Administrative Appeals Tribunal	Minister
Economic regulation	Airlines only	Delegated to member countries	Airports	Airports	No	Airports
Provides Air Navigation Services	No	No	Yes	No	No	Yes
Promotion of aviation and manufacturing	Yes	No	Yes	Yes	No	Yes
Accident investigation	Yes	Yes	No	No	No	No
Funding	Through fees and charges and grants	Entirely through fees and charges	Appropriated by Congress	Entirely through fees and charges	Appropriated by Parliament	Entirely through fees and charges

Sources: Civil Aviation Authority of India Bill, 2013; Regulation (EC) No 216/2008 of the European Parliament; Title 49 – US Code; Civil Aviation Act 1982 – UK, Transportation Act, 2000 – UK and Civil Aviation Act 2012 – UK; Civil Aviation Act, 1988 – Australia; Civil Aviation Authority of Singapore Act, 2009; PRS.

## Summary of earlier reviews of DGCA

The structure and functioning of DGCA was reviewed by various committees including the Naresh Chandra Committee (2003), the Kaw Committee (2006) and the Standing Committee on Transport, Tourism and Culture (2011).<sup>2</sup> The table below summarises the observations and recommendations of these three committees.

**Table 4: Observations and recommendations of Naresh Chandra Committee, Kaw Committee and the Standing Committee on Transport, Tourism and Culture**

Focus area	Naresh Chandra Committee (2003)	Kaw Committee (2006)	Standing Committee (2011)
Restructuring of DGCA	DGCA be responsible for safety oversight only and an independent Aviation Economic Regulatory Authority be established	DGCA be maintained as an arm of the government and provided with operational and financial autonomy	DGCA be given adequate financial and administrative autonomy
Legislation	A comprehensive review of all aviation-related legislation be undertaken	Need for a comprehensive aviation-related legislation providing statutory backing to DGCA	DGCA needs statutory backup
Functions	DGCA should initiate consultations with stakeholders	DGCA should regulate both safety and economic aspects	-
Manpower	Urgent need for adequate staffing of all important disciplines at DGCA	Need for manpower policy and Indian Civil Aviation Service	DGCA's recruitment process should be de-linked from the Union Public Service Commission
Accident investigation	A separate organisation investigate accidents and major incidents	-	Urgent need for an independent accident investigation authority
Air fares	Collusion in air fares be referred to the Competition Commission of India	-	DGCA should investigate all airlines suspected of overcharging

Sources: Report of the Committee on a Road Map for the Civil Aviation Sector, Ministry of Civil Aviation; Press Information Bureau, Ministry of Civil Aviation; 168<sup>th</sup> Report of the Standing Committee on Transport, Tourism and Culture; PRS.

## Standing Committee's observations and recommendations on the Bill

Some of the key recommendations and observations of the Standing Committee on the Bill are given below:

- CAA may struggle to achieve its objectives, as its powers and authority are not very different from DGCA. CAA should be created by bringing comprehensive legislation, after revisiting the Aircraft Act, 1934.

- DG and at least four whole-time members should be strictly from a technical aviation-related background.
- CAA's role should be limited to approval, rather than encouragement of indigenous design and manufacture of aircraft and aircraft components.
- The requirement of government approval for creation of posts in CAA would make the process cumbersome. CAA should be allowed to create and select posts within the overall strength approved by the government.
- The fines prescribed for non-compliance with the provisions of Bill or CAA's orders should be increased to serve as an effective deterrent.

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#### Notes

1. This Brief has been written on the basis of the Civil Aviation Authority of India Bill, 2013 that was introduced in the Lok Sabha on August 20, 2013.
2. "Report of the Committee on a Road Map for the Civil Aviation Sector", Ministry of Civil Aviation, November 30<sup>th</sup>, 2003, [http://www.prsindia.org/uploads/media/AERA/bill149\\_20080311149\\_Naresh\\_Chandra\\_Committee\\_Report\\_on\\_Civil\\_Aviatio\\_n.pdf](http://www.prsindia.org/uploads/media/AERA/bill149_20080311149_Naresh_Chandra_Committee_Report_on_Civil_Aviatio_n.pdf); "Committee on review and restructuring of DGCA submits its report", Press Information Bureau, Ministry of Civil Aviation, April 4, 2006; "168<sup>th</sup> Report: Directorate General Of Civil Aviation (DGCA) – Issues and Challenges", Standing Committee on Transport, Tourism and Culture, May 4, 2011, [http://164.100.47.5/newcommittee/reports/EnglishCommittees/Committee%20on%20Transport,%20Tourism%20and%20Cultu\\_re/168.pdf](http://164.100.47.5/newcommittee/reports/EnglishCommittees/Committee%20on%20Transport,%20Tourism%20and%20Cultu_re/168.pdf).
3. "Press Release – FAA Announces Revised Safety Rating for India", Federal Aviation Administration, Department of Transportation, The United States of America, January 31, 2014, [http://www.faa.gov/news/press\\_releases/news\\_story.cfm?newsid=15674](http://www.faa.gov/news/press_releases/news_story.cfm?newsid=15674).
4. "204<sup>th</sup> Report: The Civil Aviation Authority of India Bill, 2013", Standing Committee on Transport, Tourism and Culture, January 24, 2014, [http://164.100.47.5/newcommittee/reports/EnglishCommittees/Committee%20on%20Transport,%20Tourism%20and%20Cultu\\_re/204.pdf](http://164.100.47.5/newcommittee/reports/EnglishCommittees/Committee%20on%20Transport,%20Tourism%20and%20Cultu_re/204.pdf).
5. Rule 135(4), Aircraft Rules, 1937, Ministry of Civil Aviation, [http://civilaviation.gov.in/cs/groups/public/documents/rule\(dg\)/moca\\_000947.pdf](http://civilaviation.gov.in/cs/groups/public/documents/rule(dg)/moca_000947.pdf).
6. The Food Safety and Standards Act, 2006; the Agricultural Biosecurity Bill, 2013; the Biotechnology Regulatory Authority of India Bill, 2013 and the Nuclear Safety Regulatory Authority Bill, 2011.
7. "Report of the strategic review of the CAA", conducted by Sir Joseph Pilling for the UK Department for Transport, <http://webarchive.nationalarchives.gov.uk/+/http://www.dft.gov.uk/pgr/aviation/domestic/pillingreview.PDF>.

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