

AN ANALYSIS OF CARRIAGE BY AIR ACT, 1972

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INTRODUCTION

The Carriage by Air Act was enacted by the Parliament on December 19, 1972 and came into force on March 23, 1973. The Act essentially aims to implement the Warsaw Convention for the Unification of certain Rules about International Carriage by Air that was signed on October 12, 1929. The application of the Convention extends to any or all carriage like carriage of passengers, baggage or cargos performed for remuneration. The Act conjointly complies with the amendments created to the Warsaw Convention through the Protocol of amendments of the Warsaw Convention, 1959 managing the liability of the Air Carrier to passengers and merchandise terminated at Hague within the year 1955. The Act extends to the complete Indian Territory as well as the State of Jammu and geographical area. There is an international legal regime governing the liability of air carriers for injury or death of passengers, for destruction or loss of or damage to baggage and cargo, and losses caused by delay in international carriage of passengers, baggage and cargo. This regime is set out in a number of international instruments. However, India had so far ratified only two instruments, namely the Warsaw Convention 1929, and the Warsaw Convention as amended by The Hague Protocol 1955 and the same had been given effect to by the Carriage by Air Act 1972.

The various instruments adopted by the International Civil Aviation Organisation (ICAO - a specialised agency of the United Nations, which codifies the principles and techniques of international air navigation and fosters the planning and development of international air transport to ensure safe and orderly growth) failed to receive the kind of universal acceptance as parent Warsaw Convention and The Hague Protocol had received. As a result, a situation arose where several different combinations of liability regimes came into existence defying the much-desired uniformity and unification of international law in this field. The ICAO then embarked upon serious initiative for a socio-economic study of the levels of compensation and

finally the Montreal Convention 1999 was adopted for the unification of certain rules for international carriage by air which aims to achieve the dual purpose of modernising as well as consolidating the various instruments comprising the Warsaw System.

As of July 2010, 97 countries signed the Montreal Protocol treaty which included the United States, members of the European Union (EU), Australia, Canada, China, India, Japan, Korea and Mexico.

India acceded to the Convention on 1st May 2009 and it entered into force in India on 30th June 2009.

In India, the Carriage by Air Act 1972 was amended by the Carriage by Air (Amendment) Act 2009 to give effect to the Convention for the unification of certain rules relating to international carriage by air signed at Warsaw on the 12th day of October, 1929 and to the said Convention as amended by the Hague Protocol on the 28th day of September, 1955 and also to the Montreal Convention signed on the 28th day of May, 1999 and to make provision for applying the rules contained in the said Convention in its original form and in the amended form subject to exceptions, adaptations and modification to non-international carriage by air and for matters connected therewith.

The principal Act came into force w.e.f.15th May, 1973 vide Gazette of India, Part II, Section 3 (ii) (Ext) dated 26th March, 1973 and the Carriage by Air (Amendment) Act, 2009 came into force w.e.f.1st July,2009 vide Gazette of India, Part II, Section 3 (ii) (Ext) dated 20th March, 2009. Since a large number of flights operate between India and many of the countries that have ratified or acceded to the Montreal Convention 1999 (for example, USA and UK), non-accession of the Convention by India would have given rise to a situation involving serious discrimination between the passengers of the same flight with regard to compensation. To cite an instance, those passengers whose journey originated in USA or UK will be entitled to much higher compensation compared to those whose journey originated in India. This would, by and large, go against the interests of Indian passengers. Moreover, if India had not acceded to the Montreal Convention, Indian nationals would be denied the benefit of the fifth jurisdiction.

WARSAW CONVENTION

The Warsaw Convention is an international convention which regulates liability for international carriage of persons, luggage or goods performed by aircraft for reward.

Originally signed in 1929 in Warsaw (hence the name), it was amended in 1955 at The Hague and in 1975 in Montreal. United States courts have held that, at least for some purposes, the Warsaw Convention is a different instrument from the Warsaw Convention as Amended by The Hague Protocol.

In particular, the Warsaw Convention:

1. mandates carriers to issue passenger tickets;
2. requires carriers to issue baggage checks for checked luggage;
3. creates a limitation period of 2 years within which a claim must be brought (Article 29);
and
4. limits a carrier's liability to at most:
 - 250,000 Francs or 16,600 Special Drawing Rights (SDR) for personal injury;
 - 17 SDR per kilogram for checked luggage and cargo, or \$20USD per kilogram for non-signatories of the amended Montreal Protocols.
 - 5,000 Francs or 332 SDR for the hand luggage of a traveller.

The sums limiting liability were originally given in Francs (defined in terms of a particular quantity of gold by article 22 paragraph 5 of the convention). These sums were amended by the Montreal Additional Protocol No. 2 to substitute an expression given in terms of SDR's. These sums are valid in the absence of a differing agreement (on a higher sum) with the carrier. Agreements on lower sums are null and void.

A court may also award a claiming party's costs, unless the carrier made an offer within 6 months of the loss (or at least 6 months before the beginning of any legal proceedings) which the claiming party has failed to beat.

The Montreal Convention, signed in 1999, replaced the Warsaw Convention system.

APPLICABILITY OF WARSAW CONVENTION TO INDIA

The rules contained in the First Schedule to the Carriage by Air Act 1972, being the provisions of the Warsaw Convention relating to the rights and liabilities of carriers, passengers, consignors, consignees and other persons, shall, subject to the provisions of the said 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.

For the purpose of the 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 to the Act. A whole Annexure was inserted by the Carriage by Air (Amendment) Act, 2009.

MONTREAL CONVENTION

The Montreal Convention, formally the Convention for the Unification of Certain Rules for International Carriage, is a treaty adopted by a Diplomatic meeting of ICAO member states in 1999. It amended important provisions of the Warsaw Convention's regime concerning compensation for the victims of air disasters. The Convention re-establishes urgently needed uniformity and predictability of rules relating to the international carriage of passengers, baggage and cargo. Whilst maintaining the core provisions which have successfully served the international air transport community for several decades (i.e. the Warsaw regime), the new convention achieves the required modernisation in a number of key areas. It protects passengers by introducing a two-tier liability system and by facilitating the swift recovery of proven damages without the need for lengthy litigation.

Under the Montreal Convention, air carriers are strictly liable for proven damages up to 100,000 Special Drawing Rights (SDR), a mix of currency values established by the International Monetary Fund (IMF), approximately \$138,000 per passenger at the time of its ratification by the United States in 2003 (as of June 2009, around \$154,800). Where damages of more than 100,000 SDR are sought, the airline may avoid liability by proving that the accident which caused the injury or death was not due to their negligence or was attributable to the negligence of a third party. This defence is not available where damages of less than 100,000 SDR are sought. The Convention also amended the jurisdictional provisions of

Warsaw and now allows the victim or their families to sue foreign carriers where they maintain their principal residence, and requires all air carriers to carry liability insurance.

The Montreal Convention changes and generally increases the maximum liability of airlines for lost baggage to a fixed amount 1000 SDR (the amount in the Warsaw Convention is based on weight of the baggage). The amount has now been increased to 1131SDR.

Montreal Convention was brought about mainly to amend liabilities to be paid to families for death or injury whilst on board an aircraft.

APPLICABILITY OF THE MONTREAL CONVENTION TO INDIA

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.

For the purpose of the 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. A whole Annexure was inserted by the Carriage by Air (Amendment) Act, 2009 giving the Parties to the Convention and the date of enforcement.

THE CARRIAGE BY AIR ACT, 1972 (AN OVERVIEW)

The Carriage by Air Act was enacted by the Parliament on December 19, 1972 and came into force on March 23, 1973. The Act fundamentally aims to implement the Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air which was signed on October 12, 1929. The application of the Convention extends to all carriage like carriage of passengers, baggage or cargos performed for remuneration. The Act also complies with the amendments made to the Warsaw Convention through the Protocol of amendments of the Warsaw Convention, 1959 dealing with the liability of the Air Carrier to passengers and Cargo

ended at Hague in the year 1955. The Act extends to the entire Indian Territory including the State of Jammu and Kashmir.

ANALYSIS

“In this context, it's value noting that the contract of carriage isn't separately negotiated between the parties, however is distributed on the carrier's normal terms of contract as usually contained in or proven by a transport document issued by the carrier. Therefore, one in all the underlying aims of the Warsaw Convention 1929 - and this is often common to all or any existing international liability regimes within the field of transport - is to cut back the potential for abuse within the context of contracts of adhesion, used wherever parties with unequal negotiation power contract with each other. By establishing minimum standards of liability, that apply compulsorily and should not be contractually changed, international liability regimes get to confirm the protection of freight interests with very little negotiation power against unfair contract terms unilaterally introduced by the carrier in its normal terms of contract.” As is obvious from the higher than overview, there are totally different legal regimes which can doubtless be applicable to a claim arising from the international carriage of products by air. Whether or not one in all the Warsaw-system conventions or, as an alternative, the Montreal Convention 1999 is a vital and, in practice, usually sophisticated question.

In all cases, the trigger for the applying of anyone of the international air conventions and its corresponding legal regime is that the conception of "international carriage". There's one definition of "international carriage" that has not been modified in substance by the varied amendments to the first Warsaw Convention 1929, or by the foremost recent Montreal Convention 1999 to work out whether or not a particular contract of carriage is "international carriage" ruled by one in all the international air conventions, there's a two-stage inquiry, that is advanced and in practice usually creates extensive problem, each for traders and for courts charged with the resolution of disputes.

In easy terms, the method could also be summarised as follows. First, it's necessary to work out whether or not the carriage comes inside the technical conception of "international carriage", outlined by reference to the agreed places of departure and destination and any

agreed stopping place. Secondly, it's necessary to envision that the State/s of departure and destination square measure acquiring States to constant version of either one in all the Warsaw-system conventions, or the Montreal Convention 1999.

The first stage of the inquiry consists of considering the definition of "international carriage". Each the Warsaw-system conventions and therefore the Montreal Convention 1999 use similar language to outline the term "international carriage". They create regard to the "contract created by the parties", or the "agreement between the parties", in 2 distinct things.

- i) The agreed place of departure and therefore the place of destination are located inside the territories of 2 contracting States, whether or not or not there's a chance within the carriage or a transshipment;
- ii) The agreed place of departure and therefore the place of destination are located inside the territory of one contracting State, if there's AN agreed stopping place inside the territory of another State, whether or not or not this is often a contracting State.

In order to work out whether or not a contract for the transport of the good is "international carriage" ruled by anyone of the Warsaw-system conventions or the Montreal Convention 1999, it's imperative to check the air bill of lading or price tag closely to establish the agreed places of departure and destination, similarly as any agreed stopping place, and to see whether or not these meet the necessities set out in i) or ii) above. If the necessities are met, the contract is one in all "international carriage" ruled by one in all the Warsaw-system conventions or the Montreal Convention 1999, as applicable. Otherwise, the contract isn't one of "international carriage" and, therefore, not subject to any of the international air conventions. In these cases, national law and/or the terms of the contract (i.e. terms and conditions written on the air bill of lading or traveller price tag or incorporated by reference) are applicable.

Each contracting State to anyone of the international air conventions has to totally implement the several international air conventions at the national level. In countries wherever an international agreement has to be enacted into domestic legislation, this could be achieved in a number of ways, together with through desegregation the text of an international convention into existing legislation. However, within the interests of certainty and to avoid any conflict of laws problems between completely different contracting States, it's vital to aim at enacting legislation that reproduces the totality of the provisions of anyone of the international air

conventions verbatim and with none changes.

Additionally, it's vital to notice that national implementation of any of the international conventions won't accomplish the meant result unless the individual convention has been legal or acceded to. in this context, it ought to be recalled that the trigger for the applying of the conventions is, altogether cases, "international carriage" as outlined, i.e. carriage involving contracting States. Thus, a national enactment of a world convention while not its approval wouldn't guarantee application of the substantive convention provisions during a case wherever carriage involves that State. although the text of the national statute was to create it clear that carriage to or from that State ought to be covered by the convention in question, courts in different jurisdictions, which can be charged with selecting a claim, would, presumably, not offer impact to the relevant convention provisions, because the carriage wouldn't involve an acquiring State. Thus, adoption of a world air carriage convention at the international level, through approval or accession, is vital, to make sure that any relevant national enactment is totally effective.

In view of the complexities of the Warsaw-system conventions, there are clear sensible benefits in adopting the Montreal Convention 1999, the most recent and latest and comprehensive of the international conventions within the field. However, unless and till the Montreal Convention 1999 becomes universally adopted, the Warsaw-system conventions and also the Montreal Convention 1999 still co-exist. As a result, a country's trade with completely different trading partners is also ruled by different international air conventions. In cases, wherever quite one amongst the international conventions has been adopted by a State, explicit care is needed to make sure effective implementation of every of the international air conventions at the national level. The relevant national legislation has to make sure the application of every international agreement in relevance trade involving acquiring States to it explicit convention. This can be important so as to avoid inessential confusion among traders and to make sure the applying of the relevant international air convention in respect of carriage between completely different trading partners. With respect to deciding and fixating liability on air carriers, there are certain documents issued to passenger or goods owner whichever the case may be. The said provision was laid down in Warsaw Convention to fixate liability of air carrier in case of death or injury to passenger during the course of flight and damage or loss to the goods or luggage sent via such carriers. All of the liability which is to be decided by the court where the case

was filled, the court decides on facts and evidence, meaning there by it would require any or all documents issued by the air carrier.

DOCUMENTS OF CARRIAGE

The air way Bill

The air consignment note or air way bill will contain the place where it was issued and with-it date. The document will also include place of departure, destination and the intended stoppages. Also, the names and addresses of the carrier and the consignee are also to be found in this document. The nature of goods, a statement of number of packages, method of packing, weight of the goods, volume and quantity, dimensions and apparent condition of the goods. This document will be the prima facie evidence of the conclusion of the contract. This document will signify the receipt of the cargo in carriage and of condition of carriage. This document shall also include cost of freight and people who will be liable to pay will also be included in this document, with terms and condition of when to pay and how to pay.

The Passenger Ticket

Any carriage involving traveller should deliver a passenger ticket. This can be the document that contains the place and therefore the date of issue, the place of departure and of destination. Additionally, to it, the stopping places as agreed ought to be shown within the price tag. Notwithstanding, the carrier might reserve the right to change the stopping places just in case necessarily. In doing this the alteration shall not deprive the carriage of its international character. In light-weight to the current, depriving the carriage its international character suggests that neutering the carriage to the extent that the carriage is not any longer as represented within the definition section in Article 1(2). The convention needs that the name and address of the carrier or carriers be enclosed within the ticket. Finally, within the ticket ought to be an announcement of liability. This statement ought to state that the carriage is subject to the foundations regarding liability established by the Convention. These rules area unit contained in chapter (iii) of the Convention.

If the higher than mentioned ticket is lost, suffers irregularity or is absent, it doesn't have an effect on the existence or the validity of the contract of carriage, notwithstanding, the foundations of the convention shall apply. The carrier won't be able to exclude himself from the liability exploitation those provisions within the Convention that excludes him from his liability if he accepts a traveller while not a traveller price ticket once the ticket had been delivered to it traveller.

In Carriage of baggage, objects aside from personal objects of that the traveller takes charge himself the carrier should deliver a bags ticket. The convention needs that the ticket be in duplicate whereby each the traveller and therefore the carrier get a replica.

The luggage ticket shall contain details of the place and date of issue , the place of departure and of destination , the name and address of the carrier or carriers , the amount of the traveller ticket , an announcement that delivery of the bags are created to the bearer of the bags ticket , the amount and weight of the packages , the number of the worth declared in accordance with Article 22(2) and an announcement that the carriage is subject to the foundations regarding liability established by this Convention.

Just as it's the case in carriage involving passengers, if the bags ticket is lost, suffers irregularity or is absent, it doesn't have an effect on the existence or the validity of the contract of carriage, notwithstanding, the foundations of the convention shall apply. The carrier won't be able to exclude himself from the liability exploitation those provisions within the Convention that excludes him from his liability if he accepts a traveller while not a bag once the ticket had been delivered to it traveller. The price tag should conjointly bear the particulars started at (d), (f) and (h) higher than for him to avail himself of these provisions of the Convention that exclude or limit his liability.

CONCLUSION

One of the Warsaw-system conventions or the Montreal Convention 1999 applies to a claim arising from the carriage of goods by air is an important and, in practice, often complicated question. In all cases, the relevant criterion for the application of any one of the international air conventions and its corresponding legal regime is the concept of "international carriage", as

defined uniformly in the various international legal instruments. Thus, all the international air conventions apply only in respect of carriage between two Contracting States to the same international air convention, or in respect of carriage within a single Contracting State, if an intermediary international stopover has been agreed.

In regard to the carriage of products by air, there are a substantial variety of various international legal regimes co-existing at the international level. This state of affairs creates a challenge, for policy-makers and legislators charged with developing applicable national legislation, for judges and arbitrators concerned in applying and deciphering the relevant law and for personal parties engaged in transport. Every contracting State to anyone of the international air conventions has to totally implement the various international air conventions at the national level. In countries wherever an international agreement has to be enacted into domestic legislation, this will be achieved in an exceedingly variety of ways, as well as through integrating the text of an international convention into existing legislation. However, within the interests of certainty and to avoid any conflict of laws problems between completely different contracting States, it's necessary to aim at enacting legislation that reproduces the totality of the provisions of anyone of the international air conventions verbatim and with none changes.

In addition, it's necessary to notice that national implementation of any of the international conventions won't accomplish the meant result unless the various convention has been sanctioned or acceded to. During this context, it ought to be recalled that the trigger for the application of the conventions is, altogether cases, "international carriage" as outlined, i.e. carriage involving contracting States. Thus, a national enactment of an international convention while not its approval wouldn't guarantee application of the substantive convention provisions in an exceedingly case wherever carriage involves that State. even though the text of the national statute were to create it clear that carriage to or from that State ought to be coated by the convention in question, courts in different jurisdictions, which can be charged with choosing a claim, would, presumably, not provide result to the relevant convention provisions, because the carriage wouldn't involve a catching State. Thus, adoption of a global air carriage convention at the international level, through approval or accession, is vital, to make sure that any relevant national enactment is going to be totally effective.

In view of the complexities of the Warsaw-system conventions, there are clear sensible benefits

in adopting the Montreal Convention 1999, the newest and most recent and comprehensive of the international conventions within the field. However, unless and till the Montreal Convention 1999 becomes universally adopted, the Warsaw-system conventions and therefore the Montreal Convention 1999 still co-exist. As a result, a country's trade with completely different trading partners is also ruled by different international air conventions. In cases, wherever more than one among the international conventions has been adopted by a State, specific care is needed to make sure effective implementation of every of the international air conventions at the national level. The relevant national legislation has to make sure the application of every international agreement in regard to trade involving contracting States thereto specific convention. This is often very important so as to avoid gratuitous confusion among traders and to make sure the applying of the relevant international air convention in respect of carriage between completely different commerce partners.