

Legislative Brief

The Carriage by Air (Amendment) Bill, 2007

The Bill was introduced in the Lok Sabha on May 4, 2007.

The Bill has been referred to the Parliamentary Standing Committee on Transport, Tourism and Culture (Chairperson: Shri Sitaram Yechury.)

The Committee is scheduled to submit its report the first day of the last week of the Winter Session 2007.

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Highlights of the Bill

- ◆ The Carriage by Air (Amendment) Bill, 2007 seeks to amend the Carriage by Air Act, 1972 that governs the rules for international carriage by air. The Bill proposes to update India's legal regime by ratifying the Montreal Convention.
- ◆ The Bill introduces a two-tiered compensation regime for death or injury to passengers. If the accident is the fault of the carrier, then it has an unlimited liability. Otherwise, the carrier's liability is limited to 100,000 Special Drawing Rights or SDRs (around Rs 63 lakh at the current conversion rate), which is triple the limit under the earlier convention.
- ◆ The Montreal Convention allows the plaintiff the option of jurisdiction in the country of primary residence of the passenger, in addition to the primary location of business of the carrier or the destination of the flight.
- ◆ In case of death or bodily injury of the passenger, the Bill provides for advance payment by the carrier to the passenger or passenger's family to address immediate economic needs without lengthy litigation.
- ◆ The Bill changes the system for compensation of lost or damaged baggage. Under the Warsaw Convention, it was a weight-based system. The Montreal Convention changes it to a maximum of SDR 1,000 (about Rs 63,000).

Key Issues and Analysis

- ◆ The Bill only applies to international carriage by air. It permits the central government to notify similar provisions to domestic flights too. Under the current Act, the compensation levels notified by the government for domestic flights are significantly lower than for international ones.
- ◆ The Montreal Convention covers any journey where the origin and destination are in a signatory country if there is a stop-over in another country. This implies, for example, that a US-India-US ticket is covered while an India-US-India one is not covered until India ratifies the Convention.
- ◆ Some countries have ratified this convention with amendments to exclude specific carriers from the rules of the Convention.
- ◆ According to the International Civil Aviation Organisation, 78 countries have ratified and enforced the Montreal Convention, including the United States, the European Union, Canada, Japan, and China.

PART A: HIGHLIGHTS OF THE BILL¹

Context

The 1929 Warsaw Convention created a global regime of limited liability for international air transportation. The Warsaw Convention (and amendments including the Hague Protocol of 1955) established a system of standard rules for international air carriage, particularly in regard to liability arising out of the death or injury of passengers, the damage or loss of baggage or cargo, and delayed carriage. The Carriage by Air Act, 1972 ratified the Warsaw Convention and the Hague Protocol to become part of Indian law.

According to the Bill's Statement of Objects and Reasons, the International Civil Aviation Organisation (ICAO) "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." These meetings led to the adoption of the Montreal Convention, 1999, which entered into force on November 4, 2003. 78 countries have ratified the Montreal Convention.²

The Carriage by Air (Amendment) Bill, 2007 is India's ratification of the Montreal Convention, thereby enforcing the provisions of this agreement on all international air carriers in India.

Key Features

Application of Montreal Convention

- The Bill updates the Principal Act to include the Montreal Convention, or "the unification of certain rules for international carriage by air" signed on May 28th, 1999. The Bill makes the Montreal Convention legally binding in India for any international carriage by air regardless of the nationality of the aircraft.
- The central government may, through notification, apply the rules of the Montreal Convention to domestic carriage by air, with exceptions, adaptations and modifications, if any.

High Contracting Parties

- The Bill includes three annexures of the signatory countries (called High Contracting Parties) and date of enforcement of the Warsaw Convention, the Hague Protocol, and the Montreal Convention, respectively. The Bill allows the central government to add to or omit from the list of states through a notification.
- The rules of the Montreal Convention apply to all international carriage of persons, baggage or cargo carried by aircraft for fee. The departure and destination points must be in different signatory countries, or if they are within one signatory country, there must be an agreed intermediate stop-over in another country.
- In cases where either the country of departure or destination has not ratified the Montreal Convention but both have ratified the Warsaw Convention or the Hague Protocol, that Convention or Protocol will be applicable.
- Carriers of postal items are only liable to the rules of the relevant postal administration.

Documentation and Duties of Carriers

- The Montreal Convention allows individual or collective documents of carriage to be delivered by electronic or any other means. The carrier is required to offer a written statement of the same to the passenger or consignor. This effectively enables e-tickets, and electronic forms for cargo receipts and air waybills.
- The Montreal Convention specifies the details required on the individual or collective documents of carriage to be delivered to passengers. The carrier must provide each passenger with a baggage identification tag for each piece of checked baggage, and a written notice of the limited liability of carriers.
- An air waybill or cargo receipt must be delivered for carriage of cargo. The Montreal Convention specifies the information the receipt must contain. It is the responsibility of the consignor to include all documents necessary for customs, police and any other public authorities.
- Upon arrival of the cargo, the carrier must inform the recipient of arrival, and the recipient may require the carrier to deliver the cargo on payment of the charges and complying with the conditions of carriage.

Liability of Carrier and Extent of Compensation for Damages

- The carrier will be liable for damages incurred in case of death or bodily injury of a passenger only if the accident took place on board the aircraft or in the course of embarking or disembarking.
- The carrier will be liable for damages incurred in the case of destruction, loss, or damage to checked baggage if it occurred on board the aircraft or during any period in which the checked baggage was in the charge of the carrier. (The carrier will not be liable if the damage resulted from an inherent defect of the baggage).
- In the case of destruction, loss or damage to cargo during the period in which the cargo is in the charge of the carrier, the carrier will be liable. However, the carrier will not be held liable if the destruction resulted from

- (a) an inherent defect of the cargo, (b) defective packing by a person other than the carrier, (c) an act of war or armed conflict, or (d) an act of public authority related to the entry, exit or transit of the cargo.
- The carrier is liable for damage due to delay in carriage by air of passengers, baggage or cargo. However, the carrier will not be liable if it can prove it took all possible measures to avoid the damage.
 - In case of death or bodily injury of passenger due to the fault of the carrier, its liability is unlimited. If the accident is not due to the negligence or wrongful act of the carrier, or if it is fully due to the negligence or wrongful act of a third party, the carrier may limit its liability to one lakh Special Drawing Rights (SDRs) per passenger, or about Rs 63 lakh at the current conversion rate.* The carrier will not be liable for such damages if the damages was not due to the negligence or wrongful act of the carrier, or if the damage was solely due to the negligence or other wrongful act or omission of a third party.
 - In case of damage caused by delay in the carriage of persons, the liability for each passenger is limited to 4,150 SDR (about Rs 260,000). In case of destruction, loss, damage, or delay in the carriage of baggage, the liability of the carrier will be limited to 1,000 SDR (about Rs 63,000).
 - In case of the delay, destruction, loss or damage of part of the cargo, the liability of the carrier will be determined on the total weight of the concerned package(s).
 - A carrier may increase its limit of liability or have no limits,, but may not lower or relieve themselves of it.
 - The International Civil Aviation Organisation will review the limits of liability for carriage by air every five years. The Montreal Convention also specifies how the ICAO will determine the inflation factor.
 - When an aircraft accident results in death or injury of passengers, the carrier shall make advance payments to such persons who are entitled to claim compensation.
 - In case of damage, the person must make a complaint in writing to the carrier within seven calendar days of receipt of checked baggage, 14 calendar days of receipt of cargo, and in the case of delay, within 21 calendar days of receiving the checked baggage or cargo. Receipt of the checked baggage or cargo without complaint within these periods is evidence that it has been delivered in accordance with contract.
 - Countries that have ratified the Convention must require their carriers to maintain adequate insurance covering their liability under it, and a carrier may be required to furnish evidence of such insurance.

Action for Damages

- A claimant may take action for damages in the territory of one of the signatories to the Convention either (a) before the court of the domicile of the carrier, (b) the carrier's principal place of business, (c) where it has a place of business through the contract, or (d) the court at the place of destination. In the case of death or injury of a passenger, an action may be brought in any of the above, or (e) in the principal and permanent residence of the passenger at the time of the accident, and where the carrier or partner carrier operates services for the carriage of passengers by air. The nationality of the passenger is not a determining factor.
- The parties to the contract of carriage for cargo may agree in writing that any dispute relating to the liability of the carrier for cargo shall be settled by arbitration. The claimant has the same choice for the location of arbitration proceedings as detailed above.
- Action for damages must be taken either within two years of the incident.

Combined Carriage

- In the case of combined carriage, these rules apply only to the part of the carriage that was by air.

Carriage by Air Performed by a Person Other than the Contracting Carrier

- If a carrier contracts another carrier to perform the carriage by air, the contracting carrier is still subject to these rules for the entire duration of the carriage, and the performing carrier only for his leg of the carriage. Any action for damages may be brought against either or both of the carriers.

PART B: KEY ISSUES AND ANALYSIS

Warsaw Convention and Montreal Convention Comparison

The purpose of this Bill is to update the international civil aviation regime in India to comply with the Montreal Convention, in addition to the Warsaw Convention. We list below the key differences between the regimes.

* Special Drawing Rights (SDRs) is the currency measure established by the International Monetary Fund. As of August 31, 2007, one SDR is approximately Rs 63. For the purpose of the Bill, in case of judicial proceedings, the conversion into national currencies will be made at the date of the judgement.

Table 1: Key Differences between the Current Act and the Proposed Bill

Provision	Carriage by Air Act, 1972	Amendment Bill, 2007
Ticket documentation	Airline must issue passenger documentation of travel	Recognises the use of electronic documents, such as e-tickets
Provision of advance payment	No such provision	Provision for advance payment in case of death or bodily injury to address immediate economic needs without lengthy litigation
Liability of air carrier for bodily injury or death of passenger	Maximum compensation for passenger death or bodily injury: 250,000 francs (34,000 SDRs)	2 tier liability system: first tier: SDR 100,000. Second tier, if fault of carrier—unlimited liability.
Max. liability for lost baggage	Based on weight of baggage (250 francs per kg)	SDR 1,000
Location of jurisdiction	Plaintiff's options: carrier's ordinary residence or principal place of business, establishment by which the contract has been made or at the place of destination	Extends permissible location of jurisdiction to include the country in which the passenger maintains principal residence, as long as the carrier operates in that country
Liability Insurance	No such provision	Requires all air carriers to carry liability insurance
Revising liability limits	No such provision	ICAO may review limits of liability based on inflation

Sources: The Carriage by Air Act, 1973; The Carriage by Air (Amendment) Bill, 2007; PRS.

Application to Domestic Carriers

The Bill covers only international flights but allows government to write similar rules for domestic flights. For the earlier Warsaw Protocol, the compensation levels were significantly lower for non-international flights.

Table 2: Liability for International versus Domestic Carriage by Air under Current Law

Liability type	International Carriage by Air	Domestic Carriage by Air
Passenger death or injury	Liability limited to 250,000 francs (about Rs 2,100,000).	Death or permanent injury: Rs 750,000 (passenger over 12 years); Rs 375,000 (below 12 years). Temporary injury, lower of Rs 750/day or Rs 150,000.
Registered luggage/ goods	250 francs (Rs 2,100) per kg	Rs 450 per kg
Carry-on baggage	5,000 francs (Rs 42,000) per passenger	Rs 4,000 per passenger

Sources: Carriage by Air Act, 1972; Notification Regarding Application of the Carriage by Air Act, 1972, to Carriage by Air Which is Not International, DGCA; PRS

Asymmetry Until India Ratifies Montreal Convention

Under the Montreal Convention, a journey which originates and terminates within a signatory country would be considered international carriage by air if it has an agreed stop-over in a different country. This implies, for example, that under the current scenario, where the US is a signatory country and India is not, a US-India-US ticket would be covered by this convention, whereas an India-US-India ticket would not be until India ratifies it.

International Comparison

According to the ICAO, 79 countries have ratified and enforced the Montreal Convention, including the United States, the European Union, Canada, Japan, and China.³ Some countries ratified the Montreal Convention with specific amendments. For example, Canada excluded military air carriers and the US excluded international carriage by air performed by its government for non-commercial purposes. However, most countries consider the convention a necessary update to the global regime.⁴

Notes

1. This Brief has been developed on the basis of The Carriage by Air (Amendment) Bill, 2007 introduced in Lok Sabha on May 4th, 2007. The Bill has been referred to the Department-related Parliamentary Standing Committee on Transport, Tourism and Culture (Chairperson: Shri Sitaram Yechury).
2. 'Entry into Force,' International Civil Aviation Organisation, see <http://www.icao.int/icao/en/leb/mtl99.pdf>.
3. The Carriage by Air (Amendment) Bill, 2007, Annexure 3.
4. See 'Reasons for New Zealand to Become Party to Convention,' New Zealand Ministry of Foreign Affairs and Trade, <http://www.mfat.govt.nz/Treaties-and-International-Law/Treaty-making-process/National-Interest-Analyses/0-International-Carriage-by-Air.php>; Parliament of Ireland, <http://debates.oireachtas.ie/DDebate.aspx?F=DAL20040323.xml&Node=918>; Government of Hong Kong, <http://www.info.gov.hk/gia/general/200506/22/06220212.htm>.

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