INDIA
CARRIER LIABILITY FOR PASSENGERS

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INDIA
DEFICIENCY IN THE SYSTEM

India has adhered to only the following international carrier liability conventions

- Warsaw Convention 1929
Unilateral Action by Japan & the EU

- 1992: Japanese airlines agree to a two tier system of liability: strict liability of SDR 100,000 and fault based liability with reverse burden of proof beyond that limit.

- 1998: European Union establishes SDR 100,000 for EC carriers.
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DEFICIENCY IN THE SYSTEM

IATA Inter Carrier Agreement, 1995

- Voluntarily waiver limit of carrier liability as well as the defense available under Article 20 of the Warsaw Convention, 1929.

- Voluntarily acceptance of SDR 100,000 limit of carrier liability.

- Air India, Indian and Jet Airlines are not signatory.
INDIA
DEFICIENCY IN THE SYSTEM

IATA: Montreal Agreement, 1966

- Member airlines accept strict liability of US$ 75000 for carriage by air through and via the US.

- Air India had to accept in order to fly to the US. (As has Jet Airlines)
INDIA
DEFICIENCY IN THE SYSTEM

- Clearly, India’s record in keeping up with the international thinking has been poor.

- Discrimination against Indian citizens engaged in both international and domestic air travel.
INDIA

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- Kenya Airways KQ 507 crash at Douala, Cameroon on 5th May 2007
- 15 Indian nationals on board
- Kenya has ratified Montreal Convention 1999
  BUT
- India has not.
- The only international convention that both Kenya & India have ratified is the Warsaw Convention 1929.
- Kenya Airlines is signatory to the 1995 Inter Carrier Agreement.
INDIA
NATIONAL CARRIAGE BY AIR LAW

Carriage by Air Act, 1972 (‘Act’)
(repealed Carriage by Air Act, 1934)

- Schedule I harmonizes Warsaw Convention 1929
- Schedule II harmonizes Hague Protocol 1955

- Warsaw 1929 & Hague Protocol 1955 harmonized in to national law 18 years after adherence.
INDIA
DEFICIENCY IN THE LAW

- Substantive Act does not reflect faithfully the provision of Article 17 of the international conventions.

- Section 5 of the Act attaches liability to the carrier only in the event of death of a passenger in context to Schedule I & II.

- Whereas Rule 17 Schedule I & II attach liability to the carrier in the event of death, wounding and bodily injury as mandated by the two conventions.

- Possibility of a conflict in interpretation.
Section 6: Conversion of francs —

To 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.

Schedule I Rule 22: indicates carrier liability of 125000 fr. francs (gold standard) but not the manner of conversion to INR.

Schedule II Rule 22 (5) : conversion to INR at the value of gold as on the date of the judgment.
INDIA

DEFICIENCY IN THE LAW AND SYSTEM

Carrier liability for domestic carriage by air

- Section 8 of the Act extended application of Schedule I limit of carrier liability for domestic flights.
- However, Government of India issues Notification on March 30, 1973 to extend application of Schedule II (Hague 1955) in respect to carrier liability to domestic flights.
- However, Notification omitted section 6 and fixed carrier liability to a maximum limit of Rs.7,50000 in the event of death or bodily injury or wounding for a passenger above 12 yrs. of age & Rs.3,75,000 for a passenger below 12 yrs. of age.
- Restricted the scope of application of carrier liability to bodily injury or wounding only if the damage resulted in “permanent disablement incapacitating him from engaging or being occupies with his usual duties, business or occupation”.
- 2008: 35 years on this grossly discriminatory legal regime for domestic carriage by air remains and the Ministry of Civil Aviation continues to perpetuate is highly protectionist regime to favour domestic airlines.
INDIA
CONSUMER PROTECTION ACT, 1996

- Remedy in addition to remedy available under any other act.
- Airline cases on the increase.
- CPA ray of light in the gloomy legal regime for carriage by air in India.
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- Difficult law which protects industry and is distinctly passenger unfriendly.
- Law of tort not yet developed in context to carriage by air.
- Absence of 5th Jurisdiction
- Absence of lawyers trained in private international air law.
- Need to sensitize judiciary about developments in private international air law including product liability in aviation.
INDIA
RECOMMENDATION

- Ratify Montreal Convention 1999

- Immediately harmonize into domestic law

**Meanwhile**

- Unilateral action to require Air India; Indian; and Jet Airways to sign 1995 Inter Carrier agreement on immediate basis.

- Make it mandatory for private airlines desirous of flying international routes to sign 1995 Inter Carrier agreement.

- Protect domestic passengers by (i) superseding Notification dated 30th March 1973; (ii) restoring carrier liability for domestic passengers of all ages to Schedule II level with rate of conversion at the rate of gold as on date of judgment; (iii) remove restriction of “permanent disablement”.
INDIA
CARRIER LIABILITY FOR PASSENGERS

Thank you