Montreal Convention and its Applicability in India

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Abstract - India became 91st country to ratify the Convention for Unification of Certain Rules for International Carriage by Air done at Montreal on 28th May, 1999 in the year 2009. The Montreal Convention, 1999 has been incorporated into the Carriage by Air (Amendment) Act, 2009 in India and is said to have brought pro-consumer move. It, therefore, needs to be understood whether the move from pro-carrier to pro-consumer has actually occurred in the Indian landscape after incorporation of the principles of Montreal Convention under the Indian laws. The paper aims to discuss the reason for which Montreal Convention, 1999 came into being and circumstances that why the convention was adopted in India. The article also analyse that whether Montreal Convention, 1999 has successfully brought a pro-consumer regime in the Indian landscape? The Montreal Convention (formally, the Convention for the Unification of Certain Rules for International Carriage by Air) is a multilateral treaty adopted by a diplomatic meeting of ICAO member states in 1999. The provisions of the Montreal Convention, 1999 have been incorporated in the Indian carriage laws as well which help in providing greater certainty for passengers and carriers in terms of their respective rights and liabilities in the event of an accident involving international carriage. Therefore, the incorporation of the principles of Montreal Convention, 1999 under the Indian air carriage laws has been a successful move from a regime that favoured carriers to a regime that has now become pro-consumer.

Keywords - Montreal Convention, 1999,Warsaw Convention,Hague Convention,Carriage by Air Act, 1972, ICAO, Pro-consumer, Pro carrier

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INTRODUCTION

The carriage of cargo by air is not a new development rather it is being carried out since the commercial flights started. Like other modes of transportation are regulated by the national as well as international conventions a need was felt toregulate the carriage of goods by air. The regulation of international air carriage started with the Warsaw Convention in the year 1926. However, the convention was heavily in the favour of the carrier as the aviation industry was just in its nascent stage. It was thought better to make limit the liability of the carrier so as to protect the new industry from falling in the clutches of the heavy legislation.

The countries that were state parties to the Warsaw Convention brought their national legislations in consonance with the treaty. There were amendments made to the Warsaw Convention because of the developments in the aviation industry due to the passage of time. The first amendment was done by way of Warsaw Hague Protocol in the year 1955. After it several additional protocols were brought which were sequenced as Montreal Protocols 1,2,3 and 4. These international treaties together came to be known as the Warsaw-Hague Convention System.

The Warsaw-Hague Convention System regime was scattered as well as carrier centric. The need was felt to consolidate the laws and to make the laws consumer centric as the consumers were suffering huge losses due to the loss, damage and destruction to their cargo. Montreal Conference resulted in the adoption of Montreal Convention,1999. Many countries have ratified this convention as it provides for limited liability as well as exceptions in cases where such limitation will not apply.

India ratified the Montreal Convention, 1999 and became 91st member to do so. In order to bring its laws in line with the convention India brought an amendment in 2009 and introduced the Third Schedule in the Carriage by Air Act, 1972 which adopts all the principles of the Montreal Convention, 1999 Thispaper focuses on how the provisions of the Montreal Convention, 1999 are reflected in the Indian law. It also aims at establishing that pro-consumer regime has indeed been put in place with the coming and ratification of Montreal Convention, 1999

WHY THE NEED FOR MONTREAL CONVENTION, 1999?

The Montreal Convention, 1999, formally called the Convention for the Unification of Certain Rules for International carriage by Air) and famously known as MC99 is a multilateral treaty adopted by the International Civil Aviation Organisation's members states. It sets up the regulating regime for carriage by air. The convention has received the ratification of 133 countries. "The Montreal Convention 1999 (MC99) establishes airline liability in the case of death or injury to passengers, as well as in cases of delay, damage or loss of baggage and cargo". MC99 is an important convention in the field of international air carriage as it is an attempt of the international community to unify all the different international treaty regimes for the airline liability which have only been developing in a haphazard manner since the advent of 1929.

The year 1929 saw the first steps of the legal community towards codification of the rules that would be governing the international carriage of goods by air. The need was felt because the aviation industry was at its nascent stage and the world thought it as its responsibility to protect this industry from severity of the claims that it might face due to failure of its duty.

"The Warsaw convention was created in 1929 with 152-member state all over the world. It specified the conditions under which airlines could be liable for the death or injury to passengers, loss or damage to baggage and delay; sets limits to the amount of compensation that could be claimed; and excluded resort to national laws." The Warsaw convention was however more focussed on saving the airlines than providing a proper redressal to the grievances of the customer and therefore the liability in cases of loss and damage to cargo was predetermined and set at the minimum level so that the newly formed aviation industry could flourish. Next major development was seen in the form of Warsaw-Hague Convention which was an amendment made to the Warsaw Convention. The Montreal Addition Protocols 1, 2, 3 and 4 were further additions to the Warsaw-Hague Convention System. However, the treaties regulating he carriage by air were scattered and carrier centric. The need was felt for consolidation of the scattered regulations and to make it more customer centric. There were some problems with the Warsaw Hague System of Conventionwhich can further be summed up as follows –

- Article 25 of the Convention was one of the major issues as its wordings were not clear and were open to interpretations which the courts in different countries interpreted differently. It stated the carrier can be deprived of his benefit to claim limited liability if the damage was caused "by his wilful misconduct or b such default on his part as, in accordance with the law of the court to which the case is submitted, is considered to be equivalent to wilful".
- There were problems with the value limits set by the Warsaw Convention, 1929. It was argued by the underdeveloped countries the awards set-up by the Convention were putting an unnecessary burden on the airlines from their country.
- The claimants were harder hit by the Convention as not only the limits of compensation for loss or damage of the goods were predetermined but the egal costs also came withing the claimed limit and were not separately awarded.
- The rules governing international carriage of the goods by air were scattered and a need for consolidation of these rules with the requirement of modernize the Warsaw-Hague System of Convention was felt.

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The Montreal Conference saw participation of 59 countries many of which were already part of the Hague and Warsaw Convention. The major view the conference was the revision of limit of the accidental liabilities as well as consolidation of the scattered regulations that governed international carriage. The Montreal Convention, 1999 also carries at its centre the aim of protecting the consumers and thus enabling the international air carriage law to make a shift from being carrier centric to consumer centric.

MONTREAL CONVENTION AND THE INDIAN AIR CARRIAGE LAWS

India became the 91st country to ratify the Montreal Convention, 1999 in 2009. India decided to ratify the Montreal Convention as "Montreal Convention, 1999 has been ratified by 91 countries so far. Since Indian carriers are operating to most of these countries, they are required to maintain the required insurance and pay higher premium.".

The Carriage by Air Act, 1972 (the Act) was amended by the Carriage by Air (Amendment) Act, 2009 to incorporate the changes that the ratification of Montreal Convention, 1999 required. The amendment to the Act states that "the Montreal Convention, 1999 supersedes all previous international instruments on air carrier liability.The Montreal Convention, 1999 applies to all international carriage of persons, baggage or cargo performed by aircraft for reward."

The ratification of the Montreal Convention, 1999 has brought the Indian air carriage laws in consonance with the principles laid down in the Convention. Section 4A of the Act talk about the applicability of the Montreal Convention, 1999 in India. Schedule III of the Act incorporates the principles laid down in the convention. The applicability of the Montreal Convention, 1999 has been mentioned in the following words –

"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

The rules under Schedule III of the act are applied in carriage of good in two situations. They are –

1. When it is done for reward.
2. When it is done gratuitously.

The Schedule defines international carriage as "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 transhipment, 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". In order to be considered an international carriage two states are necessary to be involved.

It is to be noted that Schedule III has different liabilities fixed for carriage of goods and baggage. This is because Montreal Convention, 1999 deals with the liability for damage or lose to baggage and cargo differently. Baggage is the luggage that the passengers onboard a flight carry whereas when it comes to cargo it refers to transportation of goods in bulk mostly for trade and business purposes. The implications for the loss and damage to the cargo and luggage will be different and hence the liability is also set accordingly by the MC99

Rule 7(1) under the Third Schedule of the Act talk about air way bills in the same way as the Montreal Convention, 1999 does under Article 5. Airway bills are to be prepared by consignor in three original parts. The airway bill is said to be the conclusive proof and prima facie evidence of the contract of carriage but not that of the correction of the quantity, quality and other aspects of the good unless and until it has been cross checked by the air carrier. The correctness of airway bill is necessary because liability of carrier depends on it.

The Montreal Convention, 1999 made sure that the carrier also does not suffer from proper non-disclosure of the information by the consignor. The Act, like other principles, incorporate this principle of the MC99 as well. "The consignor is to be held responsible for all the damages suffered by the air carrier for due irregularity, incorrectness and incompleteness of the airway bills".

The Act also inter alia lays down the rights of the consignor and consignee. These rights include right of consigner to construct air carrier till the time the goods have reached consignee, right of consignee to accept delivery on payment as well as of notification when the goods. The Montreal Convention, 1999 takes into consideration the multimodal transportation that is now being used by some carriers for effective delivery of the cargo. Rule 18 (4) of the states that the liability will be that of the carrier if he without the consent of the consignor uses another mode of transportation for completion of the contract of carriage and it will be treated to be within the aegis of the contract of carriage by air. In the case of ***ParsramParumalDabrai v. The Air-India Limited*** the court held that "carriage by air means period when carrier is in-charge of goods and extends to carriage by sea, river and road".

"The consigner as well as consignee have the right to claim damages against the air carrier in the event of the destruction, loss, damage to goods and cargo during performance of contract of carriage". "Article 18 of the Montreal Convention, 1999 provides for exclusive cause of action for loss or damage or destruction of cargo". However, there's a way in which cause of action is to be brought. In order to bring the cause of action the concerned person has to bring it within the limitation period. It is also necessary that before proceeding with the cause of action a notice is served to the air carrier.

What constitutes loss, destruction and damage has been contested in the courts a few times. The major question that was under scrutiny was that whether such a loss, destruction or damage has to be to goods or to the person to whom such goods belong. The courts have stated that the expression needs to have a contextual meaning. In the case of ***Air India Ltd. v. Tej Shoe Exporters Pvt. Ltd.*** the court held that "there is nothing in the Carriage by Air Act 1972, warranting a restrictive construction as to limit 'loss' only to destruction of or loss to the goods…Therefore, to hod that loss of goods as a result of their non-delivery falls outside the enactment to justify an action for damages larger than what is provided by the Act would be unwarranted"

The Montreal Convention, 1999 like its predecessors has chosen the way to limit the liability of the air carrier, a move that makes it look like any other pro-carrier treaty. This liability, even though limited, is in the nature of strict liability. However, the limited liability principle is inapplicable in four situations- when there is wilful misconduct, intentional reckless and negligence of carrier and a situation where the consignor has paid extra sum declaring special

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interest. In the last situation the carrier will be liable to pay the sum declare by the consignor.

"The limited liability of the damages depends on the terms of contract as well as facts of each case." The Indian courts have contributed to the MC99's commitment of being more consumer centric by interpreting it in consignor's favour. This is clear from Madras High Court's decision in the case of ***M/s Lucas TVS Ltd. v. M/s Alitalia Airlines***. The court held that "the Carriage by Air Act, 1972 specifies the circumstances under which the liability of the carrier can be limited. Separate contract limiting liability of carrier, which does not conform to the Act, would be void."

The Montreal Convention, 1999 has made sure that the liability of the carrier is not done away with when the cargo is handled by third parties as its agents. Section 4A of the Carriage by Air Act, 1972 also states that "any reference in the Third Schedule to agents of the carrier shall be construed as including a reference to servants of the carrier". "Third party will be liable under the Act inly if he is working as an agent/employee of the air carrier". "If there exist a contractual relationship between carrier and third party, liability of third party will be as sub-bailee according to the Act…consignor or consignee may claim compensation from third party working as an agent of the of the carrier reflected from the express or implied contract between them"

Apart from the above rules the liability of the carrier cannot be limited when the damage, loss or destruction has been caused due to intentional recklessness of agent or employee of the air carrier. Wilful misconduct as well as intentional recklessness have to be decided on the facts of each case. "There is an assumption of wilful misconduct and intentional recklessness on the part of the carrier and the burden of proof is on the carrier to show that they were not present while the damage, loss or destruction happened"

The liability of the successive carriers has also been settled by the Montreal Convention, 1999 as well as Schedule III of the Act. Several successive carriers are one undivided carrier under the Act and their liability is joint and several. The domestic air carriage regime is also governed by Schedule III, however, there have been some changes done it for application to domestic regime. These changes are done by notification S.O. 142 (E).

CONCLUSION

India ratified Montreal Convention in 2009 and introduced Section 4A as well as Schedule III in the Carriage by Air Act, 1972 so as to integrate the principles of the Montreal Convention in the Indian laws. The Montreal Convention had been brought with two major objectives – 1. Unification of the scattered legislation governing the international air carriage and 2. To bring a shift from carrier centric to consumer centric approach.

The Montreal Convention, 1999 has indeed brought the diverse legislations existing for governing the international air carriage under one common treaty. One of the major advantages of this convention is that almost all the countries have ratified the convention so there's a uniformity with regard to the laws all over the world. One of the major reasons behind India ratifying the MC99 was many countries being a party to the Convention.

The Montreal Convention, 1999 has also been successful in bringing about a change in the carrier centric approach of its predecessor. It has successfully moved to a consumer centric approach. The limited liability of the carriers can now be waived and higher liability imposed in certain conditions. The liability of successive carriers has also been made joint and several. Apart from this carrier has also been made responsible if he uses another mode of transport for carriage without the consent of the consignor. All these developments coupled with the carrier's liability for its agent's fault are surely a move towards consumer centric approach These principles have also been resonated in the Schedule III of the Carriage by Air Act, 1972.

The Indian legal regime applies the Montreal Convention, 1999 as it exists when it comes to the international carriage. The MC99 has been adopted under Schedule III of the Carriage by Air Act, 1972. Therefore, the applicability of the Montreal Convention is in its totality and India has not provided reservations to any of the clauses of the Montreal Convention.

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