

HISTORY, LAW AND GOVERNMENT CONTROL
OF CIVIL AVIATION IN INDIA

by

MENON

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by
P.K.Menon

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P.K.M.

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INTRODUCTION

Air transport plays a crucial role in shaping the economic destiny of a nation, more so in the case of a developing country like India. Development schemes and their successful implementation depend a great deal upon the extent of the available transport and communication facilities. Indeed, any programme for increasing production in order to yield higher dividends must be effectively coordinated with an efficient system of air transport.

India is a vast subcontinent. It is the seventh largest country in the world with a geographical area of 3.27 million square kilometers¹. Lying entirely in the northern hemisphere, the mainland extends between latitudes $8^{\circ} 4'$ and $37^{\circ} 6'$ north and longitudes $68^{\circ} 7'$ and $97^{\circ} 25'$ east. The distance from north to south measures about " 3,220 kilometers and east to west 2,977 kilometers"². The second most populous country³ in the world, it has " 2,699 towns and 566,878 villages"⁴ with varying social customs, languages, geographical environments and economies.

As compared with many countries, the progress of railroad construction in India, whether considered from the standpoint of territory or of population, has been very slow. India has only 9.4 miles of railroad per 100,000 population while Canada has 465 miles, United

States 224 and the United Kingdom 46 miles.⁵ The relative backwardness of India's road mileage is evident from the fact that surfaced roads of only " 30 miles serve 100,000 population compared to 2,500 miles in the United States, 934 miles in France and 400 miles in the United Kingdom."⁶ Though, to some extent motor vehicles provide the means of transport for passengers and goods in the urban areas the bullock-carts which are a striking anachronism in these days of advanced technology still play a very important role in the countryside. While the United States has one motor vehicle for every three persons and the United Kingdom one for every fifteen, India has only⁷ one vehicle for every 1,350 persons. Inland water transport in India is of little importance; it provides for only about one percent of the total goods carried by the railways alone. At present 1,557 miles of rivers are navigable by mechanically propelled vessels and⁸ 3,587 miles by large countryboats. The coastal shipping is as yet a weak limb of the Indian transport system.

Throughout Indian history difficulties of communication have been the predominant factor in determining the political, economic and social development of the country. The distances to be traversed from one State to another are tremendous and the natural obstacles to be overcome often formidable. Even within a limited area, internal communications often break down during⁹ the monsoon. Successive Five Year Plans (of which the

fourth has recently been launched) have brought about significant industrialization. But severe regional imbalances may be noticed in various sectors of development. Whereas bulk of the industries are concentrated at certain key points such as Bombay, Calcutta, Kanpur etc., the markets made up of vast tracts of the hinterland, are not only far away but are also poorly served by the transport and communication facilities.

The primitive, inadequate and inefficient transport system is one of the principal factors arresting the growth of agriculture and limiting the market for industrial products. It hampers the country's economic development enormously. Efficient administration, effective movement of goods, an adequate control of price-line, famine relief, even distribution of population and the growth of cities and towns, encouragement of tourism, strengthening of national unity and last, but not the least, political security- all depend upon the standard of development of the country's transport system. Though traditional methods of land and water-borne traffic may continue to be necessary for general services in the rural areas (and these have to be further developed) there is an increasing need to expand the air transportation.

Agricultural aviation is of special importance to India. Aerial farming can help strengthen the country's predominantly agrarian economy; it can wipe out the recurring food deficits and eliminate dependence on

import of foodstuff. The development of agriculture can be achieved only through modern, scientific methods of farming, and pest control. The importance of aircraft in this respect and its superiority, in many cases, to ground equipment should not be underestimated. ¹⁰ Apart from the inadequacy of food and cash crops, there is also a severe shortage of fodder with the result that the cattle population is underfed and is steadily dwindling in number. Then there are the hilly tracts that are continually exposed to the danger of erosion. In these areas aerial seeding and fertilization would be the only effective counter measure. With the development of aerial farming, both agriculture and aviation will benefit which in turn would benefit the whole economy.

A historical study of the origin of the Indian aviation, however, reveals that the air services in India were introduced not so much because of economic considerations as for some strategic reasons and administrative facilities. It was the intention of holding " the Middle East theater very largely through the instrumentalities of the air " and " of buckling the ¹¹ Empire together in a very remarkable manner" which prompted Sir Winston Churchill, the then Secretary of State for War and Air, to introduce the Cairo-Bagdad-Karachi section in the Imperial Airways route structure. Since then, however, the whole outlook and motive force

of aviation has undergone a radical change; it has come to place an increasing emphasis on the economic usefulness of its activities.

A balanced and dynamic growth of air transport is of special significance not only from the economic viewpoint; it is valuable also as a social and political tool in fostering national unity. What Sir Edwin Arnold wrote in 1865 about Indian railways is equally true of the Indian airlines today. He said : "Railways may do for India what dynasties have never done....they may make India a nation"¹². By shortening distances and increasing contact, airlines could help in bridging the differences in languages, faiths and customs. A cross mingling of diverse ethnic groups could go on to a broadening of outlook and perspective, and contribute towards the country's emotional integration.

With its avowed friendship for all nations and consistent pursuit of peace, it is true that to India military prowess has less glamour than economic strength and prosperity of the masses. To avoid involvement in armed conflicts it embraced non-alignment and resolutely kept aloof from all military pacts and alliances. But the recent events- the Chinese aggression of 1962 and the Indo-Pakistan border skirmishes of 1965- have taught the nation some valuable lessons. These have an important bearing on India's future defence. Logistic mobility has always been the decisive factor in the defence

potential of a country. The mobility and speed of the movement are now identified with air power and are possible only through a developed air network. In other words, the army no longer marches on its boots but moves on its wings.

India is favourably endowed with geographical position, physical configuration, extensive territory, large population and supporting constitutional provisions. Geographically, most international airlines between the East and the West have to go across India. Even within the country, from east to west and north to south the distances would compare with medium sized intercontinental air routes. With the safe flying weather conditions throughout greater part of the year, it is ideally suited for the development of air transport. The Indian Constitution does not impose any restraint on the authority of the Parliament in making laws with respect to any of the matters concerning airways, aircraft and air navigation. In India, like in the United Kingdom, there is no federal-provincial problem.

During the pre-independence period, not enough attention was paid to the economic aspects of aviation in India. The result is what we see today: the air transportation in that country is in stark contrast to the passenger-oriented system of the western world. Soon after independence India recognized the need for

the State to play a progressively active role in the development of industries. A number of semi-autonomous public corporations were created to ensure the maximum use of all available resources and facilities instead of allowing them to be frittered away on rash and uncontrolled competition. Aviation was in the critical formative phase and was beset with unusually severe growing pains. Foreseeing the need to conserve and to make the best use of the country's meagre resources and noting that the Indian aviation industry was in an urgent need for monetary aid, if it were to expand, the Government nationalized it in 1953. The nationalization Act created two Corporations- Air India 'International' and Indian Airlines Corporation- the former for long distance international air services and the latter for domestic air services and services to neighbouring countries. The scale of operations and the route system of Air India have expanded continuously since 1953. But all has not been well with the Indian Airlines Corporation. It has still to prove itself.

The object of this dissertation is to study the present status of civil aviation law in India and trace and record the various changes in the organization, management and working of air transport from the beginning to the modern times in the context of present framework of the country's economic planning and development. Taking into consideration the past

experiences in the administration of civil aviation matters, a modest attempt will be made to suggest necessary developments for a more effective system of air transportation in India. The study has been mainly divided into four parts. Part I traces the historical growth; part II deals with the law of civil aviation; part III gives an outline of Government control and part IV offers some suggestions and conclusions.

Chapters I and II deal with the historical growth of air transport in India. The purpose is to trace the trends in the development of aviation during the pre-independence and post independence periods. Chapter III is a brief introduction to Indian aviation law. Chapter IV examines the law regarding the right to fly. Chapters V and VI deal with the law governing 'air transport services' and 'carriage by air' respectively. Chapter VII is a study on the administration of law relating to civil aviation, describing the three-fold - legislative, administrative, and quasi-judicial - functions and powers of the Department of Civil Aviation. Chapter VIII is an examination of the motives and background of Government control. The political and economic background of control is discussed in that chapter. Chapter IX contains an enquiry into the salient characteristics of Indian Air Corporations and the degree of control exercised by the Government over their activities. Chapter X suggests

certain requirements for the development of the domestic air transportation system. Chapter XI makes a plea for the admission of independent operators to undertake feeder air services.

PART I

CHAPTER I

AIR TRANSPORT IN INDIA : PRE-INDEPENDENCE PERIOD

In order to understand the present position of air transport it is necessary to review the historical development of flight. In this chapter we will enquire into the growth and problems of air transport in India during the pre-independence period.

The Early Beginnings

The desire of man to conquer the air has been recorded in legends, fables, folklores and early literature of various peoples throughout the world. Indian epics Ramayana and Mahabharata and poetical works such as Raghuvamsa and Yuktikalpataru contain many descriptions of flight vehicles. They have been named as "deva vimana, vaihayasa-vimana, pushpaka etc." Although "India's ancient sculpture, inscriptions and paintings bear testimony to a wistful longing ... of her people to achieve the art of flight", there is no evidence to prove that the first flight occurred anytime before the second part of the nineteenth century.

Experiments with balloons. The first authenticated balloon ascent in India was made at Bombay in September 1877 by an Englishman, Joseph Lynn. The balloon was the shape of a perfect sphere, 37 feet in diameter with

25,000 cubic feet of gas. It was a solo-flight. It took off from the Lal Bagh Garden and descended at Dadar after having attained an altitude of 7,500 feet. Two months later, in November, Lynn made another attempt, accompanied by his friend Gratton Geary. This time, after about an hour's flight, the balloon was forced to land in the sea from where the aeronauts were rescued by a passing boat. A few years later, in March 1889, Percival Spencer, another Englishman, made a number of ascents at Calcutta. In his first demonstration flight in the balloon "Empress of India" he took off before a large crowd from the racecourse at Calcutta on March 19. The balloon gained a height of 10,000 feet and landed 40 miles away. These early flights were made by foreign adventurers with the cooperation of native Indians. Enthusiasts at that time looked upon these attempts as nothing more than adventurous sports designed to attract large crowds with limited possibilities for commercial use.

The advent of the balloon did not satisfy man's desire to master the art of flying. Experiments continued for the construction of a more reliable vehicle. Inspired by the knowledge of the basic principles⁹ enunciated by Sir George Cayley, the Wright brothers were able to construct a power-driven aeroplane in 1903. On December 17 the same year, they were successful in making their first flight at Kitty Hawk, North

¹⁰
Carolina. The flight lasted for twelve seconds and
¹¹
covered a distance of about 120 feet. Thereafter it
did not take much time for the enthusiastic inventors
in France, Germany and England to emulate the American
experiment.

First Official Air Mail. There is nothing on record
about the development made in India till January 1911
when successful flights were made in an aeroplane sent
by the British and Colonial Aeroplane Company for the
purpose of demonstration. A month later, in pursuance
of the arrangements made by the Posts and Telegraphs
Department of the Government of India, an aircraft
officially labelled as " First Aerial Post, United
Provinces Exhibition, Allahabad, 1911", carried a bag
of messages in a Humber biplane from the Allahabad
exhibition ground to Naini junction, a distance of six
¹²
miles. The mails were delivered in thirteen minutes.

Two years later, in January 1913, an aerial exhi-
bition was held at Calcutta. Two French aviators, Marc
Pourpe and George Verminck, flew on that occasion over
Hoogly river reaching an altitude of 25,000 feet.

The exhibition flights made by foreign adventurers
served the purpose of creating an interest among Indians
in flying. This, unfortunately, was not enough to
initiate advanced study and research in the field of
air transportation. Development of aeronautics then,

as today, depended upon many factors, such as industrial and technological advancement, facilities for research, availability of financial grants and skilled labour. In all these respects India lagged considerably behind. And, hence, no other aeronautical event of significance occurred in that country until after World War I.

World War I. Elsewhere, especially in the United Kingdom, the period 1914-18 was one of spectacular achievements in flight technology. " Radio communication with aircraft became universal; aerial photography, many instruments, and armament - all made great strides; and even the radio controlled aerial bomb was pioneered¹³ successfully". The aircraft industry also expanded enormously

from the handful of machines available in 1914, through all the losses of the intervening years, the number in services in 1918 was some 3,300. The few hundreds of men employed in the industry in 1914 had been swelled by 1918 to nearly 350,000 men and women.¹⁴

Post World War I Period

Shortly after the end of hostilities in Europe the use of aircraft for civilian purposes began in¹⁵ the United Kingdom. The first aeroplane on a scheduled civil air route was flown in July 1919 from Hendon to¹⁶ Le Bourget. Echoes of these developments in the mother country reverberated in the dominions and colonies. The

Government of India in 1919 desired to give monopoly for the carriage of mails throughout India to a single transport company; but the desire went unheeded without proper response. However, next year, the Royal Air Force was advised to operate mail service on Bombay-Karachi route. After six months of operation and incurring a loss of rupees 60,000, that experimental service came to an end.

Paris Conference of 1919. In 1919, though India was not a fully self-governing territory, the British Government, in accordance with a declaration of the Imperial Conference of 1917 "decided to treat India as a Dominion, to give India a distinct place on the negotiation of the treaty and its signature, and to secure for India a separate membership of the League of Nations". Thus, India having been granted self-governing Dominion status by the British Government participated in the Paris Conference and signed the 'Convention Relating to the Regulation of Aerial Navigation' of October 13, 1919. On becoming a party to the Convention, the Indian Government put the regulatory machinery of aviation on a sound footing on the basis of principles and standards recommended by the International Commission for Aerial Navigation (ICAN).

Proposals for Cairo-Karachi Service. The question of linking India with other parts of the British Empire seriously concerned the British Government as early as

23
December 1919. Cairo-Bagdad-Karachi section was considered most important and easily practicable because of (i) fine weather; (ii) already existing garrisons of Air Force for military purposes and (iii) expectation to improve control over the Middle East through aeronautics. From the commercial point of view also, it was considered as the most desirable sector as it could save nine to ten days of sea-travel. The Government of India supported the proposal and agreed to provide and maintain the necessary aerodromes and buildings at an initial estimated cost of rupees 13.5 lakhs and an annual recurring of rupees 36,000. On account of the unsettled conditions in Arabia and Iraq, the offer was, however, not accepted and the proposal abandoned.

In order to give the Empire a sense of physical unity which had never existed, the Imperial Conference of 1922 emphasised the importance of faster communications among different sectors of the Empire. World War I proved beyond doubt that aerial power was necessary for the protection of Great Britain and the continuance of the Empire. This was a significant shift of focus from the naval to the air power. As a result of the subsequent deliberations, the Imperial Airways Limited was incorporated in Great Britain on March 31, 1924 and was instrumental in implementing the policy of opening up the Imperial air communications. The company was formed out of and took over the fleets of

the four running airlines Handley Page, Instone, Daimler²⁷ and BMAN.

The Imperial Conference of 1926 specifically adopted the policy of developing air communications between the dominions, India and the British colonies. Cairo was to be linked with Karachi. Towards this end an agreement was reached between the United Kingdom Government and the Imperial Airways on November 16, 1926 for²⁸ the operation of the Cairo-Karachi sector. It was expected that routes from Basra to Karachi would be opened for regular service in April 1927. However the Persian Government refused permission and the service²⁹ did not start until April 1929.

Indian Air Board. In India, an Air Board was set up as early as 1920 under the administration of Department³⁰ of Commerce and Industry. It was an advisory committee of senior officials of the Government of India. It was authorized to implement the decisions vested in the³¹ Department's Member in Council. According to one observer, for the first five years the Board "distinguished³² itself mainly by total inaction". Only in 1926 it submitted an important memorandum entitled " Past History and Future Development of Civil Aviation in India ". Among other things, the memorandum contained proposals for (a) establishing landing grounds and other ground facilities; (b) the wholetime appointment of a Director of Civil Aviation; (c) a survey of main

trunk routes; (d) the inauguration of an air service between Calcutta and Rangoon and the grant of a subsidy to the Company entrusted with its operation; and (e) Government's active participation in the air service undertakings.

While recommending the role of Government's participation, the Board rightly predicted that in case proper steps were not taken " the whole of aerial transportation in India would fall and be concentrated in foreign hands, Indian capital and enterprise would be ousted, and effective control of Indian interests would be difficult or impossible to achieve.... Unless India officialise, to some extent pays the piper, (it) will not be able to call even part of the tune".³³ The Board's proposals³⁴ were approved by the Government in February 1927. It might be noted that it was the period of surging nationalist movement in India. Indian nationalist leaders who were in the Legislative Assembly stressed the importance of starting flying clubs in India to enhance the knowledge of aviation. They urged the British companies to provide adequate opportunities for training, and employ³⁵ Indians as pilots and for other jobs.

The Inauguration of the England-India Service. Despite³⁶ the initial refusal of Persia in 1927 to permit the operation of Cairo-Karachi air service across the Persian territory, the British Government continued

negotiations. The Persian Government finally agreed³⁷ in October 1928 and allowed the Imperial Airways to run a weekly service along its southern coast for three years from 1929. The first airliner "City of Jerusalem" left Croydon at 10 a.m. on March 30, 1929 and arrived³⁸ in Karachi with mails and passengers on April 7, 1929. The route followed was London-Paris-Basle-Genoa-Rome-Naples-Corfu-Athens-Suda-Bay-Tobruk-Alexandria-Gaza-Bagdad-Basra-Bushire-Lingeh-Hask-Gwadar-Karachi.³⁹ The return flight left Karachi on April 7 and reached London a week later.

Indian State Air Service. With the inauguration of London-Karachi route, it was felt necessary to extend the air services from Karachi to Delhi, the seat of the Indian Government. At that time India had neither the technical nor financial resources to operate the services. At the same time to permit a foreign airliner to operate domestic services would amount to a departure from the policy adopted in 1927. The solution was found in a charter agreement with the Imperial Airways. The route was to be operated with aircraft chartered by the Government of India from Imperial Airways who were to retain complete technical and operational control. The route was designated as Indian State Air Service. According to one critic, the same was somewhat a camouflage "under which India paid the piper without calling the

⁴⁰
tune". The service started functioning in December 1929 and continued for two years under the terms of the original charter agreement. During this period, the Indian State Air Service completed 197 scheduled flights and covered a total of 135,930 miles carrying 236 passengers⁴¹ and 14,046 lbs. of mails.

Delhi Flying Club. The arrangement with the Imperial Airways to operate Karachi-Delhi route was not extended beyond December 1931 mainly because of the storm of opposition encountered in the Legislative Assembly and in the public press. It was considered undesirable because the Indian funds were being utilized for supporting a foreign airline; further, Imperial Airways' operations did not provide any scope for training or associating Indian personnel with their operations. Nevertheless, in order to avoid a complete break, in January 1932 a stop-gap arrangement was entered into with the Delhi Flying Club for the carriage of mails. This arrangement lasted for eighteen months. The Club was remunerated at a fixed rate for each pound of mail⁴² carried, and no subsidy was paid. During the period January 1932 to July 1933, it completed 153 scheduled flights achieving a regularity of 96% . It carried 15,641 pounds of mails and covered a distance of⁴³ 108,720 miles.

Indian Transcontinental Airways. In 1929 Imperial Airways submitted to the British Government proposals for a service to Australia through India. However, the negotiations between the British and the Indian Government failed as the British terms were not acceptable to India. In 1932 Imperial Airways resubmitted an amended proposal to the British Air Ministry to extend their London-Karachi service to Singapore. Pursuant to this, the British Government negotiated with the Government of India. It was this that eventually led to the establishment of Indian Transcontinental Airways in May 1933 with a capital of rupees ten lakhs. The Imperial Airways contributed 51% of the capital while the Indian National Airways, a new private Indian airline, and the Government of India contributed 25 and 24% respectively.⁴⁴ The Board of Directors consisted of seven members. Of these, the Imperial Airways nominated four, while the Indian National Airways and the Government of India nominated two and one respectively. The operational and managerial responsibilities of Indian Transcontinental Airways were vested with the Imperial Airways; hence the arrangement was of little benefit to India so far as the knowledge of commercial airlines was concerned. As an extension of the London-Karachi route, Karachi-Calcutta sector of the Airways was⁴⁵ inaugurated on July 7, 1933. The service was extended to Rangoon on October 1 and finally to Singapore on

⁴⁶
December 18. The service operated via Jodhpur, Delhi, Kanpur, Allahabad, Calcutta, Akyab, Rangoon, Bangkok⁴⁷ and Alor Star.

Tata Airlines. Although the Delhi Flying Club carried mails during the interim period January 1932 to July 1933 the first Indian indigenous scheduled air transport, in a modern sense, began only on October 15, 1932 when Tata Airlines organized an air service from Karachi to Madras connecting the Imperial Airway's London-Karachi service. Karachi-Madras route was of 1,300 miles long. Initially, it was a weekly service with stopping places at Ahmedabad⁴⁸ Bombay and Bellary. At the commencement of the services the Airlines had only " one Puss Moth, one Leopard Moth, the palm-thatched shed, one whole-time pilot, one engi-⁴⁹ neer on a part-time basis and two apprentice mechanics". The ground facilities were rather poor for safe op-⁵⁰ erations.

Passengers and freight were not intended to be carried and mail was the only traffic foundation for the service. The main sustenance for the service, according to the ten year agreement signed with Government of India in 1932, was the air mail contract with the Government for the carriage of such mails as the public offered for carriage by air. The rate of remuneration was fixed at a level covered by the surcharge collected by the⁵¹ Posts and Telegraphs Department. The mail was of course substantial as it included a good quantity of overseas air mail brought by Imperial Airways for destinations in

India. The Government did not pay any subsidy and the operator had to bear the risk of inadequate traffic loads.⁵²

In October 1935, in cooperation with Travancore State, Tata Airlines started a seasonal air service between Bombay and Trivandrum via Goa and Cannanore.⁵³ In November 1937, the Airlines established a third service between Bombay and Delhi via Indore, Bhopal and Gwalior. For operation through their territories the Indore, Bhopal and Gwalior State Governments provided small subsidies to the Airlines.⁵⁴

Indian National Airways. The second private airline to begin operations in India was Indian National Airways (INA), incorporated in May 1933⁵⁵ with the dual purpose of operating its own services and participating in the services of Indian Transcontinental Airways. For the development of feeder routes Government of India had given the company an undertaking that no other company would be given mail contract for the operation of services in the north and east of the main Empire routes in India.⁵⁶ INA began with operating weekly air services for passengers mails and freight, between Calcutta and Rangoon, and between Calcutta and Dacca on November 1, 1933. A year later, in December 1934 the company established an air mail service between Karachi and Lahore linking the Imperial Airways service at Karachi. The

rate of remuneration for carrying mails was that of the Tata Airlines' agreement, namely the surcharge which was levied on air mails by the Posts and Telegraphs Department.

Air Services of India. A third airline, Air Services of India which was registered in September 1936 started operations in November 1937 between Bombay and Porbander⁵⁷ with halts at Bhavnagar, Rajkot and Jamnagar. In 1938, the airline commenced operation between Baroda and Amreli; later, the service was extended to Bhuj via Jamnagar. As the company received no share in the carriage of mail under the Air Mail Scheme, it operated mainly for promotion of passenger traffic. The comparatively low fare charged which was just above the second class railway fare enabled the company to maintain a load factor well above 60%; but on that basis alone it was not able to operate for long without incurring heavy losses. In spite of the fact that the airline demonstrated its utility and efficiency in the promotion of passenger⁵⁸ traffic, Government of India did not offer any encouragement, either by way of guaranteed payments for carriage of mails or by providing operational facilities.⁵⁹ The meagre financial assistance received from the ruling princely States of northwestern India did not really amount to much for the continued operation of the services. The financial strain led to the closing down

of its Kathiawar services in 1939 and Kolhapur services
in 1940.⁶⁰

Empire Air Mail Scheme. The next milestone in the development of air transport in India was the introduction of Empire Air Mail Scheme. The Scheme formulated by the British Post Office in 1934 proposed that all first class mail, between the Empire and commonwealth countries served by the UK-Australia and UK-Africa routes, was to be carried by air without any surcharge.⁶¹ It was introduced across India in February 1938.⁶² Government of India in association with Government of Ceylon participated in the Scheme. In its application to India, it provided facilities for the distribution within India by air of the mail brought by Imperial Airways upto Karachi, and in the reverse direction to bring to Karachi all Indian mails destined for other parts of the British Empire. Tata Airlines and the Indian National Airways, which were already operating Karachi-Madras service and Karachi-Lahore service, were ideally suited to undertake this job. Hence, Government of India entered into fifteen year contracts with these companies. The principal terms of the contracts were:

- " a) that the Karachi-Madras route was to be extended to Colombo under arrangements with the Government of Ceylon;
- b) the services should be operated with the same frequency as Imperial Airways' service to Karachi which was expected to be five times a week and connecting with it; and

c) the remuneration to the Companies was to be as follows:-

- i) in the case of Tata Sons, a guaranteed payment by Government of Rs. 15 lakhs a year for carriage of mail on the Karachi-Colombo route upto 500,000 lbs. plus Re. 1/- for each lb. of mail extra;
- ii) in the case of Indian National Airways, a guaranteed payment of Rs. 3.25 lakhs a year for the carriage of mail on the Karachi-Lahore route upto 130,000 lbs. plus Re. 1/- for each lb. of mail extra".⁶³

The above scheme, with the advantage of the guaranteed minimum payment by the Government, stimulated the airline operation, and called for the development of larger and faster aircraft. The scheme also created an opportunity for the proper development of passenger and freight traffic. In effect, the increase of operations recorded within one single year was found to be ⁶⁴ greater than that in the four preceding years.

Indian Airlines on the Eve of World War II. The scheduled services operating on the eve of World War II are ⁶⁵ given in Appendix I. The progress made by the Indian airlines during the period 1933-38, although steady and impressive, was still far from satisfactory, considering the needs of the country for modern air communications. It was essentially an experimental period. The seasonal pattern of some of the services was responsible for the low utilization of the fleet. The high cost of fuel and oil was a formidable obstacle in the growth of air transport. Shortage of trained personnel was another

arresting factor. As the air travel in India was priced out in relation to the economic conditions of the more affluent societies of the West, it was out of reach of all but a tiny minority. For all these reasons, aviation enterprise was looked upon by potential investors as a very risky venture. The airlines, therefore, experienced inordinate difficulties in securing sufficient share capital.

World War II. The outbreak of World War II had an immediate adverse impact upon the scheduled operations of civil air transport in India. The England-India-Australia service was initially reduced to two flights a week and heavy surcharges imposed on mails. The passenger traffic was subjected to strict control. The Empire Air Mail Scheme was suspended and the resources of the Empire Air Services were diverted to the needs of the war. Likewise, all domestic air transport operations were placed on a war footing. The services were run directly for the Government and the defence services such as the carriage of freight, military personnel, mails and civil priority passengers. The traffic and route operated by the two Indian airlines- Tata Airlines and Indian National Airways - are given in Appendix II.

The popular adage 'out of evil cometh some good' proved to be aptly true in the case of air transport.

The war created unprecedented opportunities for expansion and diversification of Indian aeronautical activities. The airlines were given special assignments such as the survey of the South Arabian route on behalf of the Royal Air Force, the carriage of supplies to Iraq, the transport of civilian refugees from Burma and the overhaul and maintenance of RAF equipment.⁶⁶

New aerodromes equipped with long concrete runways were constructed; meteorological services, radio communications and landing aids were improved. After the war, India emerged " with not less than forty-four such aerodromes and a network of radio ranges and beacons".⁶⁷

For the diverse services rendered to the war effort, Indian companies earned a good remuneration which made them financially sound at the end of the war. In addition, the war requirements resulted in training a good number of technical personnel for both of the Indian airlines which made their position strong. Considerable progress was also made in the capacity and efficiency of performance.

In association with Government of India and Government of Mysore State, Hindusthan Aircraft Limited built an aircraft factory (first such factory in India) in Bangalore in 1940. Originally started as an overhaul workshop for the aircraft belonging to the civil airlines and Indian Air Force, it has now started manufacturing

Gnat fighters and Trainer aircraft for the flying clubs.

Chicago Conference of 1944. As an aftermath of the spectacular growth during World War II international air transport continued to progress steadily. The two principal multi-partite Conventions- Paris Convention of 1919 and the Havana Convention of 1928- had been deficient in many respects, particularly with regard to the provision for operation of scheduled commercial services. The provision impeded the development of an orderly system of world communications. To deal with this situation, the Chicago Conference on International Civil Aviation was held in November 1944. The Conference adopted (1) a Convention on International Civil Aviation; (2) an Interim Agreement dealing mainly with technical matters and setting up an Interim Council; (3) an International Air Services Transit Agreement, known as the Two Freedoms Agreement and (4) an International Air Transport Agreement, known as the Five Freedoms Agreement.⁶⁸ India actively participated in the proceedings of the Conference and was among the first few States to accept the Interim Agreement, International Air Services Transit Agreement and ratify the Convention on International Civil Aviation.⁶⁹ India did not sign, nor has it otherwise accepted the International Air Transport Agreement.

Post World War II Period

Even before the end of World War II, Government of India had set up plans for reconstruction and development of civil aviation. Sir Frederick Tymms, the then Director of Civil Aviation submitted the post-war plans to the Government in 1944.

Tymms Plan. Visualising the prime need for the proper development of India socially, commercially and industrially Sir Frederick estimated that the total capacity to be provided for in the initial post-war period would be of about seventeen million ton-miles a year. This, he calculated, should require about 32 aircraft of the Dakota type on a utilization of about 1700 hours per aircraft per year. He recommended that the operation of scheduled air services should be entrusted to a limited number of private companies, not exceeding four, each with an adequate route mileage and scope for development so as to ensure efficient and economic use of aircraft, ground equipment and man-power. The companies were to operate on a commercial basis backed by an indigenous system of subsidies under which operators failing to achieve certain costs and or revenue targets would incur losses and those beating the targets would make a profit. For the external services he proposed the establishment of two Corporations, one for the operation of services to the East and the other for services to the West. It was also proposed that the Government should reserve a

substantial share of the capital for itself. Of special interest to us is his recommendation that no air transport service may be operated without a licence authorized by the Government. There was no system of licensing of air transport services in the pre-war period. The Indian Aircraft Rules, as they then stood, related entirely to the technical requirements, such as registration of aircraft, certification of airworthiness and their periodical inspections, licensing of aerodromes and the qualifications of the crew. There was no control on the operation of air transport services or the routes over which they operated. The choice of routes was, of course, limited because of inadequate ground facilities. As the traffic was comparatively small, the absence of a licensing system did not cause any hardship during that pioneering era; quite on the other hand, it had proved to be conducive to development.

After considering the Tymms Plan, which was generally approved by the Post-War Reconstruction Policy Committee for Posts and Aviation, the Government of India announced its policy in May 1945 as follows:

The policy of the Government of India is to permit the development and operation of air transport services, internal and external, by a limited number of sound and reliable private commercial organizations, with their own capital and operated under normal commercial principles of risk of losses and prospects of gain. The operation of air transport services would be subject to licences granted by Government. Without such a

licence, no air transport service can operate. The grant of State assistance in specific cases will be entirely at the discretion of Government and on conditions to be laid down in each case. In specific cases, Government should take a financial interest in the companies operating air services and appoint a Director on the Board. The Government should not, however, take a controlling share in such cases. 70

Regime of Licensing. In accordance with its policy declaration of May 1945, Government of India framed rules for the establishment and operation of a Licensing Board. With the amended rules, scheduled air transport service was to start from October 1, 1946 only after obtaining a licence from the Air Transport Licensing Board. The Board was an autonomous body. It had the authority and duty to examine applications for licences to operate air transport services, and of issuing, amending, suspending or revoking such licences. In granting or refusing to grant a licence, or in attaching conditions to a licence, the Board was authorized to exercise its discretion in terms of the need for air transport in the area concerned, potential traffic on the route, existing air services and the capacity of the applicant as an air transport operator. Every operator was also required to submit to the Director of Civil Aviation and the Board, monthly returns regarding the operation of the licensed air transport services as well as the annual returns regarding the financial results of the undertaking during each calendar year.

In Britain, during the period under discussion, air

transport service was regulated by the Civil Aviation
Act, 1946. By Section 1(1) of the Act, two Public Cor-
porations- British European Airways Corporation and
British South American Airways Corporation- were set
up. These two new Corporations and the British Overseas
Airways Corporation⁷² were empowered to provide air trans-
port services and to carry out all other forms of aerial
work in any part of the world.⁷³ The carriage of passeng-
ers or goods upon scheduled journeys, with certain minor
exceptions, were restricted to these three Corporations
and their associates. As to the operation and perform-
ance of any of these Corporations, the Minister of Civil
Aviation was empowered to give directions of a general
character and the Corporations were to give effect to
such directions. Subject to the requirements of general
policy, the Government however regarded it as important
that the Corporations should have the maximum freedom in
operating and managing the services.⁷⁴ In India, it was
only seven years later that Public Corporations were⁷⁵
created for the operation of air transport services.

With the introduction of the licensing system in
India, a large number of companies came into operation.⁷⁶
Most of the newly licensed airline companies were de-
ficient in organization, equipment, training and operat-
ional standards and many of the new routes lacked traffi-
potential and were, therefore, economically disastrous.

Added to this was the insufficient utilization of equipment and staff, and thus most airlines were unable to maintain the high standards essential for safety. Nor could they provide for later reequipment with modern aircraft.⁷⁷ Excess capacity, fare undercutting, bankruptcy—all the classic consequences of overcompetition followed one after another during the post-war period the inevitable result of which is discussed in the next chapter.

CHAPTER II

AIR TRANSPORT IN INDIA: POST-INDEPENDENCE PERIOD

With the independence in August 1947 came the unfortunate partition of the country into the present Republics of India and Pakistan. Even the undivided India had scarcely anything near the equipment essential for a nation to compete with the highly industrialized and scientifically developed countries of the world. Partition inevitably resulted in the change of route pattern and caused the transfer of assets and activities of some of the existing airlines. This created grave new problems and caused extra strain on the already battered and confused system of Indian air transport. Orient Airways transferred its headquarters and all activities to Pakistan. Indian National Airways had to give up a number of its routes which lay in the territories that¹ now belonged to Pakistan.

Be that as it may, Indian independence naturally brought with it a fresh impetus for expansion. Partition created severe communal unrest which was followed by a large scale migration of population from India to Pakistan and vice versa. In the evacuation of refugees from Pakistan the Indian airline companies covered "more² than 300,000 miles and carried about 10,000 evacuees". Towards the end of 1947, Indian air transport was diverted to the task of airlifting food supplies and

personnel on a large scale to the Kashmir front. During a three week period 750 non-scheduled return trips were made by civil transport aircraft between Delhi and Srinagar carrying a load of approximately 60,000,000 pounds³ over a total distance of 620,000 miles. This fortuitious demand for air transport relieved the Indian aviation industry partially in 1947 from its economic strain.

India's International Operations

Apart from the services operated by Indian Transcontinental Airways, India's scheduled external air services; up to 1948, had been limited to flights to its immediate neighbours, namely Pakistan, Ceylon and Burma.⁴ The Indian Transcontinental Airways " which was merely a subsidiary of Imperial Airways and later⁵ of BOAC" was liquidated on March 30, 1946.

Air India International. At the end of World War II, the Government of India was confident that it was possible for India to establish its own external services without collaboration with foreign agencies. By 1947, the United States airlines Pan American and TWA had opened services through and to India. KLM and Air France were in the process of resuming normal services to Indonesia and the Far East. Realizing that once foreign airlines were solidly entrenched in the world's best air routes, India's entry would become difficult and financially risky, Air India Limited submitted comprehensive

proposals to the newly formed Government of India. The Government approved the proposals in general and early in 1948 entered into agreements with that company to form a new company called Air India International. Important provisions of the agreement are as follows:

- (a) The Government of India would take up 49 per cent of the capital of Air India International and would have the option to take up a further 2 per cent at any time if they so desired.
- (b) The Board of Directors would consist of 6 members, 2 of whom including the Chairman were to be the nominees of Air India (Chairman's appointment being subject to the approval of the Government of India), one Director to represent the general shareholders and the remaining three to be Government Directors including a Special Director with powers to reserve specified items of importance for the decision of Government.
- (c) Government would reimburse to Air India International any loss incurred by it after making provision for depreciation, for a period of 5 years, the loss for the purpose being the actual loss as disclosed by the final audited accounts of the company.
- (d) When the company begins to make a profit, not less than 50 per cent of its annual profit would be returned to Government in repayment of the subsidy, if any, which had been paid to it in earlier years. The balance could be retained by the company and out of that dividend of not more than $3\frac{1}{2}$ per cent might be declared until the whole of the subsidy received by the company from Government was paid off.
- (e) Air India would be paid a management fee by Air India International for acting as the latter's Technical Managers, on a sliding scale, decreasing, in respect of Constellation operations, from 0-5-0 per mile for the first 1 million miles to 0-1-0 per mile over $2\frac{1}{2}$ million miles flown during the year.

- (f) Air India International would have the exclusive rights of operation over all routes to the West of India within a specified zone, for a period of 10 years. 6

The new company with an authorized capital of rupees 70 million and a paid-up capital of rupees 20 million was registered on March 8, 1948. The company's first service from Bombay to London via Cairo and Geneva was inaugurated on June 8, 1948 with an initial frequency of one service a week.

Bharat Airways. With regard to the external services to the East, in 1949 the Air Transport Licensing Board authorized Bharat Airways to operate services in the Calcutta-Bangkok-Hongkong-Shanghai-Tokyo route. The service was to be operated by the company at its own risk and the Government of India did not offer any financial assistance whatsoever. Towards the end of May 1949, Bharat Airways started operating services to Hongkong, but due to the changed political conditions in China and the lack of traffic, it later restricted operations only to Bangkok. In October 1950 it extended the Calcutta-Bangkok service to Singapore and in May 1952 to Djakarta. In the initial stage, Government of India was not prepared to render any financial assistance ; later on, mindful of the fact that the airline was running at a loss and the company would not be able to maintain the service on its own, the Government agreed

to pay a subsidy of rupees 600,000 towards losses incurred by the company in its operations of Calcutta-Singapore service during the year 1950-1951.

Himalayan Aviation. In December 1951, Himalayan Aviation Limited another private company which had initially been formed in 1947 to undertake the work of air survey and ~~non~~-scheduled service, opened an external service between Ahmedabad and Kabul(Afghanistan). However the Government of Pakistan disallowed the Indian aircraft to overfly the Pak-Afghan border on the plea that it constituted a prohibited area and the airline had to take a long and circuitous route avoiding Pakistan territory altogether.⁷

Night Air Services

In 1948 Government of India considered the possibility of introducing Night Air Mail Scheme by which all mail for the four principal cities (Calcutta, Bombay, Delhi and Madras) could be flown by night. The Scheme envisaged the operation of night services on the Delhi-Nagpur-Madras and Bombay-Nagpur-Calcutta routes. The aircraft were to take-off simultaneously from Delhi, Bombay, Madras and Calcutta shortly before midnight, to exchange mail at Nagpur and return to their respective starting points the next morning. Initially air transport companies were not enthusiastic about the

Scheme and they wanted to have Government subsidies in the form of either guarantees for minimum payment or load or at least a rate of remuneration higher than the rate which was already in effect. But the Government was of the firm view that payment of subsidy would have an adverse effect on the growth of the night air services as it would not generate an incentive among airlines to greater effort.

The Government, however, successfully persuaded the companies to introduce the night air services from January 1949. Under the conditions then agreed upon, even⁸ though it was not sound operationally and economically, it proved its worth and utility in due time. It generat-⁹ ed fresh traffic without adversely affecting the revenues earned by day services. It also made the travel quicker and cheaper; trained the pilots for night flying; and encouraged cargo traffic, particularly perishables, medicines and urgently needed supplies and equip-¹⁰ ment. It resulted in tremendous improvement in the postal service of the country as the mails posted at each of the four main cables in India till late in the evening could reach their destinations the next day.

State Assistance

As mentioned earlier, two factors- partition of the country and the defence of the Kashmir front- contributed to the growth of Indian airlines, both in

capacity and in revenue during the period 1947-1948. But for these operations, some of these companies would have found themselves in financial doldrums. When conditions returned to normalcy, the airlines reverted to concentrate on general civil traffic and this was not sufficiently remunerative to meet the cost of their operations. Actually, Jupiter Airways which had been operating on the route Delhi-Nagpur-Bezwada-Vizagapatam-Madras was liquidated towards the end of 1948. Soon after in early 1949, Ambica Airlines which operated certain services in the Kathiawar area and on the Bombay-Poona-Bangalore sector was also liquidated. All this would have led to a complete breakdown of the aviation industry in India had the Government not then come forward to assist them financially.

The Government of India took immediate steps to rectify the situation. In order to give relief to the companies, the Government adopted certain measures such as (i) permission to increase the fares slightly; (ii) introduction of the 'All-Up' mail scheme on April 1, 1949 under which the surcharge of the air mail was abolished and all the domestic mail was transferred to airlines; (iii) grant of a partial rebate of customs duty on aviation fuel with effect from March 1, 1949 and (iv) permission to increase the payload of the aircraft. Through such measures the Government was

just able to avert an immediate crisis; but to keep the industry going permanently on a sound basis needed much more serious thought and consideration. Faced with this problem, the Government of India instituted on February 8, 1950 the Air Transport Enquiry Committee to investigate into the state of the air transport industry.

Air Transport Enquiry Committee

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The Air Transport Enquiry Committee was charged with the task of reviewing the existing state of the industry and of advising the Government on the measures required to ensure an economically sound operation and development of the air transport industry.

Summing up the then existing defects and difficulties of the air transport industry, the Committee stated:

- a) the number of operating units is much greater than that required to conduct the existing volume of air transport on an economic basis;
- b) this has resulted in-
 - i) multiplication of overheads, thereby increasing costs and,
 - ii) wasteful competition amongst operators resulting in reduced revenues;
- c) over-equipment of the companies, with consequent drain of capital resources, low utilization and heavy current running cost;
- d) competition between the operators for a comparatively limited supply of technical personnel, resulting in rise of wages and salaries to high levels, which has contributed in turn to excessive operating costs;

- e) building up by some companies of organizations far too big for the volume of work on hand;
- f) high costs of aviation fuel and the incidence of the State's sales or other taxes;
- g) a tendency to reduce fares to uneconomic levels.

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Regarding future development, the Committee expressed the view that an ideal pattern would be of only four operators with their bases at Bombay, Delhi, Calcutta¹³ and Hyderabad. The Committee felt that the merger of some of the airlines could lead to increased efficiency, elimination of competition and lowering of costs. The Committee also suggested the redistribution of routes.¹⁴ Experience the world over, showed that the successful operation of air transport had been possible only through financial and other assistance given by the State. The Committee therefore worked out standard costs and recommended a system of subsidies under which airlines meeting their targets would make a profit and those failing to meet the targets should bear the loss.¹⁵ The Committee also discussed at length about the pros and cons of nationalization but recommended maintenance of the status quo.¹⁶

Although the Government of India had shown eagerness in appointing the Committee, which, in fact, produced an excellent report within a short span of nine months, no active steps were, however, taken towards implementation of the Committee's recommendations.

According to Tata, the founding father of Indian aviation industry, " the Minister concerned at the time had already made up his mind in favour of nationalization and, for tactical reasons, decided to do nothing to strengthen the industry in the meantime".¹⁷

Nationalization

The question of nationalization was first considered prior to independence at a Conference convened by the Government of India on February 1, 1947. The Memorandum submitted to the Conference by the then Department of Communications stated that the arguments for and against nationalization seemed to be evenly balanced. And that if the air transport operations in the country were allowed to become divided into a large number of uneconomic units, nationalization would be the only solution to prevent disintegration and bankruptcy of the industry. The members present expressed divergent views. Representatives of air transport companies were strongly opposed to nationalization while the provincial Governments with the exception of Bombay, a stronghold of private commercial enterprises, were in favour of nationalization. Due to the wide disparity in views among the participants, no decision was taken at that time; nevertheless, Sardar Abdur Rab Nishtar, Chairman of the Conference who was also the then Member (Member of the Interim Government of India set up in 1946 for carrying

out the administration of the country before its independ-¹⁸
ence in August 1947) for Communications, Posts and Air
expected that a quick decision would be arrived at after
carefully considering all the points of view expressed¹⁹
at the Conference. This question, however, was not pur-
sued further for some time, presumably because the Govern-
ment was pre-occupied with more urgent problems in the
wake of partition of the country.

Soon after independence, the question was reopened
by the Government of India in its Industrial Policy Re-
solution of April 6, 1948. According to the Resolution
the development of air transport was to be left to pri-
vate enterprise subject to the supervisory and regulat-
ory control of the Government. A similar recommendation
was made two years later by the Air Transport Enquiry
Committee which was of the view that " the operating
companies are already in the field and unless they were
of imperative necessity, there would appear to be no
compulsion to take such a serious step as nationali-
zation".²⁰ But contrary to all expectations the situat-
ion of India's aviation worsened in 1951.

Towards the end of 1952, the conditions of all air-
lines except one deteriorated even more. Various fact-
ors were responsible for this state of affairs. Cost of
aviation fuel had gone up while the rise in wages and
salaries of the administrative and technical staff added

further to the operating cost. Overequipment resulted in low utilization. The airlines had apparently underestimated the cost of operation and overestimated the demand for transportation. With no new capital coming into the business gradually a form of operational paralysis set in. The Government realized that action could no longer be delayed. The choice was to be made between extensive subsidy and nationalization. As the British Government had found thirteen years earlier, the inherent risk of the subsidy system was that public money would be used to finance wasteful competition rather than purposeful development. In India, it was a time when there seemed to be a growing acceptance by the Government of the idea of direct State participation in the development process. A number of new projects in the irrigation, power, public utilities and manufacturing fields were taken up by Government. The Planning Commission, reviewing the entire situation recommended nationalization of air transport in the public interest. On the basis of this recommendation, Jagjivan Ram, Minister for Communications consulted the representatives of the airline companies and thereafter introduced a Bill in the House of People on March 21, 1953 for the nationalization of air transport. While piloting the Air Corporations Bill, the Minister said in the Parliament: " It is clear that if the companies are to

continue to exist financial assistance from the Government will have not only to continue but to be increased, otherwise sooner or later many of the companies would be forced to wind up".²¹ He continued: " Air transport is a public utility and ought to be developed in the national interest unhampered by the paramount necessity of making a profit which would be the overwhelming consideration in the private enterprise".²² The Bill received the assent of the President of India on May 28, and came into effect from August 1, 1953. In its principles and techniques the Air Corporations Act followed the pattern of British nationalization statutes.²³

The Act created two Corporations- Air India 'International'²⁴ and Indian Airlines- the former for long distance international air services and the latter for domestic air services to India's immediate neighbours. The Corporations took over on August 1, 1953 the nine existing airlines along with their assets and liabilities.²⁵

Post-nationalization Period

Nationalization heralded a new era in the history of air transport. The management of Air India remained almost identical to what it was before nationalization; Indian Airlines Corporation, the domestic airline with services to Pakistan, Afghanistan, Nepal, Burma and Ceylon is of a very different formation composed of all

the eight operators who upto August 1, 1953 operated the air services as private ventures.

Air India. The scale of operations and the route system of Air India have steadily expanded since 1953, when it took over its predecessor's (Air India International Limited) Bombay-London and Bombay-Nairobi services. To these the Corporation added services to Singapore in July 1954, to Sydney in October 1956, to Moscow in August 1958, to New York in May 1960, to Kuwait in October 1960²⁶ and to Djakarta in 1961.

Comparing its performance in 1954-1955, the first full year of Air India's operation with that in the last²⁷ completed year 1964-1965, the ATKms²⁸ recorded an increase from 37.5 million to 328.6 million or almost nine times.²⁹ During the same period RTKms increased seven times from 22 million to 156 million. The lag between these two ratios is due to the much larger capacity and speed of the Corporation's Boeing fleet as compared to that of the Constellation. Progress is also reflected in the productivity of its personnel. This rose from 17,800 ATKms per annum per employee in 1954-1955 to 50,200 in 1964-1965. The fleet of four 749A Constellations taken over in 1953 has been expanded to eight Boeing 707 intercontinental jets in 1965. From its very inception Air India has been following the policy of standardizing on a single type of aircraft and engine.

Although Air India is a small airline compared with some European or American major carriers it has nevertheless managed to hold its own sway in the competitive world of civil aviation. The growth has been mainly due to the high standard of morale and esprit de corps throughout all routes of the Corporation. In spite of the fact that it is a State-owned Corporation, it has run on strictly business lines. The exemplary record of service maintained by this airline attracts many seasoned travellers who "choose the Indian company in preference to European air-³⁰ lines with a much longer history or service on the route."

Indian Airlines Corporation. The development of Indian Airlines Corporation, the domestic service, has been rather different. The Corporation was established in 1953 out of virtual chaos by absorption of the eight different³¹ airlines. The route system and operational pattern it inherited had been fashioned according to the private operators' concept of unbridled competition and unrealistic optimism. The organizational structure was defective in many respects especially in regard to the size of staff with widely varying scales of pay and conditions of³² work. One of the largest domestic airlines in the world, the Corporation started with a fleet of 89 aircraft 74 of which were Dakotas.

The growth of industrialization and agricultural production as a result of India's three successive Five

Year Plans, created a market for air travel far exceeding the Corporation's capacity. The traffic began outgrowing the slow flying capacity of Dakotas. With the continued deterioration in the efficiency of its aircraft fleet and with the rising cost of spares and maintenance, the Corporation suffered financial losses during the first five years of its operation. Only in 1959-1960 did it cross the break-even point to show a small profit of rupees 781,000. Thereafter it has run services without incurring any losses.

Comparing its performance in 1955-56 with 1964-65, the ATKms recorded an increase from 84.346 million to 156.969 million while the RTKms increased from 59.515 million to 109.356 million. During the same period the operating cost per ATKm has gone up from rupee 1.09 to rupee 1.35 and the overall load factor has come down from 70.6 per cent to 69.7 per cent. Though the passenger traffic has more than doubled from 500,363 to 1,235,310 during this period there was a considerable decrease in the cargo load that fell from 54,722 tonnes to 23,002 tonnes. These operating and traffic statistics show that the State protection has not brought about any substantial economic growth in the Corporation's performance. The slow replacement of the older and uneconomic aircraft is the principal reason for that.

The route length of the Corporation's operations has increased from 21,720 kilometers in 1954 to 30,428

kilometers in 1964 which shows an average annual increase of 4.45 per cent. This increase in route network has not, however, been commensurate with the increasing tempo of the country's overall industrial and economic activities. It has still to be expanded to meet the traffic needs of new industrial centres and also some less populated areas.³⁵

Fourth Five Year Plan

The Fourth Five Year Plan of India, in its final drafting stage now, provides a sum of rupees 1180 million for the development of air transport. Of this, about rupees 320 million has been allocated to the Department of Civil Aviation for constructing new aerodromes to meet the operational requirements of modern aircraft and strengthening aeronautical communication services. Air India's development programmes provide for the purchase of five subsonic jets and also consider the possibility of ordering super-sonic aircraft. The Indian Airlines Corporation proposes to acquire six aircraft of Caravelle type, seven aircraft to replace Viscounts and Skymasters, fifteen aircraft to replace Dakotas and fifteen smaller aircraft for short haul routes.

PART II

CHAPTER III

INTRODUCTION TO INDIAN AVIATION LAW

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Under the provisions of Indian Independence Act¹ enacted by the United Kingdom Parliament on July 18, 1947 two autonomous units- India and Pakistan - with Dominion status were set up on August 15, 1947 by dividing the erstwhile British India. Though India remained a Dominion till early 1950 its status was clearly distinct from that of the Dominions to which the Statute of Westminster² applied. The Indian legislature became sovereign and it received full powers to repeal or amend any Act of the United Kingdom Parliament including the Indian Independence Act.³ The Indian Independence Act made it impossible to extend any United Kingdom statute to India even at the request and consent of India; if considered desirable, it could be achieved only through an Indian statute.

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In order to avoid any legal vacuum, it was provided in the Indian Independence Act that the laws existing immediately before August 15, 1947 shall, if necessary, with adaptations continue as the law of India until other provisions were made by the legislature.⁴ By virtue of the Constitution adopted by the Constituent Assembly on November 26, 1949 India became a Sovereign Democratic Republic with effect from January 26, 1950. The Indian Independence Act was repealed by Article 395

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() of the Constitution. Notwithstanding this repeal, the new Constitution expressly provided that " all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent legislature or other competent authority".⁵

Even in the absence of an express provision, the result would be the same.⁶ Law, in this context, no doubt includes subordinate legislation, that is ordinance, order, bye-law, rule or regulation passed or made before the commencement of the Constitution by any competent authority.⁷ An Indian commentator on the constitutional law Durga Das Basu would even go to the extent of including " the rules of English Common Law, e.g., the law of torts, in so far as it has been applied to India as being consonant with the rules of justice, equity and good conscience; as well as customary laws".⁸

() Under the provisions of Indian Constitution, the Parliament has full and exclusive power to make laws with respect to any of the matters concerning " airways, aircraft and air navigation, provision of aerodromes; regulation and organization of air traffic and aerodromes, provision for aeronautical education and training and regulation of such education and training provided by States and other agencies"¹⁰ and " carriage of passengers and goods by air".¹¹ There is no federal-provincial problem as to jurisdiction for exercising authority on

civil aviation matters in India, a problem faced by many other commonwealth countries. For example, the Australian Constitution adopted in 1900 does not make any reference to civil aviation. The Constitution, in effect, assigns it to the States as all residual powers are vested in the States. The legislative powers of the Commonwealth under Section 51 are subject to Section 92¹² of the Commonwealth of Australia Act. In Canada, the British North America Act adopted in 1867 was altogether silent on the question of civil aviation, but the thorny problem was solved by the judicial committee of the Privy Council that asserted that the civil aviation was a matter of national interest and importance and as such that Domi-¹³nion of Canada had a broad and comprehensive authority.

Statutory Legislation

The rules of Indian aviation law have been partly created by statutes and partly by sub-statutes. Many aspects of aviation such as the right to fly, control of air transport services, safety measures etc. are considered to be so important to the nation that they require Central Government's regulatory measures. Statutory legislation may perhaps be required to give binding effect to the provisions of International Air Law Conventions to which India has become a party. The position is not very clear in this respect as the Constitution is silent on the matter and judicial decisions

only deal with extradition treaties, certain treaties arising out of the merger covenants made by the rulers of Indian native States with the Union of India and treaties which were clearly in conflict with later statutes. In United Kingdom, an enabling Act of Parliament is required for enforcement of treaties which need modification of the existing law.¹⁴ So far as civil aviation in India is concerned, the existing statutory enactments include (1) The Aircraft Act, 1934 which empowers the Central Government to make rules for carrying out the Convention relating to the regulation of Aerial Navigation signed at Paris on October 13, 1919. It also empowers the Central Government to make rules for the control of the manufacture, possession, use, operation, sale, import or export of aircraft and those for the investigation of accidents; (2) The Indian Carriage by Air Act, 1934. This Act gives effect to the Warsaw Convention of 1929 for the Unification of Certain Rules Relating to International Carriage by Air; (3) The Air Corporations Act, 1953. The Act provides for the establishment of two nationalized air corporations- Air India 'International' and Indian Airlines Corporation- for operating the international and domestic air transport services respectively; (4) The Indian Aircraft(Amendment) Act, 1960 amending certain provisions of the Aircraft Act, 1934 and (5) The Air Corporations (Amendment) Act, 1962

amending certain provisions of the Air Corporations Act, 1953.

Subordinate Legislation

As a result of the enlargement of their functions Parliaments all over the world have found it necessary to confer upon specified authorities the power to make rules, directions etc. for the purpose of carrying out the objects of the statutory regulations. Technicality of the subject matter, unforeseen contingency, stress of great national emergency, slow parliamentary method, political expediency- all these factors have made delegated legislation a present day necessity. "The mass of detail involved in modern administration and the extension of the functions of the State to the economic and social sphere have rendered it essential for Parliament to delegate to Ministers the power to make statutory instruments".¹⁵

The need for delegation of legislative powers to the executive was clearly explained in the Report of the United Kingdom Committee on Minister's Powers. The Report said: "The truth is that if Parliament were not to delegate its law-making power, Parliament would be unable to pass the kind and quantity of legislation¹⁶ which modern public opinion requires". In United Kingdom, Parliament can delegate any amount of its

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lawmaking power to the executive as it is supreme and sovereign. The position is rather different in the United States where the doctrine of separation of powers does not allow holding the legislative and executive powers in the same body beyond an ascertainable degree. The American courts have laid down the principle that the Congress can delegate legislative powers to the executive provided that it lays down the policies, and establishes standards while leaving to the administrative authorities the making of subordinate rules within the prescribed limits.¹⁷ In the United States, unlike the United Kingdom, the last word rests with the courts and not with the Congress. In India, the Constitution does not prohibit delegation of powers by the legislature to the executive or to any other subordinate bodies. On this point, the pronouncement of the Supreme Court¹⁸ is contained in Vasanlal v. State of Bombay. Justice Gajendragadkar, speaking for the Court observed:

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It is now well established by the decisions of this Court that the power of delegation is a constituent element of the legislative power as a whole, and that in modern times when the legislatures enact laws to meet the challenge of the complex socio-economic problems they often find it convenient and necessary to delegate subsidiary or ancillary powers to delegates of their choice for carrying out the policy laid down by their Acts. The extent to which such delegation is permissible is also now well settled. The legislature cannot delegate its essential legislative functions in any case. It must lay down the legislative policy and principle and must afford guidance for carrying out the said policy before it delegates its subsidiary powers in that behalf.¹⁹

Because of the rapid growth of air transport services, the above method of regulation " is used extensively and in an extreme form in air law " ²⁰. This is more so in India. Not a single aviation statute is passed in India without conferring some rule-making power on an administrative agency. In framing these rules, very wide and general powers are exercised by the executive branch of the Government. To prevent the executive from abusing ²¹ its power, the Committee on Subordinate Legislation of the Lok Sabha (House of People) scrutinizes legislative measures accepted by the executive and submits its report periodically to the Parliament. The courts, also main- ²²tain a check over the exercise of power. The various types of instruments by which delegated legislation is made in India are as follows.

1. Rules. In exercise of powers conferred by Sections 5 and 7 and subsection (2) of Section 8 of the Aircraft Act, 1934 the Central Government has made the Indian Aircraft Rules, 1937. It contains thirteen parts and ten schedules dealing with, among other things, the general conditions of flying, investigation of accidents, air transport services, aircraft personnel, certificates of airworthiness, licences of aircraft maintenance engineers, rules of the air, nationality and registration marks etc. In terms of Section 8A of the Aircraft Act, 1934 the Central Government has made the Indian Aircraft (Public Health) Rules, 1954 which contain general provision:

concerning the arrival and departure of aircraft and special provisions relating to quarantinable diseases and to the carriage of dead bodies and cremated remains

2. Orders. In terms of Section 6 of the Aircraft Act, 1934 the Central Government has powers to make Orders in emergency in the interest of the public safety to regulate the flight of all or any aircraft.

3. Directions. By virtue of Section 34 of the Air Corporations Act, 1953 the Central Government is empowered to give Directions to either of the Corporations as to the exercise and performance of their functions.

4. Regulations. In terms of Section 45 of the Air Corporations Act, 1953 each of the Corporations with the previous approval of the Central Government is authorized to make Regulations for the administration of its affairs and for carrying out its functions.

CHAPTER IV

LAW REGULATING THE RIGHT TO FLY

The Indian Aircraft Rules, 1937 which have been amended from time to time and which incorporate the provisions of the Chicago Convention of 1944 on International Civil Aviation, largely contain regulations regarding the right to fly. With certain general exceptions,¹ the Rules prima facie apply to all aircraft registered in India, irrespective of whether they are in India or abroad. For aircraft registered in other countries whose regulations are at least based on the minimum standards established under the Chicago Convention and ICAO decisions, the Rules relating to registration, licensing, airworthiness etc. do not apply as they would generally correspond to the provisions of the home State of foreign registered aircraft. As the Indian aviation regulations are much the same as they are in most other countries, we will briefly examine in this chapter only certain important provisions such as (1) nationality and registration; (2) documents, certificates, licences and equipment; (3) prohibition on carriage; (4) health regulations and (5) arrival and departure of aircraft.

1. Nationality and Registration

Like sea-going vessels, aircraft have a nationality.²

The principle of nationality is very important as it confers " a claim to control and jurisdiction over them (aircraft) wherever they may be... and the claim embraces economic, political and financial considerations of the highest importance". Nationality is determined by the place of registration. Closely following the Chicago Convention⁴ and its predecessor⁵ the Paris Convention, the rules in India state that " an aircraft shall be deemed to possess the nationality of the State on the register of which it is entered"⁶. This leads us to the question of registration which is an important factor in identifying and establishing responsibility. No person shall fly an aircraft unless it has been registered. In terms of Article 19 of the Chicago Convention the conditions for the registration of aircraft are exclusively within the competence of the municipal law of the Contracting State.⁷ In India, only the Central Government is authorized to register aircraft and to grant certificate of registration. An aircraft may be registered there in either of the following two categories:

" (a) Category A- Where the aircraft is wholly owned either

- i) by citizens of India, or
- ii) by a company or corporation registered and having its principal place of business within India and the Chairman and at least two-thirds of the directors of which are citizens of India;

and

(b) Category B- Where the aircraft is wholly owned either

i) by persons resident in or carrying on business in India who are not citizens of India, or

ii) by a company or corporation registered elsewhere than in India and carrying on business in India". 8

It may therefore be noted that aviation regulations in India rely on the principle of effective control and operation of air services; and that they do not impose restriction with regard to ownership so that foreign nationals, or foreign corporations may validly register aircraft in India subject to their satisfying the conditions mentioned in category B above. This is a departure from the practice of most
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of other States that require , among other things, that the aircraft be owned by their own nationals or by a national company as a sine qua non for registration. However, the Indian Rules deny registration in the following circumstances : (i) if the aircraft
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is already validly registered in another country; (ii) if the aircraft should more appropriately be registered in some other country; and (iii) if it is not expedient in the public interest that the aircraft be registered in India. The register of aircraft is open to inspection by the public subject to

such conditions as may be specified by the Director
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General of Civil Aviation.

In conformity with Article 20 of the Chicago Convention, the Indian Rules prohibit flight by any aircraft unless it bears the appropriate nationality
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and registration marks and the name and residence of the owner affixed thereto or painted thereon.

2. Documents, Certificates, Licences and Equipment

The Indian Aircraft Rules, 1937, like those of the Chicago Convention, impose a number of conditions with which aircraft engaged in navigation should comply. We will briefly summarize here the relevant provisions with regard to documents, certificates, licences and equipment.

Documents. The documents to be carried by an aircraft registered in India, vary according to the nature of flight. A public air transport engaged in international navigation should carry the following valid documents

- i) the certificate of registration,
- ii) the certificate of airworthiness,
- iii) the journey log book,
- iv) the appropriate licences for each member of the crew,
- v) licence for radio apparatus if equipped with such an apparatus, and also the tele-communication log book in case radio telephony is not used,

- vi) a list showing the name and nationality of each member of the crew,
- vii) if the aircraft carries passengers, a list showing their names, nationality, places of embarkation, immediate and ultimate destination,
- viii) if the aircraft carries goods, air consignment notes and manifests in respect thereof showing a description of the goods, the names and addresses of the consignor and the consignee and the immediate and ultimate destination of the goods,
- ix) a stores list showing the nature and quantity of all stores carried,
- x) working copies of the aircraft, engine and variable pitch propeller log books,
- xi) the certificate of safety, and
- xii) a load sheet relating to the particular flight of the aircraft.

When not engaged in international navigation, the aircraft in addition to the above requirements should also carry working copies of the radio apparatus log book. In the case of an aerial work aircraft it is required to carry first five documents, and in the case of a private aircraft only documents mentioned in (i), (iii), (iv) and (v) above are to be carried. An aircraft which does not leave the vicinity of its starting place and which returns to its starting place, without landing elsewhere, need not carry any document except the licence for the crew.

Every foreign aircraft while flying in or over India should carry on board the first ten documents mentioned above issued or rendered valid by the State in which the aircraft is registered.

Certificates and Licences. As in accordance with the Chicago Convention and its annexes, every aircraft should be provided with a certificate of airworthiness. Its operating crew must carry licences of competency issued by the State of registry. Certificate of airworthiness is issued in India by the Central Government in respect of any flying machine " which complies with minimum standard of airworthiness prescribed in the United Kingdom, in respect of design, materials, methods of construction and equipment".¹³ In respect of foreign aircraft the Government may accept a valid certificate of airworthiness issued by the duly competent authority in the respective foreign country, provided that the conditions, on which the certificate of airworthiness is granted, are substantially equivalent to the Indian conditions for the same.¹⁴

With the solitary exception of a trainee pilot who is learning to fly an aircraft of an all-up weight not exceeding 1500 Kgs, a flight crew member of an aircraft registered in India must hold a licence which entitles him to act in the capacity in which he intends to fly.¹⁵ The flight crew members of foreign registered aircraft must be licensed in accordance with the regulations in force in the State of registry.

Equipment. Every aircraft, when flying, should be

equipped with the instruments as specified in Section B of Schedule II of the Indian Aircraft Rules, 1937. The scales of equipment vary according to the type and purpose of the aircraft and also according to the conditions of flight. For example, every public transport aircraft with a capacity of ten or more passengers including the crew, when used in international air navigation or on a regular air transport service operating in India, should be equipped with radio telegraph apparatus. This rule may, however, be waived when owing to the lack of radio telegraph organizations in a particular region its employment, in any case, would serve no useful purpose.¹⁶

3. Prohibition on Carriage

The Indian Rules prohibit carrying of certain¹⁷ goods,¹⁸ mails¹⁹ and photographic apparatus in any aircraft flying in or over India. The Rules also prohibit aircraft entering India from any place outside, unless all persons on board possess valid passports as required under the Indian Passport Act, 1920 (XXXIV of 1920).

4. Health Regulations

The regulations to prevent the threat to public health through any infectious or contagious diseases

by air traffic, have been incorporated in the Indian Aircraft (Public Health) Rules, 1954.

The Health Rules apply to all aircraft arriving in or departing from India. Special provisions have been made relating to quarantinable diseases, namely yellow fever, plague, cholera, smallpox, typhus, relapsing fever and other infectious diseases. An aircraft, however, will not be prevented from discharging or loading cargo or stores, or taking fuel or water on account of an infectious disease except in case of an emergency constituting a grave danger to public health.²⁰

5. Arrival and Departure of Aircraft

The rules relating to the arrival and departure of aircraft are governed by Part IX of the Indian Aircraft Rules, 1920, the only part of those rules not yet superseded.

Every aircraft entering in or leaving from India must make its first landing at and or departure from a customs aerodrome unless it is compelled²¹ to land elsewhere by accident, stress of weather, or other unavoidable causes. In case of the latter contingency, the person in charge of the aircraft should report to the aerodrome officer if the place of landing

is a Government aerodrome. If the place of landing is not a Government aerodrome, he should report to a customs collector or a police officer. If the locality happens to be without any customs collector or police officer, a full statement of the action taken should be made in his journey log book, and the occurrence must be reported to the customs collector and the aerodrome officer at the nearest customs aerodrome.

CHAPTER V

LAW GOVERNING AIR TRANSPORT SERVICES

According to the Air Corporations Act, 1953 an air transport service is " a service for the transport by air of persons, mails or any other thing, animate or inanimate, for any kind of remuneration whatsoever, whether such service consists of a single flight or a series of flights"¹. The above definition includes scheduled and non-scheduled air services as both of them constitute professional transport services for remuneration. Section 5 of the Aircraft Act, 1934 vests power in the Central Government to make rules for the regulation of air transport services, and the prohibition of the use of aircraft in such services except under the authority of and in accordance with a licence authorizing the establishment of the services.

Scheduled International Air Services

At the Chicago Conference of 1944, an attempt was made to reach a multilateral agreement concerning exchange of commercial rights for air services between the Contracting States; but no such agreement was reached chiefly because of the different

philosophical postures of the United States and the United Kingdom. The war-weary United Kingdom wanted a strict governmental control of rates and apportionment of routes and regulations of frequency and capacity; on the other hand, the United States with its large fleet of transport planes and experienced crew strongly advocated a " free-for-all competition " in the international field despite its rigid regulation of the domestic air transport. Unable to agree on any of the major proposals the Conference finally made a compromise solution that resulted in (1) International² Air Services Transit Agreement and (2) International³ Air Transport Agreement. The Transit Agreement which facilitates flying over the other Contracting State's territory, either non-stop or with a stop for non-traffic purposes (such as refuelling) is of little economic value as far as commercial operations are concerned. The Transport Agreement has never received the sufficient number of ratifications to make it effective. At present it " binds only few States⁴ and has little practical significance".

Bilateral Agreements. As a result of the failure to adopt International Air Transport Agreement, the only way of acquiring air routes and traffic rights " depends either on a unilateral grant by a state, or on

a bilateral agreement between the state of the airline and the other state".⁵ In cases where a State does not intend to extend its international network for political, pecuniary or administrative reasons, but at the same time desires to oblige the other party,⁶ it agrees to a unilateral grant. Although the developing countries might not for the present possess the capacity to make use of the reciprocal grant of rights in a bilateral agreement, they are reluctant to completely relinquish their rights and agree to unilateral grants in the fear that it might adversely affect their future development of international and regional services. Therefore the tendency today is to conclude bilateral agreements which provide for a reciprocal exchange of traffic rights. The main purpose of the agreement is to regulate, and stimulate, the direct flow of traffic between the two Contracting States.

By virtue of Rule 134(2) of the Indian Aircraft Rules, 1937 the Central Government may permit a foreign air transport undertaking to operate a service from, to, or across India in accordance with the terms of any agreement concluded between the Government of India and the Government of the country of that foreign airline. These agreements are signed by the authorized agents of the Government of India.⁷ Ratification of the bilateral agreement is not essential by Indian

() law but as a matter of practice, all the newly con-
cluded agreements contain a ratification clause. Such
agreements come into force only after ratification
unless otherwise provided in the agreement. In the
United States, such bilateral agreements are Executive
Agreements. It is no doubt true that the cumbersome
and slow process of treaty-making in the United States
would have retarded the exchange of commercial service
rights.

Thus far, India has concluded bilateral agreements
with twentythree countries. These agreements do not
always conform to the Bermuda pattern. Predeterminat-
ion of traffic requirements and the restriction of the
fifth freedom rights to a percentage of total traffic
carried as the third and fourth freedom traffic con-
stitute the basic principles held by India. It may
be useful to review some of the more important pro-
visions dealt with in these agreements.

() i) Routes. In the exchange of routes, the nature of
relationship is reciprocal and generally the Indian
bilateral agreements grant beyond rights to the
carriers of other party and obtain similar rights
for Indian carriers abroad. These beyond rights
might be broad in certain cases without specifying
the beyond points; in other cases they may be rest-
ricted in the sense that the beyond rights are granted

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after specified intermediate points or only to certain
specified points beyond the country concluding the
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agreement. Even when India is not in a position to
make an immediate use of all the beyond rights that
may be granted to it under the agreement, it insists
on having them incorporated in the agreement for such
incorporation is considered desirable for future ex-
pansion of its international transportation network.
The beyond rights obtained abroad, however, are not
in all cases unconditional. For example, the Exchange
of Notes of November 13, 1962 between India and Soviet
Union amending the Air Services Agreement of June 2,
1958 allows extension of Air India's service to points
outside the USSR " but without the right to pick up or
set down passengers, cargo and mail between the new
points and the USSR".

ii) Capacity and Frequency. The Bermuda principles
arose out of a compromise between the protectionist
theory of the United Kingdom and the open competit-
ion policy of the United States. No issue was however
made of predetermining the capacity of the total traffic
carried. Instead, the airlines were free to operate
service at the frequency and capacity that they con-
sidered justified, provided they complied with the
general provisions of the agreement, such as " trans-
port facilities available bear a close relationship

() to the requirement", " fair and equal opportunities for the carriers of the two nations to operate on any route" etc. It was also recognized that the operation of trunk services necessitated carriers having rights to carry traffic on intermediate sectors. This right was allowed to them only if the total capacity operated was reasonably related to the end-to-end potential of the route. The Bermuda system also provided for an ' ex -post-facto ' review of capacity if one party felt that its interests were unduly affected by the airline capacity of the other.

() As a rule, India does not allow a liberal interpretation of the Bermuda principles with regard to capacity clause. Basically it relies, and insists on the principle of predetermination rather than that of accepting the ' ex-post-facto' review clause. In rare cases, due to the interplay of bargaining power and political considerations, it has had to deviate from its firm stand;but this is an exception. A stand-¹⁵ard capacity clause of Indian bilateral agreement reads as follows:

(The capacity, frequency, type of aircraft and the nature of air service such as transiting through or terminating in the territory of the other Contracting Party, operated by the designated airline of either Contracting Party on the specified air route, shall be agreed in the first instance between the designated airlines and shall be effective only upon the approval of the aeronautical authorities. 16

Any subsequent increase in the capacity or frequency of the airline must also be agreed upon in advance between the designated airlines. This would be subject to the approval of the aeronautical authorities on the basis of the estimated requirements of traffic between the territories of the Parties and such other traffic as is to be jointly agreed and determined. Pending such an agreement the capacity and frequency entitlements already in force would prevail. India's great caution in the matter of capacity and frequency is caused by a genuine fear, that once a liberal treatment is accorded to a foreign airline with enormous economic resources, it might result in impairing the economic development of Indian airlines which are still in the process of growth.

iii) Fares. In fixing up the tariffs, relevant factors including cost of operation, reasonable profit, characteristics of service and the tariffs of other airlines for the same route are taken into consideration. For practical reasons, the fares and rates are not however regulated by a common authority. To avoid destructive competition, they are negotiated, in the first instance, through multilateral consultations and agreements between all the airlines, operating scheduled international services over a part or the whole of that route, who are members of the

International Air Transport Association (IATA), at its annual conferences. There is generally a provision in the bilateral agreements recognizing the IATA Traffic Conferences machinery for setting fares and rates. The standard clause adopted by India with respect to rates and fares reads as follows:

The tariffs will be agreed in respect of the specified route between the designated airlines, where it is deemed suitable in consultation with other airlines operating over the whole or part of that route, having regard to the relevant rates adopted by the International Air Transport Association. 17

Pooling Agreements. Apart from the bilateral agreements, India's flag carrier Air India has entered into commercial pooling arrangements with BOAC/Qantas, Aeroflot, Czechoslovakian Airlines, East African Corporation, Aden Airways, Middle East Airlines and Japan Airlines. 18

Scheduled Domestic Air Services

Before 1946, an Indian operator was not required to obtain licence for operating air transport service in India. The Indian Aircraft Rules as were in force then, related entirely to the technical requirements. As the traffic possibilities were comparatively small and the number of airlines entrepreneurs was strictly limited, the system worked well. Such a laissez-faire

policy was conducive to the development of domestic air transport at that time. But the position had substantially changed by the end of World War II. General improvements in the transportation system were accompanied by increased governmental regulatory measures. The Aircraft Act was amended. Under the amended rules, with effect from October 1, 1946 no scheduled air transport service could be operated in India without a licence issued by the Air Transport Licensing Board set up for that purpose. While granting the licence the Board took into consideration the following factors:

- " a. the proper development of air transport services in accordance with the needs of the public,
- b. the potential traffic on particular routes, and
- c. the adequacy or otherwise of the financial and technical resources of the applicant for satisfactory operation of aircraft". 19

Under Rule 141 of the Indian Aircraft Rules, 1937 the then existing airlines automatically obtained provisional licences over the routes that they were already operating. This was similar to the 'Grandfather' clause application of the Civil Aeronautics Act of 1938²⁰ by which the Civil Aeronautics Board (CAB) was required, on application, to issue the certificate of public convenience and necessity to

() the carriers that were engaged in air transportation at the time that the Act was enacted in the United States. As has been said earlier,²¹ with the introduction of licensing system, a large number of companies were floated and these started competing among themselves. Wasteful competition with all its classic adverse effects loomed large till early fifties when the Government of India nationalized the airlines.

() Since nationalization with effect from August 1, 1953, the two Corporations and their 'associates'²² virtually enjoy a monopoly in operating scheduled air transport service from, to, in or across India.²³ All the licences issued previously were invalidated. Except for the services operated by foreign airlines under bilateral agreements, no other services of considerable commercial importance were allowed to any independent operators in India.²⁴

() The Air Corporations (Amendment) Act, 1962 has somewhat relaxed the national aviation policy in this regard. The original Act was amended to the effect that the private operators may be allowed to operate such scheduled air transport service as is not provided by either of the Corporations or their 'associates'; that, however, with the previous permission of the

Government and subject to such conditions and terms²⁵
as the Government may determine. By the Indian Air-²⁶
craft (Fourth Amendment) Rules, 1965 the Director
General of Civil Aviation may grant permission to
operate scheduled air transport service either

- i) to a citizen of India, or
- ii). to a company or a body corporate provided that-
 - a) it is registered and has its principal place of business within India;
 - b) the Chairman and at least two-thirds of its Directors are citizens of India; and
 - c) its substantial ownership and effective control is vested in Indian nationals.

In arriving at a decision whether or not to
grant permission, the Director General of Civil
Aviation will consider the following factors as spell-²⁷
ed out in the Rules, in particular

- " i) whether having regard to the applicant's experience and financial resources and his ability to provide satisfactory equipment, organization and staffing arrangements, and having regard also to any contravention in respect of aircraft operated by him of the provisions of the Aircraft Act, 1934 (22 of 1934) and the rules made thereunder, the applicant is competent and a fit and proper person to operate aircraft on scheduled air transport services;
- ii) the provisions made or proposed to be made against any liability in respect of loss or damage to persons or property which may be incurred in connection with the aircraft operated by the applicant;

- iii) the existing or potential need or demand for the scheduled air transport service applied for;
- iv) in the case of any scheduled air transport service proposed, the adequacy of any other air transport service already authorized under rules 134 or under the Air Corporations Act, 1953 (27 of 1953);
- v) the extent to which any scheduled air transport service proposed would be likely to result in wasteful duplication of or in material diversion of traffic from, any air transport service which is being or is about to be provided under a permission issued under rule 134 or under the Air Corporations Act, 1953 (27 of 1953);
- vi) any capital or other expenditure reasonably incurred or any financial commitment or commercial agreement reasonably entered into, in connection with the operation of aircraft on air transport service by any person (including the applicant);
- vii) if the tariffs for the proposed scheduled air transport service are reasonable; and
- viii) any objections or representations made in accordance with the provisions of this Schedule or any other law in force".

In addition to the above eight factors which the Director General of Civil Aviation "shall consider in particular", he may at any time require the applicant to submit any other information which he
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considers necessary for processing the application. The maximum period for which the permit once issued
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is valid, is five years.

Non-scheduled International Air Services

The Chicago Convention of 1944 makes a distinction between the non-scheduled air transport services not engaged for remuneration or hire, and those engaged for remuneration or hire in the carriage of traffic. By Article 5 paragraph 1 of the Convention, so far as the former category is concerned, each Contracting State agrees that all aircraft of the other Contracting States in non-scheduled flights are granted the following three rights subject to the qualifications specified thereof: (i) right to enter and make final stop for non-traffic purposes; (ii) right to enter and fly over non-stop and (iii) right to enter and fly over and stop for non-traffic purposes on a transit flight. These rights are not however absolute.³⁰ The practice of States is inconsistent and haphazard. As far as India's attitude is concerned, only a seventy-two hours' notice is required to be given to the aerodrome officer or the Director General of Civil³¹ Aviation furnishing certain flight information. The aircraft immediately upon entry into India, without a prior landing elsewhere, must, of course, be flown³² to and landed at specified airports.

With regard to the second category, viz., non-scheduled flights engaged for remuneration or hire,

the aircraft have "merely the privilege of taking on³³ or discharging passengers, cargo or mail". The grantor State has, however, the right to "impose such regulations, conditions or limitations as it may consider desirable"³⁴. Even though the ICAO Council has stressed that the impositions should not be exercised in such a way as to render the operation of this important form of air transport impossible or non-effective,³⁵ most of the Contracting States insist³⁶ that prior permission be obtained from them for these non-scheduled flights. This may, on occasion, seriously interfere with the services.

In conformity with Article 7 of the Chicago Convention, the Indian rules would not allow aircraft "to pick up at any place in India any load to be dis-embarked at any other place in India"³⁷. For picking up or setting down in India, traffic destined for or coming from a place outside India, prior permission of the Director General of Civil Aviation has to be obtained. Apart from this, the following additional conditions have also been imposed by the Indian Government for picking up traffic from India to any place outside India: (i) A 'no objection' certificate should³⁸ be obtained from the Indian airlines; (ii) The Charter or Hire of the whole or part of space on the

aircraft must have been arranged, engaged or booked through Indian Airlines Corporation or and Air India; and (iii) Traffic may be picked up in India only at one of the specified places, namely Bombay or Delhi for the West, Calcutta for the East, Madras or Tiruchirapalli for the South and Patna, Varanasi, Delhi or Calcutta for Nepal."40

Non-scheduled Domestic Air Services

Non-scheduled air services grew up in India only after World War II due to (a) the availability of a considerable number of Dakotas from the war surplus stocks and (b) the retrenched experienced Air Force personnel. Under the third proviso to rule 134 of the Indian Aircraft Rules, 1937 the Central Government alone has the power to allow non-scheduled air transport services subject however to such terms and conditions as it may think fit to impose in each case separately. For this, the Director General of Civil Aviation to whom the Central Government has delegated the necessary authority, issues permits. The permit is granted for a certain specified period, generally limited to three years. In addition to complying with the Indian Aircraft Rules, 1937, and with all other rules in force, the operator has to observe the conditions as stated in the permit. Among the important

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conditions are: (i) The operator is not permitted to advertise the services in any manner whatsoever; (ii) No place shall be used for landing or departure other than the duly licensed aerodromes; (iii) The operator should submit to the Director General of Civil Aviation a schedule of rates and other charges for chartering different types of aircraft; and (iv) Prior permission of the Director General of Civil Aviation or the Controller of Aerodromes should be obtained in respect of each individual flight operated if a landing is to be made at any point other than the aerodrome of departure.

Before granting permission, the authorities in India would make sure that the rights of scheduled operators in regular services are protected. Only if the scheduled operator is unable to meet the requirements of the public for the transport of passengers and goods on routes or between points already served by them, then the permission is granted for a non-scheduled operator. Besides the two nationalized Air Corporations, nine operators hold permits for the operation of non-scheduled air services in India
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now.

CHAPTER VI

LAW RELATING TO CARRIAGE BY AIR

For carriage performed exclusively within a nation-State, the legal relations, between the carrier and the passenger or the carrier and the consignor or the consignee or both, as the case may be, are governed by the municipal law of that State. But by its very technical nature, the carriage by air necessarily involves international contacts and its character is, consequently, more international than national. Increased facilities for travel and communication have led to a notable increase of international commerce.

International Carriage by Air

In international commerce, the diversity of law¹ is a "disturbing factor". Where the aircraft belonging to companies registered in several countries fly over different territories and the carriage is effected by stages "the difficulties increase as well as unlikelihood of finding in the various countries in which actions might be brought any uniformity of legal principles for their decisions"². It is with that objective of avoiding the difficulties caused by the conflict of laws in actions arising from

contracts of carriage, a Convention " for the Unification of Certain Rules Relating to International Carriage by Air" was signed at Warsaw on October 12, 1919. The Convention applies only to a limited categories of air carriage, namely, international carriage. It contains detailed provisions regarding the form and legal effect of passenger tickets, baggage checks and air waybills. It also contains important provisions with respect to the liability of air carriers for damages sustained in the event of the injury or death of passengers or destruction of or loss of or damage to luggage or merchandise. This is the quintessence of the Warsaw Convention.

A great many States have since ratified the Warsaw Convention and have incorporated its provisions in their own domestic laws. Some States, have extended the rules of Warsaw Convention even to internal air carriage. The latter measure is a great step forward for promoting the unification of rules. The mere existence of the texts of the Convention in the national statutory enactments will not however contribute much to the ultimate realization of uniformity unless the principles contained in these rules are uniformly interpreted and applied. In practice, they are subject to a variety of judicial interpretation. After all, the national courts are

indigenous in nature with diverse social, political and legal systems.

In India, the legislature enacted the Indian Carriage by Air Act, 1934 which came into force as from February 18, 1935. The object of the Act, as stated in its preamble, is to give effect to the provisions of the Warsaw Convention by incorporating them into the municipal law of India. Section 2 of the Act states that

The rules contained in the First Schedule, being the provisions of the Convention (Warsaw) relating to the rights and liabilities of carriers, 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 Indian jurisprudence on the subject is neither abundant nor varied because the slow development of air transport in India has raised only few cases. The Indian Act has closely followed the English Carriage by Air Act, 1932 with very similar provisions except for a few modifications to make the Act suitable to Indian conditions. Since independence, with the intense development of Indian industry and commerce, even though State planning and government control permeate almost every sphere of commercial and industrial life, the basic law

which has gradually assimilated the English law for over a century has not been modified to any appreciable extent.³ In India, the liability for civil wrong (the law of torts) " continues to be the same as English law except where this was departed from by the Indian judges as being not applicable to Indian conditions".⁴ It is therefore obvious that English decisions are very often used in interpreting the Indian Act.

Since the Indian Act is, basically, only a literal interpretation of the Warsaw Convention, it is not proposed to attempt a detailed analysis of the various provisions of the Act. We may however briefly deal with one or two representative features which have been brought to the notice of Indian courts.

High Contracting Party. Throughout the Warsaw Convention the term 'High Contracting Party' has not been used consistently in its usual technical sense. At times it denotes those States effectively bound by the Convention, and at times it rather loosely applies to signatories to the Convention whether or not they are bound by ratification.⁵

According to subsection 2 of Section 2 of the Indian Carriage by Air Act, 1934 "the Central

Government may by notification in the Official Gazette, certify who are the High Contracting Parties and any such notification shall be conclusive evidence of the matter certified therein". India was⁶ not a signatory to the original Warsaw Convention. It is also not clear if India acceded⁷ to the Convention by a notification addressed to the Government of the Republic of Poland as required by Article 38 of the Convention. But the notification issued by the Central Government on September 13, 1939 in supersession of the previous notification, certified⁸ the names of High Contracting Parties. This included India as a High Contracting Party to the Convention as of January 18, 1935. While considering the above provision in the case of Parsram Parumal Dabrai v. Air India Limited,⁹ the Bombay High Court held that "so far as this Court is concerned, for the purpose of the Act XX of 1934, the notification must be regarded as conclusive evidence and that Court cannot go behind the Order and investigate the¹⁰true problem".

The Government of India issued the last notification under the above provisions of the Act as¹¹ far back as 1939. Many States have since then ratified/adhered to the Warsaw Convention. A strict

reliance on the above decision of the Bombay High Court would posit that those States whose names have not been notified by the Central Government in the Official Gazette would not be regarded as High Contracting Parties. Such a situation would be contrary to the generally accepted principles of interpretation of treaties and contemporary State practice and would therefore have far-reaching consequences.

In the United Kingdom, the term 'High Contracting Party' has given rise to diverse interpretation. In Grein v. Imperial Airways Limited,¹² it was assumed that the term 'High Contracting Party' referred only to States which ultimately ratified the Convention. Since Belgium had not, at the material date, ratified the Convention, it was not considered as a Contracting Party. But in the subsequent case of Philippson v. Imperial Airways Limited,¹³ the House of Lords reversing the Court of Appeals decision (with a narrow majority of three to two, Lords Russel of Killowen and Macmillan dissenting) held that the expression High Contracting Party included "those States who¹⁴ by their plenipotentiaries have signed the Convention" as well as States bound by the Convention by accession. Taken by surprise, the United Kingdom Government dissociated itself from the above decision and in a

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communication to the United States Government it
said:

His Majesty's Government are of the opinion
that the ordinary meaning of High Contracting
Party in a Convention is to designate a party
who is bound by the provision of a Convention
and does not cover a signatory who does not
ratify it.

The learned Law Lords did not attach any im-
portance to subsection 2 of Section 1 of the Carri-
age by Air Act, 1932¹⁶ which provides that the Convent-
ion is only to be applied as regards those States
which had been certified by Order-in-Council, made
under the Act, to be High Contracting Parties to the
Convention.

The Hague Protocol of 1955 has attempted to
clarify the position by Article 40A of the amended
Convention. It defines the term as follows:

In Article 37, paragraph 2 and Article 40,
paragraph 1, the expression High Contracting
Party shall mean State. In all other cases,
the expression High Contracting Party shall
mean a State whose ratification of or adherence
to the Convention has become effective and
whose denunciation thereof has not become
effective.

Thus according to the amendment, States do
not become High Contracting Parties merely by signing
the amended Convention.

Carriage by Air. In accordance with Article 18,
paragraph 1 of the Warsaw Convention, the carrier

is held liable for damage sustained to any registered luggage which is in his charge if the occurrence which caused the damage so sustained took place during the carriage by air. Carriage by air here means "the period during which the goods are in charge of the carrier, whether in an aerodrome, or on board an aircraft, or, in the case of a landing outside an aerodrome, in any place whatsoever".¹⁷

India gives a very restrictive meaning to the above provision. In the case of Dabrai v. Air India¹⁸ Limited, a parcel of gold carried by Air India was brought to the city booking office of the carrier and kept in the strong room awaiting delivery to the consignee when it was subsequently found missing. The Bombay High Court considered that loss or damage complained of was occasioned after "carriage by air" had ceased and therefore loss or damage does not come within the purview of Article 18 and that the carrier was not liable to compensate the consignee for such loss or damage under the Act. Justice Shah held that "once the goods have reached the destination and carried to the office, where they are to remain in storage till called for by the consignee, it cannot¹⁹ be said that there is any continuing carriage by air". On the other hand, in the British case of Westminster Bank v. Imperial Airways Limited,²⁰ gold which was

entrusted to the carrier by the plaintiffs was removed to Croydon where it was placed in the strong room of the aerodrome pending the flight. On the following morning the room was found open and the gold was missing. Despite the defendant's plea that the damage sustained "in this case did not take place²¹ during the carriage by air", the Court found that it was "impossible successfully to contend that at the time when the loss was sustained, the carriage by air²² had not begun". It was held in this case that carriage by air had commenced and that therefore the damage was subject to the rules relating to liability established by the Warsaw Convention.

India and The Hague Protocol

Warsaw Convention of 1929 was the first step in standardizing important aspects of the obligations and rights of, and between air carriers and passengers and shippers in international air transportation. But all was not well; dissatisfaction with some of its provisions began to be voiced shortly after it came²³ into force. CITEJA and its successor the Legal Committee of the International Civil Aviation Organization after examining it carefully proposed revision of certain provisions of the Convention. Represent-

atives of forty-four States met at The Hague in September 1955 to consider the proposals to revise the Warsaw Convention. As a result, a Protocol amending the Convention was agreed upon and signed by twenty-seven States.²⁴ The main amendments suggested by the Protocol relate to (i) simplification of documentation requirements; (ii) increase in the limit of liability of air carrier in respect of each passenger; (iii) treatment of the court costs and other expenses of litigation; (iv) principles of liability; (v) re-definition of wilful misconduct and (vi) limitation²⁵ of independent liability of servants or agents.

Even though India was a participant at the Hague Conference and signed the Protocol, it has not yet ratified it. The main reason for its being not a party to the Hague Protocol is the radical change in the limits of liability as prescribed in Article 22 paragraph 1; a 100% increase to that of 1929 limits. India was not even prepared to "accept an increase²⁶ amounting to 60% more than the old limit" as was proposed by the Legal Committee of ICAO at Rio de Janeiro in September 1953.²⁷ India remained firm in its views that any substantial increase in the limits would not be conducive to the development of air transport. The value of the gold francs had kept

pace with the increase in the cost of living. Therefore India believed that "it was a stabilising factor between the higher cost of living and the limited²⁸ liability in terms of gold francs".

As the Government of India has so far not taken any legislative action to incorporate the rules of the Hague Protocol in the Indian Carriage by Air Act, 1934, the original version of the Warsaw Convention as adopted would govern the international carriage by air, until necessary amendments are made.

Domestic Carriage By Air

By Section 4 of the Indian Carriage by Air Act, 1934 the Central Government is empowered to apply the rules contained in the First Schedule of that Act, namely the provisions of the Warsaw Convention, with or without modifications to all carriage by air not being international. In the exercise of the above power, the Central Government in December 1963 issued²⁹ a Notification containing rules for the application of the Indian Carriage by Air Act, 1934 to carriage by air which is not international. These rules came into effect from March 1, 1964. The expression 'carriage by air not being international' has been

defined to mean "any carriage in which according to the intention of the parties the place of departure and the place of destination are both situated in India and there is no agreed stopping place outside India".³⁰ The following types of carriage are not how-³¹ ever governed by these rules.

- i) carriage by air in any aircraft belonging to, or exclusively employed for the purpose of armed forces of the Union;
- ii) carriage by air, performed by the Government whether Central or State;
- iii) carriage of mails;
- iv) carriage by air of persons performed for the purpose of training such persons;
- v) carriage by aircraft belonging to or operated by the Civil Aviation Training Centre of the Government of India or a club, whose main purpose is to impart training in flying or gliding, whether such aircraft is engaged in carrying persons for purposes of training or otherwise;
- vi) carriage of goods or persons performed for the purpose of dropping goods from an aircraft; and
- vii) carriage of employees of the carrier when they are carried for the purpose of performing any duties assigned to them by the carrier or the aircraft.

Several other provisions contained in the above Notification relating to the carriage of passengers, luggage or cargo are the same as those in the Carriage by Air Act, 1934. We may now enquire into those provisions which differ from those of the 1934 Act.

Documents of Carriage. The provisions relating to the existence and contents of the documents of carriage in the Indian Carriage by Air Act, 1934 are not applicable to domestic carriage by air. The carrier is thus not obliged to deliver either a passenger or luggage ticket. Even if issued, it is not required to contain the provisions which are mandatory and specified as in the case of international carriage. Its effect is that in a contract of carriage, irrespective of the issuance of the ticket, the carrier may still advantageously avail himself of the limited form of liability as contained in the rules thereof.

() Air Consignment Note. In domestic carriage, air³² consignment note "is a more informal document". Apparently, the rules are relaxed in favour of the carrier. In accordance with Rule 5 of the First Schedule contained in the Government of India's 1963 Notification (containing rules applicable to domestic carriage by air), the consignor has no right to require the carrier to accept the air consignment note. The obligation to make out the air consignment note in three original parts with the requisite particulars has been dropped. It is now open to the carrier to set out such particulars as he thinks necessary. The carrier's right "to require the consignor to make out separate consignment notes where there is more than

one package" has however been maintained.

Liability of the Carrier. As to damage sustained in the event of death or bodily injury suffered by a passenger, the rules applicable to domestic carriage by air make a distinction between (i) death of a passenger or bodily injury resulting in a permanent disablement and (ii) bodily injury resulting in a temporary disablement. In the first case, the liability of the carrier for each passenger is limited to Rs. 42,000³³ if the passenger is twelve or more years of age, and Rs. 21,000 if the passenger is³⁴ below twelve years on the date of the accident. In the event of bodily injury suffered by a passenger which results in a temporary disablement entirely preventing the passenger from attending to his usual business the liability is limited to a sum calculated at the rate of Rs. 40 per day for every day during which he continues to be so disabled, or a sum of Rs. 8,000, whichever is less.³⁵ The rules do not provide for any special contract by which a carrier and his passenger may choose to agree to a higher limit of liability than that contained in the Carriage by Air Act, 1934.

In respect of liability occasioned by delay in the carriage of passengers, luggage or goods, the carrier will be responsible for any loss or damage

only if he has in the contract of carriage agreed
to accept liability arising out of such delay and
to the extent so agreed.³⁶

CHAPTER VII

ADMINISTRATION OF LAW RELATING TO CIVIL AVIATION

Though the foundations of civil aviation in India were laid in the years following World War I, the origin of the Department of Civil Aviation, as an entity, dates back to January 1927 when the Indian legislature created a Civil Aviation Branch in the Department of Industries and Labour in pursuance of the recommendation of Indian¹ Air Board. A Director of Civil Aviation and some secretariat staff to assist him were appointed for the control and development of civil aviation. In April 1936 the Branch was converted into a Directorate. The Directorate of Civil Aviation was made an 'Attached Office' under the Department of Industries and Labour in April of the same year. As a result of bifurcation of the Department of Industries and Labour into (i) Department of Labour and (ii) Department of Communications, the Branch dealing with civil aviation was transferred to the latter Department in November 1937. Before World War II, nothing of any significance was done to organize the Civil Aviation Directorate or to develop the Indian air transport industry. Only in 1946, as a² result of the approval of the Tymms's plan for the development of civil aviation in India by the Reconstruction (Policy) Committee on Posts and Aviation, the Government took steps to strengthen the Directorate. Under the new set up, a Director General assisted by two

Deputy Directors-General and other staff was placed in charge of the Directorate. In August 1947 the Department of Communication was designated the Ministry of Communications while the Directorate of Civil Aviation which continued to be a part of that Ministry was named as the Department of Civil Aviation. Since then interplay of several factors such as the economic planning by three successive Five Year Plans and the overall development of national economy along with the general advancement of science and technology has caused enormous strain on the executive branch of the Government; and, this has resulted in the creation of a separate Ministry in 1964 for dealing with civil aviation matters.

The civil aviation infrastructure blends with the Government's planning and general administrative system of the country as a whole. Independent India took over an instrument of Government fashioned by the British for the purpose of ruling over a subject country. There is a vital difference between the objectives of the Government of India under British rule and of independent India under its own national leadership. Though the British Government, because of an upsurge of national sentiment, had undertaken certain welfare and developmental functions, as education, public works and the encouragement of

indigenous industries since the beginning of the present century, its character as a foreign and colonial Government was motivated by the interests of the mother country. The lack of coordination in the framing of policies and in its execution has always been a retarding force in all facets of national development programmes, not in any way less so in civil aviation matters. With the adoption of a system of parliamentary responsible Government, the responsibility of the Government today extends to the executive action apart from the formulation of policy. The numerous Reports and Enquiries conducted by the Central Government as well as by the Parliament³ for the reform of general administrative apparatus of the country testify to the Government of India's anxiety to improve the organizational set up and the methods of transaction of governmental business. The reports have not however been sufficiently effective as they have been implemented only in a piecemeal, conservative and experimental manner.

The Central Government is responsible for the administration of law relating to civil aviation in India. In order to regulate the allocation of Government business and its convenient, efficient and speedy transaction, Rules of Business have been framed under

Article 77(3) of the Indian Constitution. The President makes the allocation of 'business transaction' on the advice of the Prime Minister by specifying the items of business allotted to each Minister and by assigning a Ministry or a part of a Ministry or more than one Ministry to the charge of a Minister. Consequent upon the reorganization of some of the Ministries in January 1966, the Ministry of Civil Aviation was constituted as the Department of Aviation under the Ministry of Transport and Aviation in the charge of a Minister holding cabinet rank⁴. For the purpose of administration, the Department of Aviation has jurisdiction over the following matters:

- " i) Meteorological Organization;
- ii) Aircraft and air navigation; provision of aerodrome;
- iii) Regulation and organization of air traffic and of aerodromes (excepting sanitary control of Air Navigation);
- iv) Beacons and other provisions for the safety of aircraft;
- v) Carriage of passengers and goods by air;
- vi) Corporations established under the Air Corporations Act, 1953;
- vii) Offences against laws with respect to any of the matters specified in this list;
- viii) Inquiries and statistics for the purpose of any of the matters specified in this list;
- ix) Fees in respect of any of the matters specified in this list but not including fees taken in any court;
- x) Implementation of Treaties and Agreements relating to any of the matters specified in this list". 5

While the Minister is mainly responsible for the formulation of civil aviation policy, the execution of that policy as well as the day to day administration is carried out principally by the Director General of Civil Aviation, though technically speaking he is second to the Secretary of the Department of Aviation, the highest civil servant in that Department. The Officers of the Department are empowered, in varying degree, to execute the decisions of the Government, and are charged with the responsibility of coordinating the activities of the Department with Government policy, including financial and general administration policy and rules. The above subjects are administered by the Department of Aviation through several subordinate organizations headed by the Officers as follows.

- | | |
|--------------------------------|--|
| i) Department of Aviation | -Secretary |
| ii) Civil Aviation Department | -Director General
of Civil Aviation |
| iii) Meteorological Department | -Director General
of Observatories |
| iv) Air India | -Chairman and
General Manager |
| v) Indian Airlines Corporation | -Chairman and
General Manager |

These organizations have a separate corporate existence, each enjoying complete technical autonomy

and each responsible to Government through the Department of Aviation.

The functions, powers and duties of the Department of Civil Aviation may be broadly classified into three, namely those of (1) legislative, (2) administrative and (3) of a quasi-judicial nature.

1. Legislative Functions

The evolution and expansion of legislative functions and powers of the administrative department of the Government are the direct reflection of evolving and expanding role of the welfare State. It is the product of administrative urgencies of the modern age to which Parliament has become increasingly conscious and for which reason it has delegated its power to the civil service.

The growth of rule-making powers has made rapid strides in India. Due to the great scientific and technological accomplishments in the area of transportation and communication, the exercise of legislative powers has been a matter of fact not only in emergency circumstances, but even in normal times. The sub-legislative powers have not only been given to the Department of Civil Aviation but also to the nationalized Air Corporations. No doubt, the delegated legislation exceeds in quantity the amount of direct legislation. Once the Parliament has performed

its essential duties of laying down the policies, it leaves the making of detailed regulations to the executive branch of the Government. In framing these regulations, the only restraint upon the Department of the Government is that they (the regulations) should not be ultra vires the parent Act.

The principal functions and powers exercised by the Department are derived from the Aircraft Act, 1934 (XXII of 1934), the Indian Carriage by Air Act, 1934 (XX of 1934), and the Air Corporations Act, 1953 (XXVII of 1953). These powers are exercised by means of Rules, Orders, Directives and Regulations by notifying them in the Official Gazette as prescribed in the Statutes.

i) The Aircraft Act, 1934. The Aircraft Act, 1934 confers broad powers⁶ on the Central Government to make rules and regulations for the control of air navigation. But, in order to see that these powers are properly and discreetly used, the Indian Parliament has been very cautious and has qualified them by two riders. Firstly, the power to make rules is subject to the condition that the rules be made after previous publication for a period of not less than⁷ three months. Secondly, the rules should be laid

before each House of Parliament while it is in session for a minimum period of thirty days⁸. If both Houses agree in making any modification in the rule, it will have effect only in such modified form.

By virtue of Section 3 of the Act, the Central Government, may, by notification in the Official Gazette, exempt any aircraft or any person from the application of any of the provisions of the Aircraft Act, 1934. Power is also given to make necessary rules to give effect to the 1919 Paris Convention Relating to the Regulation of Aerial Navigation to which India was a party⁹. In exercise of the powers conferred by Section 5, the Central Government made the Indian Aircraft Rules, 1937 which constitute the comprehensive Indian Code containing 161 Rules and nine Schedules dealing with practically all the aspects of air navigation. By Section 6, in the interests of public safety or tranquillity the Central Government has power to prohibit or regulate the flight of all aircraft over the Indian territory and control the use of any aerodrome, aircraft factory, flying school or club. In the exercise of this power, the Central Government has issued Aeronautical Information Circulars incorporating the procedure in connection with flights into or in

transit across the territory of India.¹⁰ The Central Government has the power to make rules providing for the investigation of any accident arising out of or in the course of navigation of any aircraft in India and of aircraft registered in India wherever they may¹¹ be. It has also power for making regulations with respect to the following matters: (i) detention of aircraft where the flight involves danger to persons or property; (ii) wreck or salvage; and (iii) penalty for acts in contravention of the rules made under the Act.

In a few cases such as rules for protection of public health, customs procedure etc., where subordinate legislation affecting civil aviation is to be enacted by some other branches of the Government, it is required to consult the Department of Civil Aviation before making the regulations.

ii) The Indian Carriage by Air Act, 1934. The Central Government alone has power to determine the day on¹² which the whole Act will come into force. By Section 2(2), the Government may by notification in the Official Gazette, certify as to who are the High Contracting Parties to the Convention. Any such notification will be conclusive evidence of the

matters certified therein. The Act also empowers the Central Government to apply the rules contained in the First Schedule to 'carriage by air not being international' subject to necessary modifications.¹³ In exercise of this power, Ministry of Transport (Civil Aviation Wing) issued notification GSR-1967 on December 17, 1963 bringing into force, with certain modifications, Carriage by Air Act, 1934 to carriage by air which is not international.

iii) The Air Corporations Act, 1953. The Central Government has various powers under the Air Corporations Act, 1953 to give directions and to make rules on matters affecting the two nationalized Air Corporations in India. This will be discussed separately in Chapter IX.

2. Administrative Functions

The administrative powers, under the Aircraft Act, 1934 and the Indian Aircraft Rules, 1937, have mostly been delegated by the Central Government to the Director General of Civil Aviation and his subordinate officials in the Department of Civil Aviation.¹⁴ The subdelegation does not rest upon any specific enactment, but on long-established practice and the

general rule of practicability. While performing the administrative duties and functions, the authorized officers exercise the powers by means of the ordinary routine of official practice, that is by oral and written instructions of a formal or informal nature, such as are necessary to ensure that the major decisions of the Government are properly authenticated. We may now look into some of the important administrative functions dealt with by the Department of Civil Aviation.

The Director General of Civil Aviation is the competent authority to grant permission to persons other than the Indian Air Corporations and their associates to operate scheduled air transport services in India.¹⁵ He has the authority to examine the applications for such permits as well as for¹⁶ issuing, cancelling or suspending them. In the performance of his functions with regard to the above matter, he is assisted by two or more persons with specialized knowledge and experience of civil¹⁷ aviation to act as his advisers.

The Director General of Civil Aviation is also the authority for the registration of civil aircraft. He issues the certificate of registration and assigns

registration marks. He prescribes the minimum requirements in regard to construction, workmanship and materials which must be satisfied by an aircraft, before a certificate of airworthiness is issued. He is the licensing authority for a wide varieties of licences, such as are issued to pilots and other members of the operating crew of aircraft and to aircraft maintenance engineers. He has the power to issue, cancel, revoke or suspend such licences in accordance with the powers vested in him. With regard to the administration of aerodromes, Director General of Civil Aviation approves tariff of charges for landing and housing at licensed public aerodromes, alterations to the landing areas, buildings or other structure and the maintenance of aerodromes.

3. Quasi-Judicial Functions

The most important quasi-judicial function of the Department of Civil Aviation is the investigation of accidents. Section 7 of the Aircraft Act, 1934 empowers the Central Government to make rules for investigation of accidents. Its authority extends to any aircraft involved in air accident in or over India and to aircraft registered in India no matter

wherever they may be. The rules framed by the Government under Section 7 of the Aircraft Act form Part X of the Indian Aircraft Rules, 1937. These rules have since been revised in order to bring them in conformity with Annex 13 to the Chicago Convention¹⁸ relating to aircraft accidents enquiry. As aircraft accident investigation is of fundamental importance for the safety of air transport services, it would be appropriate to make a brief review of the Indian regulations governing the conduct of investigation.

An accident must be notified to the Director General of Civil Aviation if (i) it involves death or serious injury to a person, or if (ii) the aircraft is substantially damaged. The conditions of what is a notifiable accident are similar to the¹⁹ definition of aircraft accident in Annex 13. Three types of investigation are possible in India: (i) Inspectors Investigation; (ii) Committee of Enquiry, and (iii) Formal Investigation.

i). Inspectors Investigation. According to Rule 71(1) of the Indian Aircraft Rules, 1937, for any accident whether it is notifiable or not, the Director General of Civil Aviation may order an investigation. The language of the Rule suggests that this is a permissive

and not a mandatory function. For the purpose of carrying out such an investigation, the Director General may appoint an Inspector of Accidents. The investigation will be held in private.²⁰ Public notice of the investigation is given in such a manner as the Director General of Civil Aviation deems fit and any person desirous of making any representation concerning the circumstances ~~or~~ causes of the accident may do so in writing within the time specified in the²¹ notice.

The Inspector of Accidents is responsible for the conduct of the investigation. He takes statements from witnesses and examines anyone as he thinks fit. Any such persons may be called before him by summons under his hand, and are required to attend and answer any question asked. Persons from whom statements are taken may be called on to make and sign a declaration as to the truth of that statement. The Inspector may call for the production of any such books, papers, documents and articles as he may consider necessary. Any material so produced may be retained by him until completion of the investigation. If a charge is made or is likely to be made against any person, that person may be given a reasonable opportunity of being present and defending his case

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by making any statement or giving any evidence and producing witnesses on his behalf. He may also examine any witnesses from whose evidence it appears²² that blame will be attributed to him.

On completion of his investigation, the Inspector of Accidents will present a report to the Director General of Civil Aviation stating his conclusions, and making any further observations and recommendations with a view to preservation of life and avoidance of similar accidents in future. The Director General of Civil Aviation, in turn, will forward the report along with his own comments to the Central Government. The Government may, at its discretion,²³ make the whole or part of any such report public.

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ii) Committee of Enquiry. When it appears to the Government that the public interest in an accident is sufficient to warrant such a procedure, the Central Government may appoint a Committee of Enquiry consisting of two or more persons to hold an enquiry into an aircraft accident. The Committee is vested with the same authority as an Inspector of Accidents. The method of enquiry will also remain the same except that at its discretion the Committee may hold the enquiry in public or in private.

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() iii) Formal Investigation. The alternative form of an accident investigation is provided for in Rule 75 of the Indian Aircraft Rules, 1937. When the Central Government thinks it expedient it can order for a 'formal investigation' whether or not an Inspector's Investigation or Enquiry has been made.

() For conducting the formal investigation, the Central Government will appoint a competent person called "the Court". The Government may also appoint one or two more assessors possessing legal, aeronautical, engineering or other special knowledge to act as assessors. This type of investigation will be held in open court. The Court is accorded all the powers of a Civil Court, and without prejudice to those powers the Court may

"a) enter and inspect or authorise any person to enter and inspect any place or building, the entry or inspection whereof appears to the Court requisite for the purposes of the investigation; and

b) enforce the attendance of witnesses and compel the production of documents and material objects; and every person required by the Court to furnish any information shall be deemed to be legally bound to do so within the meaning of Section 176 of the Indian Penal Code". 24

() The Court reports to the Central Government. The assessors must also sign the report, with or without reservations; they may state in writing

their dissent therefrom and their reasons for such dissent. The Government may cause such report to be made public, wholly or in part, in the manner it thinks fit.

Accident Involving a Foreign Aircraft. In the case of an accident involving a foreign aircraft, in or over India, an accredited representative of the country in which the aircraft is registered, and a representative of any other country which has on request furnished information in connection with the accident, may participate in the investigation, enquiry or formal investigation. He may also be accompanied by advisers as may be considered necessary by the authorities of the country by which he is appointed. By the recent amendment of Annex 13 which was adopted by the ICAO Council on November 24, 1965 and became applicable on August 25, 1966, "the State in which the aircraft was manufactured shall be entitled to appoint an accredited representative to be present at an enquiry into an accident to a turbine-engine transport aircraft".²⁵ India has agreed to abide by this provision and necessary amendment has since been made in its national regulations.

Other Government Departments Concerned
With Civil Aviation

Apart from the Department of Aviation in the Ministry of Transport and Aviation, other Government Departments of the Indian Republic which are concerned with one or other aspects of civil aviation are (i) Ministry of Health; (ii) Ministry of Defence; (iii) Ministry of External Affairs; (iv) Ministry of Finance; (v) Ministry of Home Affairs, and (vi) Ministry of Communications.

i) Ministry of Health. In exercise of the powers conferred by Section 8A of Aircraft Act, 1934 the Ministry of Health is responsible for administration of the Indian Aircraft (Public Health) Rules, 1954. The sanitary control of aerial traffic, particularly the prevention and spread of quarantinable diseases from one country to another, is regulated by the International Sanitary Regulations which came into force in India in March 1953. To enforce and implement the rules of International Sanitary Regulations, health organizations are functioning at the major airports in India. The airports at Santacruz and Dum Dum, two of the first points of entry to India by air, have made adequate provisions for the isolation of passengers suspected to be suffering from

yellow fever or other infectious diseases. The Palam Airport provides for medical inspection facilities for aircraft using it as the last airport of departure.

ii) Ministry of Defence. There is a close liaison and collaboration between the Air Force Wing of the Ministry of Defence and Department of Civil Aviation in respect of air traffic control and flight information systems. The responsibility of aerial search and rescue operation has devolved on the Air Force in India , as there is no other agency in the country which has resources, by way of aircraft and trained personnel, to meet such commitments. Whenever there is an aircraft accident within the country, whether it be a civil aircraft or not, the Indian Air Force is called upon to help spot the site and if possible help rescuing the injured. There is a Consultative Committee of Coordination between Air Headquarters and the Department of Civil Aviation. The Committee consists of the Chief of Air Staff and the Director General of Civil Aviation. The Hindustan Aircraft Limited, Bangalore, which undertakes the repair, overhaul and research in aeronautics is under the management and control of the Ministry of Defence.

iii) Ministry of External Affairs. The Ministry of External Affairs plays a vital role in the matters of foreign air transportation because the problems involved are chiefly political having some relation with foreign policy and national defence. Obtaining traffic rights for Indian carriers abroad and according reciprocal rights to foreign carriers in India are not merely confined to the economic interests or adequacy of transport services. Traffic routes and bases are prudently correlated with facilities and plans for national defence. Another important consideration is the conduct of foreign relations.

The Ministry of External Affairs is responsible for coordinating and whenever necessary sponsoring and conducting negotiations with foreign Governments in regard to bilateral agreements for exchange of commercial rights and other air facilities. The technical requirements and economic implications of such matters are often determined in large part by the Ministry of Transport and Aviation, but they must be coordinated with the Ministry of External Affairs so as to ensure compliance with the over-all foreign policy objectives of the Government. With regard to domestic air transport activities of the Department of Aviation, the Ministry of External Affairs has

little or no relation. It realizes that civil aviation policy involves practical and technical problems and they are reflected in the organization of civil aviation.

iv) Ministry of Finance. The Ministry of Finance is responsible for the administration of the finances of the Central Government as a whole by a scrupulous scrutiny of the annual budgetary proposals of the various Departments. What we are specifically concerned here is its responsibility for the administration of customs aerodromes as envisaged in the Indian Aircraft Rules, 1920. The Central Board of Revenue which is a constituent part of the Ministry of Finance deals with this. The main function is to levy and collect the customs duties by assessing the goods coming into or going out of India and to prevent smuggling. In addition, it administers the various restrictions and prohibitions under diverse Acts on the import and export of goods.

v) Ministry of Home Affairs. Ministry of Home Affairs is responsible for the administration of immigration laws and for taking necessary security measures at airports and elsewhere. By virtue of the powers conferred by the Defence of India Act, 1962, the Ministry of Home Affairs exercises broad powers to regulate

conditions of flight, inspection of aircraft, use and maintenance of aerodromes and the supervision and control of air route beacons and lights at or ²⁶ in the vicinity of aerodromes.

vi). Ministry of Communications. In accordance with Rule 10 of the Indian Aircraft Rules, 1937, the Directorate General of Posts and Telegraphs, an attached office of the Ministry of Communications, is responsible for the carriage of mails in India. The Directorate in cooperation with the Indian Air Corporations controls the inland night air mail services linking up the principal cities Bombay, Calcutta, Madras, Delhi and Nagpur. It is also responsible for fixing foreign air mail rates.

PART III

CHAPTER VIII

MOTIVES AND BACKGROUND OF GOVERNMENT CONTROL

The present development-oriented national policy of India is devised against the background of experience drawn from the British rule, and from a confrontation of British economic theories with the practice of British colonial administration. It is a sad commentary on India's past that the growth of transport had been rather haphazard. It seems that no serious attempt in conformity with the aggregate needs of society had, at any stage been made for a well-planned and co-ordinated development of the country's transport system. Each branch of transport developed in isolation from the other, and that to suit the private or public ends. In so doing the economic advancement of the country as a whole was generally ignored. Railways in India were constructed by British companies for serving the ends of an alien administration. The main purpose was the transshipment of raw materials from India to Great Britain by connecting the principal sea ports with the cotton producing centres. As a rule, the interests of foreign companies were given precedence over the interests of Indian public and whenever a conflict arose, the latter were sacrificed for the sake of

() the former.¹

() In the case of air transport, the general policy of the British Government towards India was not substantially different from that of the railways except that strategic considerations had a dominating influence over all other factors. The Civil Aerial Transport Committee emphasized that "aerial power was necessary for the protection of Great Britain and the existence of the Empire in the future, as naval power has been in the past"². The Cairo-Karachi route was inaugurated for "military purposes"³. In the early thirties, owing to the financial depression, all developmental activities, especially in the field of civil aviation were postponed. When the economic situation improved, World War II broke out. During the war period, all air transport operations were placed on a war footing for the defence purposes. Soon after the end of war, India became independent and the policy pursued by the national Government of India has since then been geared, in contradistinction to that of the colonial Government, towards active participation of the State in national economic developmental programmes.

National Objectives

() As early as April 1948, just within one year

of its independence, the Government of India declared its industrial policy which provided a blue-print of the views of the Government with regard to development of industries in India and particularly with reference to their nationalization. It laid down that "the State could contribute more quickly to the increase of national wealth by expanding its present activities, wherever it is already operating, and by concentrating on new units of production in other fields, rather⁴ than on acquiring and running the existing units". As regards the issue of nationalization, the Government reserved the right to take over any industry vital for national defence in case of emergency and stated generally that the State has the inherent right to acquire, in the public interest, any existing industrial undertaking. In terms of the Resolution, the Government of India did not wish to disturb the air transport industry, for some time to come, if the private enterprise which was already in the field would work efficiently with reasonable expansion. India had thus attempted to strike a balance between free enterprise and regimented socialism, through planned economic growth. The major considerations behind planning were the stepping up of the rate of growth and the most rational utilization in investment

programmes of scarce financial and physical resources. Above all, it was necessary to direct those resources to socially useful goals and to promote investment keeping in view the future dimensions of the growth of economy.

The 1948 policy was formulated in an atmosphere of uncertainty. At that time, the Government was almost undecided about the nature, magnitude and procedure of development planning. By adoption of the Constitution in 1950 the concept of a welfare State was more strongly ingrained in the minds of national leaders and efforts have since been made for a planned, and a more or less, controlled economy. The Constitution has taken "a comprehensive view of the activities of the State, not influenced by the laissez-faire thought of the nineteenth century"⁵. In its Directive Principles of State Policy⁶ in the Constitution, it is stated that the State shall in particular direct its policy toward securing

"the ownership and control of the material resources of the community are so distributed as best to subserve the common good";⁷ and

"the operation of the economic systems does not result in the concentration of wealth and means of production to the common detriment".⁸

These basic and general principles were given a

more precise meaning and direction in the Industrial
(Development and Regulations) Act, 1951,⁹ and later
they were reinforced by the acceptance by the Indian
Parliament in 1954¹⁰ of the principle of the 'socialistic
pattern of society' as the objective of Indian social
and economic policy. The adoption of this principle
required that all industries of basic and strategic
importance¹¹ should be in the public sector.

Against this background we may now proceed with
our enquiry into the more specific reasons for govern-
mental intervention in the airline industry.

Economic Considerations

Public Utility.¹² According to Stephen Wheatcroft,
the primary reason for the Government control on air
transport is that of its "quasi-public utility"
characteristics. The expression public utility is
more of a politico-economic concept rather than
legal; it cannot be precisely defined, nor can the
border line, between the undertakings which should
and which should not be classified as public utility,
be very clearly drawn. The process by which a parti-
cular undertaking acquires public utility status is
the political process by which a felt need is satisfied

through Government action. A communist society would advocate the elimination of free enterprise, private profit, private ownership and call for the total regimentation of the State economy; almost all the undertakings are 'public utility' undertakings inseparable from the State. On the other hand, in capitalistic countries, a clear distinction is made between undertakings 'affected with a public interest' and those which are not. Even in the latter countries there is no uniformity in accepted standards of classification. The two generally accepted chief characteristics of a public utility are (i) economic necessity or indispensable service that requires public regulation, ownership or operation, and that (ii) the service should¹³ have monopolistic features.

The first feature is described by the American term 'affected with a public interest' and by the German terms Gemeinnutigkeit (public necessity) and¹⁴ Versorgungsbetrieb (primary public service). The standard used to assign public utility status to a particular service has been its inevitable necessity¹⁵ to the society at large. Even though transport, per se, is not a basic human need, as are the necessities of food, clothing and shelter, yet it has become one of the very important necessities of men in any stage

of advanced civilization. It is a service which affects time and place utility and thereby has become the very life-breath of modern industrialized nations. Air transport renders indispensable service to the civil and military administration of a country. In fact, the availability of efficient and modern means of transportation facilities, is an essential concomitant to, and in many cases an initiating cause of, the various manifestations of economic progress and development.

The second important element of public utility is monopoly or imperfect competition. Air transport service in an underdeveloped country has certain monopolistic characteristics as pure or perfect competition does not apply to most of the situations. Transport companies are not numerous in these countries and are not always perfect substitutes for each other. It requires relatively a large capital outlay. The rate of capital turnover during the first few years of operation in proportion to the initial investment is very low. The competition among the few airline companies in India immediately after World War II was conspicuously ineffective. It created confusion with excess capacity and inefficient

duplication of facilities and overlapping services. It, thus, hampered the development of the industry as a whole, not doing any good either to the competitors or to the people at large. Almost two hundred years ago, Adam Smith, the economist wrote: "People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public in some contrivance to raise prices"¹⁶. The same situation prevailed in India in the late forties. A bankrupt line can and did reduce even the successful line to its own quandary. This may not perhaps happen in other business undertakings where the rule of the survival of the fittest holds good.

Transport Co-ordination. "Transport co-ordination" has been described as "the assignment, by whatever means, of each facility to those transport tasks which it can perform better than other facilities, under conditions which will insure its fullest development in the place so found"¹⁷. In India, there is, as yet, no comprehensive plan for the co-ordination of several forms of transportation. The governmental agencies responsible for road, rail, sea and air function separately. The conditions in India are at present

very much different from those in other industrially advanced countries of the world. Because of limited resources at its disposal, the possibilities of immediate overdevelopment of one system of transport outstretching its optimum requirements and overriding the interests of other means of transport are very remote. Yet it is not altogether inconceivable that in the long run the airlines may become the victims of technological progress taking place in other means of transport. In view of the expanding economy and the growing complexities of national and international commercial operations, the best course would be to develop a nation-wide transport system by water, road, rail and air in such a way that they supplement each other and avoid duplication and overlapping. Due to its peculiar characteristics as an instrument of national defence in time of emergency and prestige-producing flag carrier in peace time, civil aviation should be given its place of importance in promotional activities.

The different modes of transportation bear a complementary as well as a competitive relation to each other. The example of United Kingdom testifies to that. The British Transport Commission set up by the U.K. Labour Government in 1947 under the Transport

() Act was "to provide, or secure or promote the provision of an efficient, adequate, economical and properly integrated system of public inland transport".¹⁸ As early as 1951, at the time of the inauguration of India's First Five Year Plan, the Planning Commission recognized that plans for different types of transport cannot be considered in isolation; but no practical step has so far been taken to secure proper coordination of the various modes of transport. It is however gratifying to note that the National Development Council has recognized the need for the development of an integrated transport system in the Fourth Five Year Plan, the implementation of which will commence shortly.

Military Considerations

The airplane is one of the principal instruments for the defence of the country. Civil aviation reinforces¹⁹ military air power and the latter in turn makes contributions to civil aviation progress, even though they are separate and distinct operations. This does not however imply that the few civil aircraft that India has, could suddenly be converted into military weapons.

() Even in the early stages of its development, the European nations, pioneers in the field of air

transportation, enacted laws for its control, and in general placed the regulation of both civil and military aviation under a single governmental agency, an air Ministry, with the strong belief that commercial aviation was necessary in the interest of national defence. ²⁰ During World War II, in the United States, the Secretary of War was authorized and directed "to take possession and assume control of any civil aviation system, or systems, or any part thereof, to the extent necessary for the successful prosecution of the war". ²¹ Thus commercial airlines and airmen were pooled together "to operate under Army and Navy authority in the distant war theaters of the world". ²²

The value of civil aviation to defence will be found first in its availability for emergency service during the initial period of war preparations and finally in its maintenance of a nucleus of physical facilities namely aircraft factories, air navigation aids etc. The recent events in India- the Chinese attack of 1962 on the mountainous Himalayan region and the Pakistani border skirmishes of 1965- have emphasized the vital role of airlift in the defence of the nation. Logistic mobility has always been the decisive factor in the armed conflicts ever since the beginning of history, and this is more true today.

The only difference is that the mobility and speed of movement are now identified with air power and can be achieved only through aircraft. While the movement of troops and materials to the battle-fronts is the responsibility of the Air Force, the civil counterpart by moving them from the hinterland to forward blocs and thus sharing the task, play an equally important role. During the short period of the abovementioned national threats, the nationalized Indian Airlines Corporation was forced first to curtail and then completely suspend its services in order to supplement the airlift capability of the Air Force.

Safety Considerations

For every man-made device, there must be a new set of principles for its regulation and protection. Regulation for the purpose of safety is not a peculiar phenomenon affecting only air transport, but as the smallest error in the flight operations will have more serious consequences than in any other form of transport, the question of safety is of paramount importance. Not only it affects human life but it has also tremendous impact on the psychology of general travelling public on whose confidence the commercial aviation

() works. Safety in air transport depends on many factors such as "(a) proper equipment properly maintained; (b) pilot skill, intelligence and psychology; (c) skillful dispatching and adequate flight control; (d) adequate airway and airport facilities; (e) adequate weather forecasting and reporting; and (f) the promulgation and enforcement of rules designed to promote ²³ safety".

() Transport aircraft are becoming more and more complicated and consequently the demands for supporting services in engineering, aerodrome, telecommunications and air traffic control are growing day by day. Safety requirements for every new type of aircraft need to be formulated well in advance, possibly during the design stage itself. The problem of safety has been subjected to a sustained and continuous study by the International Civil Aviation Organization ever since its establishment. As a result of the standards laid down by the International Civil Aviation Organization, the requirements for safety have become increasingly severe and the Member States have been co-operative enough to include these requirements in their national regulations in order to make them mandatory on the part of airline operators.

() Even in the pre-ICAO days, the Indian Government

put the regulatory machinery of aviation on a sound footing on the basis of the principles and standards of ICAN and of British practices. The Indian Aircraft Rules, 1937, as amended from time to time, consists of regulations governing all the safety aspects of scheduled and non-scheduled services as adopted by the International Civil Aviation Organization. But, in aviation, it is not merely a matter of making regulations and enforcing them by process of law. Many of them involve extensive organizations to make them effective. For example, the Research and Development Organization of the Civil Aviation Department is responsible for research into engineering problems relating to modifications and repair of aircraft, operational problems concerning aircraft performance at various aerodromes, development and use of materials for aircraft construction and for giving advice in advanced aeronautical training and the encouragement of fundamental research in aeronautics. The Air Routes and Aerodromes Directorate is responsible for construction and equipment of aerodromes, their planning, administration and for regulation of air traffic control. The Directorate for Aeronautical Communications is concerned with planning, organization

and equipment and operation of the aeronautical
communication services for safe and regular operation
of air transport.

CHAPTER IX.
AIR CORPORATIONS.

The earliest Indian experiment with Public Corporations was, probably, the establishment of the 'Trustees of the Port of Bombay' created under the Bombay Port Trust Act, 1879.¹ After World War I, a few commodity Corporations such as Indian Central Cotton Committee, Coal Grading Board, Indian Coffee Board were created for the improvement and development in growing, marketing and manufacture of commodities. But it was only after independence that Public Corporations were created on a major scale.

Constitutional Provisions

According to Article 298 of the Indian Constitution, Government of India, just as a private individual, can acquire or purchase, grant, sell, dispose of or mortgage property. In the exercise of its executive power, the Government is also empowered to carry on any trade or business and make contracts for that purpose. With respect to a business carried by itself, the State is immune from the constitutional limitation of 'reasonable restrictions' which an ordinary citizen is otherwise subject to. By amendment² of the Constitution in 1951, the State is now free to

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compete with any private traders or to create a monopoly in favour of itself without being called upon to justify its action. The State may enter into a trade or industry not only for eliminating the evils of competition, or for the betterment of administration of public utility services but also for the mere purpose of making profit as a private businessman would do. The only requirement is that such action should be legally authorized, that is it must be authorized by properly enacted legislation and not merely by an executive order. Thus if a statute creates a monopoly "for the carrying on by the State, or by a Corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise", the reasonableness of such a statute cannot be questioned. The acquisition of private property for public purpose is justifiable on grounds that the interests of the public are paramount; and that in certain cases, private interests are to be subordinated to public interests and the necessities of Government.

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Further, in accordance with the provisions contained under Part XIII of the Constitution, regulation of trade and commerce could also be made in public

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interest without making undue discrimination, and by preserving the equality of law and equal protection of law. The general principle of freedom of trade, commerce and intercourse guaranteed by Article 301 of the Constitution, is subject to the limitations which might be imposed by Parliament for public interest. Public interest embraces "public security,⁵ public order and public morality". The State is authorized to impose restrictions not only on the grounds of public order but also on social and economic grounds as envisaged in the Directive Principles⁶ of the Constitution.

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Armed with these supporting Constitutional provisions, the Indian Parliament enacted the Air Corporations Act in 1953 by which two Corporations were created. The provisions of the Act followed substantially the corresponding British nationalization statutes and the two Corporations themselves were⁷ largely patterned on the BEA/BOAC concept. The salient features of the Corporations are examined below.

Some Characteristics of Air Corporations

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Organization and Management. The management of the Corporation is vested in a governing body. The

() governing body occupies an important position in the day-to-day management. Among other matters, the governing body has to approve or decide, (1) the appointment of a chief executive and principal officers, (2) plans for development, (3) relations with the Minister on policy matters, (4) general policy concerning finances, and (5) expenditure and staff matters. As against the board of directors in a commercial firm which is responsible only to the shareholders, the governing body has wider responsibilities. It is entrusted with duties to the Government, to the Parliament, to the employees and to the nation at large. The efficiency of the management reflects on the ability of its constituent members. The Act provides an upper limit of nine and lower limit of five members to be appointed by the Government for each of the Corporations. No specific qualifications are laid down for the members of the governing body; but, as a matter of practice, the Government uses its discretion in appointing members who have experience in the field of industrial, commercial, financial and administrative matters. The Government should satisfy itself that the person to be appointed as a member has no such financial

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or other interests as are likely to affect prejudicially the exercise of his functions as a member, and also satisfy itself from time to time with respect to every member that he has no such interests. A member who is in any way directly or indirectly interested in a contract made or proposed to be made by the Corporation should disclose the nature of his interest to the Corporation. Such a member is debarred from taking part in any deliberation of the Corporation with respect to that contract. Apart from this, the Act does not enumerate any disqualification for being a member. But due to the general criticism made inside and outside the Parliament regarding the appointment of members in public undertakings in general, Government's policy was reinstated in 1961. In accordance with that policy declaration (i) Members of Parliament will not be appointed as members of the governing body; (ii) The Chairman and the General Manager would be full-time except in the case of very small concerns; and (iii) No full-time member should have any connection with private business.

The tenure of office of the members is not specified in the Air Corporations Act, 1953. The Chairman and members of the governing body ordinarily hold

office for the period notified in the order of appointment unless the appointment is terminated earlier by the Government. The members are permitted to resign.
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As Robson comments, if the Government may dismiss at pleasure, the line between resignation and dismissal is a narrow one.

In addition to members of the governing body, a principal executive officer designated as 'General Manager' is appointed for each of the Corporations by the Corporations themselves subject to the approval of the Government. The Corporations are also empowered to employ such other categories of staff as they think necessary for the efficient transaction of business.

The Act provides for the establishment of an Air Transport Council which has extensive advisory functions. The Council consists of a Chairman and other members not exceeding eleven that are appointed by the Government. It is not a standing body but is constituted by the Government from time to time when-
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ever there arises a need for such a body. At the request of the Government, the Council investigates any matter relating to the fares and rates, facilities and services provided by the Corporations and submits

recommendations to the Government. It also advises the Government in regard to economic measures for an efficient working of the air transport services. Provision is also made for the appointment of an Advisory Committee and a Labour Relations Committee. The former Committee, appointed by the Government in consultation with the Corporation, renders advice in such matters as may be referred to it by the Corporation. The latter Committee, that is the Labour Relations Committee, consists of representatives of the Corporations and those of employees. It advises the Corporations on matters which relate to the welfare of the employees or on such matters as may promote amity and good relations between the employees and the management.

Functions, Powers and Duties. The general function of each of the Corporation is to provide safe, efficient, adequate, economical and properly co-ordinated air transport services. They must so exercise the powers as to ensure the greatest possible development of air transport in the interests of the country. In carrying out their duties, each of the Corporations should act as far as possible on business principles. The Corporations and their 'associates' have a virtual

monopoly of air services, both domestic as well as international; direct competition by independent operators is practically ruled out. Even though, in accordance with the Indian Aircraft(Fourth Amendment) Rules, 1965 private airlines are permitted to operate services on new routes which are not provided by the Corporations or their 'associates', they(the amended rules) have so far been ineffective as the conditions imposed by the Government on the issue of such permits are very severe.

According to Section 7 Clause 2 of the Air Corporations Act, 1953, certain specific powers are conferred on the Corporations. They include power (i) to operate any air transport service for a commercial or other purpose, and to carry out all forms of aerial work; (ii) to acquire, hold or dispose of
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any property, and (iii) to repair, overhaul, reconstruct, assemble or recondition aircraft or parts thereof and also to manufacture such parts. With the prior approval of the Government, the Corporations can enter into agreements with other operators to provide air transport services on behalf of or in association with them (Corporations). Each of the Corporations is empowered, with the previous approval of the Government and by notification in the Official Gazette,

to make regulations for the administration of the
Corporations and for carrying out their functions.¹⁶
These regulations should not however be ultra vires
the Air Corporations Act, 1953.

The powers in Section 7 of the Air Corporations Act, 1953 should be exercised in such a way that the services are provided at reasonable rates. Irrespective of the powers conferred on them, each of the Corporations should comply with any rules of law for the time being in force and no person is debarred from instituting any proceeding in respect of a duty or liability to which either of the Corporations is otherwise subject. The Corporations are also not exempted from any tax, duty, rate or levy or other charges whatsoever, general or local. The Corporations should act in mutual consultations in matters of common interest including, in particular, the operation of scheduled air transport services, the routes and frequency of such services, passenger fare and rates, overhaul and maintenance of aircraft, and "in regard to ensuring the fullest cooperation and coordination in respect¹⁷ of all such matters". Each year, at least two months before the commencement of the financial year, they have to submit, separately, to the Government the programme of work for the following year. After the

end of each financial year, they have also to submit to the Government a report giving an account of its activities during the previous year. This annual report, which is an important document, affords an opportunity to the Corporations to explain their policy and exhibit the results of their administration. It is the main source of information to the public as well as to the Parliament on which discussion could be made.

Finance, Accounts and Audit. The expenditure incurred by the Government for and in connection with the establishment of each of the Corporations until the date of their establishment is treated as capital provided by the Government to the Corporations, and all properties, assets and funds owned or acquired by the Government for that purpose are vested in the respective Corporations. Each of the Corporations has its own funds. If need be, additional capital is also provided for the carrying on of the business on such terms and conditions as the Government determines.

The Corporations have broad borrowing powers. With the consent of the Government or in accordance with the terms of any general authority given to them by the Government, they may borrow money and secure payment of any money borrowed by them or any interest

thereon by the issue of bonds, debentures, debenture stock or any mortgage or charge or other security on the undertaking of the Corporations of any of their properties. As the Act makes it an obligatory function of the Corporations to provide transport services at reasonable charges the general attitude to profit-making is different from that of a private company. But by carrying out their duties on business principles, they are naturally expected to make a profit.

The Corporations have to keep proper accounts and other relevant records and must prepare an annual statement of accounts including the profit and loss account and balance sheet in such form as is prescribed by the Government. The statement of accounts is required to conform with the best commercial standards. These accounts are audited by the Comptroller and Auditor General of India. The audited accounts are annually forwarded to the Government who would lay it before both Houses of Parliament.

Government Control Over The Corporations

As stated in the previous chapter, India is attempting to build a planned economy. Even private undertakings are subject to considerable amount of

control by Government. Public undertakings set up in fields that are vital to economic growth are subject to greater regulation and control than private undertakings. The main reason for the nationalizing of airlines in India was to maintain a close control and strict regulation in order to ensure their development in accordance with the public interest. Matters like the organizational set up, management, investment, on new projects, foreign collaboration, fixation of rates, policy-making etc., are reserved to the discretion of the Government. As authorized by the statute, the Government exercises a significant degree of control over their activities. There are two main types of control: (i) Ministerial control, and (ii) Parliamentary control.

i) Ministerial Control. Of all forms of control, the Ministerial control appears to be the most crucial. The Minister of Transport and Aviation exercises control through his power of appointment of the members of the governing body of the Corporations, issuing directions, providing finances and other miscellaneous ways.

The Government decides the size of the governing body of each of the Corporations and appoints the

members and the Chairman. Government is not satisfied with only formulating the broad policy decisions and leaving the rest to the top management; it desires to be closely associated in the process of day-to-day decision-making of the management. On many an occasion, it may not be possible to make a clear distinction between broad policy decisions and management decisions. Therefore, in order to ensure proper and smooth functioning, the Government exerts indirect control in addition to the formal controls and powers. With that in mind, the Government includes a considerable number of senior Government officials in the governing body of each of the Corporations. The Secretary of the Ministry of Transport and Aviation, Secretary of the Ministry of Finance, a Senior Official of the Ministry of Communications, Chief of Air Force and a few other senior ex-civil servants are oftentimes appointed as members of the governing body. It is no doubt true that the actual working of the Corporation depends upon the personalities involved. Even the appointment of the General Manager, who is the executive head of the Corporation, is subject to the approval of the Government. The same is the case with respect to the appointment of other important officers. The very composition of the members of the

governing body tends to reduce the independent status of the Corporations and makes them like any other Government departments.

In order to maintain coherence between the general policy of the Government and its execution through the instrumentalities of the Corporations, the statute vests power in the Government to give directions to either of the Corporations as to its exercise and performance of functions. These directions are usually of a general character, and their scope is not very clear. It may depend mostly on practices and precedents.¹⁸ The Corporations are bound to shape¹⁹ their activities in accordance with the directions. In addition to this general power of directions, the Government has specific powers over the Corporations in regard to particular matters of special importance. Thus the Government, if it considers it expedient in national interest, may issue directions in the following matters : "(a) to undertake any air transport service or other activity which the Corporation has power to undertake; (b) to discontinue or make any change in any schedule air transport service or other activity which it is operating or carrying on } (c) not to undertake any activity which it proposes to do."²⁰

The Government has wide financial powers in regard to the Corporations. He who pays the piper calls for the tune is a well-known saying. The capital stock at the time of the establishment is provided by the Government. Any additional capital for the carrying on of business of the Corporation is provided by the Government on such terms and conditions as the Government determines. Government also exercises control on the borrowing powers of the Corporations. Furthermore, the Government control extends over expenditure, too, by prohibiting the Corporations from undertaking any capital expenditure exceeding rupees fifteen lakhs. The Corporations are also required to submit returns to the Government regarding their programmes of work along with the financial estimates for the ensuing year.

ii). Parliamentary Control. The control of the Corporations by Parliament exists by the very reason that they were created by a statutory enactment. Parliament has the indisputable right to nationalize any industry and to formulate a coherent framework of policy and structure by which the nationalized Corporations are required to operate. While enacting legislation for the above purpose, Parliament exerts

0 a permanent influence over the conduct and organization of these Corporations. Subsequently, Parliament exercises control by means of asking questions, holding debates and discussions by members of Parliament, and scrutinising the annual reports, programmes of work and examination of estimates and expenditure by the Committees such as the Estimates Committee and the Public Accounts Committee.

() The Estimates Committee is composed of members of Parliament and works under the guidance and control of the Speaker. The Committee exercises careful scrutiny over the management and functioning of the Corporations, and whenever occasion demands, submits reports and suggests alternative policies to ensure efficiency and economy in the administration. It was in response to the criticism made by the Estimates Committee regarding the administration and operation of Indian Airlines Corporation, that the Government of India instituted an independent investigation under the chairmanship of Stephen Wheatcroft in 1959 for the planning operation and cost control of that Corporation.

() Though the primary concern of the Public Accounts Committee, again composed of Parliament members, is the financial scrutiny of technical irregularities,

its scope extends to extravagance, lack of adequate administrative control and even organizational set up. It functions as a Parliamentary watchdog to guard against negligence and corruption.

The Rules of Procedure and Conduct of Business of the House of the People do not encourage the admissibility of questions with respect to the functions of autonomous Corporations.²¹ Notwithstanding this obstructive provision, the members get their opportunities and are free to a 'full-dress' discussion to ventilate all complaints and defects when the annual reports and certified accounts of the Corporations are submitted by the Minister. It should, however, be made clear that the standard of debates on civil aviation matters in Indian Parliament is neither discernible nor constructive, as most members are ignorant of the fundamental issues involved and tend to speak without adequate preparations and study. Oftentimes the members, motivated by political considerations, are hypercritical and the discussion centres round the grievances of the Corporation employees or certain other minor working arrangements.

In conclusion, it might be stated that despite the various forms of controls exercised by the Government and the Parliament, the nationalized Air

Corporations enjoy a substantially greater degree of independence in their day-to-day working **than** is possessed by the regular departments under the direct control of a Minister. In matters of finance and personnel, budgeting and accounting, and operation of services, they have a large measure of freedom. They are however subordinate to Parliament and the Executive, and are not autonomous institutions per se.

PART IV

CHAPTER X

AIR TRANSPORT SYSTEM TODAY- DEVELOPMENT REQUIREMENTS

The Indian airlines, both domestic and international, have now operated for thirteen years under nationalized management. However, commercial aviation as yet cannot be said to have come of age in India. The slow pace of development is even more conspicuous in the domestic sphere. This is a curious situation considering that the industry has a tradition of pioneering enterprise behind it, and has some of the best management and technical talent, anywhere in the world, to draw upon. Had the Government taken a serious interest in aviation, it is certain that flying conditions in India would have been at a far more advanced stage than they are today. In chapter II we enquired into the development of air transport after nationalization. After making a general review of the present operational features of the Air Corporations, an attempt will be made in this chapter to suggest certain requirements for an effective development of domestic air services in India.

Operational Features of the Air Corporations

In so far as scheduled operations are concerned,
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air traffic statistics indicate that since nationali-

zation the growth of passenger traffic has shown an annual increase of over 20% even though the increase in total revenue hours flown during the last thirteen years were less than even 10%. With regard to cargo, the performance is very poor. During the above period there was, in fact, a fall of over 20% in freight traffic although average world air cargo traffic for 1965 itself showed an increase of 28% over the preceding year. During 1953-1965 the average growth of world cargo traffic showed an increase of 377%. There was of course a considerable increase in mail carried by air in India, which accounted for an increase of about 155% during the last thirteen years. World average during the same period was certainly much higher, at 275%.

International Operations. As far as international operations are concerned, India's flag carrier, Air India, has maintained a steady rate of growth in capacity as well as revenue loads. Comparing its output measured in available Tonne-Kilometers with the output of all the airlines who are members of the International Air Transport Association, for the eight year period 1954-1962, Australian critic David Corbett states that "Air India grew more than twice as fast as

the world air transport industry as a whole".³ The scale of operations and the route system have also registered an increase. From a total of twelve stations served in 1953 Air India now serves twenty-⁴ six stations in twentyone countries covering five continents over an unduplicated route system of 51,200 kilometers. It has entered into tripartite pool with BOAC and Qantas and separate pooling arrangements with Aeroflot, Czechoslovakian Airlines, Middle East Airlines, East African Corporation and Japan Airlines.

Air India has maintained its record even during periods of financial crisis faced by the world airline industry during 1961-1962. The reasons for such good⁵ results are a compact and standard fleet, low operating costs,⁶ high aircraft utilization,⁷ speedy maintenance service in the workshops and generally good⁸ working conditions.⁹ In the top management, there was little or no change since nationalization. The structure of the organization existed even prior to nationalization; it was a business-oriented structure managed by men experienced in commerce and aviation who are still at the head of the Corporation. The change in ownership did not create any operational difficulties; it was therefore possible for Air India to initiate

expansion programmes and plans for the future.

Domestic Operations. Indian Airlines Corporation is a different breed altogether. It was born out of the merger of eight privately owned domestic airlines, most of them with a staggering accumulation of losses and lack of working capital. It inherited an odd assortment of aircraft fleet and different types of organization with differing maintenance standards and an uneconomic route structure.

The difficulties which have beset Indian Airlines Corporation (IAC) ever since its inception sprang from two main sources; firstly, the lack of prior planning, and secondly, the inexperience of those charged with the management of the Corporation. One consequence of the lack of prior planning was the absence of a proper administrative organization at the initial stage. The automatic absorption into the Corporation of personnel serving under differing terms and conditions of service led to many anomalies; the wide-spread manouvering for key positions created a general dissatisfaction amongst all ranks of the Corporation. Furthermore, IAC had no General Manager during its first four years of operation and the Chairman, who was also the chief executive, was not even a full-time

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official. In building up utilization, IAC suffered many handicaps due to various factors such as (i) surplus of aircraft, (ii) short haul air services with constant landings and take-off along the routes, (iii) inadequate ground facilities, (iv) poor maintenance equipment and (v) defective organization.

The financial position of the Corporation has shown some improvement over the past few years, though it is still far from healthy. In all the thirteen years of its operation, it has not made any substantial effort to generate new traffic or to extend its services to other developing urban areas. The little over 11 a million passengers IAC carries today represents a ludicrously small part of India's teeming population of 480 million. Most of these passengers are businessmen, Government officials and foreign tourists. Regrettably, air travel has become progressively more expensive and is beyond the reach of even upper middle-class people. Although fares in India are still amongst the lowest in the world, they do not realistically compare with the customers' capacity to pay. While the universal trend is toward modernization and standardization of equipment as well as rationalization of techniques, the domestic Corporation still operates with outdated Dakotas and worn-out Viscounts. With

the increasing fall in the operational efficiency of the aircraft, a period of gradual diminishing returns has set in the business. Dependent on foreign sources for the aviation hardware, maintenance and reequipment had to be necessarily low. As it is now, it would be erroneous on our part to conclude that by nationalization India had been able to free the domestic air transport industry from the ills of the past. The remedy for the plight is rationalization in all aspects of the organization and management and immediate attention to developmental requirements.

Development Requirements

This study does not propose to offer a panacea for all the ills of the domestic air transportation system. Nor does it intend to explore in detail the basic requirements for a better developed air transport service for the future. Nevertheless it is worthwhile to look into some of the glaring deficiencies which, if rectified, would enhance the effectiveness of the operation.

The primary objective of an airline service should be to provide a service to the public that more and more people can use. The standard of service

is judged in terms of such criteria as speed and distance of carriage, rates and fares, route system, frequency, punctuality and reliability of service, safety and comfort. Among other things, an effective air transportation system requires an optimum combination of aircraft, airport and other support facilities, route structure, well-planned rates and fares, and an efficient organizational set up.

i) Aircraft. The financial results of an airline depend to a great extent on the type of aircraft it¹² uses for its services. This is manifestly clear from the comparative working of Air India and Indian Airlines Corporation. At the time of nationalization IAC inherited nine different types of aircraft varying in¹³ size and utility. Even until today IAC has not been able to get rid of its large number of Dakotas; indeed¹⁴ they still make up half of the total fleet strength.

It is high time that the Dakotas and Viscounts are withdrawn from IAC's services. The Dakota which was of outstanding service two decades ago is one of the most uneconomic aircraft in commercial operation today. The operating cost of an IAC Dakota is estimated at rupees 1,100 per hour while its maximum

average revenue at the present Indian fare structure¹⁵ is only rupees 600. The uneconomic operation of the Dakotas is due to its limited capacity, slow speed, costly spare parts and the high cost of aviation¹⁶ fuel. From the operational point of view the Dako-¹⁷tas have an excellent load factor and utilization; but from the financial angle this has however resulted in heavier losses. Replacement of the Viscounts is also necessary for two main reasons; firstly, it has only limited capacity of 44 passengers and secondly, being pressurized aircraft, they have now become obsolescent after a service of ten years.

One of the most essential requirements today¹⁸ is the right type of aircraft. The minimum that is needed is pressurized aircraft with a speed of 200 miles per hour in regional routes for which the Indian Airlines Corporation would require a fairly large fleet of turbo-props of the F.27/Avro¹⁹ type.

ii) Airports. For any expansion of scheduled air services, an adequate system of airports and airways is altogether essential. The usefulness of the airplanes is measured to a great degree by the number of

adequate landing areas and by the extent of navigation aids which make safe and speedy flow of traffic possible under all weather conditions.

The ground facilities for civil aviation in India are inadequate to meet the operational requirements of the airlines. Deficient in length of runways and clearness of approaches, the present system is geared towards a relatively small volume of air commerce. Most of the landing grounds can take aircraft no bigger²⁰ than a Dakota. Most airports lack provision for passengers to board or deplane without getting out and walking some distance sometimes in the rain. Individual umbrellas and similar makeshift arrangements are not in keeping with the standards of service that a commercial airline should maintain. Automobile parking facilities are also inadequate.

An air transport, if it is to be effective, must serve hundreds of communities that are now without airports. In the planning of new air transport developments, special attention must be given not only to securing adequate capacity from the point of view of the air traffic but also to the integration of airport development into the general transportation network. If the airports are very remote from the city centre the time involved in ground transportation to

and from the airport dissipates the advantages gained by the speedy air travel. This has been especially detrimental to the shorter distance traffic where good surface transportation services are available. More central location must be sought and higher standards of development secured in order to overcome obstacles that endanger traffic movement in bad weather. Careful attention should also be given to the road pattern and to the development of public transportation services between the airport and different parts of the community served. The advent of helicopter suggests the possibility that large airports may be located near the periphery of urban development, relying upon taxi services in and out of the landing places scattered throughout the urban area. This may not be very practicable in India, not at least for the immediate future as the developments in surface transportation are still below par.

The administration and operational management of the airports involve an enormous sum of capital expenditure as well as considerable annual overheads. As the aviation revenues would come only to a small percentage of the total expenditure, airport management should seriously explore the procurement of non-aviation revenues. These are the revenues from the

() taxi-cabs, the restaurants, the giftshops, the haberdasheries, the display cases, the observation deck and several other things at the air terminals. In Western countries these have been developed to a very great extent and the aviation users insist that the expense of the airport should be met by all users.²¹

() iii) Route Structure. The route structure should primarily take into consideration the country's needs for securing optimum development of air services. All the fallacies of the route pattern adopted by the privately-owned airlines prior to 1953 were perpetrated in the Corporation's route system for sometime after nationalization. The service and route pattern must be changed according to population densities and shifting of industrial centres and marketing areas. A change in the type of aircraft may also need revision of the route pattern in the light of the altered economy. For want of adequate statistics, it is not possible to comment on the modification in the route pattern. A route structure could be framed only after balancing a number of factors such as public convenience, political considerations, national economy etc. in terms of the type and number of aircraft available.

() The existing pattern of trunk line routes and

major regional routes may have to be continued in any case to meet the needs of established traffic. It, however, seems advantageous for India to encourage short haul shuttle services. The shuttle service between New York and Washington, London and Paris and many other neighbouring pairs of cities carries a good number of people daily because it suits the busy passenger to go from one place to another and come back the same day at convenient timing. Such services may perhaps be radiated from the major cities Bombay, Calcutta, New Delhi and Madras which are the main focal points of high traffic potential and the spokes spread out to smaller industrial and commercial cities in the neighbourhood.

iv) Rates and Fares. Industrialization and the rising tempo of activity in other spheres of national life have created, and will continue to create, an increasing demand for fast transportation of people and materials at economic costs. Surface transport services alone will not suffice for the growing load of traffic. The need to supplement these facilities is imperative. The domestic Corporation has not so far been successful in achieving its objective of popular air travel at reasonable rates. In fact, passenger fares and freight rates on the domestic network have

since nationalization been increased more than once.

The main objective should be to generate new traffic by offering lower fares and freight rates. With the exception of the existing trunk routes which may be able to keep up with the current fares, all the other air connections need the low fare coach class service if commercial aviation is to fulfil its role as a common-man's mode of travel. It is wrong to model India's air services on those of other countries whose people enjoy a much higher standard of living. The reduction of fares could promote increased use of air travel. In a poor country where per capita income is very low the price of the ticket is of vital importance. The passenger will not expect de luxe service facilities, nor will he demand luxury accommodation. To perform a journey in a couple of hours that at best can be managed in one day or more using other means of transport, is so rewarding that he will be satisfied with the minimum of facilities.

As the things stand today, it is hard to foresee the development of an average wage earner into a potential air passenger. Nevertheless, for the medium income groups, a coach service appears to be very feasible. Air coach service is without the varied

'thrills and frills' of food and the services of air hostesses. It is a "low cost service at the lowest rates consistent with sound business principles".²² If fares are high people would prefer to travel by rail notwithstanding the longer journey time involved. Apart from the inauguration of coach services, introduction of promotional measures such as special family concessional fares, air travel coupon scheme, higher round trip discount and higher excess baggage allowances would create an incentive for air travel. Even though the Corporation has to act according to business principles, the commercial objectives should definitely be subject to overriding considerations of social objectives. The following objectives of rate-making recommended by the Indian Air Transport Council in 1957 are worth pondering:

- " i) to stimulate the maximum economic volume of traffic;
- ii) to generate surplus revenues on high-density traffic routes which would offset to the largest extent possible the gap between costs and revenues on weak traffic routes, and
- iii) to sustain and promote air traffic, by creating a preference for it on account of its inherent advantages". 23

v) Organization and Management. The organizational structure bequeathed to the Corporation by the merging

companies was defective in many respects, particularly as regards the unwieldy size of the staff. The Corporation does not have the same freedom of action in dealing with its employees as a private employer does. While dealing with the staff the Corporation has to keep in mind as to which of its actions the public opinion would consider as reasonable and just. On more than one occasion, the employees' discontent has given rise to open strikes and go-slow tactics which have caused considerable financial loss. This situation, of course, reflects an element of irresponsibility on the part of the management as well as the union leaders.

Too much governmental interference in the management of IAC's affairs is another factor that has retarded its overall development. Vesting of the Chairmanship of the Corporation in the Secretary of the Ministry of Transport and Civil Aviation is an incongruity in itself. This dual responsibility is too burdensome and adequate attention cannot be given to either. Apart from this, in certain circumstances, he may have to be faced with a conflict of interest. Being the highest civil servant of the Ministry he exercises certain regulatory and enforcement functions over the Corporation. At the same time in the capacity

of the Chairman of the Corporation he would become liable for any defalcations on the part of the IAC in complying with these requirements. Further, the Directorate General of Civil Aviation which is subervient to him is independent of the IAC Chairman and has the authority to exercise control over him in case of infringement of any DGCA regulations. The performance of this twin-role as the judge and the culprit at the same time is an awkward situation which cannot be reconciled by any standard of sophistry. The separation of the responsibilities of the Secretary of the Ministry and the Chairman of IAC is a long felt need. Apart from this anomalous situation, the governing body of the management of the Corporation consists of a good number of active and retired civil servants who are trained for a variety of administrative matters.

To foster the commercial character of the Corporation, the management should be placed in the hands of individuals with proven organizational ability and business acumen. There is no dearth of such men in India if one cares to look for them.

CHAPTER XI

ADMISSION OF INDEPENDENT OPERATORS -- FEEDER AIR SERVICES

The foregoing enquiry indicates that the accomplishments of the nationalized Indian domestic Corporation are, by any standards, quite modest. For a variety of reasons Indian Airlines Corporation has not been in a position to satisfactorily fulfil its two-fold function. It has neither been able to meet the present demand for air transportation at reasonable charges, nor has it induced many people to adopt air as a means of transport. There seems little reason to doubt that it is possible- and economically desirable- to establish a large and commercially self-sufficient system of air transportation in India. As a first step, however, it would be necessary to liberalise the application of the provisions of the Air Corporations Act, 1953 and to allow the independent operators to operate services without undue competition. As a former General Manager of IAC has commented: "Competition is good in any industry but only if it is regulated competition"¹. In this regard, the experience of some other countries could be useful.

In the United Kingdom, France and Australia where the scheduled services are operated predominantly by nationalized airlines there is a healthy and progressive

development of independent operators. Even before the enactment of Civil Aviation (Licensing) Act, 1960, the United Kingdom Government has been liberal in dealing with independent operators which enabled them to establish their organization with sound foundations. They received very good support from the Government and the Army in the form of long term contracts especially for the carriage of Government officials and troops in and around the Commonwealth countries. The 1960 Act recognized the legal rights of all qualified British operators to participate in the development of scheduled air services and removed the State monopoly of such services granted to BOAC and BEA in 1946. To start a service, an independent operator has to obtain an 'air service licence' from the Air Transport Licensing Board²(ATLB). Before issuing the licence ATLB would satisfy itself that the new operator is fully and properly equipped and there is an existing or potential need for the proposed services which would not result in wasteful duplication or material diversion of the traffic. The intention seems to be to allow the independent companies to operate, on more or less equal terms, with the nationalized Air Corporations; but as is characteristic of British ambivalence, it is

implied that the position of the Corporations is not to be undermined.

The French air services are divided between the nationalized Air France and two private airlines, Air Inter (Lignes Aériennes Intérieures) and UTA (Union De Transports Aériens). These two independent operators are allowed to operate in healthy competition. This method of rationalization undoubtedly keeps both the nationalized and independent air services very much on their toes. Private operators "seem to have proved³ the feasibility of air transport self-sufficiency" in France.

Australia also permits and encourages competition in air services. The Government-owned Trans-Australia Airlines and the private airline Ansett/ANA run comparable competitive services. The Government maintains a keen competition which is the primary justification for the two airline policy. The Airlines Agreement of 1961 reinforces the above position and ensures equal competitive opportunity on the trunk routes for both carriers through effective control over capacity,⁴ equipment and services.

A plea for admission of independent operators does not mean that India should freely authorize them

to the extent of a direct competition with the Corporation. A direct competition would only bring about uneconomic conditions and jeopardize the development of a sound system of air transportation. Even in the United States, the stronghold of private enterprises, the competition is regulated by the Civil Aeronautics Board. It is hard to generalise; but it may be stressed that barring a small number of countries having wholly nationalized air services, most of the countries have adopted a dual approach of maintaining nationalized airlines and permitting independent operators to function, the whole however being coordinated through the Government's ultimate directive power.

For the immediate present, however, the notion of licensing one or more independent airlines in India to operate scheduled services in direct competition with the domestic Corporation is not very promising. It is also doubtful whether the present volume of traffic even on the main trunk routes is adequate to support the two operations. But geographical separation of the State Corporation and the independents, each having monopoly over the routes granted to them, is a suggestion worth considering.

The Corporation which is already operating on the trunk routes may not be disturbed; the independents may however be allowed to supplement the secondary routes and to operate on new feeder routes.

The feeder services are short-haul branch line operations that connect outlying areas to the main centres served by the trunk routes.⁵ They have an important role to play in the economic development of the country. By making large areas easily accessible to the centres of industrial activity, they facilitate the development of cottage industries and a host of other enterprises in the hinterlands. For the sake of illustration, let us take one of the largest Indian States, Maharashtra which, though chiefly agricultural, is endowed with mineral and other resources, and is industrially well-developed. Bombay being the main-spring of industrial activity, all the lines of communication lead to and from Bombay; the communication system in the hinterland is very poor and the various regions are not even linked with each other. The road and rail mileage is well below the national average and only three cities are connected by air. New roads and railways could be constructed only at heavy costs, and they, depending on the indigenous labour and

materials, are time-consuming projects. Further, absolute reliance on these systems would fail to meet the modern demand for speed of movement and communication. Feeder air services would be most expedient in this, and in similar situations.

Feeder air services can assist considerably in the rural uplift programmes by providing rapid and efficient circulation of medical aids, audio-visual aids for education and entertainment to the rural population. The shortage of skilled and trained personnel in the rural areas can be compensated for, to some extent, by improving communications in these areas.

Feeder air services can also help developing the air cargo market. If the overall gains in terms of money, effort and goodwill are considered, the shipment of delicate products and perishable commodities by air is cheaper than by any other means of transport. It may finally facilitate the opening up of a completely new market in the interior.

It may not, however, be possible for the Indian Airlines Corporation to open feeder routes as it is struggling hard to emancipate itself from the past economic strains. The feeder services could be better,

and more economically provided by small-scale organizations capable of operating with low overheads and having highly efficient operating personnel. The operator need not purchase costly equipment for these services. Given a chance, many small enterprises are sure to come forward to undertake these services provided the Government offers some encouragement to the promoters of such services.

The Government policy todate has been too restrictive. The exclusion of independent operators has already affected the development of an effective air transportation system in India. It should be recognized that independent operators are in many respects as important as the nationalized airlines. If they are encouraged along the right lines their services and aircraft fleet could become complementary to those of the Corporation. Fair and reasonable competition can only have a salutary effect on the working of the Corporation. More than twenty years ago the Civil Aeronautics Board found that "the full development and technological improvement of air transportation cannot be gained by regulation alone; to achieve improvement an incentive is necessary and under the Act that incentive should flow in part from competition

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between air carriers".⁶ The success of Air India, which has prospered in a highly competitive market and has become one of the prestigious and consistently profitable airlines of the world, also supports the above view.

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CONCLUDING OBSERVATIONS

The Indian aviation law derives primarily from the two traditional sources : (i) statutory enactments, and (ii) subordinate legislations. The statutes do not actually state the practical details of the law but delegate heavily to the executive branch of the Central Government. Most of the laws are therefore to be found in the notifications issued from time to time by the Central Government. A third source of law is the judicial decisions. Although the source is of great significance in the Common Law countries, Indian jurisprudence in this respect is lagging far behind as the number of aviation cases contended in Indian courts is very small.

In fact, a great deal of air law in the industrially developed countries is concerned with the economic regulation of the air transport industry; the law is endeavouring in these countries to give effect to the conclusions as to the best method for arriving at desired economic results. In India, till recently, aviation law has been chiefly concerned with the technical and safety aspects. The economic considerations of air transport were largely neglected. Even after independence, the basic law was not modified

to any great extent although it had been given a new directive and purpose. Eventually, as a result of the increased stress on economic advancement and the acceptance of the political philosophy of direct State participation in the development process, India enacted the nationalization legislation in 1953 and subjected the airlines to a significant degree of governmental control. Since then the civil aviation infrastructure has remained almost static. Even though the Indian Aircraft (Fourth Amendment) Rules, 1965 have, in theory, removed the disability of independent operators to run scheduled air services, the Government has not done anything so far to make the amendment meaningful enough in practice.

The nationalization of Indian airlines has not been an unqualified success. In spite of the many naturally favourable conditions, India has not achieved a development in aviation commensurate with the great opportunities available. There is an imperative need for further expansion and modernization of Indian air transport services if it is to meet the challenges of the new social, political and economic necessities of the country.

The act of nationalization alone cannot accomplish these objectives. What is needed is an efficient

management of nationalized undertaking. For that, the Corporations should be accorded a considerable degree of autonomy and independence from unnecessary departmental interference. The Government must also abandon its protectionist approach to the State enterprises and permit the independent operators to run scheduled air services as complementary to the services operated by the nationalized airlines. A judicious allocation of activities between the nationalized and independent airlines would serve to reinforce intra-service incentive in a socially desirable manner.

In conclusion, it may however be stated that the ultimate approach of the Government towards these objectives depends upon high level economic and political decisions. Within the limits prescribed by the Constitution, it is only the legislature that has full power of creating the law and formulating the policies that it thinks will best serve national needs and interests. The lawyer is neither expected, nor entitled, to determine the content or character of these decisions.

FOOTNOTES

INTRODUCTION

1. See Government of India, Pocket Book of Economic Information at xvi (5th ed. 1965).
2. Ibid.
3. According to the 1961 census the population of India was 439,072,582. On the basis of an average increase of 21.64 per cent as noticed during the ten year period 1951-1961 the present population is estimated about 480 million.
4. Government of India, India 1964 A Reference Manual 22(1964).
5. See Das and Chatterji, The Indian Economy: Its Growth and Problems 316(9th ed.1964).
6. Das Gupta, Economic Geography of India 304 (6th ed. 1963).
7. See Das and Chatterji, op.cit. supra note 5 at 322.
8. See Das Gupta, op.cit. supra note 6 at 311.
9. See 2 Jather and Beri, Indian Economics 122 (9th ed. 1949).
10. For example, peas have a staggering growth habit and pest control operations, to be effective, have to be carried out after the pods have started sprouting at which time ground equipment would cause damage to the crop. Similarly wet condition of the ground, as is the case with irrigated land, would preclude the use of ground machinery and demonstrate aircraft to be of indubitable advantage.
11. 123 House of Commons Debates (5th ser.) 311 (1919).
12. 2 Arnold, The Marquess of Dalhousie's Administration of British India 241 (1865).

CHAPTER I

1. See Gibbs-Smith, The Aeroplane, An Historical Survey of Its Origins and Development 1-3 (1960).

2. Ramayana is one of the two great epics of ancient India, composed in Sanskrit by Valmiki about 300 B.C. References to the marvellous aerial car have been made in second part, Books III and IV. See 10 Encyclopaedia of Religion and Ethics 577 (Hastings ed. 1918).
3. Mahabharata is the other great Indian epic poem composed by Krishna Dwaipayana Vyasa about 400 A.D. In the Vanaparva, there are several references to the large airship of Salva.
4. Raghuvamsa was written by the Indian poet Kalidasa, a distinguished figure in classical Sanskrit literature (c. 500 A.D.). In Chapter XIII a vivid description is given of the journey of Rama in an aerial vehicle from Lanka to his home Ayodhya.
5. Yuktikalpataru is a study referring to the ancient kings of India believed to be written by Bhoja in the eleventh century A.D. See Woodward-Nutt, "Aeronautical Research and Development in the Commonwealth", 68 Journal of the Royal Aeronautical Society 90 (1964).
6. Sen, "A Study of Concepts Relating to Aeronautical (and allied) Sciences in Ancient India", 12 The Journal of the Aeronautical Society of India 7 (February 1960).
7. Gidwani, History of Air Transport 63(1954) (Hereinafter cited as Gidwani).
8. For the factual information contained in this paragraph see generally Gidwani 10-11; Dhekney, Air Transport in India 53-54 (1953). (Hereinafter cited as Dhekney).
9. Sir George Cayley, the famous nineteenth century technologist is considered as the true inventor of modern aeroplane. See Gibbs-Smith, op.cit. supra note 1 at 188-196.
10. See Dorman, Fifty Years Fly Past 18 (1951). citing Daily Mail (New York), December 18, 1903.
11. See Gibbs-Smith, op.cit. supra note 1 at 41.
12. This is about four months before the first mail flight took place in England from Hendon to Windsor Castle as part of the celebration for the coronation of King George V. See Davies, A History of the World Airlines 4(1964); Dhekney 54; Tata, "The Story of Indian Air Transport", 13 The Journal of the Aeronautical Society of India 2 (February 1961) (Hereinafter cited as Tata).

13. Gibbs-Smith, op.cit. supra note 1 at 92.
14. Ibid at 94.
15. See Higham, Britain's Imperial Air Routes 1918 to 1939 19-38 (1961).
16. See Dorman, op. cit. supra note 10 at 61.
17. See Dhekney 67.
18. Ibid.
19. See Patricia and Stroud, "Thirty Years of India's Air Transport" 16 Asian and Indian Skyways 17 (September 1962).
20. The declaration, in principle, accepted the progressive realization of responsible Government in India and recognized the right of the Dominions and India to an adequate voice in the foreign policy. See Keith, A Constitutional History of India 1600-1935 467 (1936).
21. Ibid.
22. International Commission for Aerial Navigation is a body created by article 34 of the Paris Convention which exercised legislative, administrative and judicial functions in respect of subjects covered by the Convention.
23. See U.K. Air Ministry, Advisory Committee on Civil Aviation, "Report on Imperial Air Routes" Cmd. 449(1919). The very first recommendation was for the development of the air route from Egypt to India. For the importance of this route see 123 House of Commons Debates (5th ser.) 311 (1919).
24. See Dhekney 55.
25. Ibid.
26. For the agreement regarding the formation of the Imperial Airways Limited see Cmd. 2010 (1923).
27. See Davies, op. cit. supra note 12 at 33-34.
28. See Cmd. 2758 (1926).
29. See Higham, op.cit. supra note 15 at 122.

30. See Air Ministry, " Half-Yearly Report on the Progress of Civil Aviation October 1, 1919 to March 31, 1920", Cmd. 800 (1920).
31. Ibid.
32. Tata 3.
33. As cited by Tata, ibid.
34. Ibid.
35. See Gidwani 66.
36. See 214 House of Commons Debates (5th ser.) 1539 (1928).
37. See Higham, op. cit. supra note 15 at 125.
38. See Gidwani 66.
39. Ibid.
40. Tata 4.
41. Gidwani 67.
42. Ibid.
43. Ibid.
44. As far as Indian participation is concerned, this arrangement was in a way little better than the original charter agreement with the Imperial Airways for operation of 1929-1931 Karachi-Delhi service; nevertheless it violated the assurance given by the then Finance Minister to the Legislature in 1929 that 75% of the voting rights in any company formed to operate on trans-India route would be in Indian hands. See Tata 5-6; Dhekney 59.
45. See Higham, op. cit. supra note 15 at 176.
46. See Dhekney 60.
47. See Gidwani 70.
48. See Government of India, Report of the Air Transport Enquiry Committee 4 (1950) (Hereinafter cited as Enquiry Committee).

49. Tata 6.
50. Tata narrates the condition of ground facilities as follows: " with the exception of Karachi, which had radio and night landing facilities of a sort, the rest of the route was totally devoid of any aid whatever and Bombay, the principal base of the airline, did not even have an all-weather aerodrome. The Bombay " airport" was a dried mud flat near the sea serviceable only during eight months of the year. At high tide during the monsoon the " aerodrome " was more or less at the bottom of the sea ! As there were no lighting facilities at any of the airfields on the route no night flying was possible and with a night stop at Bellary the average speed from Karachi was a snappy 40 miles an hour.... Apart from heavy monsoon rains, the route was subject to thunderstorms, sandstorms and severe turbulence". Ibid at 7.
51. See Enquiry Committee 4.
52. See Dhekney 69-70.
53. Ibid at 71.
54. Ibid at 72.
55. See Davies, op. cit. supra note 12 at 197.
56. See Dhekney 73.
57. See Gidwani 74.
58. In 1938-1939 Air Services of India carried more than 75% of the total Indian passenger traffic. See Dhekney 77.
59. The following amount of subsidy was given by the ruling princely States. Kolhapur rupees 65,000; Baroda rupees 20,000; Navanagar rupees 18,000; Bhavnagar rupees 12,000; Porbander rupees 11,000 and Cutch rupees 6,000. See Dhekney 76-77.
60. See Gidwani 74.
61. See Tata 9.
62. See Enquiry Committee 5.
63. Ibid.

64. See Tata 9.

65. The following table indicates the progress made by the Indian scheduled air services during the period 1933-1938.

<u>Year</u>	<u>Miles flown</u>	<u>Passengers carried</u>	<u>Mails carried in Tonnes</u>	<u>Mileage of scheduled air route</u>
1933	153,680	155	10.5	5,180
1934	345,771	757	21.3	5,830
1935	553,754	553	43.4	6,395
1936	496,539	349	49.4	6,483
1937	622,193	1,178	61.3	7,500
1938	1,412,334	2,104	244.6	6,700*

* The reduction in mileage is due to the omission of Burma.

66. See Tata 10.

67. Ibid. For the changes brought about after the commencement of World War II, see generally Enquiry Committee 7-8; Gidwani 77-79; Dhekney 82-83.

68. India's proposals to the Committee with regard to article 6(scheduled air services), article 8(pilotless aircraft), article 10 (landing at customs airport), article 12(rules of the air), article 23(customs and immigration procedure), article 25(aircraft in distress), article 29(documents carried in aircraft), article 34(journey log book) and chapter x (air navigation commission) of the Convention were approved either wholly or with minor alterations by the Committee. See United States Government, 2 Proceedings of the International Civil Aviation Conference 1382-1389 (1949).

69. India accepted the Interim Agreement on May 1, 1945; Transit Agreement on May 2, 1945 and ratified the Convention on March 1, 1947. See Bin Cheng, The Law of International Air Transport 604(1962).

70. As cited, see Enquiry Committee 10.

71. See 9 and 10 Geo. 6 c.70.

72. The British Overseas Airways Corporation was established under the British Overseas Airways Act, 1939.

73. See Civil Aviation Act, 1946 Section 2.

74. See Cmd. 6712 para 15.
75. See chapter IX post.
76. The name of the companies and the route operated by them in 1947 are given in Appendix III.
77. See Tata 10.

CHAPTER II

1. See Government of India, Report of the Air Transport Enquiry Committee 13 (1950). (Hereinafter cited as Enquiry Committee).
2. Gidwani, History of Air Transport 90 (1954). (Hereinafter cited as Gidwani).
3. Ibid.
4. See Tata, "The Story of Indian Air Transport" 13 The Journal of the Aeronautical Society of India 15 (February 1961).
5. Ibid.
6. Enquiry Committee 18.
7. Gidwani 101.
8. See Tata, op.cit. supra note 4 at 13.
9. The following statistics show the extent to which night air service gained importance.

<u>Year</u>	<u>Passengers carried</u>	<u>Freight carried in lbs.</u>	<u>Mails carried in lbs.</u>
1949	3,559	228,385	842,963
1950	30,697	966,416	2,381,117
1951	34,669	1,072,495	2,547,384
1952	27,409	1,068,898	2,905,184
1953	24,592	1,120,107	3,196,121

10. Gidwani 100.
11. The Committee consisted of Justice Rajadhyaksha, Judge of the Bombay High Court as Chairman, H.L. Dey, Member of Tariff Board and R. Narayanaswami, Joint Secretary to the Government of India, Ministry of Finance as members. A senior officer of the

Trans-Australia Airlines, J.L. Watkins with wide experience of technical, financial and traffic organization in air transport was also appointed as Adviser to the Committee. See Government of India, Ministry of Communications, Resolution No. 1-A/27-49, February 8, 1950.

12. Enquiry Committee 60.
13. Ibid at 110.
14. Ibid at 116-117.
15. Ibid at 140-149.
16. Ibid at 179-189.
17. Tata, op. cit. supra note 4 at 18.
18. There were altogether fourteen Members in the Interim Government set up in 1946 dealing with different portfolios. Their functions were comparable to these of the Cabinet Ministers today.
19. See Enquiry Committee 180.
20. Ibid at 181.
21. India, House of People Debates, April 20, 1953 col. 4632-4633. As cited Ganguly, Public Corporations in a National Economy 24 (1963).
22. Ibid.
23. For salient features of the Air Corporations Act, 1953 see chapter IX, post.
24. The name was changed to Air India in 1962. See Air Corporations (Amendment) Act, 1962.
25. The operation features of the Indian airlines as on July 31, 1953 are given in Appendix IV and their route map in Figure 1.
26. A statement of the scheduled services operated by Air India is given in Appendix V and the route map in Figure 2.
27. ATKm stands for Available Tonne Kilometer. It is the product obtained by multiplying the capacity in metric tonnes available for passenger, mail and

cargo by the distance in kilometers flown by the aircraft.

28. See Annual Reports Air India 1954-1965.
29. RTKm is Revenue Tonne Kilometer which represents the actual sales out of the capacity produced.
30. Davies, A History of the World Airlines 396(1964).
31. The eight airlines were Air India, Air Services of India, Airways(India), Bharat Airways, Deccan Airways, Himalayan Aviation, Indian National Airways and Kalinga Airlines.
32. See Government of India, Air Transport Council, Report on Indian Airlines Corporation's Fares and Freight Rates 23 (1957).
33. The following statistics show the profit and loss position of Indian Airlines Corporation during the last ten years.

<u>Year</u>	<u>Revenue</u>	<u>Expenditure</u>	<u>Loss</u>	<u>Profit</u>
	(in millions of rupees)			
1954-55	69.24	78.26	9.02	-
1955-56	80.86	92.80	11.94	-
1956-57	86.13	97.01	10.88	-
1957-58	92.60	102.91	10.31	-
1958-59	108.24	117.36	9.12	-
1959-60	119.49	118.71	-	.78
1960-61	130.62	130.15	-	.47
1961-62	151.62	150.83	-	.79
1962-63	173.13	167.04	-	6.09
1963-64	199.08	188.64	-	10.44

34. The fleet composition of the Indian Airlines Corporation from year to year beginning with nationalization is shown in Appendix VI.
35. A statement of the scheduled services operated by Indian Airlines Corporation is given in Appendix VII and the route map in Figure 3.

CHAPTER III

1. See 10 and 11 Geo. VI. c. 30.
2. Though by Section 4 of the Statute of Westminster no United Kingdom Statute can extend to Dominion

territory as part of the law of that Dominion, unless it is expressly ~~consented~~ to by the Dominion, safeguards were inserted in the Statute to preserve the constitutions of the Dominions from amendment otherwise than in accordance with the law existing before the commencement of the Act. See The Statute of Westminster Sections 7(1), 8 and 9(1).

3. See Indian Independence Act Section 8.
4. Ibid Section 18(3).
5. Indian Constitution Article 372 paragraph 1.
6. See Partington v. Partington, High Court of Tanganyika E.A. 579(1962). In this case the Court held that "it is a well recognized principle of constitutional law that all legislation applicable to a territory remains applicable unless the instrument setting up the new constitution provides otherwise in clear terms".
7. See Indian Constitution Article 372 and Article 366 paragraph 10.
8. 2 Basu, Commentary on the Constitution of India 604 (3rd ed. 1956).
9. See Indian Constitution Article 246 paragraph 1.
10. Ibid, seventh schedule list 1, item 29.
11. Ibid, item 30.
12. See The King v. Burgess ex parte Henry, 55 CLR 608 (1936); James v. The Commonwealth, 55 CLR 1(1936); Australian National Airways Pty. Ltd. v. The Commonwealth 71 CLR 29(1945).
13. See Attorney General for Canada v. Attorney General for Ontario, et. al. 1 DLR 58(1932).
14. See Wade and Phillips, Constitutional Law 275 (7th ed. 1965).
15. Ibid at 29.
16. Cmd. 4060 (1932).
17. See Panama Refining Co. v. Ryan, 293 US 388(1934). In this case, Justice Cardozo said: "to uphold the delegation there is need to discover in the terms of the Act a standard reasonably clear whereby the discretion must be governed". Ibid at 434.

18. See AIR(1961)S.C. at 4.
19. As cited Tope, The Constitution of India 297 (2nd ed. 1963).
20. 1 Shawcross and Beaumont, Air Law 104 (3rd ed. 1966).
21. The Committee consists of fifteen members nominated annually by the Speaker of the House of People who also appoints the Chairman. See Jain, Indian Constitutional Law 130(1962).
22. See Shukla, "Judicial Control of Delegated Legislation in India" I Journal of the Indian Law Institute 357(1959).

CHAPTER IV

1. The general exceptions are (i) any aircraft belonging to or exclusively employed in the naval, military or air force of India; and (ii) any aircraft exempted by the Central Government. See Indian Aircraft Rules, 1937 Rule 160 and Aircraft Act, 1934 Sections 3, 19.
2. See Cooper, The Legal Status of Aircraft 9 (Mimeo, 1949).
3. Jennings, "International Civil Aviation and the Law", 22 British Yearbook of International Law 207(1945).
4. See Chicago Convention, 1944 Article 17.
5. See Paris Convention, 1919 Article 6
6. Indian Aircraft Rules, 1937 Rule 2.
7. See Paris Convention as amended by Protocol of June 15, 1929 Article 7.
8. Indian Aircraft Rules, 1937 Rule 30(2).
9. See Jennings, op.cit. supra note 3 at 207.
10. This corresponds to Article 18 of the Chicago Convention and Article 8 of the Paris Convention which prohibit dual registration of aircraft.

11. See Indian Aircraft Rules, 1937 Rule 36.
12. The nationality mark of the aircraft registered in India is the capital letters VT in Roman character and the registration mark is a group of three capital letters in Roman character assigned by the Director General of Civil Aviation.
13. Indian Aircraft Rules, 1937 Rule 49.
14. See ibid, Rule 50.
15. See ibid, Part V and Schedule II.
16. See ibid, Rule 64.
17. See ibid, Rule 8.
18. See ibid, Rule 10.
19. See ibid, Rule 13A.
20. See Indian Aircraft (Public Health) Rules, 1954 Rule 33.
21. See Indian Aircraft Rules, 1920 Rule 53(a).

CHAPTER V

1. Air Corporations Act, 1953 Section 2 clause ii. Chicago Convention gives a much simpler definition but restricts it to scheduled services. According to Article 96 of the Chicago Convention an air service is any scheduled air service performed by aircraft for public transport of passengers, mail or cargo.
2. The International Air Services Transit Agreement provides that each Contracting State grants to the other Contracting State the two freedoms of the air viz., the privilege (i) to fly across its territory without landing and (ii) to land for non-traffic purposes in respect of scheduled international air services. See International Air Services Transit Agreement Article 1.

- 3.. The International Air Transport Agreement includes, in addition to the first two freedoms, the third freedom viz., freedom to carry traffic from the home State of the carrier to the grantor State; the fourth freedom viz., freedom to carry traffic from the grantor State to the flag State of the carrier and fifth freedom of carrying traffic on a route to and from the State whose nationality the carrier possesses between two other States. Twenty States including the United States represented at the Conference in Chicago signed the Agreement; but not the United Kingdom nor any other member of the Commonwealth. United States has since denounced the Agreement.
4. Cheng, The Law of International Air Transport 25(1962).
5. Lissitzyn, "Bilateral Agreements on Air Transport", 30 Journal of Air Law and Commerce 248(1964).
6. In United States it may take the form of 'foreign air carrier permits' or 'non-common carrier flight permits' as envisaged in Section 402 and 1108(b) of the Federal Aviation Act. See Calkins, "The Role of the Civil Aeronautics Board in the Grant of Operating Rights in Foreign Air Carriage", 22 Journal of Air Law and Commerce 256(1955).
7. If the agreement is concluded at New Delhi, it is signed by the Minister in charge of the Department of Civil Aviation or by the highest civil servant of that Department; if concluded abroad, the accredited representative of India to that country, on instructions from the Government of India, signs the agreement.
8. In reply to an enquiry made by the author the Ministry of Transport and Aviation, Government of India furnished the following information:
 - " i) Ratification of the Agreement is not essential by Law but as a practice all the newly entered Agreements contain a ratification clause.
 - ii) This is more or less a uniform policy of the Government of India in the recently concluded Air Agreements.
 - iii) Wherever, an agreement contains ratification clause, it comes into force only after ratification unless otherwise provided in the Agreement.
 - iv) Normally retrospective(sic) effect is not given to the bilateral Air Transport Agreements.
 - v) The Instruments of Ratification are signed by

the President of India". Letter No. 759-A/67 dated March 8, 1967 from Mr. S.N. Kaul, Under Secretary to the Government of India addressed to the author.

9. See Stoffel, "American Bilateral Air Transport Agreements on the Threshold of the Jet Transport Age", 26 Journal of Air Law and Commerce 123(1959).
10. For the legality and advantages of Executive Agreements see Lissitzyn, "The Legal Status of Executive Agreements in Air Transportation, 17 Journal of Air Law and Commerce 436-453(1950) and 18 Journal of Air Law and Commerce 12-32 (1951).
11. See Appendix VIII.
12. See Agreement between India and Japan November 26, 1955 Section 1 and 2; Annex to the Agreement between India and Ceylon December 21, 1948.
13. See Agreement between India and Egypt June 14, 1952; Agreement between India and Iraq July 27, 1955; Agreement between India and Thailand June 12, 1956; Agreement between India and the United States of America, February 3, 1956.
14. See Exchange of Notes dated November 13, 1962 between India and the Soviet Union amending the air services agreement of June 2, 1958; Agreement between India and Czechoslovakia September 19, 1960.
15. In 1964 after eight years of its agreement with the United States based on the principle of pre-determination India had to succumb to the cherished American desire of Bermuda philosophy. This was the time when Air India wanted to operate daily flights throughout the year between London and New York. See Diplomatic Exchange of Notes between India and USA dated October 26, 1964 amending and implementing the agreement of February 3, 1956 and replacing the related Exchange of Notes of the same date.
16. See Agreement between India and Czechoslovakia September 19, 1960 Article 4; Agreement between India and France July 16, 1947 amended Article 1; Agreement between India and Italy July 16, 1959 Article 4; Agreement between India and Soviet Union June 2, 1958 Article 5; Agreement between India and Netherlands February 24, 1951 Article 4.

17. In the case of Soviet Union which is not a member of the International Air Transport Association the agreement provides that tariffs will be agreed between Air India and Aeroflot subject to the approval of the aeronautical authorities of both the Governments. See Agreement between India and Soviet Union June 2, 1958 Article 6.
18. See Annual Report 1964-65, Air India, at 13.
19. Government of India, Report of the Air Transport Enquiry Committee 11(1950).
20. See United States, Civil Aeronautics Act, 1938 Section 401 (e) (i).
21. See Chapter 1 at 31-33 supra.
22. An associate is any subsidiary of the Corporation or any person with whom the Corporation has made agreements, with the approval of the Central Government to provide air transport service on behalf of or in association with the Corporation. See Air Corporations Act, 1953 Section 2 clause iii and Section 7 subsection 2.
23. See Ibid Section 19.
24. The Air Corporations Act, 1953 did not restrict the right of any person with the prior permission of the Central Government (i) for carrying passengers for the sole purpose of instructing them in flying or on duties of aircrew, (ii) for carrying passengers or goods for the sole purpose of primarily an air ambulance service or a rescue or relief service during any natural calamity or (iii) for carrying passengers or goods for the sole purpose of providing joyrides or for the purpose of aerial survey, fire fighting, crop dusting, locust control or any other aerial work of a similar nature. See ibid Section 18.
25. See ibid Amended Section 18 clause (e); Indian Aircraft (Fourth Amendment) Rules, 1965.
26. Indian Aircraft (Fourth Amendment) Rules, 1965, Schedule XI para 1.
27. Ibid para 8(2).

28. Ibid para 8(3).
29. Ibid para 9.
30. See Cheng, op.cit. supra note 4 at 195.
31. The information required is (a) the route to be flown; (b) the date of proposed flight; (c) the type of aircraft; (d) the nationality and registration marks of the aircraft; (e) the call sign of the aircraft; (f) the description of the radio equipment carried; (g) the name of the Commander of the aircraft; (h) the name, address and nationality of operator of the aircraft; (i) the number of crew and also of passengers, if any, as well as general description of goods carried; and (j) such other information as may be required by the Director General of Civil Aviation.
32. If the entry is from the West, Bombay(Santacruz) Airport; if the entry is from the West via Karachi Airport, Bombay(Santacruz) Airport, Ahmedabad or Delhi (Palam)Airport; (b) if the entry is from the East, Calcutta (Dum Dum) Airport, but aircraft from Singapore may also land directly at Madras (St. Thomas Mount) Airport; (c) if the entry is from the South, Madras (St. Thomas Mount) Airport or Tiruchirapalli Airport; and (d) if the entry is from Nepal, Calcutta (Dum Dum) Airport, Delhi(Palam) Airport, Patna Airport or Varanasi (Babalpur)Airport. If on a transit flight across India, the aircraft can make intermediate landings in India only at places approved by the Director General of Civil Aviation. See Government of India, Notice to Airmen No. 22 of 1962 at p.3
33. Chicago Convention, 1944 Article 5 para 2 .
34. Ibid.
35. See ICAO Document 7278-C/841 May 10, 1952.
36. See Cheng, op.cit. supra note 4 at 197 citing Goudsmit's survey of 1953 which states that "Only six States did not require a prior permission while thirty-six did".
37. See Government of India, op.cit. supra note 32 at 3.
38. The certificate should be obtained from Indian Airlines Corporation if the traffic is for neighbouring countries to which Indian Airlines

Corporation operates scheduled services and from Air India if the traffic is for countries to which IAC does not operate scheduled services. If Air India or Indian Airlines Corporation is willing to undertake the carriage of the traffic within a reasonable time, permission will not be granted by Director General of Civil Aviation.

39. See Government of India, op.cit. supra note 32 at 4.
40. Ibid.
41. See Government of India, op.cit. supra note 19 at 151.
42. The nine independent operators holding permits for the operation of non-scheduled air services are Airways(India)Ltd., Air Survey Company of India (P)Ltd., Bharat Commerce and Industries (P)Ltd., Kalinga Airlines (P)Ltd., Aviation Service, Wings, India (P)Ltd., Gambata Aviation (P)Ltd., Kasturi and Sons Ltd., and Jamair Company(P)Ltd. See Government of India, Ministry of Transport and Aviation, Annual Report 1965-66, at 7.

CHAPTER VI

1. Gutteridge, Comparative Law 155(1949).
2. Greene, L.J., in Grein v. Imperial Airways Ltd., (1936) 2 All E.R. 1278.
3. See Da Silva, "Commercial Law in India" in Some Aspects of Indian Law Today 51-63(British Institute of International and Comparative Law, 1964).
4. Deshpande, "Common Law Liability of State in India" ibid at 25.
5. See Cheng, "High Contracting Parties in Air Law", The Journal of Business Law 34(1959).

6. The original signatories were Australia, Austria, Belgium, Brazil, Czechoslovakia, Denmark, France, Germany, Great Britain, and Northern Ireland, Greece, Holland, Italy, Japan, Lithuania, Luxembourg, Norway, Poland, Roumania, Spain, Switzerland, the Union of South Africa, the USSR and Yugoslavia.
7. See Shah J, in Dabrai v. Air India Ltd., (1954) Bombay Law Reporter at 944 as cited 20 Lauterpacht, International Law Reports 42(1957).
8. see ibid.
9. (1954) Bombay Law Reporter 944. (This case is not fully reported).
10. As cited Lauterpacht, op.cit. supra note 7 at 45.
11. See Narichania, Cargo Liabilities and Immunities of Air Carriers at xvi (1964).
12. See op.cit. supra note 2
13. See (1939) A.C. 332.
14. Ibid at 336.
15. As cited Hackworth, Digest of International Law 373(1942).
16. The House of Lords said that subsection 2 of section 1 of the Carriage by Air Act, 1932 "only gives power to His Majesty by Order-in-Council to certify who are the High Contracting Parties to the Convention and does not provide that any State not so certified is not a High Contracting Party to the Convention". See op.cit. supra note 13 at 337.
17. See Warsaw Convention, Article 18(2).
18. See op.cit. supra note 7
19. As cited Narichania, op.cit. supra note 11 at 19.
20. See (1936) 2 All E.R. 890

21. Ibid at 894.
22. Ibid at 895.
23. CITEJA (Comité International Technique d'Experts Juridiques Aériens) was the working and drafting committee composed of lawyers appointed by the International Private Air Law Congress held in Paris in 1925. The functions of this body were taken over by the Legal Committee of the International Civil Aviation Organization in 1947.
24. See I Shawcross and Beaumont, Air Law 336 (3rd ed. 1966).
25. For a detailed discussion of the Hague Protocol see Beaumont "The Warsaw Convention of 1929 as amended by the Protocol signed at the Hague on September 28, 1955", 22 Journal of Air Law and Commerce 414(1955); Calkins, "Grand Canyon, Warsaw and the Hague Protocol", 23 Journal of Air Law and Commerce 253(1956); Reiber, "Ratification of the Hague Protocol: its relation to the Uniform International Carrier Liability Law achieved by the Warsaw Convention" 23 Journal of Air Law and Commerce 272(1956); New York Bar Association, "Report on the Warsaw Convention as amended by the Hague Protocol" 26 Journal of Air Law and Commerce 255(1959); Forrest, "Carriage by Air: The Hague Protocol", 10 International and Comparative Law Quarterly 726(1961).
26. See Indian Delegate(D.S.Bhatti), Minutes of 14th Meeting September 15, 1955, ICAO Doc. 7686-LC/140, Vol.I. at p.166.
27. See ibid, Vol. II at 76-81.
28. See ibid, Vol. I. at 167.
29. The Notification was issued by the Central Government on December 17, 1963, bearing General Statutory Regulation No. 1967, in exercise of the powers conferred on the Government by Section 4 of the Indian Carriage by Air Act, 1934. The rules contained therein have statutory effect.(Hereinafter cited as 1963 Notification).

30. 1963 Notification, Rule 1(3), First Schedule.
31. Ibid, Rule 2.
32. McNair, The Law of the Air 192(3rd ed.1964).
33. Rs. 42,000 is almost equivalent to 125,000 francs, the limit fixed in accordance with the Warsaw Convention.
34. See op.cit. supra note 30, Rule 22(1).
35. See ibid. Rule 22(1A).
36. See ibid. Rule 19.

CHAPTER VII

1. See Chapter 1 at 16-17 supra.
2. See ibid at 29-31.
3. See Government of India, Report of N. Gopalaswami Ayyangar regarding reorganization of the machinery of Government (1949); Gorwala's Report on Public Administration (1951); Appleby's Report of a Survey Public Administration in India (1953).
4. On formation of the new Council of Ministers in March 1967 after the fourth general elections in India, Department of Aviation comes under the Ministry of Tourism and Civil Aviation in the charge of a Minister holding cabinet rank. See New York Times (March 14, 1967) p.8 col.2.
5. See Government of India, Presidential Order Doc. CD-534/66, September 18, 1966.
6. See The Aircraft Act, 1934 Sections 3,4, 5, 6, 7, 8, 8A, 8B, 9 and 10.
7. Ibid Section 14.
8. Ibid Section 14A.

9. Ibid Section 4.
10. See Government of India, Aeronautical Information Circular No. 3/1965 (9/30/59-IR) January 19, 1965.
11. See The Aircraft Act, 1934 Section 7.
12. See The Indian Carriage by Air Act, 1934 Section 3.
13. Ibid Section 4.
14. A complete list of powers delegated to the Director General of Civil Aviation and his subordinate officials is given in Appendix IX.
15. See Indian Aircraft Rules, 1937, amended rule 134; Government of India Notification No. GSR 1087, July 19, 1965.
16. Ibid.
17. Ibid.
18. There does not exist any material difference between the Standards and Recommended Practices as incorporated in Annex 13 to the Chicago Convention and the Indian regulations. See ICAO, Amendment No. 3 Supplement to Annex 13 Aircraft Accident Enquiry, November 1, 1960.
19. See Indian Aircraft Rules, 1937, Rule 68. "An accident in which an aircraft is involved shall be notified in accordance with the provisions of subrules (3), (4) and (5) of this rule if between the time any person boards the aircraft with the intention of flight until such time as all such persons have disembarked:- (a) any person suffers death or serious injury as a result of being in or upon the aircraft or by direct contact with the aircraft or anything attached thereto, or (b) the aircraft receives substantial damage".
20. Ibid, Rule 71(2).
21. Ibid, Rule 71(4).
22. Ibid, Rule 71(3).
23. Ibid, Rule 71(6).
24. Ibid, Rule 75(3).

25. ICAO, Aircraft Accident Enquiry, Annex 13 to the Convention for International Civil Aviation 8(1966).
26. See Defence of India (Fourth Amendment) Rules, 1965 Rule 105(B).

CHAPTER VIII

- 1.. Shocked by the British rule in India, over a hundred years ago Karl Marx drew the conclusion: "The profound hypocrisy and inherent barbarism of bourgeois civilization lies unveiled before our eyes turning from its home, where it assumes respectable forms, to the colonies, where it goes naked". cited by Sachs, Patterns of Public Sector in Underdeveloped Economies 106(1964).
2. U.K.Govt., "Reports of the Civil Aerial Transport Committee", Cd. 9218(1918).
- 3.. U.K.Govt., "Synopsis of Progress Work in the Department of Civil Aviation, 1st May 1919 to 31st October 1919", Cmd. 418(1919).
4. Govt. of India, "Statement on Industrial Policy of Indian Government April 6, 1948" in 1 Selected Documents on Asian Affairs, India 1947-60 568 (Poplai ed. 1959)
5. Sachs, op.cit. supra note 1 at 123 citing Anand, The Constitution of India 148(1957).
6. The Directive Principles are not enforceable by any court of law; nevertheless they are "fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws". See Indian Constitution, Article 37.
7. Ibid Article 39(b).
8. Ibid Article 39(c).
9. By the provisions of the Industrial (Development and Regulation) Act 1951, all new and existing undertakings and any substantial expansion of

existing undertakings were required to be licensed. Government is also empowered to make periodical investigations into the working of industrial undertakings and in case of unsatisfactory working, the Government can take over the management, or control. See Government of India, India 1964, A Reference Manual 253(1964).

10. See generally, Narayan Socialism in Indian Planning (1954).
11. By the Industrial Policy Declaration of April 30, 1956 a large number of industries including aircraft and air transport came under the exclusive responsibility of the State. See Government of India, op.cit. supra note 9 at 255.
12. See Wheatcroft, Air Transport Policy 46(1964).
13. See Robson, Nationalised Industry and Public Ownership 17(1960).
14. See Brunkmann, "Public Utilities" 12 Encyclopaedia of Social Sciences (Seligman ed. 1957).
15. See Koontz and Gable, Public Control of Economic Enterprise 208(1956).
16. I. Smith, The Wealth of Nations 130(Cannan ed.1904).
17. Melton, "Transport Coordination and Regulatory Philosophy" 24 Law and Contemporary Problems 622(1959) citing Peterson "Transport Coordination Meaning and Purpose" 38 Journal of Political Economics 680(1930).
18. Cited by Wheatcroft, op.cit. supra note 12 at 53.
19. President Roosevelt epitomized the importance of civil aviation to national defence in a letter to the National Aviation Forum on January 24, 1939 as follows: "Civil aviation is clearly recognized as the backlog of national defence in the Civil Aeronautics Act which sets up the effective machinery for a comprehensive national policy with respect to the air.... hardly another civil activity of our people bears such a direct and intimate relation to the national security as does civil aviation. It supplies a reservoir

of inestimable value to our military and naval forces in the form of men, and machines, while at the same time it keeps an industry so geared that it can be instantly diverted to the production of fighting planes in the event of national emergency". cited by Lissitzyn, International Air Transport and National Policy 92(1942).

20. See Thomas, Economic Regulation of Scheduled Air Transport 2(1956).
21. U.S.Govt., "Control of Civil Aviation", Executive Order No. 8974, December 13, 1941 in US Aviation Reports 301(1942).
22. Thomas, op.cit. supra note 20 at 32 citing an article entitled "The World's Greatest Airline", 32 Fortune 159(1945).
23. Frederick, Commercial Air Transportation 311 (5th ed. 1961).

CHAPTER IX

1. See Singh, "Public Corporations in India", 1 The Indian Law Journal 3(1957).
2. See Indian Constitution, amended Article 19, clause 6.
3. Ibid.
4. See Narayanappa v. State of Mysore, (1960)AIR Supreme Court 1073; Parbhani Transport Society v. R.T.A. (1960)AIR Supreme Court 801. As cited Basu, Introduction to the Constitution of India 374(2nd ed. 1962).
5. See State v. Mahajani, (1951) AIR Bombay 459. As cited L. Basu, Commentary on the Constitution of India 215(3rd ed. 1955).
6. See Indian Constitution, Article 39(b) and (c).
7. See Friedmann, The Public Corporations 190(1954).

8. For advantages on account of the flexibility of the size of the governing body see Robson, Nationalized Industry and Public Ownership 214(1960).
9. See The Air Corporations Act, 1953 Section 4(2).
10. See Government of India, Decisions of the Government of India on the Recommendations Contained in the Report of the Krishna Menon Committee and Other Reports and Studies on the Running of Public Sector Undertakings (1961).
11. See Robson, op.cit. supra note 8 at 238.
12. See The Air Corporations (Amendment) Act, 1962 Section 30(a) and (b).
13. See The Air Corporations Act, 1953 Section 41.
14. See ibid Section 9.
15. The power to acquire, hold or dispose of property is however limited by Section 35 of the Air Corporations Act, 1953 according to which "neither Corporations shall without the previous approval of the Central Government (a) undertake any capital expenditure for the purchase or acquisition of any immovable property or aircraft or any other thing at a cost exceeding rupees fifteen lakhs; (b) enter into a lease of any immovable property for a period exceeding five years; or (c) in any manner dispose of any property, right or privilege having an original value exceeding rupees ten lakhs."
16. See ibid Section 45.
17. Ibid Section 38.
18. See Robson, op.cit. supra note 8 at 141.
19. See The Air Corporations Act, 1953 Section 34(1).
20. Ibid Section 34(2).
21. See the statement made by the Speaker of the House of the People, June 10, 1952 while ruling out a short notice question. He said: "... though sovereign it(Parliament) is and it may go into

question in any part of India, yet under the scheme of our constitution, we have created certain autonomous bodies and if we want that the spirit of self-government should increase, then that autonomy should be least interfered with by putting questions in this House". See Singh, op.cit. supra note 1 at 48 citing Parliamentary Debates, House of the People, June 10, 1952 col.746. About the admissibility of questions in regard to the Corporations in United Kingdom see Robson, op.cit. supra note 8 at 166-177.

CHAPTER X

1. See Appendix X.
2. See Unni, "Air India-World's First Airline to Go All Jet" 36 Indian Aviation 247(1962).
3. Corbett, Politics and the Airlines 305(1965).
4. See Figure 2.
5. By June 1962 Air India became the world's first airline with all jet aircraft. It has now a fleet of eight Boeing 707s.
6. Since the introduction of Boeings the cost per available Tonne-Kilometer has shown a steady downward trend and has reached the lowest figures of approximately 17 U.S.cents.
7. The present rate of utilization of 10.8 hours per aircraft per day is one of the highest in the world.
8. In 1961 the United States Federal Aviation Agency awarded to Air India its Approved Repair Station Certificate in recognition of high standards and equipment of workmanship with which Air India repairs and overhauls its aircraft. The certificate also represents the first endorsement by the Federal Aviation Agency in the Near and Middle East and South Asia of a maintenance facility certified for Boeing 707 aircraft.

9. See Corbett, op.cit. supra note 3 at 303-323.
10. The first General Manager was appointed only at the end of 1957. See 19 Asian and Indian Skyways 7 (November 1965).
11. In 1965 Indian Airlines Corporation carried 1,185,843 passengers. See ICAO, Digest of Statistics Traffic 1960-1965 at 240.
12. See U.K. Government, Report from the Select Committee on Nationalized Industries at x(1959).
13. The fleet consisted of 74 Dakotas, 3 Skymasters, 12 Vikings, 1 Twin Beech, 1 Single Beech, 1 Aero XIX, 1 De Havilland Dove, 5 L-5 Sentinel and 1 Saab Safir. See Ramamritham and Ekbote, "Some Thoughts on Desirable Features for a Civil Air Transport Aircraft for Operations on Short/Medium Range Routes in India", 17 The Journal of the Aeronautical Society of India 84(1965).
14. See Appendix VI, for the fleet composition of the Indian Airlines Corporation from year to year beginning from nationalization.
15. See "A Study of Indian Airlines Workings" 39 Indian Aviation 253(1965).
16. See ibid.
17. During 1964-65, the load factor was 73.3% compared to the overall load factor of 69.7%. Annual utilization during the same period rose to 1712 hours from 1340 hours during the previous year.
18. For the desirable features of a transport aircraft for operations on medium and short haul routes see Ramamritham and Ekbote, op.cit. supra note 13 at 105-106.
19. See Parakh, "Future of Civil Aviation in India", 18 Asian and Indian Skyways 29(August 1964).
20. See ibid.
21. See Richmond, "Some Aspects of Planning for New Sources of Airport Revenues" 23 Journal of Air Law and Commerce 19-26(1956).

22. Cited by Frederick, Commercial Air Transportation 383 (5th ed. 1961).
23. Government of India, Air Transport Council, Report on Indian Airlines Corporation Fares and Freight Rates 126(1957).

CHAPTER XI

1. Mullick, Air Transport in India 4 (An Address delivered at the Convention of the Travel Agents' Association held at Hyderabad, March, 1963).
 2. Air Transport Licensing Board is an independent body established by Section 1(1) of the Civil Aviation (Licensing) Act, 1960.
 3. Lopes-Gutierrez, Government Control of Airlines in Western Europe 103 (Institute Thesis, April 1965).
 4. See Richardson, "Aviation Law in Australia" 1 Federal Law Review 274 (1965).
 5. See Chande, "Feeder Airline Service- An Urgent Need", 18 Asian and Indian Skyways 25 (February 1964). I have leaned heavily on this article.
 6. MacLay and Burt, "Entry of New Carriers into Domestic Trunkline Air Transportation" 22 Journal of Air Law and Commerce 134(1955) citing 4 CAB 373(1944).
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FIGURE 1
Route Map Of Indian Airlines
(July 1953)

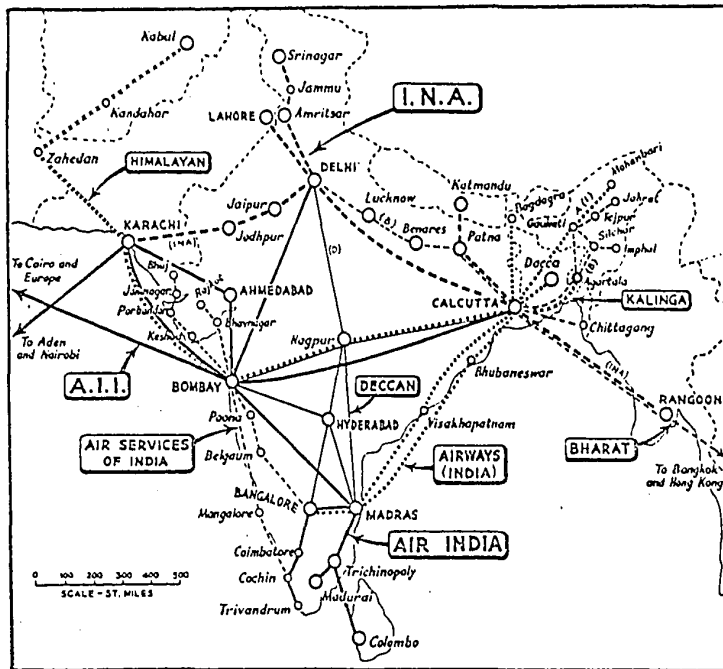


FIGURE 2

AIR INDIA ROUTE MAP

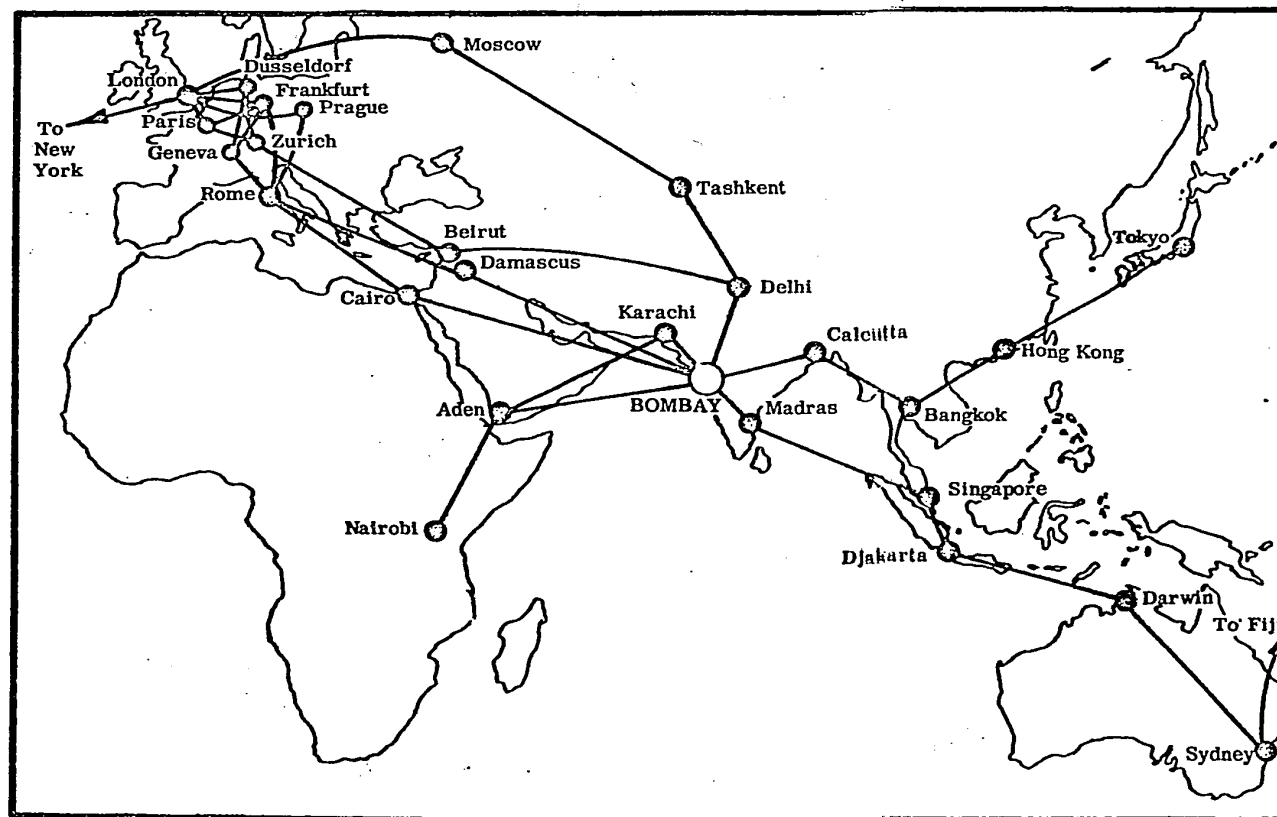
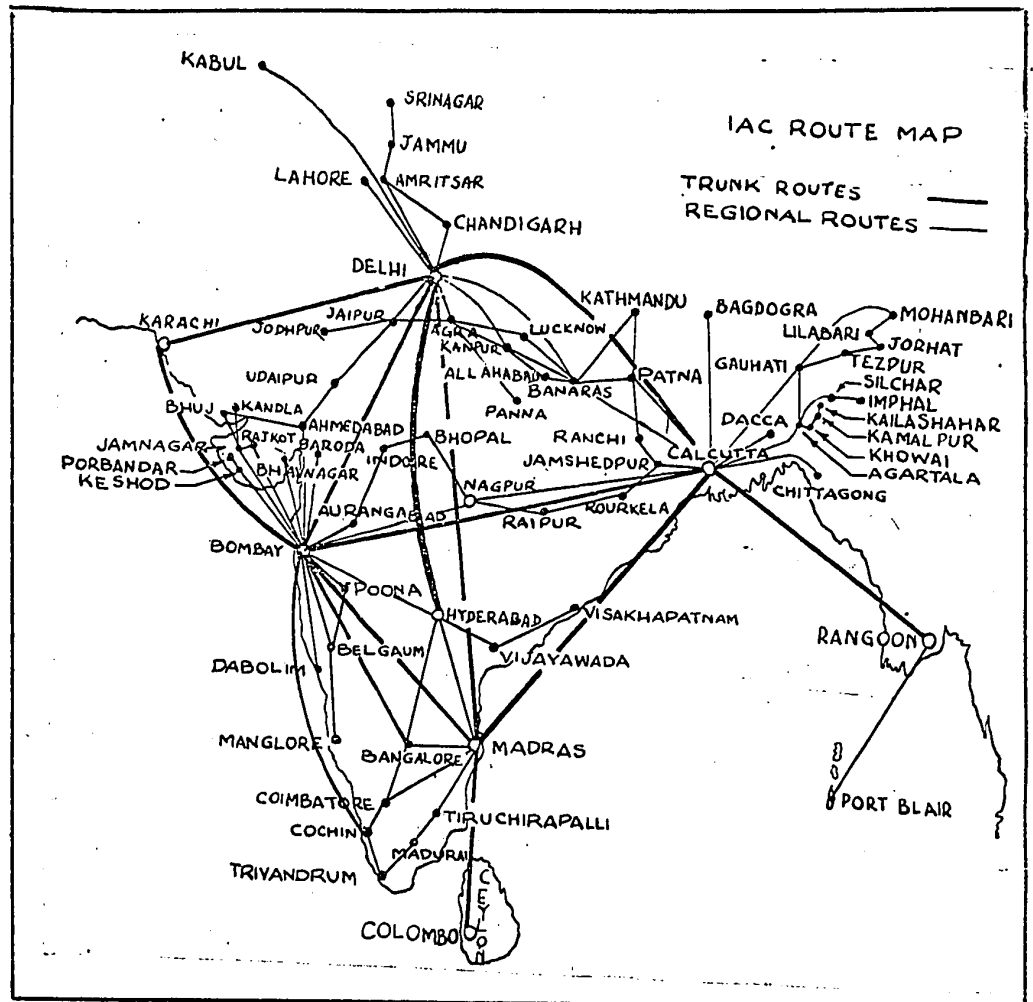


FIGURE 3
IAC Route Map



APPENDIX I

INDIAN SCHEDULED AIR SERVICES
ON THE EVE OF WORLD WAR II

<u>Company</u>	<u>Route</u>	<u>Frequency</u>
Tata Airlines	i) Karachi-Bombay- Madras-Colombo	5 weekly
	ii) Bombay-Cannanore- Trivandrum- Trichinopoly	1 weekly (seasonal)
	iii) Bombay-Indore- Bhopal-Gwalior- Delhi	2 weekly (seasonal)
Indian National Airways	i) Karachi-Lahore	5 weekly
	ii) Lahore-Delhi	3 weekly
Air Services of India	i) Bombay-Bhavnagar- Rajkot-Jamnagar- Porbander	6 weekly (seasonal)
	ii) Bombay-Poona- Kolhapur	3 weekly (seasonal)

(Source: Gidwani, History of Air Transport 75(1954)

APPENDIX II

TRAFFIC AND ROUTE OPERATED BY INDIAN
AIRLINES DURING WORLD WAR II

<u>Year</u>	<u>Miles flown</u>	<u>No. of pass- engers.</u>	<u>Freight in lbs.</u>	<u>Mails in lbs.</u>
1939	1,686,590	3,518	98,449	456,883
1940	1,335,197	3,646	48,852	118,101
1941	1,292,397	3,747	39,511	142,132
1942	1,619,564	4,659	163,242	342,921
1943	1,925,980	7,574	642,885	412,580
1944	2,120,878	13,433	1,163,725	370,659
1945	3,320,277	24,090	852,068	480,616

(Source: Dhekney, Air Transport in India 84-85(1953))

Route

Karachi-Colombo
Bombay-Delhi
Bombay-Calcutta
Bombay-Karachi
Bombay-Colombo
Delhi-Karachi
Calcutta-Dinjan
Calcutta-Jorhat
Calcutta-Gaya-Allahabad-Cawnpore-Delhi
Lahore-Multan-Jacobabad-Karachi
Lahore-Gujerat-Rawalpindi-Peshwar
Lahore-Jacobabad-Quetta
Delhi-Bhopal-Hyderabad-Bangalore-
Trichinopoly-Colombo
Delhi-Jodhpur-Karachi, and
Delhi-Ahmedabad-Bombay

(Source: Government of India, Air Transport
Enquiry Committee Report 7(1950))

APPENDIX III

INDIAN SCHEDULED AIR SERVICES
IN AUGUST 1947

<u>Airline</u>	<u>Route</u>
Tata Airlines	Bombay-Madras Karachi-Ahmedabad-Bombay- Hyderabad-Madras-Colombo Bombay-Ahmedabad-Delhi- Bombay-Calcutta Madras-Bangalore-Cochin- Trivandrum
Indian National Airways	Lahore-Delhi-Calcutta Delhi-Lucknow-Cawnpore- Allahabad-Calcutta Delhi-Jodhpur-Karachi Delhi-Lahore-Chaklala-Peshwar Lahore-Bikaner-Jodhpur- Ahmedabad Lahore-Quetta-Karachi
Air Services of India	Bombay-Junagarh-Portbender- Jamnagar-Bhuj-Karachi Bombay-Bhopal-Cawnpore-Lucknow- Jamnagar-Wadhwan-Ahmedabad Bombay-Gwalior-Delhi
Deccan Airways	Delhi-Bhopal-Nagpur-Hyderabad- Madras Hyderabad-Bangalore Hyderabad-Bombay
Mistri Airways	Bombay-Nagpur-Calcutta
Ambica Airlines	Bombay-Baroda-Ahmedabad-Bombay- Rajkot-Morvi
Airways India	Calcutta-Vizagapatam-Madras- Bangalore
Bharat Airways	Delhi-Lucknow-Gaya-Calcutta
Orient Airways	Calcutta-Akyab-Rangoon

(Source: Gidwani, History of Air Transport 86-87(1954))

APPENDIX IV

OPERATION FEATURES OF INDIAN AIRLINES
AS ON JULY 31, 1953

1. Air India International Ltd.

<u>Route</u>	<u>Frequency</u>
Bombay-Cairo-Rome-Dusseldorf-London	weekly
London-Geneva-Rome-Cairo-Bombay-Delhi	"
Calcutta-Bombay-Cairo-Rome-Geneva-London	"
London-Dusseldorf-Rome-Cairo-Bombay	"
Delhi-Bombay-Cairo-Rome-Paris-London	"
London-Paris-Geneva-Cairo-Bombay-Delhi-Calcutta	"
Delhi-Bombay-Cairo-Dusseldorf-Paris-London	"
London-Paris-Rome-Cairo-Bombay-Calcutta	"
Bombay-Karachi-Aden-Nairobi	"
Nairobi-Aden-Karachi-Bombay	"

Traffic Statistics for 1952

Miles flown	2,584,878
Passengers carried	19,820
Freight carried(lbs)	1,110,303
Mails carried(lbs)	481,974

Fleet composition: 4 Constellations

2. Air India Ltd.

<u>Route</u>	<u>Frequency</u>
Bombay-Calcutta	daily
Bombay-Delhi(Night Service)	"
Bombay-Delhi	"
Bombay-Ahmedabad-Karachi	"
Bombay-Madras-Tiruchirapalli-Colombo	"
Madras-Bangalore-Coimbatore-Cochin-Trivandrum	"

Traffic Statistics for 1952

Miles flown	3,498,764
Passengers carried	86,897
Freight carried (lbs)	4,022,771
Mails carried (lbs)	1,974,832

Fleet Composition : 1 D.C.4
10 Dakotas
7 Vikings

3. Indian National Airways Ltd.

<u>Route</u>	<u>Frequency</u>
Delhi-Lahore	13 weekly
Calcutta-Delhi	daily
Delhi-Jaipur-Jodhpur-Karachi	"
Calcutta-Rangoon	"
Delhi-Amritsar-Jammu-Srinagar	"
Calcutta-Patna-Kathmandu	5 weekly
Patna-Kathmandu	"

Traffic Statistics for 1952

Miles flown	2,338,025
Passengers carried	70,479
Freight carried (lbs)	3,071,366
Mails carried (lbs)	767,634

Fleet Composition : 5 Vikings
10 Dakotas
1 Proctor
1 Twin Beech and
1 Single Beech

4. Air Services of India Ltd.

<u>Route</u>	<u>Frequency</u>
Bombay-Porbander-Jamnagar-Bhuj	4 weekly
Bombay-Bhavnagar-Rajkot	"
Bombay-Poona-Belgaum-Bangalore	3 weekly
Bombay-Mangalore-Cochin	"

Traffic Statistics for 1952

Miles flown	857,136
Passengers carried	33,455
Freight carried (lbs)	1,953,730
Mails carried (lbs)	204,006

Fleet Composition : 7 Dakotas, and
3 L-5Bs

5.. Bharat Airways Ltd.

<u>Route</u>	<u>Frequency</u>
Calcutta-Bangkok-Singapore-Djkarta	1 weekly
Calcutta-Chittagong	4 weekly
Calcutta-Patna-Banares-Lucknow-Delhi	daily
Calcutta-Agartala-Silchar-Imphal	"
Calcutta-Agartala	14 weekly
Calcutta-Agartala (freight service)	1 to 8 daily
Agartala-Gauhati	2 weekly
Agartala-Gauhati (freight service)	5 weekly
Agartala-Gauhati-Tezpur-Jorhat-Mohanbari	daily
Gauhati-Silchar-Imphal	2 weekly

Traffic Statistics for 1952

Miles flown	2,522,561
Passengers carried	71,921
Freight carried (lbs)	24,724,236
Mails carried (lbs)	897,244

Fleet composition	: 10 Dakotas
	2 D.C.4s
	1 Sentinel L5,
	and
	1 Avro XIX

6.. Airways (India)Ltd.

<u>Route</u>	<u>Frequency</u>
Calcutta-Vizagapatam-Madras-Bangalore	4 weekly
Calcutta-Bhubaneswar-Madras-Bangalore	3 weekly
Calcutta-Dacca	2 daily
Calcutta-Gauhati-Mohanbari	daily
Calcutta-Gauhati-Mohanbari (freight service)	1 weekly
Calcutta-Gauhati	daily
Calcutta-Gauhati(freight service)	1 to 7 daily
Calcutta-Baghdogra	2 daily
Calcutta-Baghdogra(freight service)	daily
Calcutta-Nagpur-Bombay	4 weekly

Traffic Statistics for 1952

Miles flown	4,217,617
Passengers carried	104,645
Freight carried (lbs)	29,542,980
Mails carried (lbs)	748,138

Fleet composition : 16 Dakotas, and
1 D.H. Dove

7. Deccan Airways Ltd.

<u>Route</u>	<u>Frequency</u>
Madras-Hyderabad-Nagpur-Delhi	daily
Hyderabad-Bangalore	"
Hyderabad-Bombay	"
Delhi-Nagpur-Madras (night air service)	"
Bombay-Nagpur-Calcutta (night air service)	"

Traffic Statistics for 1952

Miles flown	2,852,022
Passengers carried	46,077
Freight carried (lbs)	2,497,480
Mails carried (lbs)	2,743,642

Fleet composition : 11 Dakotas

8. Himalayan Aviation Ltd.

<u>Route</u>	<u>Frequency</u>
Bombay-Karachi-Zahidan-Kandhar-Kabul	1 weekly

Traffic Statistics for 1952

Miles flown	132,916
Passengers carried	1,186
Freight carried (lbs)	75,302
Mails carried (lbs)	6,737
Fleet composition	: 7 Dakotas, and 1 Safir

9. Kalinga Airlines

<u>Route</u>	<u>Frequency</u>
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Calcutta-Agartala- (freight service)	8 daily
--------------------------------------	---------

Traffic Statistics for 1952

Miles flown	558,348
Freight carried (lbs)	19,039,439
Mails carried (lbs)	552,606

Fleet composition : 5 Dakotas, and
1 L-5

(Source:Gidwani,History of Air Transport 103-108(1954))

APPENDIX V

STATEMENT SHOWING SCHEDULED SERVICES OPERATED
BY AIR INDIA AS ON NOVEMBER 25, 1965

<u>Route</u>	<u>Frequency</u>
Bombay-New Delhi-Beirut-Geneva- Paris-London-New York	1 weekly(Sun)
New York-London-Paris-Frankfurt- Beirut-Bombay	1 weekly(Mon)
Bombay-Cairo-Rome-Frankfurt-London- New York	1 weekly(Tue)
New York-London-Paris-Frankfurt- Rome-Bombay-Calcutta	1 weekly(Tue)
Bombay-Baharain-Cairo-Rome-Rome- Paris-London-New York	1 weekly(Wed)
New York-London-Frankfurt-Geneva- Cairo-Bombay	1 weekly(Wed)
Bombay-Beirut-Rome-Frankfurt-London- New York	1 weekly(Thu)
New York-London-Prague-Rome-Beirut- Baharian-Bombay	1 weekly(Thu)
Calcutta-Bombay-Beirut-Prague- Frankfurt-London-New York	1 weekly(Thu)
New York-London-Paris-Geneva-Cairo- New Delhi-Bombay	1 weekly(Fri)
Bombay-Cairo-Rome-Paris-London- New York	1 weekly(Sat)
New York-London-Frankfurt-Geneva- Beirut-Bombay	1 weekly(Sat)
Bombay-Cairo-Zurich-Frankfurt- London-New York	1 weekly(Sun)
New York-London-Zurich-Rome-Cairo- Bombay	1 weekly(Sun)

Bombay-New Delhi-Beirut-Geneva-Paris-London	1 weekly(Sat)
London-Paris-Rome-Bombay	1 weekly(Sun)
Bombay-Delhi-Bombay-Moscow-London	2 weekly (Tue/Fri)
London-Moscow-Bombay	2 weekly (Wed/Sat)
Bombay-Calcutta-Bangkok-Hongkong-Tokyo	2 weekly (Wed/Fri)
Tokyo-Hongkong-Bangkok-Calcutta-Bombay	2 weekly (Tue/Sat)
Bombay-Delhi-Bangkok-Hongkong-Tokyo	1 weekly(Mon)
Tokyo-Hongkong-Bangkok-New Delhi-Bombay	1 weekly(Thu)
Bombay-Madras-Singapore-Perth-Sydney-Nandi	1 weekly(Mon)
Nandi-Sydney-Perth-Singapore-Madras-Bombay	1 weekly(Wed)
Bombay-Madras-Singapore	1 weekly(Fri)
Singapore-Madras-Bombay	1 weekly(Fri)
Bombay-Aden-Nairobi	2 weekly (Sun/Thu)
Nairobi-Aden-Bombay	2 weekly (Sun/Thu)
Bombay-Baharin-Kuwait	1 weekly(Sat)
Kuwait-Baharain-Bombay	1 weekly(Fri)

(Source: Government of India, Ministry of Transport and Aviation Annual Report 1965-1966 at 55)

APPENDIX VI

FLEET COMPOSITION OF INDIAN AIRLINES CORPORATION

Year	DE-3	DC-4	Vis- count	Fokker Friend ship	Cara velle	Vik ing	Her on	Other aircraft
1953-54	74	3	-	-	-	12	-	@
1954-55	72	3	-	-	-	12	-	@
1955-56	66	6	-	-	-	12	8	Twin Beech 1
1956-57	64	6	-	-	-	12	8	-
1957-58	62	6	7	-	-	12*	7	-
1958-59	58	5	10	-	-	12*	3 4*	-
1959-60	55	5	10	-	-	12*	3 4*	-
1960-61	55	5	10	-	-	12*	7*	-
1961-62	54	5	13	5	-	12*	7*	-
1962-63	45	3	13	10	-	12*	4*	-
1963-64	38	3	12	10	3	-	-	-

@ stands for Twin Beech 1; Single Beech 1; L-5 Sentinal 5; Avro XIX 1; DH-Dove 1; Saab Safir 1.

* stands for grounded.

(Source: Ramamritham and Ekbote, "Some Thoughts on Desirable Features for a Civil Transport Aircraft for Operations on Short/Medium Range Routes in India", 17 The Journal of the Aeronautical Society of India 86(1965).

APPENDIX VII

STATEMENT SHOWING SCHEDULED SERVICES OPERATED BY
INDIAN AIRLINES CORPORATION AS ON NOVEMBER 25, 1965

<u>Route</u>	<u>Frequency</u>
Bombay-Bangalore-Madras	Daily
Bombay-Delhi	Twice daily
Calcutta-Delhi	Twice daily
Delhi-Madras	Daily
Bombay-Calcutta	Daily
Bombay-Hyderabad-Madras	Daily
Bombay-Goa	Daily
Madras-Colombo	Three weekly
Calcutta-Gauhati-Jorhat	Daily
Calcutta-Bagdogra	Daily
Calcutta-Madras	Daily
Calcutta-Rangoon	Twice weekly
Delhi-Jaipur-Ammedabad-Bombay	Daily
Delhi-Hyderabad-Bangalore	Daily
Delhi-Lucknow-Banaras-Calcutta	Daily
Madras-Trichy-Madurai-Trivandrum	Daily
Madras-Bangalore-Coimbatore-Cochin	Daily
Bombay-Cochin-Trivandrum	Daily
Bombay-Cochin	Daily
Calcutta-Bhubneswar-Visakhapatnam-Madras	Five weekly
Calcutta-Visakhapatnam-Bezwada-Madras	Twice weekly

Delhi-Kanpur-Allahabad-Banaras-Patna-Calcutta	Twice weekly
Delhi-Kanpur-Jammu-Calcutta	Five weekly
Delhi-Jaipur-Udaipur-Ahmedabad-Bombay	Daily
Delhi-Amritsar-Jammu-Srinagar	Daily
Calcutta-Gauhati	Twice daily
Bombay-Aurangabad-Nagpur	Daily
Hyderabad-Bezwada-Visakhapatnam	Twice weekly
Bombay-Bhavnagar	Daily
Bombay-Rajkot	Daily
Bombay-Keshod-Porbander	Four weekly
Bombay-Belgaum-Goa-Mangalore-Bangalore	Daily
Bombay-Mangalore	Daily
Bombay-Baroda	Thrice weekly
Mohanbari-Lilabari-Jorhat-Tezpur-Gauhati	Daily
Gauhati-Silchar	Thrice daily
Silchar-Imphal	Twice daily
Silchar-Agartala	Twice daily
Patna-Kathmandu	six weekly
Calcutta-Kathmandu	six weekly
Kathmandu-Banaras	six weekly
Calcutta-Jamshedpur-Rourkela-Patna	Twice weekly
Calcutta-Jamshedpur-Ranchi-Patna	Four weekly
Calcutta-Jamshedpur-Rourkela	Once weekly
Calcutta-Rangoon-Port Blair	Once weekly

Delhi-Kathmandu	Thrice weekly
Delhi-Patna	Once weekly
Bombay-Nagpur-Calcutta	Daily
Delhi-Nagpur-Madras	Daily

(Source: Government of India, Ministry of Transport
and Aviation, Annual Report 1965-1966 at 56-57)

APPENDIX VIII

LIST OF BILATERAL AGREEMENTS TO WHICH
INDIA IS A PARTY

<u>Name of the country</u>	<u>Date of signat- ure</u>	<u>Date of entry into force</u>
Afghanistan	26- 1-1952 3- 5-1953	26- 1-1952 3- 5-1953
Australia	11- 7-1949 14-12-1960	11- 7-1949 14-12-1960
Ceylon	21-12-1948	21-12-1948
Czechoslovakia	19- 9-1960	7- 6-1961
Egypt	14- 6-1952 14- 3-1953	18-12-1952 14- 3-1953
France	16- 7-1947	16- 7-1947
Hungary	23- 2-1966	-
Iraq	27- 7-1955	3- 9-1957
Iran	10- 8-1960	-
Italy	16- 7-1959	12- 3-1962
Japan	26-11-1955	11- 5-1956
Lebanon	19- 9-1964	4- 4-1966
Nepal	26-11-1964	29- 9-1965
Netherlands	24- 5-1951	17- 6-1951
Pakistan	23- 6-1948 20- 2-1953	1- 7-1948 20- 2-1953
Philippines	20-10-1949	20-10-1949
Sweden	21- 5-1948	21- 5-1948
Switzerland	24- 6-1949	24- 6-1949

Thailand	12- 6-1956	12- 6-1956
United Kingdom	1-12-1951	1- 4-1952
	16- 3-1953	16- 3-1953
	14- 8-1953	14- 8-1953
	14-11-1953	14-11-1953
	25- 3-1957	25- 3-1957
	8- 6-1959	8- 6-1959
U.S.A.	3- 2-1956	3- 2-1956
U.S.S.R.	2- 6-1958	2- 6-1958
	13-11-1962	1- 1-1963
West Germany	31- 5-1963	18- 2-1965

(Source: Government of India, Department of Civil
Aviation, communication No. 26/23/66-IR
dated January 5, 1967 to the author)

APPENDIX IX.

DELEGATION OF POWERS UNDER THE
AIRCRAFT ACT AND RULES

<u>Designation of the officer</u>	<u>Powers delegated</u> (See the corresponding entries in the schedule annexed hereto for the nature of powers)
Director General of Civil Aviation	All
Deputy Director General of Civil Aviation	1. to 65, 67 to 73, 75, 76 to 90, 93 to 95.
Director of Training and Licensing	9 to 12, 57 to 61, 65, 68 to 70, 80, 81, 93, 94.
Director of Aeronautical Inspection	2, 3, 9 to 11, 13, 14, 15, 16, 17, 19 to 56, 62 to 64, 69, 75, 80, 81.
Director of Aircraft Inspection	2, 3, 9 to 11, 13, 14, 15, 16, 20, 22, 25, 27 to 31, 33, 34 to 41, 43, 45 to 54, 56, 63, 64, 69, 75.
Director of Communication	75, 76.
Director of Air Routes and Aerodromes	2, 14, 59, 60, 68, 77, 78, 82 to 84, 86 to 90.
Director of Air Transport	14.
Director of Research and Development	27, 29, 32 to 37, 39 to 41, 52 to 56.
Director of Air Safety	2, 14.
Deputy Directors of Communication	75, 76.
Deputy Directors of Training and Licensing	57, 59, 60, 68, 69, 81, 94.
Deputy Directors of Aero- nautical Inspection	2, 9, 10, 14, 15, 19, 21, 25, 26, 28, 30 to 33, 38, 40, 42 to 46, 48 to 52, 54, 56, 62 to 64, 69, 75, 80, 81.

Deputy Directors of Air Routes and Aerodromes	2, 14, 59, 60, 68, 77, 78, 82 to 84, 86, 88 to 90.
Deputy Director of Research and Development	27, 29, 32 to 37, 39 to 41, 52 to 56.
Deputy Director (Examinations)	69 (in respect of Student Flight Engineers' and Flight Engineers' Licences).
Deputy Director of Air Safety	2, 14.
Assistant Directors of Communication	76.
Assistant Directors of Training and Licensing	59.
Assistant Director of Air Safety	2, 14.
Controller of Aerodromes	2, 14, 59, 60, 61, 68, 77, 78, 79, 82, 89.
Senior Aerodrome Officers	2, 14, 59, 60, 61, 79, 82.
Aerodrome Officers	2, 14, 79, 82.
Assistant Aerodrome Officers in-charge of Aerodromes	2, 14, 79, 82.
Controllers of Aeronautical Inspection	2, 9, 10, 14, 15, 28, 30, 31, 38, 40, 43, 45, 46, 48, 52, 54, 56, 63, 64.
Senior Air Safety Officers	2, 14.
Senior Aircraft Inspectors (At Headquarters)	2, 9, 10, 14, 15, 19 to 21, 25, 28, 30 to 32, 38, 40, 43, 45, 46, 48, 52, 54, 56, 63, 64.
Senior Aircraft Inspectors in-charge of Inspection Office	2, 9, 10, 14, 15, 28, 30, 31, 38, 40, 43, 45, 46, 48, 52, 54, 56, 63, 64.
Senior Aircraft Inspectors	2, 9, 10, 14, 15, 28, 30, 31, 38, 40, 45, 46, 48, 52, 54, 56, 63, 64.

Senior Communication Officer	76.
Communication Officer	
Senior Technical Officer	
Technical Officer	
Assistant Technical Officer	
Assistant Communication Officer	
in the Aeronautical Communi-	
cation Organization	
Aircraft Inspectors in-charge	2,9 (Restricted to air-
of Inspection Office	craft with A.U.W.(All
	up weight) upto 2,000
	Kgs.), 10, 14, 15, 28,
	30, 31, 38, 40, 45, 52,
	54, 56, 63.
Aircraft Inspectors	2,9 (Restricted to air-
	craft with A.U.W.(All
	up weight) upto 2,000
	Kgs.), 10, 14, 15, 28,
	30, 31, 38 (Restricted
	to aircraft with A.U.W.
	(All up weight) upto
	2,000 Kgs.), 52, 56.
Assistant Aircraft Inspector	2, 14, 15, 56.
All Customs Collectors, or	2.
other Officers of the Customs	
for the time being in-charge	
of customs aerodromes	

SCHEDULE

<u>S.No.</u>	<u>Nature of Power</u>
1.	To permit carriage of arms, ammunition and other dangerous goods by air.
2.	To cause the goods to be removed from an aircraft for detailed examination.
3.	To exempt aircraft from the conditions to be complied with by aircraft in flight.
4.	To suspend any certificate, rating or licence, or any or all the privileges of any certificate, rating or licence, for any specified period.

<u>S.No.</u>	<u>Nature of Power</u>
5.	To suspend any certificate, rating or licence during the investigation of any matter.
6.	To cancel any certificate, rating or licence.
7.	To endorse any adverse remarks on any certificate, rating or licence.
8.	To cancel or vary any particulars in any licence or certificate or journey log book.
9.	To vary any particulars in a certificate of airworthiness or a certificate of registration or a journey log book.
10.	To require the surrender of any licence, certificate or other document granted or issued under the rules.
11.	To permit smoking in aircraft.
12.	To permit parachute descents and dropping of articles from aircraft.
13.	To permit persons to be carried on or in any part of aircraft or anything attached thereto.
14.	To enter, inspect and search any place or aircraft for the purpose of exercising his powers or carrying out his duties or securing compliance with any of the rules.
15.	To enter and inspect any factory or place of manufacturing, overhauling, repairing or assembling aircraft, aero-engines or parts thereof including any relevant drawings
16.	To permit a person to fly or assist in flying an unregistered aircraft and/or without its nationality and registration marks and to specify any conditions and limitations for the purpose.
17.	To cancel certificates of registration.
18.	To suspend certificates of registration.

<u>S.No.</u>	<u>Nature of Power</u>
19.	To cancel or vary any particulars in certificates of registration.
20.	To require surrender of certificates of registration.
21.	To register and grant certificates of registration.
22.	To decline to accept an application for registration.
23.	To decline to register aircraft.
24.	To cancel registration of aircraft.
25.	To require particulars relating to aircraft and its ownership.
26.	To refund fees if the application is not granted.
27.	To cancel any certificate relating to the airworthiness of aircraft.
28.	To suspend certificates of airworthiness of aircraft.
29.	To vary the conditions attached to any certificates relating to airworthiness.
30.	To require the surrender of certificates of airworthiness or any document relating thereto.
31.	To require the surrender of Aircraft Maintenance Engineers' Licences.
32.	To issue certificates of airworthiness.
33.	To call for evidence required and to decide on the inspections and tests necessary for the issue of certificate of airworthiness.
34.	To prescribe modifications of the standards of airworthiness.
35.	To accept foreign standards of airworthiness.

<u>S.No.</u>	<u>Nature of Power</u>
36.	To decide the gauges necessary for the aircraft.
37.	To approve the types and the manner of installation of instruments and equipment specified in Section B of Schedule III to the Indian Aircraft Rules, 1937.
38.	To renew certificates of airworthiness and to require flying machines to be overhauled, inspected or tested in flight and to authorise persons for inspecting the flying machine.
39.	To require modifications.
40.	To approve modifications and the methods by which they are carried out.
41.	To prescribe conditions for the technical operation, maintenance and use of aircraft accessories or equipment.
42.	To grant Aircraft Maintenance Engineers' licence.
43.	To issue a permit in respect of an extension to an Aircraft Maintenance Engineers' licence.
44.	To grant exemption from the tests to act as Aircraft Maintenance Engineer, if the applicant holds a licence granted by a competent authority of a foreign State.
45.	To renew Aircraft Maintenance Engineers' licence.
46.	To vary entries in Aircraft Maintenance Engineers' licence.
47.	To cancel Aircraft Maintenance Engineers' licence.
48.	To suspend Aircraft Maintenance Engineers' licence.
49.	To endorse Aircraft Maintenance Engineers' licence.

<u>S.No.</u>	<u>Nature of Power</u>
50.	To withhold the grant or renewal of Aircraft Maintenance Engineers' licence.
51.	To refund such portion of the sum paid as represents the cost of any examination or inspection not carried out or any licence or certificate not issued.
52.	To require aircraft to be weighed.
53.	To prescribe or approve modifications, of designs and approve repair schemes.
54.	To approve methods of treatment of metals and conversion of timber etc.
55.	To approve the firms and companies.
56.	To require delivery of defective parts.
57.	<p>To grant, to withhold the grant and renewal and to require surrender of the following licences:-</p> <ul style="list-style-type: none">(1) Student Pilot's licence(2) Private Pilot's licence(3) Commercial Pilot's licence(4) Instrument Rating(5) Assistant Flight Instructor's Rating(6) Glider Pilot's licence(7) Student Navigator's licence(8) Flight Radio Telephone Operator's licence(9) Flight Radio Operator's licence.
58.	<p>To grant, to withhold the grant and renewal and to require the surrender of the following licences/ratings:-</p> <ul style="list-style-type: none">(1) Senior Commercial Pilot's licence(2) Airline Transport Pilot's licence(3) Flight Instructor's Rating(4) Flight Navigator's licence.
59.	To renew licences (except Student Flight Engineer's and Flight Engineer's licences) and ratings of aircraft personnel.
60.	To vary licences(except Student Flight Engineer's and Flight Engineer's licences) and ratings in respect of aircraft with A.U.W. not exceeding 5,700 kgs.

<u>S.No.</u>	<u>Nature of Power</u>
61.	To vary licences (except Student Flight Engineer's and Flight Engineer's licences) and ratings in respect of aircraft with A.U.W. exceeding 5,700 kgs.
62.	To grant, to withhold the grant and renewal of and to require the surrender of- (1) Student Flight Engineers' licence (2) Flight Engineers' licence.
63.	To renew Student Flight Engineer's and Flight Engineer's licences.
64.	To vary, endorse any adverse remarks on and to cancel or vary particulars in- (1) Student Flight Engineer's licences; and (2) Flight Engineer's licences.
65.	To disqualify a person for a specified period from holding or obtaining a licence.
66.	To debar a person permanently or temporarily from holding any licence.
67.	To exempt certain I.A.F. personnel from flying tests and medical or other technical examinations for the issue of Senior Commercial and Airline Transport Pilot's licences.
68.	To validate foreign licences.
69.	To order refund of proportionate part of fees.
70.	(a) To suspend the following and any or all of the privileges thereof for a specified period or during the investigation of any matter; (b) To cancel the following licences/ ratings; (c) To endorse any adverse remarks thereon; and (d) To cancel or vary particulars therein:- (1) Student Pilots' licence (2) Private Pilots' licence (3) Commercial Pilots' licence

S.No.

Nature of Power

- (4) Instrument Rating
 - (5) Assistant Flight Instructors' Rating
 - (6) Glider Pilots' licence
 - (7) Student Navigators' licence
 - (8) Flight Radio Telephone Operators' licence
 - (9) Flight Radio Operators' licence.
71. (a) To suspend the following licences and any or all of the privileges thereof for a specified period or during the investigation of any matter;
(b) To cancel the following licences;
(c) To endorse any adverse remarks thereon; and
(d) To cancel or vary particulars therein:-
(1) Senior Commercial Pilot's licence;
(2) Airline Transport Pilot's licence;
(3) Flight Instructor's Rating; and
(4) Flight Navigator's licence.
72. To suspend or cancel Student Flight Engineer's licence.
73. To suspend or cancel Flight Engineer's licence.
74. To exempt from any or all of the tests a pilot with long and varied experience and the requisite standard of proficiency.
75. To approve the type of radio telegraph apparatus for use in aircraft.
76. To approve the installation, bonding and screening of radio telegraph apparatus in aircraft.
77. To approve the establishment and maintenance of, or alteration in the character of the light exhibited from air route beacons or aerodrome lights and prescribe conditions for such approval.
78. To serve a notice on the owner or person in possession of the place where a light is exhibited or upon the person having charge of the light for extinguishing or effectually screening such a light and for preventing for the future exhibition of any similar light.

<u>S.No.</u>	<u>Nature of Power</u>
79.	To enter upon the place where the light is and forthwith extinguish the same.
80.	To cancel or vary any particulars in any journey log book.
81.	To vary any particulars in any journey log book.
82.	To determine the extent and the conditions subject to which Government aerodromes may be open to public use.
83.	To licence aerodromes.
84.	To determine the charges for space in or outside a hangar at a Government civil aerodrome, leased out to any person for housing and parking of aircraft or for other purposes and to enter into agreement with a person regarding the terms and conditions of such lease.
85.	To approve tariff of charges for landing and housing at licensed public aerodromes, (where such approval may be necessary) other than Government aerodromes.
86.	To approve alterations to the landing areas, buildings or other structures or to withhold such approval.
87.	To cancel aerodrome licences.
88.	To suspend aerodrome licences.
89.	To approve that the aerodrome has been maintained by the licensee in a fit state for use by aircraft and marked adequately.
90.	To require the inspection of an aerodrome before the grant or renewal of a licence.
91.	To permit operation of scheduled services by private operators.

<u>S.No.</u>	<u>Nature of Power</u>
92.	To permit operation of non-scheduled air transport services.
93.	To permit acrobatics to be carried out at a height of less than 600 metres (2000 feet) above the ground.
94.	To prescribe the requirements regarding the towing of an object by an aircraft.
95.	To prescribe the requirements regarding the lighting of the landing area, the approach to the landing area and the boundary of the landing area.

(Source: Government of India, Ministry of Transport and Aviation Notification No. 10-A/98-65/AR/1937(85) dated July 23, 1966)

APPENDIX X

TRAFFIC STATISTICS OF SCHEDULED INDIAN AIR
TRANSPORT SERVICES

Year	Hours flown	Passengers carried	Freight carried (Kgs)	Mails carried (Kgs)
1953	114,796	403,992	38,467,157	4,011,873
1954	117,402	431,595	39,190,433	4,840,238
1955	125,655	468,894	44,534,986	5,205,483
1956	136,813	558,625	43,642,216	5,753,389
1957	134,453	615,321	38,862,147	5,932,251
1958	135,046	696,175	42,467,081	6,171,545
1959	131,397	736,160	33,504,096	6,825,047
1960	133,648	855,203	38,205,812	6,816,897
1961	138,450	973,941	40,069,865	7,533,853
1962	131,705	1,032,607	37,704,084	8,157,891
1963	129,305	1,176,330	37,746,142	9,100,621
1964	126,552	1,388,753	32,515,561	9,977,097
1965	126,000	1,496,000	29,832,000	10,243,000

1965 figures are estimated

(Source: 40 Indian Aviation 337 (August 1966))

BIBLIOGRAPHY

BOOKS

- Anand, C.K., The Constitution of India, New Delhi, 1957.
- Arnold, E., The Marquess of Dalhousie's Administration of British India, Vol.II, London, 1865.
- Basu, D. D., Introduction to the Constitution of India, 2nd ed. Calcutta, 1962.
- Basu, D. D., Commentary on the Constitution of India, Vol.I, 3rd. ed. Calcutta, 1955.
- Basu, D. D., Commentary on the Constitution of India, Vol. II, 3rd ed. Calcutta, 1956.
- Cheng, B., The Law of International Air Transport, London, 1962.
- Corbett, D., Politics and the Airlines, London, 1965.
- Das, A.B., Chatterji, M.N., The Indian Economy: Its Growth and Problems, 9th ed. Calcutta, 1964.
- Das Gupta, A., Economic Geography of India, 6th ed. Calcutta, 1963.
- Davies, R.E.G., A History of the World Airlines, London, 1964.
- Dhekney, M.R., Air Transport in India, Bombay, 1954.
- Dorman, G., Fifty Years Fly Past, London, 1951.
- Frederick, J.H., Commercial Air Transportation, 5th ed. Illinois, 1961.
- Friedmann, W., The Public Corporations, Toronto, 1954.
- Ganguly, D.S., Public Corporations in a National Economy, Calcutta, 1963.

Gibbs-Smith, C.H., The Aeroplane, An Historical Survey of its Origins and Development, London, 1960.

Gidwani, B. S., History of Air Transport, New Delhi, 1954.

Government of India, India 1964: A Reference Manual, New Delhi, 1964.

Government of India, Pocket Book of Economic Information, 5th ed. New Delhi, 1965.

Gutteridge, H.C., Comparative Law, Cambridge, 1949.

Hackworth, G. H., Digest of International Law, Vol. IV, Washington, 1942.

Hastings, J. (ed), Encyclopaedia of Religion and Ethics, Vol. X, Edinburg, 1918.

Jain, M.P., Indian Constitutional Law, Bombay, 1962.

Higham, R., Britain's Imperial Air Routes 1918 to 1939, Connecticut, 1961.

Jather, G.B., Beri, S.G., Indian Economics: A Comprehensive and Critical Survey, Vol. II, 9th ed. Madras, 1949.

Keith, A.B., A Constitutional History of India 1600-1935, London, 1936.

Koontz, H., Gable, R., Public Control of Economic Enterprise, New York, 1956.

Lauterpacht, H., International Law Reports, Vol. XX, London, 1957.

Lissitzyn, O.J., International Air Transport and National Policy, New York, 1942.

McNair, A.D., The Law of the Air, 3rd ed. London, 1964.

Narayan, S., Socialism in Indian Planning, Bombay, 1964.

- Narichania, V.N., Cargo Liabilities and Immunities of Air Carriers, Bombay, 1964.
- Poplai, S.L.(ed), Selected Documents on Asian Affairs, India 1947-60, Vol.I, Bombay, 1959.
- Roadcap & Associates (ed), World Airline Record, 6th ed. Chicago, 1965.
- Robson, W.A., Nationalized Industry and Public Ownership, London, 1960.
- Sachs, I., Patterns of Public Sector in Underdeveloped Economies, Bombay, 1964.
- Shawcross, C.N., Beaumont, K.B., Air Law, Vol.I, 3rd ed. London, 1966.
- Smith, A., The Wealth of Nations, Cannan ed. Vol.I, London, 1904.
- Thomas, A.J., Economic Regulation of Scheduled Air Transport, New York, 1956.
- Tope, T.K., The Constitution of India, 2nd ed. Bombay, 1963.
- United Nations, Statistics Yearbook 1965, New York, 1966.
- Wade, E.C.S., Phillips, G.G., Constitutional Law, 7th ed. London, 1965.
- Wheatcroft, S., Air Transport Policy, London, 1964.

ARTICLES AND PAMPHLETS

- " A Study of Indian Airlines' Workings", 39 Indian Aviation (1965) at 247-256.

Beaumont, K.M., "The Warsaw Convention of 1929 as amended by the Protocol signed at the Hague on September 22, 1955", 22 Journal of Air Law and Commerce (1955) at 414-433.

Brunkmann, C., "Public Utilities", 12 Encyclopaedia of Social Sciences(1957) at 674-677.

Calkins, N., "The Role of Civil Aeronautics Board in the Grant of Operating Rights in Foreign Air Carriage", 22 Journal of Air Law and Commerce(1955) at 253-270.

Calkins, N., "Grand Canyon, Warsaw and the Hague Protocol", 23 Journal of Air Law and Commerce(1956) at 253-271.

Cheng, B., "High Contracting Parties in Air Law", The Journal of Business Law(1959) at 30-44.

Civil Aeronautics Board, "Address by Alan S. Boyd, West Virginia Aviation Seminar", August 19, 1961.

Cooper, J.C., The Legal Status of Aircraft (Mimeo,1949).

Da Silva, A.V., "Commercial Law in India" in Some Aspects of Indian Law Today(British Institute of International and Comparative Law ed. 1964) at 51-63.

Deshpande, V.S., "Common Law Liability of State in India" in Some Aspects of Indian Law Today (1964) at 25-31.

Forrest, R.M., "Carriage by Air, The Hague Protocol", 10 The International and Comparative Law Quarterly (1961) at 726-738.

Gutierrez,L., Government Control of Airlines in Western Europe (Institute Thesis,1965).

- Jennings, R.Y., "International Civil Aviation and the Law", 22 British Yearbook of International Law(1945) at 191-209.
- Lissitzyn, O.J., "The Legal Status of Executive Agreements in Air Transportation", 17 Journal of Air Law and Commerce(1950) at 436-453.
- Lissitzyn, O.J., "The Legal Status of Executive Agreements in Air Transportation", 18 Journal of Air Law and Commerce(1951) at 12-32.
- Lissitzyn, O.J., "Bilateral Agreements on Air Transport", 30 Journal of Air Law and Commerce (1964) at 248-263.
- MacLay, H.K., Burt, W.C., "Entry of New Carriers into Domestic Trunkline Air Transportation", 22 Journal of Air Law and Commerce(1955) at 131-156.
- Melton, L.J., "Transport Coordination and Regulatory Philosophy" 24 Law and Contemporary Problems(1959) at 622-642.
- Mullick, S., Air Transport in India, New Delhi(1963).
- Parakh, J.S., "Future of Civil Aviation in India", 18 Asian and Indian Skyways (August 1964) at 29.
- Peterson, "Transport Coordination, Meaning and Purpose", 38 Journal of Political Economics(1930) at 680.
- Poulton, H.W., "Legal and Policy Aspects of Air Transport in Australia" 26 Journal of Air Law and Commerce(1959) at 13-35.

Ramamritham, S., Ekbote, M.S., "Some Thoughts on Desirable Features for a Civil Transport Aircraft for Operations on Short/Medium Range Routes in India", 17 The Journal of the Aeronautical Society of India(1965) at 84-106.

Reiber, P., "Ratification of the Hague Protocol; Its Relation to the Uniform International Air Carrier Liability Law achieved by the Warsaw Convention", 23 Journal of Air Law and Commerce(1956) at 272-286.

Richardson, J.E., "Aviation Law in Australia", 11 Federal Law Review(1965) at 242-291.

Richmond, S.B., "Some Aspects of Planning for New Sources of Airport Revenues", 23 Journal of Air Law and Commerce(1956) at 19-26.

Seekings, J., "Indian Airlines Corporation" Flight International (February 8, 1962) at 205-206.

Sen, S.C., "A Study of Concepts Relating to Aeronautical (and allied) Sciences in Ancient India", 12 The Journal of the Aeronautical Society of India(1960) at 1-12.

Shukla, V.N., "Judicial Control of Delegated Legislation in India", 1 Journal of the Indian Law Institute(1959) at 357-374.

Singh, R.U., "Public Corporations in India", 1 The Indian Law Journal (1957) at 1-58.

Stoffel, A.W., "American Bilateral Air Transport Agreements on the Threshold of the Jet Transport Age" 26 Journal of Air Law and Commerce (1959) at 119-136.

Stroud, J., "Thirty Years of Indian Air Transport", 16 Asian and Indian Skyways (September 1962) at 17.

Tata, J.R.D., "The Story of Indian Air Transport",
13 The Journal of the Aeronautical
Society of India (1961) at 1-34.

Tymms, F., "Aviation in India", 1 Air Affairs (1947)
at 462-474.

Unni, K.K., "Air India-World's First Airline to Go
All Jet", 36 Indian Aviation (1962) at 247.

Woodward-Nutt, A.E., "Aeronautical Research and Develop-
ment in the Commonwealth" 68
Journal of the Royal Aeronautical
Society (1964) at 90.

DOCUMENTS AND REPORTS

Annual Reports, Air India 1954-1965.

Annual Reports, Indian Airlines Corporation 1954-1965.

Annual Report, Department of Civil Aviation,
Government of India, 1965-1966.

Government of India, Memorandum on the Post-War
Development of Civil Air Transport
in India, New Delhi, 1944.

Government of India, Report of N. Gopalaswami Ayyangar
regarding the reorganization of
the Machinery of Government, New
Delhi, 1949.

Government of India, Report of the Air Transport
Enquiry Committee, New Delhi, 1950.

Government of India, Report of A.D. Gorwala on Public
Administration, New Delhi, 1951.

Government of India, Report of a Survey of P.H. Appleby
on Public Administration in India,
New Delhi, 1953.

Government of India, Report on Indian Airlines Corporation's Fares and Freight Rates, New Delhi, 1957.

Government of India, Report of the Krishna Menon Committee on the Running of Public Sector Undertakings, New Delhi, 1960.

Government of India, The Constitution of India, New Delhi, 1963.

Government of India, Fourth Five Year Plan, A Draft Outline, New Delhi, 1966.

Government of India, Presidential Order CD-534/56 regarding the allocation of business transactions, September 18, 1966.

India, House of the People, Parliamentary Debates, June 10, 1952, col. 746.

India, House of the People, Parliamentary Debates, April 20, 1953, col. 4632-4635.

ICAO, Document 7278-C/841, May 10, 1952.

ICAO, Document 7686-LC/140, Vol.I, September 1956.

ICAO, Document 7686-LC/140, Vol.II, September 1956.

ICAO, Aircraft Accident Enquiry Annex 13 to the Convention for International Civil Aviation, 2nd ed. 1960.

New York Bar Association, "Report on the Warsaw Convention as amended by the Hague Protocol", 26 Journal of Air Law and Commerce (1959) at 255-268.

U.K. Government, Report of the Civil Aerial Transport Committee, Cd. 9218 (1918).

- U.K. Government, Synopsis of Progress Work in the Development of Civil Aviation 1st May 1919 to 31st October 1919, Cmd. 418(1919).
- U.K. Government, Report on Imperial Air Routes, Cmd. 449(1919).
- U.K. Government, Half-Yearly Report on the Progress of Civil Aviation October 1, 1919 to March 31, 1920, Cmd. 800(1920).
- U.K. Government, Agreement regarding the incorporation of Imperial Airways Ltd., Cmd. 2010 (1923).
- U.K. Government, Agreement between the United Kingdom Government and the Imperial Airways for the Operation of Cairo-Karachi route, Cmd. 2758(1926).
- U.K. Government, Report of the Committee on Minister's Powers, Cmd. 4060(1932).
- U.K. Government, Report from the Select Committee on Nationalized Industries, London, 1959.
- U.K., H.C. Debates, Official Reports (5th ser.) Vol. 123 December 15, 1919 col. 311-315.
- U.K., H.C. Debates, Official Reports (5th ser.) Vol. 214 March 12, 1928 col. 1539.
- U.S. Government, Proceedings of the International Civil Aviation Conference, Vol. II, Washington, 1949.

STATUTES AND REGULATIONS

India, The Indian Aircraft Rules, 1920 (Part IX).

India, The Indian Passport Act (XXXIV of 1920).

India, The Aircraft Act, 1934 (XXII of 1934).

India, The Indian Carriage by Air Act, 1934 (XX of 1934).

India, The Indian Aircraft Rules, 1937.

India, The Air Corporations Act, 1953 (XXVII of 1953).

India, The Indian Aircraft (Public Health) Rules, 1954.

India, D.G.C.A., Notice to Airmen No. 22 of 1962
regarding the procedure in connection
with flights to, within or over India
by foreign aviators.

India, The Air Corporations (Amendment) Act, 1962.

India, The Defence of India Act, 1962 (51 of 1962).

India, The Indian Aircraft (Amendment) Rules, 1962.

India, The Indian Aircraft (Fourth Amendment) Rules, 1965.

India, Ministry of Transport Notification No. 10-A/39-63 (GSR 1967) regarding the application of Indian Carriage by Air Act, 1934 to carriage by air which is not international, December 1963.

United Kingdom, Statute of Westminster, 22 & 23 Geo. V.
c. 4.

United Kingdom, Carriage by Air Act 1932, 22 & 23
Geo. V. c. 36.

United Kingdom, Civil Aviation Act 1946, 9 & 10 Geo.
VI c. 36.

United Kingdom, Indian Independence Act 1947, 10 & 11
Geo. VI c. 30.

United Kingdom, Civil Aviation Act 1949, 12, 13 & 14
Geo. VI c. 67.

United Kingdom, Civil Aviation(Licensing)Act,1960,
8 & 9 Eliz. II c.38.

United States, Civil Aeronautics Act, 1938.

United States, Executive Order 8974, December 13, 1941.

United States, Federal Aviation Act, 1958.

INTERNATIONAL CONVENTIONS

Convention for the Regulation of Aerial Navigation,
Paris, October 13, 1919 with protocol of 1929 amending
the Convention.

Convention for the Unification of Certain Rules Relating
to the International Carriage by Air, Warsaw, October
12, 1929.

Convention on International Civil Aviation, Chicago,
December 7, 1944.

The Protocol to amend the Warsaw Convention, The
Hague, September 1955.

BILATERAL AGREEMENTS

Air Agreement between India and Afghanistan, January
26, 1952.

Air Agreement between India and Australia, July 11, 1949.

Air Agreement between India and Ceylon, December 21,
1948.

Air Agreement between India and Czechoslovakia, September
19, 1960.

Air Agreement between India and Egypt, June 14, 1952.

Air Agreement between India and France, July 16, 1947.

Air Agreement between India and Hungary, February 23,
1966.

Air Agreement between India and Iraq, July 27, 1955.

Air Agreement between India and Iran, August 10, 1960.

Air Agreement between India and Italy, July 16, 1959.

Air Agreement between India and Japan, November 26, 1955.

Air Agreement between India and Lebanon, September 19, 1964.

Air Agreement between India and Nepal, November 26, 1964.

Air Agreement between India and Netherlands, May 24, 1951.

Air Agreement between India and Pakistan, June 23, 1948.

Air Agreement between India and Philippines, October 20, 1949.

Air Agreement between India and Sweden, May 21, 1948.

Air Agreement between India and Switzerland, June 24, 1949.

Air Agreement between India and Thailand, June 12, 1956.

Air Agreement between India and United Kingdom, December 1, 1951.

Air Agreement between India and the United States, February 3, 1956.

Air Agreement between India and the Soviet Union, June 2, 1958.

Air Agreement between India and West Germany, May 31, 1963.

CASES

Attorney General for Canada v. Attorney General for Ontario, (1932) 1 DLR 58.

Australian National Airways Pty. Ltd. v. The Commonwealth, (1945) 71 CLR 29.

Dabrai v. Air India Ltd., (1954) Bombay Law Reporter 944.

Grein v. Imperial Airways Ltd., (1954) 2 All E.R. 1258.

James v. Commonwealth, (1936) 55 CLR 1.

Narayanappa v. State of Mysore, (1960) A.I.R. Supreme Court 1073.

Panama Refining Co. v. Ryan (1934) 293 US 388.

Parbhani Transport Society v. R.T.A., (1960) A.I.R. Supreme Court 801.

Partington v. Partington, (1962) HC Tanganyika E.A. 579.

Philippson v. Imperial Airways Ltd., (1939) A.C. 332.

State v. Mahajani, (1951) A.I.R. Bombay 459.

The King v. Burgess ex party Henry, (1936) 55 CLR 608.

Vasanlal v. State of Bombay, (1961) A.I.R. Supreme Court 4.

Westminster Bank v. Imperial Airways Ltd., (1936) 2 All E.R. 890
