



AVIATION INSURANCE INDUSTRY: COMPARATIVE ANALYSIS

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ABSTRACT

Aviation insurance is a specific area from a market, legal, and regulatory perspective. In this highly specialized industry, topics such as risk control, contracts, and liability pose unique challenges. As envisaged by NASA and various conventions like Warsaw, Montreal, Hague, etc. the implementation of the insurance in the aviation sector involves an in-depth analysis to determine whether the current market structure could support this major policy initiative. The impact of the current legal, regulatory, and market policy on the implementation and development of aviation insurance is our focus in this paper. The Aviation Industry is capable of a series of risks and threats, especially with respect to the technical operation of an aircraft, and the consequent dangers. The primary objective of this paper is to focus on what issues and challenges these conditions pose for the implementation of the insurance contracts and what the exceptions to it are. The paper also aims to identify solutions, possible alternatives, and regulatory policies that would help to make the transition of insurance from an earlier period to current and will lead to more definite implementation and fair outcomes for all the stakeholders. At present, there are a number of policies that providing feasible cover plans in the reckoning in India. It can be conferred from various studies that the insurance policies are more effective in the aviation sectors of other countries rather than in India; because of their

structural framework which takes action on the minor errors by the aviation sector. Aviation Industry plays a major role in the progress of the economy of the country by contributing as an important revenue-earning player of the business society and hence, it is quite important to look into to entail the hidden facts of this aspect. Furthermore, the paper also shows the recent developments in the insurance market post 9/11 event, and how the aviation insurance realities being reasonably ready to handle events of even more catastrophic magnitude.

Keywords: *Aviation insurance, liability, convention, policy, safety, regulatory bodies, implementation, safety, 9/11 event.*

I. INTRODUCTION

Aviation accidents, though sporadic, have the potential to end in huge property damages and a high range of fatalities. The various studies have examined the strategic and financial consequences of aviation accidents for the affected airlines. Despite an intensive examination of the airline industry's reaction to aviation accidents which is provided by these studies, there are relatively few other studies that contemplate however insurance corporations which ultimately pay the claims against the any damage to the property or the loss caused. Due to the very fact of being the fastest mode of travel, aviation industry is getting used as preferred mode of travel and therefore making a large chunk of revenue for the economy. Asia is one among the regions where the aviation is getting used by several residents for the primary time to travel abroad and therefore aviation industry has a lot of opportunities to come up with a lot of revenues and jobs for the region.



This paper provides an insight into the inner workings of the aviation insurance market, such as, an overview at how the risk is spread between insurers, how insurers treat deliberate acts of violence and also, how the insurers price the risk and the paper has been divided into four parts. Part II of the paper discusses the evolution of the aviation sector in India, aviation insurance and insurance coverage. Part III and Part IV of the paper focuses on various conventions and liability involved in the Air Law and the legal concerns, also after effect of 9/11 in aviation insurance industry. These developments have been discussed in detail in the paper; and whereas, several are still ongoing, it is fair to mention that the insurance market has already sufficiently has undergone the recent developments to the post 9/11 aviation insurance realities in order that if worst involves worse, it might be fairly able to handle events of more catastrophic magnitude.

1.1 RESEARCH PROBLEM

With the increasing number of accidents, work of insurance industry has also been increased. The insurance sector often faces many problems and even often takes unfair benefits from the loose regulatory system and no stringent legislation directly from insurance-related cases. A concern that needs to be discussed is the imbalance between the aviation safety bodies, the lack of adequate legislation and insurance industry.

1.2 EXISTING LEGAL SITUATION

Many provisions relating to aircraft safety provided under the Aircraft Act, 1937, where government officers are named to oversee safety functions, there were also provisions relating to civil aviation safeguard steps, ban on flying aircraft in some emergencies, etc.,

but no such precautions were taken to avoid accidents of at least similar nature.

The Carriage by Air Act, 1972, this Act determines the air carrier's responsibility for the death or injury of passengers and for the loss or harm to reported baggage and freight. The overall limits of liability for death, disability, harm, etc. are also prescribed, stating the time limits within which claims may be made to the air carrier.

1.3 SCOPE AND OBJECTIVES

The paper aims to understand the emerging trends insurance industry under aviation sector and how the aviation sector is adapting to it. Further, existing Indian legal framework shall be evaluated and the shortcoming analysis. The paper shall further examine the applicable laws when the accident occurs and investigate the enforcement of insurance. The paper shall explore the changes brought in by the 9/11 incident and conclude by mentioning the required changes in aviation sector.

1.4 RESEARCH QUESTION

1. Whether the aviation insurance industry faces any challenges owing to the regulations on airspace?
2. Whether the lack of structural framework in existing civil aviation bodies poses a danger to aircraft and passengers' safety?
3. Whether any measures were taken after the repercussions of 9/11 incident?

1.5 HYPOTHESIS

1. The existing law does not have clarity about aircraft safety insurance, and while there are several orders relating to accidents of a similar type, there are no strict steps that would have been taken in relation to it.
2. There are also structural aviation safety bodies, but some bodies do not work properly, and the risks are compensated



by the insurance companies, which should be avoided. Since 9/11, the premium rate they are entitled to is far less than the catastrophic standard of damaged parties.

1.6 METHODOLOGY

This paper follows doctrinal and qualitative methodology to analyse the current situation in insurance industry. The paper derives information from various etc. secondary data available in the form of journals, documents, legislations, study reports of expert committees. The data/information so derived from primary and secondary sources has been described and evaluated through narrative analysis.

II. AVIATION INSURANCE INDUSTRY

2.1 EMERGENCE

In the early years of the 20th Century, aviation insurance was adopted. In 1911, Lloyd's of London¹ wrote the first aviation insurance policy. In 1912, after poor weather, the firm stopped drafting aviation policies and the subsequent accidents at an air conference caused casualties on all of those first policies². The maritime insurance underwriting industry sponsored the first aviation plans. In 1924, the first specialty aircraft insurers appeared.

¹ <https://www.lloyds.com/policyholder/hurricane-information> (accessed on October 12, 2020)

² <https://www.avjobs.com/history/index.asp> (accessed on October 5, 2020)

³ <https://www.jstor.org/stable/pdf/1190520.pdf?refreqid=excelsior%3Adecf1a9c20610abb59a7495d686c6991> (accessed on October 10, 2020)

The first international conference on private air laws was held by the French government in response to aircraft accidents, in 1925 at Warsaw. The Principle of Restitution was the primary target set by International Civil Aviation in Chicago on 7 December 1944. The Warsaw Convention was signed in 1929³. This Convention was an agreement to set terms, conditions and liability restrictions for air carriage, this convention was the first of the aviation industry. In 1931, Captain Lamplugh, the chief underwriter and principal surveyor of the British Aviation Insurance Company, said of the emerging industry: "Aviation is not inherently hazardous in itself but to a greater extent than the sea, by carelessness, incapacity or negligence is terribly unforgiving⁴."

On 18th February 1911⁵, the first commercial civil aviation flight in India took off from a polo field in Allahabad carrying mail to Naini across the Yamuna River. This was the advent of a commercial flight from Allahabad that first began in India. With expanding airlines industry across the world, the aviation insurance is likely to emerge as a key growth area in the recent years.

2.2 AVIATION INSURANCE

Aviation insurance offers liability and property protections for aircraft. For a variety of various types of aircraft, including regular, experimental, and antique aircraft, as well as seaplanes, aviation insurance, also called aircraft insurance.

⁴ <https://www.thisdayinaviation.com/tag/alfred-gilmer-lamplugh/> (accessed on October 20, 2020)

⁵ [https://en.wikipedia.org/wiki/Aviation_in_India#:~:text=The%20first%20commercial%20aviation%20flight,9.7%20kilometres%20\(6%20mi\)](https://en.wikipedia.org/wiki/Aviation_in_India#:~:text=The%20first%20commercial%20aviation%20flight,9.7%20kilometres%20(6%20mi)) (accessed on October 23, 2020)



Normally no proposal process is used in aviation insurance, the normal practice is the submission of a slip by brokers who manage the bulk of this sort of business, and then they will supply the details which are required by the underwriter. This detail would be analyzed by the underwriter in terms of two major classifications:

- i. Physical hazard: relating to the subject matter, it can be ascertained from the details given and from the experience and knowledge of underwriter of the aircraft type or the relevant legislation involved.
- ii. Moral Hazard: relating to the actions of the pilot and crew, the engineer in charge or the management of the airline.

Physical hazard can be possibly estimated and evaluated accordingly whereas, moral hazard cannot be protected, and so the implementation of terms, assurances or exclusions to the scheme is dealt with. The aim of the rating is to create a premium to cover the risk based on the incidents that could cause loss and considering the costs of the underwriter, the fee or brokerage that he may allow and the need to accumulate all reserves against the future and/or other threats and a return for owners or the names of the syndicate.

There are different kinds of aircraft that can be covered and sometimes they are looked at on an individual basis. The reasoning for this is that it depends exclusively upon the risk factor. There are various risk factors like Large Airline Operators, Charter Operators i.e., Small Airline Operators, Industrial Aid Aircraft and Flying clubs.

Aircraft: The individual excess kept on each aircraft would be determined by the scale and value of the aircraft. The higher the aircraft's worth, the larger the excess kept on it. Owing to the likelihood of the aircraft sinking and thus being a complete loss, seaplanes have the additional chance of destruction while moored. The coverage, the liability curb and the surplus kept on the hull part of the policy are all significant performance considerations.

The basic principle of the insurance industry is the "premium of the many will pay the losses of the few"⁶ which means that the minimum price will be charged by consumers, but only a few insurers will benefit. Because the insurance industry operates in the commercial sector, they function in their own way.

2.3 INSURANCE COVERAGE

Several co-insurers, each of whom has entered into a separate insurance agreement with the insured, will cover the risk. One of the co-insurers will serve as the risk leader and negotiate the terms and conditions for the cover offered. Usually, this lead insurer will also be liable for managing any claims that may occur. These requirements would generally be met by the other insurers, known as the following sector, as it would be impossible to have separate insurers for each participant. Depending on whether the aircraft is being used for recreation or for commercial purposes, insurance providers may have varying types of coverage. If it offers flight training services, an aviation enterprise can require coverage. A financial corporation should buy aircraft insurance for

⁶ Book on aviation insurance by Peter J.C. Viccars, 2001 page xiii.



its corporate jet fleet. Some insurance providers would also have insurance policies for aircraft licensed rather than owned by the operator, because if anything were to happen to the aircraft, the operator could be responsible for million rupees in damage. Organizations, such as flying clubs, whose participants can engage in the use of one or more aircraft, are often entitled to aircraft insurance. Aviation Accident Insurance⁷ covers accidents incurred by an aircraft collision. Aviation crash insurance includes incidents suffered by pilots and passengers, with the form of coverage usually covering accidental death and dismemberment. Although the chance of suffering an injury during a flight is minimal, a factor that may be protected against is the potential for accidental death or disability. The number of insurance providers selling this type of coverage is comparatively limited since the market for aircraft accident insurance is smaller than the demand for certain other forms of insurance, such as general liability or life insurance.

Passengers who exit the aircraft by descending the stairs, or who walk or ride a bus to the terminal, or who pass through passport control and enter the main baggage area, are not involved in any of the Warsaw Convention's embarkation or disembarkation operations when terrorists strike the baggage area. But at the time of a terrorist attack on the lounge, as passengers are gathered in an airport transit lounge to undergo a physical and handbag search, they are in the process of embarking. At that moment, passengers

are under the control of the air carrier, held in the case *Evangelinos et. Al. v. TWA*⁸.

III. CHALLENGES IN INSURANCE INDUSTRY

3.1 LAWS AND REGULATION

In many cases, our court scheme trend towards unfair verdicts and ludicrous awards that has forced many registered owners of aircrafts to build shell companies. There are several regulations, but no such regulations explicitly mention about insurance and due to unbound regulations, when it comes to compensating the parties how to pay and how much to pay, the aviation insurance industry faces challenges. Insurance industry face challenges because when accidents happened and pilots died, regulatory authorities were often unable to identify the real reasons for accidents, so the insurance industry would be burdened under compensation for all passengers whether insured and the same may be the case under undue advantage.

i. Aircraft Act, 1934⁹

There are specific provisions¹⁰ under this Act related to safety of aircraft and power of government to issue directions in case of accidents and negligence but according to various reports by pilots no such provisions are being followed by the authorities to make aviation a safest industry. It is the primary domestic law regulating the Indian aviation industry. Its main purpose is to enable the federal government to make regulations governing the production, selling, use, service, export, import and protection of all civil aircraft. Under the provisions of this Act, protection, directions, public life,

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<https://scholar.smu.edu/cgi/viewcontent.cgi?article=1022&context=jalc> (accessed on October 14, 2020)

⁸ 14 Avi 17, 101

⁹ http://legislative.gov.in/sites/default/files/A1934-22_0.pdf (accessed on October 19, 2020)

¹⁰ Section 4 to 11



compensation, insured orders, etc. are mentioned. It also referred to as situations where the aircraft cannot operate, but no such provisions are strictly followed in India, resulting in severe consequences faced by aviation sector, passengers, and pilots.

ii. Aircraft Rules, 1937¹¹

The 1937 Aircraft Rules usually apply to and to persons on Indian-registered aircraft, wherever they may be with some exceptions, and to all aircraft present in or over India. These regulations lay down, among other things, criteria for flying conditions, registration, airworthiness and licenses. The regulations of that country shall apply when an aircraft is registered in a foreign country, provided that its underlying requirements are based on those defined by the Chicago Convention. In addition, the scope of implementation generally depends on the agreement between the two countries. There is a set of laws and regulations regulating the usage of airspace for aviation and its advantages for the public and the other nations.

iii. Airport Authority of India Act, 1947¹²

This Act talks about better management and cohesive administration. As Aviation Insurance falls under this head, it is clearly important to expressly mentioning of proper rules. Chapters III and IV state irregularities in the procedure and functions of Authorities, as well as in the insurance industry, but it only mentions that insurers must be compensated and that no other such procedures apply to incidents in which passengers have been killed or injured.

iv. The Aircraft (Security) Rules, 2011¹³

This Act talks in detail about every single operation on an aircraft. There are several provisions in this Act which are regulating even the smallest function on an aircraft or an airport. An Act, which is so extensively focused on the security, should be followed very strictly. But unfortunately, people do not adhere to many rules mentioned in this act, thus creating possibilities of mishaps. Adherence to the rules mentioned in Act can be considered as exercising safety measures. As we know, Aircraft Insurance sector is very technically detailed in its nature and it consists of various terms and conditions for the insured. The insurance company expects the insured to exercise all safety measures very carefully in the vicinity. But in India, the aircraft insurance sector is not booming because it is lacking Government support. This is so because, according to the rules and regulations of the aircraft, in case of disputes, there has to be a proper investigation from the side of Government authorities to ensure a valid insurance claim and derive a conclusive report of the case so as to prevent such happenings in future.

v. The Aircraft (Investigation of Accidents and Incidents) Rules, 2012¹⁴

Under this Rule, an investigating team was appointed by the Central Government to investigate an accident or serious incident either by an investigation committee¹⁵ or by a formal investigation pursuant¹⁶ or approved

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https://www.civilaviation.gov.in/sites/default/files/moca_000947.pdf (accessed on October 19, 2020)

¹²

https://www.civilaviation.gov.in/sites/default/files/moca_000719_0.pdf (accessed on October 20, 2020)

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<https://www.civilaviation.gov.in/en/aircraft-security-rules-2011> (accessed on October 22, 2020)

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https://www.civilaviation.gov.in/sites/default/files/moca_003427_0.pdf (accessed on October 22, 2020)

¹⁵ Rule 11

¹⁶ Rule 12



by the Bureau to carry out a preliminary investigation¹⁷.

vi. Carriage by Air Act, 1972¹⁸

There is no governing body, or there is no international law, with the freedom to frame air laws which governs all states in the legal sense. The term Air Law, however, is used to define a system of explicit and implicit agreements between nations. These contracts are known as conventions.

(a) Warsaw Convention

Article 17 states that, “the carrier is liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking¹⁹”. In *Air-inter v. Sage et al*²⁰, before heading to the departure lounge, the passenger slipped and fell in the airport entrance hall when he was in front of the check-in counter. The explanation for the fall was a passenger stumbling over a pool of whisky that a previous traveler spilled on the floor. On 10 February 1976, the Court of France ruled that the case could not be blamed on the carrier, because the airport entrance hall was a public place and not subject to the control and management of the carrier. In *Lockerbie Case*²¹ the Montreal Convention was also controversial in its implementation, as shown by contentious cases before the International Court of Justice. In 1971, following the explosion of Pan Am Flight 103 over Lockerbie, Scotland, in which two Libyan nationals were accused

of placing a bomb on board, this case emerged out of a conflict between the United States and Libya. According to Article 14 of the Montreal Convention, Libya brought the United States before the ICJ on the ground that for conflicts occurring under the Montreal Convention, the United States had infringed the arbitration provisions. In this case, two issues with the Montreal Convention are illustrated. First the enforcement under certain circumstances inconsistent with treaty. For instance, the obvious involvement of Libya in the airline bombing led to the decision of the United States to ignore the explicit arbitration clause in the Montreal Convention. Secondly, there is disagreement about the hierarchical existence of different international law outlets. In the *Ross v. Pan-American Airways*²² case, a theatrical director kept all his employees’ tickets. The Court of Appeals of the State of New York ruled on 14 April 1949 that it was not necessary for the ticket to be given directly to the passenger. But if the ticket was issued to the passenger, the same was bound by a restriction clause restricting the liability of the carrier. *Mertens v. Flying Tiger Line*²³, the ticket was not delivered until after the aircraft was boarded by Mertens. On 16 February 1965, the US Court of Appeals ruled that the ticket had to be delivered to the passenger in such a way that he was given a fair opportunity to take action to defend him against the restriction of liability.

(b) Chicago Convention

¹⁷ Rule 9

¹⁸ http://legislative.gov.in/sites/default/files/A1972-69_0.pdf (accessed on October 23, 2020)

¹⁹

<https://www.iata.org/contentassets/fb1137ff561a4819a2d38f3db7308758/mc99-full-text.pdf> (accessed on November 2, 2020)

²⁰ [1976] RFDA 266

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<https://www.jstor.org/stable/pdf/761322.pdf?refreqid=excelsior%3A69b6cc1d1ca80d52b3ce0708b54643e5> (accessed on November 12, 2020)

²² (1949) USAvR 168; 2 Avi 14, 911

²³ 9 Avi 17, 475



On 7 December 1944, in Chicago, the Convention on International Civil Aviation was signed. To establish international civil aviation in a safe and orderly way, it has set out basic principles. It also ensures the establishment of international air transport services based on equal opportunities for the participating countries.

3.2 POLICIES

The Personal Accident business published in aviation departments emerged from the need for financial insurance against the flying effects of death or injuries. The laws published today, though also address a much broader spectrum of risks. While aircraft insurance usually covers the restoration or reconstruction of defective aircraft and components, aviation accident insurance covers compensation claims for injuries or loss of life.

Not every insurer has the capacity to maintain a risk equal to, or even a substantial proportion of the size of a major airline. The devastating essence of aviation insurance can be calculated in terms of the number of losses costing hundreds of millions of dollars to insurers. "Fleet policies" are covered by most airlines to encompass all aircraft they own or run.

Singapore Aviation insurance policies contain risk management for coordinating operational teams, including ground staff, cabin crew, and security, as well as providing the appropriate workplace guidance. Given the impact on commercial premiums and insurance coverage, this is particularly important when reviewing and structuring insurance programmes. Whereas Indian

Aviation insurance policies is susceptible to a number of risks and threats, especially with regard to aircraft technical operations and the resulting hazards. Aviation insurance is a specialized insurance scheme designed to cover the specific activities of an aircraft and potential aviation risks.

According to National Civil Aviation Policy²⁴, 2016 India has the potential to be among the top three nations worldwide in terms of air traffic nationally and internationally. The rapidly rising economy is an ideal geographical position between the Eastern and Western Hemisphere. Despite these benefits, the Indian aviation industry has not achieved the position it should have and is currently ranked 10th in the world in terms of passenger numbers. Systems and procedures impacting this industry would need to be streamlined and made more accessible by increasing the use of technology without sacrificing security and safety.

3.3 REGULATORY BODIES

The London insurance market is the largest aviation insurance centre in the world. National markets are developed in different countries in the rest of the world, depending on the aviation operation within each country. The US has a large percentage of the general aviation fleet of the world and has a large established market.

The Ministry of Civil Aviation, by regulatory supervision by the Directorate General of Civil Aviation, is responsible for civil aviation. The 2016 National Civil Aviation Policy sets broad safety and operations targets. In over 400 Tier 2 cities across India,

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<https://www.civilaviation.gov.in/sites/default/files/Fi>

nal_NCAP_2016_15-06-2016-2_1.pdf (accessed on November 14, 2020)



the UDAN²⁵ is a proposal to establish a sustainable air network²⁶.

i. Ministry of Civil Aviation

The Aircraft Act and the Aircraft Rules, and various other aviation-related regulations, are governed by the MoCA. It is responsible for formulating national policies and programs which contribute to the development and regulation of the civil aviation industry in India. It exercises administrative power over organizations such as the DGCA, the BCAS and the AAI and is allowed to enter into agreements with other countries on air service.

ii. Directorate General of Civil Aviation

Administrative and financial autonomy for an efficient framework of aviation safety supervision has been given to the DGCA. For all aviation-related transactions, queries and grievances, it has developed a single-window system. The DGCA will review the criteria of civil aviation as appropriate, but at least once every five years.

iii. International Air Transport Association

Article IX of International Airport Transport Association

In *Hadley v. Baxendale*²⁷, the court held that it was not possible to grant remote or indirect damages, especially if the same was not conveyed on or before the contract was formed. The Act does not specifically allow for the cost of emergency landing to be charged if the prohibited goods are taken on board by a passenger. If a passenger brings on board banned items that are dangerous or inflammable in nature, it can constitute a

criminal offence for which it is not a legal recourse to seek damages.

iv. The International Civil Aviation Organization

The ICAO²⁸, a United Nations agency headquartered in Canada, was founded by the Chicago Convention. It defines international air navigation principles. It works to harmonize the rules of airlines. This means that the Member States comply with identical laws, but the rules themselves are in turn formed at the national level.

v. IATA Operational Safety Audit

The IOSA is an internationally recognized and accepted system for auditing and certification of airline operational management and control systems. This Certifying Assessment Body was established by IATA in 2003. It consistently conducts airline audits according to aviation laws.

vi. Federal Aviation Administration

The FAA in the US is responsible for overseeing the control of air transport and air traffic. A similar role in Europe is played by the European Aviation Safety Agency, which draws up important safety regulations which decide how airlines should operate.

vii. Aviation regulator

Since aviation regulators are national organizations, the roles of each of them can differ according to each country's particular needs. Maintaining an aircraft registry and issuing certificates of registration for aircraft is one of the key duties of an aviation regulator. This registry contains key aircraft information and ensuring that air travel is safe and secure.

²⁵ Regional connectivity scheme of government which says "Let the common citizen of the country fly."

²⁶<https://www.civilaviation.gov.in/sites/default/files/Final%20Regional%20Connectivity%20Scheme%20%28RCS%29.pdf> (accessed on November 1, 2020)

²⁷ 9 Ex. 341

²⁸ Established under Article 43 of Chicago Convention.



IV. REVISED AVIATION INDUSTRY

4.1 CHANGES IN AVIATION INDUSTRY AFTER 9/11

The events of 9/11, where the two aircraft that struck the World Trade Centre used the possibly one re-instatement at this devastating amount of damage²⁹, insurers will have to carry more reinstatements or have gone bare, vulnerable to further disasters. Reinstatements after 9/11 are still eligible, but their costs have risen. The projected loss on aviation policies amounted to just about \$4 billion, which was less than 10% of the estimated total insured loss, it was by far the worst affected by the event relative to the premium created. Used as weapons in the 9/11 effect, resulting in a huge loss of life, also changed the views of the industry on this form of danger. Aviation insurers started to recognize that the effect of certain types of terrorism was unquantifiable and therefore uninsurable, while their suppliers of capital realized that the extent of their possible exposure to aviation was out of proportion to the small premium income it produced. Capital suppliers have ceased to see aviation as a limited "residual" business. The effect on the aviation insurance industry, however, was such that insurers had to move rapidly to safeguard their business and 're-inflate' the market. Insurers immediately took steps to restrict their potential exposure to this form of case and with the implementation of 'surcharges' to raise significant sums of additional revenue. While the events of 9/11 were known as the biggest loss ever experienced by the insurance industry, even in the first hours, there seems to have been little or no concern among insurers that they

will not be able to meet the financial requirements arising from the event.

Ultimately, the most notable of these steps was the reduction to \$50 million³⁰ of the AVN52 cover for third parties. This would have grounded the world airlines as they work under different contractual arrangements, conditions and terms of use which usually specify substantially higher standards of coverage. Fortunately, the governments of the world stepped in and either offered forms of 'government-sponsored insurance' or gave compensation to allow the airlines to continue operating. The area of air travel is complex and diverse. Regulations are also evolving and changing for this purpose. Therefore the latest trends and news are closely tracked by many professionals within the travel industry.

4.2 EXCEPTIONS OF AVIATION INSURANCE

Under an aviation insurance policy, there are several exceptions which apply to it. There are some of the common exceptions. However, it should be noted that such exceptions differ from one regulation to another and that the list is only illustrative and not exhaustive.

- Wear, tear and gradual deterioration, damage to ingestion caused by stones, grit, dust, ice etc. resulting in gradual deterioration of the engine, mechanical breakdown. The standard policy also excludes War and Allied perils.
- If the aircraft is being used for any illegal reason.

²⁹ <https://www.9-11commission.gov/report/911Report.pdf> (accessed on October 30, 2020)

³⁰ [file:///C:/Users/MATRIX/Downloads/2006_1A_StockPrice_paper%20\(3\).pdf](file:///C:/Users/MATRIX/Downloads/2006_1A_StockPrice_paper%20(3).pdf) (accessed on November 14, 2020)



- Claims occurring when the aircraft is outside the geographical limits unless due to force majeure³¹(unforcing compulsion or irresistible consequences).
- Claims that are due under any other insurance policy.
- Noise and emissions, unless reported inside the aircraft because of accident, fire or some kind of explosions.
- Every kind of loss caused by the insured's own properties.

When a carrier had shipped cargo to the wrong consignee and there was no way of retrieving it, *UTA v. Societe d 'Equipement d' Avions*³², the Court of Appeal of Paris ruled that in this case, the consignor could seek damages for breach of contract instead of damages for loss from insurance industry. In a case *Chutter v. KLM Royal Dutch Airlines & Allied Aviation Services International Company*³³, a passenger wished to say goodbye to her relatives. She missed the 'fasten seat belts' sign and did not notice that the stairs leading to the aircraft had already been removed when she went to the door of the aircraft. She dropped out of the aircraft and got her leg broken. On June 27, 1955, the US District Court, Southern District of New York, held that the carrier was not liable in the present case because this was a case of complete negligence.

V. CRITICAL ANALYSIS BETWEEN INDIA AND UNITED STATES

³¹irresistible circumstances.

³² RFDA 127

³³ [1955] USA vR 25

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<https://www.thehindu.com/news/national/kozhikode-plane-crash-everything-came-apart-in-nano-seconds-recalls-ai-express-cabin-crew/article32358129.ece> (accessed on October 6, 2020)

In foreign countries, aviation insurance policies are more successful than in our country because they have stringent legislation and regulatory bodies that work to avoid accidents or prevent accidents of a similar nature.

When we have done case analysis of *Kozikode accidents*³⁴ and *Mangalore accidents*³⁵, they are both of similar natures as both occurred on tabletop runways. Pilots need to report³⁶ after landing and some pilots have confirmed that both runways are not secure for landing during the monsoon because both the runways do not have RESA (runway end safety areas) factor and it plays major role in controlling the accidents. As the reports were sent to DGCA (director general of civil aviation), no such measures or precautions were taken on landing. The reasons were also set out by the pilots in reports to ensure additional protection. In this case the board of inquiry was called to investigate the comprehensive matter. After all these efforts, the regulatory authorities have not been able to deter accidents and the insurance industry needs to recover the losses. In comparison, the insurance sector also deals with losses that can be prevented and incidents that are not very atrocious in nature.

When we compare the world's other safest flights³⁷, they are of Singapore, United States

³⁵ <https://www.ndtv.com/photos/news/mangalore-air-crash-how-it-happened--7416> (accessed on October 6, 2020)

³⁶ Report by Pilot Mohan after Mangalore Air crash in 2011.

³⁷

<https://www.forbes.com/sites/laurabegleybloom/2020/01/06/ranked-the-worlds-safest-airlines-most-punctual-airlines-and-more/?sh=32280d302f9f> (accessed on November 14, 2020)



because they have strict laws and functional bodies.

There is a case of US when a flock of geese struck when *Captain Sully* was flying from La Guardia Airport, damaging the aircraft's engine. Although he saved all the life of the passenger, this was entirely an unavoidable accident, but for this Sully was placed in remand only because strict regulatory bodies implemented strict laws³⁸.

Because of no proper legislation in India due to which the insurance industry is often under loss or the aviation has sometimes taken undue advantage of insurance. We have structural bodies, but the proper operation of laws and policies is incomplete. When we compare India with the country having safest flight because 1 percent minor error would keep the pilot or authorities in remand, but in India nothing like this happens. So, in those areas, the insurance industry is booming. There were back-to-back incidents in 2009 for the same cause, but the files were only stacked up after investigation and no more steps were taken to avoid such losses. Even as international insurance companies came to India to make the Indian insurance market more massive, but we were downgraded by the ICAO (international civil aviation organization) agency and other security authorities and their records. India signed the Chicago Convention in 1945. Its principle is sound and economic flight operation that has been signed by 52 other nations. But India focuses only on economic operation and pilot should have full control of aircraft during emergency or any causality, but pilots do not

have full control due to strict policies. The policy states that if an accident happens and the pilot violates the policy, the pilot must face the consequences.

At present, there are likely to be no more than about 50 insurers writing airline business worldwide. Where the bulk of the effective insurance business is in the US, Singapore, London, etc. since the limited number of risks are still protected by Aviation and in particular, airline insurance. Perhaps the aviation insurance industry in India covers the danger that is less likely to occur, and there is no such re-insurance provision as re-insurance helps to smooth out the effects of random loss variability and reduce the impact of catastrophe losses.

VI. CONCLUSION

Many underwriters would only quote a particular risk to one broker, a system known as locking prices, making it impossible to shop around. The business of aviation insurance is very specialized, so insurers can generally get decent service from any broker they want to do business with. However, in the case of an injury, the right broker could save money.

It can be tough to secure an offer for insurance industry since the industry must usually cover a wide spectrum of pilot experience. There are decent prices to be had, though. Snead says, "There could be 20 passengers in the club, but the insurance premium is focused on the 5 participants if any five of them are travelling³⁹."

³⁸ <https://www.theguardian.com/us-news/2016/sep/08/sully-hudson-river-plane-crash-investigators-clint-eastwood> (accessed on October 12, 2020)

³⁹<https://www.flyingmag.com/pilots-places/pilots-adventures-more/how-save-money-aviation-insurance/> (accessed on October 22, 2020)



Clearly, the industry was put to the test on 9/11, but while the events that took place on that day cost the insurance industry billions of dollars, no insurance firm was in extreme danger of collapsing as a result. While some insurance firms have withdrawn from the aviation industry as they see the risk-reward trade-off as unattractive, insurance companies that remain have rewritten their contracts and updated a variety of critical provisions to shield themselves from adverse accidents and to be able to cover much greater possible hazards in the future. Although airlines can continue to insure themselves against most risks, the cost of doing so has clearly increased and put insurance premiums at the forefront of the minds of airline managers potentially overshadowed by few factors, such as concerns about rising fuel prices. Whether, say, a potential political stabilization in the Middle East or a hopeful reduction in terrorist threats will ultimately reduce the overall risk exposure of the industry remains to be seen but in the longer term, airline managers can rest assured that competition between insurers will surely result in a fair level playing field for their risk profile. Overall, airline insurance is a positive idea, and there is a range of businesses which are able to offer it but at the right amount.

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