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ASSEMBLY — 40TH SESSION

LEGAL COMMISSION

Agenda Item 38: Work Programme of the Organization in the legal field

“NATIONAL NO FLY LIST” FOR ONBOARD UNRULY PASSENGER BEHAVIOUR

(Presented by India)

EXECUTIVE SUMMARY

With a focus on ensuring on-board safety and maintaining an element of balance and safeguarding the interest of passengers, crew and the airlines, India has laid down regulations to tackle on-board disruptive and unruly passenger behaviour. The new rule allowed the formation of a “National No Fly List” of unruly passengers, unique and first of its kind in the world.

<i>Strategic Objectives:</i>	This working paper relates to Strategic Objective Safety.
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<i>Financial implications:</i>	Not applicable.
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<i>References:</i>	Not applicable.
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1. INTRODUCTION

1.1 Indian aviation has grown leaps and bounds in the last two decades. The domestic market has opened up new vistas for growth not only in the aviation business but also in related sectors, which has contributed significantly to the overall economic growth.

1.2 The National Civil Aviation Policy (NCAP), which was formalized and implemented in the year 2016, has given a new dimension to civil aviation in India. The Government of India has made significant positive changes to cater to the double digit growth in the domestic market witnessed consecutively for the past five years. Growth in the civil aviation sector has a multiplier effect on the economy and the Government has taken initiatives to capture the benefits of growth in the civil aviation sector. Over the 20 year period, this continued growth has reduced the average stage length and has provided an ease of travel across the length and breadth of the country.

1.3 Giving an opportunity for everyone to fly, also meant that the Government had to bring in regulations to cover various safety issues on the ground and in the air.

1.4 With the focus on ensuring on-board safety and maintaining an element of balance and safeguarding the interest of passengers, crew and the airlines, after a lot of deliberation and consultation with stakeholders, the Indian Government formalized a new rule to tackle on-board disruptive and unruly passenger behaviour. The new rule allowed the formation of a “National No Fly List” of unruly passengers, unique and first of its kind in the world.

2. DESCRIPTION

2.1 In September 2017, the Director General of Civil Aviation (DGCA), Government of India issued a Civil Aviation Requirement (CAR) to deal with unruly passenger behaviour on board aircraft which outlined the definition, applicability, reporting and handling of the situations of unruly behaviour of passengers on board the aircraft. The CAR has been published on 8 September 2017 and is available on the DGCA Website (<http://dgca.gov.in>) (CAR Section 3 - Air Transport, Series M Part VI). This CAR is in accordance with the Tokyo Convention, 1963.

2.2 The applicability of the CAR would lead to the passenger being listed on the “No Fly List” and could be banned from flying for a period of three months to two years or more. The “No Fly List” has two components – unruly passenger banned for a certain period by the airline and those perceived to be a national security risk by the Ministry of Home Affairs.

2.3 The CAR is applicable to all Indian operators engaged in scheduled and non-scheduled air transport services and forms part of the new “**National No Fly List**” which was unveiled by Union Civil Aviation in September 2017.

2.4 The CAR defines three categories of unruly behaviour.

Level 1: Unruly verbal behaviour under which a passenger found guilty can be banned for flying for up to three months.

Level 2: Offences which relate to physical behaviour and a passenger being prosecuted under this offence can be banned from taking to the skies for up to six months.

Level 3: If a passenger’s behaviour is considered life threatening, such as affecting the safety of the aircraft, then he or she can be banned for up to two years or more.

2.5 As per the CAR, unruly behaviour will be considered by an Internal Committee set up by every domestic airline. The Internal Committee consists of a retired District and Session Judge as the Chairperson; a representative from a different scheduled airline as a Member; and a representative from a passengers association or consumer association or retired officer of Consumer Dispute Redressal Forum as a Member.

2.6 The CAR lays down that the Internal Committee will decide the matter of offence committed by a passenger within 30 days along with the duration of the ban. In case the Internal Committee fails to come to a decision in 30 days then the passenger will be free to fly.

2.7 The complaint of unruly behaviour would need to be filed by the pilot-in-command. These complaints will be considered by the airline Internal Committee. During the period of pendency of the enquiry, the concerned airline may impose a ban on the said passenger. For every subsequent offence, the ban will be twice the period of the previous ban.

2.8 The first category of disruptive behaviour includes verbal assault and carries a ban of three months, the second includes physical attack with a ban of six months and the third and most serious category comprises life-threatening behaviour as well as sexual harassment with a ban ranging from two years or more without upper limit.

2.9 The airline is required to inform a traveller about the flying restrictions imposed by it.

2.10 Unruly passengers will also be investigated by the local police in addition to the airline's Internal Committee and can face criminal charges as the airline is required to file a First Information Report to the local police.

2.11 Other domestic air carriers "will not be bound by the no-fly list of an airline" implying that they are free to decide whether or not to bar a passenger already banned by one of the airlines for his/her misconduct.

2.12 International airlines will have to conform to these rules as per the Tokyo Convention, 1963. The Convention allows a Contracting State to impose its criminal jurisdiction on an aircraft in flight if there is a breach of flight related rules, in case the offence has been committed by or against a national of that country and if it harms its security.

2.13 India's "National No Fly List" will also comprise passengers identified by the Ministry of Home Affairs as a threat to national security. Presently, a "No Fly List" is maintained by the [United States' Federal Government's Terrorist Screening Centre](#) (TSC) for people who are prohibited from boarding [commercial aircraft](#) for travel within, into, or out of the [United States](#). Canada also has a "No Fly List" – an initiative by the Canadian Government to identify individuals who may be an immediate threat to aviation security and prevent them from boarding the flight.

2.14 One Indian passenger has already been put on the "National No Fly List" (eight months after it was unveiled). In view of the offence, the passenger was placed under the third category defined in the CAR.

2.15 The CAR has described Standard Operating Procedures (SOP) for the crew and outlines the training requirements to empower the crew to effectively use the SOP for on-board incidents. Training has also been identified for ground staff for procedures to deal with unruly passengers.

2.16 **Appeal Mechanism:**

2.16.1 The new CAR also has an appeal mechanism which provides an aggrieved person the provision to appeal within 60 days of the order to an appellate committee constituted by the Ministry of Civil Aviation. The “No Fly List” has been developed keeping in mind the safety of passengers, crew and the aircraft and is based on a security threat perception. Interestingly one airline will not be bound by the “No Fly List” of another domestic airline. A passenger cannot circumvent the domestic fly ban by flying to a nearby foreign country and then flying to the original destination in India. For example, a passenger on the banned list wanting to fly from Delhi to Chennai will not be able to reach Colombo from Delhi and then fly from Colombo to Chennai.

2.16.2 Unruly behaviour of passengers in airport premises will be dealt with by the relevant security agencies.

2.16.3 The list of unruly passengers will be provided by the airlines to the Directorate General of Civil Aviation and will be available on the website of the airline regulator.

2.17 A passenger barred from flying can approach an appellate committee constituted by the Ministry of Civil Aviation within a period of 60 days. The decision of this committee will be final but if the appellant is dissatisfied he or she can approach the High Court.

3. **CONCLUSION**

3.1 The CAR has been well received by the travelling public.

3.2 Close to two years after publishing the CAR and after putting one person on the “National No Fly List”, India has witnessed a visible reduction in incidents of on-board unruly behaviour.