

# Economic Advancement and Legislative Reform in India's Aviation Sector

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*The safe and orderly development of international aviation is dependent upon effective implementation of the Convention on International Civil Aviation (the "Chicago Convention"). The cornerstone of this effort is the enactment of primary aviation legislation—a comprehensive aviation law—by each Contracting State. International assessments and high-level reviews within India, however, have revealed significant weaknesses in India's aviation law. In addition, the rapid economic advancement of India's aviation market is exacerbating tensions within the current legal structure. In response to these challenges, the Central Government introduced new legislation, the Civil Aviation Authority Act of India ("CAAI Act"). This effort at legislative reform, however, has stalled even as the underlying dynamic mandating change continues. India currently has the fastest growing domestic aviation market in the world to match the world's fastest growing economy. In addition, India faces ongoing scrutiny from the international aviation community, including the risk of reputational harm and potential sanction for non-compliance with the Chicago Convention. The urgency for reform only increases with time. This article calls for a renewed effort to reform India's civil aviation regulatory system based on the CAAI Act or an improved alternative. At the very least, legislative action is required to build a legal framework to support the rising flight path of India's economy.*

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## INTRODUCTION

The legal regime established by the Convention on International Civil Aviation (“Chicago Convention”) and managed by the International Civil Aviation Organization (“ICAO”), a specialized United Nations agency, reflects a broad international consensus on the regulation of international aviation.<sup>1</sup> With 191 Contracting States,<sup>2</sup> the treaty-regime is arguably one of the world’s most successful multilateral enterprises.<sup>3</sup> The safe and orderly development of international aviation is dependent upon effective implementation of the Chicago Convention.<sup>4</sup> The cornerstone of this effort is the enactment of primary aviation legislation—a comprehensive aviation law—by each Contracting State.<sup>5</sup>

India is an ICAO Contracting State and charged with effective implementation of the Chicago Convention.<sup>6</sup> International as-

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1. Convention on Int’l Civil Aviation, Dec. 7, 1944, 61 Stat. 1180, 15 U.N.T.S. 295 [hereinafter Chicago Convention].

2. A Contracting State of ICAO is a state that has adhered to the Chicago Convention, whether or not it is a member of the United Nations and/or any of its other Agencies, for example Switzerland. Int’l Civil Aviation Org., *Categorization of States*, <http://www.icao.int/secretariat/Pages/ro-categorization.aspx> (last visited Nov. 1, 2016).

3. By comparison the United Nations has 193 member states with the recent addition of South Sudan. U.N., *Member States*, <http://www.un.org/en/member-states> (last visited Nov. 1, 2016).

4. Int’l Civil Aviation Org., *Safety Oversight Manual*, iii, Doc. 9734 AN/959 (2<sup>nd</sup> ed. 2006), [www.icao.int/safety/fsix/Library/Doc9734\\_Part\\_A.pdf](http://www.icao.int/safety/fsix/Library/Doc9734_Part_A.pdf) [hereinafter ICAO Doc. 9734].

5. *Id.* at 3-2; Int’l Civil Aviation Org. *Manual for Procedures for Operations Inspections, Certification and Continued Surveillance*, at I-3-1, Doc. 8335 AN/879 (5<sup>th</sup> ed. 2010), [http://www.icao.int/RO\\_APAC/Meetings/2012\\_FAOSD\\_Training/Doc%208335%20-%20Manual%20for%20Ops%20Inspection%20Cert%20Continued%20Surv%20Ed%2005%20%20\(En\)\[1\].pdf](http://www.icao.int/RO_APAC/Meetings/2012_FAOSD_Training/Doc%208335%20-%20Manual%20for%20Ops%20Inspection%20Cert%20Continued%20Surv%20Ed%2005%20%20(En)[1].pdf) [hereinafter ICAO Doc. 8335].

6. India became a Contracting State to the Chicago Convention on March 1, 1947. U.S. Dep’t of State, *Status of Convention on Int’l Civil Aviation*,

assessments and high-level reviews within India, however, have revealed significant weaknesses in India's aviation law. Questions have been raised as to whether India's current legislative framework provides the regulatory authorities sufficient administrative capacity, financial flexibility, and legal autonomy to ensure effective oversight.<sup>7</sup> The multi-tiered legal system in place obscures lines of authority and creates uncertainty for industry stakeholders.<sup>8</sup> Moreover, the rapid development of India's aviation market—its depth and breadth—is exacerbating tensions within the current legal structure.<sup>9</sup>

Following the liberalization of India's skies in the 1990s, the country has experienced phenomenal growth in the aviation sector. India's air traffic grew by approximately 160% during the first decade of the twenty-first century<sup>10</sup> and the country became the ninth largest civil aviation market in the world.<sup>11</sup> Pursuant to the new National Civil Aviation Policy of 2016, India is seeking to become the world's third largest civil aviation market by 2022, behind the United States and China.<sup>12</sup> India currently has the fastest growing domestic aviation market in the world<sup>13</sup> to match the world's fastest growing economy.<sup>14</sup> Both trends will likely continue.<sup>15</sup> The World Bank pro-

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<http://www.state.gov/documents/organization/22698.rtf>. A complete list of Contracting States is available on the ICAO website. See Int'l Civil Aviation Org., *List of Parties*, [http://www.icao.int/secretariat/legal/List%20of%20Parties/Chicago\\_EN.pdf](http://www.icao.int/secretariat/legal/List%20of%20Parties/Chicago_EN.pdf).

7. See *infra*, pt. I.

8. See *infra*, pt. I.

9. See *infra*, pt. I.

10. STANDING COMMITTEE ON TRANSPORT, TOURISM, AND CULTURE, PARLIAMENT OF INDIA, RAJYA SABHA, 168<sup>TH</sup> REPORT: DIRECTORATE GENERAL OF CIVIL AVIATION (DGCA)—ISSUES AND CHALLENGES, ¶ 2, at 1 (2011), <http://164.100.47.5/newcommittee/reports/EnglishCommittees/Committee%20on%20Transport,%20Tourism%20and%20Culture/168.pdf> [hereinafter Standing Committee Report No. 168].

11. In 2015, Indian airports handled a total of 190 million passengers, making it one of the ten largest markets globally. CAPA—CENTRE FOR AVIATION, *Profile on India*, <http://centreforaviation.com/profiles/countries/india> (last visited Nov. 1, 2016).

12. Nirmala George, *India's Government Approves New Civil Aviation Policy*, ASSOCIATED PRESS (June 17, 2016), <http://www.bigstory.ap.org/article/a228427a4cb14a92a94353beb656ce32/indias-government-approves-new-civil-aviation-policy>.

13. Press Release, Int'l Air Transp. Ass'n, *IATA Air Passenger Forecast Shows Dip in Long-Term Demand*, IATA (Nov. 26, 2015), <https://www.iata.org/pressroom/pr/Pages/2015-11-26-01.aspx>.

14. Joanna Sugden, *India Leads World Bank Growth Forecast Amid Global Economic Heavy Weather*, WALL ST. J. (Jan. 8, 2016), <http://blogs.wsj.com/indiarealtime/2016/01/08/india-sheltered-from-global-economic-heavy-weather-world-bank-says>.

15. Raymond Zong, *India Will Be Fastest-Growing Economy for Coming Decade, Harvard Researchers Predict*, WALL ST. J. (Jan. 1, 2016),

jects India's economy to grow at 7.5% from 2015–2016, followed by further acceleration to 7.8% from 2016–2017 and 7.9% from 2017–2018.<sup>16</sup> Economic growth leads to rising incomes, which underpin the forecast for strong air travel demand.<sup>17</sup> This economic advancement, in turn, increases the duties and responsibilities of India's aviation oversight system.<sup>18</sup>

In response to these challenges, in 2013 the Central Government introduced before Parliament the Civil Aviation Authority of India Bill ("CAAI Bill").<sup>19</sup> The CAAI Bill laid out a plan for an independent authority with the power and resources to more effectively discharge India's safety oversight responsibilities under the Chicago Convention. This legislative effort, however, has lapsed even as the underlying dynamic mandating change continues. The urgency for reforming India's aviation law only increases alongside the continued growth and development of India's aviation industry. Given the continuous monitoring of India's performance under the Chicago Convention by ICAO<sup>20</sup> and other Contracting States, such as the United States, inaction could lead to reputational harm or even international operational restrictions for Indian airlines.<sup>21</sup> Therefore, the Central

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<http://blogs.wsj.com/indiarealtime/2016/01/01/india-will-be-fastest-growing-economy-for-coming-decade-harvard-researchers-predict>; Saurabh Sinha, *India to Displace UK and be Third Largest Aviation Market by 2026: IATA*, TIMES OF INDIA (Nov. 26, 2015), <http://timesofindia.indiatimes.com/business/india-business/India-to-displace-UK-and-be-third-largest-aviation-market-by-2026-IATA/articleshow/49938569.cms>; Press Release, World Bank, *Manufacturing and Services, Urban Consumption Keep Indian Economy on Growth Path* (Jun. 20, 2016), <http://www.worldbank.org/en/news/press-release/2016/06/20/manufacturing-and-services-urban-consumption-keep-economy-on-growth-path>; *India's Aviation Market Surges 20% on Economic Growth and Low Fuel Prices*, CAPA—CENTRE FOR AVIATION (Jun. 3, 2016), <http://centreforaviation.com/analysis/iata-indias-aviation-market-surges-20-on-economic-growth-and-low-fuel-prices-283494>.

16. Press Release, World Bank, *India's Economic Growth Picks Up, But Uncertainty Over Its Momentum Remains* (Oct. 15, 2015), <http://www.worldbank.org/en/news/press-release/2015/10/29/indias-economic-growth-picks-up-but-uncertainty-over-its-momentum-remains>.

17. BOEING CO., CURRENT MARKET OUTLOOK 2015–2034, at 11 (2015), [http://www.boeing.com/resources/boeingdotcom/commercial/about-our-market/assets/downloads/Boeing\\_Current\\_Market\\_Outlook\\_2015.pdf](http://www.boeing.com/resources/boeingdotcom/commercial/about-our-market/assets/downloads/Boeing_Current_Market_Outlook_2015.pdf).

18. ICAO Doc. 9734, *supra* note 4, at 2-10–2-11 (identifying pressures of increased demand and complexity of air transportation as being a root cause for non-implementation of Chicago Convention standards).

19. Civil Aviation Authority of India Bill, 2013, <http://www.prsindia.org/uploads/media/Civil%20Aviation%20bill/Civil%20Aviation%20authority%20bill.pdf> [hereinafter "CAAI Bill"].

20. Int'l Civil Aviation Org., *USOAP Continuous Monitoring Approach*, <http://www.icao.int/safety/cmaforum/Pages/default.aspx> (last visited Nov. 1, 2016).

21. The United States conducts foreign country audits through the U.S. Federal

Government should take the necessary steps to enact and implement legislation, either in the form of the CAAI Bill or an improved alternative, that reforms civil aviation oversight in order to sustain and grow India's aviation potential.

This Article proceeds as follows. Part I reviews the requirements of primary aviation legislation under the Chicago Convention. Part II examines the current legal framework governing civil aviation in India and briefly notes identified shortcomings in this approach. Part III analyzes key characteristics of the CAAI Bill that seek to address structural challenges facing India's civil aviation oversight system. Part IV concludes with a renewed call for legislative reform based on the CAAI Bill.

## I. REQUIREMENTS OF THE CHICAGO CONVENTION

Under the Chicago Convention and its Annexes, Contracting States are required to promulgate primary aviation legislation, such as a "national civil aviation code" or a "civil aviation act," which establishes a State's civil aviation authority. As stated by ICAO:

For a State to fulfil its obligations as provided for in the [Chicago] Convention, it is clear that an appropriately organized, funded and empowered civil aviation system must be established on the basis of national legislation and structured to fulfil the tasks that it is expected to undertake.<sup>22</sup>

The requirement to promulgate primary aviation legislation is derived from the framework and intent of the treaty regime.<sup>23</sup> The Chicago Convention refers to national laws and regulations relating to the admission to or departure from its territory of civil aircraft en-

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Aviation Administration's (FAA) International Aviation Safety Assessment (IASA) program, which includes an audit of the country's primary aviation legislation for compliance with the Chicago Convention. If the country fails the FAA IASA audit, then its national air carriers' access to the U.S. market is restricted (for the foreign airlines with existing service to the U.S.) or prohibited (for new entrants). See Roncevert Almond, *The FAA's International Aviation Safety Assessment Program*, in AVIATION REGULATION IN THE UNITED STATES, 389–402 (Heffernan & O'Connor eds., 2014). Some countries ban certain air operations from countries that have been issued "Significant Safety Concerns" by ICAO. Khettiya Jittapong and Manunphattr Dhanananphorn, *China, Japan, South Korea Halt Thai Air Route Expansion on Safety Concerns*, REUTERS (Mar. 30, 2015), <http://www.reuters.com/article/us-thailand-aviation-idUSKBN0MQ1ZM20150330>.

22. ICAO Doc. 9734, *supra* note 4, at 3-7–3-8.

23. *Id.* at 3-2–3-3.

gaged in international air commerce.<sup>24</sup> The treaty also references state regulations in respect to operations,<sup>25</sup> airworthiness,<sup>26</sup> and registration of such aircraft within its territory.<sup>27</sup>

In addition, the Chicago Convention sets forth a positive duty on Contracting States to ensure conformity and uniformity across the international legal regime. Each Contracting State must undertake to keep its own aviation regulations uniform “to the greatest extent possible” with those established under the Chicago Convention.<sup>28</sup> Contracting States are required to cooperate in achieving the “highest practicable degree of uniformity” in their respective regulations and procedures related to air navigation and conform domestic systems to international standards as well as recommended practices established under the Chicago Convention.<sup>29</sup> This is consistent with the basic precept of international law that sovereign states that accept a treaty’s obligations will comply with them.<sup>30</sup>

The primary aviation legislation serves as the foundation for the Contracting State’s entire regulatory system. As explained by ICAO, “[A]s a first step towards discharging its obligations and responsibilities [under the Chicago Convention], a State will require an enactment of a legislative framework referred to as the primary aviation legislation.”<sup>31</sup> This legislative framework provides the bedrock for the “critical elements” that comprise a safety oversight system.<sup>32</sup> As such, the aviation law should be comprehensive, effective, and reflective of the environment and complexity of the aviation activities of the Contracting State.<sup>33</sup> To this end, the Chicago Convention and ICAO prescribe key characteristics, which must be included in the

24. Chicago Convention, *supra* note 1, art. 13.

25. *Id.* art. 11.

26. *Id.* art. 31.

27. *Id.* art. 19.

28. *Id.* art. 12.

29. *Id.* art. 37.

30. States are generally bound by the principle of *pacta sunt servanda*. Vienna Convention on the Law of Treaties art. 26, *opened for signature* May 23, 1969, 1155 U.N.T.S. 33 (entered into force Jan. 27, 1980).

31. ICAO Doc. 9734, *supra* note 4, at iii.

32. ICAO has identified eight critical elements of a safety oversight system: (1) “Primary aviation legislation”; (2) “Specific operating regulations”; (3) “State civil aviation system and safety oversight functions”; (4) “Technical personnel qualification and training”; (5) “Technical guidance, tools and the provision of safety-critical information”; (6) “Licensing, certification, authorization and approval obligations”; (7) “Surveillance obligations”; and (8) “Resolution of safety concerns.” *Id.* at 3-1-3-2.

33. *Id.*

primary aviation legislation.

First, the aviation law must firmly establish the country's civil aviation oversight system. Specifically, the primary aviation legislation must provide for the establishment of a government oversight body, a civil aviation authority, to be headed by a Director General with power to exercise authority over civil aviation matters.<sup>34</sup> The Director General must have a legal basis for issuing certificates and licenses, as applicable, to aircraft, organizations, and personnel engaged in international air navigation.<sup>35</sup> In turn, the Director General should be specifically empowered by the primary aviation legislation to "refuse, withdraw, revoke, suspend or amend" any certificate or license, if it is necessary in the interest of safety.<sup>36</sup> To effectively fulfill responsibilities, the civil aviation authority must have the legal capacity to properly staff the organization with qualified personnel capable of accomplishing its technical responsibilities.<sup>37</sup>

Second, the primary aviation legislation must empower the civil aviation authority to discharge its oversight responsibilities under the Chicago Convention.<sup>38</sup> The aviation law should contain provisions that enable the government, through the civil aviation authority, to proactively supervise and regulate civil aviation activities of the Contracting State.<sup>39</sup> This includes provisions for the delegation of the necessary authority and the assignment of corresponding responsibility to the civil aviation authority to develop, issue, and revise operating regulations consistent with the air navigation regulations and rules as set forth in the Chicago Convention and its Annexes.<sup>40</sup>

Third, the primary aviation legislation must provide the civil aviation authority with the tools to effectively carry out its oversight functions under the law. For example, the aviation law should enable the authority—through the licensing, certification, and continued supervision of airmen and air carriers—to set forth conditions on com-

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34. ICAO Doc. 8335, *supra* note 5, I-3-1-I-3-2; ICAO Doc. 9734, *supra* note 4, at 3-1, 3-3, 3-7-3-8; Int'l Civil Aviation Org., *Airworthiness Manual*, at 23-24, ICAO Doc. 9760 (3d ed. 2013), <http://aaib.gov.mn/uploads/Doc9760.pdf>.

35. Chicago Convention, *supra* note 1, arts. 12, 37; ICAO Doc. 9734, *supra* note 4, 3-3, 3-7-3-8; ICAO Doc. 8335, *supra* note 5, at I-3-2.

36. ICAO Doc. 8335, *supra* note 5, at I-3-2. *See generally* Convention on Int'l Civil Aviation, Annex 6, Dec. 7, 1944, 61 Stat. 1180, 15 U.N.T.S. 295, pt. I, at 4-2 [hereinafter Annex 6].

37. ICAO Doc. 9734, *supra* note 4, at 3-2-3-3.

38. Annex 6, *supra* note 36, § 4.2.1.8, app. 5; ICAO Doc. 9734, *supra* note 4, at 3-2-3-3; ICAO Doc. 8335, *supra* note 5, at I-2-1.

39. ICAO Doc. 9734, *supra* note 4, at 3-3.

40. ICAO Doc. 8335, *supra* note 5, at I-3-1.

mercial air transport operations.<sup>41</sup> The aviation law should give the civil aviation authority responsibility to exercise surveillance of certificate or license-holders through inspections and audits.<sup>42</sup> Contracting States also have a responsibility under the Chicago Convention to prosecute violations of the air navigation regulations.<sup>43</sup> To enable enforcement, the primary aviation legislation must provide authority to punish regulatory violations in accordance with the national penal code or other penal legislation.<sup>44</sup> For this purpose, ICAO recommends the specification of the applicable penalty, whether civil or criminal, in the event of a violation.<sup>45</sup>

Fourth, the national legislation must provide the civil aviation authority with funding and resources appropriate to the size and complexity of air operations under the jurisdiction of the Contracting State.<sup>46</sup> For example, the civil aviation authority must have sufficient financial resources available for hiring qualified technical staff.<sup>47</sup> The budget should permit the remuneration of government's technical staff to be comparable to industry personnel (for example, aviation operations inspector salaries should be similar to airline pilot salaries).<sup>48</sup> ICAO recognizes that the cost of recruiting and retaining qualified technical personnel who satisfactorily meet the requirements of the profession represents a significant financial commitment and may require revisions to long-standing policies and regulations regarding remuneration for these specific government employees.<sup>49</sup>

Fifth, the primary aviation law must establish the autonomy of the civil aviation authority within the governing structure of the state.<sup>50</sup> To establish a solid legal foundation for the civil aviation authority, the primary aviation legislation must be promulgated at the highest level of government, on par with other national codes legislated by the state.<sup>51</sup> There must be a clear division between the regu-

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41. Annex 6, *supra* note 36, § 4.2.1.8, app. 5; ICAO Doc. 9734, *supra* note 4, at 3-2-3-3, 3-16-3-19; ICAO Doc. 8335, *supra* note 5, at I-3-1.

42. ICAO Doc. 9734, *supra* note 4, at 3-16-3-18.

43. Chicago Convention, *supra* note 1, art. 12.

44. ICAO Doc. 9734, *supra* note 4, at 3-3.

45. ICAO Doc. 8335, *supra* note 5, at v.

46. ICAO Doc. 9734, *supra* note 4, at 3-7-3-11.

47. *Id.* at 3-7-3-12.

48. *Id.* at 3-8.

49. *Id.*

50. Annex 6, *supra* note 36, § 4.2.1.8, app. 5; ICAO Doc. 9734, *supra* note 4, at 3-2-3-3; ICAO Doc. 8335, *supra* note 5, at I-3-2.

51. Annex 6, *supra* note 36, § 4.2.1.8, app. 5; ICAO Doc. 9734, *supra* note 4, at 3-2-3-3.

latory functions and service provision functions of the state so as to avoid any conflicts of interest or overlap in responsibilities.<sup>52</sup> The primary aviation legislation should also ensure the impartiality of the civil aviation authority's investigation of accidents and incidents.<sup>53</sup>

## II. EXISTING LEGISLATIVE FRAMEWORK IN INDIA

India has a three-tiered legal system governing civil aviation. The country's principal legislation is the Aircraft Act, 1934 ("Aircraft Act"), which came into force on August 19, 1934 and was substantially amended in 1994 with the passing of the Airports Authority of India Act, 1994.<sup>54</sup> The Aircraft Act specifically addresses the implementation of the Chicago Convention and the provisions contained in its Annexes.<sup>55</sup> Pursuant to the Aircraft Act, the Central Government authorizes the Directorate General of Civil Aviation ("DGCA") to perform the regulatory oversight functions set forth in the law.<sup>56</sup>

The Aircraft Act empowers the Central Government, through the Minister of Civil Aviation ("MoCA"), to make air navigation regulations, in the form of the Aircraft Rules, 1937 ("Aircraft Rules").<sup>57</sup> These rules form the second-tier of the legal system.<sup>58</sup> An Aircraft Rule takes effect once it is approved by the MoCA and published in the *Official Gazette* of India. The Aircraft Rules empower the Director General, as head of the DGCA, to lay down standards and procedures to carry out the obligations of the Aircraft Act, the Chicago Convention, and the provisions contained in its associated Annexes.<sup>59</sup>

The Director General is further empowered to issue binding orders and directions, such as the Civil Aviation Requirements ("CARs"). These orders constitute the third legal tier under the Indi-

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52. Annex 6, *supra* note 36, § 4.2.1.8, app. 5; ICAO Doc. 9734, *supra* note 4, at 2-8-2-10, 3-3; ICAO Doc. 8335, *supra* note 5, at I-5-2.

53. Chicago Convention, *supra* note 1, art. 26; ICAO Doc. 9734, *supra* note 4, at 3-3.

54. The Aircraft Act, No. 22 of 1934, INDIA CODE (1993), vol. 1 [hereinafter Aircraft Act].

55. *Id.* § 4.

56. *Id.* §§ 4A, 5A.

57. AIRCRAFT RULES, 1937 (INDIA), <http://www.dgca.nic.in/rules/act-ind.htm> [hereinafter Aircraft Rules].

58. Aircraft Act, *supra* note 54, §§ 4, 5, 7.

59. Aircraft Rules, *supra* note 57, r. 29C.

an system.<sup>60</sup> The CARs are mandatory and detailed requirements for implementing the Aircraft Rules. Although the Aircraft Rules may only be amended at the ministerial level in a process that usually takes three months to complete, the CARs may be amended within the DGCA with minimal delay. As such, in order to ensure their conformance with the standards contained in the Chicago Convention and its Annexes the CARs are amended on a continuous basis.

ICAO, acting under the Universal Safety Oversight Audit Program (“USOAP”), together with the United States Federal Aviation Administration (“FAA”), acting pursuant to the International Aviation Safety Assessment Program (“IASA”),<sup>61</sup> has conducted reviews of the DGCA and India’s legislative framework. A common deficiency identified among developing countries, like India, is the lack of an adequate safety oversight organization and infrastructure within the civil aviation authority. According to ICAO, in the majority of cases, this has resulted from insufficient resources available to the regulator.<sup>62</sup> Where a civil aviation authority has not been firmly established, control and supervision of aircraft operations and associated activities may be deficient, creating safety concerns and reflecting the lack of a high-level government commitment to the viability of the safety oversight system.<sup>63</sup>

In India’s case, both ICAO and the FAA have identified the need for a more effective organizational structure for the DGCA, as supported by an enhanced legal foundation.<sup>64</sup> Among several other issues identified, ICAO and the FAA noted the inadequate number of government technical personnel to oversee India’s rapidly growing aviation sector—a poor reflection on the legal, administrative, and financial capacity of the DGCA to hire, recruit, and train the necessary staff.<sup>65</sup> Ministerial and parliamentary committees studying reform of the DGCA have issued similar conclusions.<sup>66</sup>

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60. Aircraft Act, *supra* note 54, § 5A; Aircraft Rules, *supra* note 57, r. 133A.

61. *Int’l Aviation Safety Assessment (IASA) Program*, U.S. FED. AVIATION ADMIN. 1 (October 7, 2016, 5:00 PM), <https://www.faa.gov/about/initiatives/iasa>.

62. ICAO Doc. 9734, *supra* note 4, at 1-1.

63. *Id.*

64. CAAI Bill, *supra* note 19, at 18–19.

65. CAAI Bill, *supra* note 19, at 18–19; *Committee on Review and Restructuring of DGCA Submits Its Report*, GOVT. OF INDIA, MINISTRY OF CIVIL AVIATION, PRESS INFORMATION BUREAU 3, 4 (October 7, 2016, 5:00 PM), <http://www.prsindia.org/uploads/media/Civil%20Aviation%20bill/Kaw%20Comm%20report%20on%20restructurin%20of%20DGCA.pdf> [hereinafter Kaw Commission Report].

66. *See generally*, Kaw Commission Report, *supra* note 65; Standing Committee Report No. 168, *supra* note 10, ¶ 6; *204th Report: The Civil Aviation Authority of India Bill, 2013*, STANDING COMMITTEE ON TRANSPORT, TOURISM, AND CULTURE, PARLIAMENT OF

The Kaw Commission, established by MoCA to study the role and function of the DGCA, found that the lines of competency and legal authority for aviation oversight are unclear.<sup>67</sup> Most aviation oversight functions authorized by the Aviation Act are granted not to the DGCA but directly to the Central Government and MoCA. According to the Parliamentary Standing Committee on Transport, Tourism and Culture (“Standing Committee”), there is no express statutory basis for the DGCA.<sup>68</sup> It is only through delegation by ministry-issued orders that the DGCA and its officers are authorized to perform the various aviation oversight functions.<sup>69</sup> This results in a complex, if not opaque process, of legal delegation for empowering the DGCA. The Kaw Commission cited the lack of statutory backing when raising concerns as to the ability of the DGCA to effectively enforce compliance of aviation regulations.<sup>70</sup> The lack of clarity in India’s aviation law may also hamper the industry’s growth because industry stakeholders are unable to understand the proper hierarchy of the laws or the applicable standards they must follow.

The byzantine complexity of the aviation law mirrors the government structure managing civil aviation in India. The DGCA falls within the purview of MoCA. MoCA is the ministry responsible for the formulation of national policies and programs for the development and regulation of civil aviation and for devising and implementing schemes for the orderly growth and expansion of civil aviation. MoCA’s functions extend to overseeing airport facilities, air traffic services, and carriage of passengers and goods by air. Raising the potential for conflicts of interest, MoCA’s organizational structure also includes Air India, Ltd., the state-owned enterprise and national airline, which is subject to DGCA’s oversight.<sup>71</sup>

In 2011, the Standing Committee issued a report entitled “Director General of Civil Aviation—Issues and Challenges” finding that the DGCA had neither the required powers—legal, administrative, and financial—nor the adequate manpower, infrastructure, and

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INDIA, RAJYA SABHA, (October 7, 2016, 5:00 PM), <http://164.100.47.5/newcommittee/reports/EnglishCommittees/Committee%20on%20Transport,%20Tourism%20and%20Culture/204.pdf> [hereinafter Standing Committee Report No. 204].

67. Kaw Commission Report, *supra* note 65, at 3.

68. Standing Committee Report No. 168, *supra* note 10, at 11–12 (noting that the DGCA had no statutory backing and it was functioning as an appendage of MoCA); *see generally*, Kaw Commission Report, *supra* note 65.

69. Standing Committee Report No. 168, *supra* note 10, at 11.

70. Kaw Commission Report, *supra* note 65, at 3.

71. *Organization Setup*, MINISTRY OF CIVIL AVIATION, (October 21, 2016, 5:00 PM) <http://www.civilaviation.gov.in/aboutus/orgsetup>.

resources for fulfilling its responsibilities adequately and effectively.<sup>72</sup> The committee identified a shortage of qualified inspectors: aircraft maintenance engineers to serve as airworthiness inspectors and pilots as air operations inspectors, who play a crucial role in oversight functions of the DGCA.<sup>73</sup> In general, the DGCA's inspectors must have qualifications, operational or technical work experience, and training compatible with the certificate and license-holders subject to their oversight.<sup>74</sup> As a result, the committee recommended the establishment of a civil aviation authority with the necessary legal independence and financial autonomy to address issues currently faced by the DGCA.<sup>75</sup>

Acknowledging these concerns and recommendations, on August 20, 2013, MoCA proposed new legislation, the CAAI Bill, to replace the DGCA and strengthen the legal foundation of India's civil aviation oversight system.<sup>76</sup>

### III. CIVIL AVIATION AUTHORITY OF INDIA BILL

The CAAI Bill is designed to establish a new government body, the Civil Aviation Authority of India ("Authority"), with sufficient administrative capacity, financial flexibility, and legal autonomy to ensure effective civil aviation safety oversight capabilities.<sup>77</sup> The CAAI Bill addresses many of the identified weaknesses with India's existing primary aviation legislation and includes key characteristics required by the Chicago Convention.

First, the CAAI Bill establishes the Authority.<sup>78</sup> With its headquarters in Delhi, the Authority is composed of a Chairperson, a Director-General, and Members appointed by the Central Government.<sup>79</sup> Based on the recommendations of a high-level selection committee,<sup>80</sup> the Central Government appoints seven to nine mem-

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72. See Standing Committee Report No. 168, *supra* note 10, at 11–15.

73. *Id.* at 11–12.

74. ICAO Doc. 8335, *supra* note 5, at I-5-2.

75. See Standing Committee Report No. 168, *supra* note 10, at 14.

76. *Bill in LS to Replace DGCA by New Regulator*, HINDU (October 21, 2016), <http://www.thehindu.com/business/Industry/bill-in-ls-to-replace-dgca-by-new-regulator/article5041761.ece>.

77. CAAI Bill, *supra* note 19, at 18–19.

78. *Id.*, cl. 3.

79. *Id.*, cl. 4.

80. The Selection Committee consists of a Cabinet Secretary (Chairperson), the Secretary of MoCA, the Secretary (Personnel of the Department of Personnel and Training),

bers, with at least five members being full-time.<sup>81</sup>

The proposed legislation empowers the Director-General to serve as “Chief Executive” of the Authority.<sup>82</sup> The Director-General should be technically competent and qualified to lead the Authority, with a professional background in the core functions of the Authority including airworthiness and aircraft engineering; flight standards operations; aviation safety; aerodromes, air navigation and air space management; air transport, such as matters related to financial fitness, consumer protection, and environmental regulation; and human resource and finance.<sup>83</sup>

In addition to the leadership or board-level positions, the CAAI Bill also accounts for the staffing of the Authority. With prior approval from the Central Government, the Authority can hire officers and other employees necessary to enable the organization to “efficiently discharge its functions under the CAAI Bill.”<sup>84</sup> The Authority can delegate to officers, by general or special order, its functions and powers under the CAAI Bill.<sup>85</sup>

Second, the proposed legislation sets and clarifies the authority of the Civil Aviation Authority of India to regulate civil aviation. The CAAI Bill expressly defines the functions, duties, and powers of the Authority.<sup>86</sup> The proposed legislation also makes clear that the Authority will supersede the DGCA: the duties currently assigned to the DGCA under the Aircraft Act and the Aircraft Rules are assumed by the Authority.<sup>87</sup> These duties include establishing and enforcing safety standards for service providers (like airlines), environmental regulation, licensing and certification, coordination of air space usage, international coordination, advising the government, checking anti-competitive fares, and promotion of aviation industry within India.<sup>88</sup> In effect, the Authority is charged with implementing the requirements of the Chicago Convention and its Annexes.<sup>89</sup> Further,

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and an expert nominated by MoCA. *Id.*, cl. 5.

81. *Id.*, cl. 4.

82. *Id.*, cl. 4(6).

83. *Id.*, cl. 4(4).

84. *Id.*, cl. 15(5).

85. *Id.*, cl. 39.

86. *Id.*, cl. 15.

87. *Id.*, cl. 14.

88. *Id.*

89. For example, the Authority will oversee subject matter under the Chicago Convention and its Annexes such as personnel licensing (Annex 1), air operations (Annex 6), and airworthiness of aircraft (Annex 8). *Id.*, cl. 15(2).

the Authority will serve as the lead governmental body for engaging with ICAO and cooperating bilaterally with civil aviation authorities of other Contracting States.<sup>90</sup>

Third, the CAAI Bill provides regulatory tools to enable the Authority to implement its functions and powers effectively. For instance, the Authority is empowered to make regulations,<sup>91</sup> issue directions,<sup>92</sup> and perform surveillance and conduct investigations.<sup>93</sup> The inspection authority of the Civil Aviation Authority of India includes the power to compel the furnishing of information and documentation, as well as the right to access facilities and buildings subject to investigation.<sup>94</sup> The subjects of an Authority investigation may include government departments to the extent that a department is an air transport operator or related service provider.<sup>95</sup>

Relatedly, the CAAI Bill provides for enforcement of the regulatory scheme. The proposed legislation establishes civil penalties: (1) for violations of the CAAI Bill, or any regulations, rules, or directions made or given thereunder;<sup>96</sup> and (2) for violations of any order or direction of the Authority issued in furtherance of its functions and powers, as enumerated under the CAAI Bill.<sup>97</sup> As a further deterrent, the Authority has the ability to compound the penalties.<sup>98</sup>

The CAAI Bill creates personal responsibility for certain individuals—such as directors, managers, or officers—for offenses committed by their companies, when that person was in charge of, and was responsible to, the company for the conduct.<sup>99</sup> Similarly,

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90. *Id.*, cl. 14(4)(d)–(e).

91. *Id.*, cl. 43.

92. *Id.*, cl. 16.

93. *Id.*, cl. 15.

94. *Id.*, cls. 15, 17. Under the Chicago Convention, the civil aviation authority must be legally empowered to access air operators' personnel, aircraft, operations and facilities and associated records for the purpose of certification and continued surveillance. Annex 6, *supra* note 36, ¶ 4.2.1.8, App. 5.

95. CAAI Bill, *supra* note 19, cl. 15.

96. The fine may extend to one lakh (100,000) rupees for violations of any order or instruction given under the CAAI Bill, and two lakhs (200,000) rupees for continuing violations, with additional fines of up to four thousand rupees for each day the violation continues. *Id.*, cl. 28.

97. The fine may extend to one lakh (100,000) rupees and, in the case of a second or subsequent offense, the fine may extend to two lakhs (200,000) rupees, with additional fines for continuing violations of up to four thousand rupees for each day the violation continues. *Id.*, cl. 29.

98. *Id.*, cl. 32.

99. *Id.*, cl. 30.

heads of government departments and their officers may be held personally liable for violations by a government department.<sup>100</sup> Any person aggrieved by an order or direction issued by the Authority, under the CAAI Bill, may appeal to the Central Government.<sup>101</sup>

Fourth, the CAAI Bill is designed to provide financial and budget capacity for the Authority to carry out its oversight activities. The Authority is empowered to prepare a budget for the upcoming financial year.<sup>102</sup> To support this budget, the Authority may collect fees and charges for all functions, duties, and services requiring performance under the Aircraft Act and other safety functions such as the certification and surveillance of air carriers.<sup>103</sup> The Authority's independent funding should assist in the hiring, retention, and training of qualified technical staff. Moreover, the Central Government is enabled to provide additional capital if required for the Authority to discharge its functions under the CAAI Bill.<sup>104</sup> These funds will be deposited into a new "Civil Aviation Authority of India Fund," which will cover the costs and expenses of the Authority.<sup>105</sup>

Fifth, the proposed legislation establishes the independence of the Authority within the Central Government. The CAAI Bill is to be promulgated by Parliament, the supreme legislative body of India. The proposed legislation bars the assertion of jurisdiction by any civil court over any matter, which the Authority is empowered to determine under the law.<sup>106</sup> Courts can only take cognizance of offense under the CAAI Bill upon written complaint from the Authority.<sup>107</sup> The proposed legislation provides immunity for the Authority from prosecution or legal proceedings for performance of its functions, in good faith, under the CAAI Bill.<sup>108</sup> The Authority is also immune from taxation.<sup>109</sup> The Central Government reserves the final authority to issue directions to the Authority concerning policy involving the public interest<sup>110</sup> and to supersede the Authority in the event of per-

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100. *Id.*, cl. 31.

101. The right to appeal includes appeal of orders issued by members or officers of the Authority. *Id.*, cl. 36.

102. *Id.*, cl. 26.

103. *Id.*, cl. 22.

104. *Id.*, cl. 23.

105. *Id.*, cl. 24.

106. *Id.*, cl. 34.

107. *Id.*, cl. 38.

108. *Id.*, cl. 38. This immunity extends to any member, officer, or employee of the Authority.

109. *Id.*, cl. 37.

110. *Id.*, cl. 33.

sistent default by the Authority or emergency conditions.<sup>111</sup>

#### IV. LOOKING FORWARD

Following the introduction of the CAAI Bill, Parliament referred the bill to the Standing Committee for study. On January 20, 2014, the Standing Committee issued its report and made recommendations to improve the bill.<sup>112</sup> These recommendations included strengthening the independence and technical capacity of the Authority, such as preventing conflicts of interest with MoCA;<sup>113</sup> closing loopholes to ensure that the Director-General has technical aviation expertise;<sup>114</sup> increasing deterrence by raising the amount of civil penalties for violations;<sup>115</sup> and empowering the Authority to select and appoint its staff, without prior approval from the Central Government.<sup>116</sup> Notably, the Standing Committee's recommendations required amendments to the legislation, not rejection of the bill. Nonetheless, the CAAI Bill lapsed in February 2014 following the conclusion of the parliamentary session.<sup>117</sup> No further legislative action on the bill has been taken.<sup>118</sup>

On June 15, 2016, the Central Government issued the National Civil Aviation Policy, which takes a number of concrete steps to further liberalize India's civil aviation market.<sup>119</sup> The long-awaited announcement further opens India's skies to competition and investment, international and domestic, and sends a clear signal of the Central Government's commitment to promote the growth of India's aviation sector. However, the new policy is silent on the issue of legislative reform and the CAAI Bill.

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111. *Id.*, cl. 40.

112. *See generally*, Standing Committee Report No. 204, *supra* note 66.

113. *Id.*, ¶¶ 27, 32, 33.

114. *Id.*, ¶¶ 29, 30.

115. *Id.*, ¶ 47.

116. *Id.*, ¶ 44.

117. *68 Bills Lapsed at End of 15<sup>th</sup> Lok Sabha*, TIMES OF INDIA (Feb. 22, 2014, 7:16 PM), <http://timesofindia.indiatimes.com/india/68-bills-lapsed-at-end-of-15th-Lok-Sabha/articleshow/30862388.cms>.

118. PRS Legislative Institute, *The Civil Aviation Authority of India Bill, 2013*, <http://www.prsindia.org/billtrack/the-civil-aviation-authority-of-india-bill-2013-2877> (last visited Oct. 21, 2016).

119. Government of India, Ministry of Civil Aviation, *National Civil Aviation Policy 2016* (Jun. 15, 2016), [http://www.civilaviation.gov.in/sites/default/files/Final\\_NCAP\\_2016\\_15-06-2016-2\\_1.pdf](http://www.civilaviation.gov.in/sites/default/files/Final_NCAP_2016_15-06-2016-2_1.pdf).

The effort to reform India's aviation law has effectively stalled, but the challenges facing the current legal structure continue. Even with its reservations, the Standing Committee's report highlighted the urgent need for change: "[I]n view of increasing responsibilities of DGCA, and faster technical advancement in the sector, it is imperative to have a safety regulator which is adequately empowered to effectively carry out its functions . . . ."<sup>120</sup> Moreover, in the realm of international aviation, where ICAO and the United States continuously monitor compliance with the Chicago Convention, India will be subject to scrutiny in the future.<sup>121</sup>

Importantly, the CAAI Bill includes the minimum requirements of the Chicago Convention and seeks to address the identified weaknesses with India's current aviation law. The CAAI Bill would establish a new civil aviation oversight body, led by a Director-General; empower the Authority with a clarified legal basis; provide oversight tools for the Authority to effectively carry out its regulatory functions; set forth an independent scheme for budgeting and financial resources; and protect the autonomy of the Authority within the Central Government. Indeed, the CAAI Bill is an important step forward and should serve as the basis for a renewed effort to reform India's civil aviation regulatory system. At the very least, legislative action is required to build a legal framework to support the rising flight path of India's economy. India requires the legal infrastructure necessary to realize its potential and become the world's third largest aviation market.

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120. Standing Committee Report No. 204, *supra* note 66, ¶ 10.

121. Aneesh Phadnis, *Indian Aviation Faces Second Safety Audit in Two Years*, BUS. STANDARD (Aug. 20, 2016, 10:12 PM), [http://www.business-standard.com/article/companies/indian-aviation-faces-second-safety-audit-in-two-years-116081900313\\_1.html](http://www.business-standard.com/article/companies/indian-aviation-faces-second-safety-audit-in-two-years-116081900313_1.html) (noting that ICAO will be auditing India in 2017).