



## FEDERATION OF INDIAN PILOTS

Ref No: FIP/MOCA/2023 - 11

28th June 2023

To,

**Mr. Ambuj Sharma**

Deputy Secretary to the Government of India

Ministry of Civil Aviation

Rajiv Gandhi Bhavan, Block B

Jor Bagh Safdarjung Airport Area, New Delhi 110003

Tel. 011-24641912

**Subject: Comments on the Draft Aircraft Bill, 2023**

Sir,

The Ministry of Civil Aviation, Government of India has proposed to introduce a bill titled Aircraft Bill, 2023 (hereinafter referred to as the “Bill”) and on 30<sup>th</sup> May 2023, as a part of the pre-legislative consultation process, the Ministry of Civil Aviation, Government of India had placed the soft copy of the proposed draft Bill on its website inviting comments on the same from the general public, stakeholders or the persons likely to be affected thereby, within a period of thirty days.

On behalf of the Federation of Pilots, we are furnishing below our comments on the Bill after setting a brief background of our Society.

**A. ABOUT FEDERATION OF INDIAN PILOTS(FIP):**

The Federation of Indian Pilots (FIP) is registered as a Society under the Societies Registration Act 1860 and as a Public Trust under the provisions of the Bombay Public Trust, 1950, having its office at Gate No. 2, Air India Complex, Kalina, Santa Cruz (East), Mumbai - 400029. The Federation is a prestigious organization in India, comprising approximately 5000 members who are licensed, serving, or retired pilots. These members represent a wide range of expertise within the civil aviation sector encompassing major scheduled airlines, non-scheduled operators, and general aviation operations. They bring with them a diverse background of military and non-military experience. The primary objective of the FIP is to foster the development of the aviation profession and the field of aviation. In pursuit of this goal, the organization engages in various activities aimed at advancing the profession and supporting the aviation industry. Additionally, the FIP acts as a platform for its members to voice their opinions and concerns, and it actively represents their interests by submitting views and making representations to the government and other relevant authorities. In summary, the FIP is dedicated to promoting the aviation profession, enhancing the field of civil aviation, and advocating for the professional advancement of its members and the civil aviation industry at large.

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### **B. OUR APPROACH TO THE BILL**

Pilots are critically important stakeholders in the Civil Aviation sector and on whom the sector is very reliant upon. Keeping this aspect in mind, we note that the Bill while seeking to ensure the safety and efficiency of air transportation and design and manufacture of aircraft within the country and while also addressing existing and emerging challenges facing the aviation industry has ignored this very important stakeholder. There are other areas where further amendments may be required to address the working environment of pilots, address safety concerns, and enhance the regulatory framework for air transportation.

From the above perspective of Pilots, we have evaluated the Bill to check if it provides enough clarity on safety regulations and whether it could reduce the confusion and inconsistencies in the regulation of civil aviation in India. We have also reviewed if the proposed changes would (i) decrease the bureaucracy, delays, and confusion in the Indian aviation industry; and (ii) provide clarity on these issues so that there are lesser confusion and inconsistencies in the regulation of civil aviation in India.

**In view of the same, we would like to submit our observations on the Bill and would like to draw your kind attention to the following issues, which could be detrimental to the interests of pilots or others related to the field of aviation, regarding flight safety and the public interest. Before we comment on individual provisions of the Bill, it would be appropriate to set out some of the issues faced by pilots and related matters which directly and indirectly affect the aims and objects of this Bill.**

### **C. CURRENT ISSUES FACED BY PILOTS**

The Directorate General of Civil Aviation (DGCA) in purported exercise of their powers with respect to licensing, training standards, safety regulations have often sought to draft CARs, notifications and regulations which are beyond their jurisdiction and has framed harsh or ambiguous provisions that in the recent past has affected the pilots' fundamental rights, welfare, employment terms and career progression.

Indian pilots have frequently expressed concerns regarding the excessive powers wielded by the regulatory body, namely the Directorate General of Civil Aviation (DGCA). This has resulted in the implementation of Civil Aviation Requirements (CARs) and notifications that have had adverse effects on pilots' work environment, motivation, job satisfaction, and safety. It is unfortunate that the Bill currently under consideration has not taken these issues into account or made any attempts to address them.

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It is crucial that these concerns are acknowledged and appropriately dealt with to ensure that pilots can carry out their responsibilities in a safe and efficient manner, while also prioritizing their own health and emotional well-being. By addressing these issues, we can create an environment that promotes pilot job satisfaction, boosts motivation levels, and enhances overall safety standards. It is imperative that the Bill incorporates measures to address these longstanding concerns and safeguard the interests of pilots in the civil aviation industry.

Pilots also have complaints related to issues which can impact their performance in various ways. Some of the concerns of pilots also arise from the ultra vires CARs and notifications of the DGCA which include:

- a) **Long duty hours/Inadequate opportunities to recover from cumulative and/or transient fatigue:** Pilots often must work long hours and/or have inadequate post and preflight rest periods leading to fatigue and safety being compromised. This can also impact their work-life balance and lead to stress and burnout. It is pertinent to mention that the Federation of Indian Pilots have challenged the vires of “*Civil Aviation Requirement, Section 7 - Flight Crew Standards Training and Licensing, Series J, Part III dated 24.04.2019*” whereby DGCA had severely reduced rest periods as prescribed by the 2011 CAR. vide a writ petition titled as *FIP v. DGCA WP(C) No. 616 of 2023* before the Hon’ble High Court of Delhi and the same is pending for adjudication.
- b) **Poor Working Environment:** Stressful and unhealthy working conditions can significantly impact the well-being and performance of pilots. Inadequate monitoring of occupational health, combined with unstable and punishing schedules, may subject pilots to an unfavourable environment. Furthermore, some pilots may be compelled to work without receiving proper compensation or under financial pressure due to coercive employment terms and regulatory indifference. These unfavourable working conditions not only affect pilots' emotional and physical health but also undermine their focus and competence, ultimately jeopardizing safety in the aviation industry.
- c) **Airline safety management systems:** Safety management systems (SMS) are an integral part of aviation safety and are required by many regulatory bodies around the world. It is often the discretion of Airlines to implement such SMS. The Aircraft Act may need to be amended to include provisions for the mandatory establishment of SMS by airlines operating in India using robust and foolproof processes. Mandating the usage of scientifically tested principles and performance vigilance tools to actively monitor fatigue and levels of alertness at work should also be established.

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d) **Mandatory Long Notice Periods:** Pilots have also challenged the direction<sup>1</sup> of DGCA whereby it is mandatory for commanders to give a notice period of at least one year and co-pilots to give a notice period of at least six months to their employers, indicating their intention to leave the job. No other regulator in the world interferes with notice periods as it is clearly an employer employee related contractual issue. It is also noteworthy to mention that the Federation of Indian Pilots has challenged the vires said directions vide a writ petition titled *FIP v. DGCAWP(C) No. 8399 of 2017* before the Hon'ble High Court of Delhi and the same is pending for final adjudication.

e) **Regulatory Overreach and the Need for Fair and Transparent Appellate Mechanisms:** The existing system grants the Directorate General of Civil Aviation (DGCA) extensive authority as a rule maker, investigating agency, adjudicator, and appellate body. This consolidation of power provides the DGCA with unrestricted control over pilots, resulting in frequent suspensions of pilot licenses and punishments without adequate avenues for timely and just resolution. The current regulatory framework lacks transparency and accountability, creating an environment where pilots face arbitrary decisions and limited opportunities for recourse. The absence of a fair and efficient appellate mechanism further exacerbates the issue, denying pilots the expeditious justice they deserve. To address these concerns, it is essential to establish a more balanced and transparent system. This can be achieved by separating the regulatory, investigative, adjudicatory, and appellate functions, ensuring that no single entity possesses unchecked authority. By implementing such reforms, pilots will have a fairer and more just system that guarantees their rights, while maintaining appropriate safety standards in the aviation industry

### D. ANALYSIS OF THE BILL vis-à-vis PILOTS

#### i. **RULES, NOTIFICATIONS, REGULATIONS, CARs, ORDERS MADE OR ISSUED IN PURSUANCE TO THE 1934 ACT**

Our observations and Comments on this matter are as follows -

1. The preamble of the Bill states that the underlying intent of the Bill is to enact better statutory provisions for regulation and control of the design, manufacture, possession, use, operation, sale, import and export of aircraft and matters connected therewith or incidental thereto, and to remove the redundancies in the 1934 Act.

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<sup>1</sup> Civil Aviation Requirement, Section 7- Flight Crew Standards Training and Licensing, Series X, Part II, Issue III, bearing F. No. 23-5/2016-AED dated 16.08.2017



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2. The Bill does not repeal any of the said rules, notifications, regulations, and orders, therefore in the absence of any change in the prevailing rule, notification, regulation, or order made or issued in pursuance to the 1934 Act, there shall not be any impact upon the responsibilities, duties and terms governing the operations of pilots.
3. Section 39(2)(i) of the Bill specifically provide that any rule, notification, regulation, order made or issued in pursuance to the 1934 Act, shall be in force at the commencement of the 2023 Act and shall continue to be in force, and shall have the effect as if the 1934 Act has not been repealed. Furthermore, Section 39(2) (iii) of the Bill also provides that any proceedings instituted under the repealed Act and pending immediately before the commencement of this Act before any authority, court or tribunal shall, subject to the provisions of this Act, continue to be heard and disposed of by the concerned authority, court, or tribunal.
4. Due to the operation of Section 39 of the Bill, on the enactment of the Bill as an Act, all the rules, notifications, regulations, orders made or issued in pursuance to the 1934 Act, shall continue to operate, until the same are specifically replaced or amended by the competent authority. Further, the Bill includes identical provisions with respect to constituting bodies such as DGCA and the Bureau of Civil Aviation Security (BCAS).

**Recommendation:** *It is our recommendation that all the above-mentioned CARs and notifications identified in Section C above and which are detrimental to the interests of pilots should be mitigated so that all the issues of the past are adequately dealt with.*

### ii. **SECTIONS OF THE BILL WHICH MAY IMPACT PILOTS ALONG WITH COMMENTS**

#### 1. **SECTION 7(2)(y), 10(2)(d), 13(1)(a)**

It is pertinent to highlight the various sections of the Bill, vide which the powers of the Central Government have been derived to make provisions regarding the operations and function of the Pilots.

- a) **Section 7(2)(y)** - The provision gives the Central Government the power to make rules to provide the manner and conditions of the issue or renewal or cancellation of any licence, certificate or approval under the Act, without any specific criteria to be followed.

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- b) **Section 10(2)(d)**– The provision authorizes the Central Government to require cancellation, suspension, endorsement or surrender of any licence or certificate with regards the investigation of accidents.
- c) **Section 13(1)(a)**- The provision provides for cancellation or suspension of license or certificate in the interest of public safety or tranquillity, while such conditions have not been described.

### COMMENTS:

In this regard, it is noteworthy to mention that in the absence of any proviso or guidelines provided by the Central Government, the above provisions may be used against the interest of the pilots.

**Recommendation:** *The Ministry should provide for a proviso to the effect that such revocation, suspension or cancellation of any license or approvals, shall not be done without providing a due opportunity of being heard to the alleged offender and issuing guidelines with respect to the manner in which the role of the alleged offender may be correlated to the offence committed and only a proportionate/reasonable penalty is levied for the same.*

### 2. SECTION 21 & 22:

- a) Section 21 of the Bill provides for the penalty for flying as to cause danger in such a manner as to cause danger to any person or to any property on land or water or in the air, with imprisonment which may extend to 2 years or with fine which may extend to one crore rupees or with both.
- b) Section 22 of the Bill provides for a penalty for failure to comply with directions issued under Section 18 of the Bill, with imprisonment which may extend to 2 years or with a fine which may extend to one crore rupees or with both. The Central Government also has power under Sections 28 and 20(4) to make rules imposing further punishment and fines, which may also be detrimental to the interests of pilots.

### COMMENTS:

The penalty of Rupees one crore and imprisonment of up to two years for the said offence are seemingly disproportionate and harsh for pilots and others related to aviation. The same provision may have grave implications on the professional lives of the pilots and may be used arbitrarily against them.

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**Recommendation:** *It should be clarified that to enable the levy of the penalty under this provision, the involvement of the alleged offender in the offence can be correlated to the penalty levied and that there shall be a differentiation between airline operators and pilots in case of such offences, to avoid a strait jacketed formula for mechanically levying such high penalty, commonly for all offenders.*

### 3. SECTION 27

- a) Section 27(2) of the Bill provides that on being satisfied that there has been a contravention of the provisions of the Act or rules or directions by any person, the Central Government or any officer authorised under sub-section (1) may, by an order in writing.
  - i. suspend or cancel the licence, certificate, or approval; or
  - ii. impose restrictions on the licence, certificate, or approval, issued to such person stating the nature of contravention, the provisions of Act, rule or the direction which has been contravened and the reasons for such suspension or cancellation or imposition of restriction.
- b) Section 27 (3) of the Bill also mandates that the Central Government shall, before passing an order under sub-section (2), give an opportunity of being heard to the person concerned.
- c) Section 27 (4) of the Bill also provides that the Central Government may, in the rules made under this section, specify the grounds on which the license, certificate or approval may be suspended or the circumstances under which such restrictions may be imposed with immediate effect.

### COMMENTS:

- a) The Bill, specifically in Section 29, provides for the remedy of appeal to any person who may feel aggrieved by an order that imposes a penalty under sub-section (2) of Section 27 or sub-section (4) of Section 28 of the Bill. Additionally, the Bill offers recourse to additional levels of appeal in the event of dissatisfaction with the order of the appellate officer. Notably, the Central Government is designated as the final appellate authority.
- b) However, it is important to note that the administrative Ministry for various operators, including Alliance Air, Pawan Hans, and the Airports Authority of

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India, is the same appellate body (Ministry of Civil Aviation). This arrangement potentially creates a conflict of interest between the Central Government (Ministry of Civil Aviation) and the operators when adjudicating orders passed against them.

- c) Furthermore, it is worth mentioning that various stakeholders of civil aviation, including pilots, have challenged the validity of various orders, guidelines, Civil Aviation Requirements (CARs), rules, regulations, etc. issued by different governing authorities such as the Director General of Civil Aviation. These challenges arise in matters before the Hon'ble High Courts under their writ jurisdictions as the 1934 Act does not provide for any judicial/quasi-judicial body to test the vires of such delegated legislations.
- d) In addition, the absence of an independent quasi-judicial authority has left pilots and other stakeholders to contend with arbitrary and high-handed decisions made by airlines and authorities in various court proceedings in India.

**Recommendation:** *The current efforts of the Ministry of Civil Aviation to revamp the legislative framework of civil aviation is an opportunity **to establish an independent Tribunal and Appellate Tribunal**. These tribunals should have the authority to examine the legality and validity of various orders, guidelines, CARs, rules, regulations, etc. issued by various governing bodies under the new Act. Additionally, the Tribunals should have jurisdiction over disputes between various stakeholders of civil aviation, including disputes between pilots and airlines, and disputes between pilots and authorities constituted under the new Act.*

#### 4. SECTION 36

This section provides that the Central Government may, by order published in the Official Gazette, direct that the powers (except the power to make rules under this Act) exercisable by it under this Act may also be exercisable by the Director General of Civil Aviation or any other officer or authority specifically empowered in this behalf by the Central Government. In our view this provides for scope for misuse since the DGCA has used such residual powers to frame guidelines which they were not empowered under the Act. Rules like the one-year notice have been sought to be introduced misusing the powers granted under such clauses.

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### COMMENTS:

The DGCA, in purported exercise of their powers with respect to licensing, training standards and safety regulations, have often sought to draft CARs, notifications and regulations which are beyond their jurisdiction or exceed the provisions of law. In several cases, for example, the abuse of this provision has led to pilots serving the one-year notice period with loss of pay, loss of opportunity, not being paid their legitimate dues and being coerced to sign instruments in favor of airlines that create onerous employment terms.

**Recommendation:** *There should be guardrails under which DGCA's power to legislate regulations should be governed. Wide clauses like the instant section led to permissive framing of harsh or ambiguous provisions in the DGCA notifications and CARs of recent past which have affected the pilots' fundamental rights, welfare, employment terms and career progression. Specifically, the Civil Aviation Requirement, Section 7- Flight Crew Standards Training and Licensing, Series X, Part II, Issue III, bearing F. No. 23-5/2016-AED dated 16.08.2017 which provided for a 1-year notice period for Commanders wanting to leave their Airlines has severely damaged the morale and job opportunities.*

*of pilots. Not only is this violative of constitutional freedoms guaranteed by the Constitutions of India and is also a restraint of trade under the Contract Act.*

### 5. ADDITIONAL COMMENTS

#### i) Incorporation of the term and definition of 'POWERED LIFT AIRCRAFT'

The Ministry is requested to consider the incorporation of a definition for a new category of aircraft type known as "Powered Lift Aircraft" in the Bill. We anticipate the introduction of such aircraft in India and the rest of the world for various purposes within the coming years and in view of the same, suggest the addition of the same in the Bill to ensure that the laws are equipped to integrate the technological advancements, training and licencing forms related to such technology.

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The proposed definition for a Powered Lift Aircraft is proposed as follows:

*"A Powered Lift Aircraft is a heavier-than-air aircraft capable of vertical take-off, vertical landing, and low-speed flight that primarily relies on engine-driven lift devices or engine thrust for lift during take-off and landing phases while it utilizes non-rotating air foils for lift during horizontal flight."*

(Explanatory note: Powered Lift Aircraft are capable of vertical take-off and landing using engine power, while relying on a fixed wing during horizontal flight).

### ii) NEED TO AMEND AIRCRAFT RULES

1. The Aircraft Rules, 1937 promulgated as subordinate legislation to the Aircraft Act 1934, cover topics such as airworthiness certification, maintenance, and licensing of pilots. The draft of the new Aircraft Rules, incorporating the corresponding amendments as per the Bill should also be released for public consultation. This will allow all stakeholders, including pilots, to contribute more effectively to the process through a more comprehensive public consultation.
2. The simultaneous issue and release of the draft of amended rules is of utmost importance, considering that the major operations of pilots and airlines operating in civil aviation are governed by various rules, notifications, regulations, and orders that are made or issued in pursuance of the Act. To ensure that the amendments proposed in the Bill are effectively implemented, it is imperative that the corresponding amendments are made to the Aircraft Rules. Without access to the draft rules containing the suggested amendments, it is not possible to conduct a precise analysis of the potential impact of the amendments. This is essential for relevant stakeholders, including pilots and airlines, to provide their informed comments during the public consultation process. The bill does not provide sufficient clarity on safety regulations and could lead to confusion and inconsistencies in the regulation of civil aviation in India.

### iii) REPORT OF STANDING COMMITTEE /KAW COMMITTEE

1. It is also pertinent to mention that the Standing Committee of Parliament in its report dated 13.01.2014, noted several deficiencies in the functioning of the DGCA. Further, the Kaw Committee, which was set up to review the civil aviation sector, also recommended for an appropriate level of administrative and financial autonomy should be provided to the DGCA.

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2. The Standing Committee of Parliament in its report also noted that countries like the United Kingdom, Singapore, New Zealand, Australia, Nigeria, Jamaica, Pakistan, Sri Lanka, etc. have already set up similar authorities for the regulation of civil aviation and that the Ministry of Civil Aviation had studied the Civil Aviation Authorities set up in Sri Lanka, Singapore, New Zealand, Australia, and Indonesia.
3. Furthermore, the Parliamentary Standing Committee on Transport, Tourism and Culture, in its 168th Report titled “*Directorate General of Civil Aviation – Issues and Challenges*” had recommended setting up a Civil Aviation Authority with required autonomy to take care of the problems that DGCA is currently faced with.
4. Therefore, after the study of the various civil aviation authorities and considering the deficiencies of DGCA as pointed out in various audit reports, the Ministry of Civil Aviation proposed the Civil Aviation Authority Bill 2013. Some of the beneficial provisions of the Civil Aviation Authority Bill, 2013 should have been incorporated in this Bill.

Some of these provisions were:

a) **Responsibilities:** The CAA's responsibilities were proposed to encompass all duties assigned to DGCA under the Aircraft Act of 1934. Additionally, the CAA was also proposed to be responsible for environmental regulation of airports, airlines, and other civil aviation activities, as well as the protection of consumer interests. The CAA was also proposed to coordinate and regulate the use of Indian airspace by civil and military traffic, encourage indigenous design and manufacture of aircraft and their components, and facilitate the training of civil aviation personnel.

b) **Financial Independence:** To provide a level of financial independence to the CAA, the bill provided that the CAA may collect fees and charges currently being collected by the DGCA under the Aircraft Act, 1934. Additionally, it may also levy fees/charges for safety oversight and surveillance functions, as well as for the use of its facilities by ATCs, passengers, and airlines. All funds received by the CAA, including central government grants and fees and charges, will be credited to the Civil Aviation Authority Fund. This fund was proposed to be used to pay salaries and meet other expenses of the CAA, and its accounts will be audited by the Comptroller and Auditor-General of India.

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### Conclusion:

The Draft Aircraft Bill, 2023 is a case of “Old Wine in a New Bottle”. None of the key issues leading to the tabling of the Civil Aviation Authority of India Bill 2013 has been addressed. If the Ministry of Civil Aviation is serious on revamping the legislative framework governing civil aviation, it is important to consider the issues raised in the multiple reports (Indian and International) which have severely critiqued the functioning of the DGCA. Further, the reasons and issues leading to the filing of the following cases, i.e. - *FIP v. DGCA WP(C) No. 616 of 2023* and *FIP v. DGCA WP© No. 8399 of 2017* (both before the Delhi High Court) should have been addressed.

From the above perspective of the Pilots the Bill does not provide enough clarity on safety regulations and whether it could reduce the confusion and inconsistencies in the regulation of civil aviation in India. The proposed changes do not decrease the bureaucracy, delays, and confusion beset in the Indian aviation industry. It is our view that the Bill had an opportunity to provide clarity on these issues so that there is lesser confusion and inconsistencies in the regulation of civil aviation in India but does not do so for the reasons stated in our analysis.

We believe that if the Bill is passed as it stands now, the government might miss a vital opportunity to address and rectify longstanding issues impacting the Civil Aviation sector, as highlighted in various national and international reports.

We strongly urge for a review and amendment of the proposed Bill, incorporating insights provided by the FIP and other reports to provide a robust and clear legislative framework. It is our conviction that this is a crucial step to drive progressive and sustainable changes in our industry.

We trust our concerns will be given due consideration.

Thanking you,

Yours faithfully,

**Capt. Surinder Mehta**  
**President, FIP**