Civil Aviation and Contemporary Issues in India

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Contemporary Issues in Aviation and Air Laws in India

1. Globalization, Liberalization and privatization (GLP) of aviation sector and Indian Responses
2. Liberalization and open skies policy
3. Airport Privatization Legal Issues
4. The Airports Authority of India Act, 1994 (55 of 1994)
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6. Airport Infrastructure Policy 1997
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Globalization and its Impact

- Globalization is the shift towards a more integrated and independent world economy. World Bank: Globalization is the growing integration of economies and societies around the world. The globalization components are:
- The globalization of markets, globalization of production, globalization of technology, globalization of HR skills
- Globalization of markets is one of the most fascinating developments of 20th century. Its impact on economic transactions, processes, institutions, and players is dramatic and wide ranging. It challenges established norms and behavior and requires different mindsets. Yet, it creates opportunities for the well prepared participants who can be proactive and visionary
- Globalization of markets involves the growing interdependency among the economies of the world; multinational nature of sourcing, manufacturing, trading, and investment activities; increasing frequency of cross-border transactions and financing; and heightened intensify of competition among a larger number of players.
- This phenomenon has been fueled by advances in communication and transportation technologies, the spread of economic growth and wealth around the world, the loosening of barriers to trade, and the formation of regional economic blocs.3 Development of new technologies and the proliferation of new products also contributes to the globalization of markets.

Globalization and its Impact Cont.

- Globalization has both positive and negative aspects.
- On the positive side, it generated by growing international economic, cultural, and political cooperation and solved many global problems.
- On the negative side, globalization also has profound implications for states such as the autonomy and policy-making capability of states is being undermined by economic and cultural internationalization.
- Many governments see their role as not to regulate markets but to facilitate their expansion.
- Role of State have Changed from Law-maker to Law-takers
- Globalization and regional interactions are wiping out national borders and weakening national policies.

Emerging Challenges in Aviation Industry

- Globalization of economies, liberalization of aviation policies, new technological developments in civil aviation, privatization of airlines and airports, and liberal and open "open skies" bilateral agreements, are the some of the new trends emerging on the horizon.
- Deregulation and intensified global competition are forcing airlines to become responsive, competitive and efficient by focusing more closely on their customers and operations.
- The technological, infrastructural, institutional, economic and human challenges have prompted those in charge of airlines and aviation-related agencies to effect a shift in their polices and approaches pursued for years. In fact, civil aviation in the new millennium would be one of the biggest growth sectors.
- New concepts of ownership, financing, management and operation of air transport are emerging.
- Traditional patterns of state involvement are increasingly being questioned.
- Many governments have begun to pursue competitive policies domestically - including the continuing movement to privatize many government-owned airlines - and to expand foreign holdings in airline equity.
- As a result, there is a significant growth in the number of alliances over marketing, code sharing and computer reservation system.

LPG and Its Impact on Civil Aviation

- Privatization, cross-border acquisitions, market alliances, merger and restructuring of airlines in the wake of liberalization of air transport and deregulation are all leading towards market oriented international aviation environment.
- Airlines of many countries are in various stages of privatization.
- Airports Privatization is happening in many parts of the world including developing countries.
- The Asia/Pacific region offers abundant opportunities as the fastest growing aviation region in the world.
- The reasons for this optimism includes the strong economic expansion, significant ethnic ties with various countries, increase in leisure time, moves towards air transport liberalization and vigorous efforts to promote tourism to/from the region.

LPG and Its Impact on Civil Aviation

- New operating environment , Bankruptcy and shut downs of Airlines
- Regulation vs. Liberalization vs. Deregulation
- Rising costs (fuel, labor, maintenance, security)
- New generation airlines vs. legacies (tiers)
- Restructuring and alliances , Excessive capacity , Competition (transport and technology) Customer (target, loyalty)
- Air carrier ownership and control, Sustainability of air carriers and safeguards , Physical and environmental constraints
- Air transport and the global trade mechanism , Consumer protection and passenger rights Impact of technology (aircraft, e-commerce, CRSs and GDSs, Internet) on liberalization process
- Future approaches to regulatory reform etc are the future trends in international air Law

LPG and India

- Pre-Liberalization More regulations: Trade Barriers, Tariff Barriers and Non-Tariff Barriers, Technical Barriers to Trade, More Taxes, Restrictive Regulations
- Since its independence in 1947, India has implemented six major industrial policies, the most recent being announced July24, 1991.
- Why Liberalization in India? India Globalized its economy in 1991 With Mounting problems- huge fiscal deficits, BoP crisis and foreign exchange crisis, Foreign investors and NRIs had lost confidence in Indian economy
- Major measures as a part of the Globalization strategy, Devaluation of Currency, Disinvestment, Dismantling of The Industrial Licensing Regime Abolition of the MRTP Act , Allowing Foreign Direct Investment, Wide-ranging financial sector reforms
- Reforms relating to the banking system-- Capital base of the banks were strengthened by recapitalization, public equity issues and subordinated debt, Prudential norms were introduced and progressively tightened for income recognition, classification of assets, provisioning of bad debts, marking to market of investments,
- New private sector banks were licensed and branch licensing restrictions were relaxed., Credit delivery was shifted away from cash credit to loan method

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LPG and India

- Exchange Control and Convertibility-- Exchange controls on current account transactions were progressively relaxed culminating in current account convertibility.,
- Foreign Institutional Investors were allowed to invest in Indian equities subject to restrictions on maximum holdings in individual companies.,
- Restrictions remain on investment in debt, but these too have been progressively relaxed., Indian companies were allowed to raise equity in international markets subject to various restrictions.,
- Indian companies were allowed to invest a small portion of their assets abroad, Indian companies were given access to long dated forward contracts and to cross currency options.(Derivatives)
- Reforms in the capital market SEBI- the apex regulator of the Indian capital markets Regulations were framed for insider trading Abolition of capital issues control Introduction of free pricing of equity issues On-line trading was introduced at all stock exchanges

LPG and Aviation Sector

- De regulations, Elimination of Trade Barriers and Harmonization of Laws

Aviation Industry:

- Contribution of technology - lower the cost of air travel.
- Fuel-efficient engines, Low maintenance, an improved materials have progressively allowed airlines to lower air fares and allowing more and more people to use air transportation on a routine basis.

➢ Why above Changes?

➢ Change in priorities of governments, General deterioration of condition of airports and airlines owned by government, Financial problems faced by States, Managerial problems and desire to improve, Recognition of airports and airlines as business propositions

- Legislative Changes including Monopolies and Restrictive Trade Practice Act, 1969 (MRTP) replaced by the Competition Act, 2002, The Foreign Exchange Regulation Act, 1974 (FERA), replaced by the Foreign Exchange Management Act, FDIs and The Foreign Investment Promotion Board (FIPB) and Export Processing Zones (EPZs) and Export Oriented Units (EOUs):

Scope for Civil aviation growth

- Civil aviation industry in India is experiencing a new era of expansion driven by factors such as low cost carriers, modern airports, foreign direct investments in domestic airlines, cutting edge information technology interventions and growing emphasis on regional connectivity.
- India is the 9th largest aviation market in the world with a size of around US$ 16 billion and is poised to be the 3rd biggest by 2022.
- India aviation industry promises huge growth potential due to large and growing middle class population, rapid economic growth, higher disposable incomes, rising aspirations of the middle class and overall low penetration levels.
- The growing aircraft fleet size, strategic location advantage, rich pool of engineering expertise, and lower labour costs have huge potential to be a global MRO hub.

Growth Factors

- a. growing domestic aircraft demand,
- b. liberalization of civil aviation policies,
- c. offset requirements,
- d. a strong domestic manufacturing base,
- e. cost advantages, talent pool, and
- f. a liberal Special Economic Zones law,
- g. globalization of Maintenance, Repair and Overhaul (MRO) services,
- h. manpower cost competitiveness,
- i. availability of talent,
- j. locational advantages,
- k. use of technologies such as increased use of composites, modern engine technology, all weather capabilities, etc.

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Major changes in ownership management and operation of air transport services in India

- Most airlines are now privately owned and government role is declining
- Airports are also being gradually privatized
- Air navigation services are still largely with the government but limited privatization is taking place
- Regulation is in the domain of government but independent entities are being established
- Scope of economic regulation has considerably reduced
- India has also moved along with international trends
- Airport Privatization Legal Issues
- Airport Regulations before the AAI
- The Airports Authority of India Act, 1994 (55 of 1994)
- Privatization of AAI 2003
- Airport Infrastructure Policy 1997
- Joint Ventures, PPP and FDI in Airports
- Airports Economic Regulatory Authority of India Act, 2008

Recent Changes

- The Government of India has brought several recent changes in the civil aviation policy and other related regulatory framework to boost the civil aviation Industry.
- The changes include an attempt to liberalize the regulatory compliances, tax benefits given to those industries, improving regional air connectivity, taking measures to cut cost in operating and building existing and new airports, obtaining 'make in India' policy to further promote the scope and market size of this sector and several other measures.
- With the ever growing fleet size, growing popularity of air travel in Indian population, expansion, growth and modernization of regional and international airports, the Government has finally stepped up to completely revive the civil aviation sector and specially, the MRO sector to stop the outflow of revenue for performing maintenance operations outside India.
- With the new surge of change in the regulatory requirements and possible tax benefits, and the Government's objective to bring the air travel cost within the budget of the huge middle class population of India, Indian MRO industry is finally ready to grow and explore the huge market opportunities available to the sector.
- In the coming year and within 2022, the MRO industry of India is expected to become one of the strongest MRO sector in the whole world and to cater to the needs of not only domestic airlines, but also international airlines operating in and around India.

LPG and Airports

- At present the airport business is experiencing tremendous change to meet the ever-increasing growth of air traffic.
- Airports need to expand as and when needed especially for handling larger aircraft carrying more passengers than previously.
- Globally, there has been aggressive investment programs by airports to satisfy this demand.
- Due to the current economic climate, governments are reducing their funding of large airport projects and are shifting this burden of debt to the private sector.
- This evolution is seen in varying stages around the world in the out sourcing of activities such as: - award of management contracts of airport facilities, initiating public/private joint ventures, - BOT project financing.
- In the Asian region where tourism contributes significantly to the GDP of our nations, Asian airports are slowly accepting the idea of commercialization and privatization of their airport facilities.

Airports Privatization and Legal Issue

- The deregulation movement - brought a new wave of thinking into the management of airports around the world in the mid 1980s.
- Since then, significant changes - in the way airports are owned, managed and operated.
- Attention turned by policy makers towards reforming airport governance.
- Corporatization, commercialization and privatization of airports - became worldwide trend.
- Increasingly different strategies pursued by countries to liberalise airports by means of two forms of freeing industry from government control - privatization and deregulation
- Airport commercialization models appeared to range from partial to full privatization to some form of public-private partnership.
- Privatization means, in a broader sense, usually associated with the transfer of management of an airport, and in many cases the ownership as well, to the private sector by a variety of methods such as
- □Share floatation □Trade sale □Concession □Project finance privatization and □Management contract
- 1990s - airport privatization became a reality.
- •The momentum to privatization of airport - gaining throughout most of the world, however global crisis affected this trends in 2002 and 2007-2008 .

LPG and Airports

- Liberalisation refers to a relaxation of government restrictions usually in the area of social or economic policy.
- Rising passenger demand led to: Airport congestion, The need to invest in additional capacity and Innovation to increase the productivity of existing airport infrastructure
- Priorities were established by government for government spending - airports being at the bottom of the list.
- To respond to these needs.
- Countries around the world - moved toward commercialized airport governance.
- Applying business-like approaches and allowing market forces, incentives and mechanisms to affect the delivery of services.
- Thus 'commercialization' of the airport industry began to take place

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Airport Privatization

- In line with the government's open-sky policy, the AAI has collaborated with private entities for operation, management and development under the Public-Private Partnership model.
- The Joint Venture Cell has been formed to ensure compliance under the operation, management and development agreement.
- The AAI operates 126 airports and civil enclaves out of 449 airports and airstrips located throughout India.
- The airports at Bengaluru, Delhi, Hyderabad, Kochi and Mumbai are handed over to private operators.
- The Government of India has granted 'in principle' approval for setting up 18 greenfield airports in the country, to be developed by private parties, State government or other government agencies.
- The government has approved a proposal to manage Ahmedabad, Jaipur, Lucknow, Mangalore, Thiruvananthapuram and Guwahati under the Public Private Partnership (PPP) model to revamp these airports to meet international standards.

Airport Investments & Private Sector

- Private Investments in Airports are increasing
- Why? Driven by strong growth of air travel (Asia/Pacific)
- Pressure on airport infrastructure to adapt to growing demand and changing technology
- Governments facing dilemma of:
- 1.How to finance airport facilities to meet growing demand, on limited public funds?
- 2.How to improve service levels at airports?
- 3.How to operate airports to maximize commercial potential?
- Governments turning to private sector to meet investments/operational requirements for airports' expansion

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Privatization of Airports and problems

- Revenue earning opportunities of Airport Authorities of India is lost.
- Discrepancies in floating Tenders.
- Closure of Revenue earning Airports
- Non-compliance of legal provisions under various enactments and the Constitution of India by Concession Agreements.
- Collection of User Development Charges by a Private Company
- Job Security
- Cultivates commercial thinking instead of **national perespectiveness**, a set back to the socialistic pattern of distribution of national income,

Reasons advocating Privatization of Public run Airports

The following are the reasons for privatization of airports in India:

- Changes in international and domestic politics.
- Performance of Public Sector Undertakings.
- Magnitude of fiscal compulsion and external debt.
- Inherent efficiency of Private Sector companies etc.

The primary objective of privatization of airports are:

- To provide efficient, safe and economical services to airlines and passengers.
- The State should choose the option that is best suited for achieving this objective after careful consideration of planning.
- Regardless of the organisational structure or the legal status, the State remains ultimately responsible for Safety and Security

Benefits of Privatization of Airports

- Increased Operating Efficiency
- 2. Additional Operating Revenues
- 3. Improved Customer Amenities
- 4. Reduced Risk of unwise Investment
- 5. Lease Proceeds
- **Risks Involved in Privatization of Airports**
- Monopolistic Abuse by Private Player
- Loss of Governmental Control
- Private players becoming over-sensitive to fluctuations in share price
- Diversification of Operations pursued by Private airports
- Safety and Security may suffer when profits are main objective etc.
- The Leasing Entity (Private Player) may become Bankrupt.

Privatization and Legal Questions

- Whether Privatization of Airports is a part of Public Sector Reform or a Structural Adjustment Program?
- Whether Policy of the Government on Privatization of Airports is converting the Airports Authority of India into a sick industry thereby closing down the AAI leading to socio-economic-legal problems?
- Whether Government of India has adequate legal framework/Policy to deal with the Privatization of Airports?
- Whether an appropriate Policy Document shall be created after having thorough analytical socio-economic and legal research?

Privatization and Legal Questions

- Whether Privatization of Airports:
- a) has led to the transferring the employees from PSU to Private Sector?
- b) increases efficiency and employment?
- c) leads to deterioration in labour relations?
- d) gives social and economic protection to labour?
- e) takes place in isolation under ailing economy?
- f) involves complex social and labour issues?
- g) effect employment and job security?
- h) is going to solve the Air Traffic Control Problems?
- What are the legal implications involved due to the impact of Public Private Partnership?
- Whether Privatization of Airports raises doubts about the application and efficacy of the fundamental rights in the Indian Constitution?

FDI in Aviation Sector

- What is the concept of FDI? What are the likely implications of enhanced FDI in Indian Aviation Sector?
- The concept of FDI is closely linked with the concept of Globalization and is primarily based on want/ requirement of foreign capital by an enterprise that is resident in the economy of the host nation.
- The concept of FDI in general was introduced in India in 1991 with the opening of the Indian economy.
- Positive factors which helped FDI in India include availability of a highly lucrative market, adequate and cheap raw material, reasonably developed infrastructure, trained workforce, low production cost and ease of doing business. The interplay of these factors greatly influences potential foreign vendors' investment decisions

FDI Cont..

- **FDI: Methods and Classification**
- **Methods.** FDI is feasible in various sectors in different methods as under:
- Joint ventures
- Financial collaborations
- Private equity or preferential allotment
- Capital markets.
- **Classifications.** : **Classification I**
- Inward FDI: Investment made by other countries in the domestic country.
- Outward FDI: Investment made by domestic country in other countries.
- **Classification II**
- Horizontal FDI: Horizontal FDI arises when a firm duplicates its home country-based activities at the same value chain stage in a host country through FDI.
- Vertical FDI: Vertical FDI arises when a firm moves upstream or downstream in different value chains through FDI

Advantages and Disadvantages of FDI

- **Transparency.** Reduced imports are likely to lead to greater transparency with a diminishing role for middlemen.
- **Quality Products.** Infrastructure facilities are likely to improve due to higher capital infusion. Manufacture of improved quality products due to inflow of technology, expertise and better production facilities
- **Reduction of Reserves.** Higher FDI translates into better infrastructure, enhanced capacities and greater self-reliance.
- **Boost to Economy.** The capital base of the country will be positively affected due to inflow of foreign capital. The FDI will spur the GDP growth and boost the economy
- **Employment Opportunities.** The FDI creates employment opportunities, both in organised and un-organised sector, for large number of unemployed people due to increased level of economic activity.
- **Disadvantages: Security Concerns, Competition for Domestic Private Industry, Sharing of Benefits, Emergence of Cartels and Lobbies. Emergence of Cartels and Lobbies etc,.**

Foreign Investment

- Post LPG: India embarked on the path of liberalization and economic reform
- Over the past several years, the policy and procedures regulating and governing the inflow of foreign investments into India have been progressively liberalized and simplified.
- A non-resident entity may invest or participate in India in the following ways:
- Foreign Direct Investment ("FDI")
- As a registered Foreign Institutional Investor ("FII") under the Portfolio Investment Scheme
- As a registered Foreign Venture Capital
- As a holder of American Global Depository Receipts ("ADR") and Global Depository Receipts ("GDR"s) under the ADR / GDR Scheme
- Technology and Trademark Licence Agreements

Foreign Investment Cont..

- Entry Options for Foreign Investors: Basic Norms
- Business Venture could be Incorporated or Unincorporated
- Incorporation only through JV or WOS (overseas wholly owned subsidiaries ("WOS")
- Unincorporated Foreign Company can open business through Liaison Office or Branch Office or Project Office
- Foreign Direct Investments:
- FDI and its mechanisms are regulated by RBI & GoI Policies and are constantly reviewed
- Two routes of FDI: Prior Approval & Automatic
- Portfolio Investment Scheme: through-
- Foreign Institutional Investment
- Non-Resident Investment
- Qualified Foreign Investors

Foreign Investment Cont..

- Foreign Venture Capital Investment:
- Should be registered with SEBI & regulated by FEMA Regulations
- Can contribute up to 100% of the capital of an Indian Venture Capital Undertaking
- can also set up a domestic asset management company to manage the fund.
- ADR, GDR and FCCBs
- These are other means of foreign investment
- GoI issues guidelines for its regulations from time to time
- Foreign Technology and Trademark License Agreements
- The FDI policy and FEMA allows foreign technology collaboration agreements for the acquisition of foreign technology and trademark license agreements for the use of trademarks and brand names without requiring financial contributions on the part of foreign companies

Competition and Fair Competition

What is Competition?

- Competition in the market means sellers striving independently for buyer's patronage to maximize profit or other business objectives.
- Competition is a process of rivalry between suppliers seeking to win business.
- Competition is essential to a healthy economy and a well-functioning market place but competition by itself may not necessarily deliver the best outcomes.
- What is Fair Competition?
- Fair Competition is the prevention of unlawful acts and acts contrary to honest practices. Fair competition is based on the factors of price, quality, and service; not on the abuse of near-monopoly powers, competitor bashing, predatory pricing etc.
- Fair Competition makes an enterprise more efficient and offers wider choice to consumers at lower price.
- Fair competition is beneficial for the Consumers, Producers / Sellers and finally for the whole society since it induces economic growth.

The Objectives of Competition Act, 2002

- To prevent anti-competitive practices
- To promote and sustain competition
- To protect the interests of the consumers
- To ensure freedom of trade.
- Theme areas for the Competition Act,
- Prohibition of anti-competitive agreements
- Prohibition of abuse of dominant position
- Regulation of combinations (M&A)
- Competition Advocacy
- The objectives of this Act are to be achieved through the instrumentality of the
- Competition Commission of India (CCI)
- established by the Central Govt. wef 14 Oct 2003.

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Competition Law And Aviation Cont..

- With a growth rate of 18% Aviation Industry is one of the fastest growing industry in India
- Post LPG & Open Skies Policy : Splurge of Private Players
- Air Travel has become affordable
- Airline, being a service industry is facing intense competition after liberalization.
- various airlines are engaged in consolidation, strategic alliance and privatization, with an aim of improving their competitive positions.
- High Regulatory Burden influencing Competition in Aviation Sector:
- minimum equity requirements;
- route dispersal guidelines;
- minimum fleet & experience requirement of 5 years for International Operations;
- exclusive right to National carriers to fly to Gulf Routes etc

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Why Competition in Aviation?

- The monopoly of state-run airlines and their deteriorating performance was one of the most important reasons for deregulation in the aviation sector.
- The rising costs of travel and dissatisfaction amongst consumers and various reasons demanded deregulation of the aviation sector.
- The restriction on entry of private players disallowing competition and reduced prices was a clear disadvantage for the passengers.
- Many forces including growth in demand for air services, technical changes, emphasis on safety, and changing perceptions of limited Government intervention in commercial activities contributed to the shift
- Increasing passenger demand was not meted out by satisfactory services to cater to the demand.
- It was not only a trend with increasing passenger demand but the passengers demanded variety and options in aviation services, such as low- cost and no-frill airline services.

Why Competition in Aviation?

- Liberalization of the sector entailed a combination of both privatization initiatives as well as deregulation as a whole. Privatization of the airlines from Government control would enable the airlines to operate on economic principles, fostering competition and improved efficiency.
- Worldwide experience showed that privatization of ownership improved efficiency in operations, as the parameters that govern the operations are no more non-economic.
- Excessive Government control had been one of the weak links of the sector.
- Private ownership would also facilitate resource mobilization.
- It was deemed to prove important especially for developing countries because it was perhaps the best way of bringing in financial discipline in the aviation sector.
- The decline in performance as well as profitability of both Air India and Indian Airlines and increased passenger demand from 1990 onwards, necessitated additional capacity creation in the domestic market leading to deregulation.
- Apart from the reasons related to the monopolistic state carriers, other reasons such as rising fuel prices and the zeal of privatization demanded deregulation of the aviation sector.

Competition Policy and Airlines Issues

- The private airlines, which had to close down, blamed their sickness on reasons such as:
- • Lack of transparent and consistent government policy
- • Route Dispersal Guidelines – Operations on uneconomic routes
- • High Cost of Aviation Turbine Fuel
- • Inland Air Travel tax and Income Tax on leasing of aircraft
- • High rates of airport charges
- • Lack of adequate airport facilities and limited watch hour problem at minor airports
- • Uneconomic fares
- All these reasons contributed to the downfall of private airlines

Competition Law And Aviation Cont..

- As per para. 15 (2) of Schedule XI to AF1937, the Director General has the power to suspend/cancel an Air Operator's Certificate on sufficient grounds recorded in writing.
- In October 2012, the DGCA suspended the debt-ridden Kingfisher Airlines from flying, as the operator was unable to revive its financial position.
- The airline was compelled to lock out and suspend its airline operations because of a strike by its employees for unpaid salaries/dues, and even failed to renew its permit within the deadline stipulated under clause 7 of CAP 3300.
- Eventually, in November 2016, the Bangalore High Court passed an order for the winding-up of the Company.

Competition Law And Aviation Cont..

- In another matter, a complaint was filed with the Competition Commission of India (CCI) against airline operators as Jet Airways, IndiGo Airlines, Spicejet, Air India and Go Airlines on grounds that such airlines were engaged in anti-competitive agreements.
- It was alleged that airlines colluded with each other to introduce a "fuel surcharge" which was levied on transportation of cargo.
- The CCI directed its Directorate General (DG) to investigate the complaint and DG concluded that the alleged collusive actions by the airlines were not sufficient to constitute a cartel.
- The CCI disagreed with this finding and levied a penalty of 1% on the turnover of the airline companies engaged in such cartel activity.
- The appellate tribunal, however, reversed this unreasoned order and the matter was remanded back to the CCI to give parties an opportunity to file objections

Mergers and Acquisitions

- Mergers and acquisitions ("M&A") are strategic decisions taken for maximization of a company's growth by enhancing its production and marketing operations.
- They are being used in a wide array of fields in order to gain strength, expand the customer base, cut competition or enter into a new market or product segment.
- Aviation sector is one of the least researched sectors in India as it has limited number of players.
- However, as the sector is growing rapidly, it becomes essential to have knowledge about the sector and the activities which are taking place in the sector.

Mergers and Acquisitions

- Horizontal Mergers
  A Horizontal Mergers occurs when one firm combines with the other in the same line of business. This kind of merger takes place between entities engaged in competing businesses which are at the same stage of the industrial process.
- Vertical mergers
  Vertical mergers refer to the combination of two entities at different stages of the industrial or production process. For example, the merger of a company engaged in the construction business with a company engaged in production of brick or steel would lead to vertical integration.
- Conglomerate Mergers
  A conglomerate merger occurs when unrelated enterprises combine. The principal reason for a conglomerate merger is utilization of financial resources, enlargement of debt capacity, and increase in the value of outstanding shares by increased leverage and earnings per share, and by lowering the average cost of capital.

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Mergers and Acquisitions: Civil Aviation Sector

- The airline industry has to operate in a competitive world. Many airlines are unable to survive in their present set up and have to streamline their operations through cost cutting measures.
- Merging with another airline provides a possible method to improve airline operations and reduce costs by sharing the available resources and eliminating duplication of service.
- Consistent with the global trends in aviation, aviation sector in India has and is likely to witness more number of consolidations amongst airlines.
- The question regarding use of airport infrastructure in case of merger / takeover of airlines and sale / transfer of aircraft etc. had drawn attention of the Government for quite some time

Mergers and Acquisitions: Civil Aviation Sector

- In keeping with the spirit of consolidation the Aircraft Acquisition Committee of the Ministry of Civil Aviation considered the issue of policy on transfer of airport infrastructure in case of merger/take-over of airlines and sale/transfer of aircraft in 2006.
- Some of the general principles forming the basis for consideration of this policy are:
- The Government would adopt a non-discriminatory approach towards the acquiring entity.
- No public inconvenience should be caused by disrupting flight schedules.
- Policy should not be arbitrary and should not hamper growth and consolidation of the airline industry.

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Mergers and Acquisitions: Civil Aviation Sector

- Policy Provisions
- The airline that takes over the aircraft (acquirer) pursuant to merger / takeover or sale / transfer of the aircraft may be allowed the use of airport infrastructure like parking bays, landing slots etc., which is allotted by Airport Operator without any payment.
- This was particularly necessary as the transferred aircraft is in operation in the country already availing the airport infrastructure. In terms of schedules / connectivity etc. it will be in public convenience if usage of such infrastructure is allowed to the airline that take over the aircraft provided the user rights are actually used by the airline.
- Only the user rights over such infrastructure that are given to an airline on non-payment basis e.g. parking bays, landing slots etc. may be allowed to be used by the airline that takes over the aircraft.
- For all other rights, the terms of lease / sale agreement between the airport operator and the airline may apply.

Mergers and Acquisitions: Civil Aviation Sector

- The user rights belong to the Government / airport operator and therefore, cannot be transferred by one airline to the other airline in any event.
- The Government / airport operator shall allow the user rights to be availed by the airline that takes over the aircraft.
- The user rights will be available with the airline that takes over the aircraft only in respect of those rights, which are actually under use by the airline that transfers the aircraft.
- All other rights will be taken over by the Government / airport operator. The user rights will be available with the airline that takes over the aircraft only till such time that the infrastructure concerned is under actual use.
- If the airline that takes over the aircraft does not use the concerned infrastructure, it will lose the user rights over the infrastructure.

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M&As/ JVs

- The MCA does not regulate joint ventures or any form of corporate structuring in the civil aviation sector; the open sky policy approach adopted by India has paved the way for numerous corporate integrations, despite merger control restrictions under the Competition Act, 2002 (CA2002) and/or foreign investment norms imposed under the Foreign Exchange Management Act, 1999 (FEMA).
- Tata SIA Airlines Limited is one such recent successful joint venture company formed by Tata Sons and Singapore Airlines, operating domestically under the brand Vistara. Etihad holds 24% Equity stake in Jet Airways, which has a great impact on the international routes of Jet Airways.
- Other example of Jet Airways by the Tata Group with the aim of expanding Vistara airlines.

M&As/JVs

- Besides the CCI, M&As/JVs are regulated by the RoC and the Securities Exchange Board of India (SEBI) under the provisions of the Companies Act, 2013 (CA2013) and the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (Takeover Code), respectively.
- Chapter XV of CA2013 contains provisions with regard to compromises, arrangements and the acquisition of unlisted companies. Any proposal/scheme evidencing the corporate restructuring should stand up to the scrutiny of shareholders/creditors/other stakeholders.
- The National Company Law Tribunal is the adjudicating authority that approves the scheme. SEBI regulates listed entities as well as entities proposed to be listed on stock exchanges in India.

M&As/JVs

- The Takeover Code regulates the acquisition of shares/voting rights of a listed company and triggers open offer requirements in some cases whereby the acquirer of shares shall be obligated to make an offer to purchase the shares of the remaining shareholders.
- Besides, listed entities are required to disclose/notify the stock exchange(s) in which such securities are listed as prescribed under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.
- Exchange control aspects of M&A are regulated by the Reserve Bank of India (**RBI**) under the extant FEMA regulations, which prescribe strict pricing and reporting requirements. As per the prevailing foreign direct investment policy, foreign investment of up to 100% of the share capital is allowed without any approval from Indian operators in scheduled air transport services, or domestic scheduled passenger airlines.
- Foreign airlines are allowed to invest up to 49% under the approval of the government in Indian companies operating scheduled and non-scheduled air transport services. The government on approval permits 49% of foreign investment in the national carrier, Air India.

Cartelization and Civil Aviation

Cartelization amongst Airline Companies in India:

- 'Cartelization' is a process where enterprises to fix prices, limit or control production, share the market or customers, or indulge in collusive bidding.
- Cartels operate in secrecy & thus are hard to detect, or successfully, investigate and prosecute and because of this competition laws across the globe reserve their most severe treatment for cartels
- Directive Principles under Indian Constitution: directs the State policy in matter of concentration of wealth, welfare of consumers
- Post LPG : Entry of Private Players – Rigorous Fare Wars – Cut throat competition
- Very Common Amongst Indian Private Airlines. Jet & Kingfisher have been accused
- Effect: a. increase in air fares among all the privately owned airlines

  b. route rationalization

Airline Mergers

- The Jet-Sahara Mega Merger: On 20th April , 2007 Jet acquired 100% stake in Air Sahara 15 months after signing the original purchase agreement.
- Jet purchased its arch rival for INR 14.5 billion (3500 USD Million) which is 35 % less than the price agreed in 2006. The ultimate consummation of Sahara represented the conclusion of the arbitration exercise that has been going on since July, 2006. Jet has announced its going to re brand Sahara as "Jetlite" which would operate as a value carrier.
- The new entity would offer reduced frills but would be over and above LCC in terms of service They together account for a market share of 28% as on May.2007 which is sharply in contrast to their market share in Jan, 2006 which was more than 45% reflecting increase in competition and fragmentation since then.
- The Air Deccan-Kingfisher Merger:
- The merger between the pioneer LCC and liquor baron was announced on 31st May, 2007 as the United Brewies, picked up 26% stake in Air Deccan and propose to buy another 20 % via an open offer. The deal UB group paid a whopping INR 550 Crore to pick up a 26% stake in the LCC.
- The Air India-Indian Merger:
- The two state run carriers entered into a merger in April, 2007 in a bid to consolidate and optimize the use of the assets of the two public sector airlines. The will help the two airlines to synergize their operations.

Business Opportunities in Aviation

- At present the existing aviation business is strongly dependent on the general economy.
- The past and projected future growth of general business aviation in India has been driven by the strong economic growth the country has witnessed in the last five years.
- Air travel was once considered a luxury for both business and private needs. This perception has now changed as savings in travel time, comfort and convenience and higher reliability compared to other modes of travel have outweighed the cost differential.
- The poor connectivity between the metros and smaller cities is why more and more companies and individuals are gradually branching out to use private jets and helicopters.
- The business avenues in civil aviation are vast and diverse and given the increasing human dependency on civil aviation, it has become a very crucial aspect of the economic development of any country.

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Business Opportunities Cont..

- The tourism and cargo industry of today relies heavily on the enhanced connectivity and cost effective means of distributing goods and services established by the dynamic air transportation industry
- India is poised to experience a rapid upswing in the business aviation sector due to its strategic geographic location, favourable demographics and robust economic growth.
- Located strategically between the Middle East and Europe on one side and the East Asian economies on the other, India's geography offers a lucrative opportunity for growth of general and non-scheduled aviation due to the rising demand from the ever-growing volume of high net-worth individuals and business houses in the country.
- The country has witnessed a significant growth in the number of non-scheduled airline operators with the total number of operators having crossed 400 in 2018 from a mere 36 in 2000.

Business Opportunities Cont..

- The Directorate General of Civil Aviation (DGCA) estimates that the general aviation fleet in India comprises around 800 small aircraft and 300 helicopters. Around 20% of this fleet size is expected to be more than 25 years old and may not be operational.
- Apart from the said scheduled airlines, the trend of private airlines and jets are also on the rise.
- India is one of the strongest markets for private jets with strong economic growth, expanding business interests and increasing number of billionaires.
- The private jets market in India constitutes 12 % of the global market and is bigger than Asian markets in China and Japan.
- As per the Business Aviation Association of India, there are 680 business aviation aircraft including private jets, helicopters, turboprops and piston engines and this number is expected to reach 2000 by 2022.

Scope and Opportunities in MRO

- Alongside, as support to the aviation industry, the opportunity to provide maintenance, repair and operations (MRO) activities will grow with the industry.
- India's MRO segment is estimated to grow at 10% and reach USD 2.6 billion by 2020. Establishing MRO facilities in India will enable operators to achieve faster turnaround times, savings in operating costs and a decline in foreign exchange outflows. 100% foreign direct investment (FDI) is permitted under the automatic route for MRO, flying training institutes and technical training institutions.
- The government has also undertaken a major programme to develop and improve the ecosystem for the civil aviation sector. However, the focus of these efforts has been a scheduled commercial aviation.
- At present, Airlines operating in India get nearly 90% of their MRO done abroad, mainly due to cost advantages resulting from the comparatively high tax burden, cumbersome operating procedures, and the inadequate MRO service facilities available in India.
- A strong MRO industry could achieve lot of benefits including the Create thousands of Jobs for Aerospace engineers and other professionals Save and earn foreign exchange by attracting national and international carriers to Indian MROs, Reduce dependency of Indian carriers on other countries for their MRO requirements.

MRO Industry – New Opportunities

- The MRO Industry will increase the opportunities for employment, leading to considerable saving in foreign exchange, and the revenue earned by taxes will increase every year and Make India an attractive MRO hub in this part of the world.
- The Indian MRO industry is rapidly adapting to new opportunities and challenges that lie ahead in the global aviation marketplace.
- India's MRO sector has set its gear in overdrive by increasing the globalization of supply chains, advancing the technological sophistication of its aircraft, increasing military outsourcing and creating a substantial MRO sector in a low cost economy.
- The Indian MRO sector needs to take a take advantage of all future opportunities to create profitability.
- The Indian MRO industry is projected for substantial growth in the years to come.
- By implementing timely changes in their policies now, could really benefit India in the years to come.
- The seed is already planted, but nourishing the program with proper oversee and policies would make it not only grow but thrive in the global aviation environment.
- The demand is present, the growth is unquestionable, and the only thing left is the overseas that programs and policies are practiced. India's MRO economic boom has only reached the tip of the iceberg.
- There is a lot more work to be done and a lot more revenue to be made in the years and decades to come.

Different kinds of Business models in Aviation Sector

- General Business Model:
- Partnership
- Company (Public, Private and Joint Venture)
- LLP
- Business Models in Aviation Sector:
- Government Owned and Operated
- PPP (Public-Private Partnership)
- Partial/Full Privatization Model
- PPI (Public Private Investor) Peoples Airport

IPRs and Civil Aviation

- As India is a signatory to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), numerous pieces of legislation have been enacted and updated over the years to protect intellectual property rights (IPRs).
- IPR Regulations Before TRIPs
- **Paris and Bern Regimes and IP Protection**
- **What is IPR and IP Regulations by Paris and Bern Regimes**
- **What is Paris regime** ? Paris Regime consists of (a) the Paris Convention for Protection of Industrial Property, 1883, (b) Other related international Conventions on Patents, Industrial Designs and Trademarks
- **What is Berne regime**? Berne regime consists of Berne Convention 1886 for the protection of literary and artistic works and other conventions on copyrights and neighbouring rights
- **GATT & IPRs:** Though GATT not dealt with IPRs as such but there were some provisions like : Art IX on Marks of Origin, Art XX on Patent protection, Trade Marks, Copyrights and prevention of deceptive practices. Other articles include Articles I, III,XXII and XXIII
- WTO, TRIPs and IP Regulations

Uruguay Round, WTO and TRIPs

- Marrakesh Agreement or Final Act of Uruguay established the WTO and put important treaties as Annexes to the WTO treaty
- Objectives, scope, functions structure of the WTO Various annexes to the WTO
- Annex 1-A, Trade in Goods– GATT-1947 and1994
- Annex -1B, GATS
- Annex –1C, TRIPS
- Annex - 2, DSU/DSB
- Annex- 3, TPRM.
- Annex- 4, Plurilateral agreements

Analysis of TRIPs Agreement

- TRIPS consists of 73 articles divided into 7 parts
- Part 1 General principles and basic principles (Art 1-8)
- Part II IPR issues covered in TRIPS (Art 9-40)

  Copyright and related rights (Art. 9-14), Trademarks (Art 15-21)

  Geographical Indications (Art 22-24), Industrial Designs (Art 25 & 26) Patents (Art 27-34), Layout designs of integrated circuits (Art. 35-38) Protection of undisclosed information (Art 39),
- Enforcement of IPRs (Part III- Art 41-61),
- Acquisition and maintenance of IPR (Part IV. Art. 62)
- Dispute Prevention and Settlement (Part V Art 63 & 64)
- Transitional Arrangements (Part VI Art 65-67)
- Inst. arrangements and final provisions (Part VII Art 68-73)

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Legislative and Administrative Initiatives

- The Patents Act, 1970 and various Amendments in conformance with TRIPS
- Design Act in May 2001, Trade Marks Act in 1999
- Geographical Indications of Goods Act, 1999
- Modernization of the current infrastructure
- New administrative initiatives including establishing Offices for Patents and Trade Marks in all four metros
- Geographical Indications Registry set up at Chennai
- Release of a Draft Manual for Examination and Patent Procedure by the Indian Patent Office
- Each of the said pieces of legislation provides for the mechanisms and procedure for the filing, registration and protection of the relevant IPR both in domestic as well as foreign jurisdictions, subject to international commitments, and also the action that can be taken for alleged or actual infringement.

Future Regulatory Changes

- The proposal to replace the DGCA with a new regulator – the Civil Aviation Authority – with financial autonomy and power to address issues relating to consumer protection and environment regulations.
- The government's proposed construction of 17 highways-cum-airstrips; 18 greenfield airports; reviving 50 unserved and under-served airstrips in the next three financial years; starting a new regional connectivity scheme; and reviving an air services agreement with countries an agreement already having been concluded with the Netherlands to operate up to 28 flights each week).
- The Executive Development Programme of Rajiv Gandhi National Aviation University in collaboration with the US–India Cooperation Program to promote skills development for the senior leadership and close the gap of increasing demand for trained people in the aviation sector.
- The Requirements for the Operation of Civil Remotely Piloted Aircraft Systems, 2017, issued by the DGCA.

Future Regulatory Changes

- The MRO industry in India is likely to expand and gain expertise in the likeliness of a fully fledged MRO venture hosted by Thailand. The venture is favoured owing to the fast-growing commercial aviation market in India.
- Government has planned to enter into an 'Open Sky' Air Service Agreement as per National Civil Aviation Policy 2016, on a reciprocal basis with SAARC countries and countries with territory located entirely beyond a 5,000km radius from New Delhi.
- The taxes levied on the Aviation Turbine Fuel must be brought within the purview of GST, which will attract input tax credit thereby enabling the airlines to pass down the cost fully to passengers.
- The DGCA until recently had prohibited the use of drones in India citing privacy and security concerns. Past attempts by the civil aviation regulator to draw a framework to govern its operations in India was met with criticism and never saw fruition. In 2014, the DGCA issued a public notice enlisting several approvals required for civil application of an unmanned aircraft vehicle; followed by draft guidelines issued in 2016 and 2017. Although the drafts were not given effect, it largely announced the Government's intention to permit the use of UAV's for civilian and recreational purposes in the future. On August 27, 2018, the National Drone Policy has legalised the use of drones in India to be effective from December 1, 2018.

Rise of Litigation in Aviation Sector

- Role of Aviation Attorneys:
- It presents distinct challenges for trial counsel.
- Specialized technical, legal and regulatory knowledge is critical to the effective handling of an aviation case.
- Aviation Attorneys have vast experience in the legal doctrines, conventions and statutes that arise with regularity in the aviation context like :
- Warsaw Convention/Montreal Convention,
- Airline Deregulation Act and Federal Aviation Act preemption,
- the government contractor defense,
- the economic loss doctrine,
- the General Aviation Revitalization Act and
- the Foreign Sovereign Immunities Act.

Rise of Litigation in Aviation Sector

- The nature of aviation cases that go for litigation may vary from design or manufacture of an aircraft or component parts to aircraft and airline operations or aircraft maintenance.
- Aviation Attorneys are enabled to effectively advise their clients on how best to avoid litigation or pitfalls that compromise subsequent litigation.
- They have technical expertise in advising manufacturers of aircraft with respect to such areas as warnings, accident investigation, document retention, documentary privileges, and legal aspects of product integrity programs.
- Aviation Attorneys work towards helping their clients in avoiding practices and procedures that are either "litigation magnets," or which will impair our client's defense in the event of litigation.

Rise of Litigation in Aviation Sector

- Varied Forms of Claims:
- Commercial disputes directly for airlines, including multi-jurisdictional claims, arbitration and mediation
- Claims handling, advice and legal representation arising from accidents including major air disasters and passenger and cargo liability claims
- Disputes arising in other sectors of the aviation industry underwritten by insurers
- Liability and coverage disputes for underwriters
- Disputes arising out of aircraft purchase, sale, leasing and financing, including those concerning re-delivery condition requirements on operating leases

Rise of Litigation in Aviation Sector

- Disputes arising out of alliances, joint ventures, franchising and general sales agencies
- Disputes arising out of the termination of leases and enforcement of security, aircraft repossessions and related issues, including insolvency
- Anti-trust and regulatory investigations including price-fixing and anti-trust issues between airline alliance members
- Regulatory matters, including EU legislation, CAA regulation and licensing
- Intellectual property matters
- Political risk policies and aero-political matters, including access to airports and the application of international embargo rules
- Slot allocation and slot transactions
- Development of emergency response policies for major disasters
- Blacklisting issues – including representation for removal from the EU blacklist

Thank You