GLOBALIZATION, COVIDIZATION AND ITS IMPACT ON AVIATION INDUSTRY

Dr. V. Balakista Reddy
Professor of Law and Registrar
Head, Center for Aerospace and Defence Law
NALSAR University of Law, Hyderabad
www.nalsar.ac.in: Email: balakista@gmail.com

Scheme of Discussion

- This module is divided into three parts.
- Part-I will focus on globalization and its impact on global economy and will also highlight its impact on Indian economy.
- Part-II will focus on de-regulation, globalization and liberalization of aviation industry. It will also highlight the de-regulation in the USA and its impact on US aviation industry. Further it also highlighted the aviation liberalization process in the European Union and other parts of the world including Asia Pacific Region.
- Part-III will focus on the Covid-19 pandemic impact on various sectors and particularly it will focus on the aviation industry. The pandemic has presented a lot of challenges for the global economy some of which have direct bearing such as disruption in supply chains, challenges in meeting contractual obligations and problems of funding while others are universal in nature like maintaining the safety and health obligations at workplaces, impact of travel restrictions It also briefly highlights the Covid-19 pandemic impact on Airlines, Airports, MROs, Force Majeure, passenger rights etc.

What is Globalization?

- Globalization is the term used to characterize the processes of growing interconnection and interdependence among the different nations of the world.
- It offers to the increased flow of trade, people, investment, technology, culture, ideas among countries and creates a more <u>integrated</u> and <u>interdependent</u> world
- World Bank: Globalization is the growing integration of economies and societies around the world.
- Globalization is often understood as the dissemination, transmission, and dispersal of goods and Services, persons, images, and ideas across national boundaries
- Globalization of markets is one of the most fascinating developments of the 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.
- 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

When Globalization Started?

- Globalization has been around since the 15th century when European exploration & colonization created global empires & markets.
- Globalization From 15th – 18th C – age of exploration by European nations – invasions in pursuit of raw-materials/resources for industry development.
- Globalization from 18th – 20th C – Industrial Revolution and rapid growth of Manufacturing Industries, Migrations of Labor, Steamships, Telegraph, Railways, MNC Exporting Odyssey, Dutch East India Company, etc. .
- Globalization in the late 20st C – Old economic & business order changed. New business landscape and major shifts in the global economy after Oil Shocks.
- Phase 1: 1974 -1980s Oil Shock -OPEC sets Oil price NOT oil MNCs. A blow to BIG 3 US Auto Industry and Competitiveness, Rise of Japan and Germany as Globally Competitive Nations .

When Globalization Started Cont..

- Phase 2: 1980s – 1990s China's World Manufactory & India IT Business Development.
- Globalization ERA : Carry-over from the late 20th C into 21st C– New World Economic & Business Order.
- Phase 1: 2000+ BRIC then Expanded to BRIC+KS (Korea +S Africa)
- Phase 2: 2010+ G20 Emerging Markets including BRICKS join JUG to share economic/ business power in a globally competitive trading system – accounts for over 80% of World Trade, FDI , World Output (GDP) and EMCs w China & Japan leading account for 75% world's FOREX reserves
- Recent developments including communication, information technology and e-commerce and related issues.

ASPECTS OF GLOBALIZATION

1. Economic perspective - globalization is perceived as the creation of high-tech jobs in wealthy nations and the lifting from poverty of some three billion people or half the world's population. At the same time, it is also perceived as the loss of jobs in wealthy nations and the exploitation of workers in poor nations.
2. Cultural perspective - it is the growth of cross-cultural understanding made possible by the increasing two-way flow of entertainment and news, and the development of human values that transcend those of any one culture. At the same time, it is also the erosion of local traditions and standards and their replacement by foreign ones.
3. Technological perspective - globalization is the spread of knowledge and the dramatic leaps in world communications and travel that has resulted in eradication of deadly diseases, saving of endangered species, the reduction of famine and the increase in world productivity to the benefit of all humankind. At the same time, it has also unleashed destructive forces leading to loss of species, spread of disease, environmental degradation, war, and terrorism.
4. Political Perspective – Creation of global and regional political organisations

League of Nations, UN and WTO, Regional organisations like European Unions like NAFTA, SAFTA etc,.

Impact of Globalization

- On the positive side, it generated by growing international economic, cultural, and political cooperation and solved many global problems.
- Promotes intense competition among multinational corporations (MNCs) and also makes local companies to be more competitive internationally.
- Makes governments more aware of the global impact of poor environmental policy.
- Promotes ethical behavior by MNCs in the area of wages, working conditions and pollution abatement, since they are vulnerable to global media coverage of their operations, and fear loss of market share resulting from negative publicity.
- On the positive side, it generated by growing int. economic, cultural, and political cooperation & solved many global problems.

Arguments Against Globalization contd….

- On the negative side, globalization also has profound implications for states such as the autonomy and policy-making capability of states are being undermined by economic and cultural internationalization.
- Shift of sovereignty from political to economic
- Role of States have Changed from Law-maker to Law-takers
- Role of States are changing from regulator to facilitators
- Many governments see their role as not to regulate markets but to facilitate their expansion.
- Globalization and regional interactions are wiping out national borders and weakening national policies.
- Concept of Law has changed from sovereign to science of social adjustment

Globalization Drivers

- **Global Market –** Common customer needs, Expanding global customers, Global market channels, Marketing transfers and global branding
- **Production & Supply Chain** - Taking advantage of economies of scale & scope, Sourcing efficiencies, Production factor cost differences, Product development costs, Application of rapidly changing economies
- **Government and Multilateral -** Role of GATT/WTO in trade liberalization, Unrestrictive trade and investment policies, Compatibility of technical standards
- **Competitive Advantage Drivers -** Global competitors in trade and investment, Interdependence among nations, Shrinking product life cycles and technology advances, Imports compete with domestic products
- **Human Resource Skills Drivers -** Readily available engineers and scientists abroad
- **Globalization of Technology Use -** Mergers & Acquisitions of complementary technologies, Access to the global phenomenon of shared technologies, Integration of company operations with new technologies of rivalry

Globalization and 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

Globalization 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

Option for DCs

- “Globalize or Perish” is now the buzzword synonymous to “Do or Die” which conveys that there is no alternative to globalization and everybody should learn to live with it.

- Most of the DCs including India, being a signatory to the W.T.O, can no way step backwards. This is not the time to curse the darkness but to work for making India emerge as a global market leader.

- Last but not least, it was considered that ignorance of law is no excuse. But now we can tell ignorance of WTO is no excuse in the interest of our nation

- Know the Rules to play the Game well

Globalization of Aviation in Different Regions

- Since the passing of the De Regulation Act of 1978 in the United States of America, the international air transport is undergoing the most dramatic changes in its history.
- Globalization, deregulation, liberal bilateral air transport agreements, international alliances, privatization of airlines and airports, and economic constraints are some of the factors challenging established management and business practices.
- Globalization process, each region plays variations on a common theme. In North America, air travel is the normal way of moving people, mail and increasingly, freight.
- In the European Union, we have liberalization, consolidation, concentration and decentralization.
- Civil aviation in Eastern Europe and the Former Soviet Union is being restructured and needs strengthening –while adjusting to a free market economy.
- Impressive Aviation expansion is seen in India, China and ASEAN.
- Latin America shows promise.

Globalization on Civil Aviation Cont.

- With the increasing globalization of economies, liberalization and technological developments in air transport, new trends are emerging on the horizon.
- 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

De-Regulation in USA

- The deregulation process in the USA stared first in air cargo sector in 1977, followed by the passenger deregulation by passing deregulation Act, in 1978
- The aim of the above act was that the market place should determine the airlines business decisions in the future.
- This fundamental change in policy meant that the U.S. Government's role in the new regulatory environment would be to protect the competitive process, not individual competitors.
- The scope of regulatory reform was limited essentially to commercial meters, such as pricing (which include fares, rates, and charges) market entry, capacity and frequencies, but did not include any relaxation of government controls over such matter as safety, air traffic control, airworthiness, personnel licensing and aircraft maintenance.

Liberalization in other countries

- Under the influence of deregulation in the United States, other industrialized countries, such as Australia, Canada, European Union (EU) countries and Japan adopted policies to liberalize the aviation industry and to bring about a more competitive environment.
- The structural changes in the Canadian airline industry bear a great similarity to developments in the US.
- In a period of de facto deregulation, starting in 1984, the airline industry in Canada moved rapidly toward a high degree of market concentration, before the new National Transportation Act came into effect in 1987.

Liberalization in EU

- A major landmark was the decision of the European Court of Justice in the Nouvelles Frontieres case in April 1986, that air transport agreements are subject to the competition rules of the Treaty of Rome, Signed in 1957 by six European Countries.
- This meant that airlines may be prosecuted for violation unless exemptions have been granted to them under policies agreed upon by the Council of Ministers.
- The implications of this judgment put considerable pressure upon the European Community (EC), presently European Union (EU, to develop and agree upon an air transport policy.
- In December 1987, the Council of Ministers adopted a package of legal instruments put to them by the Commission and thus took the first step toward a general liberalization of the European air transport industry[6]

EU Aviation Regulations

- There are three different regulations:
- Regulation NO. 2407—the Licensing Regulation, dealing with the requirements for the issue and revocation of operating licenses to air carriers established in the Community
- Regulation No. 2408—the Access Regulation, giving access to intra-Community routes to Community air carriers, and
- Regulation No. 2409—the Fares Regulations, whose purpose is to abolish government intervention in the determination of fares on intra-Community routes[7].(3 ,see Aviation Industry Developments 1997,p.115)
- As a result, all air services within EU countries may be regarded as having a special status under the EU third aviation package a domestic traffic and thus providing EU-based airlines with the opportunity to open new routes, whereas non-EU airline services within EU-countries may be considered cabotage traffic.
- This could bring about a new dimension in future negations concerning air service agreements.

Impact on Developing Countries

- The most serious impact of deregulation and liberalization of the aviation industry is being felt by airlines in developing countries.
- This lead to the formation of regional airlines from a number of small carriers in order to improve efficiency and productivity, to reduce cost and to maintain market share.
- Alternatively airlines also combined operations and joint projects, such as joint scheduling, sharing of equipment, crews and ground facilities, pooling of aircraft parts and support equipment, and cooperative arrangements for aircraft overhaul and maintenance.
- The rapidly changing environment of world air transport makes it essential that governments of developing countries and airline management should be very clear about their objectives and the need for close cooperation and sharing of scarce national resources.

Impact on Asia/Pacific Region

- 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.
- The size and economic potential of the region has acted as a catalyst for development of new aircraft types, and manufacturers foresees a big market for future new aircraft.

LPG and Its Impact on Indian Aviation

- Liberalization and open skies policy
- Repealing of Air Corporation Act 1953 and new Air Corporation Act 1994

Airport Privatization Legal Issues

- 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
- The Carriage by Air Act 2009

Airlines Privatization and Legal Issues

- FDI in Aviation Sector
- Mergers and Acquisition: Legal Issues
- Competition Issues in Aviation Issues
- Aviation Insuranc

Aviation Liability: Recent Developments

Draft Civil Aviation Policy 2016 and Anti-Hijacking Act, 2016

COVID-19 Pandemic and ILO

- The COVID-19 Pandemic made us handshake to Namaste, forced states to Closed borders, quarantine imposed on people, travel bans, paralyzed supply chains, and export restrictions
- The impact of the pandemic COVID-19 poses fundamentals questions : How will the pandemic influence the international order in the future?. How the pandemic might reshape the world order, including prospects for international cooperation. Can the pandemic will accelerate USA decline and the advent of a more multipolar world ?.
- The world now faces a new form of "non-solidarity" globalization between the countries of the North and the countries of the global South. How trade war between the US and China will influence the international order.

COVID Crisis and Business

- How Companies should respond to this crisis?
- Is it time to Resetting business plans, growth, earnings and spending's
- Do the Companies should focus on customer retention quality of product or services?
- How Companies are going to Procure and Preserving capital?
- How should they Maintaining a healthy balance sheet?
- Is it the not time to adopt new form and new way of working Environment?
- How will the business organization are ensure the well-being of people and the safety of productive assets in the Pandemic crisis?
- How can you ensure sustainable financing and stable cash reserves?
- Are there well-coordinated and standardized communication systems and protocols to ensure clear and transparent communication with all stakeholders?

COVID Crisis and Business

- Does the business organization have crisis management teams to manage short-term liquidity impacts and initiate appropriate countermeasures?
- What model do the business organizations have in place to assess potential risks and define responses in the event of a crisis?
- Have the organizations considered the impact of a crisis in the budgeting and business planning processes, and implemented early warning mechanisms?
- When a crisis has significant financial impact, how can they adapt business model to reduce costs, both in the short and medium term?
- How will demand disruption impact and how will it recover from its aftermath?
- Have the organizations defined supply chain and production risks that crises might pose and what you could do to mitigate those risks?
- Is the business model resilient enough to recover from the impact of a crisis and manage potential crises in the future?

COVID-19 and Changing Business and Legal Environment

- What sorts of guidelines and input should guide product design?
- How desirable are knowledge-sharing agreements?
- How about the Joint development of technology and know-how?
- What are ideal features of international business partners?
- How should management monitor competitive activity?
- How can competitive advantages be created and sustained?
- What degree of attachment is optimal to alternative sourcing and production locations around the world?
- Management has to grapple with these and many other similar questions on an ongoing basis.

Shifts in Int. Business: Legal Challenges

- **A. From Nation State to Individual Enterprise.** shifted from trade relationships among nations to activities of the individual enterprise. Such a shift in orientation requires greater attention from the legal professionals of the structure, strategy, and operations of the individual firm.
- Globalization challenges the legal professional to contribute to the global competitiveness of the individual enterprise through a better understanding of the business strategy-performance relationship. It also calls for greater input on the part of legal professionals in formulating strategic directions for the enterprise.
- **From Nation-Based Advantages to Firm-Based Competencies and Assets** .In today's global competition, critical sources of competitive advantage are often firm specific.' These include such factors as the quality of management and leadership, ability to innovate and commercialize new products, ability to pinpoint and respond to emerging opportunities, and ability to organize monetary and HR
- These new realities of competition imply that legal professionals must develop a comprehensive understanding of firm assets and competencies.

Shifts in Int. Business: Legal Challenges

- **C. From Rigid Operations to Flexible Operations.** A great advantage of multinational operations is the flexibility the firm gains in terms of sourcing and manufacturing. The firm is free to market, produce, and source wherever it wishes, responding to low-cost, low-tax, and favorable infrastructure environments. Such flexibility allows it to better respond to opportunities and variations among national markets.
- This mode of international operations confounds the issue of territory and jurisdiction for international trade lawyers.
- It implies that they will need new definitions of legal jurisdiction. It also challenges them to design organizational and legal entities that are optimal under a broadened set of environmental variables.

Shifts in Int. Business: Legal Challenges

- **D. From Transactions to Relationships.** The focus of management attention is rapidly moving away from an emphasis on transactions to relationships among firms. The interface between international business partners (e.g., buyer-seller, manufacturer-distributor, franchisor-franchisee, licensor-licensee) should be carefully nurtured and maintained.
- Legal agreements and contracts are not sufficient in maintaining harmonious and fruitful relationships among business partners. If they would like to remain central to international business operations, legal professionals will need to be sensitive to relationship building. In the case of international strategic alliances, legal arrangements among the partners are likely to be project based.
- **E. From Competition to Cooperation.** While free markets always implied competition among firms, today there are good reasons for companies to collaborate. In the age of collaboration, the legal profession needs to shift its attention to the formation and maintenance of partnerships. It needs to assume a proactive role in defining the parameters of successful collaboration.

Shifts in Int. Business: Legal Challenges

- How should these ventures be structured? How should disclosure of proprietary knowledge be protected? What should be done by the partners to prevent conflicts and divorce?
- **F. From Market Diversity to Market Homogenization.** Market homogenization opens up new opportunities for firms in terms of product standardization, economies of scale in manufacturing, and simultaneous market entry.
- For the legal profession, it implies a more favorable environment for harmonization of product standards, advertising regulations, and legal processes
- **G. From Multilateral to Bilateral Trade Relationships.** A key macro-level trend of the past two decades has been the establishment of bilateral arrangements in trade. Countries have resorted to two party negotiations in order to resolve trade interests.
- Bilateral relationships may, in fact, enhance the chances of resolution in international trade conflicts. They may also enable trade lawyers to be more effective in resolving conflicts.

WTO,GATS and Globalization of Legal Services

- The globalization of legal services is a serious issue, which needs the attention of the all the stakeholders
- At present, the legal services industry is experiencing a fundamental transformation
- Corporate restructuring, privatization of government departments, cross-border mergers and acquisitions, issues dealing with intellectual property rights and competition law have generated increasing demand for more sophisticated legal services
- This also led to the emergence of a new type of lawyers mainly involved in advisory services—as opposed to the traditional local court advocate—expected to provide advice to clients in respect of transactions and investments covering countries around the world.
- The globalization of markets and the internationalization of trade in services have increased scope for lawyers, while reducing traditional protective barriers.
- Globalization of legal services will lead, increasingly, to issues of regulation.

Influence of GATS on Indian Legal Profession

- India as a founder member of the WTO and GATS has the imperative that the restructuring of the regulatory regime, keeping in mind the GATS and the consequent imminent changes, should be done after thorough study and analysis, in a very careful and detailed manner.
- In India, in particular, e.g., it is felt that the following points should be kept in mind while restructuring a proper regulatory regime:
  - There is a distinction between those foreign lawyers who want to practice in Indian courts and those who want to work primarily as Foreign Legal Consultants.
  - Most foreign firms are interested in non-litigation legal consulting business.
  - Any regulatory regime must be decided after consulting the Bar as well as the various Bar Associations, Bar Councils, Law Officers and leading law firms, and must address the following issues.
  - a) Reciprocity rights of the Indian lawyer in the foreign country's jurisdiction. b) Discipline control and maintenance of ethical standards as prevailing in India. c) Undertakings that the FLCs will not practice Indian law or employ.

IMPACT OF COVID-19 ON DOMESTIC INSTITUTIONS

- No industry has escaped the impact of COVID-19.
- Some have been hit hard, for example; Travel, Tourism, Entertainment Hotel Industries, steel, textiles, etc. Others, such as food and beverages, paper, pharmaceuticals, and industrial machinery and equipment, have fared better.
- An ongoing restructuring was put in motion as a result of the Covdization and its impact on markets. Downsizing, consolidation, and reconfiguration are common terms used to describe the current state of affairs in all industries.
- The new realities of the global marketplace have prompted business organizations to be constantly in search of enhanced productivity and new sources of competitive advantage. Such efforts to critically examine one's capabilities can be classified into several thrusts

State Responsibility

- Under IL States have legal responsibilities both towards states and individuals.
- If a state violates international law it is responsible to immediately cease the unlawful conduct, and offer appropriate guarantees that it will not repeat the illegal actions in the future.
- The state also has a responsibility to make full reparations for the injury caused, including both material and moral damages.
- Apart from these, individual's rights are also violated by some states and also by non state actors.
- So it is the responsibility of state under international law to protect or to take immediate attention to solve these problems.
- State responsibility, the possibility of holding China accountable for violations of the provisions of the International Health Regulations of 2005 ("IHR") is a research topic.

State Responsibility of China under Covid-19

- In the wake of the novel corona virus outbreak, recurring questions have been raised about the legal responsibility of China for its role in the spread of the virus.
- As the virus continues to wreck havoc across the globe, many have questioned the Chinese government's actions in the initial weeks following the outbreak of the novel virus in Wuhan.
- There have been repeated calls from many across the world for China to pay compensation to the affected countries.
- In the US alone, two class action suits have been filed against China, for suppressing information about the virus in its early days and seeking billions in compensation for the damages caused by the outbreak of the virus.
- ***Can China Be Tried in Domestic Courts?***
- availability of sovereign immunity to China before domestic courts. Most countries including the US and India have legislative provisions granting sovereign immunity to foreign States before domestic courts.

State Responsibility Cont…

- ***Can China Be Held Responsible Under International Law?***
- Under international law, every internationally wrongful act or omission of a State entails the international responsibility of that State.
- ***Practical Difficulties in Proving China's Culpability***
- However, the question of whether such acts or omissions constitute a breach of an international obligation binding upon China at the relevant time is more problematic and challenging.
- In terms of treaty law, the International Health Regulations, 2005 (IHR), Adopted by WHO under Article 6 read with Article 7 of the IHR obliges States to assess events occurring within their territory and notify the WHO within 24 hours of any event, including any "unexpected or unusual public health event" within its territory, regardless of its origin, which may constitute a "public health emergency of international concern".
- Since China is a member of the WHO, it is bound by this reporting obligation, and by the actions/omissions of its officials in allegedly suppressing information from the WHO about a highly contagious virus despite having necessary information.

State Responsibility Cont…

- Further, the WHO's leverage with the Chinese government to obtain detailed information about the origin of the COVID-19 virus and the idea of establishing an international commission of inquiry for COVID-19 are researchable topics.
- It is noted that the measures taken by States in response to the spread of the virus may soon cause various legal disputes on the basis of the IHR, but a number of shortcomings of the regulation provided will not allow for their effective resolution.
- It is suggested that an advisory opinion of the ICJ should be requested to clarify the content of States' obligations under the IHR .
- Is suggested that neither recourse to international nor national courts will lead to the desired result (compensation for material and/or moral damage),
- acceptance of the jurisdiction of an international judicial body depends on China; or as a sovereign State, China is immune from the jurisdiction of any foreign court

Impact of COVID on Aviation

- One of the industries that the coronavirus pandemic is threatening is the airline industry. Flights are almost empty. Flight schedules have been dramatically reduced. The warnings from trade associations are dire.
- **Issues such as Rental payments, force majeure and rent holidays, Leasing issues particularly Wet leases, Airport slots, Passengers' rights to refunds, crisis has affected the litigation process, Third party contractor agreements/Hedging arrangement for jet fuel prices, Financing Arrangements, Restructuring, Import Duties and Trade barriers**
- People who work for airlines don't know what's going to happen, affects not only the public health but also the business world. There is no doubt that the civil aviation sector is the most affected sector by the epidemic and hundreds of airlines have to ground thousands of airplanes due to flight bans.
- ICAO, ACI, IATA, TIACA, WFP and WHO have worked in close cooperation in the development of this single source for aviation-specific guidelines with the objective of ensuring appropriate planning and action at all levels in order to mitigate the effects of a human outbreak.

Impact of COVID on Aviation

- People who work for airlines don't know what's going to happen. Since the outbreak in Wuhan, China in December 2019, the CoVid-19 epidemic caused by the novel coronavirus which is spreading increasingly and became a huge crisis across the globe, deeply affects not only the public health but also the business world.
- Airlines are more fragile than the airport operators at the moment since a considerable percentage of airlines were struggling to survive even before the COVID-19 crisis started showing its impact. So if rescuing these airlines was a tough task before, now it seems next to impossible
- Airlines around the world are confronting the challenge of a sharp decline in demand, complicated by almost total uncertainty about when the virus will be under control and travel can return to normal.
- The collapse in demand has led major airlines worldwide to announce severe cost-cutting measures, request government assistance, and, in the case of certain airlines, ground fleets. Many airlines are seeing more cancellations than bookings.

Impact of COVID on Airlines

- Airlines face an unprecedented international crisis in the wake of the coronavirus pandemic.
- The International Air Transport Association (IATA) estimates that the global industry will lose US$252 billion in 2020.
- Many airlines are cutting up to 90%of their flight capacity.
- The airline industry has faced many crises before – 9/11 and the 2010 Icelandic volcano eruption, for example. But these pale in comparison to the economic hit that airlines are currently facing.
- Some are asking: can it recover?
- Is this an economic crisis that could reshape how we travel and live?
- Or will it turn out to be more of a pause, before returning to business as usual? And what role does the climate crisis play in all this – how will sustainability figure in any rebooting of the industry going forward?

Impact of COVID on Airlines

- Most of the global airline industry is currently grounded. Although some routes are still managing to operate, and there is evidence of a gradual domestic air market rebound in China, 2020 will certainly not see the 4.6 billion annual passengers of 2019.
- The long-term trend of ever-rising air passenger numbers year on year has been brought to a dramatic and rapid halt.
- The global outcomes of the crisis, then, are firmly anchored in national responses. The airline industry is cyclical: it is used to peaks and valleys. Bailouts have repeatedly been vital for airlines, so many countries have some sort of precedent to go by.
- In any bailout, the key question is whether this is a solvency or liquidity crisis.
- Solvency means that the airline will be very unlikely to ever remain financially viable. Liquidity means that the airline has a high risk of running out of cash flow but should be solvent soon, if supported. Assessing this is sometimes complex.

Impact of COVID-19 on Airports

- The impact of COVID-19 is challenging airports on both of those revenue channels.
- The shortfall in the number of passengers and the cancellation of flights leads to reduced revenues from airport charges (landing charge and parking charges paid by airlines for instance, and passenger service charges and security charges paid by passengers)
- While aeronautical revenues are being challenged, the cost base for airport charges remains unchanged as airports can neither close nor relocate their terminals during the outbreak.
- Non-aeronautical sources of revenue usually provide diversification of airport income streams, but they also serve as an additional cushion during economic downturns.
- In today's unprecedented situation, airlines and airports are at the forefront taking the brunt of this global COVID-19 crisis. The Airport Council International (ACI) estimates that this year the sector will have a loss of approximately US$46 trillion by the end of 2020.

Impact of COVID-19 on Airports

- ACI currently forecasted that, prior to the COVID-19 outbreak, global airport revenues for the first quarter of 2020 would reach close to $39 billion (all figures in US Dollars).
- In today's unprecedented situation, airlines and airports are at the forefront taking the brunt of this global COVID-19 crisis. The Airport Council International (ACI) estimates that this year the sector will have a loss of approximately US$46 trillion by the end of 2020.
- Based on traffic trends under COVID-19 and constant unit revenues, ACI now estimates a loss of revenues of at least $4.2 billion. This is approximately equal to the total annual revenues of two major European or Asian hubs combined.
- Airports Council International (ACI), has reached out to India's civil aviation ministry seeking to bail out the players affected by Covid-19 virus outbreak.
- The global body took to the notice of the Indian government that Covid-19 outbreak has "drastically impacted the airport business and is posing a serious threat to the financial sustainability of the airport india.
- ACI has also recommended to the Indian government that "alternative relief measures should be explored to support both the airlines and the airport industries as primary generator of economic and social value for the country."

Force Majeure Clause

- The outbreak of pandemic COVID-19 has reignited the debate of term ‘force majeure’ in contractual businesses particularly in civil aviation business.
- The outbreak has brought the world to a near standstill and as a result the commercial businesses are at their low.
- The companies across the world want the governments or the other businesses to invoke the clause of force majeure so as to save them from incurring losses and their collapse in these unforeseen circumstances.
- One of the major industry suffering in India from this pandemic is the airline industry. It is already suffering from low availability of credit to maintain their day to day operation and has been plagued by rampant corruption.
- The Federation of Indian Chambers of Commerce and Industry (FICCI) has recommended that the government should mandate that force majeure applies to all civil aviation contracts to save the domestic civil aviation industry from the COVID-19 induced crisis.

Force Majeure Clause

- The passenger airlines both domestic and international have been put on ground for an indefinite period to contain the spread of novel corona virus.
- In such an extraordinary situation the airlines are seeking invocation of force majeure by the government to defer the payment of taxes, oil charges, aviation turbine fuel and salary to workers.
- Most of the airlines capital reserves would be wiped out if the situation persists for more than three months.
- FICCI also suggested that Oil Marketing Companies may be directed to extend unsecured interest-free credit terms to the aviation sector as the aviation turbine fuel is one of the three major costs for domestic airlines.
- The Supreme Court in case of Dhanrajmal Gobindram vs. Shamji Kalidas, (1961) 3 SCR 1020 held that the term force majeure is of wider import. Judges in the past have agreed that where the reference is made to force majeure, the intention is to save the performing party from the consequences from the anything over which he has no control.

COVID and Indian Aviation

- Post Covid, megatrends such as the dramatic rise in remote working, government or organisation-imposed limitations/restrictions on air travel, greater reliance on locally-oriented supply chains as well as avoiding non-essential travels will impact the recovery demand in the aviation industry and may lead to major overhaul in the management and operation of the airline industry.
- In order to fly safely through this turbulent time, it is of utmost importance that the airline companies launch a crisis management team or as its being coined by some in the industry – "Plan Ahead Team".
- This Plan Ahead Team will be responsible for collecting forward looking intelligence and provide a Post Covid-19 flight plan to guide and accelerate decision making.
- Following are some of the of the challenges/considerations which airline companies in India may consider while formulating their Post Covid-19 flight plan:

COVID Pandemic and Challenges

- Aviation industry needs to quickly accept that the standard operating procedures (SOPs), protocols, frameworks, business models and the whole eco-system around the aviation activity will be different.
- Some airlines have announced closure and many more are expected to follow suit. Numerous leasing companies will be battered. Many aircraft, especially the wide bodied ones, will remain grounded as the cost of maintenance will be too high with lesser revenues.
- MRO services have to re-align to cater for the likely increase in smaller aircraft. Many jobs across verticals will be lost. IATA is expecting the aviation industry job loss to the tune of 29 lacs in India alone.
- Large scale multi-skilling and re-skilling will be needed to create lean workforce.
- Many crew members will lose currency of ratings due to aircraft being on ground for long requiring regulators to give the required waivers.
- Air Crew may even lose their licenses due to medical issues and non-renewal of medical status.

COVID Pandemic and Challenges

- Social distancing will become part of life, longer waiting, longer turn-around times, baggage restrictions etc.
- Hands free technologies and machine readable documentation will be put to use. processes, technologies and SOPs will undergo changes.
- Baggage handling will be different. The concept of lounge will undergo a sea change. Many concessionaires will lose economic viability and wind-up. Luxury brands may vanish from the terminals.
- Catering and food outlets may find fewer customers. Business travel will reduce drastically as executives will make do with video conferencing and work from being the norm. Public transportation will see less foot fall and private transportation may increase. Expenditure on hygiene and sanitation by airport management will increase.
- Thermal scanners will be in operation. Last minute cancellations at security gate level will increase due to enhanced checks. Use of private transportation will increase the consumption in petroleum products. Thus, the aviation fuel may cost more.
- The government and airport management will look for higher taxation on passengers to off-set the revenue loss from other avenues and cater for subsidies.
- The cost of air travel will go up.

COVID-19 -Key Challenges for Lawyers

- The role that can be fulfilled by legal professionals including guiding the future courses of action for the enterprise.
- What kind of guidance enterprises required? How should the firm be interacting with its external partners (e.g., suppliers, buyers, competitors, and regulators)?
- How should it position itself within its industry? How should it choose its target markets? What new sources of competitive advantage should it pursue?
- How should it configure its global procurement, manufacturing, and marketing operations, and coordinate them? These are areas where legal professionals could provide input to guide Managers of the company

COVID-19 -Key Challenges for Lawyers

- Participation in cross-border transactions poses some unique legal concerns for companies. The legal profession will need to pay continued attention to these management issues. These issues are outlined below.
- **Legal Agreements and Conflict Resolution in International Business Transactions** How should sales, distributor licensing contracts be structured? How detailed should they be? What are the mechanisms for satisfactory conflict resolution?
- **Intellectual Property Protection**: This perennial problem is a concern for most technology-intensive firms. International partners continue to have their own interpretations of the rights and obligations associated with technology transfer. Practical mechanisms for ensuring protection are absent.

COVID-19 -Key Challenges for Lawyers

- **Standards and Product Liability**: Legal systems for product liability exhibit great variations from country to country. Simplification and harmonization of legal processes will be a high priority for international trade lawyers.
- ***Dumping and Anti-dumping*** . The legal profession will continue to be involved in dumping suits initiated by domestic manufacturers. Effectiveness of such appeals will depend upon their ability to generate convincing evidence of deliberate underpricing
- **International Business Ethics** For many years the U.S. business community has argued that the Foreign Corrupt Practices Act (FCPA) creates a competitive disadvantage in international operations.
- **Environmental Impact** Multinational companies will be under tremendous scrutiny for the potentially damaging impact to their host country environments. Creative strategies are needed in this area in order to avoid such problems.

Thanks

Thanks