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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

AVIATION LAWS IN INDIA

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Introduction

The Indian civil aviation industry proves to be promising due to increased demand from growing middle class population, favourable demographics, rapid economic growth and higher disposable incomes. It holds glowing prospects of becoming the third largest aviation market by 2020 and reaching the zenith by 2030. The industry is traversing on a progressive trajectory and has paved way for a new wave of growth and expansion with the focus on Low-Cost Carriers (LCC), modern airports, Foreign Direct Investments (FDI) in domestic airlines, Information Technology (IT) developments and regional connectivity. The Indian civil aviation industry is amongst the top ten in the world with a size of around 1600 crore (16billion). This is only a fragment of the potential and capabilities of the industry. With the draft National Civil Aviation Policy on the table, it is significant to explicate the current framework of aviation sector. The Ministry of Civil Aviation Policy is responsible for administration of aviation industry in India. The MOCA is responsible for formulation of national policies and programs for development and regulation of civilian aviation and for devising and implementing schemes for the orderly growth and expansion of civilian air transport. The ministry also ensures the implementation of the Aircraft Act, 1934. The following are the principal regulatory authorities of the civil aviation industry functioning under the authority of Ministry of civil aviation in India: Director General of Civil Aviation (DGCA), Airports Authority of India (AAI) and Airport Economic Regulatory Authority (AERA). The DGCA is the governmental body entrusted with the regulation of civil aviation in India. It is responsible for the regulation of air transport services and enforcement of civil air regulations, air safety and airworthiness standards. It also co-ordinates all regulatory functions with International Civil Aviation Organization. The AAI is a nodal organization entrusted with the responsibility of creating upgrading, maintaining and managing civil aviation infrastructure, both on ground and air space in the country. Its activities include passenger services, air navigation services security services and managing aerodrome facilities.

AERA was established in 2008 to regulate tariff for aeronautical services rendered at major airports in India. The authority also monitors the performance standards of the established airports as set out by the Central Government or any other body authorized by it. Its primary activity is to set aeronautical charges on a five-year cycle, taking into account the economic viability of an airport in line with ICAO principles of transparency, cost relatedness, and non-discrimination and user consultation. Some of the prominent features of civil aviation sector in India include a large number of consumers, a relatively small number of airlines with significant market share and significant cost barriers to market entry differentiated services and competitive firms affecting each other's business decisions. These market characteristics indicate that Indian civil aviation sector has an inherent oligopolistic market structure. The carriage by Air Act 1972 explicates the rights and liabilities of aircraft carriers in India. Additionally, Aircraft Rules 2012 is to govern the liabilities of the aircraft carriers and damages to be paid in cases of accidents or incidents when the liability is imputed to the carriers. The Act also provides for the mechanism of mandatory and voluntary reporting of such accidents or incidents.

Legal Framework for Liability

The rights and liabilities of air carriers are governed by the carriage by Air Act 1972. Since, the Act extends to the entire territory of India. It is applicable to Indian citizens involved in domestic carriage by air and in international carriage by air irrespective of the nationality of the aircraft performing the carriage. The carriage by Air Act, 1972 embodies the provisions of Warsaw Convention 1924 and Warsaw Convention as amended by the Hague protocol. While a large number of countries incorporated suitable amendments to Conventions to remedy the nuisances. India continued to abide by the archaic Conventions to establish the liability of the carrier. It was finally realized that the obsolete protocols would not address the problems pertaining to liabilities and consequently India became the 41st country to have ratified the Montreal Convention 1999 which is a watershed in the history of aviation industry. The application of aviation is elucidated in Article 1(2). Further, it is pertinent to note that the Montreal Convention does not provide for damages in the events of mental anguish or psychiatric injury unless such injury has a close nexus to physical injury. In the contemporary world where the use of air transport is a part of modern life, the safety of people is the primary concern for any industry. Consequently, a two-tier compensation system under the Act is established where the carrier is strictly liable up to the first 1 lakh special drawing Rights or 45 lakh. However, nothing prevents the carrier and the passenger to enter into an agreement to fix a

higher limit of damages. Additionally, any provision to solve the carrier from liability or fix a lower limit than that which laid down in the rules shall be null and void. If the carrier proves that the damage was caused by or contributed to by the negligence of the injured person, the court may exonerate the carrier wholly or partly from his liability.

Safety

The global aviation safety and security standards for aviation sector are provided by standards and recommended practices laid down by the ICAO. The ICAO puts the onus on the contracting states to devise and formulate a state safety program. The program is an integrated set of regulations and activities with the objective of improving safety. The DGCA has responsibility for regulating the aviation safety. A state safety program and safety management systems division has been established to ensure the management of the SSP and implementation of requirements of safety management systems by stakeholders. The following are the obligations of authorities engaged in aviation to ensure proper implementation of safety program. An Accident Investigation and Incident Reporting all events of accident and incident investigation are governed by Aircraft Rule 2012. Under these rules, the Central Government is under an obligation to institute an investigation into events of accidents with respect to aircrafts weighing maximum 2250kg or turbo jet plane: in all other events, it is the DGCA who is responsible for initiating an enquiry into such events. The rules provide for setting up of aircraft accident Investigation Bureau of India to enquire into the occurrence of accident or incidents, further where it appears to the Central government that any new and material evidence has become available after completion of the investigation, it may by order be able to direct the reopening of the same. It also has the responsibility to appraise the Bureau of any accident or incident within twenty four hours from occurrence of such accident or incident. SSP responsibilities and accountabilities in India has recognized the responsibilities and accountabilities pertaining to the establishment and maintenance of the SSP. This comprises of the directives to plan, develop, maintain, control and constantly improve the SSP. The DGCA is the central authority entrusted with the responsibility for overseeing the implementation of SSP and carrying out various activities of the aviation organizations covered under SSP safety oversights. Air worthiness is the assessment of an air craft suitability for safe flight Rule 50 of the Aircraft Rules 1937 stipulates that, there shall be a certificate of airworthiness for operation of aircraft in India. Such certification of airworth

iness is initially conferred by a national aviation authority and maintained by performing the required maintenance actions. The application of airworthiness defines the condition of an aircraft and supplies the basis for evaluation of the suitability for flight of that aircraft, namely that it has been designed with engineering rigor, constructed, maintained and expected to be operated in accordance with the approved standards and limitations, by competent and approved individuals. When an airworthiness directive is issued by DGCA to correct the unsafe condition, the holder of the type-certificate, restricted type-certificate, and supplemental type-certificate, major

Competition

The Competition Commission of India (CCI) is the premier body of the Government of India responsible for enforcing the Competition Act 2002, throughout the territory of India and to prevent activities that have an appreciable adverse effect (AAEC) on competition in India. The purpose of the commission is to establish a competitive culture in order to promote fair, competitive and innovative business practices and eliminating all impediments to such establishment. Cartelization is one such impediment to competitive culture and presumed to have an AAEC on competition under Sec. 3 of the Act. Cartel behaviour in the aviation industry is not unusual in India. A significant level of investments and liquidity to cover start-up and high operational costs are certain prerequisites that impose barriers to entry owing to that limit entry and thereby, protect the functioning of a cartel. Further, regulations pertaining to fleet and financial requirements, and slot allocations preclude entry and may escalate the likelihood of cartel behaviour. Recently, the Competition Commission of India has penalized three carriers - Jet Airways, InterGlobe Aviation Ltd and Spice Jet - for "concerted action in fixing and revising Fuel Surcharge for transporting cargo". The Competition Commission of India imposed a penalty of Rs. 151.69 crore on Jet Airways, Rs.63.74 crore on Indigo and Rs.42.48 crore on Spice Jet for cartelization. The CCI said that it had looked into allegations of "connivance" by airline companies to introduce a fuel surcharge (FSC) without any legal basis and had concluded that the penalties were warranted. In the case of Uniglobe Mod Travels Ltd³⁹ relating to ticket booking segment, the Commission found the cartelization of travel agents and penalized them for breach of section 3 of the Act. The case pertains to a boycott call made by trade associations of the travel agents in India against a few international airlines, as a consequence of the shift from 'commission basis' fee structure to 'transaction fee' structure, and the demand to restore the former business model. One of the members did not submit to the boycott call, which resulted in its expulsion from the association. The matter was brought before a court of law, which dismissed the civil suit

filed by the informant. The CCI held that the travel agents, through their tacit agreement, were involved in the boycott and thus they violated Section 3 of the Competition Act.

Conclusion

The outlook for 2016 for the aviation industry in India is constructive. Last year in 2015, India was bequeathed with the fastest growing aviation industry in the world when it overtook China. It is widely perceived that the nation will record 7.3 to 7.9 per capita growth in 2016. As a further matter, the proposal of the Government to make large scale investments in the sector for development of regional airports is expected to prove propitious the industry. However, considering that the costs of choosing air transport still proves to be exorbitant for a majority of the population, it is only proper to say that the sector is yet to be properly explored. Specific attention should be directed to the following events: The draft civil aviation policy, announced in October 2015, aims to fortify the aviation sector which has prospective of growth in the future. It has proposed tax incentives for airlines, setting up of no-frills airports, maintenance and repair works of aircrafts, increasing FDI limit for foreign airlines, and providing viability gap funding for carriers to strengthen the regional air connectivity. The long established 5/20 rule which tends to favour the established airlines and creates an entry barrier for new players needs reconsideration for the reason that such rule obliterates competition in the industry. It is an encumbrance on the new business entrants willing to make an investment in the sector. The fixing of fare price on the basis of travel time as provided in the Draft Civil Aviation policy is a welcome proposal. The Government should take further initiatives towards this end to extend the reach of the airlines to the common masses. The Route Dispersal Guidelines which mandate all airlines to direct the loss making flights to remote parts of India also need reevaluation since they create a stringent environment for carrying out business in India. Furthermore, the current brooding presence of the governmental control in the aviation sector tends to impede the growth and exploration of the sector. Therefore, the Government should consider restricting its presence in the field of aviation and yield to the organizations holding expertise in the field. An overall participation and collaboration of the stakeholders with the policy makers to implement efficient and rational decisions is imperative to boost India's civil aviation industry. With appropriate policies and persistent focus on quality, cost and passenger interest, the well formed vision of India to become the third largest market by 2020 and the largest by 2030 will be successfully realized.