



PROS AND CONS OF PRIVATIZATION OF AIRPORT

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INTRODUCTION

Airport has emerged as government run enterprises. But due to globalization the trend is changing from public sector to private sector and airport is not an exception to it. The major reason for the change of mindset of government is to make available the air travel services for common man which will eventually lead to liberalization of air line services. But such services will not come alone and it will lead to increase in air traffic as well and country like India does not has such potential to handle such increased traffic at present. so in order to reduce the burden of government and to increase efficiency the government has decided for privatization of airlines. One of the other reason for privatization of Indian airports is monopoly of airport authority of India as well. airport authority of India has come into force on 1st April 1995 and has been formed by uniting national airport authority and international airport authority. AAI manages 125 airports, which include 18 International Airport, 07 Customs Airports, 78 Domestic Airports and 26 Civil Enclaves at Defence airfields. AAI provides air navigation services over 2.8 million square nautical miles of air space. Apart from this there are five international airports governed by public private ownership under Aircraft Act 1934 and the Aircrafts Rules 1937. And via an amendment in the AAI Act in 2003, private airports are excluded from the ambit of the Act, namely:

1. Indira Gandhi International Airport, Delhi operator Delhi International Airport Limited (DIAL).
2. Chatrapati Shivaji International Airport, Mumbai operator Mumbai International Airport Limited (MIAL)
3. Rajiv Gandhi International Airport, Hyderabad operator GMR Hyderabad International Airport Limited (GHIAL)
4. Kempe Gowda International Airport, Bengaluru operator Bangalore International Airport Limited (BIAL)
5. Cochin International Airport, Kochi operator Cochin International Airport Limited (CIAL)

There is wide spectrum of ownership such as airport which is controlled and owned by government, independent airport authorities, PPP i.e. public private partnership with government majority or private majority ownership. India has started this trend since 2006 following British airport authority who transferred their own airports under privatization. There are other reasons as well such as to improve efficiency, to enhance profitability and improve competitiveness.

STATEMENT OF PROBLEM

Due to the changing mindset of government in order to meet the need of globalization and for liberalization of airline services privatization of airports are the only solution at present left with India. although the first private airport was established in cochin in India to meet the increased number of passengers from India and majority from foreign nations but After it the need was felt for privatization due to the fact that India got responsibility to host commonwealth games in 2010, and after that in 2004, the Brownfield Airports (Mumbai and Delhi)



and in 2008, two Greenfield Airports (Hyderabad and Bangalore) was handed over to the private players. Approximately in all the PPP airports the 75% share belongs to the private entities and the rest are belonging to the state government and AAI. The major reason for privatization of airport in India are as follow:

- A high percentage of aeronautical revenue – This shows the high dependence of AAI on aeronautical revenues and the low level of development of non-aeronautical streams of revenue.
- Low commercial revenue per passenger – This points towards a low level of development of non-aeronautical streams of revenue.
- Very low revenue per employee – AAI, being a government-controlled organization, cannot take tough labour related decisions based on economical considerations. Hence, we see surplus labour at AAI.
- Low operating profit per passenger – This is mainly because of inefficiencies in the operations of AAI.

- Low passengers per employee
- Low staff cost per employee
- High percentage of staff cost in total cost

However, privatization of airports has been the issue of debate across the country. Although privatization has lot of merits attached with it such as increase efficiency, improved infrastructure, high revenue etc so as to overcome the loopholes of government owned airports such as inefficiency, capital storage but privatization has demerits as well ,say for example in case of public private partnership the major area of concern is control, political problem, agency problem and in case of private owned

airports the concern is related to control, conflict of interest, safety concerns, regulation. On the other hand, there are some suggestions given by Naresh Chandra committee regarding management of these loopholes such as separate economic regulation, reduction of airport charges which will be discussed in detail in this paper.

further looking forward and taking a prospective step toward globalization in terms of privatization of airport along with the global norms and practices governing and regulating the same in relation to airports. To understand how privatization of airports should play out in India, given its unique range of socio-economic issues, it is imperative to take them into consideration and evaluate their application to the Indian scenario. Thus, this research shall also examine the compatibility of the same.

RESEARCH QUESTION

The researcher will examine, analyse and seek answers to the following questions through the project work: -

1. Why the need of privatization of airports in India emerged?
2. What are the legal and other issues related to privatization of airports?
3. What are the best practices India can adopt from foreign airport of developed countries related to privatization of airport ?
4. What are the merits and demerits of privatization of airport?

HYPOTHESIS

The researcher believes that although due to globalization and liberalization we are moving toward privatization but still due to



security issues fully privatization cannot be done and at the end of the day we should have state run carriers and one of the other reason for not making airport fully privatized is to check abuse of dominant position by CCI. However, on the other hand the country like USA has private airports but still India's condition is not such as to compare the two on the grounds of security and competition issues.

OBJECTIVES

The researcher aims at pursuing the need of privatization in India along with the pros and cons of privatization. the researcher aims to know the need of privatization in India along with the merits and demits of government owned airport, public private partnership owned airport, private owned airport. The researcher also aims to acknowledge the best practice to be adopted from foreign nations of developed country for privatisation in India. It is important to see whether the privatization of Indian airport serves the need. In case they are identified the important of privatization of airports then the identification of loopholes become the second most problem. The researcher further, examines the benefit and cost of privatization of airports in India. Thereafter, the researcher aims at studying and analysing the evolution of privatization of airports in the light of privatization of Greenfield and Brownfield airports project in India. The researcher also aims at getting an idea as to what can be the way forward for further privatization of airports or privatization of uneconomical airports in India.

SCOPE

The scope of research is limited to pros and cons of privatization of airport according to Indian scenario i.e. keeping into mind loopholes and expectation of India. however, it will not measure expectation on detailed statistical basis. Moreover, the research will also look after the recommendation enumerated by Naresh Chandra committee. On the other hand, the researcher will also look into the developed foreign nation so as to adopt the recommendations from them regarding privatization of airport but it will not go into the technicalities of developed country private airport. the researcher will focus on the need for privatization of airport in India.

METHODOLOGY

The researcher has adopted doctrinal method of legal research in doing the project. The researcher has adopted historical method of research in knowing the history of airport authority of India i.e. how it emerged, what were the factors for its existence. The researcher has also adopted an analytical approach for determining the need for privatization of airport in India .and also the comparative approach to enlist the pros and cons of privatization of airport in India and to adopt the principles or recommendation from developed nation regarding privatization of airport. The researcher has used analytical and philosophical approach for drawing interpretation and the conclusion. The researcher has used a uniform mode of citation throughout the course of this research paper

SOURCES

The sources of data are:

Primary sources e.g. the Aircraft Act 1934, Aircraft Rules 1937, and AAI Act 1994



Secondary sources e.g. committee report, agreements, articles, journals, books etc.

venture, PPP, SEZ, safety and security, slot allocation, environmental concerns etc.

TENTATIVE CHAPTERIZATION

1.INTRODUCTION

In this chapter researcher gives the brief history of the airport authority of India i.e. how it emerged and also the researcher gives the brief history relating to the needs of privatization in India according to the need of society

2.NEED FOR PRIVATISATION OF INDIAN AIRPORTS

In this chapter researcher gives the detailed analysis of need of privatization of airport in India going into details of economic and environmental issues.in this chapter the researcher will also focus on the behaviour of developers toward government bodies and the long-term project

3.COMPARITIVE ANALYSIS

In this chapter researcher will look into the technicalities especially related to environmental and economic issues of developed foreign nation regarding privatization of airport. The researcher will also compare the private foreign airports with that of Indian airports and at the end of the chapter will also try to adopt the recommendations from foreign private airport suitable to Indian scenario.

4.LEGAL AND OTHER ISSUES RELATED TO PRIVATISATION OF AIRPORT

Privatisation of airport is not devoid of issues and concerns and it has been attached with various issues which need to be addressed such as issues related to joint

5.PROS AND CONS OF PRIVATISATION OF AIRPORT

In this chapter the researcher enumerates the merits and demerits in detail related to privatisation of airport in india.in this chapter researcher also discusses the recommendation given by Naresh Chandra committee regarding privatisation of airport.

6.CONCLUSION

At the end researcher will conclude the project either proving or disapproving the hypothesis by going into detail through all the issues concerned

CHAPTER 2 NEED FOR PRIVATIZATION OF INDIAN AIRPORT PRIVATISATION

Privatization is transferring function and responsibility either whole or in part from government i.e. public to private owner. there are three types of privatization:¹

- a) **Contracting out:** it is one of the prevalent form of privatization, in this the government uses private contractor instead of government resources to provide services (government in nature). It involves identifying potential private sources, developing specification i.e. detailed in nature, conducting competition,

¹Willard, Stephen H., and Bonnie H. Weinstein. "International Investment, Development, and Privatization." *The International Lawyer*, vol. 34, no. 2, 2000, pp. 485–492. JSTOR, JSTOR, www.jstor.org/stable/40707540.



making award and finally monitoring performance of contractors. Contracting can be done at task level or on full service bases. Government can let contracting out at task level and can maintain responsibility for overall management of government function. On the other hand, government can let contracting out for full services as well and in this condition, government can maintain the performance of contractor and can ensure that performance is in accordance with terms and condition of government regulation.²

- b) **Asset transfer:** in this government can divest itself of all the responsibilities, revenue producing asset of the government are leased out to private players. the major difference between contracting out and asset transfer is in this government retain no more responsibility or management. however, asset transfer can only be done of those areas which are not considered to be proper government function or where the private body can provide better service³
- c) **Managed competition:** in this public and private compete to provide services. both the entities i.e. public and private get equal opportunity to provide the proposal for service and the best gets the award for service which is evaluated in accordance with terms of competition.⁴

suggesting that private players are wiser, kinder or more hard working as compared to the people working in government department but the fact is that scarce resources are more likely to be allocated to their most urgent uses if operated by profit seeking owners.⁵

Now the question comes how this proposition applies to privatization of airport?

The public sector which has faced a huge loss and which has been evident to incur losses, is reluctant to make profits surprisingly.

HISTORY OF AIRPORTS AND AIRLINES

Earlier there were only two airlines for scheduled air service in India i.e. Indian airlines for domestic purpose and Air India for international purpose. Indian airline acquired monopoly in domestic schedule service via air corporation act of India, 1953. Private commercial airline offering scheduled air services did not emerge until 1994 as elected government eased barrier to private sector participation, foreign trade and foreign direct investment in country economy.⁶

WHY PRIVATIZED AIRPORT?

This is general perception that airport should be owned by government bodies i.e. public sector and thus the case for their privatization needs to be stated. I am not

² id

³ id

⁴ id

⁵Roth, Gabriel. "Airport Privatization." *Proceedings of the Academy of Political Science*, vol. 36, no. 3, 1987, pp. 74–82. JSTOR, JSTOR, www.jstor.org/stable/1174098.

⁶Mazumdar, Arijit. "DEREGULATION OF THE AIRLINE INDUSTRY IN INDIA: Issues, Causes and Rationale." *The Indian Journal of Political Science*, vol. 70, no. 2, 2009, pp. 451–



Deregulation of airlines industry by government was done with passengers of air corporation (transfer of undertaking and repeal) act 1994, which has opened the gate for private domestic commercial airlines to operate scheduled service with in country ,eventually leading to expand private domestic commercial airlines .the government has also given permission to certain private domestic commercial airlines to operate services to other countries and also re-negotiating few bilateral existing air service agreement with some countries ,which has given rise to new bilateral air service agreement with others.⁷

Moreover, government has also allowed new 'ports of call' for foreign airlines, especially US commercial airlines so that they can expand service to and from India through new open skies agreement.⁸

Furthermore, government through PPR eased regulation of airports. Some of the example of privatization of airports in our country is Delhi and Mumbai (ministry of civil aviation, government of india, 2008 act). on the other hand, government also formulated favourable policies to attract foreign players along with domestic players.⁹

Since 1950 civil aviation was regulated in India up until mid-1980s Indian airlines, a¹⁰ state carrier was having complete monopoly

over domestic schedules air services and this was the part of economic policy regime adopted by government .so due to this policy public sector was having dominant position and private sector was not only subservient to public sector but also public sector has a control over private sector in terms of what kind of goods it can produce and in what quantity. Government policies was characterized by having tariffs on imports and restrictions on foreign investment in order to protect local industry and business. Government adopted import substitution industrialization strategy.¹¹

During independence, after second world war many aircraft surplus was left and many private operators asked for license to operate it and thereafter government decided to give license to 11 airlines. However, airlines increased but passengers were too less.so in an effort to garner maximum number of passengers, airline frequently undercut each other resorting to predatory pricing, due to which several operators became bankrupt as capacity utilization fall and losses occurred.

Air transport inquiry was set up by government to look into the matter concerned and it was found that the loss occurred due to the government itself. Later the government planned to nationalize the industry and unify several different airlines, moreover the government was unwilling to share the burden of financial cost as a result of restructuring airlines. On the other hand during the introduction of bill in the parliament for nationalization of airlines the discussion emerged for privatization of airports but government claimed transportation to be public utility and hence

469. JSTOR, JSTOR, www.jstor.org/stable/42743909.

⁷ id

⁸ id

⁹ id

¹¹ id



out of private enterprises. As a result, air corporation act 1953 was passed which has three major components:¹²

- a) Policy concerning Indian airlines and Air India
- b) General regulatory power of government of India regarding civil aviation
- c) Domestic scheduled air service policy

Thus, government has all the powers to regulate the functioning of civil aviation sector in India from 1953. So, Air India and Indian airlines would be owned and controlled (i.e. management and expenditure) by government.¹³

Although the air service made huge profit but one must also look at the period of 1988-89 to 1994-95 when it suffers heavy losses as well.¹⁴

The major reason for the loss was due to restriction on expenditure of Air India fleet because of government policy i.e. state ownership and associated lack of managerial autonomy which resulted in political priority i.e. extra market investment decisions and high amount of expenditure and its impact on country's balance of payment situation. Public sector poor performance has led to economic crisis in mid-1960-70 whose recovery took a long time and hence government declined to invest in new jet aircraft for air India and Indian airlines.

The area which was revenue spinner for air India i.e. Indian gulf route was also suffering from heavy losses.¹⁵

FACTORS WHICH LED TO PRIVATIZATION

- a) **Economic development:** It include developers of: -
 1. Air transport infrastructure
 2. Air transport link
 3. Facilitation of trade and commerce
 4. Promotion of tourism
- Attracting foreign investment in air service industry

Shortly after independence, government established various private sector enterprises, protected the local private sector and imposed high tariff on imported goods. The ultimate goal was to protect self sufficiency via indigenous goods and technology development. Industrial policy focussed on import substitution rather than export promotion. However, these policies lead to relatively slow economic growth. due to which India share of export and output fell and human development index also declined far behind those of east Asia which lead to diminish international influence over time. In mid-1980 Rajiv Gandhi lead government made some attempt but it hardly made any change.¹⁶

Reforms was introduced in 1991 under congress government of prime minister P.V Narasimha Rao and his finance minister Dr. Manmohan Singh (future prime minister of

¹² id

¹³ id

¹⁴ id

¹⁵ id

¹⁶ id



India). Under the 4th report on air corporation (transfer of undertaking and repeal) bill, 1992 by committee on transport and tourism of the parliament of India (Rajya Sabha) pointed out investment in private sector in air transport industry has been permitted and industry deserved from exclusive preview of public sector under new economic policy.¹⁷

As a result of rapid liberalization in 1980-90 due to programme undertaken by government, demand for air service has been increased. Reason was need for export promotion which was viewed as an important source of foreign exchange for import of oil, goods and technology that was especially for modernization and liberalization.

For economic development better connectivity was a mandate. The area which is integral part of country economic growth are all dependent on better air transport link such as call centres, business process outsources, medical tourism, software industry and other services. It is also a major factor to attract foreign investment in telecommunication, automobile, electronics etc. It also facilitates trade and travel in country in country and hence fulfils social and economic objective of government. Madharao Scinda, minister of civil aviation and tourism in Rao government also stated benefit of privatization of airports which will result in increased flight frequency and capacity to all corner of the country.¹⁸

Above all more liberal bilateral agreement would encourage foreign airlines to expand operation in India.

Adequate capacity and modern air transport infrastructure are essential to attract foreign investment. Airport act as an important centre for trade and commerce and tourism which further leads to economic development. Only 60 airports out of 400 airports in India are active. I do not hesitate in saying that Indian airports have poor infrastructure, poor landing and take-off facilities, inadequate ground handling system, poor passenger amenities and above all congestion at major airports are a major concern.

Balance of payment crises was also one of the major reasons to liberalize its economy. India wanted to promote tourism, as they will bring foreign exchange more in our country. The tourist industry has significant impact on economic development. The linkage between necessity of having good air transport service and tourism is not hard to fathom.¹⁹

b) Provision for air services:

One of the another reason for deregulation of airline industry was increase demand of air service in India. This led to relax entry procedures for private domestic commercial carrier where two national carriers failed to perform. Country has observed increased passenger i.e. domestic and international in recent time and it is expected that the number of passenger is going to increase in upcoming decades as well. So, to cater the demand of increased

¹⁷ id

¹⁸ id

¹⁹ id



passenger it is an important step i.e. privatization.

Planning commission pointed out in December 1989, that public ownership and government regulation of entry fare, freight and capacity experience of 50 years; cast doubt on the efficiency of public ownership²⁰

c) International trend:

Indian air service industry has been affected by deregulation of us civil aviation industry in 1978 and subsequent deregulation of air service industry in Australia, Canada, UK, Japan and several other western European countries. There has been increased competition among these countries due to deregulation and it has positive impact on these countries as well. This competition has increased efficiency standard of air service and led to consolidation of this industry. The government of India also felt that same benefit or profit can be incurred due to deregulation once it is done in air service industry.

d) Revenue based factor:²¹

- High percentage of aeronautical revenue- as there is high dependence on aeronautical revenue than that of non-aeronautical revenue
- Low commercial revenue per passenger: this is again due to the fact that of low development of non-aeronautical sources of revenue

²⁰ id

²¹ Airport Privatization in India – A Study of Different Modes of Infrastructure Provision Manuj Ohri 1 Faculty of Management Studies, University of Delhi.

- Very low revenue per employee: as due to lack of tuff labour related decision as AAI is government controlled, we have surplus of labour

e) Profit based factor:²²

- Low operating profit per passenger- due to inefficiency of AAI

f) Intake – output based factor:²³

- Low passenger per employee
- Low staff cost per employee
- High percentage of staff cost in total cost

GAP ANALYSIS:

• Work force rationalization: efficiency would be increased in airports if it gets privatized. As one can see downward revision of staff cost once the airport are privatized.

- Increasing contribution on non-aeronautical revenue: the airport operator would look for new sources for revenue generation once the mindset toward airport shifts from being infrastructure provider to business and non-aeronautical revenue has been good source of revenue generation worldwide.

CHAPTER 3

**AIRPORT PRIVATIZATION;
GLOBAL CONTEXT:**

UNITED STATES OF AMERICA-

Commercial airports in the us are mostly owned by local and state government or by airport authority or multipurpose port authorities i.e. public entities. Airport privatization pilot programme (APPP) was

²² id

²³ id



established by congress in 1996, so as to explore prospect of privatizing publicly owned airports and using private capitals to develop and improve airports. furthermore, to make airport more efficient and financially viable, privatization has been promoted. However, the owner of airport choose privatization but they do not proceed for it, the reason being – barrier or lack of incentive to privatize, publicly owned airports have readily available financial sources, satisfaction with publicly owned airport, implication on major stake holders (i.e. airport owner, air carrier, private investors and operators, federal government)²⁴

- **Airport owner-** they are mostly local government and they will opt for privatization only if they get benefit out of it .on the other hand privatization involves surrender of economic facility which will ultimately lead to loss of public sector jobs. However, there are federal airport privatization pilot programme which is meant to encourage privatization by granting exemption to public sector owner²⁵
- **Air carrier-** they are usually cargo airlines and scheduled passenger airline who wish to keep their cost low and they want to have control over airport revenue to ensure that fees paid by them and customers are used for airport related purposes. On the other hand, private owner are more money minded and profit maker. while the air

carrier also wants that the airport should be maintained properly with all facility, so in this case they may opt for privatization if lower charges be maintained.²⁶

- **Private investors and operators-** addition to financial return they also want growth potential by increase flight in order to earn lease revenue by providing facilities such as shopping, dining etc at airport and also to draw more freight traffics by offering lower fees or improved facilities and if in case they increase landing fees or rent they may put themselves into conflict
- **Federal government-** as directed by congress and represented by federal aviation administration and department of transportation, has been engaged in private capital in aviation infrastructure development and reduce reliance on federal grants and subsidies. However, FAA has statutory mandate to maintain safety and integrity of air transportation system.

AIRPORT PRIVATIZATION PILOT PROGRAMME:

APPP has been established by section 149 of federal aviation reauthorization programme act of 1996 to test the concept of increase privatization, especially investment of private capital in airport development and operation.

Initially APPP limited participation of only 5 airports but FAA modernization and reform act of 2012 has changed number from 5 to 10 airports. out of which only one large hub commercial airport may participate in this programme and that airport may only be leased not sold.

²⁴Rachel Y. Tang Analyst in Transportation and Industry August 16, 2017 [Airport Privatization: Issues and Options for Congress](https://fas.org/sgp/crs/misc/R43545.pdf)

²⁵ id

²⁶ id



however only general aviation airport can be sold under APPP.²⁷

PRIVATIZATION UNDER APPP WORK UNDER CERTAIN CONDITIONS:

- Department of transport gives approval for using sale/lease proceeds for non-airport purposes on request by airport and for commercial airports 65% consent of airlines is required and for general aviation airport consultation with owners of aircraft is required
- Other grant assurance obligations must be followed by airports while department of transport may grant exemption from existing repayment obligation
- 65% consent of airlines is required to raise rates than inflation rate on airline
- Imposition, collection use of revenue from passenger facilities charges will be done by private operator²⁸

PARTICIPATION IN APPP:

Success for increase privately run airports has been limited. Initially only 12 airports have applied to APPP out of which only 2 have been completely privatized and among these 2, one reverted to public ownership later on. example of privatized airport is Luis Muñoz marine international airport, San Juan, Puerto Rico; Stewart international airport, Newburg, New York airport privatized in 2000 after FAA approval and reverted to public operator in 2007. There are some more airports whose application have been approved such as Hendry county air glades airport, Clewiston, FL etc.

REASON WHY APPP IS NOT SUCCESSFUL IN PRIVATIZING AIRPORT:

- APPP application process: too time consuming
- Regulatory conditions and obligation: due to regulatory conditions and obligations private parties are not interested
- Inadequate access to funding: lack of highway and public transportation agencies

EUROPE

British airport authority which has been part of British aviation ministry from 1946-66 and then became independent government agency has been privatized by British prime minister Margaret Thatcher and thus build the momentum of airport privatization. The transfer of BAA to private sector in 1987 transformed the airport sector in UK and eventually around the world. among the 7-privatized airport, London Heathrow, London Gatwick, Stansted are also included. Initially British government has its share but later on sold it completely. however, till 2003 it retained the golden share which would block foreign investors to takeover^{29, 30}

Initially economic regulation was done by government agency i.e. civil aviation authority under British approach to privatization. but after 2012 only airports

²⁹Bottasso, Anna, and Maurizio Conti. "The Cost Structure of the UK Airport Industry." *Journal of Transport Economics and Policy*, vol. 46, no. 3, 2012, pp. 313–332. JSTOR, JSTOR, www.jstor.org/stable/24396314.

³⁰Rachel Y. Tang Analyst in Transportation and Industry August 16, 2017 [Airport Privatization: Issues and Options for Congress](https://www.fas.org/sgp/crs/misc/R43545.pdf)

²⁷ id

²⁸ id



with more than 5 million annual passengers are subjected to government regulation.³¹ Later on, November 12,2012, name of BAA was dropped and company rebranded a Heathrow airport holding limited (HAH) and ferrovia are largest shareholder in HAH with 25% stake.

However, there were critics against privatization of airport i.e. for transferring public into private property and also not all private airports were successful.

Following British privatization action of 1987, number of government in Europe privatized major airports either fully or partially. Some of the private owners or operators then acquired full or partial ownership interest in other airports. at the same time some public-sector airports operator expanded by providing management service at other airport. according to 2016 study of airport council international – in Europe approximately 14% of European airports are owned by mixed public – private shareholders and 9% are fully privatized

APPROACHES FOR PRIVATIZATION:

- Offering same tax treatment to private and public airport infrastructure bond
- Liberalizing rules governing fees i.e. allowing private airport to have more flexible charges for passenger facility and also raising landing facilities and rent would attract private investors. However, this may be against privatization which

will ultimately lead to higher price of passenger and cargo shipper³²

- Easing limit on use of privatization revenue – local and state government interest in privatization can be increased by reducing obstacles for public sector owner to use privatization revenue for non-airport purposes. however, it will lead to less investment in aviation infrastructure.³³

**CHAPTER 4
LEGAL AND OTHER ISSUES
RELATED TO PRIVATIZATION OF
AIRPORT**

- On PPP basis, new and modernized airports are developed by Indian government in-
 - Delhi, India- management, development, operation agreement between government of India and Delhi international airport ,2006(brownfield)
 - Mumbai, India- - management, development, operation agreement between government of India and Mumbai international airport 2006(brownfield)
 - Hyderabad draft concession agreement - development, construction, operation and maintenance under concession agreement between government of India and Hyderabad international airport 2004 (greenfield)

1. Legal issues related to joint ventures in airport infrastructure development: airport BOT (build-operate - transfer) and concession agreement include –
 - Is concession a contract or lease?

³¹ id

³² id

³³ id



- Who is a grantor and is it duly authorized by: civil aviation authorities, ministry of trade, finance ministry, military, municipality
- Is a grantor a legal entity?
- Ability of grantor to amend agreement unilaterally (is there a concept of balancing contracts implied into the contract by the law in the case of changes/hardship)
- Governing law- is there a potential to choose?
- Dispute resolution- is the court system appropriate or should there be an alternative form of dispute resolution
- Sovereign immunity- is the grantor gets benefit of sovereign benefit, if so is it possible for it to waive such immunity

2. **Issues and concern related to project finance in airport development:**

the major issue is related to environmental impact of airport operation, maintenance and expansion-during the current trend process, method to address impact on environment is debatable issues especially for stakeholder whose health, property value and quality of life will be affected. Concern is also toward community member. The major issues are noise issues, water quality issues (especially fuel storage), air quality issue (i.e. emission of criteria pollutants, emission of toxic air pollutants) and other issues such as research funding, mitigation grants and procedural changes to assist environment compliance. There are range of other activities that affect environment:

- operation of aircraft
- operation of airport, passenger, vehicle and airport ground service equipment
- cleaning and maintenance of aircraft, GSE, motor vehicle

- de-icing and anti-icing of airports and airfield
- fuelling and fuel storage of aircraft and vehicles
- airport facility operation and maintenance
 - construction

Major issue for noise are- amount of Air Traffic which is increasing, number of airlines and corporate jets which are increasing and also airline traffic and noise is concentrated at small number of airports that are also likely to be among the largest airport. there are approaches to address airport noise such as mitigation I.e. including mechanisms for accommodating with existing level of noise by installing sound proof material at home, school etc. and purchasing land buffer around the airport, land use restrictions such as on use of certain runway etc, but there are challenges for its implication

Water quality include fuel storage i.e. operating procedures intended to prevent oil spill such as procedure to inspect tank and associated piping for leaks, controlled measure installed to prevent spill from reaching navigation water such as construction of pit around tank and countermeasures to mitigate the effect of the oil spill that reaches navigable water such as presence of spill clean up kit with sorbent boom or wiper

Air quality issues include both mobile and sanitary sources such as aircraft, motor vehicle (e.g. Car, bus for airport operation), ground service equipment (e.g. Aircraft baggage, beltloader, generator, lawn mower, snow plover etc), sanitary sources



(e.g.Boiler, space heater), aircraft engine testing facilities

Mitigation grants- include projects i.e. those designated to reduce or mitigate aviation impacts on noise, air quality or water quality

3. **Cost related issued in airport and air navigation** :

it includes aeronautical fees- which refers to sum charged for air navigation services, airport services (landing, lighting, parking etc) ,aeronautical metrological services and others; aeronautical charges – these refer mainly to the amount charged to passenger in exchange of facilities that the organization provides them, With air terminals concession, this charge is for rental of spare at airport terminals and of infrastructure belonging to the organization , which it turned over to operator as in the case of hangers ,land and other elements.

4. **Issues and concern related to PPP in airport development:**

- AERA, airport economic regulatory authority, has found larger financial gap between Mumbai and Delhi. however according to concession agreement, the amount was to recover through levying of airport development fees on passengers
- Time delay and change of scope in these airports by 113.4% in case of Mumbai and 49.5% in case of Delhi airport has led to cost over-run
- Under the concession agreement private sector were given the land by government without adding any financial burden to developers. however, developer claimed this amount to be outside regulatory hence

not used for subsidizing tariffs determination on aeronautical services

- There was change of lead shareholders when original promoters off loaded there share in favour of GVK group in case of Bangalore airports. hence airport valuation raised to rupees 4630 cr in short period of time
 - JV operators were able to achieve higher service standard rating than stipulated targeted for them.RGA Hyderabad was ranked as best airport by airport council international (ACI) in the airport service quality survey in February 2011 and Delhi was ranked 4th
 - At recent infrastructure conclave, GMR group chief financial officer (airports) presented his view against bringing PPPA under preview of CAG and he said it will accordingly increase the risk of private sector investors (economic times 2.11.2013)
 - The AERA (2011) has mandated that airport operators should form airport user, consultative committee (AUCC) at major airport for the purpose of consultation with users at three different stages. while this support over research stand which seeks to establish consumer centric airport infrastructure development at the same time it derails the entire process of consumer centric since the user involvement starts after the airport operator is finalized. This implies that the term of reference and project scope is already defined and the user view at this stage would hardly matter.
5. **Hub and spoke model in Indian scenario:** many development methods used by aircraft in which carrier designates one or more strategically located cities as hub to



which larger aircraft bring its cargo and passenger and then smaller aircraft further make it deliver to different desired destination. Major hurdles for its failure are inadequate infrastructure and complex taxation and regulation. As India tax system is complex and to avoid this complexity companies have warehouse operation in every state and larger number of small warehouses lack warehousing process and technologies and thus fail to offer economies of such.

6. **Slot allocation:** it is time period for an aircraft to take off and land at airport, when the slot demand exceeds the supply that Airport is considered to be capacity constraint and at this time slot allocation process is implemented. it can happen on any particular day, particular period or particular season. The slot allocation issue is directly proportional to airport situation and it impact market access and international air service operation. as due to increase our traffic which is due to increase passenger and hub and spoke operation demand for slot allocation increase. the issues of slot allocation were discussed in sixth meeting of worldwide air transport conference (ACTONF) by ICAO on 18 to 22 March 2013. AAI and DGCA a lot slots in accordance with ATA worldwide slot guidelines in India. according to section 7.1.1 (e) and (f) of ATA principle of slot allotment, an incumbent airline is entitled to retain a group of slots based on historic precedence, if the slot in question has been allotted by slot cordinance to a passenger carrier and have been utilized atleast 80% of time in preceding season. only 50% access to the slots can be given to new entrants on the basis of availability of slots.

however, this rule are barriers for new entrants and thus limit the range and number of air carrier service provider.

7. **Issues and challenges in India related to airport safety and security:**

There is a apprehension of handling security matter to private owners which would deteriorate safety and security standard of aircraft and airport. the government has responsibility to ensure that such situation does not occur. the government should make such policies which would be acceptable to everyone as interest of various parties are involved. Safety and security in aviation is of primary importance. in past terrorist have targeted aircraft and airport and it is possible that in near future they can take advantage of any lax in security. there can be loss of lives of thousand and considerable damage to property by mere negligence. American government have adopted comprehensive security structure after 9/11 attack and India is also the victim of terrorist attacks and it is desirable to have proper safety and security plan in India to ensure a safe travel.

8. **Special economic zones and airport:** It is a Geographic area with liberal economic laws than as compared to country's economic laws. SEZ covers free trade zone, export processing zone, free zone, industrial estates, freeports, urban enterprise zones and others. SEZ is basically meant for the purpose of trade operation, duties and tariffs for investors as it is duty free area. in this area manufacturing and services operators are allowed and it is viewed as investment for enhancing the credibility of transformation policies, acceptability and also for attracting domestic and foreign



Investment. but the major concern is that there are many critics who were arguing with it as Indian peasants are getting robbed as they are losing their farmland to industrial zones. moreover, farmer activist has gone to Supreme Court for stopping all this, as India cannot act as Dictator as China does and cannot rail down through policies, the way China communities does. but it is ashamed that India in a need to generate jobs for people out of IT service boom from poor rural area can't figure out the way to SEZ right.

9. A need for separate regulatory regime and issues and trend in airport bidding as suggested by Naresh Chandra committee
10. Key features of construction and engineering contract in airport
11. Land acquisition and allied issues in airport construction
12. Proposed airport economic regulatory authority: review of investor concern and consumer right
13. Aero contractual claims – choosing, articulating and presenting them (special mechanism on ADR)
14. Need for due diligence, know-how for aviation investment
15. Issues related to re-fuelling infrastructure – ownership and investment

**CHAPTER 5
MERITS AND DEMERIS OF
PRIVATIZATION**

Government owned:

- **Inefficiency** – there is no doubt that public owned airport in India are insufficient and

further lack of maintenance has lead to deterioration of infrastructure.

- **Capital storage** – central mechanism has the responsibility for allocation which avoid ground realities and has been inefficient in the past. lack of resources for maintaining and upgrading facilities is also one of the factor. In India AAI is responsible for number of airports in India

Public private partnership:

- **Control** – the major problem with PPP is that of control. Government can have control either directly on board of companies or indirectly via regulation
- **Political problem** – history of public sector unit depicts the political problem and so can be carried forward to airports as well. However, one can see that employee union and left front have opposed for privatization but still JV have proceeded for Delhi and Mumbai airport formation. Another issue has been the allegation of foul play in selection of JV partners and one of the loosing bidder i.e. reliance has also approached court for the same. However high court has dismissed the plea and efforts for airport privatization has continued.

- **Agency problem** – the government is in learning mode of privatization .as on can see the proposed change regarding concession agreement for future process of airport privatization, this will change revenue sharing to tariff based from revenue based and hence problem to cast padding can be prevented as it will artificially increase cost to depress revenue and hence will reduce payment of government

Private:



- **Control** – the problem of control still exists in case of private players
- **Conflict of interest** – the intention of CIAL to foray into airline sector has been point of concern. this has raised conflict of interest between airport infrastructure and airline and possibility of airport allocating slot favourable to its own airline
- **Regulation** - economic regulation for airports suggested by Naresh Chandra committee has been government agenda for some time now.
- **Safety concern** – private player may be more interested in short time profitability rather than long-term sustainability which lead to think over safety issues.
- **Naresh Chandra committee report**
- **Separate economic regulation** – to ensure active regulation and check malpractice of air service sector this is one of the approach. Similar approach has been carried by area of telecommunication via telecom regulation authority of India i.e. TRAI and it has been successful in resolving conflict as well.
- **Reduction of airport charges** – non-aeronautical revenue can be of great help in reducing airport charges as one can see that though Mumbai airport rank 49 in the list of most expensive airports bit it still stand no where in terms of infrastructure.

will and ability of the government to garner support for ongoing initiative. Privatization of airport will ultimately increase the air travel and eventually will be lucrative market in near future. On the other hand, one should also remember that private players are just profit-making people and the concern will be toward safety and security issues which has to be managed by the state in efficient manner. However, by looking toward the losses incurred by the public airports it is suggested to privatize the Indian airports by incorporating the recommendation suggested by Naresh Chandra committee.

CHAPTER 6 CONCLUSION

India has taken initiative toward globalization via privatisation of airport i.e. five international airports are under PPP programme, but in near future India's most of the airport will be privatised. although future growth will be governed by political