



Ensuring legal compliance in the establishment of new private or public-private partnership Airports

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Abstract

Indian aviation is one of the world's sectors with the quickest growth rates. The Indian aviation industry has undergone a quick transition as a result of sector liberalisation. The creation of new regional airlines and airports as well as regional growth have been mentioned in the Ministry of Civil Aviation's policy on airport infrastructure to improve connectivity. The government is ready to support the growth of regional airlines using small aircraft to provide air connections in the interior regions of the nation. Over the years, the Public Private Partnership (PPP) model of funding has been one of the most popular options for financing infrastructure projects, helping India realise its goal of developing world-class infrastructure. Particularly over the past ten years, PPPs have played a significant role in India's physical infrastructure development.

Keywords: Aviation, Airports, regional airlines and Airports, Airport connectivity, public-private partnership, world-class infrastructure

Introduction

The Indian aviation industry is one of the fastest-growing sectors globally, and its transformation has been swift since it was liberalized. Formerly under government control, the market is now dominated by full-service and low-cost carriers, with private airlines holding around 75% of the domestic aviation sector. Once limited to a privileged few, air travel has become more affordable and accessible due to intense competition.

The industry has witnessed unprecedented growth in recent years, driven by India's expanding economy, a thriving tourism sector, the entry of budget airlines into the private sector, liberalization of international agreements, and changes in civil aviation laws. Despite the current global crisis causing a temporary slowdown, it is expected that civil aviation traffic will continue to grow at a similar pace in the future. However, the expansion of air travel has not been matched by adequate airport infrastructure development, leading to congestion and inefficiencies at major airports. These issues include limited parking spaces, insufficient landing slots, and congested airline operations during peak hours. Investing in high-quality infrastructure will have a significant impact on economic development and enhance India's global competitiveness^[1].

To address this, there is a need for accelerated development of civil aviation infrastructure through collaborations between the public and private sectors. Initial steps were taken during the Tenth five-year plan to meet the required standards, and these efforts continued into the 11th five-year plan. In the 12th five-year plan, the aviation ministry expressed its objective of improving the regional connectivity scheme. According to a recent study by the Centre for Asia Pacific Aviation (CAPA), the Indian Civil Aviation Ministry aims to have 500 operational airports within the next 12 years^[2].

Relation of the Development with the Policy on Infrastructure

The Ministry of Civil Aviation's policy on airport infrastructure emphasizes the development of new regional airlines, airports, and regional growth to enhance connectivity. The government is committed to supporting the expansion of regional airlines that use smaller aircraft to establish air links in remote areas of the country. Regional hubs are envisioned as key operational centres for nearby airlines and are expected to offer the same facilities as model airports, including limited international traffic capabilities. These regional hubs will be identified based on factors like traffic demand, origin-destination surveys, and airline needs. State governments will play a closely involved role as co-promoters in the development of regional airlines. A suggestion has been made to utilize the 300 currently unused airstrips across the country in collaboration with state governments. These airstrips could facilitate the use of smaller aircraft for regional connectivity. As part of the Ministry of Civil Aviation's efforts to improve regional connectivity, the Airports Authority of India will upgrade night landing and parking facilities at approximately 20 non-metro airports. Some of these airports may also be transformed into medium-sized facilities capable of accommodating larger aircraft. The forthcoming phase of aviation will have a strong focus on regional connectivity. To achieve this, the ministry is considering reclassifying scheduled operators, opening the door for new regional airlines to enter the market.

Regional Development through Aviation

The Ministry of Civil Aviation's airport infrastructure policy places a significant emphasis on the development of new regional airlines, airports, and fostering regional growth to enhance connectivity. The government is dedicated to supporting the expansion of regional airlines that utilize smaller aircraft to establish air links in remote parts of the country. These regional hubs are envisioned as crucial operational centres for neighbouring airlines and are

expected to offer similar facilities to model airports, even accommodating limited international traffic. The selection of these regional hubs will be based on various factors, including traffic demand, origin-destination surveys, and the specific requirements of airlines. State governments will play an integral role as co-promoters in the growth of regional airlines.

A proposal has been put forward to make use of the 300 currently unused airstrips throughout the country in collaboration with state governments. These airstrips have the potential to support the use of smaller aircraft for improving regional connectivity. As part of the Ministry of Civil Aviation's endeavours to enhance regional connectivity, the Airports Authority of India will upgrade the night landing and parking facilities at approximately 20 non-metro airports. Some of these airports may also be converted into medium-sized facilities capable of handling larger aircraft. The upcoming phase of the aviation sector will prominently focus on regional connectivity. To facilitate this, the ministry is contemplating a reclassification of scheduled operators, creating opportunities for new regional airlines to enter the industry [3].

Improvement in air connectivity is an essential objective of the air transport industry, which is also in line with *Article 44 of the Chicago Convention, 1944, namely, "meet the needs of the peoples of the world for safe, regular, efficient and economical air transport"* [4]. When it comes to air passenger traffic, India's aviation industry ranks fifth globally, trailing behind the US, China, Ireland, and the UK. However, there is significant room for improvement in its revenue tonne-kilometre performance, where it currently stands at the twentieth position. Recognizing the importance of the aviation sector, the Indian government has introduced various legislative and regulatory changes since the 1990s.

Indian authorities have placed a strong emphasis on promoting air travel in rural and regional areas, acknowledging the positive impact that air connectivity can have on the socioeconomic development of these regions. To incentivize and support private airlines in serving economically unfavourable routes, they established the route dispersal guidelines in 1994. In 2016, the National Civil Aviation Policy (NCAP) was unveiled, and in 2014, the Regional and Distant Area Air Connectivity policy was introduced due to the insufficient participation of private air service providers in regional and remote areas.

One of the key objectives of NCAP was the implementation of the Regional Connectivity Scheme (RCS), known as UDAN (Ude Desh Ka Aam Nagarik), which translates to "let the common citizens of the country fly." The goal of this initiative is to make air travel affordable for the masses, boost tourism, create more job opportunities, and foster balanced regional economic growth. Despite the flourishing national and international aviation markets, regional aviation in India remains underdeveloped. The draft RCS unveiled in December 2016 underscores the substantial efforts made to encourage airlines to operate flights to remote and underutilized airports, as well as those with limited flight options.

Regional Development through Regional Connectivity Scheme in India

The International Air Transport Association (IATA) foresees India surpassing the UK and securing the third

position in air passenger traffic by 2025. In preparation for the years 2031 to 2032, airports need to be equipped to handle a staggering 1,150 million passengers annually. This growth pertains to both domestic and international travel. Notably, a significant portion of the population in India has yet to experience air travel. Given the well-documented positive impact of air connectivity on economic growth and development, policymakers are actively exploring effective strategies to promote air transport to remote regions.

The focus lies in providing air transportation services to markets, particularly towns and cities, that are either underserved or unserved but hold potential. This approach aligns with reports from the Government of India and the DTTIPL Report for the Ministry of Civil Aviation (MoCA) in 2013. The Ministry of Civil Aviation's Regional Connectivity Scheme (RCS) defines the operation of air transportation services between two airports, at least one of which is designated as unserved or underserved by the national government. Underserved airports are those receiving fewer than seven flights per week, while unserved airports have had no flights during the last two flight schedules.

"The RCS aims to make these airports economically viable by incentivizing airlines to boost traffic. Instead of mandating airlines to operate at underserved and unserved airports by offering discounts, the innovative approach in RCS invites airlines to bid for routes where they can ensure profitability. They have the flexibility to choose the number of subsidized seats and weekly flights, with the government supporting them through Viability Gap Funding (VGF)."

The RCS UDAN program has significantly enhanced India's regional air connectivity since its inception. It has expanded from an initial 74 airports to 141 active airports. As of August 2022, over one crore passengers have reaped the benefits of this program. The scheme has successfully connected underserved and unserved destinations, encompassing 68 such locations, including 58 airports, eight heliports, and two water aerodromes. RCS UDAN has introduced air connectivity to more than 29 states and union territories across the country, launching 425 new routes under the scheme. By ensuring nationwide connectivity and promoting balanced regional development, the Regional Connectivity Scheme (RCS) UDAN has had a positive economic impact by fostering local employment and economic progress.

Challenges to Regional Connectivity Scheme

The Viability Gap Funding (VGF) would be collected through a fee imposed on passengers traveling on major domestic routes to support the financial stability of airlines. This means that passengers on important domestic routes may face increased costs. However, there is currently no mechanism in place to prevent airlines from overcharging passengers. In cases where prices are already high on these routes, it could pose challenges for the airline operators. The airline owners might need to seek alternative sources of financing for their plans.

Over the past decade, regional airlines have faced significant challenges, and this situation may not offer much hope. Legal issues have led to the closure of airlines like Paramount Airways in Chennai and Air Mantra in Delhi. Making a profit on unserved and underserved routes has proven to be difficult. In the initial phase of the Regional Connectivity Scheme (RCS), major players refrained from

participation, primarily because they operated larger-capacity aircraft. There were concerns about the potential future responsibilities of Air India in running such routes. However, significant participants have emerged in the second phase of the RCS.

The issue of regional aircraft faces significant hurdles due to India's congested air traffic and inadequate airport infrastructure. Airports struggle to allocate slots for regional operations. For example, on April 20, 2018, Air Deccan suspended its flights on the Pune-Nashik route due to the unavailability of slots at Pune airport. Air Deccan, which had been awarded 34 routes in the first round of UDAN, had launched services on the Pune-Nashik route in December 2017. Services were set to resume once new slots were secured at Pune airport, and the issue had also been raised with the civil aviation ministry. The Airports Authority of India (AAI) confirmed that some airports faced significant slot constraints, with Mumbai being cited as completely out of available slots^[5].”

In addition to providing energy, water, and other utility services at reduced prices, state governments are expected to offer tax breaks for regional companies as well as fire security and fire protection services. This must be agreed to by every state, and it might not be as straightforward as the Centre had envisioned.

Creation of New Regional Private or Public-Private Partnership Airports

The significance of enhancing India's airport infrastructure was acknowledged in the preliminary policy on airport infrastructure dating back to December 1997. It was understood that the quality of airport infrastructure was closely linked to India's global competitiveness and its ability to attract foreign investments. The policy paved the way for private investments, including contributions from foreign airport authorities. The remarkable growth in the civil aviation sector has made it imperative for India to have state-of-the-art airports. The urgent need is to create world-class airports efficiently and leverage the available resources.

The extensive infrastructure required to accommodate the substantial increase in passenger traffic across the country cannot be solely funded by public finances. Over the years, the Public Private Partnership (PPP) model has become one of the most popular approaches for financing infrastructure projects, allowing India to realize its objective of developing top-tier infrastructure. Particularly in the last decade, PPPs have played a significant role in advancing India's physical infrastructure.

The adoption of PPP financing progressed relatively slowly before deregulation, gaining momentum between 1991 and 2006. Subsequently, PPP initiatives experienced significant growth in various sectors. India presently boasts over 200 airports, covering domestic, international, civic enclave, and military travel. Among these, only 20 qualify as international airports, and just 5 of those 20 airports were constructed through the PPP model. These airports were built in compliance with global standards set by the International Civil Aviation Organization (ICAO). Two of the five airports, Delhi and Mumbai, are brownfield airports, while the other four are greenfield projects.

The Private or Public-Private Partnership Airports in India

Cochin International Airport, managed by Cochin International Airport Ltd. (CIAL), is a distinct entity established in 1994. It holds the distinction of being India's first greenfield airport, constructed entirely from the ground up with private sector involvement, making it a trailblazer in the Indian airport public-private partnership (PPP) model. Its ownership is distributed among various stakeholders, including the Government of Kerala, financial institutions, non-resident Indians (NRIs), airport service providers, and foreign entities. CIAL has approximately 18,000 shareholders hailing from over 25 countries, which include notable names like Bharat Petroleum in India and Air India. Delhi International Airport is operated by Delhi International Airport Limited (DIAL) since 2006. The concession to operate and develop Delhi airport was awarded to DIAL through an international competitive bidding process. The initial concession period is for 30 years. DIAL is a joint venture consortium involving three major entities: GMR Group (64%), Airport Authority of India (AAI) (26%), and Fraport AG (10%). In March 2015, Malaysia Airports (Mauritius) Private Limited left the consortium and sold its 10% share to the GMR Group for \$80 million.

The Hyderabad Rajiv Gandhi International Airport is managed by Hyderabad International Airport Limited (HIAL), which entered into a concession agreement with the Government of India in December 2004, valid for 30 years. HIAL operates as a consortium, with ownership divided among several key entities: GMR Group (63%), the Government of India (13%), the Government of Telangana (13%), and Malaysia Airports Holding Bhd (11%). The airport's public-private partnership (PPP) model is based on a Build-Own-Operate-Transfer (BOOT) basis. Kazi Nazrul Islam International Airport is a component of India's inaugural private sector aerotropolis initiative, established by Bengal Aerotropolis Projects Limited (BAPL). BAPL is a project driven by local entrepreneurs with expertise in infrastructure development and the planning of aerotropolis projects within India. The promoters of Bengal Aerotropolis Projects Limited include the following stakeholders: Changi Airports India Pte. Limited, Singapore, holding 32.2%, which is a subsidiary of Changi Airport International (CAI), Singapore; IL&FS Airports Ltd., with a 12.7% stake; and West Bengal Industrial Development Corporation, with a 1.2% interest.

Bangalore International Airport Limited (BIAL) is responsible for the design, construction, ownership, and operation (DBOO) of the Kempegowda International Airport. The concession agreement between the Government of India and BIAL was signed in July 2004, and the airport commenced operations in May 2008. BIAL is primarily owned by a foreign consortium, holding a 74% stake. The private promoters in this consortium include GVK Group India (43%), Siemens Project Ventures GmbH (26%), and Flughafen Zurich AG Ltd. (5%). The remaining 26% ownership is divided among state promoters, with the Airports Authority of India (AAI) and the Karnataka State Industrial Investment & Development Corporation Limited (KSIIDC) each holding 13%.

The Mumbai Chhatrapati Shivaji International Airport (CSIA) underwent a significant transformation with its privatization. In 2006, Mumbai International Airport Pvt.

Ltd. (MIAL), a joint venture, was awarded the responsibility to modernize and upgrade CSIA. MIAL is a consortium led by GVK (74%) and includes the Airports Authority of India (AAI) as a partner with a 26% stake.

Other Developments in Indian Airports

Regarding recent developments, in March 2022, the Ministry of Civil Aviation announced plans for a 36,000-crore investment in the development of greenfield airports under the PPP (Public-Private Partnership) model. Additionally, the Airports Authority of India (AAI) leased out seven airports to Adani's Adani Thiruvananthapuram International Airport Limited (ATIAL), including airports in Delhi, Mumbai, Ahmedabad, Jaipur, Lucknow, Guwahati, Thiruvananthapuram, and Mangalore. It's worth noting that a Writ Petition was filed in the Kerala High Court challenging the leasing of Thiruvananthapuram International Airport to Adani Enterprises Limited.

Issues and Solutions

The concerns about increased charges at Public-Private Partnership (PPP) airports and the lack of a well-defined process for capital expenditure and cost monitoring are valid. These issues can lead to higher costs for airlines and passengers. Here are some solutions

1. **Transparent Pricing Mechanism:** Establish a transparent mechanism for determining charges at PPP airports. This mechanism should consider the actual capital expenditure, operational costs, and a reasonable rate of return for the private operators. This way, charges can be set fairly.
2. **Cost Control and Monitoring:** Implement a rigorous system for monitoring project costs. This should involve regular audits and oversight to ensure that projects stay within budget. If cost overruns occur, they should not automatically be passed on to airlines and passengers.
3. **Performance-Based Contracts:** Structure PPP agreements with performance-based clauses. Private operators should be incentivized to complete projects within budget and meet certain service quality standards. Failure to do so should result in financial penalties.
4. **Regular Review and Adjustment:** Periodically review the charges at PPP airports and adjust them based on actual costs and financial performance. This ensures that charges remain fair and competitive.
5. **Job Creation and Training:** If there's a transformation of AAI, it should include a plan for reskilling and retraining employees who may be affected by the transition. The new policy should also focus on job creation in the aviation sector.
6. **Consultation:** Engage stakeholders, including airlines, passengers, and airport authorities, in the decision-making process regarding charges and infrastructure development. This ensures that the interests of all parties are considered.

7. **Long-Term Planning:** Develop a comprehensive infrastructure plan for the aviation sector, taking into account long-term growth and sustainability. This plan should guide capital expenditure and prioritize projects that enhance connectivity and efficiency.
8. **Independent Regulatory Body:** Consider establishing an independent regulatory authority responsible for overseeing the aviation sector, including charge determination and project monitoring. This can help ensure impartial decision-making.
9. **Protection for Employees:** Implement measures to protect the job security and benefits of AAI employees during any transition or transformation. This can include reassignment opportunities or assistance with finding alternative employment.
10. **Benchmarking and Best Practices:** Study international best practices in airport management and apply them to improve the efficiency and cost-effectiveness of Indian airports.

Conclusion

By addressing these issues and implementing these solutions, the aviation sector in India can achieve a balance between infrastructure development and affordability for airlines and passengers while also ensuring job security for existing employees.

References

1. Blonigen B, AD Cristea. Airports and Urban Growth: Evidence from a Quasi-Natural Policy Experiment. *NBER Working Papers 18278*, National Bureau of Economic Research, Inc, 2012.
2. Position paper on Airport sector in India, www.mof.gov.in.
3. Bruekner JK. Airline Traffic and Urban Economic Development. *Urban Studies*, 2003;40(8):1455–1469.
4. The Convention on International Civil Aviation, UNCTC, 1944, 122.
5. *Ibid.*