

27<sup>th</sup> January, 2022

# ANALYSING THE AIRPORTS ECONOMIC REGULATORY AUTHORITY OF INDIA (AMENDMENT) ACT, 2021

## Introduction

The Airports Economic Regulatory Authority of India (Amendment) Act, 2021 ['the Amendment Act'] amended the Airports Economic Regulatory Authority of India Act, 2008 ['the Principal Act'] pursuant to the passing of the Amendment Bill by both the Houses of the Parliament followed by the assent of the President of India on 12th August, 2021. The Amendment Bill was first introduced in March, 2021 and subsequently referred to the Department-related Parliamentary Standing Committee on Transport, Tourism and Culture which approved it without any changes. The Amendment Act has inserted the words "or a group of airports" after the words "any other airport" in Section 2(i) of the Principal Act. The Amendment Act has made a very small change in the Principal Act but having major ramifications.

## The Principal Act: Purpose and Extent

As per the Constitution of India, only the Parliament has the power to legislate on the question of airports. Entry 29 of List I (Union List) of Schedule 7 of the Constitution inter alia talks about airways; aircraft and air navigation; provision of aerodromes. From 1934 until 1971, airports in India were run and maintained by the Director General for Civil Aviation (DGCA) under the Ministry of Civil Aviation (MoCA). In 1971, the Parliament felt that there are four major airports in the country viz. in Delhi, Bombay, Chennai and Calcutta which were also international airports and needed a lot of investment and development. So, these four airports were spun off and were put into a separate corporation called the International Airports Authority of India which was looking after these four airports. In 1985 a need was felt to develop other airports as well. So the airports apart from the four abovementioned airports for more operability, more flexibility and more money coming into in, etc. were put into the corporation called National Airports Authority of India by the Parliament. Then over a period of time, in order to develop both international as well as domestic airports in the country Airports Authority of India (AAI) was established which is also looking after the airports in

India even today. The post-liberalization (post-1991 economic reforms), it was decided that the AAI will not be only agency that will be running the airports, so private players also came into the management and development of aeronautical services.

In 2006, in order to eliminate conflict between AAI and private players, a need was felt to put in place an independent regulator for determining tariffs for the aeronautical services. Accordingly, the Principal Act was enacted in 2008 and an independent economic regulator, i.e., Airports Economic Regulatory Authority ['AERA'] was established in 2009. As per Section 13 of the Principal Act, AERA, inter alia, had been mandated to determine the tariff for the aeronautical services rendered at major airports; the amount of the development fees including User Development Fee; and the amount of the passenger service fee levied under Rule 88 of the Aircraft Rules, 1937 made under the Aircraft Act, 1934. AERA as per the Principal Act, is also mandated to monitor the set performance standards relating to quality, continuity and reliability of services at major airports.

AERA follows cost plus philosophy for determining the tariff at Major Airports. The initial Benchmark passenger throughput to qualify as major airport was 1.5 million passenger per annum (mppa), which was amended in 2019 to make it as 3.5 mppa. Regarding tariff determination at Major airports, AERA determines the tariffs for airports having passenger throughput of 3.5 mppa or as notified by the Central Government. As on date, AERA determines tariffs for 24 airports, out of which 20 airports have mppa of 3.5 or above and 4 airports viz., Varanasi, Trichy, Amritsar, Raipur have been notified by the Central Government.

As regards the tariff determination at Non-Major airports, the Non-Major airports belong to the AAI and that AAI submits the proposed rate card to MoCA for aeronautical services rendered at its non-major airports. The MoCA approves the aeronautical charges submitted by AAI with modifications, if any.



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### **The Amendment Act in a nutshell: The necessity and reason**

AAI has awarded six airports for operations, management and development under Public Private Partnership (PPP) in 2019. Further, AAI Board in its 190th Meeting held on 05 Sept. 2019 has approved leasing of another six airports namely, Bhubaneswar, Varanasi, Amritsar, Raipur, Indore and Trichy for undertaking operations, management and development through PPP (Public Private Partnership). A suggestion has been made to club each of these airports with nearby smaller airports for the purpose of joint development.

However, the provisions of the Principal Act provided for the determination of tariffs for aeronautical services in case of a 'major airport' i.e., a single airport on standalone basis. The Principal Act did not provide for determination of tariff for a group of airports together. Therefore, an amendment was made to insert an enabling provision in the Principal Act for tariff determination of a 'group of airports' by way of amending the definition of 'major airport' in Section 2 clause (i).

### **Arguments in favour**

- 1 The clubbing/pairing of smaller/non-profitable/low traffic/non-viable airports with bigger/profitable/high traffic/viable airports, as a package to bidders/investors for next phase of PPP of Airports would ensure and facilitate integrated and holistic development of smaller, non-profitable and low traffic airports with bigger, profitable and high traffic airports.
- 2 Further, smaller, non-profitable and low traffic airports would also be developed faster through professional efficiency of private operators.
- 3 It would also create scale of operations, making it an attractive proposition and elicit better response from bidders/investors.
- 4 If tariff for smaller airports is determined on standalone basis, the tariff will be unreasonably high. It would help encourage development of smaller airports. Otherwise, these small airports will never get into PPP mode.
- 5 This approach would help in development of more number of airports through the PPP route thus, expanding the air connectivity to relatively remote and far-flung areas. The revenue earned by AAI from these airports will be utilized for development of airports in Tier-II and Tier-III cities.
- 6 The Amendment is also in furtherance of the Central Government's regional connectivity scheme namely Uday Desh ka Aam Nagrik (UDAN).
- 7 Moreover, there are no financial implications to the Central Government.
- 8 Additional investment for development of smaller airport would increase economic activity and create additional jobs.

### **Concerns**

- 1 Lack of clarity regarding the criterion for clubbing/pairing airports together. There is no criteria or definition envisaged by the Government as to what kinds of airports need to be or will be clubbed together. Will they be profitable airports with non-profitable airports or bigger ones with small airports or low traffic with high traffic or will they be non-viable with viable ones.
- 2 A monopoly situation might be created in the airport operating business while awarding a group of airports to the same entity.
- 3 Another concern is relating to the amount invested in the development and the returns from the relatively smaller airports. Because growth of smaller airports will also depend on growth prospects, economic activity or tourist attractions for the non-profitable airports.

### **Conclusion**

The definition of 'major airports' including a single airport on a standalone basis in the Principal Act was not suitable enough to develop falling below the criteria mentioned in the definition. That is precisely the reason that an amendment has been brought about to include airports which are not attracting the amount of passenger traffic for various reasons but are necessary for the enhancement, upgradation, facilities, etc. Developing, operating, running and maintaining an airport takes a lot of capital infrastructure that needs to be created. Many of the new airports that are been built are built with the large amount of expenditure. As on ongoing basis even maintaining the current airports and upgrading them in terms of infrastructure is a very capital intensive business. That is the reason even the Department related Parliament Committee felt that there is a huge demand for more airports in the country and it is not feasible for AAI to meet the investment requirements to develop and maintain all the airports in the country. There is an inevitable need for PPP in the development and maintenance of smaller and unprofitable airports. The Amendment was needed to address the significant and continuous investment requirements in the airport infrastructure for upgradation/ expansion of capacity and modernization of processes and systems in an equitable manner to ensure that the growth in air traffic is managed efficiently.



# भारत का राजपत्र The Gazette of India

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।  
Separate paging is given to this Part in order that it may be filed as a separate compilation.

## MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 13th August, 2021/ Sravana 22, 1943 (Saka)

The following Act of Parliament received the assent of the President on the 12th August, 2021, and is hereby published for general information:—

### THE AIRPORTS ECONOMIC REGULATORY AUTHORITY OF INDIA (AMENDMENT) ACT, 2021

No. 28 OF 2021

[12th August, 2021.]

An Act further to amend the Airports Economic Regulatory Authority of India Act, 2008.

BE it enacted by Parliament in the Seventy-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Airports Economic Regulatory Authority of India (Amendment) Act, 2021.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Amendment  
of Act 27 of  
2008.

2. In section 2 of the Airports Economic Regulatory Authority of India Act, 2008, in clause (i), after the words "any other airport", the words "or a group of airports" shall be inserted.

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ANOOP KUMAR MENDIRATTA,  
*Secretary to the Govt. of India.*

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