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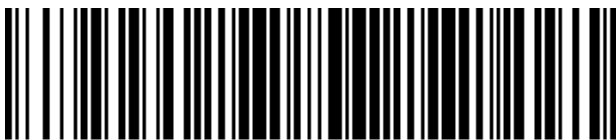
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**Impact of COVID-19 on the Aviation industry in India**

**Madhava Sai Amulothu**

# 1.INTRODUCTION

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Coronavirus outbreak in many parts of the world started as early as December of 2019 or January of 2020. In India however, the outbreak did not start until late March 2020. At the start of the pandemic, we would see a rise of about 1000 cases per day. The spread of COVID-19 is now in full flow in India, there are approximately 80,000 cases being reported per day and it has become a new norm. India is now second in the number of cases globally only behind the USA<sup>1</sup>, but it is hard to see how India will not surpass the US with the massive rise in the number of cases each day. Even under these grave circumstances, the fact that India's case fatality rate is lower than the global average and that the recovery rate of our country is very high (77.8%), gives the nation a glimmer of hope.<sup>2</sup>

Most of the industries worldwide have incurred losses during this pandemic. There are very few industries that have not incurred any such losses as the gaming industry. Understandably so, because of various lockdown restrictions and quarantine procedures being followed all across the world, a lot of people have started gaming to pass their time and the industry saw an increase in time spent on these games.<sup>3</sup> But this is an exception, according to the International Monetary Fund, global growth is projected at -3%, which is worse than the position in 2009 during a global financial crisis.<sup>4</sup>

The aviation industry has been hit the worst by this economic crisis. In a report released by the International civil aviation organization (ICAO) it has been estimated that for the year of 2020, there has been an overall reduction ranging from 47 – 52 % of seats offered by the airlines<sup>5</sup>, an overall reduction of around 2.5 million passengers<sup>6</sup> and a potential loss of about USD 355- 392 billion dollars.<sup>7</sup> Although the situation might get better, the losses will be incurred even in the next financial year of 2021. This is, however, an estimated amount and it may vary depending on the actual duration of this outbreak, quarantine measures followed by states, and other important factors.

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<sup>1</sup>India, Worldometer (Sept. 11, 2020, 1:13 PM), <https://www.worldometers.info/coronavirus/country/india/>.

<sup>2</sup>Home Page, Ministry of Health and Family Welfare, Government of India (Sept.10,2020,1:25 PM), <https://www.mohfw.gov.in/index1.php>.

<sup>3</sup>Stefen Hall, How COVID-19 is taking gaming and esports to the next level, The World Economic Forum (Sept. 10,2020, 2:20 PM), <https://www.weforum.org/agenda/2020/05/covid-19-taking-gaming-and-esports-next-level/>.

<sup>4</sup>International Monetary Fund. 2020. World Economic Outlook:The Great Lockdown. Washington, DC, April.

<sup>5</sup>Effects of Novel Coronavirus (COVID-19) on civil aviation: Economic Impact analysis, ICAO available at [https://www.icao.int/sustainability/Documents/COVID-19/ICAO\\_Coronavirus\\_Econ\\_Impact.pdf](https://www.icao.int/sustainability/Documents/COVID-19/ICAO_Coronavirus_Econ_Impact.pdf).

<sup>6</sup>Id.

<sup>7</sup>Id.

## 2.MAJOR PROBLEMS THAT THE AVIATION INDUSTRY IN INDIA IS FACING DURING THE PANDEMIC

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### 2.1 No demand for airlines

During this pandemic, most of the countries have actively insisted on their citizens to avoid ‘unnecessary’ travel and have imposed nationwide lockdowns to implement the same. In India, there has been a ban on domestic and international flights from March 24, 2020,<sup>8</sup> and it extended for a period of about 2 months till 31<sup>st</sup> May 2020 in the case of domestic flights. However, the lifting of the ban on domestic flights could not bring much relief to the aviation industry because most of the passengers did not have a round trip planned for various reasons like they were looking to go to their hometown from the places that they were stranded in due to the imposition of lockdown, etc. Also, the fact that airlines were allowed to fly only 1/3<sup>rd</sup> of their capacity initially did not help either. This in turn meant less revenue and more costs for these airlines. Considering international services are an important part of these airlines, it is a major blow that the ban on international scheduled flights that have been imposed till 31<sup>st</sup> September 2020.

Even after easing the lockdown restrictions, it needs to be seen whether the passengers are confident of traveling by air. The survival of the aviation industry depends on whether the passengers find traveling by air safe or risky, whether measures taken by airlines to follow physical distancing protocols instill confidence among travelers and various other ancillary reasons. According to a circular dated 22<sup>nd</sup> May 2020, the DGCA has laid down some general guidelines which need to be followed like the ban of physical check-ins at airports and only the people who have a confirmed web-in check will have to be allowed, no meals and newspapers should be provided by the airlines, sanitization after every trip by the airlines and also, more importantly, the fact that the airline can fly the only 1/3<sup>rd</sup> of the total capacity.<sup>9</sup> This condition has been relaxed and up to 60% of the airline’s capacity is allowed to fly now. These measures have been implemented strictly by all of the airlines but some passengers might still not feel safe to travel in a pandemic, which is understandable. It might take time for this stigma to be completely negated but the fact that the number of passengers has been increasing constantly is something that the aviation industry will feel optimistic about.

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<sup>8</sup>Order No. AV.11011/ 1/ 2020-US(AG)Office-MoCA dated 23<sup>rd</sup> March, 2020 from the MoCA , available at <https://www.civilaviation.gov.in/sites/default/files/Revised-%20COVID-19%20-%20Order%20under%20Section%208B.pdf>

<sup>9</sup> Circular No.4/1/2020-IR dated 22<sup>nd</sup> May,2020, available at <https://dgca.gov.in/digigov-portal/jsp/dgca/homePage/viewPDF.jsp?page=topHeader/COVID/Circular%2022.5.2020-MoCA%20Order.pdf>.



## **2.2 Minimal capital flow- Consequences and reasons**

Naturally, the aftermath of a 2-month lockdown on the aviation industry has been that the cash reserves of most of the airlines have dried up. Although the airlines are not flying they are still forced to pay a lot of charges like parking charges, lease charges based on their sale and leaseback transactions(SLB), etc. Most of the airlines are also facing the dilemma as to whether they should retain, furlough, or layoff their employees.

### 2.2.1. Should layoffs be resorted to?

Indigo, which is the country's largest airline, laid off 10% of its work staff and also reduced the salaries of its workers. A similar practice has been followed by various other carriers like GoAir, Vistara, and SpiceJet as they have resorted to leaving without pay and salary cuts.<sup>10</sup> This is not only a problem in India but it has affected major airlines all over the world. According to a survey by the Bureau of Labour Statistics, employment in the aviation industry in the US fell from 512,000 workers in March 2020 to 380,000 workers in June 2020.<sup>11</sup> This pandemic has affected the livelihoods of a lot of people, although the airlines do not want to lay off their employees and would rather resort to leaving without pay, for the airlines to survive it has to cut down on costs and if the situation persists then a lot of workers in the industry will be laid off.

### 2.2.2. Excessive ad valorem tax on Aviation Turbine Fuel

Another major problem that has India could not deal with, is to reduce the price of Aviation Turbine Fuel (ATF). In a letter dated June 1, 2018, the International Air transport Association (IATA) talked about the reasons as to why this is the case. One of the major reasons that the association mentions in the letter is the fact that there is a lack of effective ATF supply competition.<sup>12</sup> In the letter it makes it clear that ATF costs in India are very high compared to the other countries, it also establishes how lower ATF costs will help the sustainable development of the aviation industry. Another major reason why the cost of ATF is so high in India is the fact that it is not able to benefit from the single taxation scheme under the Goods and Service tax and hence the airlines are forced to pay 11% ad valorem rate of exercise duty

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<sup>10</sup>Manu Kaushik, IndiGo's layoffs and salary cuts to trigger 20% job losses across industry, Business Today(Sept.9,2020, 3:31 PM), <https://www.businesstoday.in/sectors/aviation/indigo-layoffs-and-salary-cuts-to-trigger-20pc-job-losses-across-industry/story/411331.html>

<sup>11</sup>Industries at a glance, U.S. Bureau of Labor Statistics (Sept. 9,2020, 5:25 PM),<https://www.bls.gov/iag/tgs/iag481.htm>

<sup>12</sup> IATA's letter to Petroleum and Natural Gas Regulatory Board dated June 1<sup>st</sup> , 2020, available at <https://www.pngrb.gov.in/pdf/public-notice/ATF%20Comments/IATA.pdf>

right now.<sup>13</sup> For the airlines to survive in the near future ATF has to be included in the GST which will effectively reduce double taxation and hence the cost of ATF will subsequently reduce.

### 2.2.3. Sale and Leaseback agreements (SLB) and how they are hurting the airlines during the pandemic

Most of the airlines in our country follow the sale and leaseback financial transactions. In this transaction, an asset is bought for preferably a cheaper rate and then sold at a higher rate. The difference amount here is direct profit. After selling the asset, the person leases back the asset to themselves for a long period. This transaction allows a person to use the asset without owning it. There are several advantages and disadvantages to this model. It usually helps companies that cannot afford these assets, through this procedure they can still use the asset after getting more than 100% for their investment. However, the airlines are obliged to now pay the rent under these agreements even when they have not been flying for more than 2 months. The application of the principle of *force majeure* usually changes from a case to case basis depending on whether it has been explicitly mentioned in the contract, if not this principle usually cannot be applied. It is also tough for airlines to terminate the contracts early because they are made to pay hefty sums for the same. This just adds up to the problems the airlines are already facing. Although India acceded to the Cape Town convention in 2008 and made minor changes in the Aircraft rules, 1937, India is not able to avail of most of the benefits of this convention which aims to help countries with efficient transactions, as there is no domestic law in place for its implementation. The closest we have come to try to implement the convention is The Cape Town Convention Bill, 2018. The major reason why this has not been implemented is that the treaty has a non-obstante clause which states that this convention should have the overriding effect whenever there is a conflict with domestic laws. There are other acts and provisions in India which have the same clause as that in the Insolvency and Bankruptcy code, 2016 and hence there is a clash of both the laws. It is clear that the implementation of this bill will strongly help the aviation sector in India as a whole, we will have to wait and watch how and whether this will be implemented.

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<sup>13</sup>Govt considering specific excise duty on ATF, The Times Of India (Sept. 10, 2020, 5:47 PM), [http://timesofindia.indiatimes.com/articleshow/73373389.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://timesofindia.indiatimes.com/articleshow/73373389.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

### 3. SHOULD THE STATE BAIL OUT THE AVIATION SECTOR?

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It is usually a matter of state's discretion in the case of bailouts. It can be done in various ways like direct cash flow as in the case of the US, taking ownership of the airlines after investment like in the case of Alitalia in Italy, etc. In India, any sort of economic relief would have helped the sector like introducing ATF under the GST, direct cash flow, etc. There are certain governments that are hesitant to directly bail out the airline industry like in the case of the United Kingdom where a specific bailout for the airline industry as a whole wasn't planned and they were treated just like other businesses and the requirements for loans to businesses were reduced. It has helped airlines like EasyJet who have taken a loan of 600 million euros.<sup>14</sup>

France announced a 15 billion euro 'rescue plan' for its aerospace industry, out of which 7 billion euros were announced solely for Air France, the country's national carrier. But this bailout has certain conditions with the objective of making Air France the most environmentally respectful airline<sup>15</sup>. According to the agreement Air France has vowed to reduce 50% emissions from domestic flights by the year 2024 by reducing the domestic airlines by 40%<sup>16</sup>. Similar climate conditions have been imposed by the Dutch government in their 3.8 billion dollar bailout for KLM. Conditions have been imposed to promote rail journeys domestically and also reduction of emissions per passenger by 2030.<sup>17</sup>

Under the Coronavirus Aid, relief, and economic security (CARES) Act, airlines are eligible to receive more than 50 million dollars in part grant and part loans<sup>18</sup>. The primary focus is to keep the jobs in the aviation industry intact. It also provides for 10 million dollars in funds as economic relief to the airports in the country.<sup>19</sup>

To try to help the country's economy, the center launched a 20 lakh-crore economic package. It amounts to about 10% of the country's Gross Domestic Product (GDP), it is one of the world's

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<sup>14</sup>EasyJet secures £600m coronavirus loan from UK Treasury and Bank, The Guardian (Sept.10,2020, 6:00 PM), <https://www.theguardian.com/business/2020/apr/06/easyjet-secures-600m-coronavirus-loan-from-uk-treasury-and-bank>.

<sup>15</sup> Coronavirus aid: Air France 'must cut domestic flights to get state loan', BBC news (Sept. 9,2020,6:15 PM), <https://www.bbc.com/news/world-europe-52527517>

<sup>16</sup>Katherine Dunn, Climate conditions on airline government bailouts are rare—and the coronavirus likely won't be an exception, Fortune (sept.8,2020,6:25PM),<https://fortune.com/2020/06/26/airline-bailouts-climate-conditions-coronavirus/>.

<sup>17</sup>Id.

<sup>18</sup>Lori Aratani, Delta, United among airlines that will accept government loans under Cares Act, The Washington Post (Sept.10,2020,5:33PM),[https://www.washingtonpost.com/local/trafficandcommuting/delta-united-among-airlines-that-will-accept-government-loans-under-cares-act/2020/07/07/995c3e32-c08d-11ea-b4f6-cb39cd8940fb\\_story.html](https://www.washingtonpost.com/local/trafficandcommuting/delta-united-among-airlines-that-will-accept-government-loans-under-cares-act/2020/07/07/995c3e32-c08d-11ea-b4f6-cb39cd8940fb_story.html).

<sup>19</sup>2020 CARES Act grants, Federal Aviation Administration (Sept.9, 2020,6:25 PM), [https://www.faa.gov/airports/cares\\_act/](https://www.faa.gov/airports/cares_act/).

most substantial COVID-19 recovery packages.<sup>20</sup> This scheme focuses on making India – *atmanirbhar* or self-reliant and hence focuses heavily on the Make in India movement started by the government. The scheme indicates that there will be policy changes for efficient use of airspace for civil aviation which will in turn reduce the fuel use, time and will also have a positive environmental impact.<sup>21</sup> The policy also encourages the Public-Private-Partnership (PPP) when it comes to developing the constructions of the airports and how this model will bring in more profits.<sup>22</sup> Finally, the scheme also talks about how India might become a major hub for Aircraft Maintenance, Repair, and Overhaul.<sup>23</sup> This disappointed the aviation industry because there was no direct cash influx in the industry. The scheme does not address the problems at hand. The major problems for most of the airlines in the country are that their cash reserves have dried up and on top of that, they are being forced to pay leases, parking charges, high rate of VAT in ATF, etc. The scheme thus fails to address this issue.

The major dilemma here is whether ‘taxpayer’s’ money should be invested in the private sector. It is an established fact that lots of jobs in the aviation sector are on the line. We have already discussed earlier how some airlines have already, although unwillingly, resorted to laying off of employees.

Article 39(a) states that the ‘Indian constitution shall be directing this policy for securing adequate livelihood to every citizen, including all men and women, and these rights are equal.’ Considering that livelihood of a whole industry is at substantial risk and it is not a foreseeable but rather an external factor that nobody could have thought of, it can be argued that the state has a constitutional responsibility to save the livelihood of its citizens. This article however falls under the Directive Principles of State Policy (DPSP) and Art 37 of the constitution makes it clear that although it is not enforceable under the court of law, it has to be taken into consideration while making laws. Now all of this analysis leaves us with one conclusion i.e. if the state believes that the livelihood of its citizens is under jeopardy then it can make a law that will be constitutionally valid, but nobody can force the state to make such a law. It is usually at the discretion of the state.

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<sup>20</sup>India's Rs 20 lakh crore Covid relief package one among the largest in the world, The Economic Times (Sept.8,2020,8:00AM),<https://economictimes.indiatimes.com/news/economy/finance/latest-stimulus-package-among-largest-in-the-world/articleshow/75701976.cms?from=mdr>

<sup>21</sup>Finance Minister announces new horizons of growth; structural reforms across Eight Sectors paving way for Aatma Nirbhar Bharat, Press Information Bureau, Government of India (Sept. 9,2020, 10:00 AM), <https://pib.nic.in/PressReleasePage.aspx?PRID=1624536>

<sup>22</sup>Id.

<sup>23</sup>Id.

One of the major problems with this bailout procedure is that the companies might become complacent because they have the assurance that the state might bail them out and this will in turn deter the companies from preparing for the worst-case scenarios. Although in this case, there is nothing the aviation industry could have done considering most of the countries had imposed travel restrictions and the airlines were hence unable to take flight. Expecting airlines to prepare for these kinds of exceptional scenarios is implausible. This should be treated as an exceptional circumstance and if the state has the capacity to bail out its aviation industry, it should.

India has very ambitious plans concerning its civil aviation sector and wants to compete against the world's best, we have seen how major European airlines have been bailed out either through direct cash inflow or loans, etc. It is quite shocking to see no monetary influx into the aviation industry, what is more, baffling is there were no tax exemptions either. In this kind of scenario, industries need state help which the government did not provide, this may eventually result at the end of a lot of airlines in our country.

#### **4. REGULATING BODY AND ITS ROLE DURING THIS PANDEMIC**

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Ministry of Civil Aviation (MoCA) is responsible for formulating policies and regulations for civil aviation in the country.<sup>24</sup> There are several autonomous bodies that are under the administrative control of MoCA. Directorate General of Civil Aviation (DGCA) is the main regulatory body that deals with safety issues and also deals with regulation of civil aviation services to and from the country.<sup>25</sup>

DGCA in its circular dated 21<sup>st</sup> May 2020<sup>26</sup> along with announcing various safety measures also announced fare caps i.e. maximum and minimum price of an air ticket between two places. Fixing prices in an open market is far from an ideal scenario, many argue that this goes against the principles of an open market. Usually, the market decides the prices itself and there are various factors involved like supply and demand, competition from other airlines, price of fuel, etc. which determine the prices in an aviation market. But, the government's concern seems genuine. Although prima facie it might appear and is in fact to some extent consumer-friendly because it is not allowing the airlines to charge exorbitant fees to try to cover up their losses, it also helps the airlines which are facing a cash crunch, against an airline with more funds who can

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<sup>24</sup>Organisation Setup, Ministry of Civil Aviation (Sept.7,2020,5:00PM), <https://www.civilaviation.gov.in/en/aboutus/orgsetup>.

<sup>25</sup>About DGCA, Directorate General of Civil Aviation (Sept.6,2020,5:00PM),<https://dgca.gov.in/digigov-portal/?page=jsp/dgca/topHeader/aboutDGCA/aboutUsDetail.html>.

<sup>26</sup>Circular No. 4/1/2020-IR dated 21<sup>st</sup> May , 2020, available at <https://dgca.gov.in/digigov-portal/jsp/dgca/homePage/viewPDF.jsp?page=topHeader/COVID/Circular%2021.05.2020.pdf>

throw them out of the market by reducing the prices of their tickets and aggressively increasing their capacity. But on the other side of this argument is that if the airlines are not allowed to charge exorbitantly to try to make up for the two month lockdown period, even then there is a probability of making the weak carriers close their businesses. These fare caps imposed by the DGCA might look very consumer-friendly but they are in fact trying to make the market more competitive and trying to help airlines that are facing cash crunches. This helps the weaker airlines to not worry about one less thing i.e. their cash-rich competitor. Yes, imposing fare caps, in general, is not ideal but this is an exceptional circumstance and the government is trying its level best to try to do the balancing act between the consumers and the airlines. Fare caps should not be introduced unless there is an exceptional circumstance where doing the same is necessary for the larger benefit of both the consumers and the airlines and the researcher believes that this is one such circumstance.

In another circular dated April 16, 2020, the MoCA had laid down certain rules for refund of air tickets. The summary of the circular is that if the passenger asks for a refund for his air ticket which was booked during the lockdown period, the airlines are obliged to pay him without any cancellation charges and within three weeks.<sup>27</sup> This order is highly favoring the passengers. The airlines on the other hand are trying to work towards a credit system which may extend up to a period of 2 years and may be used by the passenger in any route.<sup>28</sup> Proceedings of the case are still in progress; as various writ petitions were accepted by the court which was filed by the consumers who claim that this credit shell system is blatantly disregarding the April 16 circular and hence the actions by the airlines is ultra-vires. The latest development is that the airlines along with DGCA, MoCA are working towards a credit-based system which will be passenger-friendly because most of the airlines have minimal cash reserves, and refunding every customer will eventually lead to the sad demise of some of the airlines involved. The researcher is of the view that a credit system that will favor the passengers has to be agreed upon and enforcing this refund system in a sector that has already had devastating losses will only crush the sector.

## 5. CONCLUSIONS

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The road to recovery for the aviation industry is going to be extremely difficult. In India, the situation is even worse considering all the added factors the industry has to incur compared to

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<sup>27</sup>Circular No. 4/1/2020-IR dated April 16<sup>th</sup>, 2020, available at <https://dgca.gov.in/digigov-portal/jsp/dgca/homePage/viewPDF.jsp?page=topHeader/COVID/Circular%2016.4.2020.pdf>

<sup>28</sup>Coronavirus lockdown, Supreme Court admits plea for full refund on cancelled flight tickets, The Hindu (Sept.5,2020,6:00PM),<https://www.thehindu.com/news/national/coronavirus-lockdown-supreme-court-admits-plea-for-full-refund-on-cancelled-flight-tickets/article32016124.ece>

airlines in other countries. The aviation industry has always been a highly risky business in India. Even before the pandemic a lot of companies were barely making any profits, companies like Jet Airways shut down their operations and Indigo is single-handedly controlling more than 60%<sup>29</sup> of the market share in the country and has been in profit from the past 10 years. The market is imbalanced and highly favoring airlines like Indigo because of their cheap, affordable yet efficient services. So the fare caps might help the competitors and the passengers, there is however no guarantee that Indigo would have engaged in activities that would put its competitors out of the market.

Bailing out by the state was needed in some of the other forms for most of the airlines, even the richest airline in India, Indigo was forced to lay off 10% of its employees. The fact that the MoCA and DGCA have been consumer-friendly during this pandemic has not helped the airlines either, expecting full refunds from airlines at this stage would only make things worse. However, by a circular dated 2<sup>nd</sup> September, the MoCA has further eased restrictions and has allowed up to 60% of the airline's capacity to operate.<sup>30</sup> The bailout was necessary but structural and policy changes are the need of the hour, without these changes bailout might just delay what is inevitable i.e. the end of the majority of the aviation sector in our country.

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<sup>29</sup>Traffic Data July 2020, Directorate General of Civil Aviation (Sept. 7, 2020, 8:00 PM), <https://dgca.gov.in/digigov-portal/?page=jsp/dgca/InventoryList/dataReports/aviationDataStatistics/airTransport/domestic/airTraffic/Traffic%20data%20July%202020.pdf&main4264/4206/sericename>

<sup>30</sup>Order no. 06/2020 dated September 2nd, 2020, available at <https://www.civilaviation.gov.in/sites/default/files/DOC090220-09022020132609.pdf>