CHAPTER IV

APPLICATION OF INTERNATIONAL TRADING PRINCIPLES TO INTERNATIONAL AIR TRANSPORT

The magnitude of change that commercial aviation has undergone exerts enormous pressure on the bilateral regulatory system. Today commercial aviation is literally poised on the threshold of transition into a free-trade regime. Despite the recent trends discussed in the last chapter, the principle of sovereignty and national interests are still considered as a major hurdle in carrying out the liberalisation plans in air transport services. However, a compromise on ownership clause and flexibility in foreign investment clearly show the dilution of 'sovereignty principle' to a considerable extent. Moreover, instances of global equity alliances and interdependence through market-strategies have altered the fundamental nature of national carrier interests. A further development of a similar dimension is the change in aviation policies of different states. A close coordination of aviation
policies among nations has witnessed a rising trend towards 'regionalism' in air transport regulation [e.g. EU, LACAC and AFCAC].

Regionalisation has provided significant opportunities for the reduction or removal of barriers and a largely beneficient international cooperation. To explore every possible avenue of multilateralism and to benefit states from sharing opportunities and creating a larger commonwealth are the basic determinants of regionalism.¹ Regionalism, however, contains in itself a distinct trait: it may sometimes lead to what is called cartelisation. It is also symbolic of a 'trade bloc' in the strict sense of the term, as it prevents the non-regional carrier market access into the region (community-cabotage area), thereby defeating the purpose of liberalisation. The significance of the above phenomena is reflected in the recent shift in aviation industry from bilateralism to multilateralism which is widely perceived as an acceptance of an alternative at regional levels.

However further progress of multilateralism at global level is beset with various intricate problems. Multilateralism under a free-trade regime has a diabolical tendency to cause incalculable harm to small countries whose perceptions about international air transport is different from others. Basically the ongoing developments seem encouraging and satisfying to those states who perceive the aviation industry as a purely private economic enterprise. This is, however, not the perception of other countries, for whom economic interests are one among several national objectives. Even in a regional arrangement, though countries have accepted multilateralism internally, they may be short of reaching a common understanding on external aviation relations. Thus the conflict of interests and policies have left a hiatus between bilateralism and multilateralism to be filled by the aviation community.

Simpson, while presenting a paper to International conference, expresses the view that there are various national goals which may be pursued by air carriers which are not directly related to the economics of air transport markets: tourism, defence, maintenance of an indigenous aircraft manufacturing industry, political goals in foreign relations, independence in deciding on air services desired, etc., are goals for a nation which may cause the airline to be deviated from its own interests in economic viability. See Robert W. Simpson, "The Economic rationale For Regionalism" paper presented to an International Conference on Regionalism in International Air Transportation: Cooperation and Competition, organised by the Massachusetts Institute of Technology, held at the Amman Chamber of Commerce, Amman, Jordan, April 91-21, 1983, p.26.
The earliest occasion on which the aviation community dealt with the basic elements of commercial regulation was in 1947 when the ICAO convened in Geneva, a conference (an unsuccessful attempt following the Chicago Conference) to develop an agreement for a multilateral regime. Thereafter a series of conferences convened by the ICAO Council in 1977, 1980 and 1985, dealt primarily with coordination and harmonization of policy for the regulation of capacity, tariffs and non-scheduled air transport. These conferences did not make any attempt to suggest an alternative regime to bilateralism; however, it did touch upon several issues involving bilateral air agreements and principles of bilateralism in international air relations.

In 1992 ICAO convened a Worldwide Air Transport Colloquium where it included a topic on 'bilateralism and multilateralism'. In contrast the outcome was largely confined to aviation policies and perspectives of the participating countries and a broadly acceptable

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1 See the World Air Transport Colloquium on Exploring the Future International Air Transport (Montreal), ICAO, DOC, WATC 1.2, 14/2/92, p.1.
world-wide multilateral structure for the exchange of international air service rights was felt to be a remote possibility in the foreseeable future. Recently, ICAO called for a Fourth Air Transport Conference in 1994, which focused mainly on the regulatory content or tools needed for a less restricted industry which was to be in conformity with the general trends of changing regulatory approaches in most other service industries.\(^4\) The conference was not, however, charged with discussing a multilateral or any other type of agreement nor with considering amendments to the Chicago Convention, 1994.\(^5\) Thus a world-wide multilateral approach through ICAO has proved to be arduous for countries to apply on commercial aviation matters, though the efforts are still underway.

The idea of liberalization through GATT sprang into limelight with countries like the USA, the Netherlands and the Singapore advocating strongly for free-trade

\(^4\) See World-wide Air Transport Conference on International Air Transport Regulation; Present and Future (Montreal), 23 November-6 December 1994. ICAO DOC AT Conf./4-WP/4, Paragraph 2.6, p.3.

\(^5\) ibid., paragraph 2.2, p.3.
regime in international air transport. These countries indicated that liberalisation and bilateralism did not go together.\textsuperscript{6} Their tilt towards liberalisation was evident when they expressed the view that airline markets had become global and interdependent and that the market behaviour changed so rapidly with growing complexities which necessitated the elimination of restraints on competition allowing it to respond freely to serve the consumer needs.\textsuperscript{7} However, they were quite pragmatic in propounding that neither the Singapore approach, nor the Thai approach could be singularly accepted as an absolute programme for push button application the world over. Conversely, the resource constraints and differing economic priorities are forcing countries to change their policies accordingly to harmonize liberalisation with domestic necessities and requirements in each country. Accordingly, countries have different ideas on how a national economy should operate and in particular, how much government intervention in air transport sector is appropriate with

\textsuperscript{6} See Mathew Samuel presentation in World Air Transport Colloquium, n.3, p.2.

\textsuperscript{7} ibid.,
the advent of liberalization and globalization of international air services. It has, however, been felt necessary to establish a multilateral regulating system at the global level. This was not a new concept, but a long felt need to regulate international air transport. Despite repeated earlier attempts to execute the long-cherished idea, states failed to reach any consensus.

I. EARLIER EFFORTS AT A MULTILATERAL SYSTEM

By and large, the Chicago Convention was a commercial failure in the sense of realising the global economic importance of international air transportation. However, it did succeed in establishing the Provisional International Civil Aviation Organisation (PICAO), as an interim body to regulate and monitor the global air transportation. As a part of its immediate responsibility, PICAO evolved a proposal for a multilateral transport agreement in 1946.8

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8 The draft was prepared by the Air Transport Committee and was submitted to Interim Assembly of the PICAO. See PICAO DOC.2089-EC/57(1946).
The proposed draft was the culmination of the developments associated with the Chicago and the Bermuda Agreements. The following points spelt out in the 1946 draft are of prime importance for the current purpose of study:

(a) The 1946 draft granted all five freedoms without any need for bilateral negotiations. The language used for capacity determination was similar to that of Bermuda Agreement with one minor addition, which proposed "a rate differential of 10% may, however, be imposed on fifth freedom passengers than for a third and fourth freedom passenger on the same segment. The pre-determination capacity was ruled out by providing the airlines a "reasonable discretion". The government-involvement arose in case where it became imperative to prevent airlines from "undue continuation to operate excessive capacity" for destructively competitive purposes.\(^9\)

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\(^9\) See Article 15 of the 1946 draft Agreement.
(b) Regarding the fixation of rates, the authority vested with the airlines itself or the airline conference. In case of disagreement, the issue would be settled through bilateral negotiations. If the negotiations did not yield positive results then the aggrieved state could refer the matter to the International Civil Air Transport Board constituted by PICAO. The most remarkable feature about it was that the draft itself constituted a reasonable rate-structure to be charged.\textsuperscript{10}

(c) The most significant feature of the draft was the approach to the dispute settlement mechanism. If the parties failed to settle the difference through bilateral negotiations, the parties could refer the matter to the Board. The Board, in this regard, could exercise an extensive range of powers bestowed on it and it was incumbent on the parties that they "shall confirm" to the Board's

\textsuperscript{10} See Article 20 of the proposed Draft 1946. It provides that "rates shall be deemed unreasonable if they are found by the board to depart unduly from the level indicated by the costs of the most economic comparable operator, plus a profit reasonable in the circumstances."
Despite the extensive range of powers that the Board enjoyed, it was confined to passing a judgment on the following set of issues only:\textsuperscript{12}

(1) on inadequacy of a fifth freedom, rate differential or hardship resulting from one;
(2) regarding operation or threatened operation of excessive capacity of airlines;
(3) over instances of unreasonably high or low rates; and
(4) where the issue was of unfair competitive practices or unfair subsidies.

The draft also laid down, under Article 33, that the Board's decision could be subject to appeal within 30 days before the ICAO Council, which could dismiss it as void or affirm it or refer it back to the Board for a review or for further proceedings.\textsuperscript{13}

\textsuperscript{11} See Article 33 of the 1946 draft.
\textsuperscript{12} See Article 29 of the 1946 draft.
\textsuperscript{13} See Article 32 of the 1946 draft.
This leads to the conclusion that the 1946 agreement provided a better flexibility than the existing bilateral system. The airlines had considerable discretion in the matters of settling the capacity provisions and rate-fixation procedures with a rate differential formula for fifth freedom passengers. A notable achievement of the draft would have been that it provided for the establishment of an international regulatory body to check irregularities on capacity issues and for settlement of disputes, unlike the role of the ICAO Council under the Bermuda regime (where it had only an advisory role). Despite the best efforts by PICAO to work out a multilateral framework, a favorable environment to effect unanimity on this issue did not materialise. The controversy centered around the mandatory powers of the proposed international Civil Air Transport Board. Though Australia, Canada and India supported the proposal, the UK adhered to the principles of the Bermuda regime, and the U.S. outrightly rejected the proposal.\textsuperscript{14}

\textsuperscript{14} See PICAO DOC., n.8, pp.147-8. 
Another serious attempt to establish a multilateral exchange of traffic rights was made in May 1947. The approach to this problem was by the way of organising negotiations over the draft submitted to the First Assembly of ICAO by the Air Transport Committee of the PICAO, with the objective of a thorough review of the resolutions of the 1946 Interim Assembly and their subsequent implementation. As in the earlier draft, the new (1947) draft:

(a) provided no scope for bilateral route bargaining and

(b) accepted general principles relating to the capacity, fifth freedom, and

(c) provided fixation of prices to be propounded on the lines of Chicago-Bermuda regime.

The important feature of the 1947 agreement was that a statement of minority views was attached as Appendix C to the Air Transport Committee report, which sought to replace the Articles relating to the routes and capacity supported by the majority of the committee in the 1946 draft of the agreement. The point of difference between the views of the majority and the
minority sections of the committee was that the former contended that the airlines while taking unilateral decisions in exercising non-commercial rights, ought to issue one month prior notice. Similarly, in respect of their exercise of commercial rights, an issue of prior notice of four months, was to be a prerequisite. The minority, however, supported the application of the rules of bilateral regulatory regime. Unlike the 1946 draft, the 1947 draft agreement did not propose formation of any international body to regulate air transportation. The remaining provisions of 1947 draft were substantially similar to the Chicago Bermuda regime with little variations. However, the draft agreement could not be brought into force for lack of consensus among the governments. Accordingly, the ICAO Assembly resolved to convene a conference with the objective of evolving a multilateral agreement for the exchange of commercial rights in air transportation, which culminated in the Geneva Conference of November

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The subjects of primary concern of the Geneva Conference were the fixation of rates, exchange of rights on the specific routes, principles governing capacity, and settlement of disputes. But the Commission established by the Geneva Conference at the very outset frustrated the objectives of the conference, by proposing initial discussions on tentative decisions based on the bilateral route agreements, rather than multilateral exchanges, to be followed by discussions on other related subjects.  

This was because the conference aimed at formulating an unanimously agreed set of guidelines relating to traffic rights despite the objections of smaller states about laying focus on specific issues. But the rising number of unresolved issues and the

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16 It was considered to be the first session of the ICAO, "Commission on Multilateral Agreement on Commercial Rights in International Civil Air Transport, though confined to a plenary meeting of governments. The discussions were based on the 1947 Draft (Majority Version) which strongly supported the end of bilateral route negotiation.

Commission to attempt to resolve them resulted in an immediate breakdown of the conference.\textsuperscript{18}

Later ICAO made repeated efforts to work out the possibilities of a global agreement by adopting various resolutions in the Assembly, but ultimately it failed to achieve its efforts.\textsuperscript{19} In the context of achieving a multilateral mechanism through ICAO, majority of the States could never visualize the international civil aviation as a normal economic activity and isolate it from political attributes. On the contrary, whatever mechanism these states sought and accepted, demanded strict government supervision and regulation, i.e., for all intents and purposes, the states preferred a bilateral regulatory regime.

With the failure of PICAQ and the repeated attempts of ICAO as an international body to bring forth multilateralism in international air transportation,

\textsuperscript{18} ibid.

\textsuperscript{19} See Resolution A2-16 in ICAO-DOC.7017, p.10, A4-21 in DOC.7148, p.48 and also see Ivor Thomas, "Civil Aviation International Questions Outstanding", \textit{International Affairs}, vol.25 (1949), p.5665.
many states chose GATT as a multilateral non-regional alternative to existing regulatory arrangements.20

II. COULD GATT BE AN APPROPRIATE FORUM?

The widespread enthusiasm to develop a multilateral regime for air transport, did not coincide with a requisite consensus among states to choose a suitable forum to achieve this. A section of these States contended that ICAO being already a specialized agency, functioning in the area of air transport, there was no reason to opt for an altogether different agency like GATT.21 Another group of states saw the best prospects of achieving a liberalised multilateral agreement in breaking away from the traditional, technical organisations like ICAO and selecting a forum which was more specifically associated with the abolition of trade restrictions.22 But international institutions such as the International Chamber of Commerce (ICC) and

20 See n.4, ICAO DOC AT Conf./4-wp/13, P.1.
22 ibid., p.17.
International Air Transport Association (IATA) did not agree, then, with the view that international air transportation be brought within the purview of GATT. ICC expressed its view that "Air-Transport' be dealt separately, within ICAO and other related organizations, but should not form part of GATT. IATA opined that application of trading principles to air transportation would result in fundamental changes in the existing composition of the bilateral regime. Any attempt to apply GATT principles to the field of air transport, would require a background study of its special legal, technical and commercial aspects. In this regard, an effective agency that could successfully carry out this task would be ICAO. The Singapore Airlines Director Mathew Samuel, an ardent supporter of free trade, first expressed the view that "the GATT-Uruguay Round is one possible step forward to offer sufficient flexibility to make a gradual transition from current regime to


24 ibid.
multilateral one." Later, he changed his stance, stating that an agreement among like-minded countries would be easier to facilitate liberal trading principles. For this reason he suggested that it would be neither appropriate to redraft a Chicago Convention of 1990 under ICAO's supervision, for, it would not be acceptable to all the members; nor would it be advisable to invite GATT, since aviation markets across the world would not have an equal level of development.  

The 26th Session of the ICAO Assembly in 1990 emphasized the impact of trade in service negotiations on international air transport. It also expressed concern about the recent tendencies for liberalisation of international air transportation, undertaken at the international negotiations on trade in services of the Uruguay Round. Accordingly, in the 27th Session of the Assembly, it reaffirmed its competence as a multilateral


26 See Mathew Samuel presentation to World Air Transport Colloquium, n.3, p.2. He proposed a dual regulatory policy one, for liberal minded countries, a multilateral free trade agreement, and another regime for developing countries aiming to safeguard their interests.
body in the UN system in respect of international air transport. It also suggested that the contracting states, Parties to the Uruguay Round on matters concerning trade in services decide the primary points of internal conflict concerning the applicable legal system for the regulation of international air transportation. Next, it advised the ICAO council to forge an understanding amongst the international bodies involved with trade in services and draw up the role of ICAO in this respect.27 Finally, in an attempt to resolve the differences the Ministerial Declaration of the Uruguay Round itself provided that negotiations on services should take into account the work of ICAO and also the appropriate arrangements for consultation and co-operation with the UN, its Specialized Agency (ICAO) and other inter-governmental organisations concerned with the services.28

Finally, the negotiations on trade in services were initiated with the issue of Ministerial declaration on


the Uruguay Round under Part II, at Punta del Este in September 1986. The 'trade in services' covers within its purview banking insurance, transport - both air and maritime and telecommunications, professional skills, etc. The negotiations had set an agenda, covering the following aspects of 'trade in services':

(1) to establish a multilateral framework for trade in services with a view to expand trade and thereby to promote the economic growth of all the trading partners and aim at the development of the developing countries;

(2) to achieve higher levels of progressive liberalization in 'trade in services' aimed at promoting the interests of all participants on mutually advantageous basis and at securing an overall balance of rights and obligations.

To achieve these objectives, member states were required to consider seriously the national policy objectives, the special needs of the developing

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29 See the Preamble of GATS, MTN/FA II-A1B, p.3.
countries (which includes the strengthening of the developing services, efficiency and competitiveness) and the asymmetries associated with the degree of development of service regulations in different countries. Keeping this in view, member states have examined the application of trading principles and rules to the air service sector during the course of deliberations in Uruguay round Group of Negotiations on Services (GNS). The discussions in GNS mainly concentrated on the concepts and principles which were originally developed for trade in goods under GATT. For a further review of these principles, a working group was constituted in 1990, with a view to develop the disciplining of a multilateral regime governing the air transport sector.

III. RESENTMENT OVER INCLUSION OF AIR SERVICES UNDER GATT

The introduction of trading principles in the service sector, i.e., in air transport, caused resentment among states - both at the conceptual and
application/feasibility levels. As air transport sector is different from other service sectors, in nature, form and behaviour, the application of GATT principles to ‘trade in services’, originally designed for ‘trade in goods’ became a cause celebre between the developed and developing countries.

The inception of services under GATT has triggered off a heated debate between developed and developing countries. The developed countries perceive liberalisation of services under GATT as a revolutionary force to effect the development process in the developing countries. The unrestricted service imports is considered as a potential attribute to actuate efficiency in key sectors, access to advanced technology and support to exports in these countries. The arguments forwarded by the developing countries were dismissed as being devoid of economic sense and the position taken by them was dubbed as "a legalistic approach" to justify their opposition to the
liberalisation of services.\textsuperscript{31} The OECD, while discussing the relative impact of liberalisation of services on developing countries, outlined the interrelationship of liberalization gains from export opportunities with development benefits reflecting on increased efficiency in the allocation of domestic resources. However, the OECD severely criticised the developing countries for their policy of extending domestic support to indigenous-service-providers for ensuring export-growth, which contributes dearly to overall inefficiency and costs the economy of the country.\textsuperscript{32} The central contention of the developing countries was not over the acquisition of liberalisation gains or increased export opportunities, but the matter of concern was the multilateral negotiations on complexities of the services sector on the basis of incomplete data. Especially, in the backdrop of unequal and varied changes in competitiveness and comparative advantages, the liberalization of trade in services


\textsuperscript{32} See the OECD DOC. on Trade in Services and Developing Countries (OECD, Paris, 1980, p.6.)
proves inimical to the interests of the developing countries. In majority of the developing countries, the service sectors are still in a state of infancy and need protection against the fiercely competitive environment. Murray Gibbs and Knichito Hayashi while commenting on the multilateral framework of trade in services, strongly feel that the countries with developed market economy are dominant in virtually all services sectors.33 Regarding the liberalisation of service imports, they hold that it has a dynamic effect on the development process in developing countries, if carried out selectively and within the regulatory framework so that:

- import of such services does not undermine the ability of developing countries to carry out strategic national objectives;
- it does not restrict developing higher skills, knowledge-based services and information resources;

- it ensures their ability to compete in foreign market and should not result in developing country producers or consumers becoming captive to foreign service suppliers;
- it does not result in exacerbating the existing balance of payments disequilibria.34

The acrimony between the developed and the developing countries (which was finally settled by means of an accepting twin track system for negotiation of services quite different from GATT negotiations) continued until the US threatened to withdraw its tariff preferences for the developing countries if they continued to oppose the inclusion of services in the round.35

Despite the projected misgivings of various developing countries and ambitious plans of developed countries, a 'working group' was established aimed at circulating authentic information regarding services on

34 ibid., p.45.
the basis of the findings compiled after studies conducted at national level as well as comments contributed by the relevant international organizations on specific service sectors. The decision regarding the high level study was taken up in September 1986, at Punta Del Este. Despite taking into its fold all the accusations, the text of the decision (taken by the working group) spelt out the ideas and objectives of both developed and developing countries. The developed countries were particular about the inclusion of services in the Uruguay Round and the developing countries pressed for two-track negotiations. The text ensured that the two propositions reconcile in the best possible way featuring a multilateral action on services outside the GATT and of obtaining recognition of the developmental priority objectives and the supremacy of national law and regulations.

Another significant feature associated with the text was the proposed multilateral trade negotiations to be conducted on two broad scales.
Under Part I of the declaration, the contracting parties undertook to establish a Group of Negotiations on Goods (GNG) to supervise the subjects falling in its purview. The GNG, in turn, would be responsible to the Trade Negotiations Committee (TNC). Likewise, under the umbrella of the second declaration, the ministers (in place of contracting parties) decided to establish a group for negotiations on services (GNS), to deal with matters pertaining to services. The GNS too was made responsible to TNC. Thus, TNC appeared to be a common political establishment, to ensure that negotiations would be conducted on two parallel lines: one about the goods and the other for services.\textsuperscript{36}

For the initial level of negotiations, the GNS chose the following five subjects to focus on:

(a) Definitional and statistical issues;

(b) Broad concepts on which principles and rules for trade in services, including the possible

disciplines for individual sectors, might be based;

(c) Coverage of the multilateral framework for trade in services;

(d) Existing international disciplines and arrangements; and

(e) measures and practices contributing to or limiting the expansion of trade in services, including any barriers perceived by individual participants, to which the conditions of transparency and progressive liberalisation might be applicable.\(^{37}\)

These issues figured prominently on the agenda during various rounds of multilateral trade negotiations on services. The differences between the developed and the developing countries continued to subsist, while the negotiations made its headway towards progressively newer dimensions. The developing countries preferred to concentrate on the subjects of definition, statistics,

coverage and development, whereas the developed countries confined the sphere of discussion to broad concepts and barriers to trade in services. The controversy was centered on the priority of issues that could be placed on the agenda. The contentious issue was whether the definition be given precedence over the commencement of negotiations on concepts, or the negotiations should proceed without definition.38

The ensuing discussion in GNS underlined the following aspects to be considered in order to work out a multilateral framework for trade in services:

(a) the importance of statistics, in relation to trade in services;

(b) the relevance of various trading concepts including their compatibility with development;

(c) the importance of progressive liberalisation while safeguarding national policy objectives;

(d) the broadest possible sectoral coverage to ensure

a balance of benefits among participants; and
(e) the significance of such service transactions based on the movement of factors of production.

The outcome of these negotiations was the evolution of a multilateral framework for trade in services, popularly known as "General Agreement on Trade in Services" (GATS). This forms part of the Final Act embodying the results of the Uruguay round of multilateral trade negotiations.39 The draft agreement comprises thirty five articles, five annexes, inclusive of the one completely devoted to the air transport services. The service agreement, an integral part of the Final Act, rests on a tripod:40

(1) A basic agreement containing various general obligations, which apply to all members;

(2) National schedules containing specific commitments which will be subject to a continuing process of liberalisation.

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(3) A number of annexes addressing the special situation of individual sectors.

For the purpose of the present study, the basic agreement can be broadly categorised into three parts:

(a) Definitional aspects of Trade in services,
(b) Scope and coverage of the basic agreement,
(c) The concepts, rules and principles applicable to air transport services.

A Definitional Aspects

This part of the agreement attempts to identify the sphere of trade in services and assign to it a clear-cut region that accommodates the scope and meaning of the entire concept. The question as to what constitutes 'trade in services' is fundamental and complex. A paramount issue has been the consensus of opinions among the economists on the various components that constitutes 'services'. In general, it has been defined as "any transaction in service between the residents of
one country and the residents of another country irrespective of the place, where the transaction takes place".\textsuperscript{41} Care has been taken while attempting to define what should constitute 'service' so that it is self-contained and that there is no recourse to the definition of 'trade in goods' or any analogy thereof. Since a service transaction involves distinct characteristic features of its own, it is inappropriate to apply the former trade policy principles developed for goods.

Based on the above considerations the 'trade in services' would include the following three aspects:

(a) Cross-border movement of service;
(b) Cross-border movement of consumer;
(c) Cross-border movement of factors of production - where such movement is essential to suppliers.

During negotiations, the problem centered round one issue: whether or not to include the movement of factors

\textsuperscript{41} See Deepak Nayyar, n.38, p.113.
of production in the definitional region of 'trade in service'. While a few countries argued in favour of inclusion of foreign investment and labour services along with transportation, banking, insurance and professional services under the umbrella of services, some other countries opposed this and sought to exclude them from the list.\textsuperscript{42} In Deepak Nayyar's view, "any international discipline for services defined in a wider sense, would, thus, have to go beyond restrictions on trade \textit{per se} into the realm of regulations about the movement of capital and workers across national boundaries".\textsuperscript{43}

However, the Montreal mid-term review of the Uruguay Round in 1988, while discussing on the definitional aspects, decided that the issue should be examined further in the light of:\textsuperscript{44}

(a) Cross-border movement of service and payment,


\textsuperscript{43} See Deepak Nayyar, n.38, p.114.

\textsuperscript{44} See MTN. TNC/1 (MIN).
(b) specificity of purpose,
(c) Discreetness of transactions and
(d) Limited duration.

The above definitional aspects purposefully exclude the vital point of movement of labour services and capital movement. As a result, the efforts of the developing countries towards the claim of an equal status on movement of labour services as in services involving capital flows, were thwarted. Over and above this omission, the concept of development compatibility contained in the proposal prepared by the developing countries too did not find a place in the definitional aspects of trade in services.

The main criteria used in determining the transaction of trade in services is the movement of the supplier to the consumer and the movement of the consumer to the supplier across the border, in either direction subject to the cross border movement of payment. However, the transaction ceases to be a trade

\[45\] ibid.
in service when the non-resident supplier becomes a resident supplier or when a non-resident consumer becomes a resident consumer, since the payment is not crossing the border.46

On the basis of the above examination, the Final Draft of the GATS text incorporated the following aspects of supply of services in the definition of trade-in-services:47

(a) Supply of service from the territory of one member into the territory of any other member;

(b) Supply of service in the territory of one member to the service consumer of any other member;

(c) Supply of service by a service supplier of one member, through commercial presence in the territory of any other member;

(d) Supply of service by a service supplier of one member, through presence of natural persons of a member in the territory of any other member.

46 See Deepak Nayyar, n.41, pp.115-16.
47 See MTN/FA-II-AIB, p.4.
The above definition includes various sectors such as banking, insurance, tourism and to a certain extent the labour services, but no mention is made of foreign investment, though the term 'services' includes even the service of capital and partly appears to be covered by the narrow definition of services in the form of Foreign Investment Related Services.48

A fundamental problem arises, when air transport is sought to be brought within the purview of the definition of 'trade in services'. This involves the determination, "when does an international air transport assume the character of international trade". This also amounts to recognising as to what constitutes an export or an import of air service which will subsequently be instrumental in effecting liberalisation. No beginning seems to have been made as yet, on a definition of 'air transport service' from the viewpoint of international trade. The following definition of international trade in air transport is

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preferred herein: "any international transaction can be termed as international trade in air transport when an airline offers its services to potential consumers of another country for monetary benefits." For instance, when Air India offers its services to Australians, i.e., India exporting its service to Australia and when Qantas offers its service to Indians, India is importing service from Australia. When either nation offers its services to its nationals, there is, prima facie, no international transaction involved.

The underlying premise of the definition for international air transport is to remove non-tariff barriers and to facilitate progressive liberalisation on a non-discriminatory basis. However, non-discrimination is not a new concept under the existing bilateral regime, though it confines itself to administrative provisions. Regarding commercial provisions, airline

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49 Ken Tucker and Mark Sundberg define that, "Trade in airline occurs when an airline of one country sells its service to a resident; a corporation or government of another country". See Ken Tucker and Mark Sundberg, *Trade in Services* (London: Billing and Sons Ltd., 1988), p.156.

50 See Article 15, regarding airport and similar charges, Article 24, regarding customs duties, Article 44 includes the principle of non-discrimination between contracting states as one of the ICAO objectives mentioned in Chicago Convention, 1944.
operations are broadly categorised into two. One category relates to conditions pertaining to the conduct of business activities and the other, the operation of air services. While carrying out the business activities (trading rights such as airport slots, ground handling etc.) within the framework of free trade principles, it is unlikely to raise controversy. Whereas the traffic rights will certainly land the progressive liberalisation motive into complications. The regulation of traffic rights under bilateral regime is comparatively liberalised to a greater extent. This was what states precisely perceived and hence singled out air transportation as a unique sector to be kept aside. Hence the separate annex on air transport to the GATS text, instead of covering it under the general agreement.

The grant of traffic rights such as the third, the fourth and the fifth freedom rights gets further complicated, if brought within the purview of the definition of trade in air services. In this context it was rightly pointed out that, the mere presence of a
foreign air transport service in a country does not constitute an import of service unless there is an actual sale and use of its capacity, within the meaning of the GATT-approach.\textsuperscript{51} In the context of air transport services, analogous to trade in goods when a country earns foreign money by supplying service is called export of such service and pays foreign money for making use of any service it is termed as "import of service".

Let us examine the following propositions which constitute the export and import of air services.

1. **First Proposition:**

   An airline is carrying passengers from home country to a point in a foreign country. In this transaction, the travelling public includes both residents and non-residents. The offer and use of service take place in the country of the service provider. The payment made by the non-resident user in the country of service

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provider, amounts to export of service from the country of service provider, to the foreign country of destination. Since the money paid by the non-resident user, though does not cross border after the transaction, is still 'remitted' to the resident provider. For the country of destination it is an import of service.

2. Second Proposition;

An airline is carrying passengers from a foreign country to a point in home country. In this transaction, the resident user makes the payment to the non-resident provider and the payment thus made crosses borders after the transaction and is an export of service to the home country of the carrier, and certainly an import of service to the foreign country.

In the said two propositions, the movement of service and the movement of consumer are evidently clear. However, to constitute an international trade in service, it does not matter where the transaction has taken place nor is it necessary that the payment crosses
borders. Thus, the import of service is taking, in such a place, where its residents use a foreign airline either for travelling to a foreign country or returning home from a foreign country, which could be made subject to the economic regulation by that importing state. So also is the case with the export of service when a non-resident uses a resident airline in either direction.

3. Third Proposition:

An airline is carrying passengers from home country to a foreign country with a stop-over in another foreign country. In such cases, the arriving of non-residents by a foreign airline and returning of residents by a national (in return journey) airline does not constitute an import of service into the state of destination. The stop-over country, in such cases, should freely allow the transportation as long as there is no embarkation of traffic. If there is any such embarkation, the state should definitely concern itself economically with regard to the air transport service. Even the
disembarkation of non-resident traffic at the stopover place does not constitute an import of service.

However, Wassenbergh is of the view that the fifth freedom of the air should be freely granted by the state of destination if it concerns arrival of non-residents and returning of residents as the embarkation does not constitute an import of air transport service into the state of disembarkation. In his opinion, returning of residents even by foreign airline does not constitute an import of service, since the home state has already exhausted its jurisdiction by allowing its residents to spend money viz., purchase of ticket enabling the use of foreign airline.

The above view presumes that, returning of residents by a foreign airline does not constitute an import of service, since it does not involve the actual transportation of revenue traffic across the border. However, it is beneficial to the country providing service and potential loss to the receiving state. In

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52 ibid., p.89.
other words, though it does not constitute an import of service to the receiving state, it definitely amounts to export of service, if transported by an airline belonging to another state. This interpretation of trade in air services is definitely not applicable to the countries with huge traffic potential (USA). Since returning of residents by a foreign airline constitutes a major chunk of traffic flow, it constitutes no import of service and hence no economic regulation, though it is an export of service for an other country. The underlying assumption is that, what is import of service for one country is export of service for another. But here it does not seem to be so. There seems to be a lack of logical consistency in the definition so arrived at. Unless there is precision in the definition, the progressive liberalisation in air services will be in a state of quandary.

IV. CONCEPTS AND RULES APPLICABLE TO AIR TRANSPORT SERVICES

The General Agreement on Trade in Services (GATS) which refers to an Article of Agreement, which lays down
two sets of provisions as one of the main pillars of the Agreement. The provisions pertain to:

(a) general obligations applicable to all the service sectors of the parties to the Agreement in accordance with sectoral annexes.

(b) specific provisions to be followed by each party in accordance with the liberalization commitments negotiated bilaterally and laid down in national schedules to be attached to the Agreement.

Part II of the General Agreement spells out general obligations and principles such as the Most Favoured Nation (MFN) treatment and transparency.

These multilateral trading principles which developed out of GATT negotiations were primarily meant to liberalise trade in goods. However, these principles were found relevant for a framework agreement on trade in services and were enumerated in detail at Uruguay Mid Term Review. But consensus could not be reached

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53 See the Report of the GNS to the TNC meeting at ministerial level in Montreal, MTN/GNS/21 (1989).
among the participant countries over the implications of the application of these principles on individual sectors. Later, in December 1990 at the Montreal meet, the Brussels group negotiating on services submitted a Draft Proposal on General Agreement on Trade in Services, contained Draft Annexes which also included air transport services. Here trading concepts were discussed in relation to individual service sectors.

Following are some key principles applicable in relation to air transport services:

A. Most Favoured Nation (MFN) Principle:

The MFN principle under Article II, para II of the GATS reads:

each member state shall accord immediately and unconditionally to services and service providers of any other party a treatment no less favorable than it accords to like service and service providers of any other country.\(^{54}\)

It implies that the MFN principle shall be treated as a general obligation to extend the benefits of any

\(^{54}\) See MTN/FAII,AIB, p.5.
measure on trade in services from any country to all parties. However, granting unconditional MFN treatment to every service sector has become the centre of controversy between the developed and the developing countries. The developed countries argue that it is impossible to grant unconditional MFN treatment to all services alike. They suggest that the MFN principle be qualified in regard to certain sectors and conditional MFN treatment should be provided for in other sectors. At the same time the developing countries argue in favour of unconditional application of the MFN principle to all sectors rather than sectoral reciprocity, since it permits cross-sectoral trade-offs, compensation or retaliation as between service sectors.  

It is also contended that the sectoral reciprocity or conditional MFN has no relevance to trade in services sector and goes against the concept of comparative advantage. The final outcome is that though

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56 ibid.
unconditional MFN treatment has been incorporated as a principle in the Final text of the agreement, still parties may indicate specific exemptions to the MFN principle. The conditions for such exemptions are included as an annex and provision is made for review after five years with a normal limitation of ten years on their duration.\textsuperscript{57}

Various difficulties surface when the MFN principle is applied to air transport services. Basically, the Bilateral Air Service Agreement (BASA) speaks of the importance of 'balance of benefits' in the exchange of traffic rights between the pairs of countries. The exchange of such rights is mainly based on strict reciprocity. The reciprocity here denotes the bargaining power of the contracting parties and hence the allocation of rights are specific to some countries. In this sense, the air service agreements are highly discriminatory and heterogeneous since conditions vary from agreement to agreement. The MFN principle, in this regard, purports to eliminate discrimination between foreign airlines in providing traffic rights. But the

\textsuperscript{57} See MTN/FAII, AIB, p.27.
application of unconditional MFN principle in air transport services would not satisfy the interests of those countries which perceived the notion of 'bilateral reciprocity' as an idea of equal access to foreign markets. In the given asymmetrical situation in air traffic markets, countries with huge traffic potential would naturally be reluctant to provide MFN treatment to other countries where its own airlines do not have an assurance of comparable access. The United States could be an example. In a situation where countries have little traffic potential the unconditional MFN treatment would be an added advantage in entering the bigger markets. But this possibility could be actualized only when the airlines have the capacity to do so. Many developing countries with less efficient airlines and high tourist potential could be examples of this category. Implementing the unconditional MFN principle in the name of progressive liberalization and forcing developing countries to open up their markets to other signatories of the agreement is not justified without taking into account their capacity for greater access to foreign markets.
Thus, the application of the MFN principle to air services would be problematic and in order to provide developing countries with effective reciprocity in the liberalization process, certain compensatory measures should be provided. Another dimension of the controversy regarding the application of the MFN principle is the emergence of regional groupings, such as the European Union, the Andean market, etc. The regional arrangements as such are envisaged under the Chicago Convention (Art.77), and they do not violate GATT agreement. But what is significant about these trading blocs is that they affect the progressive liberalisation of trade in air services through unconditional MFN treatment. There is no misgiving about the unconditional MFN treatment among the member countries within the region, which is more or less a process of economic integration, if not a political one. What about non-regional members? Would they be treated on par with regional members, as far as unconditional MFN treatment is concerned? The answer is a definite
'No', because of the community cabotage area and recognition of the 'escape clause' even by ICAO under the Chicago Convention. However, under GATT it is yet to be decided. Moreover, if unconditional MFN is provided to non-regional members by regional blocs it would benefit the 'free riders' and protectionist states rather than the countries providing MFN treatment.

Thus, it was rightly observed that application of the MFN principle to air traffic rights will not only threaten the existing regulatory structure of international air transport but also impede its progressive liberalisation. Daniel Kasper observe that unconditional MFN under GATT as a vehicle for liberalising the air transport sector is totally flawed. In such circumstances, the benefits provided

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59 The 'escape clause' provides that "the grant of cabotage rights to state will be terminated as soon as other states make their claim for the same right". This arrangement was first made by SAS and even affirmed by the ICAO. See ICAO DOC.8775, A-16, Min., pp.1-19.

60 See the presentation of Vijay Poonoosamy to worldwide Air Transport Colloquium on Exploring the Future of International Air Transport Regulation, ICAO DOC WATC 3.11(1992), p.1.

for member states in the regional set up need not necessarily be provided to non-members. If a non-member state makes its claim to be treated on par with member states for the benefits, then the benefits accorded to the member states would cease to be considered as falling under the 'escape clause'. Due to these anomalies the very purpose of the MFN treatment would remain unfulfilled. To avoid such discrepancies in the application of unconditional MFN, it was suggested that the GATT approach should rely on multilateral negotiations to resolve the issue of free riders by ensuring a 'balance of concessions', i.e., to compensate potential gains in some sectors for free rider losses in other sectors.62 This is in fact a very ill-defined way to rectify the MFN derogations because the very proposed sectoral annexes are intended to provide a leverage for derogations from MFN.

B. Market Access

The principle of market access is yet another thorny issue because there is no consensus on its application to the trade in services. The confusion arises primarily in distinguishing market access from national treatment in service transactions. Unlike trade in goods, trade in services requires a simultaneous sale and consumption of services which is made possible by physical proximity between provider of services and user of services. Thus the market access in the context of services confirms, to non-resident service providers the right to establish commercial enterprises so that they can supply services. Accordingly, in the ministerial level meeting in Montreal the focus of discussion was on the treatment meted out to the capital and labour, accompanying the services and the modes of supply of services which has become a point of contention.

However, the Montreal declaration recognised national treatment as an element of effective market
access and extended it to the movement of capital as well. But as for labour, it is limited to highly skilled, temporary and essential, in providing such services. Consequently, the Final text of GATS provides for the establishment of services in another country according to the modes of supply enumerated in the Article I (i.e., scope and definition). Article I specifically refers to cross-border movement of capital as an essential part of the services and the members have agreed to allow such movement of capital, without any specific reference to the movement of labour. In international air services the market access principle should mean that the parties to the agreement commit themselves to grant increased access to their markets to foreign airlines and their activities.

Under the existing system of market access, foreign airlines are entitled to establish offices, opening up of Computer Reservation Systems [CRSs], provide ground handling services for themselves and such other facilities as will assist in an easy access to the

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See Part III, Article XVI of GATS, MTN/FA II-A1B, p.17.

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foreign markets and exercise of trading rights. In regard to traffic rights, the market access principle has no validity because of the prevalence of the principle of sovereignty and ownership clause. Moreover, regarding strict limitations imposed on the exercise of commercial freedoms [Chicago Convention] and route allocation, there is a widespread discrimination in air service agreements which would render the market access principle ineffective. Moreover, in a liberalised environment, the expectations of increasing number of new entrants are subjected to various regulations such as those relating to financial position and responsible management, which may also affect the market access principle adversely.

ICC has justified the limiting of market access, by prohibiting new air carriers, in the liberalised environment by imposing the above mentioned conditions, with a view to avoid adverse economic consequences for the efficiently operating air carriers.64 Under the existing system the Air Transport Agreement, 1944

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64 See ICC.DOC.No.310/433 (Dec. 1933), p.3.
encompassing all the five freedoms could be a possible multilateral framework for market access. But unfortunately it never came into force. The underlying interests such as the equal opportunity principle, the expected equivalent access to the major aviation powers and the perceived domination of stronger states over weaker ones, made the transport agreement virtually a dead letter. Therefore, efforts towards a multilateral framework on open market access in air services deserves a careful study.

C. National Treatment

The GATS agreement maintains that the national treatment principle is not mandatory but only constitutes a negotiated commitment. It provides that each member state shall give treatment to services and service suppliers of any other member state no less favourable than given to its own like services and suppliers. The efforts of the developing countries

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65 For details see Chapter II, Historical Perspectives on Exchange of Traffic Rights in International Air Transportation, Section III, p.36.

66 See Article XVII of GATS, MTN/FA-II-A18, p.18.
for preferential treatment was thus ruled out at the Montreal Ministerial meeting. The US draft text submitted to the GNS negotiations in early 1990 specifically excluded the possibility of granting preferential treatment to domestic service providers for developing countries on the basis of national policy objectives and developmental concerns. At the Brussels meeting, the developing countries fought to ensure that the national treatment principle be confined to the sectors and sub-sectors where they had agreed to specific concessions. But the Brussels text as finally adopted failed to provide any such concessions to the developing countries.

Another problem with the national treatment principle lies in the distinction between the nature of goods and that of services. In fact this principle had developed in the context of trade in goods. There the intention was to ensure that imported products were not discriminated against the domestic products. It means that national treatment would come into force once the

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67 See Murray Gibbs and Mina Mashayekhi, n.55, p.15.
imported product was provided market access and crossed national border (i.e., tariff regime). This implies that the principle of market access would take precedence over the national treatment. Thus the market access and national treatment principles were developed for two different purposes. For the tariffs imposed on goods are quite visible and quantifiable, whereas the case of trade in services is not analogous to trade in goods since no tariffs are imposed on import of services and that the restrictions which exist are invisible. Hence, application of national treatment principle to trade in services is quite complex. Moreover, in the case of trade in services the national treatment was accorded not only to the services but to the service suppliers as well, which is not the case with trade in goods. The text of GATS makes it clear that foreign enterprises will be given the same treatment which is meted out to the domestic enterprises, i.e., "both service as well as service supplier". Application of

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69 See Part II, Article XVII of GATS, MTN/FA II-A18, p.18.
the national treatment principle to air service implies that a foreign airline will receive the same treatment given to a domestic airline. This principle, however, had a little application in its scope in the existing bilateral air service agreements.

The existing air service agreements under the Chicago Convention accorded the national treatment to aspects which relate to ancillary rights or doing business activities, such as prohibited areas under Article 9 and other charges mentioned in the Article 15. However, regarding granting of traffic rights this principle has been subjected to severe limitations. These restrictions are as follows:

First, the prohibition on cabotage rights, where the foreign airlines do not have a right to claim the national treatment along with domestic airlines. With the emergence of regional arrangements the application of national treatment may further be restricted between countries belonging to different regional groups because a regional arrangement would be a 'community-cabotage
like area'. In such cases regional airlines always get more favourable treatment than 'foreign' airlines.

Second, the continuing trend of ceilings on foreign direct investment in domestic airlines further restricts the scope of application of the national treatment principle. Imposition of ceilings does not allow the national treatment principle to the extent where the free investment opportunity is available to the foreign airlines.

Third, the national treatment principle does not discriminate between liberal and protectionist states because it is not based on reciprocity and does not expect the same treatment from non-market economy countries (protectionist states). Therefore, it helps the 'free-riders' indirectly.

Lastly, the limitation on the national treatment principle also stems from lack of infrastructural facilities in developing countries which renders these countries unable to provide slot allocation and air
facilities alike in both summer peaks and winter trough. National policy objectives, development priorities and protection to upcoming airlines in developing countries also control the application of national treatment in air transport services.

In this context, it has rightly been pointed out that national treatment amounts to a guarantee of equal opportunities to foreign enterprises (airlines) by national governments. However, no government permits such equality of opportunity to foreigners.\textsuperscript{70} Thus, the application of the national treatment principle requires either the elimination of artificial barriers or the change in air policies of the states; a change in the very legal base is mandatory.

D. Transparency

Transparency is another important condition developed in the context of liberalising trade in goods. The problem arises when it is applied to trade in services. The tariff barriers or restrictions imposed on

\textsuperscript{70} See P.S. Randhawa, n.68, p.170.
the import of goods are quantifiable and quite visible, whereas, in the case of services, the restrictions (non-tariff barriers) are not visible and thus its application to non-transparent protective barriers is difficult to measure. The concept of transparency in air services thus involves the availability of economic data and accessibility to information regarding national laws, regulatory and administrative guidelines and relevant international agreements as it was envisaged in the text of the GATS Final draft.\textsuperscript{71} In the present situation the existing air service agreements are neither discriminatory nor flouted by any obligations to disclose the above mentioned relevant information for starting air services operations. In fact, states are under an obligation to register their bilateral air service agreements containing the general information regarding various aspects with the International Civil Aviation Organization.\textsuperscript{72} Certain factors that contribute to the lack of transparency in bilateral air service agreements, are mainly related to the

\textsuperscript{71} See Article III of the GATS, MTN/FA II-A1B, p.5.

\textsuperscript{72} See Article 81 and 83 of the Chicago Convention 1944, and also see the Digest of Bilateral Air Transport Agreement, ICAO DOC No.9511, Feb. 1988.
disclosure of any information which:

a) would impede the law enforcement,
b) would be contrary to the public interest,
c) would prejudice the legitimate commercial interests of public or private enterprises.\(^7\)

The "Commercial imperatives" of these factors being very high, they have been accommodated in the GATS text.

A greater degree of transparency in air services is feasible only when there is a willingness on the part of all the countries to co-operate to disclose such information.

V. PROGRESSIVE LIBERALISATION OF TRADE IN AIR SERVICES

Many delegates at the World Air Transport Colloquium held in October 1992 in Montreal vociferously expressed the opinion that "progressive liberalization"
was one of the stated objectives of the 'trade in services' negotiations and a cornerstone of the GATT approach.\textsuperscript{74} In fact, Part II of the Punta del Este declaration (1986), provides that "negotiations shall aim to establish a multilateral framework for trade in services"... with a view to "expansion of such trade under conditions of transparency and progressive liberalisation". Here it is clear that the main objective of the negotiations is "expansion of trade in services", which is to take place under conditions of transparency and progressive liberalisation. Thus, the progressive liberalisation is one of the means to achieve the above mentioned objective and not an objective per se. In fact, the same text has been incorporated even in the GATS Final Draft.\textsuperscript{75} In achieving the objective the text further provides that the multilateral framework for services must serve as a means to

- promote the economic growth of all trading partners, and

\begin{itemize}
\item \textsuperscript{74} See the presentation of Vijay Poonooswamy, n.60, p.3 and also Kasper, n.62, p.4.
\item \textsuperscript{75} See the Preamble of the Final text of the GATS, MTN/FA II, A1B, p.3.
\end{itemize}
- the development of developmental activities.

Moreover, in the process of progressive liberalisation member states agree to respect the policy objectives of national laws and regulations applied to services. Still it is not clear whether it implies that existing national policies should be dismantled if they operate as barriers impinging upon trade liberalisation or whether it is necessary to establish the concepts and principles of trade liberalisation in conformity with the existing national objectives, since they are not subjects for negotiations.

In the light of these factors, progressive liberalisation in air transport services will have to address not only the pervasiveness of regulations but also a common understanding regarding the existing asymmetrical relations between the developing and the developed countries. The application of trading concepts such as the unconditional MFN principle on a non-discriminatory basis would no doubt facilitate free market access to the developing countries. But how many
countries will come forward to accept the principle in the exercise of traffic rights being claimed for multilateral reciprocity, is an open question. One of the most surprising findings is that the US government, which is a strong supporter of liberalisation, expressed its desire to extricate air transport from GNS, since the US airlines vehemently opposed the inclusion of air transport in GATT.76 The US National Commission on Air Transport, while submitting its findings to the US President in August 1993, expressed its concern for the need to overhaul the bilateral system in preference to multinational system.77 The logic behind this is simple. The US, having a strong aviation industry and with a huge traffic generating potential, is well entrenched in the market. This made the US a principal beneficiary of the existing bilateral regulatory regime owing to a strong bargaining power. Thus any attempt to liberalise trade in air services should not focus on "adverse effects" of the existing regulatory regime but

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77 See the Standing Group Meeting on International Air Transport and the GATT, ICC DOC. No.310/413 (Nov. 1993), p.2.
on the "positive gains" which could maintain a balance between both developed and developing countries by acceding to the multilateral trading concepts. After all, the motive behind the regulatory regime is to find a place in the market instead of becoming a niche player or closing down the business.

VI. EVALUATION OF THE ANNEX ON AIR TRANSPORT SERVICES.

The sectoral annex attached to the final draft forms an integral part of the GATS. The inherent peculiarities in different sectors led to the adoption of various sectoral annexes which have been appended to the Final text, including the Annex on Air Transport Services. Owing to the difficulties inherent in the application of GATS principles, the measures affecting trade in air services are broadly classified into two categories, i.e., soft rights and hard rights. The GATS final draft issued in December 1992 divides the rights pertaining to air transport sector into hard rights and soft rights. The hard rights include (a) the traffic rights covered by the Chicago Convention, including the
five freedoms of air, and by bilateral air service agreements; and (b) directly related activities which would limit or affect the ability of parties to negotiate, to grant or to receive traffic rights or which would have the effect of limiting their exercise. Whereas soft rights include aircraft repair and maintenance services, the selling or marketing of air transport services and computer reservation systems.\textsuperscript{78}

The sectoral annex wholly excludes the traffic rights from the agreement, which thereby deprives the free market access currently under paragraph (2) of the Annex. It lays down that the agreement shall not apply to measures affecting traffic rights and such other activities directly related to the exercise of traffic rights.\textsuperscript{79} Nevertheless, the agreement applies only to the measures affecting:

a) aircraft repair and maintenance of service,

b) selling and marketing of air transport services,

\textsuperscript{78} See the Annex on Air Transport Services appended to the GATS, December 1992, and also see ICAO DOC WATC, 1992, 3.4, p.5.

\textsuperscript{79} See the Annex on air transport services, MTN/FA II-AIB, p.37.
c) computer reservation services.\textsuperscript{80}

Thus the draft annex excludes all hard rights and most of the soft rights from its coverage. However, the Annex under paragraph (4) specifically provides that it would be reviewed periodically at least every five years with a view to considering the possibilities of further application of the agreement in this sector. It thus provides for further extension of the scope of agreement which could include such other rights over which parties may reach consensus over a period of time. Further liberalisation of air transport depends on positive outcome of this arrangement, i.e., when multilateral liberalisation produces better results than bilateral liberalisation. As things stand now, the negotiations are mainly focused on issues relating to business activities.

However, there is widespread opposition from every corner of the world, including airlines and states on the exchange of traffic rights. The increased

\textsuperscript{80} See para (3) of the Annex on air transport services, ibid.
participation of the developing countries which is identified as a necessary condition for progressive liberalisation was not fulfilled in relation to traffic rights. Moreover, the present day air service agreements are conditionally flexible and liberal. Any alternative multilateral approach without such flexibility would further impede the progressive liberalisation of air services.

The limited inclusion of soft rights in GNS discussions are considered as a stepping stone for the successful progress in other related issues as well as on traffic rights. In this regard the Think Tank Association in its report optimistically identified the

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81 The following are various forms of Multilateral alternatives possible in the exchange of traffic rights based on free trade in aviation and liberalisation of international civil aviation:

A) Globalism: It means multilateral exchange of traffic rights within a global context and open the agreement to all sovereign states. The ICAO, the two and Five Freedoms Agreements, and GATS; are instances of Globalism.

B) Expanding Multilateralism: It means, the multilateral exchange of traffic rights within a smaller group of states, having a "common recognition of the importance of liberal market access" but with the intention of expanding the membership to other like minded countries.

C) Plurilateralism: It is substantially similar to the expanding multilateralism, where a minority of like minded states exchange traffic rights by an agreement, in which they deviate from a number of aspects of the applicable bilateral regulatory regime.

For a detailed study of these alternatives See B.D.K. Henaku, Regionalism In International Air Transport Regulation (Leiden, Koma publishers Association, 1993), pp.20-36.

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following advantages:

a) Though the coverage is limited in scope, it would be a significant step in the direction of multilateral liberalisation.

b) It would be a source of continuing pressure to liberalise the air transport sector.

c) It would offer some multilateral solutions to specific problems of doing business in airline operations that might prove superior to existing bilateral solutions to such problems.

d) It might serve a self-generating dynamic force for air transport liberalisation.

While commenting on the achievements of GATT on air services, Kasper opines that setting progressive liberalisation as the objective rather than the attainment of a liberal trade regime actually retards liberalisation. To overcome this difficulty, he suggests an alternative approach for "attainment of a


\footnote{See Kasper, n.62, p.4. Se also Vijay Poonooswamy, n.60, p.1.}
liberal regime for air services" through a targeted multilateral approach. According to him, countries willing to meet more liberal conditions in trading air services should reach an agreement based on a more liberal regime subject to the principle of conditional MFN principle. This approach, thought of as the best alternative to the GATT approach, is confronted with a number of conceptual and practical problems when applied to air services. Moreover, it is easier to extend the unconditional MFN and national treatment to like minded countries than to all. It can also avoid the free rider beneficiaries from the open liberal markets. Kasper further says that this approach does not exclude states but advance liberalisation by extending it to those who agree to terms of the agreement under the principles of national treatment and conditional MFN.

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84 See Kasper, n.62, p.5.
86 Ibid.,
This targeted multilateral\textsuperscript{87} or plurilateral approach\textsuperscript{88} is not in fact a new concept expounded by Kasper. In fact, similar views were expressed by Jagdish Bhagwati in the name of "middle approach" where he said, "going with like minded countries" outside GATT was to be preferred to freezing developing countries out of a service compact.\textsuperscript{89} Such an approach would indeed be an acceptable solution since it neither forced states to accept the rules and obligations which were necessary for other states nor would it prevent other states to join when they were able to accept and honour the liberal trading rules set out in that agreement. The only difficulty which is to be overcome in this regional plurilateral approach is that it should not play the

\textsuperscript{87} This is also Known as "expanding multilateralism proposes by the Participants of the "Think Tank" created by Global Aviation Associates. This body, after discussing the virtues of free trade, Published a Report on Liberal Multilateral Policy in International Aviation and advocated a form of multilateralism which would consists of "those countries with a "common recognition of the importance of liberal market access and a common commitment to achieving this objective. See Free Trade in the Air, Report of the Think Tank on Multilateral Air Transport liberalisation (Global Aviation Associates, Washington D.C., 1990) pp.2-6. Also See Henaku n.81, p.31.


role of a potential protectionist economic bloc. Because it widens the gulf between the developed and the developing countries which would eventually deny fair and equal trading opportunities to smaller aviation powers.

Thus the efforts of GATT in providing a multilateral trade regime for international air services albeit confined to a very narrow range of activities relate to ancillary rights. In regard to other issues such as traffic rights and related issues, it is clear that no common grounds have yet been identified for a broadly acceptable multilateral framework. The various alternatives put forward to include such activities would undoubtedly satisfy the needs unleashed by deregulation and liberalisation of the world's largest air service market. On the other hand, countries struggling to keep alive their policy priorities have felt that the current bilateral structure have served them very well. The current regulatory regime was criticised as bilateral anarchism. But one should not overlook the fact that the regulatory regime emerged out
of the conflicting national economic and political interests of the countries. Some conflicts are continuing even under GATT but this time with a new outlook. Hence, in any attempt to liberalise air services either through GATT or through plurilateral mechanism, the economic and political interests of various countries will remain fundamental in blocking a multilateral solution. Mere application of international trading principles to ancillary rights does not solve the problem and a broad consensus over the exchange of traffic rights is of utmost necessity. In this regard negotiations on economic issues under GATT, multilateral framework should focus on the possibility of increasing the participation of developing countries in the international market through liberalization. In contrast to economic issues, it is less complicated to bring other issues, such as ancillary rights, administrative concerns and conditions for doing airline business under GATT, since common positions are widely held in the existing
Chicago-Bermuda regime. In this endeavour, the multilateral approach may presumably be an opportunity to free the airlines from the web of the bilateral agreements.

It would be at a mistake to perceive GATT multilateral approach as the last opportunity to liberalise air transport. As it is rightly pointed out by John H. Jackson, "GATT as an instrument has many flaws". It is meant to serve the preconceived interests of the industrialised countries. In a recent analysis of Uruguay Round benefits, the GATT Secretariat revealed that "the elimination of restrictions in international trade barriers, resulting from the Uruguay Round agreement resulted in world income gains of $510 billion a year. But the big two - the US and the European Community - will take the lion's share of this cake and leave only about $116 billion for the developing and transitional economies as a group."
Is this the liberalisation one is striving for in the air services? The concept of liberalisation should be free from such ill-defined objectives, since it is not meant for market expansion vis-a-vis the question of participation in the international trade in air services. The attempt to induct air services sector into GATT framework needs to be freed from the monopolistic tendencies of trade in the hands of a few developed countries that has perpetuated an inequitable development of the world economy.
CHAPTER V

THE INDIAN CIVIL AVIATION SCENARIO - TOWARDS A POLICY OF LIBERALISATION

The developments at global level have brought significant changes in attitudes and perceptions of states towards international air transportation. The multilateral attempt, as seen earlier, is aimed at promoting the interests of all states on a mutually advantageous basis and securing an overall balance of rights and obligations. In the given asymmetries existing with respect to the degree of development in different countries, the need of the developing countries to safeguard their right of sustained involvement and effective participation in international air transportation continues to be a subject of high priority at all levels. To demonstrate some of the implications of these global developments on developing countries a case study of Indian civil aviation policy has been undertaken in this chapter.
Indian civil aviation is one of the founding forces of global aviation and has to its credit some of the pioneering flights in the history of aviation. The first commercial flight, the first of its kind in the world, took place in India, when a French pilot Louis Bleriot flew from Allahabad to Naini in 1911 carrying a cargo of 6,500 pieces of air mail.¹ The same year saw the enactment of the Indian Airships Act. Since then India, though a colonial country at that time, actively participated in various international conferences on aerial navigation, along with other members of the world community in shaping the global aviation. Global aviation industry has undergone some significant changes with the rapid development of aviation technology over time. The Indian air transport industry was not an exception to the impact of such changes, and it achieved major breakthrough in commercial aviation with the launching of Tata Airlines in 1932 The Madras Air Taxi Service in 1934, The Indian National Airways Ltd., in

1933 and The Himalayan Air Transport Company in 1935. The significant aspect of these companies lies in the fact that all of them were private enterprises with absolutely no government control or sponsorship. However, to provide a safe and orderly development of these corporations, the government enacted Indian Aircraft Act in 1934 and the Aircraft Rules in 1937. The main purpose of the Indian Aircraft Act 1934 was mainly to provide for the technical requirements of air transport operations like licensing of aviation personnel, registration of aircraft, certification of air worthiness and periodical inspections, licensing of aerodromes etc. There was absolutely no government control on the operations of air services and the routes over which they might be operated. In order to give effect to the powers conferred by the Aircraft Act 1934, the Central Government formulated the Aircraft Rules,

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3 See the Preamble of the Indian Aircraft Act 1934, and see also the Statement of Objectives and Reasons for the Aircraft Act, 1934 (Gazette of India, 1934), Part V, p.82.
1937. The 1934 Act and 1937 Rules together provided a legal and institutional framework to facilitate the Indian aviation industry to keep pace with the developments in aviation technology.

I. THE INDIAN CIVIL AVIATION SCENARIO IN THE POST-SECOND WORLD WAR PERIOD

The outbreak of World War II brought forth some remarkable developments in the Indian air transport industry. All commercial air services were suspended and whatever air transport operations allowed were directed to fulfil the war needs. Nevertheless, the wartime experiences provided a base for the reorientation of Indian aviation policy and reconstruction of the then existing aviation industry. As a sequel to the emergence of the new wave, the then Director of Civil Aviation, Frederick Tymms (later Sir Frederick Tymms), submitted various proposals to the government to enhance the strength and efficiency of the

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industry and also to improve the operational network.\textsuperscript{5} These papers were later collectively referred to as the 'Tymms plan'. This plan received the approval of the government which led to the announcement of its aviation policy, the first of its kind in 1946, which read, \textit{inter alia}, as follows:

The policy of the Government of India is to permit the development and operation of air transport services, internal and external, by a limited number of sound and reliable private commercial organisations, with their own capital and operated under normal commercial principles of risk of losses and prospects of gains. The operation of air transport services shall be subjected to licenses granted by Government. Without such a license no air transport service can operate. The grant of state assistance in specific cases will be entirely at the discretion of government and on conditions to be laid down in each case. In specific cases, government will take a financial interest in the companies operating air services and appoint a director on the Board. The Government shall not, however, take a controlling share in such cases.\textsuperscript{6}

A careful analysis of the policy revealed that the operation of air transport services was primarily

\textsuperscript{5} See M.R. Dhekney, \textit{Air Transport in India (Growth and Problems)} (Bombay: Vora & Co. Publishers, 1953), pp.84-85.

subjected to normal commercial principles. Secondly, no financial assistance was extended by the government, and thirdly the industry, that had been free for all, was brought under the regulation of the government vested with authority to grant the licences to the air companies to operate.

Accordingly, the Aircraft Act, 1934 was amended and an Air Licensing Board came into being to grant provisional licences to the existing carriers to continue their operation, and fresh licences for the new entrants. Consequently, Air Services of India and Deccan Airways Limited were established by 30 June 1946. Moreover, the period immediately after the war witnessed a sudden growth in the number of airline operators due to availability of American war-surplus Dakotas at cheaper prices and the considerable increase in traffic potential. Consequently, the Tata and Sons Ltd. soon transformed itself into ‘Air India’, a public limited company on 29 July 1946, followed by Mistri Airways.

See Mustafa Anwar, Civil Aviation in India (Calcutta: Thacker, Spink & Co., 1954), p.43.
(later changed into Indian Overseas Airlines) in September 1946, Bharat Airways in June 1947, Airways (India) in April 1947, Orient Airways in 1947 and Ambica Airlines in Kathiwar region, Jupiter Airways between Madras and Delhi, and Dalmiya Jain Airways between Delhi and Srinagar started their operations by the end of 1947. Of the total fleet of 113 scheduled airlines, Dakotas constituted the majority, over 96 and the rest 12 Vikings, 2 SO-90 and some Skymasters. 8

Apart from this, in order to provide a conducive atmosphere for the operation of the airlines, the infrastructural facilities were revamped and developed extensively. The revamping measures included strengthening of operational facilities and improving ground facilities, training centre for pilots, aircraft manufacturing units (HAL) and repair and maintenance of workshops etc. These developments in fact enhanced the efficiency of the airlines and helped to establish a well knit route pattern for both internal and external service operations.

8 See the Report on Progress of Civil Aviation, 1947.
In contrast, the termination of war witnessed a setback in the development of the air transportation, mainly because of the partition of India on the one hand, and the economic recession due to war, on the other.

The partition of India in 1947 considerably changed the route pattern due to the emergence of Pakistan. Most of the airlines before the Partition which had frequent domestic operations into Pakistan, became international with the independence of Pakistan and thereby affected the business of the air transport industry. For instance, Orient Airways shifted its headquarter to Pakistan and Indian National Airways wound up its entire routing pattern, connected to Pakistan. Consequently in India, the eventual increase in capacity of the operators with excessive work-force and a simultaneous decrease in the size of the market, forced the industry to undergo a critical phase in its early stages. This was further aggravated by the economic recession which gave rise to increased operational costs due to the price-hike in aviation fuel.
and high expenditure incurred on the wages of aviation personnel. Though the government granted various relief measures and concessions to the aviation industry to overcome the situation, it could not mitigate the loss. This became quite conspicuous with the winding up of some airlines. The Jupiter Airways on Delhi-Nagpur-Bezawada-Vizagapatam-Madras route went into liquidation in early 1949 and Dalmia-Jain Airways on Delhi-Srinagar route went out of the field of scheduled operators on 30 June 1949. Overall, a grim situation prevailed over the air transport industry at that time. It was rightly pointed out that it was economically unviable to sustain so many airlines in this underdeveloped country.⁹

As the situation warranted, the Government of India appointed a committee known as the Air Transport Inquiry Committee in 1950, under the Chairmanship of Justice G.S. Rajadhyaksha to probe into the deteriorating condition of the air transport industry.¹⁰ At the time of the appointment of the committee the following nine private airlines were operating scheduled air services:

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⁹ See Anwar, n.7, p.44.
(a) Air India,
(b) Indian National Airways,
(c) Air Services of India,
(d) Deccan Airways,
(e) Airways India,
(f) Bharat Airways,
(g) Indian Overseas Airlines,
(h) Himalayan Aviation, and
(i) Kalinga Airlines.

The main objective of the Committee was to enquire into and make recommendations with regard to the following matters:\footnote{See the Report of the Air Transport Inquiry Committee, (Delhi: Government of India Press, 1950), p.2.}:

(a) the state of the air transport industry in regard to both internal and external services;
(b) the shortcomings, if any in the operation and management of the industry as a whole or in regard to any individual company or companies;
(c) the major difficulties and defects in the industry as at present constituted;
(d) the operations of the air services, internal and external with the maximum economy, having due
regard to passenger fares, freight and mail rates. For such purpose:

(1) the reasonable needs of industry such as state assistance and cost thereof to the state,

(2) regulation of the industry and control over its management by the state,

(3) necessary reorganisation of the industry; and

(e) the desirability, practicability and economic consequences of the operation of the said air services under State ownership and management, either direct or through a body corporate, and the cost of acquisition of such ownership.

With these objectives in view, the Committee set about inquiring into the efficiency, operational strength and the financial aspects of all the existing airlines. After making a thorough investigation into the state of affairs of all nine private airlines the Inquiry Committee presented the following assessment of the air transport industry:

(1) the number of operating units were much greater than the requirement to handle the existing volume of air traffic on an economic basis.\(^\text{12}\) In fact,

\(^{12}\) See the Report of the Enquiry Committee, n.11, paragraph (194), p.108.
the Tymns plan had, on which the government based its policy for the post-war aviation industry, recommended that the operation of air services should be entrusted to a limited number of four private companies. In order to ensure an orderly development of air transport it also suggested the establishment of a licensing authority. Despite the recommendations, the Air Transport Licensing Board (ATLB) which came into existence on 1 October 1946, received over 95 applications from 21 companies, to operate on 122 routes. However, the Board granted licences only to 11 companies by the end of 1949.\(^\text{13}\) Though two of the licensed operators soon went into liquidation, the surviving 9 was itself a disproportionately high number, given the considerably low traffic market, making the operations commercially not viable.

(2) Too many operators also resulted in multiplication of overheads, thereby, increasing costs and wasteful competition amongst operators resulting

\(^{13}\) ibid., paragraph (107) and (108), p.54.
in reduced revenues.\textsuperscript{14} It was very interesting to note that, during 1947-49, the average overall load factor was as high as 65\%, much above the international load-factor. Despite the steady increase in load factor, the airlines ran into losses, mainly because of their increased operating costs. Excess staff in almost all airlines was another reason for incurring high costs and thereby low revenue. At the time of the constitution of the Air Transport Licensing Board, there were only four airlines operating on trunk routes—Air India, Indian National Airways, Deccan Airways and Air Services of India. In addition to this, the Board granted licence to the Indian Overseas Airlines to operate on such routes for which Air India already held a licence. Ambica Airlines was granted licence to operate in the region where Air Service of India was already operating. Likewise, Bharat Airways started parallel operations with Indian National Airways over Delhi-Calcutta route. Similarly, India

\textsuperscript{14} Ibid., paragraphs (110) and (111), p.55.
National Airways, Dalmia-Jain Airways and Bharat Airways were given licence for similar operations on the same route. Jupiter Airways started its operation parallel with Deccan Airways on Delhi-Nagpur-Visakhapatnam-Madras route. Leaving a few routes in North-Eastern region and on Coromandel route, almost all routes were overcrowded by too many operators. Addition of Kalinga Airlines in Calcutta-Agartala route further worsened the situation in the region. It was also pointed out that the superimposition of an additional operator to work out the scheme of night airmail services upon the then existing pattern of air transport operations further complicated the situation.\textsuperscript{15} By the end of 1949, almost all airlines except Airways (India) registered heavy losses in their operations. Even Air India, despite having a strong fleet, operating on more profitable trunk routes and having remunerable contract with Air India International incurred losses.

\textsuperscript{15} ibid., paragraphs (118), p.59.
(3) Excess equipment of the companies, with consequent drain of capital resources and low utilisation of fleet, too, resulted in heavy losses.\textsuperscript{16} The air transport industry immediately after World War II, had too many small carriers competing for a limited traffic and heavily concentrated on lobbying for attractive trunk routes. This was a clear indication of the economic deterioration in the industry which led the operators to incur a heavy load of overheads otherwise. Moreover the utilisation of fleet was much below the standard rate. By the end of 1949, the scheduled operators had a combined strength of 113 aircraft with an average utilisation well under 1,000 hours per aircraft per annum. As against this, the Tymns plan had recommended only for 32 Dakota type of aircraft on an average utilisation rate of about 1700 hours per aircraft per year. The operators had held that the Air Transport Licensing Board (ATLB) primarily responsible because it made it mandatory to possess the necessary fleet even

\textsuperscript{16} ibid., paragraphs (110) and (111), p.55.
before grant of the licence. Accordingly, the license granted did not permit the complete utilisation of the fleet, thereby leading to heavy losses. For instance, Air India utilised only 9 Dakotas and 7 Vikings instead of actual 14 Dakotas and 7 Vikings in its possession on an average of 1450 hours for Dakotas and 1350 hours for the Vikings per annum.\textsuperscript{17} Whereas Air Services of India's fleet comprised 8 Dakotas and 2 SO-95's, it, in fact, did not require more than 3 Dakotas and 2 SO-95's for its operations.\textsuperscript{18} Similarly, out of 13 Dakotas of Deccan Airways, 7 were sufficient to cater for its operations.\textsuperscript{19} Consequently, all the operators recorded a very poor utilisation rate and as such the extra fleet added to their high cost of operations.

\textbf{(4) Competition between the operators for a comparatively limited supply of technical}

\begin{itemize}
  \item \textsuperscript{17} ibid., paragraph (41), p.27.
  \item \textsuperscript{18} ibid., paragraph (69), p.37.
  \item \textsuperscript{19} ibid., paragraph (77), p.39.
\end{itemize}
personnel, resulting in rise in the wages and salaries to high levels, also contributed in turn to excessive operating costs.\textsuperscript{20} In the immediate post-war period, the operators enlarged their workshops and base facilities, which laid a firm basis for the technical infrastructure. But shortage of technical and skilled personnel with limited airline operations made it uneconomical. Even the limited availability of technical personnel forced the operators to pay relatively high salaries for their services.

(5) The uneconomic operations of the airline industry was rendered more precarious by high costs of aviation fuel and the incidence of Government taxes.\textsuperscript{21} Soon after the end of the war the prices of aviation fuel rose sharply. Though the government provided oil rebate over 22%, simultaneous increase of custom duty by over 30% was of no actual relief to the ailing industry. In addition to this, other taxes were continued to

\textsuperscript{20} ibid., paragraphs (112) and (113), p.56.
\textsuperscript{21} ibid., paragraphs (114) and (115), p.57.
be levied either partially or fully, counting heavily on the cost of the operators of air transport.

(6) Lastly, the tendency of reducing the air fares to uneconomic levels due to parallel scheduling and cut-throat competition further reduced the rate of earnings of airline operators.\textsuperscript{22}

The most unimpressive feature of the Indian aviation in pre-war period was the total neglect of external services. The limited operation, made by Tata and Sons to Karachi in the integrated India as a part of Europe Air Mail Scheme, started in 1938. This was further extended to Colombo via Madras and then the Colombo-Madras- Karachi was established as a connecting route to Imperial Airways' from Karachi to London. Till the establishment of Air India International in 1948, the external services were operated to serve colonial interests and not for commercial purposes. Little attention was paid to Tymms plan which suggested

\textsuperscript{22} ibid., paragraph (116), p.58.
competing in a particular region. For example, Bharat Airways with Airways (India), and Air Services of India with Deccan Airways.

(b) As a measure to reorganise the industry, it suggested only four operators having their bases at Bombay, Delhi, Calcutta and Madras, for this would provide a good geographical distribution and would synchronise with good overhauling and service facilities.

(c) The Committee opined that the purpose of licensing the private airlines by ATLB failed to bring the results that were intended to be achieved.

(d) The Committee recommended for the disposal of excess fleet in internal services, about 25 Dakotas, either by selling them out of India or by making use of them by the recently constituted Indian Air Force.

(e) For the reduction of costs, the Committee suggested retrenchment of excess staff, especially the non-skilled and semi-skilled personnel.

(f) The Committee appreciated the operations of Air
India International and felt the necessity of increasing the number of airlines and route network for external services.

(g) The Committee strongly recommended the necessity of Government financial assistance to the air transport industry under certain circumstances. After a comparative review of the position of airline industry in other parts of the world, the Committee argued that the successful operation of air transport services had been possible only through financial and other timely assistance provided by the state.

(h) The Committee concluded that nationalisation of air transport industry, on 'a priori' considerations, was necessary in the national interests such as defence and public utility requirements. The available resources could be utilised to the maximum advantage if the industry would run as a single unified unit. However, the Committee suggested nationalisation, subject to certain conditions such as the necessity of skilled personnel and technical efficiency in the
government to monitor and manage the highly technical industry to keep pace with contemporary developments.

The Air Transport Inquiry Committee, thus, made a comprehensive analysis of the then existing air transport industry and submitted its final conclusions and recommendations to the Government on 15 September 1950. The findings of the Committee in fact encouraged the government's move to nationalise the air transport industry. Earlier in 1947, the government discussed the question of nationalisation at a conference held in New Delhi on 1 February 1947, but failed to take any decision. Later the Government of free India in its First Industrial Policy Resolution, dated 6 April 1948, decided to control the planning and regulation of the air transport industry, leaving the development of air transport to private entrepreneurs. Moreover, the doctrine of socialism to which the Indian economy adhered to, accepted the concept of 'mixed economy' which further provided a leverage to convert some of the private enterprises into public enterprises. The Indian
air transport industry was one such sector which had been brought under heavy governmental control, with the passage of Air Corporations Act 1953.

The Air Corporations Act, 1953 [ACA] was intended to provide for the establishment of air corporations, by taking over the undertakings belonging to nine private airlines. Thus was formed, the two carriers Air India (initially it was Air India International) and Indian Airlines. The former was designated as the sole carrier for scheduled international operations while the latter was given a virtual monopoly on the domestic sector.

In reaction to the sad state of affairs of the industry, and eventual nationalisation, the then Chairman of Air India Ltd., J.R.D. Tata in his last speech on 22 June 1953, lamented:

It is with heavy heart that I address you today for the last time. In little over a month, as government take over all air transport operations, this company will cease to exist. The nationalisation of air transport brings to a close an era of twenty-one years, during which from small beginning the Indian Air Transport Industry
grew into the far-flung domestic and international system of today. As it is fashionable in some quarters to decry "free-enterprise", let it be remembered that the highly developed Indian air transport system which the government are acquiring ready made and at small cost, was built up wholly by private enterprise in spite of the many difficulties and restrictions placed in its path....

Despite all odds, Jagjivan Ram, the then Communications Minister on 14 March 1953, introduced a bill for nationalisation of Indian scheduled air services, both internal and external. As a result, the scheduled airlines came under the state ownership and management in pursuance of Air Corporations Act 1953, on 1 August 1953.

II. POST-NATIONALISATION ERA - OPERATION OF EXTERNAL SERVICES

The government decision to create a separate corporation for international operations culminated in the establishment of Air India International on 1 August 1953. The Air India International (AII) took over the

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25 ibid., p.130.
assets and business of pre-1953 Air India International Limited. The initial establishment of AII, was confronted with so many hurdles. It was mainly due to the conversion of Air India International Limited into AII; whereas its technical wing Air India Limited (domestic operator in pre-1953) along with other operators integrated into Indian Airlines Corporation (IAC). As such all the workshop equipment, ground facilities and ground personnel in India and also the handling agents and chief booking agents in India were transferred to IAC. Consequently, the AII was disentangled, from the previously integrated structure of Air India Limited and Air India International Limited, with a view to building a self contained international airline with its own workshops, ground services, officers and sales organisations.

The fleet in 1953 mainly consisted of four Lockheed Model 749A constellation aircraft. The first major task of the Air India, in its early stage was to expand its fleet in order to provide additional capacity for its operations and also to rectify disadvantages and
inflexibility inherent in the existing aircraft. With the government approval, it purchased three model 1049 E Super constellations at a cost of approximately Rs.375 lakhs and also took delivery of two more Lockheed Model 1049C Super constellations as an obligation under a contract placed by the Air India International Limited. By the middle of 1955, the Corporation fleet thus rose to nine modern long range aircraft. In addition to this, the Corporation entered the age of jet propulsion by purchasing two comet jet aircraft by mid-1957. This was in fact made necessary to have jet aircraft when most of the world airlines long range services were operated by jet aircraft, which the Indian corporation could not afford to ignore. Having 11 aircraft in its fleet strength the AII started its operations to various destinations such as London, Paris, Geneva, Dusseldorf, Rome, Cairo, Nairobi, Aden and Karachi from Delhi, Calcutta and Bombay with a total frequency of 32 flights per week. Like any other airline in the world, the AII, too, exchanged its traffic rights on the basis of bilateral agreements. In the very first year, for a period of eight months, the
AII carried over 30,556 passengers with an average load factor of 58.0%. During the first full year of operation, i.e., from April 1, 1954 to March 31, 1955, the corporation carried 44,362 passengers with an overall load factor of 61.0%. Since then the Air India (the name of AII changed to Air India in 1963) extended its operations and network to farflung areas with rapid increase in the number of passengers carried and passenger kilometers performed (see Table 1). 

26 See the First Annual Report of Air India (Bombay, 1953-54).
<table>
<thead>
<tr>
<th>Year</th>
<th>No. of Revenue passengers</th>
<th>Revenue Passengers kilo-meters flown (millions)</th>
<th>Aircraft Utilisation (hours)</th>
<th>Overall Load Factor (%)</th>
<th>Total No. of Staff</th>
<th>Net Profit/Loss incr.</th>
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<td>2,986</td>
<td>60.5</td>
<td>15,866</td>
<td>-21.30</td>
</tr>
<tr>
<td>1981-82</td>
<td>1,641,774</td>
<td>7622.8</td>
<td>3,117</td>
<td>63.4</td>
<td>15,267</td>
<td>10.36</td>
</tr>
<tr>
<td>1982-83</td>
<td>1,749,260</td>
<td>7993.2</td>
<td>3,070</td>
<td>59.9</td>
<td>16,296</td>
<td>38.04</td>
</tr>
<tr>
<td>1983-84</td>
<td>1,842,939</td>
<td>8623.0</td>
<td>3,213</td>
<td>61.5</td>
<td>17,764</td>
<td>57.39</td>
</tr>
<tr>
<td>1984-85</td>
<td>1,810,021</td>
<td>8217.9</td>
<td>3,175</td>
<td>63.4</td>
<td>17,636</td>
<td>44.69</td>
</tr>
<tr>
<td>1985-86</td>
<td>1,780,227</td>
<td>7593.4</td>
<td>3,166</td>
<td>60.4</td>
<td>17,458</td>
<td>66.00</td>
</tr>
<tr>
<td>1986-87</td>
<td>1,830,078</td>
<td>7731.9</td>
<td>2,950</td>
<td>63.1</td>
<td>17,443</td>
<td>30.16</td>
</tr>
<tr>
<td>1987-88</td>
<td>2,133,333</td>
<td>9004.9</td>
<td>3,403</td>
<td>63.7</td>
<td>17,328</td>
<td>-60.32</td>
</tr>
<tr>
<td>1988-89</td>
<td>2,110,200</td>
<td>8948.5</td>
<td>3,510</td>
<td>65.8</td>
<td>17,271</td>
<td>43.31</td>
</tr>
<tr>
<td>1989-90</td>
<td>2,238,335</td>
<td>9268.5</td>
<td>3,176</td>
<td>64.8</td>
<td>17,445</td>
<td>70.89</td>
</tr>
<tr>
<td>1990-91</td>
<td>2,046,847</td>
<td>8492.7</td>
<td>2,771</td>
<td>63.9</td>
<td>17,489</td>
<td>65.13</td>
</tr>
<tr>
<td>1991-92</td>
<td>1,983,492</td>
<td>8078.2</td>
<td>3,091</td>
<td>60.0</td>
<td>17,425</td>
<td>14.58</td>
</tr>
<tr>
<td>1992-93</td>
<td>2,178,706</td>
<td>8415.9</td>
<td>3,076</td>
<td>61.3</td>
<td>17,717</td>
<td>26.89</td>
</tr>
</tbody>
</table>

Source: AI ICAO ATR Form EF-1 and AI Annual Reports of various years 1953-93.
Net profit calculated after excluding non-operating expenses and taxes.
By March 1993 it carried over 2,178 million passengers (includes both domestic and international) by operating over 8,415 million passenger kilometers. In fact the passenger traffic carried by Air India increased by 71 times over a period of 30 years; correspondingly the world traffic increased only by 18 times from 58.06 million to 1027.72 million. However, AI's rate of growth in international air traffic during 1983-1993 compared with the growth rate achieved in the 1960's and 1970's was far from satisfactory. In 1955-63 the average growth rate stood at 44.0%, whereas it declined to 18.0% in 1963-73 and 17.0% in 1973-83. In 1983-93 it further declined to a meager 1.82%. These figures include both domestic as well as international traffic. If we look at the figures of international traffic alone it stands at 13.1% in 1960-70 and 13.3% in 1970-80 and as low as 4.6% in 1980 onwards.

While explaining this confirmed decline in performance to the Parliamentary Committee, Air India said, the double digit growth rate achieved in the sixties was accounted for by the fact that the traffic

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was small and the industry was in an expansionary stage of development. During 1970s the growth in traffic was chiefly attributed to the advent of wide-bodied jet aircraft and thereby an increase in capacity coupled with higher productivity and lower unit operating costs of their aircraft. The poor performance in 1980s was mainly due to world recession and the general adverse economic conditions prevailing during these years.29

Another significant point regarding the market share of Air India in world market as well as in its own country’s international traffic, gives the untold story of the airline’s struggle to keep its flag flying. The world traffic expanded nearly 29 times from 9.6 million in 1954 to 276.1 million in 1990.30 However, Air India’s share was far below the expected level and it never reached 2% in the world traffic in its 40 years of history. In the initial year, i.e., in 1954 it was 1.5% and subsequently declined sharply to a of 0.6 % by 1974. Thus the market share was always fluctuating, at around 1% and has never exhibited any signs of significant improvement.31

29 ibid., p.42-43.
30 See Baldev Raj Nayar, n.27, p.2670.
The dismal part of Air India's performance was its lackadaisical tendency in maximising the utilisation of its rightful claim in its own market. The performance of the carrier in India's international traffic fared well over 50% until 1970s and as such its objective in adhering to strict bilateralism was thereby fulfilled by sharing 50-50 share of the traffic. It gradually dropped to 40% in 1974 and immediately shot over 50% in 1977. Since then it started declining, dropping down to an abysmal low of 19 per cent by the end of 1993 (see Table 2).

**TABLE 2: PASSENGERS CARRIED ON SCHEDULED SERVICES OF AIR INDIA AND FOREIGN AIRLINES IN INDIA'S INTERNATIONAL TRAFFIC, 1986-93**

(figures in thousands)

<table>
<thead>
<tr>
<th>Year</th>
<th>Air India Domestic</th>
<th>Foreign Total</th>
<th>% of Air India's Share in traffic</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Domestic National</td>
<td>+ International</td>
<td>Inter- + Domes- + Inte- + Domes-</td>
</tr>
<tr>
<td></td>
<td>(Domestic + + + )</td>
<td></td>
<td>Inter- + Domes- + Inte- + Domes-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>National</td>
</tr>
<tr>
<td>1986-87</td>
<td>403</td>
<td>1386</td>
<td>1789</td>
</tr>
<tr>
<td>1987-88</td>
<td>507</td>
<td>1612</td>
<td>2119</td>
</tr>
<tr>
<td>1988-89</td>
<td>400</td>
<td>1838</td>
<td>2110</td>
</tr>
<tr>
<td>1989-90</td>
<td>397</td>
<td>1841</td>
<td>2238</td>
</tr>
<tr>
<td>1990-91</td>
<td>364</td>
<td>1683</td>
<td>2046</td>
</tr>
<tr>
<td>1992-93</td>
<td>393</td>
<td>1785</td>
<td>2178</td>
</tr>
</tbody>
</table>

Source: AI ICAO ATR FORM A-1 of various years.

* Figures derived by calculations.
On the contrary, the foreign airlines' share in India's international traffic has picked up since 1975 from nearly 50% to 75% in 1986-87 and thereafter increased by over 80% during 1992-93. While accepting the decline in Air India's share, the then Chairman and Managing Director Yogesh Chandra very, optimistically said:

One of my principal goals is to get Air India back into growth mode. It has remained stagnant over the last 10 years. The flag carrier has now only 26% of Indian international traffic. We should have at least 35% to 40% of our own market.\(^{32}\)

Thus under the existing bilateral regulatory system, Air India was neither protected from the over-exploitation of the foreign airlines nor did it make any efforts to utilise the traffic rights derived from the bilateral arrangements to the full extent. If the year 1975-76 is taken as the starting point marking the declining trend, the Air India and the Indian Airlines together operated 170 flights in other countries as against 217 services actually operated into India by foreign airlines.\(^{33}\) For instance, Swiss Air operated 7 times as against 3 times of AI's, PANAM 12 against AI's 7, Qantas 3 against AI's 1, BOAC 18 against


AI's 16, Aeroflot 5 against AI's 2. The then Director-General of Civil Aviation (DGCA) admitted that Air India had not been utilising fully its entitlements regarding frequencies but explained that "reciprocity under bilateral air service agreement does not mean actual operation of frequencies but depends on the actual rights for operations taking into account the revenue and traffic benefits and the consideration of commercial arrangements necessary in considering the totality of reciprocity." This explanation sounds good, since Air India during the year 1975-76 and 1976-78 overtook the foreign airlines in carrying maximum passengers with limited frequencies, resulting in huge profits of over Rs.63.5 million in 1975-76, Rs.176 million in 1976-77 and an all time high of about Rs.250 million in 1977-78. Of course, the introduction of nine Boeing 707s and five 747s with considerably young fleet brought down the operational costs; the exemptions granted from payment of customs duty on aircraft spares, sales tax on aviation fuel in 1975-76 to 1977-78 and better management of resources under the dynamic leadership of J.R.D. Tata in his last days contributed to make huge profits despite its deficit in the previous two years. Yet the Parliamentary Committee observed

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34 See the Annual Reports of Air India for profit and loss statistics in 1976-1978 (Bombay, 1978).
that, "but for the substantial reliefs enjoyed by Air India, the financial position of the Corporation would not at all be gratifying."\textsuperscript{35}

If we accept the same interpretation for reciprocity given by DGCA in 1978, further decline of AI’s share in India’s international traffic to 19\% in 1993 offers no excuses. Despite the profit making spree, the business of the industry is shrinking on all counts. On the question of imbalance in the carriage of passengers and inability to operate on certain routes, the Air India while defending its position said that, if it had secured a right to operate under the agreement, it could penetrate that market and carry passengers at a future date. This may, at best be wishful thinking, but it does not augur well with the realities of the situation. It would not be so easy to enter the already entrenched market, if not penetrate, and it would also be quite formidable to have a niche in the said market due to the monopoly of mega carriers with better on-line connections and extensive hub and spoke operations, in the wake of liberalisation and globalisation. Moreover, receiving compensation from foreign airlines without operations under a bilateral agreement, though may avoid

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incur any monetary loss, in the long run it curtails the area of operations, thereby perpetuating stagnation in the industry.

The most striking feature of the AI’s performance lies in its profitable operations (see Table 1). Since its inception in 1953, the Air India’s financial results always recorded net profits. Barring a few years in 1971-73, 1974-75 and 1979-81 and recently in 1987-88 (see Tables 1 and 3), it had always been a profitable organisation. The reasoning of AI explaining its losses in 1970’s related to world wide economic recession. The 1980-82 losses were attributed to the increase in operational costs as a result of unexpected hike in oil prices in 1979 followed by recessionary market conditions and decline in traffic, apart from other factors which were beyond the control of the management (such as strikes).
TABLE 3: FINANCIAL RESULTS OF AIR INDIA, 1983-93
(Figures in thousands of Rs.)

<table>
<thead>
<tr>
<th>Year</th>
<th>Revenue</th>
<th>Expenses</th>
<th>Operating Results*</th>
<th>Net Profit or Loss</th>
</tr>
</thead>
<tbody>
<tr>
<td>1983-84</td>
<td>7795.5</td>
<td>6924.3</td>
<td>871.2</td>
<td>573.9</td>
</tr>
<tr>
<td>1984-85</td>
<td>8352.4</td>
<td>7644.7</td>
<td>707.7</td>
<td>446.9</td>
</tr>
<tr>
<td>1985-86</td>
<td>8470.9</td>
<td>7904.8</td>
<td>566.1</td>
<td>566.15</td>
</tr>
<tr>
<td>1986-87</td>
<td>8403.2</td>
<td>8437.9</td>
<td>465.3</td>
<td>465.37</td>
</tr>
<tr>
<td>1987-88</td>
<td>9958.7</td>
<td>10019.0</td>
<td>-60.3</td>
<td>-60.32</td>
</tr>
<tr>
<td>1988-89</td>
<td>11508.4</td>
<td>10842.6</td>
<td>665.8</td>
<td>433.10</td>
</tr>
<tr>
<td>1989-90</td>
<td>13681.7</td>
<td>12411.5</td>
<td>1270.2</td>
<td>708.9</td>
</tr>
<tr>
<td>1990-91</td>
<td>16268.8</td>
<td>15537.0</td>
<td>731.8</td>
<td>651.3</td>
</tr>
<tr>
<td>1991-92</td>
<td>19651.8</td>
<td>18021.1</td>
<td>1630.7</td>
<td>1458.9</td>
</tr>
<tr>
<td>1992-93</td>
<td>24358.6</td>
<td>21467.8</td>
<td>2896.6</td>
<td>2689.7</td>
</tr>
<tr>
<td>1993-94</td>
<td>1741.01</td>
<td>1586.15</td>
<td>154.86</td>
<td></td>
</tr>
</tbody>
</table>

(till Nov. 1994)

Source: AI ICAO ATR FORM EF-1 of various years.

* Operating results do not include non-operating expenses.

Surprisingly, the Air India has registered its profits over the years despite its reduced market share and low average yield per revenue tonne kilometers. It implies that the amount of profits accrued to the AI has been derived from its limited operations and little business activities. We have seen earlier how the market share of AI in the world market and India’s international traffic has been continuously showing a declining trend. Because of the poor average yield, the carrier incurred losses in 1971-73, 1974-75 and 1979-91. Even in the year 1977-78 it recorded all time high profits, despite the persisting low average yield. When
compared with other foreign airlines, such as KLM which recorded average yield 57%, Swiss Air 70%, Air France 57.7%, Lufthansa 61.1%, Alitalia 59% and British Airways 55%, Air India recorded 46.9% only in terms of U.S. cents. The trend of low average yield continued even in 90s. Even when western carriers registered continued losses, the Air India made increasing net profits in successive years. It reached Rs.14.58 crores in 1991-92 and it further rose by 85% to Rs.26.89 crores in the year 1992-93 (see Table 1).

One reason which could be attributed to the low average yields per tonne kilometer, is that the routes operated by Air India are not economically viable and thus the operational costs are increasing. If we take the 1977-78 as the base year since it rendered an all time high profit (with an absolute growth of 177%), the routes operated by Air India during 1979-85, realised substantially low returns. The Eighth Lok Sabha Committee on Air India identified that 13 out of 16 routes operated by Air India have been incurring losses continuously for many years. These are (1) India-Canada, (2) India-Australia, (3) India-Singapore, (4) India-East Africa, (5) India-Mauritius, (6)

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India-Zimbabwe, (7) India-Bangladesh, (8) India-USA, (9) India-UK, (10) India-Continent, (11) India-Japan, (12) India-West Africa, (13) India-Thailand. The only profitable routes for Air India were India-USSR, India-Zambia and India-Gulf. The Committee noted that the India-Gulf route has been the revenue spinner right from the day one. More or less, this trend has continued even into the 90s with only one addition to profit making routes, i.e., India-Japan in 1987. In contrast to this, with a rapid growth in Asia Pacific traffic, the foreign airlines have increased their operations in the Indian market. Business-wise in 1992, the Indian market ranks fourth among the top 5 destinations for KLM after Japan, Taiwan and Indonesia for both passengers and cargo. For Lufthansa, India has emerged as the leading country after Japan and Hong Kong, and for Swiss Air, India ranks the third after Japan and Hong Kong. In 1992, the surplus profits registered by British Airways had gone up (in 1993) from Rs.87.75 crore to Rs.133.66 crore; for Lufthansa from Rs.204.43 crore to Rs.372.78 crore; for Singapore International Airlines from Rs.95.15 crore to Rs.146.20 crore and for KLM from Rs.43.18 crore to Rs.62.29 crore. In all, airlines are

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37 See Fourteenth Report of COPU on Air-India Working Results and Traffic Growth (1986-87) (New Delhi: Lok Sabha Secretariat, 1987), p.27; and also see Baldev Raj Nayar, n.31, p.11.

38 See Times of India (New Delhi) 23 April 1994, p.3.
taking nearly Rs.1,000 crores out of India from their operations.\textsuperscript{39}

Moreover, the average break even load factor always remained between 50 to 60\% and the prices of aviation fuel increasing sharply over the years. It is very difficult to comprehend as to how Air India could continue to make profits by operating such routes incurring losses, losing passengers’ share year by year and with simultaneously increasing operational costs. The following reasons perhaps explain, on close evaluation, Air India’s profit making trend:\textsuperscript{40}

(a) Low-labour costs,
(b) Modest debt repayments, and
(c) High yield Visiting Friends and Relatives (VFR) traffic.

Another major reason that has led to the decline in market share and thereby industry’s growth is that Air India being basically an ethnic carrier, relied mostly on Visiting Friends and Relatives [VFR] traffic. The sluggish growth in tourism further added to the capacity

\textsuperscript{39} See Hindustan Times (New Delhi) 18 August 1994, p.18.

\textsuperscript{40} For a detailed analysis, see Baldev Raj Nayyar, n.31, pp.8-9.
shortage. Though the carrier in its early stages of development carried substantial number of tourists, i.e., half of its clientele were non-Indians, it, in later years, received a setback due to various reasons. The government from time to time fixed highly ambitious targets which were never achieved. For instance, in 1983-85 it was projected to 2 million but received only 0.8 million. For 1990 it received 1.33 million as against the fixed target of 2.5 million. The insufficient political motivation, frequent dislocations of flights, lack of tourist development activities and poor financial resources are some of the major reasons for the non-fulfillment of target propositions. This eventually forced the carrier to bend towards ethnic traffic and as a result the Gulf route has become more profitable than any other because of high concentration of Indian population in Gulf.

To worsen the situation further, the government announced its open skies policy in 1989 as a corollary to the policy of economic liberalisation and globalisation. The open sky policy does not mean operation of foreign in the Indian market without any conditions of reciprocity and royalty. However, it

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would mean that foreign airlines would be allowed increased frequency of operations in India on a case by case basis. The policy of free for all would never be a reality. No country in the world has declared its skies 'free for all' to all foreign competitors so far. The Government of India which reposes its faith on the existing bilateral aviation regulatory system claims itself to be more liberal.43

At the time of this writing, a change in the existing policy is imminent. Air India's present strategy to cope with the prevailing competitive regime in the global air transport industry requires a new orientation. In this context the following points, deserve elaboration:-

(a) The first and foremost point to be made is that the government should not interfere in the activities of the airlines as such. The concept of managerial autonomy is more essential in fulfilling the commitments of the corporation towards the consumer as well as in foreign exchange earnings.44 The last Chairman of Air India, Russi Mody, is reported to have strongly

43 See the Presentation of Aruna Mascarenhas to the worldwide Air Transport Colloquium held in Montreal, 6-10, 1992, ICAO DOC. WATC, 1.17, pp.1-5.

argued for total privatisation of management in fobbing off various pressures from different quarters.\(^{45}\) The heavy bureaucratic control such as appointment of civil servants, with no professional expertise on the boards of the Corporation clearly shows the lack of commercial orientation.

(b) The policy of the government towards aviation industry should primarily focus on the needs and interests of the Corporation. The political considerations on operation of routes in 1980's such as India-Zimbabwe, India-Canada and India-Mauritius have turned out to be very expensive, and the airline has not even recovered the direct operating costs.\(^{46}\) The recent strategy of the government to break the united stand of the Arab-Gulf Cooperation Council (AGCC) which unceremoniously recommended the suspension of operations between India and Gulf, due to the outbreak of plague in Surat, has cost the Indian carriers heavily.\(^{47}\)

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45 See King Shuk Nag and Rohit Bansal, "Russi's One Point Plan for Airlines", *Times of India* (New Delhi), Nov. 9, 1994, p.1.


47 In return, the Government promised additional landing flights to both Oman and Qatar Airways for leaving the other two partners Saudi Arabia and Kuwait in the cold since they argued for suspension. Such steps though justified on purely commercial grounds, reflects the lack of foresight on part of the government because, in the long run, any additional flights and landing slots to the Gulf carriers at Indian airports especially on the lucrative
(c) Increase in competition usually marks a reduction of air-fares. With the advent of liberalisation, the competition increased, especially on profitable routes. The Indian market in the Asia Pacific region is one of the fastest growing markets in the world, which has recently witnessed increasing competition among various foreign airlines. Eventually, almost all the foreign airlines either reduced the actual fare or offered discounts on the existing fares. Surprisingly, the order of DGCA which imposed ceilings on the foreign airlines not to discount fares originating from India does not seem to be justified. In commercial sense, it does not pay-off either in terms of monetary benefits or of protection to Air India. The DGCA directive may prevent the travelling public originating in India from benefiting from the low prices, but it cannot prevent the foreign airlines from selling discounted tickets to the passengers coming into India.48

Trivandrum-Gulf or Madras-Gulf route, would cost heavily for India's flag carrier. See Indian Express (New Delhi), 8 October 1994, p.5.

It indirectly amounts to encourage the "Havala" market by forcing people to buy their tickets abroad instead of India and in this respect, directly affecting Air India's business prospects. Secondly, it is highly discriminatory to allow some airlines offering discounting fares (e.g., East European carriers) and objecting to other airlines (e.g., West European carriers). See The Hindustan Times (New Delhi), 18 August 1994, p.11.

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(d) India, though having rich potential for international tourism, has sadly not made the maximum utilisation, as is shown by the figures given below. In 1990 tourists accounted for only 1.4 million, 1.33 million in 1991, about 1.87 million in 1992 and 1.76 million in 1993, whereas in 1994 the figure is running more or less at same level i.e., 1.89 without any further improvement. The tourist arrivals, however marked the figure of 2 million in 1995, for the first time.49 In this context, the 'Target-96' projecting 5 million tourists by the end of 1996, seems unrealistic and absolutely an over ambitious plan on the part of the government.50 For increasing tourist arrivals, there is a need to enhance tourist facilities, tourist developmental activities, as also considerable resources, cooperation of state governments and proper development of regional and feeder airlines to carry the in bound tourists to various centres of the country. Unless these issues are actively dealt with, the idea of permitting increased capacity and operators, would increase capacity, cut-throat competition

49 See the Reports of Department of Tourism, Government of India, 1991-95 (New Delhi, 1995)
50 See The Times of India (New Delhi), 23 April 1994, p.3.
and uneconomical price wars.\(^{51}\)

(e) The increase in aviation fuel prices, excessive staff and the maintenance of ageing fleet are also contributing to high operating costs. It is, therefore, mandatory for the management to reduce operating expenditure to keep revenues high. The staff costs of Air India are low when compared with other airlines but the expenditure on operational costs are very high. The 25 aircraft fleet of Air India having a staff of 17,717 with an average of 710 per aircraft is the highest in the world, as compared to other airlines (see Table 1). For instance, the British Airways with 233 aircraft fleet has only 205 staff per aircraft; United Airlines with 498 aircraft has 150 staff per aircraft and in Asia, Pakistan International Airlines with 44 aircraft has 477 employees per aircraft, Singapore Airlines with 46 aircraft has 254 employees per aircraft and Thai Airways with 62 aircraft has only 286 employees per aircraft.\(^{52}\) A slash over 50 per cent of the

\(^{51}\) Moreover, the foreign airlines continue to siphon off the Indian ethnic traffic rather than promoting in-bound tourism. For instance, in 1993 out of an annual capacity of 2.17 lakh seats of KLM, the official number of Dutch arrivals here was only 30,552, and the remaining was Indian ethnic traffic. Thus what is required on the part of the government, is to set a target keeping in view the Air India's share in international traffic rather than bowing to dangling peanuts like the trickle-down inbound 'tourism promotion' by foreign airlines. See The Times of India (New Delhi), 13 July 1994, p.13.

total staff strength of Corporation would help the airline to save expenditure on staff costs by 50 per cent. Moreover, the average age of Air India’s fleet is around 14 years against 5.5 years for Lufthansa’s fleet of 300, and Singapore Airlines with double the strength of Air India’s fleet averaging only 4.5 years. \textsuperscript{53} The aging fleet consumes a major portion of its revenues by way of maintenance costs and declining fuel efficiency. Current efforts to reduce the average age from 14 to 10 by the year 2010, and increase the fleet strength from 22 aircraft to almost 56 with an investment of over $5 billion by the end of century may augur well for Air India. \textsuperscript{54}

Despite these shortcomings, Air India ranked sixth in 1992-93 with a net profit of Rs.269 crore (Table 1) among 150 IATA members in terms of profit generation. But its position in the total revenue passenger kilometers performed and in total revenue passengers carried, is far from satisfactory, especially for a country having one fifth of the world’s population and a diaspora of some 13 million overseas Indians. Consequently, Air India still remains a ‘small airline’ even in the Asian context.

\textsuperscript{53} The Times of India (New Delhi), 12 May 1993, p.8.
III. INDIA'S DOMESTIC OPERATIONS

In 1950, as seen earlier, there were nine private operators in India operating in the domestic sector. According to the Air Transport Inquiry Committee observations, established in 1950 to look into the state of aviation industry's performance, the entire aviation industry became sick because of internal problems. Consequently, it was nationalised with the promulgation of Air Corporations Act (ACA) 1953. The Indian Airlines Corporation (IAC) was an integration of the then existing nine private operators, established as a statutory corporation under this Act (ACA).

The ACA confers monopoly of operation of scheduled air transport services on Indian Airlines. It provides that "it shall not be lawful for any person other than the corporation or their associates to operate any scheduled air transport service from, to, in and across India...." The "Corporation and associates" under the said Act means Air India and Indian Airlines under Section 3 of the Act. Later, Vayudoot Airlines created under the Act, continues to function till date as a subsidiary to both Air India and Indian Airlines. As a result, Indian Airlines continued its operations as a

55 Section 18 of the Air Corporations Act, 1953.
monopoly service, unlike Air India where it has considerable competition with other foreign airlines in international market besides sharing some of the international routes.

Over the years, the Indian Airlines increased its strength, fleet and operations but did not escape the criticism for its dismal financial performance, poor performance in its operations and an appalling reputation for service. Besides this, the domestic market also did not increase, contrary to the expectations of the Tata Committee. The total air passenger traffic in India for past one decade does not show any consistency in growth (see Table 4). In 1983-84 the total number of revenue passengers carried by state-run-carrier was 7.7 million, which increased to 9.1 million in 1985-86, declined to 7.8 million in 1990-91 and sharply rose to 9.8 million in 1992-93. In contrast to this, the Tata Committee constituted by the Planning Commission in 1971, estimated that traffic would grow from 9.1 million passengers in 1985-86 to 15.8 million in 1990-91 and further to 24.4 million in 1995-96 and an unbelievable 47.0 million by the end of the century, i.e., 2000.

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While accepting the declining trend, the former Director-General of Civil Aviation, M.R. Sivaraman, attributed the following reasons for the stagnation of growth in air traffic market:

(a) The air traffic market growth is interlinked to the high rate of economic growth of the country. Since the country has not shown any radical improvement in its economic growth, of correspondingly it has stunted the growth potential air traffic market.

(b) The Gulf war and global recession in passenger traffic adversely affected the air traffic in India.

(c) The phenomenal fare increases by the air corporation forced the consumers to prefer other high speed intermodal transportation as a token of resistance.

(d) The number of unfortunate accidents in the Indian Airlines led to some kind of a loss of faith in the safety standards which made the people to prefer alternative means to travel than by air.

(e) Lastly, the low morale of its employees, wild-cat strikes and grounding of aircraft for extraneous

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considerations (reference is to the grounding of the newly acquired Airbus 320S) have also resulted in the passenger traffic not raising to the levels, as forecast by the Tata Committee.

Moreover, Indian Airlines has long been burdened with continual political interferences in its corporate affairs, and this, combined with the low utilisation of fleet, has thwarted all efforts in 'commercialising' its operations. The grounding of 18 Airbus A320s in 1990 following an A320 crash at Bangalore as a result of human error was a serious manifestation of mindless political interference. 59

Apart from this, the carrier was criticised for its low utilisation of fleet despite a high load factor, and for its poor sense of regularity in timings and deteriorated inflight service. 60 In an interview with "Indian Aviation" the then Minister for Civil Aviation, Madhavrao Scindia, accepted that the utilisation of A320 and Boeing 737 aircraft was less because of their short-haul operations, and that for that reason the

59 If the plea that they were grounded on any technical or safety reasons, is to be accepted per se, then it is difficult to understand how they were later used for evacuation of the stranded Indian nationals from Kuwait during the Gulf war. See Ian Verchere, "Indian Reservations", Airline Business, October 1992, p.56.

60 For various other inconveniences encountered by frequent travellers with Indian Airlines, see "Freedom in the Skies", Sunday (Calcutta), 17-23 July 1993, pp.8-9.

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entire fleet of aircraft could not be offered for services on a daily basis because of scheduled and non-scheduled inspections, modifications etc. on a cyclic basis. However, he did not concede that the pilots' strike and non-availability of required number of pilots aggravated the under-utilisation of fleet, although these also contributed to the problem.

TABLE 4: FLEET STRENGTH AND UTILISATION OF AIRCRAFT OF INDIAN AIRLINES
(as on 31st December)

<table>
<thead>
<tr>
<th>Year</th>
<th>Fleet</th>
<th>Revenue Hours Flown</th>
<th>Total Number of Passengers carried in the financial year</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Number</td>
<td>Per Air Carrier (average)</td>
</tr>
<tr>
<td>1982</td>
<td>55</td>
<td>106,867</td>
<td>1,943</td>
</tr>
<tr>
<td>1983</td>
<td>55</td>
<td>108,899</td>
<td>1,971</td>
</tr>
<tr>
<td>1984</td>
<td>54</td>
<td>116,553</td>
<td>2,158</td>
</tr>
<tr>
<td>1985</td>
<td>54</td>
<td>126,029</td>
<td>2,334</td>
</tr>
<tr>
<td>1986</td>
<td>48</td>
<td>133,428</td>
<td>2,780</td>
</tr>
<tr>
<td>1987</td>
<td>47</td>
<td>137,655</td>
<td>2,929</td>
</tr>
<tr>
<td>1988</td>
<td>46</td>
<td>129,781</td>
<td>2,281</td>
</tr>
<tr>
<td>1989</td>
<td>53</td>
<td>118,812</td>
<td>2,230</td>
</tr>
<tr>
<td>1990</td>
<td>53</td>
<td>101,364</td>
<td>1,983</td>
</tr>
<tr>
<td>1991</td>
<td>52</td>
<td>111,288</td>
<td>2,140</td>
</tr>
<tr>
<td>1992</td>
<td>57</td>
<td>115,955</td>
<td>2,035</td>
</tr>
<tr>
<td>1993</td>
<td>57</td>
<td>100,645</td>
<td>2,004</td>
</tr>
</tbody>
</table>

Source: IAC, ICAO, ATR Form D-1 and A-1 Q various years.

It is quite evident from the Table 4 that the average utilisation of per aircraft per annum shows a declining

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61 See "Toward Fuller Development of Airlines in India", *Indian Aviation Civil and Military* (New Delhi), October 1992, p.56.
trend since 1988 and it stood at 2,281 hours that year and 2,230 hours in the year 1990 and 1,983 hours in the year 1990 and slightly better in 1991 with 2,140 hours declining to 2,035 hours in 1992 and to 2,004 hours in 1993. As against this performance, the corporate plan had forecast a target for annual aircraft utilisation of about 2,800 hours per aircraft. Though the target achievement is not a difficult task, it however, insist the authorities not to be complacent with the following: (a) an effort to minimise the ground time of aircraft undergoing various repairs and inspection schedules, (b) sufficient number of trained pilots is a major requisite for successful operations and, (c) improving infrastructure utilisation of facilities to avoid airport delays due to congestion.

IV. OPEN SKIES POLICY AND ITS IMPACT

The strong consumer demand, the ongoing liberation policy of the economy and the necessity of increasing the tourist potential have all influenced the Government of India to announcing the open sky policy in 1989. As a sequel, the Government permitted operations of air taxis, which started their operations against all odds. Private operators were euphemistically referred to as "air taxis" because the Air Corporations Act
specifically prohibited the scheduled operations by any person other than the Air India, the Indian Airlines, and their subsidiaries.\textsuperscript{62} The Act further defined the "scheduled air transport service" as an air transport service undertaken between the two and more places according to a published timetable or with flights so regular or frequent that they constitute a recognisably systematic series and each flight being open to use by members of the public".\textsuperscript{63} Thus, the Air Corporations Act prohibited scheduled operations but not non-scheduled operations by any private airline and as such, they came to be referred to as "private air taxis". The policy which permits the private operations and the law denying the right to publish time-tables were at variance with each other. In an attempt to defend both the policy and the then existing law, the Civil Aviation Ministry said that "our objective should be to see that, in our desire to liberalise we do not repeat the same mistake, what we did prior to 1953."\textsuperscript{64}

Notwithstanding the doubtful legality of their functioning as scheduled flights, the private airlines have started their operations as air taxis, in a very

\textsuperscript{62} See Section 5 of the Air Corporations Act, 1953.
\textsuperscript{63} See Section 2 of the Air Corporations Act, 1953.
\textsuperscript{64} See \textit{The Hindu} (New Delhi), 9 January 1994, p.7.
non-co-operative atmosphere. Initially the air taxi operators (ATOs) were required to take permission from the Director-General of Civil Aviation (DGCA), i.e., obtain a licence, by fulfilling all technical standards for operations. After that, they had to follow the strict guidelines issued by the DGCA for operations. The guidelines envisaged that the private air taxi were:

- allowed for non-scheduled operations;
- allowed to import planes having not more than 50-seater capacity;
- not allowed to touch all airports in the country;
- not allowed to operate on trunk routes.\(^{65}\)

Accordingly, a decision was also taken by the Union Cabinet and the Cabinet Committee on Parliamentary Affairs (CCPA), in conformity with the above guidelines to operate non-scheduled operations in India by the air taxi operators.

On 11 April 1990, the then Minister for Civil Aviation, Arif Mohammed Khan, upholding the "open skies policy" declared the skies, to be "free for all".\(^{66}\)

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\(^{65}\) See the Guidelines of DGCA, AIC 10/1990, dated, 28th May 1990.

Accordingly he said, the private operators could run services from any airport and own any size of aircraft and they need not take the permission of DGCA to start operations and their status need not be charter.\textsuperscript{67} 

In fact, this announcement was not in tune with the Air Corporations Act, 1953; moreover, it also became inimical to the efforts of private airlines' legalising their operations and becoming scheduled airlines. It thus necessitated either repeal or amendment of the Air Corporations Act. The private airlines strongly criticised the dual policy of the Government which tacitly allowed scheduled services in the name of "morning, afternoon, evening and night flights" and the seemingly absurd situation of retaining the statutory provision that would not allow them to publish their schedules.\textsuperscript{68} The Government's intention of prohibiting the private airlines from publishing their flight schedules did not serve any purpose other than a hypocritical compliance with the Act. In this regard it does not seem difficult to understand what the government really intended. The Government was not prepared to expose the state-run carrier to open competition in an open market with private airlines.

\textsuperscript{67} See Louise Fernandes, "The Open Sky Policy has to be Regulated", \textit{Sunday} (Calcutta), 24-30 July 1994, p.28.

\textsuperscript{68} See Raj Chengappa, "Turbulence Ahead", \textit{India Today} (New Delhi), 15 March 1994, p. 182; and also see \textit{Times of India} (New Delhi), 14 June 1994, p.8.
Realising these anomalies, another Minister for Civil Aviation, Madhav Rao Scindia, introduced a Bill in Parliament to repeal the Air Corporations Act, 1953 on 4 May 1992. Scindia, who believed in open competition, said that the Ministry did not mean just Air India and the Indian Airlines and opined that the Ministry’s job was to provide an efficient civil aviation network which need not remain an exclusive domain of the Indian Airlines. Accordingly, he permitted the Air Taxi operators to import large aircraft up to 150 seats, so that they could offer some kind of competition to Indian Airlines, which badly needed to be shaken out of its monopolistic complacence.

With the Bill pending in Parliament, more than 25 potential air taxi operators were given permission to operate and to import aircraft with their own foreign currency. The important taxi operators among them are:

(1) M/s. East West Airlines,
(2) M/s. Modiluft,
(3) M/s Jet Airways,
(4) M/s. Damania Airways Ltd.,
(5) M/s. Archana Airways Ltd.,
(6) M/s. Sahara India Airlines,

See *Hindustan Times* (New Delhi), 19 April 1994, p.5.
(7) M/s. India International Airways Ltd.,
(8) M/s. Delhi Gulf Airways Services Ltd.,
(9) M/s. U.B. Air Pvt. Ltd.,
(10) M/s. Trans Bharat Aviation Ltd.,
(11) M/s. Aerial Services Pvt. Ltd.,
(12) M/s. Saraya Aviation Ltd.,
(13) M/s. M.G. Express,
(14) M/s. Citylink Airways.

The indecisive attitude of the Government not only led to a policy of confusion but also resulted in a step motherly treatment of the private airlines.

Apart from not allowing the private operators from publishing flight schedules and space problems in airports, the following guidelines have been issued by the DGCA to regulate and control the air taxi operations:  

1. Air taxi operators shall be air carriers engaged in air transportation of persons, along with their baggage, within the territory of the Indian Union.
2. Multi-engine fixed wing aircraft and single or

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The guidelines for Air Taxi Operators are in fact issued in the name of "information and guidance. See the Aeronautical Information Service AIC No.24/1990, (Civil Aviation Department, New Delhi), dated 24 December 1990, pp.1-6. With the issue of this AIC, the Guidelines issued earlier vide AIC No.10/1990, dated 28 May 1990 stand superseded.
multi-engine helicopters may be used for the purpose of air taxi services.

3. The DGCA, shall be licensing authority for granting permission to air taxi operators.

4. Before the air taxi permit is issued, the applicant should be in possession of an aircraft either by outright purchase or through lease.

5. The applicant shall either have own maintenance and repair facilities or shall furnish proof of the availability of maintenance and repair facilities by way of a subsisting contract with any other organisation who have the maintenance and repair facilities for the aircraft to be used, duly approved by the DGCA.

6. Air taxis shall be permitted to operate in all the authorised airports in the country which are open to scheduled operations, subject however, to prior approval of the authorities of the airports.

7. In the case of operations under instrument metereological conditions, the aircraft must be fitted with suitable equipment required for instrument flying and the aerodrome to which operations are proposed shall be declared fit by the competent authorities for IFR operations.

8. Air taxi operations shall not be permitted to destinations outside India.
9. No air taxi operator shall employ anyone already servicing any of the national carriers, namely Air India, Indian Airlines, Vayudoot and Pawan Hans without obtaining a 'No Objection Certificate' (NOC), from the employer with whom they are working.

10. The air taxi operators shall pay landing and parking charges to the owner of the air field.

Besides these, the DGCA guidelines also include various other issues relating to the documents required, eligibility requirements and operational pre-requisites. These guidelines, however, do not deal with the nature of traffic to be carried, the specification of route(s) to be operated and the type of aircraft to be used by the air taxi operators. Moreover, the requirement of installation of flight recorders namely, CVR, FDR and DFDR is not made mandatory under these guidelines. Accordingly, the restrictions imposed on such issues thereafter, were subjected to severe criticism by air taxi operators.\textsuperscript{71} In a bid to rectify such discrepancies, the Government issued a new set of guidelines, superseding the earlier one, on 8 March 1995.\textsuperscript{72}

\textsuperscript{71} See the views deposed by private air taxi operators before the Mahajan Committee: Report on Transport and Tourism 1993-94 (New Delhi: Rajya Sabha Secretariat, 1993), pp.1-14.

\textsuperscript{72} See Aeronautical Information Service, AIC No.03/1995, (Civil Aviation Department, New Delhi), dated 8 March 1995, pp.1-8.
new guidelines provide that "the operations by the air taxi operators shall be charter and/or non-scheduled operations and it is necessary to obtain authorisation from the DGCA for each individual flight, and tickets will not be sold to individual passenger." However, on routes not covered by any scheduled operator, an air taxi operator shall have the option to sell tickets to individual passengers, and it shall also, not be necessary to take prior permission from the DGCA for each flight. Regarding the type of aircraft to be used, the new guidelines provides that:

(a) Pressurised aircraft, imported for air taxi operations for passenger services shall not be more than 15 years in age or have completed 75% of its design economic cycles or 45,000 pressurisation cycles, whichever is less.

(b) Unpressurised aircraft, and for aircraft to be used solely for freighter services, the decision will be taken on a case to case basis depending on a complete examination of the records of the aircraft being procured. However, DGCA would normally not allow more than 20 years old

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73 ibid., clause (i) and sub-clause (ii) of AIC No.03/1995.
74 ibid., clause (i) and sub-clause (iii) of AIC No.03/1995.
75 ibid., clause (vi) and sub-clause (ii) of AIC No.03/1995.
The installations of flight recorders (CVR, FDR and DFDR) and the facilities to read out EVR are made mandatory on foreign aircraft leased to Indian operators. The applicability of this requirement is not clear in respect of aircraft owned by the operators engaged in air taxi operations, since these requirements are mentioned in the "Civil Aviation Requirements" issued by the Government entitled as "Minimum Requirements for Grant of Permission and to Operate Scheduled Air Transport Services" and "Airworthiness And Operational Control of Foreign Aircraft Leased by Indian Operators".

The crux of the controversy lies in the continued operation of air taxis under open-skies policy, without bringing any corresponding changes in the existing law, i.e. Air Corporations Act, 1953. The repeated changes in DGCA guidelines regarding safety standards and maintenance are also keeping the private operators under serious pressure. For instance, DGCA issued a mandatory requirement of the age of aircraft in 1994 following a

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76 ibid., clause (6) and sub-clause (iii) of AIC No.03/1995.
77 See Civil Aviation Requirements, Section 3 Air Transport Series 'C' Part II, Issue I [Civil Aviation Department, New Delhi], dated 1 March 1994, pp.1-7.
78 See Civil Aviation Requirements, Section 3 Air Transport Series 'C' Part I, Issue II, [Civil Aviation Department, New Delhi], dated 30 December 1993, pp.1-10.
crash of Indian Airlines aircraft in Aurangabad. Surprisingly, the age of many state-run third level service aircraft are more than 20 years (e.g. Avro fleet of Vayudoot). The Jagson Airline was grounded for not being fitted with Flight Data Recorder (FDR), whereas no action was taken against Vayudoot, which is being allowed to fly without FDR. The Government often alleged that the air taxi operators are flying only on trunk routes and hence divided the routes into three categories.\textsuperscript{79} Had the Government been serious about the operation of private air taxis, it would have averted the incongruity between the policy and practice in 1989 itself. In addition to this, the private operators' also complain about inadequacy of space at airports, poor hangar facilities, non-provision of infrastructure facilities, exorbitant charges for such facilities where provided, slot allotment problems etc. Against this backdrop, the Government constituted a Committee under the chairmanship of Pramod Mahajan to assess the Government policy on air taxi operations, its impact on Indian Airlines and other matters connected therewith.\textsuperscript{80} After probing into various aspects, the

\textsuperscript{79} The allegation was made by the Government in 1993 before Mahajan Committee on Transport and Tourism 1993-94 (New Delhi: Rajya Sabha Secretariat, 1993), p.9; and the Order No.Av.ll012/2/94-A. For categorisation of Routes was issued on 1 March 1994.


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Committee felt that there was *no clear cut policy* and made the following recommendations:

(a) The guidelines for air taxi operations should be formulated after due consultations with operators. Any change thereafter should be made only if it is absolute necessary.

(b) The restriction, on air taxi operators, to publish and advertise their schedule of flights is unconscionable and this restriction must be withdrawn forthwith.

(c) The policy of not allowing air taxi operators in air transportation of cargo should be reviewed further for capacity utilisation of ATO’s within the country.

(d) The Government should consider whether the requirement of CVR and FDR [which has no link with flight safety measures] to smaller aircraft, prescribed by the DGCA, is in conformity with international flight safety measures and if not, the same should be dispensed with.

(e) The NAA should keep open smaller airports for landing and take-off of the flights of air taxis according to their flight timings and provide them with all necessary infrastructure including availability of airport staff for handling such flights.
(f) The Government should consider and review the policy as it will not only save the outflow of foreign exchange but also supplement the revenue earnings if the facilities available in the country with the Air India and the Indian Airlines for maintenance of aircraft and training of cockpit crew, are made available to the air taxi operators.

(g) The Government should review the situation and evolve a clear cut policy on issues like import of aircraft and their space parts, so as to ensure a fair growth of air taxi operations in India.

(h) The Government should consider the possibility of operating the Indian Airlines on international routes either independently or jointly with the private air taxi operators where Air India has the permission but is unlikely to operate under bilateral agreements.

(i) The exorbitant charges on certain facilities being extended to private airlines should be sealed down and made reasonable and a two slab system could be considered according to the types of aircraft used and the nature of the operation i.e. commercial or otherwise, performed.

(j) The Government should consider providing parking bays, cargo area, communication facilities at the
airports for air taxi operators and space to raise their own workshop maintenance.

(k) The pilots retired from the Indian Airlines, the Air India and the Indian Air force should be considered for re-employment to meet shortage of pilots.

(l) The private air taxi operators may be allowed to develop airports in the North-Eastern region where the Indian Airlines has no airlinks, for the benefit of the public and to attract tourists in large numbers.

(m) Credit facilities in the matter of aviation fuel may be extended to the private air taxi operators on the basis of bank guarantee.

(n) The Air India and the Indian Airlines should have interline agreement with private air taxi operators for carrying passengers to their destinations.

Finally, the Mahajan Committee strongly recommended the repeal of the Air Corporations Act 1953. Accordingly, the then Civil Aviation Minister, Gulam Nabi Azad, decided to repeal the Air Corporations Act, 1953 but did not succeed, due to fierce opposition in the Lok Sabha. The Air Corporations Act was finally

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See Mahajan Committee Report, ibid., p.25.

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repealed by proclamation of a Presidential ordinance, though the Bill to repeal Air Corporations Act was pending before Parliament since May 1992. 82

While introducing the Open Skies Bill in Lok Sabha the Minister said that the Bill facilitated: 83

- management control at the hands of the workers and employees in the new set up;
- to make the outfits more competitive; and
- to introduce the financial institutions as the joint owners of the new companies.

Surprisingly, the opposition who previously raised much hue and cry against the Bill had in fact announced its own aviation policy in 1990 when they were in Government, without even consulting the Cabinet Committee on Parliamentary Affairs (CCPA). In comparison with that policy, Azad’s policy is more restrictive and calculated. Despite this, the Opposition protested against the Bill.


The Bill was introduced with the object "to meet the growth requirements of Indian Airlines and Air India both constituted under 1953 Act, and with the need to tap the capital market for equity funds rather than depending on budgetary support from the Government as envisaged under the Act. As a part of liberalisation set in motion under the new economic policy, private investment had also been granted permission in the air transport sector."  

Legally, the repeal of Air Corporations Act has brought about the following changes:

- the Government monopoly over the Indian skies came to an end and the sky is now open to private operators,
- the two corporations, the Air India and the Indian Airlines, are to be converted into two proposed companies namely Air India Ltd., and Indian Airlines Ltd., to tap capital market,
- the operations of private airlines are legitimised. The tag 'air taxis' ceased to exist and they soon became scheduled airlines enjoying a legal status free from restrictions which had blocked their expansion.

The private airlines as well as pro-liberalists, welcomed the repeal of the 1953 Act with an expectation that the deregulated environment would be best utilised for the growth of a strong aviation sector. The private airlines too, which had once clamoured for scheduled status appeared reluctant by adopting a wait-and-watch policy because of the stiff conditions laid down by DGCA in its freshly issued Civil Aviation Regulations (CAR). As of today ten private air taxi operators have applied for airline status but only the following six have been granted the scheduled airline status:

1. East West Airlines,
2. Jet Airways,
3. Damania Airways,
4. Modiluft,
5. NEPC,
6. Archana Airways.

The scheduled operations of the private airlines are not as smooth as expected. This is primarily attributed to the CAR which contains very stringent rules and regulations regarding technical and operational matters, than ever before. Whether such

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85 See Indian Aviation Civil and Military (New Delhi), 8 April 1994, p.3.
rigidity will result in higher safety and reliability is
difficult to predict. However, going by the vast
experience of deregulated markets in the world, a little
control over the market is essential for an orderly
development of a strong aviation sector – as long as it
does not discriminate the private airlines against
state-run carriers.

It does not, however, mean what Azad said in
Parliament. He said, "I would not mind clipping their
wings if they did not fly within the prescribed limits". He
further assured the Opposition: "I would not allow
the growth of private airlines at the cost of the Indian
Airlines". In his opinion the private airlines are
meant to supplement the already existing state-run air
carriers network but not to weaken it. These
statements would rather underscore the incompetence of
the Indian Airlines to take up the new challenge of free
competition and also reflects the reluctance of the
Minister to free the Indian Airlines from the control of
the Government. The recent appointment of civil
servants at the helm of corporate affairs has led to an
increasing bureaucratic hold over the carrier, an evil
that liberalisation seeks to do away with. In this
regard, the Ministers’ approach towards the operations

87 See Indian Aviation Civil and Military (New Delhi), 6 May 1994, p.3.
88 See Hindustan Times (New Delhi), 29th April 1994, P.5.
of both infant private airlines and the Indian Airlines should be totally in consonance with the policies. However, the government attitude has been in disharmony with the letter and spirit of economic liberalisation and globalisation to which it was committed.

V. POST DEREGULATION SCENARIO

Though it is too early to judge the effects of the repeal of the 1953 Act, so far the mood of the industry is far from upbeat. However, the following ramifications of the repeal of the 1953 Act may be noted.

First, the state-run-carrier is the most affected adversely in the post liberalisation era. The Indian Airlines which is known for its shoddy treatment and which is branded as "VVIP Carrier", is running in the red with its poor performance in the competitive environment. In 1987-88 Indian Airlines carried over 10.5 million passengers which gradually declined to 9.8 million in 1989-90 and further declined to 7.8 million in 1992-93 with the advent of private airlines (see Table-5).
### TABLE 5: PASSENGERS CARRIED ON SCHEDULED SERVICES OF INDIAN AIRLINES AND AIR TAXI OPERATORS IN INDIA'S DOMESTIC AND INTERNATIONAL TRAFFIC 1986-93

<table>
<thead>
<tr>
<th>Year</th>
<th>Domestic Indian Airlines Passengers ('000)</th>
<th>International Passengers ('000)</th>
<th>Total Passengers ('000)</th>
<th>% of Indian* carried by Air Airlines</th>
<th>% of Indian* Share in Air Taxi’s Operators</th>
<th>% of Domestic Traffic</th>
</tr>
</thead>
<tbody>
<tr>
<td>1986-87</td>
<td>9176</td>
<td>519</td>
<td>9695</td>
<td>100.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1987-88</td>
<td>9934</td>
<td>519</td>
<td>10454</td>
<td>100.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1988-89</td>
<td>9549</td>
<td>540</td>
<td>10082</td>
<td>100.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1989-90</td>
<td>9390</td>
<td>439</td>
<td>9830</td>
<td>99.84</td>
<td>15</td>
<td>99.84</td>
</tr>
<tr>
<td>1990-91</td>
<td>7471</td>
<td>383</td>
<td>7854</td>
<td>99.84</td>
<td>32</td>
<td>99.84</td>
</tr>
<tr>
<td>1991-92</td>
<td>8311</td>
<td>559</td>
<td>8871</td>
<td>95.06</td>
<td>382</td>
<td>95.06</td>
</tr>
<tr>
<td>1992-93</td>
<td>7268</td>
<td>538</td>
<td>7806</td>
<td>77.99</td>
<td>2051</td>
<td>77.99</td>
</tr>
</tbody>
</table>

Source: IAC ICAO ATR FORM A-1, of various years.

* figures derived by calculations.

This was primarily because the traffic growth rate of six per cent estimated in late 1980’s, did not materialise. Secondly, the private airlines made heavy inroads into the Indian Airlines business by carrying over 22 per cent of total traffic (see Table 6).

### TABLE 6: PASSENGERS CARRIED BY AIR TAXI OPERATORS* 1989-93

<table>
<thead>
<tr>
<th>Year</th>
<th>Flights operated</th>
<th>Passengers carried ('000)</th>
<th>Total No. of passengers ('000)</th>
<th>% of passenger traffic</th>
</tr>
</thead>
<tbody>
<tr>
<td>1989-90</td>
<td>582</td>
<td>15,096</td>
<td>9,845</td>
<td>0.15</td>
</tr>
<tr>
<td>1990-91</td>
<td>1,065</td>
<td>32,817</td>
<td>7,886</td>
<td>0.40</td>
</tr>
<tr>
<td>1991-92</td>
<td>6,592</td>
<td>382,563</td>
<td>9,253</td>
<td>4.12</td>
</tr>
<tr>
<td>1992-93</td>
<td>31,170</td>
<td>2,051,172</td>
<td>9,857</td>
<td>20.80</td>
</tr>
</tbody>
</table>

Source: DGCA Air Transport Statistics regarding various years.

* Air Taxi’s (a few of them are now Scheduled Private Airlines) started their operations from 1989-90.
The phenomenal growth of private airlines, from 15,000 passengers in the very first year i.e. in 1989-90 to over 2 millions in 1992-93, recorded an increase of 135 times which clearly affected the Indian Airlines business. By 1994-95, the beleaguered Indian Airlines maintained its market share of 63.7% and the net loss stood at Rs. 188.73 crore. Of course, the increase in the growth of private airlines passenger traffic may be due to small initial base but the reality is that the Indian Airlines plunged into heavy losses. The private airlines with its total fleet of 37 by the end of 1992-93 with a fleet utilisation of 10 hours per day achieved this growth as against Indian Airlines current fleet strength of 54 and perhaps 5 to 6 hours of utilisation per day. As a result, the Indian Airlines whose financial results indicated a net profit of Rs.632 millions in 1985-86 declined sharply into a huge loss of Rs.1951 millions in 1992-93. Shockingly, though the financial results witnessed a gradual decline in the net profit margin, in 1992-93 even the financial results are recorded in losses due to an increased operating expenses over revenues (Table 7).

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**TABLE 7: FINANCIAL RESULTS OF INDIAN AIRLINES, 1983-93**  
*(Rs. in millions)*

<table>
<thead>
<tr>
<th>Year</th>
<th>Operating Revenue</th>
<th>Operating Expenses</th>
<th>Result Profit/Loss</th>
</tr>
</thead>
<tbody>
<tr>
<td>1983-84</td>
<td>5367.7</td>
<td>4460.0</td>
<td>907.7</td>
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<tr>
<td>1984-85</td>
<td>6035.8</td>
<td>5038.1</td>
<td>997.7</td>
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<td>1985-86</td>
<td>7113.0</td>
<td>6133.9</td>
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<td>8209.1</td>
<td>7197.5</td>
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<td>1987-88</td>
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<td>1989-90</td>
<td>10690.7</td>
<td>9949.6</td>
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<td>11237.4</td>
<td>10729.6</td>
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<tr>
<td>1991-92</td>
<td>14362.5</td>
<td>14179.3</td>
<td>183.2</td>
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<tr>
<td>1992-93</td>
<td>15131.1</td>
<td>15920.0</td>
<td>-788.9</td>
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**Source:** IAC ICAO ATR FORM EF-1, of various years.  
* Net profit is calculated after deducting non-operating expenses and Income tax.

It is estimated that in the last four years 1990-93 the Indian Airlines incurred a huge loss of Rs.600 crores. The principal reasons for such heavy loss are the following:

- the grounding of 14 fly-by-wire Airbus A320,
- Reduction of market share due to the advent of private airlines,
- pilots' strikes resulting in low utilisation of capacity, particularly during peak tourist seasons,

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*See Indian Aviation Civil and Military (New Delhi), 12 June 1994, p.5.*
- operation of uneconomical and non-profitable routes,
- depreciation of rupee value and increase of ATF prices,
- non-availability of required number of pilots due to exodus of personnel resulting in a decline of IA's passenger share.92

With the stagnated growth in air traffic and the entry of private airlines the Indian Airlines is suffering from over-capacity which needs to be critically examined. The private airlines with a fleet of 29 aircraft in 1990-91 offered 1,100 seats per day which have been increased to 4,000 a day in 1992-93 and further projected to 18,000 a day with an increase in fleet strength to 57 aircraft by the end of 1994. On the other hand, the current fleet strength of Indian Airlines is 54, offering nearly 50,000 seats per day, i.e., total capacity.93 However, it needs to be mentioned here that the actual availability of seats will depend, to a large extent, on actual utilisation of the fleet. The Indian Airlines alone is providing an operational capacity only around 30,000 seats as against the total capacity of 50,000 seats per day due to

non-availability of the required number of flight crew, because of the mass exodus of pilots during 1990-94. Thus the total available seats have gone up to 50,000 including the Indian Airlines and private airlines as against a demand for only 30,000 seats. Such a massive influx of capacity, though, offers rich incentives to the travelling public due to excess supply over the existing demand, it would work as a negative factor for the growth of aviation industry. Surely, no airline in the domestic sector will have sustained longevity if the trend of increased capacity continues. After all, business involves making profits. The Government decision to impose restrictions on private airlines for importing of new aircraft and the decision not to add any more fleet to the current strength of the Indian Airlines till 1997-98 is a right step in the direction for the survival of all instead of doing favour to a chosen few. But by deviating from its own decision, the Government subsequently allowed East West airlines to purchase 2 B737-400 aircraft and allowed Sahara to import 2 B737-400.

Third, the increase in capacity and a corresponding decrease in traffic resulted into a cut-throat

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95 See Mark Odell, n.92, p.27.
96 See Times of India (New Delhi), 7 September 1994, p.13.
competition among airlines and steep reduction of fares to uneconomical levels. In open competition the travelling public will always have a field day with discount fares and reduced fares or such other incentives which can effectively tap the business potential. But the question is how long can the industry afford to provide these incentives without cutting into safety requirements. In the post-deregulated market the air fare structure, especially, on trunk routes, is worse than ever before. In fact, there is no short cut to containing price-wars because of poor traffic growth and fierce competition. For instance, the discount offer of Sahara India Airlines upto Rs.500 to Rs.700 on some trunk routes is in no way justifiable on economic grounds.\textsuperscript{97} In fact, it forced the other airlines including Indian Airlines to slash its fares on par with Sahara. In no time, the airlines realised the impact of undercut fares on the industry and entered into an agreement to self-regulate the airfares and also to persuade the Sahara Airlines to fall in line.\textsuperscript{98} To save the day, the Ministry even went to the extent of asking private airlines not to undercut air fares.

In contrast to decreasing fare levels, the airlines are providing increasing commissions to their sales

\textsuperscript{97} See \textit{The Hindu} (New Delhi), 9 January 1994, p.7.

\textsuperscript{98} See Raj Chengappa, n.68, p.183.
agents. Since the agents' role in aviation circles is crucial in increasing the number of passengers to the concerned carriers, it becomes imminent to enhance their commissions for sake of survival in a fierce competitive environment. As a result, in recent times the commissions are enhanced to nearly 10-15% to all agents. According to an estimate, the Indian Airlines is incurring a loss of Rs. one crore everyday on its net sales.\(^9^9\) Reacting to the situation seriously, an airline official said, "a hike in airfares could depress growth considerably and with the glut in capacity it holds worrying portents for the domestic sector".\(^1^0^0\)

Fourth, as noted already, the private airlines are making heavy inroads into the Indian Airlines' market share. The situation has taken a turn for the worse, where the Indian Airlines is offering 35% less than the total capacity available due to heavy pilot exodus. With the resignation of 12 commanders recently, the total shortage of commanders, as on date 3 December 1994, increased to 96. This shortage includes 72 commanders on B737-200, 22 on A-320 and 2 on A-300 (see Table 8).

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\(^1^0^0\) See Raj Chengappa, n.68, p.183.
TABLE 8: PILOT EXODUS IN INDIAN AIRLINES SINCE 1992-94
AS ON 3 DECEMBER 1994
The total strength (including both Commanders and Co-pilots) is 574

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<tr>
<td></td>
<td>Commanders</td>
<td>Co-Pilots</td>
<td>Commanders</td>
<td>Co-Pilots</td>
</tr>
<tr>
<td>A300</td>
<td>1</td>
<td>3</td>
<td>24</td>
<td>25</td>
</tr>
<tr>
<td>A320</td>
<td>7</td>
<td>5</td>
<td>85</td>
<td>126</td>
</tr>
<tr>
<td>B737-200</td>
<td>45</td>
<td>5</td>
<td>35</td>
<td>113</td>
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<tr>
<td>Total</td>
<td>53</td>
<td>13</td>
<td>144</td>
<td>274</td>
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Source: IA Department of Operations (Safdarjung, New Delhi), 1994.

In the total strength of Indian Carriers' strength comprises contractual Pilots also. Total 7 contractual Commanders and 3 contractual Co-Pilots.

The above source also confirms that 60 co-pilots have resigned from Indian Airlines, including 9 on A300, 17 on A320 and 34 on B737-200, by December 1994. Majority of them, it was said, have joined private airlines and other foreign airlines without even taking any "no objection certificate", and also defied their employment bonds. One of the main reasons for the exodus is that the majority of the private airlines have acquired only B737-200 aircraft on dry lease without any trained personnel or facilities to train pilots. Moreover, employing trained pilots from the established carrier by paying extra amounts is relatively easier,

See Times of India (New Delhi), 1 September 1994, p.15.
rather than incurring expenses on providing training. To cope with the situation, the civil aviation authorities set up a Committee under Air Marshall Keeler to assess the shortage of pilots before 20 September 1994.\(^\text{102}\) According to the report of this Committee the Boeing 737 is the worst affected aircraft due to the exodus. It recommended that:\(^\text{103}\)

- the training of senior Boeing commanders and so as to convert them to A320.
- that the Reserve 40 co-pilots be trained as pilot-in-command for Boeing 737-200.
- the transfer of Boeing commanders, to short haul operations department created by the merger of Indian Airlines and Vayudoot.
- the training of B737-200 co-pilots for being taken as co-pilots for A300.
- that the B737-200 pilots be taken up as A300 co-pilots.

\(^{102}\) See Economic Times (New Delhi), 8 September 1994, p.11.
\(^{103}\) See Keeler Committee Report, 1994.
In addition to this, increase in the retirement age of flight crew in Indian Airlines and hiring commanders from outside have been recommended to meet the shortfall due to exodus. It was said that the shortage of commanders had resulted into a ball park figure of 12-15 aircraft.\textsuperscript{104}

Last, but not least, the advent of new private airlines has led to the overcrowding of some of the major Indian airports, if not for the whole day, at least in peak hours of mornings and evenings. Out of the total 93 airports identified and offered to the private airlines only a handful have become crowded at peak hours. A majority of them have not even figured on the route map of private airlines and some of them have been credited with only inaugural flights. There has been a total neglect of regional and feeder routes whereas trunk routes are swamped with private airlines. The following table (Table 9) in respect of the traffic handled at the five major airports in 1993-94 shows an overall improvement over the previous years.

\textsuperscript{104} See \textit{Times of India} (New Delhi), 2 September 1994, p.13.
The above data shows that in 1993-94, 123,449 domestic aircraft movements witnessed 38.51 per cent growth rate over 1992-93. The Indian Airlines alone had contributed to 105,600 aircraft movements way back in 1987-88. Thereafter its contributions declined steadily to 80,579 movements in the year 1990-91, when private airlines had started their initial operations. After this it increased by 6% in 1991-92 and again 4% in 1992-93 and all time high of 38.5% due to massive increase in operations by private airlines with main concentration at five major airports. Of the total 38.5% increase, the comparative statistics reveal that the Bombay Airport alone accounted for 47.3% increase, the highest
ever. This is mainly attributed to increase in the operation of various private airlines such as East-West, Damania, Modiluft, Jet Airways, Sahara and Raj Air.\(^{105}\) Another reason for this, is that the airport facilities had not been correspondingly augmented with the increase in aircraft movements.

The aforesaid consequences of post-liberalisation phase, particularly in the last four years show a downward trend for the Indian Airlines. Despite the Government’s bid to help the carrier, it is still reeling under heavy losses. It is high time to concentrate on revamping its organisation, management and more important, its method of operation and work culture. The following major steps need to be taken to arrest the downslide of the carrier:-

(a) As in the case of the Air India, the Government in this case too, should minimise its interference in the commercial activities of the carrier. So far, the tendency of the Government has been, like the eternal Big Brother, never maintaining a decent distance. It is time for the Government to consider the proposal of Russi Mody for "total privatisation of management"\(^{106}\) and leave the airline alone to fend for itself.

\(^{105}\) See *Indian Aviation Civil and Military* (New Delhi), 11 June 1994, p.18.

\(^{106}\) See *Pioneer* (New Delhi), 1 December 1994, p.8.
(b) The Indian Airlines, from the beginning, has been influenced by a "social obligations approach", by undertaking far-flung operations without taking into account their economic viability. Assuming this should continue, it would be imperative that the responsibility get shared equally by the private airlines, since they are also equal partners as scheduled airlines. In this regard, the new CAR issued by DGCA should be implemented strictly, i.e., the private airlines must fly on Category II and III routes; at least 10% of the Available Seat Kilometres on Category II and 50% on Category III. Thus, if a scheduled airline has 100 seats, it is expected to deploy 10 seats on Category II and 50 more on Category III. This will contain overcrowding and thereby ease out congestion at major airports. However, the major beneficiary would be the Indian Airlines, which lost as much as Rs.65 crores in 1992-93 and an estimated loss of Rs.50 crores in 1993-94 for category II operations. It remains to be seen how far the private airlines, which have so far concentrated on lucrative high yield sectors, will accept the plan. If accepted, the Indian Airlines is

Category I comprises, Bombay, Delhi, Calcutta, Madras, Hyderabad, Bangalore and Tiruvananthapuram; Category II - North East, Jammu and Kashmir, Andaman and Nicobar and Lakshadweep islands; Category III all other stations not included in Category I and II. See Indian Aviation and Civil and Military, 15 April 1994, p.3.

See John Cherian, "Open Skies", Frontline (Madras), 25 March 1994, p.105; and also see Mark Odell, n.92, p.27.
likely to Rs. 94 crores annually.\textsuperscript{109}

(c) Another area where the Indian Airlines can step in is, its business in international market. If the Indian Airlines widens its operations to international market, it will serve several purposes. Primarily it will be able to utilise its total fleet capacity; secondly, it can increase its operational network by using its surplus fleet derived out of a diversion from the uneconomic domestic sector; and lastly, it can fully exploit the benefits from liberal-bilateral air service agreements to implement and supplement Air India. At present, the Air India as a single designated carrier is underutilising the benefits of liberal bilaterals. With a clear co-operation and co-ordination between the two Airlines it will not be a difficult task for the Indian Airlines to become a strong airline increasing India's bargaining power in Asia Pacific area, one of the fastest growing markets in the world. Apart from the existing operations to the neighbouring countries and Bangkok, Tashkent and Gulf, it can be further extended eastwards beyond Singapore and Thailand and westward as far as Turkey. Thus the development of an international sub-system could be beneficial in:\textsuperscript{110}

\begin{footnotesize}
\begin{enumerate}
\item See Rohit Bansal, "Indian Airlines to Cut Operations on Uneconomic Routes", \textit{The Times of India} (New Delhi), 21 October 1994, p.1.
\item See \textit{Indian Aviation Civil and Military} (New Delhi), 11 September 1992, p.12.
\end{enumerate}
\end{footnotesize}
- increasing market share of Indian carriers,
- augmenting the foreign currency earnings,
- minimising the drain of foreign exchange caused by foreign airlines,
- better point to point connections for international passengers by dovetailing with domestic services, and
- opening up the Indian hinterland with Indian Airlines International services.

(d) Another aspect which the Indian Airlines should seriously think of, is about providing maintenance and training facilities not only to private domestic airlines, but also to airlines from other developing countries. Extending these facilities would result in additional earnings. This would serve the best utilisation of technical knowhow training and maintenance facilities, and also the services of some of the excess staff, particularly the skilled personnel. It would also help the private airlines who are not at the moment able to afford such a huge investment for their own maintenance and other facilities, given the size of their fleet, unstable financial position and mutual distrust in setting up common facilities for all.\textsuperscript{111}

\begin{footnotesize}
\textsuperscript{111} See \textit{Times of India} (New Delhi), 14 June 1994, p.8.
\end{footnotesize}
(e) In reducing the operational costs/expenditure, the Indian Airlines has to make consistent efforts to increase productivity. The major expenditure incurred by the Indian Airlines is on aviation fuel, nearly 36-40% and on the excessive staff, around 15-16%. The measures to reduce expenditure should also include, as already pointed out, the increase of international operations where the ATF prices are comparatively cheaper, realignment of domestic routes to save time and thereby consumption of fuel, increase in employment productivity and reduction of excess staff.

(f) Another most crucial factor for the survival of the Indian Airlines today is its punctual performance. When compared with private airlines, the performance rate of Indian Airlines stands at a very low level. For instance in 1993, the Indian Airlines claimed its performance at 67.4%, whereas Modiluft claimed 99%. The recent efforts to increase business class (J. class) capacity to 75% and with no change in economy class (Y), is expected to increase the annual earnings to Rs.767 crores. This will be just another over-ambitious plan
unless there is a substantial improvement in on-time performance. Without high level on-time performance, it is impossible to expect passengers (for that matter any type of passengers) to come back to the Indian Airlines.\textsuperscript{115}

The chances of revival for the Indian Airlines in the competitive environment depend on ensuring the aforesaid factors. In open competition, only a worthy few will survive. Of course, both the Air India and the Indian Airlines have certain limitations and constraints in facing the new challenges. The former has no spare capacity to increase its operational network whereas the latter does not have a profitable market to utilise its excessive capacity. The repeal of the 1953 Act, in this sense, is a boon in disguise for both the airlines to go ahead together in the wake of liberalisation and globalisation.

One of the major moves in this direction is, the recent announcement to merge all the three public corporations, i.e. Air India, Indian Airlines and Vayudoot. This proposal in fact provides them with a synergy in operations and services that few international airlines can match in Asia-Pacific. The

\textsuperscript{115} See \textit{Times of India} (New Delhi), 28 August 1994, p.15.
proposal contemplates:

1. the merger of Vayudoot and Indian Airlines,
2. the merger of Indian Airlines and Air India, and
3. the establishment of an integrated airline merging all the three government owned airlines.

To assess the prospects of eventual merger of Vayudoot with the Indian Airlines, it is necessary to look at the operational performance, financial results and current liabilities of Vayudoot. Vayudoot which was an outcome of the B.S. Gidwani Committee, incorporated as a company in 1981, was jointly owned by Air India and Indian Airlines. The Gidwani Committee felt an immediate need for third level air services in India, as a subsidiary to both the Air India and the Indian Airlines. The Planning Commission referred the Gidwani Committee Report to the National Transport Policy Committee (NTPC), appointed by the Government in 1978 to propose, inter alia, a comprehensive National Transport Policy, with the objective of making its recommendations on the expansion of the domestic services. The NTPC recommended the establishment of "Vayudoot Service", exclusively for the North Eastern

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The company started its operations with a fleet of 8 Avros HS748 (48 seater), 8 Dorniers (19 seater) and a single Fokker (44 seater) with Guwahati as its base. Initially, it operated to 18 destinations and then extended to 105 stations by 1990, but was reduced to 48 stations by 1991. At present Vayudoot is operating 22 short haul services which includes thirteen in North East and nine in the western region. The staff strength rose from 36 in 1982-83 to 1,847 in 1990-91. Though the number of stations increased from 18 to 48 only, the increase in staff continued unabated. Presently, the strength stands at nearly 1,500 on its pay rolls.

The Vayudoot services faced financial problems right from the beginning of its operations. The accumulated losses of Vayudoot stood at Rs.158.19 crores in the year 1992-93 with additional liabilities of over Rs.180 crores. Such a poor state of financial performance of the service stemmed from the following factors:


(a) Despite the NTPC opposition to the general expansion, it almost touched more than 100 stations with more than five bases namely, Delhi, Bombay, Calcutta, Madras and Hyderabad, instead of the initially proposed one at Guwahati.\textsuperscript{119} There were allegations that some of the unprofitable routes were introduced under political pressure.

(b) Excessive staff is another reason for the airline to run into financial deficits. Though the operating stations were reduced by 50\%, the staff strength continued to increase.

(c) High profile and uneconomic adventure projects like the Himalayan Airtrek, courier service, rent a plane, holiday package and night airmail services were other ventures that added to the losses.\textsuperscript{120}

(d) Short haul operations (often established on political considerations) and uneconomic fleet incurred heavy expenditure on operational costs and the airline thereby suffered huge losses. Out of the 8 Avros only one is flying in the western region while the other seven are grounded for various reasons. Of the eight Dorniers, only three operate in the North East. One is grounded.

\textsuperscript{119} See Mahajan Committee Report, ibid., Paragraph (8), p.3.

\textsuperscript{120} ibid.
for major checks and four cannot be flown for want of spares.\textsuperscript{121} The Committee demanded the details of the deal to purchase Dorniers, flouting the Billimoria Committee's recommendations not to purchase Dornier aircraft, which was termed unsuitable for Vayudoot operations.

(e) Lastly, a consistent drop in the capacity offered and utilised, from 1989 to 1992 resulted in decrease in the number of passengers carried and consequently the revenue realised. From 1989-90, there has been 31 per cent drop in ATKm (capacity produced) in 1990-91 and in 1991-92 it further dropped to 42% compared to the previous year. The number of passengers also dropped by 20% and 32% respectively for the same period. But the overall load factor (capacity utilised) increased from 58 per cent in 1989-90 to 64% in 1990-91 and 67.5% in 1991-92 due to constant efforts to deploy capacity on high performing sectors. Consequently, in 1990-91, there was 35% increase in net loss compared to the previous year, as against reduction by 15 % in losses in 1991-92 over 1990-91.\textsuperscript{122}

\textsuperscript{121} ibid., paragraph (9).

The sordid performance of Vayudoot raises the question whether the Indian Airlines can afford to absorb on Vayudoot's huge losses, liabilities on its balance sheet and nearly 1,500 employees of Vayudoot onto Indian Airlines payrolls. In an answer to this question, the Committee replied that "the merger is likely to plunge the Indian Airlines further into the red and is as good as tying a heavy stone around the leg of a drowning man." Further, the Government decision in favour of merger evoked strong protest from almost all unions of the Indian Airlines. But the Civil Aviation Ministry while sticking to its decision seems to have dangled a carrot in front of the unions - a merger with Air India. If this comes through, the Indian Airlines employees stand to gain on similar terms as the Vayudoot staff. However, the Ministry this time may have to tackle the disgruntled Air India Employees Unions.

One alternative for resolving the problem would be to offer Vayudoot services to private airlines where they have to compulsorily operate on Category II and Category III routes under the new guidelines. In fact, it will serve dual purpose; one to prevent the import of new aircraft by private airlines for their short haul

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123 See Mahajan Committee Report, n.118, paragraph (15), p.4.
operations and second, to allow private airlines to hire Vayudoot service without investing on new aircraft and support facilities to fly the mandatory hours prescribed by the DGCA.

The decision to merge the Air India and the Indian Airlines as announced by the Ministry and a well thought-out plan in working out modalities have raised the hopes of both the state-held airlines, to regain their lost share in world traffic market. Both the carriers, which are already working together in Gulf operations, intend joint fleet planning and flight scheduling under a common management.

A merger will allow the Indian Airlines to concentrate on a hefty share of the domestic market as well as the short haul international operations, whereas Air India will operate long haul routes for which it is properly equipped. Anticipating the hurdles in total integration, the then Chairman of both the airlines, Mathur, said: "we are heading towards a merger, but an immediate merger would be a disaster. 124 But in the advent of globalisation it is a necessity, if not to monopolise the market but at least to prevent the overexploitation of Indian market by foreign airlines.

Another significant move towards the eventual merger is to create a 'hub and spoke' network jointly operated by both the airlines.\textsuperscript{125} It will provide convenient connections to international travellers to and from its main hubs at Bombay and Delhi from and into principal cities in India. For such operations, the Indian Airlines also provides feeder services under the Air India flight numbers for Delhi's international operations from Ahmedabad, Amritsar and Hyderabad, to the extent that both the airlines have also reached an agreement.\textsuperscript{126} The hub and spoke operations are not a new invention on Indian market, as this is a widespread phenomenon all over the world. For example, British Airways attempts to build such a network within USA by buying into US Air, whereas KLM plans to introduce a similar network in Asia-Pacific in collaboration with Singapore Airlines.

The idea of hub and spoke operations is not only confined to national carriers but similar plans have been worked out by many private airlines such as Jet Air with Kuwait Airways and Gulf Air, while Modiluft with Lufthansa, and Damania Airlines with British

\textsuperscript{125} See \textit{Times of India} (New Delhi), 29 July 1994, p.13.

\textsuperscript{126} See Raj Chengappa, n.68, p.185.
Airways. As such these private airlines will serve as feeders to the foreign carriers to carry the inbound international passenger to various destinations.

After having entered into hub and spoke operations, the Government announced the frequent flier programme, i.e., "Flying Returns" to woo regular passengers abroad. This programme is an integral part of both the airlines' ongoing marketing strategy to attract more passengers in the face of growing competition. In international market - British Airways' Executive Club, Swiss Air's Qualiflyer, Lufthansa's Miles and More, Air France's Frequence Plus and KLM's Flying Dutchman are beckoning regular fliers. However, the airlines follow different calculations, where the traveller is offered points after calculating on the basis of a specified number of aeronautical miles. Each set of these accumulated miles entitles the traveller to a host of benefits. Even the private airlines along with national carriers started their schemes on domestic sector. However, the success of the programme depends either on the network of the carrier's operations or on

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129 See Bharati Rawla, Raji Menon, "Adding Mileage to Air Travel", The Economic Times (New Delhi), 14 July 1994, p.3.
increasing its network by entering into an alliance with others. For instance, Swiss Air tie-up with Malaysian Airlines, Cathay-Pacific and Singapore Airlines; SAS tie-up Delta and Austrian airways are a few examples worth mentioning.

In addition to these joint marketing strategies, the introduction of computer reservation systems in the domestic sector and an agreement with ‘Sabre’, the largest reservation system for travel agents in the world, will enhance the carriers’ responsiveness towards the passengers. It also provides easy access to foreign destinations, on line connections and improved reservation facilities to passengers. In this regard the International Civil Aviation Organisation is working to formulate a uniform code of conduct applicable to the worldwide reservation systems in order to curb the biased nature or excessive allegiance to the concerned parental airline.\textsuperscript{130}

These marketing strategies together with the projected growth of 8% in Asia-Pacific offers some optimism about the future prospects of Indian national carriers. However, the main problem here is that the

\textsuperscript{130} See ICAO Assembly Resolution, A27-16/1989: requesting the Council to carry out studies on a code of conduct regarding computer reservation system (CRS’s) which can be applied world-wide and which might lead to a multilateral agreement.
open skies policy announced by the Government is in sharp contrast to its actual implementation. This hiatus between the policy and the practice has caused considerable confusion. Moreover, it is driving the aviation industry one step forward and two steps backward. It is high time for the Government to come out with a clear cut policy keeping in view the global as well as domestic aviation developments.

VI. TOWARDS A VIABLE POLICY FOR INDIAN CIVIL AVIATION

In light of the above analysis a gradual shift in perception by the Government of India is quite discernible in the changes effected from regulatory environment to domestic deregulation—a broader economic reforms. The change in perception, however, remains adhoc and ambivalent, without a flexible policy framework. However, the action plan initiated by the Government of India appears to be working at cross-purposes with the objectives sought to be achieved under the new liberalisation policy. The basic objectives which the Government seeks to attain through the process of liberalisation are:

(a) ensuring fair competition among public and private carriers;

(b) strengthening the domestic aviation industry; and
(c) providing the best possible service to the travelling public.

In pursuance of the new economic policy, the Government has permitted private sector participation in air transport industry and thus the industry is no more an exclusive domain of the public sector. To enable both national carriers and private enterprises to operate efficiently, the carriers need to be provided sufficient functional autonomy in taking decisions regarding the route(s) to operate, the aircraft to use and the services to be offered, in order to meet the requirements of the competitive environment.

Unregulated functional autonomy to airlines in turn results in commercialisation of air transport, thereby marginalising national policy objectives such as social service obligations. The fact, however, remains that neither liberalisation nor deregulation must always result in marginalisation of social service obligations or essential service programmes. The experiences of the U.S. deregulation, however, show a reduction of services to small communities on non-profitable routes. To avoid such discrepancies the U.S. Airline Deregulation Act 1977 and EC Competition Laws authorise the state for providing financial assistance to airlines serving small communities or social obligations. In India there are no clear guidelines to demarcate the commercial services
from public utility services. The DGCA guidelines which categorised the air routes on the basis of profitability, needs to be reviewed. Since air transportation is high-risk, capital-intensive industry, in the absence of sufficient financial incentives or subsidies, it is not commercially viable for any operator to perform such activities. Hence both logically and realistically, the responsibility to serve non-profitable routes lies equally on both private and state-run carriers.

Under the existing policy framework the obligations and responsibilities for public and private carriers are equally poised. Any over-enthusiastic step to favour unduly public carriers in the pretext of strengthening the domestic civil aviation sector would have a dampening affect on the private carriers and it goes against the spirit of liberalisation policy i.e., the principle of fair competition. Hence it would appropriate on the part of the Government to further review the foreign ownership limits, restrictions on aircraft imports and alliances imposed on private carriers.

Gradual removal of restrictions is an essential attribute of liberalisation policy. It would rather be difficult to expect a 'perfect competition' but one may still ensure a 'workable competition' by means of a
posteriori regulations. Any a priori regulations would restrict fair competition and thereby hamper the positive yields of liberalisation policy.

Further, the process of liberalisation would have little meaning without corresponding improvements in the existing infrastructural facilities. To overcome such incidental shortcomings, the private sector participation should be encouraged not only in operating airlines but also in the development of infrastructural facilities such as airports terminals, cargo complexes and ground handling facilities. This would enhance the growth of industry and reduce the dependency solely on budgetary support.

Though the liberalisation process in India is at present confined to domestic sector, yet the effect of external liberalisation on India are likely to be quite significant. The adoption of liberal bilateral since 1993 are infact a forward step in the progressive liberalisation of international air transportation. In a liberal environment, unlike in the domestic market, only the fit and able carriers will survive the global competition and weak will perish. To avoid such undesirable eventualities, the international carriers may be permitted to enter into cross-border, regional, inter-airline alliances where weaker airlines would strengthen their position and become active players in
the global market. To further enable the carriers to be more self-reliant it is essential either to privatise the national carrier or to tap the equity funds from capital market.

Another important feature that deserves careful attention is that the Indian international carriers are branded as 'ethnic carriers' because of their heavy reliance on VFR and traffic belonging to Indian origin rather than on tourist traffic. The percentage of tourist traffic carried by the Indian carriers in international operations is abysmally low, when compared with other foreign airlines. This is indicative of the lack of a coordinated policy between the tourism and aviation sectors. Since the volume of tourist inflow is an appreciable component for the success of any air transport industry, the tourism promotion plans should be harmonized with air transport developments. In this light there is a need to permit charters, feeder services, supplemental carriers and even multimodal transport to promote tourism and also to cater for the needs of leisure and tourism markets.