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“Journal of Unique Laws and Students” (JULS) which shall provide law students, young lawyers and legal professionals to deliberate and express their critical thinking on impressionistic realms of Law. The JULS aims to provide cost free, open access academic deliberations among law students and young lawyers. The ISSUE III of Volume 1 focuses on three themes i.e. (i) Arbitration Law (ii) Competition Law, and (iii) Criminal Law.

The journal strives to contribute to the community with quality papers on a vast number of legal issues and topics written by authors from various groups that have been reassessed and revised by our editorial team to reach the highest possible standard.

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## PREFACE

On looking today scenario, there are numerous issues to know about. Our journal`s Issue III of Volume 1 has work on three crucial themes namely Criminal law, Arbitrational Law and Competition law. We have tried to cover these wide topics with the relevant research and landmark judgments. We have used standard of words for the explanation, evenly attempted to clear the concepts and presented captivating writing to the readers. The works also contains some suggestions in respective fields.

The views expressed in the articles are purely and solely of the authors and the entire team of the Journal has no association with the same. Although all attempts have been made to ensure the correctness of the information published in the articles, the Editorial team shall not be held responsible for any errors that might have been caused due to oversight or otherwise. It is up to the rest of us to help make the journal a success story in the next several years.

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Unique Law was established in the month of April 2020 and cheerfully brings **Volume 1 Issue III** of **Journal of Unique Laws and Students (JULS)**. This journal has become a successful climb in reaching to our goal of gaining visibility in the academic front and becoming a great platform in education community.

The journal aims to present merit papers on the numerous legal issues and these topics are authored by various groups of individuals that have been reappraise and emended by our team of editors to attend the highest possible excellence.

We thanks to all our authors for their obedient submission to the third issue of the Journal by Unique Law and also for their productive cooperation with the editorial team to garnish their work with perfection. We would also like to express our gratitude to our diligent editorial board, whose restless support and commitment made this Journal's Issue III a success.

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# INTERNATIONAL COMPETITION IN AVIATION: AN ANALYSIS

**Author:** Vandana\*

## **ABSTRACT**

*The role of aviation sector and its significance is highlighted in this research paper. The impact of competition on the aviation sector is examined. In India, no such specific legal framework is there that is concerned with the competition in aviation sector. However, certain rules and regulations as provided in the Aircraft Rules of 1937 and the Competition Act, 2002 that are dealing with the competition in the aviation sector are described. Certain factors that are resulting in the competition in aviation sector like globalization, increase in domestic property, deregulations and “open skies” policy, mergers and acquisitions and liberalization policy are discussed. The Convention on International Civil Aviation and its impact on aviation sector, formulation of regulations in the aviation field, International Civil Aviation Organization, relation between different nations is analysed. Some International Organizations that are associated with aviation sector are described. The objectives of these organizations are also highlighted. Analysis of Indian Civil Aviation and the case study of Air India is performed and the reasons behind the occurrence of losses in Air India are also explained.*

**Keywords:** Competition, mergers, aviation, regulation, Air India

## **INTRODUCTION**

The present era is ruled by competition. There exists no field with no competition. The aviation sector also struggle with the competition even when most of these are government owned. The aviation sector has gone through evolution since past few years. It is a very significant sector as it helps in provision of many services including passenger services, cargo services. It plays

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an important role in facilitating job opportunities, education, trade by providing mobility services. With the increase in companies offering airline transportation services, the competition in this sector has risen tremendously. No single company enjoys a dominant position in aviation sector which is the reason why there exists tough competition in this sector. A no. of airports is available globally to facilitate the provisions of air transport services. India has around 137 airports currently (as of 2021) the most of which are regulated by the Airport Authority of India.<sup>1</sup> There are no set international competition rules. Moreover, there is less state interference in this sector due to which the competition between the companies rise as sometimes they even adopt unfair practices. At the same time, airlines also face certain issues like a no. of airlines get involved in conflicts with each other, they face a shortage of funds and even go bankrupt.<sup>2</sup> The consumers are benefitting from the competition among the airline companies as they are receiving the services at cheaper prices. But they are also facing losses as the companies holding good market share often end up having price collusion leading to rising in the prices.<sup>3</sup> Sometimes, the companies enjoying good positions merge up to avoid competition and to keep holding their positions in the future. India holds a good position in the world aviation and has set good targets for further improvements in the aviation sector. Competition in this sector often hurts the profit prospects of the airline companies leading to overpricing of the services becoming a bane for the consumers. But liberalization norms restrict the countries from setting up rules to save the domestic airline companies from facing losses.

Air Transport services continue to be a huge and flourishing industry. It plays a significant role in globalization. Air travel grew by around 7% per annum in the past decade. The growth in the economic development of countries has made its citizens more civilized and the risen their living standards and they become international tourists which lead to hike in the demand of airline services. With the increase in demand for airline services, the supply also increases and with an urge to provide better services to the consumers, the market players end up competing with each other to reap more profits and acquire a good market share.

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<sup>1</sup> KNOW INDIA, <http://www.knowindia.net/aviation3.html> (last visited on 1 October, 2021)

<sup>2</sup>Dario Klasic, *Flying on the Edge of Legalities - Safeguarding Fair Competition in European and International Aviation*, 66 (2016)

<sup>3</sup> Mukesh Kacker, *Competition and Regulatory Deficit in Civil Aviation Sector in India*

## **RELEVANCE OF INDIAN COMPETITION ACT, 2002**

There have been no laws framed for preventing competition in the aviation sector in India. But the Aircraft Rules of 1937 lays down restrictions on the anticompetitive practices in the aviation sector.<sup>4</sup> The provisions of the Indian Competition Act, 2002 provide some provisions restricting the anticompetitive agreements, abuse of holding a dominant position, and regulates the mergers. A no. of cases has been decided on the basis of these provisions by the Competition Commission of India. In *International Airport Association (IATA) v. Air Cargo Agents Association of India (ACAAI) and others*<sup>5</sup>, IATA sued ACAAI under article 19 (1)(a) of the Competition Act for violating the provisions of anticompetitive agreements. The petitioners claimed that ACAAI boycotted the business with airlines who were in favour of implementing the cargo account settlement system in India, affecting the supply of air cargo transport services which is indirectly violating the anticompetitive agreements laying impact on the consumers. It was decided by the Competition Commission that it depends on the enterprise to choose and offer services as per their will. There exists no circumstance or agreement for not providing services for specific conditions for raising such concerns. The matter was decided in the favour of the Air Cargo Agents Association of India (ACAAI) due to lack of evidence.

In *Express Industry Council of India v. Jet Airways (India) Ltd and others*,<sup>6</sup> the Express Industry Council of India claimed that Jet Airways, IndiGo Airlines, Spicejet, Air India, and Go Airlines have infringed the provision against anti-competition. It was decided by the Competition Commission of India that the rise in the FSCs is the consequence of collusion among them. Such conduct indirectly helps in determining the rates of air cargo services leading to violation of section 3 (3a) of the Competition Act of India, 2002.

The anticompetitive agreements by travel agents have been dismissed by the court many a times and acquisitions have been approved by it. 24 percent acquisition of Jet Airways by Etihad have been approved by the Competition Commission of India in 2013. Such approvals can be granted by the CCI if it does not impact the competition adversely.<sup>7</sup> Further, in a caselaw

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<sup>4</sup>LEXOLOGY, <https://www.lexology.com/library/detail.aspx?g=9d40295c-9b3c-4178-b4de-51d7aa87a8fa> (last visited 03 October, 2021)

<sup>5</sup> *International Airport Association (IATA) v. Air Cargo Agents Association of India (ACAAI) and others*, AIR 2012 SC 79

<sup>6</sup> *Express Industry Council of India v. Jet Airways (India) Ltd and others*, AIR 2013 SC 30

<sup>7</sup>*Supra* note 4

decided in February 2021, the Competition Commission of India dismissed the case of cartelization. It was held by the CCI that an action against price parallelism can be taken only when it is done collusively and is not an independent decision. The present case involved an independent decision due to which it was dismissed.<sup>8</sup>

In *MP Mehrotra v Jet Airways (India) Ltd and Kingfisher Airlines Ltd*, it was claimed by the petitioner that the defendant companies holding dominant positions in the aviation industry entered into an alliance and with respect to the different areas of passenger services which is against the provisions of anti-competition under section 3 of the Competition Act of India, 2002. The CCI held that the activities conducted by the defendants are covered under the definition of enterprise under section 2 (h) of the Competition Act and there have been no abuse of power and the agreements were instead very beneficial for the consumers. It was held that no provision under sections 3 and 4 has been violated and the matter was dismissed.

### **FACTORS FOR COMPETITION IN THE AVIATION SECTOR**

- **Globalization:** Globalization has led to increase in interaction among the countries, increasing the trade, tourism and the need for travel using the air transportation services. This has led to increase in demand of air transport services. The urge to satisfy consumers with best services induces the airlines companies in the market. This has tremendously increased the competition among the airline entrepreneurs at global levels.<sup>9</sup>
- **Rising Domestic Prosperity:** The growth in economies especially in the Asia/ Pacific region is leading to increase in the trade, investment which consequently leads to ‘Domestic Prosperity.’ The rise in air travel has led to increase in the demand and supply in these services leading to the emergence of more market players attracted by profits and market share and immense competition among the market players.<sup>10</sup>
- **Deregulation “Open Skies”:** Deregulation and adoption of ‘Open Skies’ regulations have been playing a significant role in increasing competition in the aviation sector among the countries. Most countries have uplifted the restriction on the operation of airlines in foreign countries and have adopted “Open Skies” to promote intercountry airlines transport services.<sup>11</sup>

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<sup>8</sup>*Id*

<sup>9</sup>LEGALSERVICES, <http://www.legalservicesindia.com/article/918/Competition-Law-&-Its-Impact-on-Airline-Industry.html> (last visited on 03 October, 2021)

<sup>10</sup>*Id*

<sup>11</sup>*Id*

- **Mergers and Acquisition:** The airlines companies often acquire others and merge with others which rises the competition among other market players in the economy. It helps inefficiency in work and achieve economies of scale. Sometimes these mergers are more ego-driven than having economic ambitions. This adversely impacts competition. Provisions for regulation of competition including acquisition and amalgamation have been listed in the Indian Competition Act, 2002. It has to be approved by the Competition Commission of India.<sup>12</sup>
- **Liberalization Policy:** The liberalization policy has proven to be very beneficial for the airline industry. Reforms in the trade policies have led to the increased role of market forces in the economy. This has increased the domestic competition. Further, the restrictions of industrial policy, including licenses, quotas, locational preferences have been lifted by most countries, which has given a tough competition to the domestic players in a country.<sup>13</sup>

The aforementioned factors are majorly responsible for the increase in competition among the airline companies. The competition not only affects the airlines sector, but the economy and society as a whole. The increased competition has led to fall in prices which has helped the dream of a common man to air travel come true. The aviation sector has also generated a lot of job opportunities which has positively impacted the society. Competition has positively impacted the growth of society by suppressing inflation, raising the living standards of citizens, and enhancing the manufacturing productivity of the nation. Therefore, the competition in the airline industry benefits the consumers and society as a whole.<sup>14</sup>

## **CONVENTION ON INTERNATIONAL CIVIL AVIATION**

The convention on international civil aviation, also called the Chicago Convention came into existence in 1944 when it was signed by 52 states.<sup>15</sup> Later it was signed by all states in 1947. The Convention states the objectives of the International Civil Aviation Organisation.<sup>16</sup> The preamble of the convention states that: The future development of the international civil aviation can help in developing friendly relationships among the economies and its people and at the same time, its abuse can pose danger to the security of the nation.<sup>17</sup>

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<sup>12</sup>*Id*

<sup>13</sup>*Id*

<sup>14</sup>*Supra* note 9

<sup>15</sup> ICAO, <https://www.icao.int/publications/pages/doc7300.aspx> (last visited 03 October, 2021)

<sup>16</sup>*Id*

<sup>17</sup> ICAO, <https://www.icao.int/publications/pages/doc7300.aspx> (last visited 03 October, 2021)

The nations need to cooperate and avoid friction and hence develop peace among themselves.<sup>18</sup>

The governments who have ratified the convention have to follow the principles and arrangements so that the airline industry is developed to its best, peace is promoted among the nations, and equality of opportunity is provided to all.<sup>19</sup> Equality of opportunity is identified as the basic principle of the convention.

In the Sixth Worldwide Air Transport Conference (ATC) held in 2013, it was proposed that ICAO should develop certain competition-related policies.<sup>20</sup> The online compendium of competition rules and policies, cooperation in the field of competition has been formulated by the International Civil Aviation Organisation on the basis of the information collected by it from the member states through a competition survey conducted by it in June 2015. The compilation is divided into two parts where the first part talks about the overview of competition policies applicable to the air transport in the regions globally.<sup>21</sup> It further includes the anti-competitive behaviours including cooperation agreements, abuse of dominance and monopoly; merger and control; and state control. While the second part talks about the practices used by the states and regional entities. This part includes provisions for the prevention of anti-competitive behaviour and provides certain regulatory approaches for the same. It is divided into the following three: Bilateral cooperation; (ii) Multilateral cooperation; (iii) Role of international organizations.<sup>22</sup> The compendium has been framed with an objective to provide easy access to the information and rules and regulations framed by the ICAO. Part one of the compendium describes how the airlines have aligned with the other airline companies of the foreign or domestic territories which may include agreements related to ticketing, joint fare agreements, wet leases, e-commerce joint ventures, prices, and scheduling etc. 1.2 explains the impact of such agreements leading to unfair competition practices on the users and warns that if such agreements are not regulated, they can have adverse impacts on the overall economy. Therefore, effective competition rules and procedures have to be framed in order to preserve the consumer welfare and ensure consumer welfare.<sup>23</sup> The part 2 of the compendium explains the practices and mechanisms to prevent unlawful and anti-competitive behaviours. Bilateral

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<sup>18</sup>*Supra* note 12

<sup>19</sup>*Id*

<sup>20</sup> ICAO, <https://www.icao.int/sustainability/Compendium/Pages/0-default.aspx> (last visited 03 September, 2021)

<sup>21</sup> ICAO, [https://www.icao.int/sustainability/Documents/Compendium\\_FairCompetition/Compendium.pdf](https://www.icao.int/sustainability/Documents/Compendium_FairCompetition/Compendium.pdf) (last visited 03 September, 2021)

<sup>22</sup> *Id*

<sup>23</sup>*Supra* note 16

co-operation has been developed in order to prevent competition. Since the past few decades of following the Convention, the economic regulatory framework for the international airlines was decided by the states themselves and the competition was limited this way. But with the liberalization and deregulation, the competition has been significantly rising as the entrepreneurs have been provided with the opportunities to carry their operations at global levels. This induces more entrepreneurs to participate in the market and reap more profits by providing better services to them. This gives rise to competition at global levels which can prove to be dangerous for economies. So, it is important for the states to apply the competition laws in the aviation sector and regulate competition.<sup>24</sup>

### **SOME INTERNATIONAL ORGANIZATIONS FOR AVIATION**

- *International Civil Aviation Organization (ICAO)*: It is an international organization formed in 1944 and is funded by 193 signatory states. Its basic function includes maintaining administrative bureaucracy and research new air transport policies and develop new innovations in the aviation sector through the ICAO Assembly and ICAO Council elected by the assembly. With the new priorities being identified by the stakeholders, ICAO has been working to research the panels, task forces, seminars, and some other aspects. It provides results to the government and which will help to collectively establish new international standards and recommend policy changes in the aviation sector.<sup>25</sup>
  
- *International Air Transport Association (IATA)*: It is an international aviation organization founded in 1945 in Cuba and headquartered in Montreal, Quebec. It consists of 117 countries and 290 airlines globally. Its functions include providing support to the airline activity and framing industry policies and standards. It also provides consultation and training services. It treats safety as its first priority and its main branch for safety is IOSO i.e., IATA Operational Safety Audit. It has been made compulsory by a no. of countries at their own levels.<sup>26</sup>

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<sup>24</sup>*Id*

<sup>25</sup> ICAO, <https://www.icao.int/about-icao/Council/Pages/Strategic-Objectives.aspx> (last visited on 03 October, 2021)

<sup>26</sup>*Id*

- *Airports Council International*: Airport Council International is a representative of the overall airport authorities in the world. It formulates and recommends the policies to the airports. It also provides trainings to the airports which helps them to raise their standards which helps in innovation and adopting innovative techniques helps in the overall development. It is headquartered in Quebec, Canada, and is governed by the ACI governing board.<sup>27</sup>

The other international aviation organizations include the Federal Aviation Administration, International Federation of Air Line Pilots' Associations, among some others.

### **Objectives of the international organizations:**

The international organizations aim at supporting the aviation sector performing its best to formulate policies and provide necessary support to the airlines and enhance the air transport network. They aim at enhancing the air transportation capacity by 2030 without compromising the system safety, efficiency and environmental performance.<sup>28</sup> The international organisations aim at common objectives which are discussed under:

1. *Safety*: Safety in aviation is the topmost priority the international aviation organizations have. They aim at ensuring and enhancing the civil aviation safety at global levels. The central focus is on the regulatory capacities of the states and the Global Aviation Safety Plan is prepared to maintain safety. The policies framed by these organizations aim at providing and enhancing safety in the aviation sector.<sup>29</sup>
2. *Air Navigation Capacity and Efficiency*: Enhancing the air navigation capacity and efficiency is another objective the organizations focus to achieve. This objective focuses on improvising the air navigation and aerodrome infrastructure, developing new innovative techniques to upgrade the optimize aviation system performance. The air navigation capacity and efficiency plan outlines the objectives to be achieved for improvising in this sector. The policies framed

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<sup>27</sup>Supra note 20

<sup>28</sup> ICAO, <https://www.icao.int/about-icao/Council/Pages/Strategic-Objectives.aspx> (last visited 03 October, 2021)

<sup>29</sup> Nationsencyclopedia, <https://www.nationsencyclopedia.com/United-Nations-Related-Agencies/The-International-Civil-Aviation-Organization-ICAO-PURPOSES.html> (last visited 03 October, 2021)

by the international aviation organizations focus on adopting the latest techniques to enhance the capacity and efficiency in the aviation sector.<sup>30</sup>

3. *Security and Facilitation*: Security is the necessity of any sector. The international aviation organizations aim at enhancing security and facilitation. The strategic objective of the international aviation organizations includes maintaining aviation security, facilitation, and other security-related matters. The policies framed by the international aviation organizations focus on improving security by formulating such policies and programs which ensures security and facilitation in aviation.<sup>31</sup>
4. *Economic Development of Air Transport*: The economic Development of Air Transport helps in enhancing the development of a viable civil aviation system. The organizations focus on harmonizing the air transport and formulate required policies to provide support to the airline activities.<sup>32</sup>
5. *Environmental Protection*: Another main objective of the environment includes environmental protection. The international aviation organizations aim at minimizing the adverse environmental impacts of civil aviation activities. These organizations formulate environmental-related policies and practices in order to sustainably develop the aviation sector. The policies framed are such that the targets are achieved without compromising the environmental prospects in the country.
6. *Economic Development*: The international aviation organizations formulate such policies which focus on overall economic development. They aim at improving the cost efficiency and other operational costs with an aim to focus on providing the returns in order to invest.<sup>33</sup>

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<sup>30</sup>*Id*

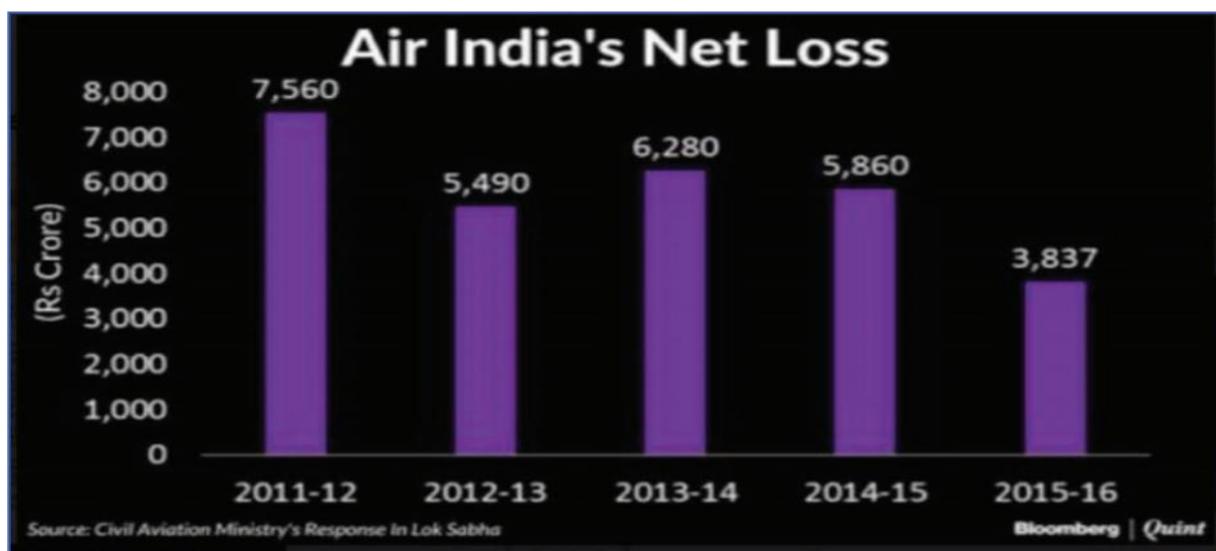
<sup>31</sup>*Id*

<sup>32</sup>*Supra* note 24

<sup>33</sup>*Supra* note 24

## AIR INDIA: CASE STUDY ANALYSIS

Indian Civil Aviation has been ranked as the 11<sup>th</sup> largest in the world. Air India, formerly known as National Aviation Company of India Limited struggled a lot due to the competition among the various airlines. Air India has been providing great aviation services at around 94 international and national airport destinations. It reaped good amounts of profit during its good times till 2007. It was 2007 when the airlines were merged with Indian Airlines. The directors of the company reported in 2007 that it was necessary to merge both Air India and Indian Airlines as both of them faced a lot of competition from the other airlines companies and the condition of their market shares was not at all good.<sup>34</sup> Air India faced a huge loss of 22,262 million in only 2007-2008 and decline in passengers; rise in depreciation, maintenance costs, fuel costs among some others were identified as the factors responsible for such losses.<sup>35</sup> So, it was decided by the NITI Aayog to merge Air India and Indian Airlines. The market share of Air India did not improve, instead, the losses faced by it multiplied eventually. In 2018, the government decided to disinvest in Air India due to huge losses. The invitation of Expression of Interest by the government left the whole aviation industry in shock.<sup>36</sup>



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The figures of losses faced by the company till 2015-2016 have been represented by the above-given graph. It clearly shows the values of net loss did not improve much. The company ran

<sup>34</sup> NACIL, [https://www.airindia.in/writereaddata/Portal/FinancialReport/1\\_114\\_1\\_Directors\\_report\\_0708.pdf](https://www.airindia.in/writereaddata/Portal/FinancialReport/1_114_1_Directors_report_0708.pdf) (last visited 03 October, 2021)

<sup>35</sup> *Id*

<sup>36</sup> *Id*

<sup>37</sup> Arjuni Jain Agarwal and Irala Lokanandha Reddy, *Air India on Sale*, SAGEPUB, 1, <https://journals.sagepub.com/doi/pdf/10.1177/2516604220942971> (last visited on 03 October, 2021)

on the bailout funds of Rs. 300 billion. So, the disinvestment plan was announced by the government.

### *Causes for Losses suffered by Air India*

- The actual reason for losses faced by the company was Competition. There has been arise in competition due to an increase in the competitive players on the domestic and international levels.<sup>38</sup> This made Air India suffer huge losses and it lost its significant position of share in the market.<sup>39</sup>
- Fall in the passengers eventually affected the income of the airlines company which further added to the losses of the company leaving low or no chances of survival.<sup>40</sup>
- Liberalization in granting bail agreements also added up to the sufferings of Air India. It was identified as a cause for losses of Air India as more than required bilateral seats were provided to the foreign countries which directly adversely impacted the prospects of Air India.<sup>41</sup>
- The losses further lead to the incapacity of the company to cover up its maintenance costs and the company went into more debts since then. This was followed by anexcessive intervention by theMinistry of Aviation and other officials.<sup>42</sup>

So, the government decided to give up its 100 percent share in Air India. Indigo and Jet Airways were the companies who expressed their interests to buy stakes in the company.<sup>43</sup> This investment would raise their position in the market and will help them grow. Tata Group was also among the participants in the bid. Recently, bids were invited for the stakes of Air India till 15 September, and rumours were spread in the country that the Tata Group won the bid.<sup>44</sup> But the Commerce and Industry minister Piyush Goyal clarified that the final winner of bid is yet to be announced after proper assessing the required parameters.<sup>45</sup> The turnaround of Air India has to be carried out carefully as if the process is completed successfully, it would lead to the growth and development of the aviation sector.

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<sup>38</sup>*Supra* note 37

<sup>39</sup>*Id*

<sup>40</sup>*Id*

<sup>41</sup>*Id*

<sup>42</sup>*Id*

<sup>43</sup>THE INDIAN EXPRESS, <https://indianexpress.com/article/business/govt-reports-tata-group-winning-air-india-bid-incorrect-7545896/> (last visited on 03 October, 2021)

<sup>44</sup>*Id*

<sup>45</sup>*Id*

## **CONCLUSION**

The aviation sector is developing at its best and it will achieve good outcomes in the nearest future. Amidst the ups and downs the world economies go through, the aviation sector has continuously grown. The aviation business is flourishing since the past decades. While there is a noticeable growth in the aviation sector, the competition in this sector is also increasing which has both positive and negative impacts. The competition helps the consumers as the airline entrepreneurs try their best to provide them with good services. So, this improves the quality of services provided to the consumers. But at the same time, the competition proves to be a threat to the airline entrepreneurs operating in the market as their market share is determined by their profits earned which often lower down due to the competition. Many airline companies have gone into losses and eventually come under the burden of debt. The competition has increased due to the liberalization policies adopted by the countries. The rules formulated by the International Competition Convention related to the competition and agreements should be followed by the countries to ensure fair competition at global levels. This will eventually add to the growth of the aviation sector.