

PARLIAMENT OF INDIA

RAJYA SABHA

DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE ON TRANSPORT,
TOURISM & CULTURE

ONE HUNDRED AND THIRTY THIRD REPORT

ON

THE AIRPORTS ECONOMIC REGULATORY AUTHORITY OF
INDIA BILL, 2007

(PRESENTED TO THE RAJYA SABHA ON 17.04.08)
(LAID ON THE TABLE OF THE LOK SABHA ON 17.04.08)

**RAJYA SABHA SECRETARIAT
NEW DELHI**

APRIL, 2008/CHAITRA, 1930 (SAKA)

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COMPOSITION OF THE DEPARTMENT-RELATED PARLIAMENTARY
STANDING COMMITTEE ON TRANSPORT, TOURISM AND CULTURE
(2007-2008)

1. **Shri Sitaram Yechury** - *Chairman*

RAJYA SABHA

2. Prof. Ram Deo Bhandary*
3. Shri Naresh Gujral
4. Shri Vedprakash P. Goyal^
5. Prof. Alka Balram Kshatriya*
6. Shri Janardhan Poojary *

7. Shri M.V. Mysura Reddy
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LOK SABHA

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13. Shri Joachim Baxla
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19. Shri Dip Gogoi
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21. Dr. P.P. Koya
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23. Dr. Ramkrishna Kusmaria
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28. Shri Akshay Pratap Singh
29. Shri Dushyant Singh
30. Shri Suraj Singh
31. Shri Prahlad Joshi
32. Shri Rakesh Singh**

SECRETARIAT

Shrimati Agnes Momin George, Joint Secretary
 Shri Jagdish Kumar, Joint Director
 Shri Swarabji B., Deputy Director
 Shrimati Nidhi Chaturvedi, Committee Officer

^ Ceased to be a member of the committee *w.e.f.* 2.4.2008

* Ceased to be a member of the committee *w.e.f.* 9th April, 2008

Expired on 13.11.2007

** Nominated on 1.12.2007.

INTRODUCTION

I, the Chairman of the Department-related Parliamentary Standing Committee on Transport, Tourism and Culture, having been authorised by the Committee to present on its behalf, do hereby present this One Hundred and Thirty Third Report of the Committee on the Airports Economic Regulatory Authority of India Bill, 2007 *.

2. The Bill was introduced in the Lok Sabha on the 5th September, 2007. In pursuance of rules relating to the Department-related Parliamentary Standing Committees, the Hon'ble Chairman, Rajya Sabha, referred** the Bill to the Committee on 28th September, 2007 for examination and report within three months. On the request being made by the Chairman of the Committee, Hon'ble Chairman had granted extension of time till the first day of last week of the Budget Session (second part) of the Parliament for the presentation of the report of the Committee on the aforesaid Bill.

3. The Committee took oral evidence of the Secretary and other officers of the Ministry of Civil Aviation at its meeting held on the 23rd October, 2007.

4. The Committee heard the views of the representatives of Federation of Indian Airlines (FIA), Airports Authority

Employees Union and Air Cargo Agents Association of India at its meeting held on the 7 February, 2008. The Committee also heard the views of the Chairman, Airports Authority of India at its meeting held on the 14th February, 2008. Under the mandate, the Committee has examined the Bill and finalized the Report.

5. The Committee also considered the draft Report on the subject and adopted the same on 15th April, 2008.

6. The Committee wishes to express its thanks to the Secretary and other officers of the Ministry of Civil Aviation and Ministry of Law and Justice for the assistance and inputs provided during deliberations on the provisions of the Bill. The Committee also acknowledges the contribution of representatives of Federation of Indian Airlines (FIA), Airports Authority Employees Union, Airports Authority of India and Air Cargo Agents Association of India who submitted their valuable suggestions on the provisions of the Bill.

NEW DELHI;

April 15, 2008

Chaitra 26, 1930 (*Saka*)

SITARAM YECHURY

Chairman

*Department-related Parliamentary Standing
Committee on Transport, Tourism & Culture.*

* Published in the Gazette of India Extraordinary Part II, Section-2, dated 5.9.2007

** Rajya Sabha Parliamentary Bulletin Part II, No.44503 dated 1.10.2007.

(ii)

Report

The Airports Economic Regulatory Authority of India Bill, 2007 was introduced in the Lok Sabha on the 5th September, 2007. The Bill was referred to the Department-related Parliamentary Standing Committee on Transport, Tourism and Culture for examination and report. Under the mandate, the Committee has examined the Bill and finalised the Report after hearing the views of various stakeholders and the nodal Department *i.e.* Ministry of Civil Aviation. The Bill seeks to provide for the establishment of an Airports Economic Regulatory Authority to regulate tariff and other charges for the aeronautical services rendered at airports and to monitor performance standards of airports and also to establish Appellate Tribunal to adjudicate disputes and dispose of appeals and for matters connected therewith or incidental thereto.

2. The salient features given in the Statement of Objects and Reasons appended to the Airports Economic Regulatory Authority of India, 2007 (Annexure) are as follows:-

- 2.1 Most of the civil airports, including civil enclaves at Defence Airports, are presently controlled by the Airports Authority of India (the Airports Authority) in the Ministry of Civil Aviation. The Airports Authority, with the approval of the Central Government, fixes the aeronautical charges for the airports under its control and prescribes the performance standards to all airports and monitor the same. Airport infrastructure Policy formulated in 1997 provides for the private sector participation for improving quality, efficiency and increasing competition. As a result of this initiative, Greenfield airports are now coming up at Bangalore and Hyderabad in Public-Private-Partnership. A private airport is already fully operational at Cochin. Delhi and Mumbai Airports have also been restructured through the Joint Venture route for modernization and development. The trends indicate growing competition and a requirement of level playing field amongst different categories of airports in future.
- 2.2 At present, the Airports Authority performs the role of airport operator as well as the regulator, which results in conflict of interest. This situation has often led to complaints of a mis-match between the aeronautical charges levied by the Airports Authority and the quality of services rendered at airports which are controlled by the Airports Authority. The Naresh Chandra Committee set up by the Central Government to prepare the road map for civil aviation sector has recommended for setting up of an independent regulatory authority.

- 2.3 In the above background, it is felt that an independent economic regulator, namely, the Airports Economic Regulatory Authority (the Regulatory Authority), may be established so as to create a level playing field and foster healthy competition amongst all major airports to encourage investment in airport facilities to regulate tariffs for aeronautical services, etc. It is, therefore, considered necessary to enact a law for the establishment of the Regulatory Authority to regulate tariff and other charges for the aeronautical services rendered at airports and to monitor performance standards of airports and also to establish Appellate Tribunal to adjudicate disputes and dispose of appeals.
- 2.4 The Airports Economic Regulatory Authority of India Bill, 2007, *inter alia*, seeks to provide for (i) establishment of Regulatory Authority which shall consist of a Chairperson and two Members to be appointed by the Central Government; (ii) laying down the powers and functions of the Regulatory Authority to determine the tariff structure for aeronautical services; to determine the amount of development fees in respect of major airports; to determine the amount of passenger service fee; to monitor the performance standards relating to quality, continuity and reliability of service; (iii) establishment of an Appellate Tribunal consisting of a Chairperson and not more than two Members to be appointed by the Central Government; (iv) laying down the functions of the Appellate Tribunal to adjudicate disputes between two or more service providers or between a service provider and a group of consumers, and to hear and dispose of appeals against any direction, decision or order of the Regulatory Authority under this Act; (v) imposing penalties in cases of willful non-compliance of the orders or directions given under the Act; and (vi) the powers of the Central Government to issue directions in the matter of policy involving public interest.
3. The Ministry of Civil Aviation further informed the Committee the reasons for the introduction of the Bill, which have been enumerated in the succeeding paragraphs:-
- 3.1 In India, civilian airports, including civil enclave at Defence Airports, have traditionally been managed by Airports Authority of India (AAI) and its predecessor entities. Airport Infrastructure Policy formulated in 1997 recognised the need for private sector participation in this sector for improving quality, efficiency and increasing competition. The Airports Authority of India Act, 1994 and the Aircraft Rules, 1937 were amended in 2004 to enable the participation of private sector. As a result of this initiative, Greenfield airports are now coming up in Bangalore and Hyderabad in Public-Private-Partnership (PPP) mode. A similar airport is already fully operational at Cochin. Delhi and Mumbai Airports are also being restructured through Joint Venture route for modernization and upgradation. In this scenario, there is a need to ensure a level playing field amongst different categories of airports. Further, airports are natural monopolies. It is, therefore, necessary to ensure that the tariffs are commensurate with the services. Besides, prospective investors are seeking certainty about regulatory and commercial regime over the concession period and have urged the Government to set up an independent regulatory authority to fix aeronautical charges etc.
- 3.2 The Committee was informed that at present, fixation of aeronautical charges is done by the Central Government for Airports Authority of India airports. However, the monitoring of commensurate performance standards is left to Airports Authority of India only. Such performance standards have not been fixed for Airports Authority of India's airports. In a way, Airports Authority of India assumes the role of airport operator and at the same time regulator, which results in conflict of interest. This may have led to a mis-match between the aeronautical charges levied by Airports Authority of India and the quality of services rendered at airports. Further, private airports, after amendment of the Airports Authority of India Act of 1994, are not covered by Airports Authority of India Act 1994 and are subjected to the provisions of Aircraft Act, 1934 and Rules made there under. These Private Airports will also have to approach Central Government for tariff fixation.
- 3.3 The Ministry has also stated that various Committees and Studies have recommended setting up of an independent regulator in the civil aviation sector. The Planning Commission, in a study conducted for a regulatory mechanism in Civil aviation sector, has recommended setting up of an Aviation Economic Regulatory and Development Authority. The Competition Commission of India (CCI), as a general body, may not be able to handle the special problems of the Civil Aviation Sector in the most effective manner. The Naresh Chandra Committee set up by Ministry of Civil Aviation to prepare the road map

for Civil Aviation sector, realizing the potential for likely abuse of monopoly power in airport activities, have also recommended the setting up of an Independent Economic Regulator. The Committee on Infrastructure under the Chairmanship of Prime Minister and 'Empowered Group of Ministers (EGOM)' constituted to oversee restructuring process of Delhi and Mumbai airports have also suggested the setting up of an Economic Regulatory Authority for airport sector.

3.4 With the prime objective to create a level playing field, to foster healthy competition amongst all airports, encourage investment in airport facilities, regulation of tariffs of aeronautical services, protection of reasonable interest of users, operation of efficient, economic and viable airports, etc., the setting up of an Airports Economic Regulatory Authority (AERA) has, therefore, become imperative.

3.5 The Committee was further informed that the civil aviation sector on the transport side, already has market based competition where fares, entry and exit of firms are market determined. The anti-competitive practices amongst airlines can be checked through existing competition laws. Hence, only airports sector are proposed to be brought within the ambit of the economic regulation. Even in airport sector, the economic regulation regime can be extended to cover all airport related functions, ranging from tariff to slot allocation. However, on careful consideration and considering the level of private sector participation, it has been felt that to begin with, tariff regulation and monitoring of pre-set performance standards at major airports only should be covered by The Airports Economic Regulatory Authority of India Bill, 2007. In future, depending upon further developments in the sector, other functions could be considered for being assigned to the regulator.

3.6 Further to ensure that the Authority works in accordance with the broad policy guidelines, the Bill provides that the Central Government can issue directions on policy issues to the Authority. There is also an emergency provision by which the authority can be suspended. Clause 49 of the Bill provides that the authority can be superseded if it is not following the directions issued; and the authority can be reconstituted.

4. The Committee in its meeting held on the 23rd October, 2007 heard the views of the Secretary and other Officials of the Ministry of Civil Aviation and Ministry of Law and Justice on the Bill and sought replies to the queries on the subject. The Committee heard the views of Associations/stakeholders in its meeting held on the 7th February, 2008 and also the Chairman, Airports Authority of India on the 14th February, 2008. The Committee in its meeting held on the 15th April, 2008 considered the Bill and recommends for amendments as under:

4.1 **Clause 2 reads** - "In this Act, unless the context otherwise requires,—

(a) "aeronautical service" means any service provided—

(i) for navigation, surveillance and supportive communication thereto for air traffic management;

(ii) for the landing, housing or parking of an aircraft or any other ground facility offered in connection with aircraft operations at an airport;

(iii) for providing ground safety services at an airport;

(b) "airport" means a landing and taking off area for aircrafts, usually with runways and aircraft maintenance and passenger facilities and includes an aerodrome as defined in clause (2) of section 2 of the Aircraft Act, 1934;

(c) "airport user" means any person availing of passenger facilities at an airport;

(d) "Appellate Tribunal" means the Airports Economic Regulatory Authority Appellate Tribunal established under section 17;

(e) "Authority" means the Airports Economic Regulatory Authority established under sub-section (1) of section 3;

(f) "civil enclave" means an area, if any, allotted at an airport belonging to any

armed force of the Union, for use by persons availing of any air transport services from such airport or for the handling of baggage or cargo by such service, and includes land comprising of any building and structure on such area;

(g) "Chairperson" means the Chairperson of the Authority appointed under sub-section (2) of section 4;

(h) "leased airport" means an airport in respect of which a lease has been made under section 12A of the Airports Authority of India Act, 1994;

(i) "major airport" means any airport which has, or is designated to have, annual passenger throughout in excess of one and a half million or any other airport as the Central Government may, by notification, specify as such;

(j) "Member" means a Member of the Authority and includes the Chairperson;

(k) "prescribed" means prescribed by rules made under this Act;

(l) "private airport" has the same meaning as assigned to it in clause (nn) of section 2 of the Airports Authority of India Act, 1994;

(m) "regulations" means regulations made by the Authority under this Act;

(n) "service provider" means any person who provides aeronautical services and is eligible to levy and charge user development fees from the embarking passengers at any airport and includes the authority which manages the airport;

(o) words and expressions used but not defined in this Act and defined in the Airports Authority of India Act, 1994 shall have the same meanings respectively assigned to them in that Act."

5. This clause defines certain expressions used in the proposed legislation. Jet Airways Limited in their written submission stated that at several places throughout the Bill and in important clauses there is a reference to "stakeholders". However, at no place in the Bill is the word itself defined. The Ministry in their reply submitted that AERA is proposed to be a high level regulatory body for economic regulation of major airports. It will consult all stakeholders and not merely principal stakeholders, in discharging its functions. The provisions of Sub clause 4 of clause 13, while ensuring that AERA will discharge its functions in consultation with the stakeholders, also provide sufficient flexibility to the Authority to choose the stakeholders to be consulted based upon the matter, under consideration, on case to case basis.

6. The Committee notes that it will be critical in defining to what extent or what role a "stakeholder" such as an airline has in the key decision making processes of the regulatory framework. The Committee feel that it is not clear from the provisions of the Bill that whether the passengers using the airports would presumably be classified as one of the stakeholders so that they have the opportunity to make submission for determination of the quantum of the airport tariffs. The Committee, therefore, recommends that the Bill should clearly define as to who are the principal stakeholders and establish unambiguously their role in the functioning of AERA and the consultative process for decision making by AERA.

7. The proposed legislation does not address the cargo activity involved in the airports. The Cargo Agents Association while submitting their views before the Committee requested that the definition of airport user should be expanded to include persons availing of cargo/freight transportation and operation facilities at the airports. The Cargo Agents Association submitted before the Committee that as far as India is concerned, 30% of the international trade is carried by air, i.e., in value terms. It will come around 40-50 billion dollars of our trade. They further stated that the most glaring omission in the draft Bill is the absence of the any mention of cargo in the definition in Section 2(c). In Section 2(c) it is mentioned : "user means any person availing of passenger services at airport" but cargo has not been mentioned as part of airport user. The matter was taken up with the Ministry of Civil Aviation and they submitted vide their letter NoAV.20036/32/2005-AAI dated the 7th February, 2008 that since cargo operators also use airports and pay

charges for aeronautical services the suggestion is acceptable.

8. The Committee notes that cargo is one of the major components of the civil aviation sector and the omission of cargo from the definition of the Bill need to be rectified. The Committee, therefore, recommends that the definition 'airport user' in Section 2(c) should read "as any person availing of passenger and/or cargo facilities".

9. The Committee also received a representation stating that various surcharges imposed on the cargo added to more than what is the freight charges. The Committee feels that this also needs to be looked into.

10. The Committee recommends that the Ministry may suitably amend the Bill to include the cargo operators in the ambit of the Bill.

11. **Clause 4 reads -** "(1) The Authority shall consist of a Chairperson and two other Members to be appointed by the Central Government:

Provided that whenever the Authority is deciding a matter involving a civil enclave in a defence airfield, there shall be an additional Member, not below the rank of Additional Secretary on the Authority, to be nominated by the Ministry of Defence.

(2) The Chairperson and Members of the Authority shall be appointed by the Central Government from amongst persons of ability and integrity having adequate knowledge of, and professional experience in, aviation, economics, law, commerce or consumer affairs:

Provided that a person who is or has been in the service of Government shall not be appointed as a Member unless such person has held the post of Secretary or Additional Secretary to the Government of India or any equivalent post in the Central or State Government for a total period of not less than three years.

(3) The Chairperson and other Members shall be whole time members.

(4) The Chairperson or other Members shall not hold any other office.

(5) The Chairperson shall be the Chief Executive of the Authority.

(6) The Chairperson and other Members of the Authority shall be appointed by the Central Government on the recommendation of Selection Committee referred to in section 5".

12. This clause relates to composition of Authority. This clause, *inter alia*, provides that the Authority shall consist of a Chairperson and two other Members to be appointed, on the recommendation of Selection Committee referred to in clause 5 by the Central Government from amongst persons of ability and integrity having adequate knowledge of, and professional experience in, aviation, economics, law, commerce or consumer affairs. However, whenever the Authority is deciding a matter involving a civil enclave in a defence airfield, there shall be an additional Member, not below the rank of Additional Secretary on the Authority, to be nominated by the Ministry of Defence. It further provides that a person who is or has been in the service of Government shall not be appointed as a Member unless such person has held the post of Secretary or Additional Secretary to the Government of India or any equivalent post in the Central or State Government for a total period of not less than three years. The Chairperson and other Members shall be whole-time Members. It also provides that the Chairperson or whole-time Members, if any, shall not hold any other office.

13. One of the stakeholders submitted to the Committee that AERA should be an autonomous entity and the Members selected for appointment should not have been employees of any stakeholder for the previous three to four years at the time of appointment. In response thereto the Ministry submitted that sufficient safeguards for autonomous exercise of powers and independence of the Chairpersons and Members of the authority have been built into the AERA Bill. In order to ensure that AERA works independently and in unbiased manner, a person who had served any of stakeholder organization should have some minimum cooling period before he is appointed as Chairperson/Members. The Committee recommends that the provision may be modified accordingly.

14. Clause 4(2) of the Bill states that the Chairperson and the Members of the Authority shall be appointed by the Central government from amongst persons of ability and integrity having adequate knowledge of, and professional experience in, aviation, economics, law, commerce and consumer affairs. The Committee is of the opinion that the Members should also have the expertise on competition law and policy as the AERA is created to promote fair competition in the field of aviation. Therefore, the Clause 4(2) may be amended accordingly.

15. Various representationists stated that this clause effectively debar senior serving or retired officer from the

Defence Forces who might otherwise have vast experience in the field of aviation. In reply to the representation, the Ministry clarified that the proviso to the Sub-Clause 2 of Clause 4 of the Bill simply specifies that the persons who have held any equivalent posts to the post of Secretary or Additional Secretary to the Government of India should also be appointed as Member/Chairperson of the Authority. The Committee wonders whether in the Defence Forces there is any equal post to the Secretary. The literal meaning of the clause does not bar personnel of the Defence Forces being appointed to the Authority. However, in practice, the clause may effectively prevent the entry of experienced and meritorious people of the Defence Forces to the Authority. Moreover, the reply of the Government gives an impression that the Authority can be filled up only by Members of bureaucracy. In fact, in the era of economic liberalization and globalization a lot of talent and expertise is available outside the Government set up. The Committee, therefore, feels that the law should be flexible not only to accommodate the personnel of the Defence Forces but also to accommodate the experts from the private sector. The Committee, therefore, recommends that Clause 4(2) may be suitably modified.

16. Clause 6 reads - "(1) The Chairperson and other Members, shall hold office, as such, for a term of five years from the date on which he enters upon his office, but shall not be eligible for re-appointment:

Provided that no Chairperson or other Member shall hold office, as such, after he attains —

(a) in the case of the Chairperson, the age of sixty-five years; and

(b) in the case of any other Member, the age of sixty-two years.

(2) The salary and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members shall be such as may be prescribed.

(3) The salary, allowances and other conditions of service of the Chairperson and other Members shall not be varied to their disadvantage after their appointment.

(4) Notwithstanding anything contained in sub-section (1), the Chairperson or any Member may,—

(a) relinquish his office by giving, in writing to the Central Government, a notice of not less than three months; or

(b) be removed from his office in accordance with the provisions of section 8.

(5) The Chairperson or any Member ceasing to hold office, as such, shall—

(a) be ineligible for further employment under the Central Government or any State Government for a period of two years from the date he ceases to hold such office;

(b) not accept any commercial employment including private for a period of two years from the date he ceases to hold such office; or

(c) not represent any person before the Authority in any other manner.

Explanation.—For the purposes of this sub-section,—

(a) “employment under the Central Government or State Government” includes employment under any local or other authority within the territory of India or under the control of the Central Government or State Government or under any corporation or society owned or controlled by the Government.

(b) “commercial employment” means employment in any capacity under, or agency of, a person engaged in trading, commercial, industrial or financial business in any field and includes also a director of a company or partner of a firm and it also includes setting up practice either independently or as partner of a firm or as an adviser or a consultant."

17. This clause relates to the terms of office and other conditions of service, etc., of Chairperson and Members.

18. This clause, *inter alia*, provides that the Chairperson and other Members, shall hold office, as such, for a term of five years from the date on which he enters upon his office, but shall not be eligible for re-appointment. The Chairperson shall not hold office, as such, after he attains the age of sixty-five years and other Members shall not hold office, as such, after he attains the age of sixty-two years. The salary and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members shall be such as may be prescribed. The Chairperson or any Member ceasing to hold office, as such, shall (a) not be eligible for further employment under the Central

Government or any State Government for a period of two years from the date he ceases to hold such office; (b) not accept any commercial employment including private for a period of two years from the date he ceases to hold such office; or (c) represent any person before the Authority in any other manner. This clause also defines the expressions (a) "employment under the Central Government or State Government"; and (b) "commercial employment". The Chairperson or any Member can, relinquish his office by giving in writing to the Central Government notice of not less than three months; or be removed from his office in accordance with the provisions of Clause 6.

19. When the Committee specifically asked about the curtailment of the tenure of the Chairperson and other Members of the Authority from five years to three years, the Ministry has replied that the term of office of five years for Chairperson and members of the Authority is reasonable. This is also in line with the provisions in respect of similar regulatory bodies already established such as Central Electricity Regulatory Commission, Petroleum and Natural Gas Regulatory Board, etc.

20. This clause *inter alia* provides that the Chairpersons and other Members shall hold Office for a term of five years from the date on which he enters upon his Office but shall not be eligible for reappointment. One of the stakeholders in a written submission submitted to the Committee stated that it is not clear whether a past Member be appointed as a Chairperson and *vice versa* because Section 2(j) includes Chairperson also to be a Member. In a clarification to the question raised, the Ministry of Civil Aviation submitted that Sub-Clause (1) of Clause 6 of the AERA Bill provides that the Chairperson other Members shall not be eligible for reappointment. As such, it is clear that the Chairperson and other Members of the Authority shall not be eligible for reappointment as Chairperson or Member, respectively. There is no bar for a Member being appointed as the Chairperson. The Committee notes the clarification furnished by the Ministry. The Committee, however, feels that to avoid ambiguity and multiplicity of interpretation it is better to define the aspects of reappointment in the clause itself. While drafting the clause the legislative intent should be made amply clear. Theoretically, it is possible that a Chairperson could be appointed as a Member, though normally it is not done. Therefore, the Committee recommends that the clause should be modified in such a way making it clear that a Member cannot be appointed as Chairperson but a Chairperson can be appointed as a Member.

21. **Clause 13 reads - "** (1) The Authority shall perform the following functions in respect of major airports, namely:—

(a) to determine the tariff for the aeronautical services taking into consideration—

(i) the capital expenditure incurred and timely investment in improvement of airport facilities;

(ii) the service provided, its quality and other relevant factors;

(iii) the cost for improving efficiency;

(iv) economic and viable operation of major airports;

(v) the concession offered by the Central Government in any agreement or memorandum of understanding or otherwise;

(vi) any other factor which may be relevant for the purposes of this Act:

Provided that different tariff structures may be determined for different airports having regard to all or any of the above considerations specified at Sub- Clauses (i) to (vi);

(b) to determine the amount of the development fees in respect of major airports;

(c) to determine the amount of the passengers service fee levied under rule 88 of the Aircraft Rules, 1937 made under the Aircraft Act, 1934;

(d) to monitor the set performance standards relating to quality, continuity and reliability of service as may be specified by the Central Government or any authority authorised by it in this behalf;

(e) to call for such information as may be necessary to determine the tariff under clause (a);

(f) to perform such other functions relating to tariff, as may be entrusted to it by the Central Government or as may be necessary to carry out the provisions of this Act.

(2) The Authority shall determine the tariff once in five years and may if so considered appropriate and in

public interest, amend, from time to time during the said period of five years, the tariff so determined.

(3) While discharging its functions under sub-section (1) the Authority shall not act against the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality.

(4) The Authority shall ensure transparency while exercising its powers and discharging its functions, *inter alia*,—

(a) by holding due consultations with all stake-holders with the airport;

(b) by allowing all stake-holders to make their submissions to the authority; and

(c) by making all decisions of the authority fully documented and explained".

22. This clause relates to the functions of the Authority. This clause specifies the functions to be performed in respect of the major airports, by the Authority. The functions to be performed by the Authority shall be (a) to determine the tariff for the aeronautical services taking into certain considerations specified in items (a)(i) to (a)(vi) of Sub-Clause (1) of this Clause. The Authority can determine different tariff structures for different airports having regard to all or any of the above considerations specified in said sub-clauses (i) to (vi); (b) to determine the amount of the development fees in respect of major airports; (c) to determine the amount of the passengers service fee levied under rule 88 of the Aircraft Rules, 1937 made under the Aircraft Act, 1934; (d) to monitor set performance standards relating to quality, continuity and reliability of service as may be specified by the Central Government or any authority authorised by it in this behalf; (e) to call for such information as may be necessary to determine the tariff under clause (a); (f) to perform such other functions relating to tariff as may be entrusted to it by the Central Government or as may be necessary to carry out the provisions of this proposed legislation. This clause further provides that the Authority shall determine the tariff once in five years and may if so considered appropriate and in public interest, amend, from time to time during the said period of five years, the tariff so fixed. It also provides that while discharging its functions, the Authority shall not act against the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality and it shall ensure transparency in the manner specified in sub-clause (4) of this clause while exercising its power and discharging its functions.

23. The proposed legislation will determine the charges for the aeronautical services provided by the operator and the "aeronautical service" has been defined in this Act as any service provided (i) for navigation, surveillance and supportive communication thereto for air traffic management; (ii) for the landing, housing or parking of an aircraft or any other ground facility offered in connection with air craft operations at an airport; and (iii) for providing ground safety services at an airport.

24. One of the important functions of the Authority will be determination of tariff for the aeronautical services. To a specific query about the methodology for determination of tariff, the Ministry of Civil Aviation replied that internationally there are various approaches to economic regulation of airports viz., regulation on rate of return basis, direct price control, revenue cap basis, light handed approval system and deregulated approach with monitoring of price only. The Ministry further stated that the approach to be adopted by AERA would be finalized, keeping in background the international best practices and the requirement of the civil aviation sector in India in specific.

25. Another important aspect of the proposed legislation is the determination of tariff in respect of major airports under the AERA vide Clause 13 (1) (a). Major airports which are defined as airports which have, or are designated to have, annual passenger throughput in excess of one and a half million or any other airports as the Central Government may, by notification, specify as such. This gives impression that all airports in the country other than major airports, will continue to be governed by the already existing tariff structure set by the Airports Authority of India.

26. While deposing before the Committee, the Secretary, Ministry of Civil Aviation submitted that the jurisdiction of the regulatory authority has been confined to the airport sector. As it is felt that the Civil Aviation Sector and the Transport side already has a market based competition where fares, entry and exit of firms are marketed determined. On the other hand, airports could be susceptible to their abuse of monopoly power. However, Jet Airways in their representation submitted that the role of AERA should not be restricted to the determination of tariffs and airport sectors but it should include non-aeronautical services also. The Authority's coverage should be expanded to include provision of terminal facilities to airlines such as office premises, checking counters, passenger amenities such as restaurants, food stalls, etc., allotment of land for construction of hangers, maintenance facilities etc. AERA should

have the responsibility of ensuring that the charges levied by the service providers in these areas are reasonable and do not take advantage of their monopolistic position while determining the charges. Air India also submitted to the Committee that the ambit of AERA should be broadened to include regulation of both aeronautical as well as non-aeronautical revenues. As per the current proposal only aeronautical revenues are sought to be regulated through AERA. If non-aeronautical revenues are exempted from the purview of AERA Act, the user charges for aeronautical services may increase in an unwarranted fashion imposing severe financial constraints to the airlines as well as passengers. The Ministry of Civil Aviation in their comments submitted that the airport operators, mostly through concessionaire, were selected based on a process of open bidding /in line with the market practices. On the other hand, aeronautical services are the monopoly of the airport operator. Therefore, it is felt that the jurisdiction of AERA should, presently, be limited to regulate the aeronautical services only. The Committee observes that though the basic infrastructure of airport is geared towards providing landing, housing, parking of an aircraft along with supporting ground handling, navigation, surveillance and communication facilities, the airports also provide banks and other office spaces etc. The economies of airport operation depends on both revenue streams i.e. aeronautical revenue and non-aeronautical revenue. Even though the bulk of revenue for Indian airports come from aeronautical services, world over the successful airports get majority of their revenue from non-aeronautical services.

27. The Committee further observes that the points raised by the stakeholders need serious consideration in view of the financial implication involved in it and the Government may amend the Bill in order to include non-aeronautical service also in the ambit of the Bill.

28. The representative of the Federation of Indian Airlines submitted before the Committee that the Civil Aviation Sector is intensely competitive on the demand side with the fares being market determined. On the supply side Airlines deal only with monopoly players, be it airports, the fuel suppliers or the aircraft and equipment manufacturers. The cost of the Airlines have been spiraling out of control, most notably on the fuel front. So there are rising costs, lower revenues and excess capacity in the airline industry in India. Indian carriers simply have no room to absorb any new charges and through surcharges imposed on the airlines we are seeing pass through of cost and a rise in the total cost of travel for passengers. The airports are increasing the surcharges manifold on various heads, whether it is vehicle entry permits, introducing new surcharges for non-motorised vehicles or increasing the royalty charge for ground handling services at the airport. All these are exercises for revenue maximization on the airport front which are pushing the airlines deeper into the red. The Federation of Indian Airlines also submitted that there appears to be a gap between the definition of aeronautical services as defined in the AERA Bill and the coverage of aeronautical services under the consensus agreements for airports signed by the Government of India, or the Operations Management Development Agreement (OMDA) signed in the case of Delhi and Mumbai airports. The OMDA agreements lists around 52 different heads with the provisions to enlarge its scope. However, on a perusal of the provisions of the AERA Bill it is apparent that the Bill did not capture all the 52 heads in its entirety. Therefore, they requested that adequate provision may be made in the Bill to ensure that all the aeronautical and non-aeronautical services listed in various OMDA agreements are covered under the ambit of the AERA Bill.

29. The Committee feels that there appears to be a gap between the definitions of aeronautical services as defined in the AERA Bill and the coverage of aeronautical services under the concession agreement for airports signed by the Government of India or even the Operations Management Development Agreement, the OMDA signed in the case of Delhi and Mumbai airports. The Committee is of the opinion that while the AERA Bill limits itself to the navigation, surveillance and supportive communication for Air Traffic Management and for landing, housing or parking of aircraft, the OMDA has a broader scope for aeronautical services and it includes baggage systems, check-in concourses and hydrant infrastructure for aircraft fuelling services among many others. The Committee recommends that AERA oversight for aeronautical services and their charges should not be restrictive in scope, but should be extended to all other major aeronautical service heads laid out in concession and OMDA agreements as AERA has to ensure a balanced outcome between airports, airlines and also the passengers as many services which have been left out of AERA coverage are essential to passengers and need monitoring by a regulator. The Committee welcomes the regulation of aeronautical services by the new regulator even though this will be only a small part of the revenue earning however, the non-aeronautical services, which are the large chunk of the earnings will go as un-regulated. The ambit of AERA should be broadened to include regulation of both aeronautical, as well as, non-aeronautical revenue. As per the current proposal, only aeronautical revenues are sought to be regulated through AERA. The Committee recommends that this lacuna should be addressed by the Government and the non-aeronautical services also be brought under the ambit of proposed regulator.

30. Another point brought before the Committee by the Federation of Indian Airlines is that the exorbitant cost of the ATF. The Indian carriers are subject to surcharges, states sales taxation, airport throughput charges etc. All these various different elements add up to the differential of 70 to 90% in excess of what fuel costs elsewhere. Airports have a considerable scope to exercise market power in negotiating terms and conditions for the provisions of refueling services by the Oil Companies and the scope for airlines to use alternative suppliers or refuel offside is not available. Therefore, they propose that fuel supply infrastructure at airports should come under the purview of AERA. This is in line with the recommendations of the Naresh Chandra Committee.

31. In view of the submissions made by the FIA, the Committee strongly recommends that the fuel supply infrastructure should be brought under the purview of AERA Bill and this should be added in the powers and functions of the authority in Chapter 3 of the Bill.

32. To a specific query regarding the expansion of AERA's role and functions to cover all airports used for the operation of commercial flights irrespective of size of the airport or ownership, the Ministry of Civil Aviation has replied that 11 major airports generate/handle almost 85% of the revenue and passenger traffic. Therefore, the scope of AERA is sufficiently wide. Further the Ministry has stated that economic regulation of smaller airports would be cumbersome without commensurate benefits. In any case depending on the need, the Central Government can notify other airports also, i.e. even those airports which have throughput less than 1.5 million passengers per annum as major airports.

33. The Bill limits the powers of the authority only to major airports which are having a throughput of 1.5 million passengers per annum. Jet Airways submitted that all airports are inevitable monopolies irrespective of ownership and the passenger throughput. Therefore, it is necessary that the charges levied at all the airports should be subject to the regulation of AERA. This will ensure that the tariffs payable at these airports are determined on the basis of some principles as are being laid down under the Bill and they also bear some relationship to the charges levied at major airports as defined in the Bill.

34. The Committee observes that the Airports Authority of India, did not have any fixed performance standards to serve the passengers or to that matter for the efficiency of the airports. The Bill presently covers only major airports handling 1.5 million or more passengers per annum. The Committee does not find any reason to exclude about 116 odd other airports from the purview of the present Bill. The Committee, therefore, recommends that the role of AERA and its functions should be expanded to cover all the airports used for the operation of commercial flights irrespective of the size of the airport or ownership or throughput of passengers.

35. The Authority will also determine the amount of development fees in respect of major airports as per Clause 13 (1) (b). Development fees are a new syndrome which is being introduced in the Indian aviation sector. Commissioning of new Greenfield private airports at Hyderabad and Bangalore has paved the way for introduction of user development fees on the passengers for using the airports. Pending the AERA set-up, both the operators at these Greenfield airports have already fixed different rate of development fees for the passengers.

36. The main question before the regulator will be quantum of development fees which will be charged on the passengers. Since this will be a new phenomenon in the Indian aviation sector, response from the passengers will be a varied one. Any amount of development fees will definitely increase the cost of air travel which will finally have an impact on the viability of the airlines.

37. The Committee hopes that any amount of development fee which will be fixed by the AERA should not dampen the passenger demand. The Committee is of the opinion that making air travel expensive by such development fees will have a significant impact on the overall economy, especially, on the tourism, commerce and hospitality sectors. The Committee hopes that the proposed regulator will definitely play a positive and critical role in determining development fees.

38. It further provides that the selection of Chairperson and Members of the Appellate Tribunal shall be made by the Central Government in consultation with the Chief Justice of India or his nominee.

Clause 20 reads - " A person shall not be qualified for appointment as the Chairperson or a Member of the Appellate Tribunal unless he—

(a) in the case of Chairperson, is, or has been, a Judge of the Supreme Court or the Chief Justice of a High Court;

(b) in the case of a Member, has held the post of Secretary to the Government of India or any equivalent post in the Central Government or the State Government for a total period of not less than two years in the Ministries or Departments dealing with aviation or economics or law or a person who is well-versed in the field of aviation or economics or law".

39. This Clause relates to the qualifications for appointment of Chairperson and Members. This clause provides that (a) a person shall not be qualified for appointment as the Chairperson of the Appellate Tribunal unless he, is, or has been, a Judge of the Supreme Court or the Chief Justice of a High Court; and (b) a person shall not be qualified for appointment as the Member of the Appellate Tribunal unless he has held the post of Secretary to the Government of India or any equivalent post in the Central Government or the State Government for a total period of not less than two years in the Ministries or Departments dealing with aviation, economics or law, or a person who is well-versed in the field of aviation or economic or law.

40. This Clause prescribes the qualification for appointment of chairperson and Members of the Appellate Tribunal. The Clause *inter alia* specifies conditions as to who could be appointed for such posts. The Orient Flying School raised the point that if an ex-Chairperson or ex-Member of the AERA is appointed to the Appellate Board of the Tribunal and any matter on appeal relating to their period of incumbency in AERA is to be examined, it may create embarrassing situation. While clarifying this point the Ministry of Civil Aviation given an example of the Members of lower Authority/Courts who progress to become Members of the Appellate Authority/Courts in normal course. In such cases, as per judicial discipline/propriety the appeals arising from the judgements/orders based in lower capacity are not listed before/heard by the same persons while acting in higher capacity. The Committee is not convinced by the reply of the Ministry mainly because the Appellate Tribunal Acts as a single entity where all the appeals are invariably heard by all the Members sitting together irrespective of the fact that whether any one of them was part of the deciding authority at the lower levels or not.

41. The Committee observes that while doing so there are chances that the Members may be biased in taking a decision. The Committee also observes that India does not have dearth of any qualified and experienced people to man the Authority or the Tribunal. The Committee, therefore, recommends that Section 20 may be suitably modified to ensure that those who were Members of AERA, are not appointed to the Appellate Tribunal.

Clause 22 reads - "The salary and allowances payable to and the other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or a Member of the Appellate Tribunal shall be varied to his disadvantage after appointment"

42. This Clause relates to the terms and conditions of service. This Clause provides that the salary and allowances payable to and the other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal shall be such as may be specified by rules made by the Central Government. However, neither the salary and allowances nor the other terms and conditions of service of the Chairperson or a Member of the Appellate Tribunal shall be varied to his disadvantage after appointment.

43. The Committee is of the view that on the lines of Telecom Regulatory Authority of India Bill a Clause on 'Funds' may be inserted as follows:

(1) There shall be constituted a Fund to be called the Airport Regulatory Authority of India General fund and there shall be credited thereto- (a) all grants, fees and charges received by the Authority under this Act; and (b) all sums received by the Authority from such other services as may be decided upon by the Central Government.

(2) The Fund shall be applied for meeting-(a) the salaries and allowances payable to the Chairperson and members and the administrative expenses including the salaries, allowances and pension payable to or in respect of officers and other employees of the Authority; and (b) the expenses on objects and for purposes authorized by this Act.

44. **Clause 42 reads -** "(1) The Central Government may, from time to time, issue to the Authority such directions as it may think necessary in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality.

(2) Without prejudice to the foregoing provisions, the Authority shall, in exercise of its powers or the

performance of its functions, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time:

Provided that the Authority shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(3) The decision of the Central Government whether a question is one of policy or not shall be final".

45. This Clause relates to the directions by the Central Government. This Clause confers power upon the Central Government may, issue from time to time, such directions to the Authority, as it may think necessary in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality. It further provides that the Authority shall, in exercise of its powers or the performance of its functions, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time. It also provides that the decision of the Central Government whether a question is one of policy or not shall be final.

46. **Clause 43 reads** - "The Chairperson, Members, officers and other employees of the Authority shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code".

47. This Clause relates to the Members, Officers and employees of the Authority to be public servants. This Clause provides that the Chairperson, Members, officers and other employees of the Authority shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code.

48. **Clause 44 reads** - "No civil court shall have jurisdiction in respect of any matter which the Authority is empowered by or under this Act to determine".

49. This Clause relates to the bar of jurisdiction. This Clause provides that no civil court shall have jurisdiction in respect of any matter which the Authority is empowered by or under this proposed legislation to determine.

50. **Clause 45 reads** - "No suit, prosecution or other legal proceedings shall lie against the Central Government or the Authority or any Member, officer or other employees thereof for anything which is in good faith done or intended to be done under this Act or the rules and regulations made thereunder".

51. This Clause relates to the protection to the Members/Officers of the Authority for action taken in good faith. This Clause provides that no suit, prosecution or other legal proceedings shall lie against the Central Government or the Authority or, any Member, officer or other employees thereof for anything which is in good faith done or intended to be done under this proposed legislation or the rules and regulations made thereunder.

52. **Clause 46 reads** - "Notwithstanding anything contained in the Wealth-tax Act, 1957, the Income-tax Act, 1961, or any other enactment for the time being in force relating to tax on wealth, income, profits or gains, the Authority shall not be liable to pay wealth-tax, income-tax or any other tax in respect of their wealth, income, profits or gains derived".

53. This Clause relates to the exemption of the Authority from tax on wealth and income. This Clause provides that the Authority shall, notwithstanding anything contained in the Wealth-tax Act, 1957, the Income-tax Act, 1961, or any other law for the time being in force relating to tax on wealth, income, profits or gains, be liable to pay wealth-tax, income-tax or any other tax in respect of their wealth, income, profits or gains derived.

54. **Clause 47 reads** - "No court shall take cognizance of an offence punishable under this Act, except upon a complaint in writing made by the Authority or by any officer of the Authority duly authorised by the Authority for this purpose".

55. The Clause 47 provides that no court shall take cognizance of an offence punishable under this proposed legislation, except upon a complaint in writing made by the Authority or by any officer of the Authority duly authorised by the Authority for this purpose.

56. **Clause 48 reads** - "The Authority may, by general or special order in writing, delegate to the Chairperson or any Member or officer of the Authority, subject to such conditions and limitations, if any, as may be specified in the order, such of its powers and functions under this Act (except the power to settle disputes and the power to

make regulations), as it may deem necessary".

57. This Clause relates to the delegation of powers. This Clause confers power upon the Authority, delegate, by general or special order in writing to the Chairperson or any Member or officer of the Authority, subject to such conditions and limitations, if any, as may be specified in the order, such of its powers and functions under this proposed legislation (except the power to settle disputes and the power to make regulations), as it may deem necessary.

58. **Clause 49 reads -** "(1) If, at any time, the Central Government is of opinion—

(a) that on account of a grave emergency, the Authority is unable to discharge the functions and duties imposed on it by or under the provisions of this Act; or

(b) that the Authority has persistently made default in complying with any direction issued by the Central Government under this Act or in the discharge of the functions and duties imposed on it by or under the provisions of this Act and as a result of which default, the financial position of the Authority or the administration of any airport, heliport, airstrip, civil enclave or aeronautical communication station has deteriorated; or

(c) that circumstances exist which render it necessary in the public interest so to do, the Central Government may, by notification in the Official Gazette, supersede the Authority for such period, not exceeding six months, as may be specified in the notification:

Provided that before issuing a notification under this sub-section for the reasons mentioned in Clause (b), the Central Government shall give a reasonable opportunity to the Authority to show cause as to why it should not be superseded and shall consider the explanations and objections, if any, of the Authority.

(2) Upon the publication of a notification under sub-section (1) superseding the Authority,—

(a) all the Members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Authority, shall until the Authority is re-constituted under sub-section (3), be exercised and discharged by such person or persons as the Central Government may direct;

(c) all property owned or controlled by the Authority shall, until the Authority is re-constituted under sub-section (3), vest in the Central Government.

(3) On the expiration of the period of supersession specified the notification issued under sub-section (1), the Central Government may,—

(a) extend the period of supersession for such further term not exceeding six months, as it may consider necessary; or

(b) re-constitute the Authority by fresh appointment and in such case the Members who vacated their offices under Clause (a) of sub-section (2) shall not be deemed disqualified for appointment:

Provided that the Central Government may, at any time before the expiration of the period of supersession, whether as originally specified under sub-section (1) or as extended under this sub-section, take Action under Clause (b) of this sub-section.

(4) The Central Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before both Houses of Parliament at the earliest opportunity".

59. This Clause relates to the power of the Central Government to supersede Authority. This Clause confers power upon the Central Government to supersede, by notification in the Official Gazette, the Authority for such period, not exceeding six months. The grounds on which the Authority can be superseded on the grounds mentioned in this sub-Clause. This Clause further provides that upon the publication of a notification under Sub-Clause (1) superseding the Authority, (a) all the Members shall, as from the date of supersession, vacate their offices as such; (b) all the powers, functions and duties which may, by or under the provisions of this proposed legislation, be exercised or discharged by or on behalf of the Authority, shall until the Authority is re-constituted under Sub-Clause (3), be exercised and discharged by such person or persons as the Central Government may direct; (c) all property owned or controlled by the

Authority shall, until the Authority is re-constituted under Sub-Clause (3), vest in the Central Government. On the expiration of the period of supersession specified the notification issued under Sub-Clause (1), the Central Government may, (a) extend the period of supersession for such further term not exceeding six months, as it may consider necessary; or (b) re-constitute the Authority by fresh appointment and in such case the Members who vacated their offices under item (a) of Sub-Clause (2) of this Clause shall not be deemed disqualified for appointment. This Clause also provides that the Central Government shall cause a notification issued under Sub-Clause (1) and a full report of any action taken under this Clause and the circumstances leading to such action to be laid before both Houses of Parliament at the earliest opportunity.

60. **Clause 50 reads** - " The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force".

61. The Clause 50 provides that the provisions of this proposed legislation shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

62. **Clause 51 reads** - " (1) The Central Government may, by notification in Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the salary and allowances payable to, and the other conditions of service of, the Chairperson and other Members under sub-section (2) of section 6;

(b) the form and manner in which and the Authority before whom the oath of office and secrecy shall be made and subscribed under sub-section (4) of section 6;

(c) the powers and functions to be exercised or discharged by the Chairperson under section 7;

(d) the procedure for conducting any inquiry made under sub-section (2) of section 8;

(e) the salaries and allowances payable to, and the other terms and conditions of service of the Secretary, officers and other employees of the Authority under subsection (3) of section 9;

(f) the performance standards relating to the quality, continuity and reliability of service to be monitored under Clause (d) of sub-section (1) of section 13;

(g) the books of account or other documents which are required to be maintained by the service provider under sub-section (3) of section 14;

(h) the form and manner in which the form shall be verified and fee to be accompanied by the form under sub-section (3) of section 18;

(i) the salary and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members of the Appellate Tribunal under section 22;

(j) the salaries and allowances and other conditions of service of such officers and employees of the Appellate Tribunal under sub-section (3) of section 25;

(k) the matters in respect of which the Authority will have the powers of a civil court under Clause (a) of sub-section (2) of section 29;

(l) the form in which the Authority shall prepare, and at such time in each financial year, its budget and the time at which such budget shall be prepared under section 33;

(m) the form in which proper accounts and other relevant records shall be maintained and the annual statement of accounts shall be prepared by the Authority under sub-section (1) of section 35;

(n) the form, manner and the time in which the returns and statements shall be furnished by the Authority under sub-section (1) of section 36;

(o) the form and time at which the annual report, shall be prepared by the Authority under sub-section (2) of section 36;

(p) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made

by rules".

63. This Clause relates to the power of the Central Government to make rules. This Clause confers power upon the Central Government to make rules to carry out the provisions of this proposed legislation. The matters in respect of which rules may be made are specified in Sub-Clause (2) of this Clause.
64. **Clause 52 reads** - "(1) The Authority may, by notification in the Official Gazette, and with the previous approval of the Central Government, make regulations, not inconsistent with this Act, and the rules made thereunder, to carry out the purposes of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—
- (a) the procedure in accordance with which the experts and professionals may be engaged under sub-section (4) of section 9;
- (b) the places and time of meetings of the Authority and the procedure to be followed at such meetings, (including the quorum at its meetings) under sub-section (1) of section 10;
- (c) any other matter which is required to be, or may be, specified by regulations".
65. This Clause relates to the power of the Central Government to make regulations. This Clause confers power upon the Authority to make, with the previous approval of the Central Government, regulations, not inconsistent with this proposed legislation, and the rules made thereunder, to carry out the purposes of this proposed legislation. The matters in respect of which regulations may be made are specified in Sub-Clause (2) of this Clause.
66. **Clause 53 reads** - "Every rule made by the Central Government, and every regulation made by the Authority, under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation".
67. This Clause relates to the rules and regulations to be laid before Parliament. This Clause requires that every rule made by the Central Government, and every regulation made by the Authority, under this proposed legislation shall be laid before each House of Parliament.
68. **Clause 54 reads** - "The enactments specified in the Schedule to this Act shall be amended in the manner specified therein and such amendments shall take effect on the date of establishment of the Authority".
69. This Clause relates to the amendment of the Aircraft Act, 1934 and the Airports Authority of India Act, 1994. The proposed amendments are of consequential nature and amendments shall take effect on the date of establishment of the Authority.
70. **Clause 55 reads** - "(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to it to be necessary for removing the difficulty:
- Provided that no order shall be made under this section after the expiry of two years from the date of commencement of this Act.
- (2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament".
71. This Clause relates to the power of the Central Government to remove difficulties. This Clause confers power upon the Central Government to make, by order, published in the Official Gazette, such provisions, not inconsistent with the provisions of this proposed legislation, as may appear to it to be necessary for removing the difficulty, if any, which arises in giving effect to the provisions of this proposed legislation. However, no such order shall be made under this Clause after the expiry of two years from the date of commencement of this proposed legislation. This Clause further requires that every order made under this Clause shall be laid before each House of Parliament.

72. When the Committee raised some queries over the sweeping powers of the Authority vide Clauses 43-48 like no suit, prosecution or other legal proceedings shall lie against the Central Government or the Authority or any member, officer or other employees thereof for anything which is done in good faith and also the non-taxation of profits of the Authority, the Secretary responded that the Central Government can supersede the Authority as mentioned in the Clause 49 of the Bill.

73. The Legislative Department, Ministry of Law and Justice while responding to the abovementioned queries has stated that the provisions of Clause 43 has incorporated this policy to strengthen the legal status of the Chairperson, Members and the officials or the Authority so that they may effectively discharge their duties envisaged under the law. As for as Clause 44 is concerned, they have stated that whenever an Authority is created under the law to determine the tariff in respect of a service, no other forum should determine the same matter for the purpose of certainty and avoidance of multiplicity of conflict on jurisdiction on the issues involved. This Clause is also necessary for the purpose to avoid parallel proceedings at two places in respect of the same matter.

74. The Legislative Department has also stated that the provisions of Clause 45 aim to provide protection in respect of action taken in good faith. It has been the policy of law not to protect the actions which are in bad faith, actuated by malice, ill-will or deliberate misuse of powers, as it has been the golden thread of the rule of law. However, the honest and bonafide actions must be protected by the law for the efficient discharge of duties by the officials. The provisions of Clause 45 are necessary in a legislation creating an authority for the purpose of effective functioning of the Members and Officials of the Authority. The Indian Penal Code has also provided general exception to the offence in respect of actions and omissions done in good faith. Therefore, it has been consistent legal policy to uphold protection in law for the acts and omissions done in good faith.

75. Regarding Clause 47 the Department has further stated the Chapter VI of the proposed legislation contains offences and penalties under sections 37 to 41. Sections 37 to 39 provide for the punishment of non-compliance of the orders of the Authority and the Appellate Authority and of the orders and directions given under this Act. Sections 40 and 41 provide for the punishment of the officers in case the offences committed by the companies and the Government Departments. Hence, it is necessary that no prosecution may be initiated in respect of the offences under this Act except on an authorization by the Authority so that the Authority may effectively monitor the performance standard at the airports.

76. When the Committee enquired about the delegation of powers of the Authority as mentioned in Clause 48 of the Bill, the Legislative Department replied that there is a Chairperson and Members in the Authority and decision of the Authority is arrived by the collective participation and discussion of views of all the Members and the chairperson in the Authority. It may not be always convenient to call for the meeting of the Authority where all the Members and the Chairperson would resolve certain matters which may better be delegated and, therefore, the arrangement for delegation is necessary to be made in law. What matters may suitable be delegated and to whom, have been left for the decision of the Authority with in the scope and ambit of the legislation. There is also an inbuilt safeguard under the provision of Clause 48 of the Bill that suitable conditions and limitations may be imposed by the Authority while delegating its powers. A provision for delegation is necessary for efficient and convenient performance by the Authority consisting of number of persons for resolving the issues falling within their purview. There is need to clearly demarcate policy and regulatory matters.

77. The Committee recommends that the Bill be passed after taking into account its recommendations as enumerated in the preceding paragraphs.

78. The Committee recommends that the Bill's title should be changed from Airports Economic Regulatory Authority of India Bill, 2007 to Airports Economic Regulatory Authority of India Bill, 2008 as the year has changed from 2007 to 2008.

79. In the enacting formula the words 'Fifty Eighth' be substituted by 'Fifty Ninth'.

OBSERVATIONS/CONCLUSIONS/RECOMMENDATIONS — AT A GLANCE**Clause 2**

The Committee notes that it will be critical in defining to what extent or what role a “stakeholder” such as an airline has in the key decision making processes of the regulatory framework. The Committee feel that it is not clear from the provisions of the Bill that whether the passengers using the airports would presumably be classified as one of the stakeholders so that they have the opportunity to make submission for determination of the quantum of the airport tariffs. The Committee, therefore, recommends that the Bill should clearly define as to who are the principal stakeholders and establish unambiguously their role in the functioning of AERA and the consultative process for decision making by AERA.

(Para : 6)

The Committee notes that cargo is one of the major components of the civil aviation sector and the omission of cargo from the definition of the Bill need to be rectified. The Committee, therefore, recommends that the definition ‘airport user’ in Section 2(c) should read "as any person availing of passenger and/or cargo facilities".

(Para :8)

The Committee also received a representation stating that various surcharges imposed on the cargo added to more than what is the freight charges. The Committee feels that this also needs to be looked into.

(Para : 9)

The Committee recommends that the Ministry may suitably amend the Bill to include the cargo operators in the ambit of the Bill.

(Para : 10)

The Committee is of the opinion that the Members should also have the expertise on competition law and policy as the AERA is created to promote fair competition in the field of aviation. Therefore, the Clause 4(2) may be amended accordingly.

(Para: 14)

The Committee wonders whether in the Defence Forces there is any equal post to the Secretary. The literal meaning of the clause does not bar personnel of the Defence Forces being appointed to the Authority. However, in practice, the clause may effectively prevent the entry of experienced and meritorious people of the Defence Forces to the Authority. Moreover, the reply of the Government gives an impression that the Authority can be filled up only by Members of bureaucracy. In fact, in the era of economic liberalization and globalization a lot of talent and expertise is available outside the Government set up. The Committee, therefore, feels that the law should be flexible not only to accommodate the personnel of the Defence Forces but also to accommodate the experts from the private sector. The Committee, therefore, recommends that Clause 4(2) may be suitably modified.

(Para :15)

Clause 6

The Committee notes the clarification furnished by the Ministry. The Committee, however, feels that to avoid ambiguity and multiplicity of interpretation it is better to define the aspects of reappointment in the clause itself. While drafting the clause the legislative intent should be made amply clear. Theoretically, it is possible that a Chairperson could be appointed as a Member, though normally it is not done. Therefore, the Committee recommends that the clause should be modified in such a way making it clear that a Member cannot be appointed as Chairperson but a Chairperson can be appointed as a Member.

(Para : 20)

The Committee observes that though the basic infrastructure of airport is geared towards providing landing, housing, parking of an aircraft along with supporting ground handling, navigation, surveillance and communication facilities, the airports also provide banks and other office spaces etc. The economies of airport operation depends on both revenue streams i.e. aeronautical revenue and non-aeronautical revenue. Even though the bulk of revenue for Indian airports come from aeronautical services, world over the successful airports get majority of their revenue from non-aeronautical services.

(Para : 26)

The Committee further observes that the points raised by the stakeholders need serious consideration in view of the financial implication involved in it and the Government may amend the Bill in order to include non-aeronautical service also in the ambit of the Bill.

(Para : 27)

The Committee feels that there appears to be a gap between the definitions of aeronautical services as defined in the AERA Bill and the coverage of aeronautical services under the concession agreement for airports signed by the Government of India or even the Operations Management Development Agreement, the OMDA signed in the case of Delhi and Mumbai airports. The Committee is of the opinion that while the AERA Bill limits itself to the navigation, surveillance and supportive communication for Air Traffic Management and for landing, housing or parking of aircraft, the OMDA has a broader scope for aeronautical services and it includes baggage systems, check-in concourses and hydrant infrastructure for aircraft fuelling services among many others. The Committee recommends that AERA oversight for aeronautical services and their charges should not be restrictive in scope, but should be extended to all other major aeronautical service heads laid out in concession and OMDA agreements as AERA has to ensure a balanced outcome between airports, airlines and also the passengers as many services which have been left out of AERA coverage are essential to passengers and need monitoring by a regulator. The Committee welcomes the regulation of aeronautical services by the new regulator even though this will be only a small part of the revenue earning however, the non-aeronautical services, which are the large chunk of the earnings will go as un-regulated. The ambit of AERA should be broadened to include regulation of both aeronautical, as well as, non-aeronautical revenue. As per the current proposal, only aeronautical revenues are sought to be regulated through AERA. The Committee recommends that this lacuna should be addressed by the Government and the non-aeronautical services also be brought under the ambit of proposed regulator.

(Para :29)

The Committee strongly recommends that the fuel supply infrastructure should be brought under the purview of AERA Bill and this should be added in the powers and functions of the authority in Chapter 3 of the Bill.

(Para : 31)

The Committee observes that the Airports Authority of India, did not have any fixed performance standards to serve the passengers or to that matter for the efficiency of the airports. The Bill presently covers only major airports handling 1.5 million or more passengers per annum. The Committee does not find any reason to exclude about 116 odd other airports from the purview of the present Bill. The Committee, therefore, recommends that the role of AERA and its functions should be expanded to cover all the airports used for the operation of commercial flights irrespective of the size of the airport or ownership or throughput of passengers.

(Para : 34)

The Committee hopes that any amount of development fee which will be fixed by the AERA should not dampen the passenger demand. The Committee is of the opinion that making air travel expensive by such development fees will have a significant impact on the overall economy, especially, on the tourism, commerce and hospitality sectors. The Committee hopes that the proposed regulator will definitely play a positive and

critical role in determining development fees.

(Para : 37)

Clause 20

The Committee observes that while doing so there are chances that the Members may be biased in taking a decision. The Committee also observes that India does not have dearth of any qualified and experienced people to man the Authority or the Tribunal. The Committee, therefore, recommends that Section 20 may be suitably modified to ensure that those who were Members of AERA , are not appointed to the Appellate Tribunal.

(Para : 41)

The Committee recommends that the Bill be passed after taking into account its recommendations as enumerated in the preceding paragraphs.

(Para : 77)

The Committee recommends that the Bill's title should be changed from Airports Economic Regulatory Authority of India Bill, 2007 to Airports Economic Regulatory Authority of India Bill, 2008 as the year has changed from 2007 to 2008. (Para : 78)

In the enacting formula the words 'Fifty Eighth' be substituted by 'Fifty Ninth'.

(Para : 79)

FOURTH MEETING

The Committee met at 11.00 A.M. on Thursday, the 23rd October 2007 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

1. Shri Sitaram Yechury – *Chairman*

RAJYA SABHA

2. Shri Naresh Gujral
3. Shri Vedprakash P. Goyal
4. Shri M.V. Mysura Reddy
5. Shri Shahid Siddiqui
6. Shri Shatrughan Sinha

LOK SABHA

7. Shri Anandrao Vithoba Adsul
8. Shri Joachim Baxla
9. Shri Sartaj Singh Chhatwal
10. Dr. K. Dhanaraju
11. Shri P. Karunakaran
12. Shri Samik Lahiri
13. Shri Alok Kumar Mehta
14. Shri Madan Lal Sharma
15. Shri Prahlad Joshi

SECRETARIAT

Shrimati Agnes Momin George, Joint Secretary

Shri Jagdish Kumar, Joint Director

Shri Swarabji B., Deputy Director

Shrimati Nidhi Chaturvedi, Committee Officer

REPRESENTATIVES OF THE MINISTRY OF LAW AND JUSTICE (LEGISLATIVE DEPARTMENT):

Shri N.L. Meena, Joint Secretary & Legislative Counsel

Shrimati Veena Kothavale, Assistant Legislative Counsel

REPRESENTATIVES OF THE DEPARTMENT OF SHIPPING:

Shri A.K. Mohapatra, Secretary

Shri Rajeev Gupta, Joint Secretary (S&IWT)

Shri Rajneesh Kumar, Director (IWT)

Shri S.B. Mathur, Chairman, IWAI

Shri Susheel Kumar, Vice-Chairman, IWAI

Shri R.P. Khare, Director

Shri S.S. Pandian, Chief Engineer

REPRESENTATIVES OF THE MINISTRY OF LAW AND JUSTICE (LEGISLATIVE DEPARTMENT):

Shri P.B. Singh, Joint Secretary & Legislative Counsel

Dr. G.N. Raju, Additional Legislative Counsel

Shri K. Biswal, Deputy Legislative Counsel

REPRESENTATIVES OF THE MINISTRY OF CIVIL AVIATION:

Shri Ashok Chawla, Secretary

Shri K.N. Shrivastava, Joint Secretary

Shri Sandeep Prakash, Director

Dr. K. Ramalingam, Chairman, Airport Authority of India

Shri S.C. Chhatwal, Member (Finance), Airport Authority of India

2. At the outset, the Chairman briefed the Members about the National Waterway (Lakhipur-Bhanga stretch of the Barak River) Bill, 2007 and the Airports Economic Regulatory Authority of India Bill, 2007 which have been referred to the Committee for examination and report. Thereafter, the Committee heard the views of the Secretary, Department of Shipping on the National Waterway (Lakhipur-Bhanga stretch of the Barak River) Bill, 2007 followed by a power point presentation on the subject by the Vice-Chairman, Inland Water Authority of India (IWAI). The Secretary replied to various queries raised by the Members during the meeting. To several other queries raised by the Members, the Ministry representatives were requested to give written replies within a week. The Chairman of the Committee also informed the Secretary, Department of Shipping that the Department has not furnished the comments on the Memoranda received from various individuals/stakeholders on the Indian Maritime University Bill, 2007 forwarded to the Department and directed to furnish the same immediately. The representatives of the Department of Shipping then withdrew.

3. Thereafter, the Committee heard the views of the Secretary, Ministry of Civil Aviation on the Airports Economic Regulatory Authority of India Bill, 2007. The Secretary explained to the Committee on various provisions of the Bill. The Secretary and other representatives replied to various points raised by the Members. To several other queries raised by the Members, the Ministry representatives were requested to give written replies within a week.

4. * * * * *

5. The meeting of the Committee then adjourned at 1.45 p.m. to meet again on the 2nd November, 2007.

XII TWELFTH MEETING

The Committee met at 3.30 P.M. on Thursday, the 7th February, 2008 in Committee Room 'D', Ground Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

1. Shri Sitaram Yechury – *Chairman*

RAJYA SABHA

2. Prof. Ram Deo Bhandary
3. Shri Naresh Gujral
4. Shri Janardhana Poojary
5. Shri M.V. Mysura Reddy
6. Shri Shatrughan Sinha

LOK SABHA

7. Shri Anandrao Vithoba Adsul
8. Shri Joachim Baxla
9. Shri Sartaj Singh Chhatwal
10. Dr. K. Dhanaraju
11. Shri P. Karunakaran
12. Shri Samik Lahiri
13. Shri Alok Kumar Mehta
14. Shri Madan Lal Sharma
15. Shri Pralhad Joshi

SECRETARIAT

Shrimati Agnes Momin George, Joint Secretary

Shri Jagdish Kumar, Joint Director

Shri Swarabji B., Deputy Director

Smt. Nidhi Chaturvedi, Committee Officer

REPRESENTATIVES OF THE MINISTRY OF LAW AND JUSTICE (LEGISLATIVE DEPARTMENT):

Shri P.B. Singh, Joint Secretary & Legislative Counsel

Dr. G.N. Raju, Additional Legislative Counsel

Shri K. Biswal, Assistant Legislative Counsel

REPRESENTATIVE OF THE FEDERATION OF INDIAN AIRLINES (FIA):

Shri Amitabh Khosla, Executive Director

REPRESENTATIVES OF THE AIRPORTS AUTHORITY EMPLOYEE'S UNION:

Shri P.K. Tyagi, All India Vice-President,

Shri Jai Pal Singh, Asstt. General Secretary,

Shri Pramod Kumar Sharma, Branch Secretary

REPRESENTATIVE OF THE AIR CARGO AGENTS ASSOCIATION OF INDIA

Shri Depak Dadlani, Former President & Advisor

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2. The Committee heard the views of the above-mentioned witnesses on the Airports Economic Regulatory Authority of India Bill, 2007. The Members raised queries on various provisions of the Bill and the stakeholders explained their position thereon.

3. * * * * *

4. The Committee also decided to hear the views of the Chairman, Airports Authority of India on the Airport Economic Regulatory Authority of India Bill 2007 in its next meeting on the 14th February, 2008.

5. The meeting of the Committee then adjourned at 5.30 p.m.

XIII

THIRTEENTH MEETING

The Committee met at 3.30 P.M. on Thursday, the 14th February, 2008 in Committee Room 'D', Ground Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

1. **Shri Sitaram Yechury – *Chairman***

RAJYA SABHA

2. Shri Naresh Gujral
3. Shri M.V. Mysura Reddy
4. Shri Shahid Siddiqui
5. Shri Shatrughan Sinha

LOK SABHA

6. Shri Anandrao Vithoba Adsul
7. Shri Sartaj Singh Chhatwal
8. Dr. P.P. Koya
9. Dr. Ramkrishna Kusmaria
10. Shri Samik Lahiri

11. Shri Madan Lal Sharma
12. Shri Dushyant Singh

SECRETARIAT

Shri Jagdish Kumar, Joint Director
Shri Swarabji B., Deputy Director
Smt. Nidhi Chaturvedi, Committee Officer

REPRESENTATIVES OF THE AIRPORTS AUTHORITY OF INDIA :

Dr. K. Ramalingam, Chairman (AAI)
Shri H.S. Bains, Member (P&A)
Shri V.P. Agarwal, Member (Planning)
Shri M.C. Kishore, Company Secretary

REPRESENTATIVES OF THE MINISTRY OF LAW AND JUSTICE (LEGISLATIVE DEPARTMENT):

Shri P.B. Singh, Joint Secretary & Legislative Counsel
Dr. G.N. Raju, Additional Legislative Counsel

2. The Committee heard the views of the Chairman, Airport Authority of India on the Airports Economic Regulatory Authority of India Bill, 2007. The Committee also sought clarifications from the Chairman, Airports Authority of India on the closure of Begumpet Hyderabad Airport. The Members raised queries on the subject and the Chairman, AAI explained their position thereon. To some queries raised by the Members, the Chairman, AAI was requested to give written replies within a week.

3. * * * * *

4. The Committee also decided to hear the views of the Secretary, Ministry of Civil Aviation on the proposed closure of Begumpet Airport in Hyderabad and matters related thereto in its next meeting on the 22nd February, 2008.

5. The meeting of the Committee then adjourned at 5.00 p.m.

XIX**NINETEENTH MEETING**

The Committee met at 3.00 P.M. on Tuesday, the 15th April 2008 in Room No. '63', First Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT**1. Shri Sitaram Yechury – Chairman*****RAJYA SABHA***

2. Shri Naresh Gujral
3. Shri M.V. Mysura Reddy
4. Shri Shahid Siddiqui

LOK SABHA

5. Shri Anandrao Vithoba Adsul
6. Shri N.S. V. Chitthan

7. Dr. K. Dhanaraju
8. Dr. P.P. Koya
9. Shri Samik Lahiri
10. Shri Madan Lal Sharma
11. Shri Dushyant Singh

SECRETARIAT

Shrimati Agnes Momin George, Joint Secretary

Shri Jagdish Kumar, Joint Director

Shri Swarabji B., Deputy Director

2. The Committee considered the following draft Reports :

- (i) The Indian Maritime University Bill, 2007;
- (ii) The Airports Economic Regulatory Authority Bill, 2007; and
- (iii) Demands for Grants (2008-2009) of the Department of Shipping.

After some discussion the Committee adopted all the three Reports with minor modifications. The Committee also authorized the Chairman and Shri Naresh Gujral to present the Reports in Rajya Sabha and Dr. P.P. Koya and Shri Anandrao Vithoba Adsul to lay the Reports in Lok Sabha on the 17th April, 2008. The Committee also decided to hold a Press Conference after the presentation of the Reports.

3. * * * * *

4. The meeting of the Committee then adjourned at 4.15 p.m. to meet again on the 24th April, 2008.
