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PRIVATIZATION, REGULATORY SPACE AND AFFORDABILITY IN INDIAN AIRPORTS: A STUDY OF AERA AND THE CHANGING ROLE OF THE STATE

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ABSTRACT

This essay considers the influence of the Airports Economic Regulatory Authority of India (AERA) on ground-level airport infrastructural governance and how AERA, by determining boundaries (what is considered as “aeronautical” services), determines cost access for passengers in the privatising Indian Airports industry. Through three theoretical filters

- (i) the reason why governments regulate (market failure, consumer protection, distributive objectives),
- (ii) the regulatory-state thesis (shift from ownership to oversight) and
- (iii) regulatory-space analysis (distribution of legal, economic and informational resources to different actors) — the paper identifies the actors (Ministry of Civil Aviation, AAI, AERA, concessionaires, airlines, courts, consumers) and tracks how tariff incidence results from contested regulations.

In the empirical sense, the essay discusses AERA tariff determinations, Multi-Year Tariff Proposals (MYTPs), User Development Fee (UDF) debates and prominent tribunal and court decisions (recent appellate dispute on AERA’s standing). And the basic point is that affordability is not a mechanical by-product of privatisation, but rather is a contested regulatory boundary-making at the ground level: as to whether ground handling, cargo handling, security and some airside services are treated as aeronautical (regulated) services or non-aeronautical (less regulated) services can have a meaningful impact on who pays and how much. The paper thus ends with specific reforms: more articulate statutory definitions, a broader investigatory reach and better access to data for AERA, an obligation for large tariff changes, more traceable concession accounting and a coordinating institutional forum for making trade-offs between investment incentives and distributive obligations.

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INTRODUCTION

Privatisation of infrastructure supplanting public ownership with private action, regulated is one of the defining public policy shifts in the past three decades. For India's aviation industry, the evolution from Airports Authority of India (AAI) monopoly to long-term privately-owned concession status has engendered new facilities and operational efficiency but has also produced ongoing battles over tariffs and user fees and how much authority regulators may have. All these battles revolve around the Airports Economic Regulatory Authority of India (AERA), which is the statutory agency required to set aeronautical tariffs and ensure user protection for aeronautical services.² This essay explores the ways that AERA's judgements about which services fall within its regulatory purview particularly ground services like ground handling, cargo handling, security-related services, and certain airside operations influence air-traveller affordability. I maintain that how regulatory resources are allocated in the aviation regulatory field, and AERA's discretion in supervising investigations and accounting oversight, will determine whether privatisation benefits are broadly shared or captured by private operators and other upstream firms. To get to grips with this point requires a mix of the classic "why regulate" rationale combined with regulatory-space mapping and doctrinal focus on the AERA Act and its judicial/prudential developments.

RESEARCH QUESTION

How has the privatisation of airport infrastructure in India changed the state's role and regulatory outcomes with respect to ground-level airport services, and to what extent do AERA's boundary and tariff decisions influence affordability for passengers?

Sub-questions:

- 1) What legal and institutional powers does AERA possess under the AERA Act to regulate ground-level services?
- 2) How do interactions among MoCA, AAI, AERA, concessionaires and courts determine tariff incidence?
- 3) What reforms would better align private investment incentives with distributive fairness (affordability)?

² Airports Economic Regulatory Authority of India Act, 2008 (full text), Government of India, India Code. <https://www.indiacode.nic.in/bitstream/123456789/2090/1/A2008-27.pdf>

LITERATURE REVIEW

Explaining regulation. The regulatory literature identifies market failures (natural monopoly, externalities), informational asymmetries and distributive/political rationales as motives for regulatory intervention; regulators use instruments price caps, licences, standards that aim to strike a balance between investor returns and user protection.³ For network industries (airports included), regulators play a crucial role due to their high fixed costs and their multi-product nature; revenues from aeronautical activities and those from other non-aeronautical functions intersect.⁴

The regulatory state. Majone's argument that contemporary governance is based not directly on state intervention but regulation provides an account for the institutional transition to AERA-type bodies.⁵ But studies of regulators in developing countries (Dubash & Morgan) point out that independence and capabilities are contingent on political negotiation and resource constraints.⁶

Regulatory space. Hancher & Moran, (later Scott) claim that regulatory results emerge from decentralised authority in a regulatory environment filled with other actors with legal, economic and informational resources.⁷ This is particularly convenient for airport conduct where ministries, regulators, operators, airlines, and courts influence the results.⁸

A substantial gap in the literature exists regarding the doctrinal and operational boundary-drawing process between aeronautical and non-aeronautical services an issue the text attempts to address by providing doctrinal analysis of the AERA Act and orders, whilst also considering regulatory-space theory.

METHODOLOGY

This paper applies doctrinal and institutional analysis alongside regulatory-space mapping. Primary sources are the Airports Economic Regulatory Authority of India Act, 2008 and AERA tariff orders

³ Robert Baldwin, Martin Cave & Martin Lodge, *Understanding Regulation: Theory, Strategy and Practice*, 2nd ed., Oxford University Press, ch.2. <https://academic.oup.com/book/7235>

⁴ Antonio Estache & Liam Wren-Lewis, "On the Theory and Evidence on Regulation of Network Industries," in Robert Baldwin, Martin Cave & Martin Lodge (eds), *The Oxford Handbook of Regulation*, Oxford University Press. <https://academic.oup.com/edited-volume/34523>

⁵ Giandomenico Majone, "The Rise of the Regulatory State in Europe," *West European Politics*, Vol. 17, No. 3 (1994), pp. 77–101. <https://betterregulation.lumsa.it/sites/default/files/betterregulation/Majone%201994.pdf>.

⁶ Navroz K. Dubash & Bronwen Morgan (eds), *The Rise of the Regulatory State of the South: Infrastructure and Development in Emerging Economies*, Oxford University Press, 2013. <https://academic.oup.com/book/33103>.

⁷ Leigh Hancher & Michael Moran, "Organising Regulatory Space," in *Capitalism, Culture and Regulation* (1989); Colin Scott, "Analysing Regulatory Space: Fragmented Resources and Institutional Design," *Public Law* (2001). Hancher & Moran overview: https://books.google.com/books/about/Capitalism_Culture_and_Economic_Regulati.html

⁸ For regulatory space theory applied to utilities, see Colin Scott, *op. cit.*; also David Levi-Faur, "The Odyssey of the Regulatory State," *Law & Policy* (2013). <https://onlinelibrary.wiley.com/doi/abs/10.1111/lapo.12000>.

and consultation papers. Secondary sources include academic commentary on regulatory theory and Indian infrastructure regulation, AAI and concession documents, and select tribunal and court judgments (TDSAT decisions; Supreme Court appellate jurisprudence). The regulatory-space mapping identifies actor types, their resources, and how interactions shape tariff determination and affordability.

BACKGROUND: AERA’S STATUTORY RESPONSIBILITIES AND ARCHITECTURE OF AIRPORT PRIVATISATION.

The Airports Economic Regulatory Authority of India Act, 2008 (AERA Act) defines AERA’s task to define aeronautical duties and to oversee performance standards for major airports.⁹ AERA’s statutory function mandates assessment of Multi-Year Tariff Proposals (MYTPs) submitted by operators, establishment of tariff caps, timelines for managing tariffs, and enforcement of tariffs under law as “just and reasonable,” while giving operators a fair return on their investment.¹⁰ Privatisation in India has commonly adhered to concession models in which operators (private concessionaires) pay for its infrastructure and recover their costs through aeronautical charges (landing, parking, and passenger service fees) as well as non-aeronautical income (retail, advertising). The concession agreements lay down accounting rules, revenue sharing, and various mechanisms by which cost recovery can be effected, but ambiguities frequently arise over service classification (aeronautical vs non-aeronautical) and historical cost base adjustments.¹¹ These institutional arrangements ensure that AERA’s tariff decisions and ability to oversee operator accounting are determinative of affordability: if AERA includes ground-level services in the regulatory base, charges might be subject to controls; if not, airlines pass a higher levy on passengers.

⁹ AERA Act, 2008 (see fn.1); Section 13 et seq. set out functions regarding tariffs and standards. <https://www.indiacode.nic.in/bitstream/123456789/2090/1/A2008-27.pdf>

¹⁰ AERA — “Functions & Powers”; AERA reportage & order repository. <https://aera.gov.in>.

¹¹ See AERA tariff orders and concession agreement summaries (e.g., Delhi/Mumbai concession documents and MYTPs available on AERA and operator websites). Example operator file (Adani airport aeronautical charges PDF): <https://www.adani.com/-/media/Project/AhmedabadAirport/Business/Airlines/Aeronautical-Charges.pdf>

REGULATORY SPACE: WHO DO THEY PLAY ROLES, WHAT ARE ITS RESOURCES, AND WHERE DOES IT ALL COME FROM?

A diagram for Indian airports' regulatory space map points out here the main actors in this part of space and also the resources that they are capable of providing Ministry of Civil Aviation (MoCA) policymaking and PPP design; sets national schemes (in this case UDAN) and frames concession tenders.¹² Airports Authority of India (AAI) own and operate the old brand of air transports; but remains the country's operational base and in charge for air navigation of this kind.¹³ Airports Economic Regulatory Authority (AERA) legal basis on which to establish aeronautical tariffs, technical know-how, tariff methodologies.¹⁴ Private concessionaires (GMR, GVK, Adani etc) investment capital, operation capability, accounting and technical data.¹⁵ Airline companies the force of purchase on routes; resistance to increasing costs and influence on pass-through decisions.¹⁶ Courts / TDSAT – judicial power to adjudicate disputes and review regulatory decisions.¹⁷ Consumers / civil society – limited real market sway but a political/persona voice via media and litigation. Resources are unevenly distributed. Concessionaires control the most detailed operational data and commercial levers, while AERA is the one to approve formal tariffs. MoCA lays down the language for policy and may have an effect on concession design. Courts can modify expectations of regulations after the fact. This fragmentation means that tariff outcomes are negotiated, litigated and usually uncertain.

THE ROLE OF CLASSIFICATION: SERVICES AT THE GROUND LEVEL

“Ground-level” services include various services like, but are not limited to, ground handling (baggage handling, marshalling), cargo handling, fuelling, security screening, airside vehicle operations, and certain passenger facilitation services. Whether they are classified as “aeronautical” (a component of the regulated charge base under AERA) or “non-aeronautical” (mainly commercial revenues not

¹²Ministry of Civil Aviation — UDAN scheme & policy materials. <https://www.civilaviation.gov.in>.

¹³ Airports Authority of India official site: <https://www.aai.aero>.

¹⁴ AERA order repository: <https://aera.gov.in/uploads/airports/16486701288302.pdf>

¹⁵ For concessions and operator roles see Dubash & Morgan (2013) and operator annual reports. <https://academic.oup.com/book/33103>.

¹⁶ Airline price transmission literature; see industry press and economic analyses (e.g., CAPA, IATA reports). CAPA reports and airline filings (various).

¹⁷ TDSAT judgments and appeal procedures: TDSAT official website (order repository). <https://tdsat.gov.in>.

subject to tariff caps), dictates how their costs are recovered and who should ultimately pay.¹⁸ If AERA includes certain ground services within the aeronautical basket, these charges are regulated and capped, preventing operators from imposing ad hoc charges on such services. If instead such services are deemed non-aeronautical, operators have the free hand to price them commercially, often shifting costs to airlines or premium segments of passengers. Consequently, this classification has immediate distributive effects.

IMPORTANT DOCTRINAL AND ADJUDICATORY DEVELOPMENTS

Testing of AERA’s statutory powers and the boundaries of its remit have been at the tribunal and court level.

Two types of disputes reoccur:

1. Scope disputes whether particular services (ground handling, cargo handling) fall within AERA’s purview of “aeronautical” services. AERA and concessionaires frequently differ on the latter, and the TDSAT has been the immediate forum for appeals.¹⁹
2. Accounting and base-year disputes – disputes over which revenues and costs should be included in the regulatory asset base (RAB) and how historical adjustments should be carried out in respect of concessionaires who have changed (e.g., transfers of concessions or new operators).²⁰

Applicable recent appellate case law stresses AERA’s ability to protect regulatory objectives. One such Supreme Court ruling in 2024 clarified elements of AERA’s appeal rights and stressed the regulator’s role in vindicating statutory objectives, thereby reinforcing AERA’s ability to resist contractual reclassification of services to the detriment of users. (Full case summaries with factual background, issue, ratio and implications are provided in the footnotes and will be cited when preparing the final submission.)²¹

¹⁸ For treatment of ground handling and aeronautical classification, see AERA consultation papers and TDSAT proceedings (sample consult: HIAL consultation paper).

<https://aera.adgstaging.in/uploads/consultations/5a38ef9f51fefHIALFinalConsultationPaper191217.pdf>

¹⁹ TDSAT orders on AERA appeals — sample order:

https://tdsat.gov.in/order_files/final/2020/March/070110008082014_1392.pdf.

²⁰ Accounting disputes are frequent in AERA dockets; see AERA tariff decisions and related TDSAT appeals (AERA repository). <https://aera.gov.in>.

²¹ **AERA v. Delhi International Airport Ltd. (Supreme Court, 18 Oct 2024)** — appellate decision addressing AERA’s standing and maintainability of appeals; see SC PDF: https://images.assettype.com/barandbench/2024-1018/mgqjp1i0/Airports_Economic_Regulatory_Authority_of_India_v_Delhi_International_Airport_Ltd_and_ors.pdf.

PRACTICAL ASPECTS OF AFFORDABILITY: EMPIRICAL PATTERNS AND MECHANISMS. THREE EMPIRICAL MECHANISMS CONNECT GROUND-LEVEL REGULATION TO PASSENGER AFFORDABILITY:

(a) Direct levies: passenger service fees and UDFs (User Development Fees) are explicit charges added to tickets. AERA approves UDF caps in tariffs; increases directly raise passenger outlays.²²

(b) Airline pass-through: regulators set landing and route charges; airlines facing higher airport costs may pass them to consumers through fares, especially where competition is limited.²³

(c) Non-aero commercialization and differential pricing: growth in non-aeronautical revenues (retail, parking, lounges) often leads operators to segment services and charge premium rates; absent cross-subsidy design, lower-income travellers face higher real costs relative to disposable income.²⁴

Evidence from Indian metro airports shows modernised infrastructure but also episodes of tariff resistance: proposed UDF hikes or reclassification of services have triggered airline pushback, public scrutiny and litigation.²⁵ The net effect is improved quality but higher average per-passenger charges at major airports.

CRITICAL ASSESSMENT: REGULATORY CAPACITY, CAPTURE AND DISTRIBUTIVE JUSTICE

Three problems emerge.

1. Capacity and information asymmetry. AERA must analyse complex MYTPs and concession accounting prepared by concessionaires. Operators provide detailed operational and revenue data; if AERA lacks sufficient technical staff or independent auditors, conclusions rely on operator submissions, increasing the risk of mismeasurement or strategic accounting.²⁶
2. Regulatory capture risk. Where AERA relies on operator-provided data and MoCA retains political influence over concession design, powerful operators can shape regulatory outcomes,

²² AERA tariff orders and UDF tables: <https://aera.gov.in/uploads/airports/16437885566482.pdf>

²³ Airline cost pass-through literature and press coverage of fare adjustments (various business newspapers). Example: coverage of UDF impact in major Indian business press (Times of India, Economic Times).

²⁴ Revenue diversification and cross-subsidy discussion: Dubash & Morgan; AERA performance reports. <https://academic.oup.com/book/33103>; <https://aera.gov.in/uploads/airports/16465745274640.pdf>.

²⁵ BIAL/BLR UDF debates / reporting: e.g., press coverage on Bengaluru UDF adjustments (Times of India). <https://timesofindia.indiatimes.com/city/bengaluru/no-relief-for-flyers-in-bengaluru-as-cut-in-user-development-fee-pushed-to-next-fiscal/articleshow/126109101.cms>

²⁶ On technical capacity and information asymmetries see Baldwin et al., *Understanding Regulation*, ch.2. <https://academic.oup.com/book/7235>.

undermining user protection. This risk is higher in developing country contexts where institutional resources are constrained.²⁷

3. Distributional gaps. Efficiency gains alone do not guarantee equitable outcomes. Without explicit redistributive mechanisms, privatization can raise average costs for mass passengers even while creating premium services that benefit wealthier travellers.

These critiques suggest that protecting affordability requires institutional remedies, procedural strengthening, and explicit distributive policy instruments.

RECOMMENDATIONS

To help ensure that private investment incentives more closely mirror public-sector affordability goals, here are the reforms that I would suggest be more appropriate:

Clarity in legislation for “aeronautical services”. Alter the AERA Act or establish a regulatory definition that lists services included/excluded (ground handling, cargo handling, security facilitation), limiting boundary disputes and ad hoc reclassification.²⁸

Reinforce AERA’s investigatory powers and access to data. Make audited operator data a requirement for AERA, appoint independent forensic accountants where necessary, and access real-time operational metrics.²⁹

Invest in AERA through a protected levy to decrease reliance on funding. Put social-impact appraisals in place for material tariff adjustments. Require AERA to issue distributional impact statements when approving major UDF increases, including impacts on low-income and regional travellers. Aim for focused lifeline measures (lower UDF slabs for certain passenger types or routes).³⁰

Transparency of concession accounting. Make MYTPs, concession revenue models and AERA decisions publicly available in machine-readable formats to put them under scrutiny by civil society and independent analysts.³¹

²⁷ On regulatory capture concerns in Southern regulatory contexts, see Dubash & Morgan (2013). <https://academic.oup.com/book/33103>.

²⁸ Statutory amendment suggestion and comparative drafting practice: see AERA Act; comparative models in airport regulation (UK CAA). UK CAA background: <https://www.caa.co.uk>.

²⁹ Proposals for regulator funding independence: see institutional design literature in Majone and Yeung. Majone (1994) link: <https://betterregulation.lumsa.it/sites/default/files/betterregulation/Majone%201994.pdf>.

³⁰ Social impact appraisal for tariff changes: see policy instruments in Baldwin et al. <https://academic.oup.com/book/7235>.

³¹ Transparency recommendations: see OECD / regulatory best practice and Baldwin et al. OECD guidance (regulatory policy): <https://www.oecd.org/gov/regulatorypolicy>.

Coordination forum. Establish a standing multi-stakeholder forum (MoCA, AERA, AAI, airlines, consumer groups) to ensure policy objectives (connectivity, affordability, investment) are aligned and ex-post litigation is reduced.³²

Specialised appeal / judicial deference norms. - Urge tribunals to pursue specialised deferential standards on technical tariff issues, to ensure the safeguarding of legal review of law and procedure, as a mitigating measure of litigation-based uncertainty.³³

FINDINGS

Privatization has resulted in measurable advancements in airport infrastructure and operational efficiency. Affordability outcomes depend less on privatization itself than on regulatory boundary choices about ground-level services and the capacity of AERA to scrutinize operator accounting. Institutional fragmentation and data asymmetries create opportunities for capture and contested tariffs; addressing these requires doctrinal clarity and capacity building.^{34,35}

CONCLUSION

It is not enough just to privatise to keep airport services affordable. Affordability is shaped instead in a regulatory space in which statutory boundaries, regulator capacity, operator practices and judicial review interact. AERA occupies an important place in that space and as both a tariff setter and a custodian of the public interest, its effectiveness depends on its legal powers, access to reliable data and procedural tools. Defining aeronautical services, equipping AERA with investigatory capabilities, raising the profile of transparency, and institutionalising coordination are practical means for ensuring that the private sector participation in airports translates into public-oriented outcomes: world-class infrastructure that remains accessible to a broad cross-section of the population.

³² Coordination forum model: inspired by multi-agency coordination mechanisms in other infrastructure sectors (examples in Dubash & Morgan). <https://academic.oup.com/book/33103>.

³³ On specialist tribunals and judicial deference norms see scholarship on adjudication of technical regulation (TDSAT literature). TDSAT: <https://tdsat.gov.in>.

³⁴ Evidence of terminal modernisation and performance monitoring: AERA reports; operator annual reports (Delhi, Hyderabad). <https://aera.gov.in/uploads/airports/16465745274640.pdf>.

³⁵ On affordability and distributive effects see AERA orders and press analyses. <https://aera.gov.in>.