

BUSINESS WORLD

COVID-19 and Aviation: Responsibility and liability of China

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WHILE WE were reeling under the depressing state of the India aviation and the recent budget announced on 1st February 2020 which gave no relief to the Aviation sector, came the tsunami of Coronavirus or COVID-19 as it is called now from Wuhan in China which has shattered the world economy and in particular the Aviation sector. In fact, aviation is the main source of the spread of this virus internationally from China. While China was in denial ever since mid-November 2019 and tried to contain it down at Wuhan city with orders to hush it up and not to publish any information on it, it was not till 14th January when WHO announced it but gave no clear evidence. By then the damage was done internationally by the aviation sector as Wuhan

is also well connected worldwide. Globalised aviation is mainly responsible for the transmission of this virus. Only by 20th January 2020 did China admit that the virus was transmitted human to human. As a result of the countries worldwide started putting entry barriers to their country mainly through aviation. Most countries including India have now announced a complete lockdown.

There is no doubt that aviation today is a critical catalyst to globalisation and growth. Air connectivity is becoming more and more important. In fact, besides passengers, air cargo carries around 30% of the world trade in value terms. However, when in November 2019 China found a virus spreading around Wuhan city in Hubei province, they tried to hush up. Unfortunately, while this was being hushed up by China, it started to spread worldwide through airline passengers as there was no medical check on them. Only by mid-January, the world was aware of this deadly virus and the obvious containment measure was to curtail aviation. Therefore, a sudden Tsunami hit the aviation sector worldwide leading to a clampdown on flights all over. According to IATA, the International Airline Association, International airlines could lose around \$ 200 billion in the present year. In India also Aviation sector is reeling under a meltdown as India clampdowns completely on international and domestic flights. While one can appreciate the timely steps the Indian government has taken to stop the spread of this deadly virus, the government has to ensure that this vital infrastructure is not allowed to collapse.

One is reminded of 9/11 incident of terrorist attack through hijacking of aircrafts in the US in 2001 and their use as a weapon of mass destruction. The entire aviation industry worldwide collapsed even then. Calling it a catastrophic event, the world's leading insurance companies suspended their insurance cover for airlines and all governments including Indian had to help their national Airlines through financial measures. The present crisis of COVID-19 is yet another catastrophic event occurring after 19 years through the aviation sector but with no fault of theirs and it's important for the government to come to the aid of this sector because it is the government that has grounded all air travel for good reasons.

The Chicago Convention 1944, is the basis for creation of the International Civil Aviation Organisation (ICAO) and Air Laws and is ratified by practically

all the members of UN including China. Article 14 imposes on each member state the responsibility to take effective measures to prevent the spread by means of air navigation of cholera and such other communicable diseases and to that extent contracting state has the responsibility to keep in close consultation with agencies concerned with international regulation relating to sanitary measures applicable to aircraft. It has by now been well established that China had purposely kept quiet of COVID-19 virus in early stages leading to the spread of this deadly virus globally.

There is, therefore a clear case of default by China due to its deliberate and irresponsible behaviour causing immeasurable loss to so many persons by reasons of death and hospitalisation and its spread all over the world. It has also caused extreme losses to countries who had to take extreme preventive measure to stop the spread of the virus. It has caused loss to nearly all Airlines worldwide due to stoppage of their operations by their countries. Had they informed ICAO on time this spreading would not have occurred. It is, therefore, a fit case for settlement of a dispute under Article 84/85/88. Further, under Montreal Convention 1999(which replaces the Warsaw System) the liability of the carrier starts when an emplaning passenger crosses security or a deplaning passenger leaves the security of an airport. In an unfortunate accident in Delhi's IGI airport in 1999 when a 12-year-old girl was killed due to an accident in the escalator, the Supreme Court of India in 2008 awarded a fine/ penalty on the Airports Authority of India under the Warsaw System (as India had not ratified the Montreal 1999 Convention then).

Similarly, in the present case, Wuhan Airport is liable under Article 17 of the Montreal Convention 1999 read with Article 14 of the Chicago Convention 1944 mentioned above for damage sustained by so many international passengers of various nationalities of permitting passengers board without a screening of the COVID-19 and spreading it across the world due to utter negligence of the Wuhan Airport Authorities, an airport owned by the Government of China and thereby the Chinese Government. It's a fit case for Class Action suit also on a worldwide basis under Montreal Convention 1999.

It may be added further that World Health Organisation (WHO)'s initial endorsement of the Chinese claim in that this virus gave no evidence of

human to human transmission is now being questioned as a case of successful Chinese influencing of a multi-lateral Organisation to its national advantage as part of a Chinese strategy to infiltrate multilateral organisations. While two decades back when SARS crisis took place in China it was WHO that issued the first travel advisory. Now, with the growing financial clout of China and its political support and backing of the current Director-General Tedros Adhanom in his election in 2017, the independent role of WHO could have been undermined! Incidentally, the Secretary-General of ICAO is also Chinese.

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