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# Air India Crashes and Compensation: A Jurisprudential Review of Domestic and International Legal Regimes

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## ABSTRACT

*The landscape of aviation liability and victim compensation in India is characterized by a complex interplay of international conventions and domestic legal frameworks. This article provides a jurisprudential review, analyzing the evolution from limited carrier liability to a system emphasizing strict and potentially unlimited accountability, largely driven by the Montreal Convention of 1999 and its integration into Indian law. Recent Air India tragedies, such as the Ahmedabad Flight 171 crash in 2025, have brought renewed scrutiny to compensation mechanisms, highlighting both the significant financial implications for airlines and their insurers and the persistent challenges faced by victims' families in securing equitable redress. Judicial precedents in India have played a pivotal role in enhancing compensation standards, often pushing payouts beyond initial airline offers. Despite these advancements, complexities arising from multi-jurisdictional claims, the arduous process of proving negligence, and disparities in compensation for different victim categories underscore the continuous need for refinement in legal and regulatory frameworks to ensure timely and just compensation.*

**Keywords:** *Air India, Aviation Accidents, Compensation, Airline Liability, Montreal Convention, Carriage by Air Act, 1972, Indian Law, International Law, Jurisprudence, Strict Liability, Judicial Precedents*

## I. INTRODUCTION: THE EVOLVING LANDSCAPE OF AVIATION LIABILITY

The global aviation sector has witnessed unprecedented growth, and India stands as a prominent example of this expansion. The nation's aviation industry has undergone significant liberalization, transitioning from a state-centric model to a dynamic, competitive market. This transformation has led to a substantial increase in air travel, with domestic air passenger numbers more than doubling between 2014 and 2024, reaching 37.6 crore passengers in FY24.<sup>1</sup> While this growth signifies economic progress and enhanced connectivity, it inherently carries the risk of aviation accidents, which in turn necessitate robust and adaptable

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legal frameworks for victim compensation.

### **A. Overview of Air India Accidents and the Imperative for Legal Review**

Recent Air India incidents have starkly illuminated the intricate challenges associated with aviation liability and compensation. Major crashes, including the Ahmedabad Flight 171 in 2025, Mangalore Flight IX-812 in 2010, and Kozhikode Flight 1344 in 2020, have consistently drawn public and legal attention to the complexities of compensation claims.<sup>3</sup> These tragedies underscore the critical need for a thorough jurisprudential review of the applicable legal regimes.

The Air India Flight 171 crash on June 12, 2025, involving a Boeing 787 Dreamliner en route from Ahmedabad to London, resulted in the deaths of 241 of the 242 people on board, along with over two dozen individuals on the ground.<sup>7</sup> This incident marked the first fatal crash involving a Boeing 787 and was Air India's first major accident since its acquisition by the Tata Group in 2022.<sup>7</sup> The financial ramifications of this single event are projected to be immense, with claims estimated at around Rs 4,000 crore (\$470 million), positioning it as one of the largest insurance claims in the history of plane accidents.<sup>3</sup> The sheer scale of these claims, coupled with the prediction of a significant increase in airline insurance premiums—potentially rising by 10% to 30% in the next renewal cycle—indicates a hardening of the global aviation insurance market.<sup>9</sup> This situation is not merely an isolated financial event for a single airline but represents a systemic shock to the global aviation insurance sector, leading to higher operational costs for all airlines and potentially impacting ticket prices worldwide.<sup>9</sup> The rapid expansion of the aviation sector in India, therefore, requires a proactive and continuously updated legal and regulatory framework to effectively manage inherent risks and ensure adequate victim compensation, rather than merely reacting to each tragedy as it occurs.

### **B. Scope and Objectives of the Jurisprudential Analysis**

This article aims to meticulously dissect the legal mechanisms that govern compensation for victims of aviation accidents, with a specific focus on incidents involving Air India. It will analyze the intricate interplay between international treaties, such as the Warsaw Convention and the Montreal Convention, and India's domestic legal provisions, including the Carriage by Air Act, the Consumer Protection Act, and general tort law. A key objective is to examine the judicial interpretations that have significantly shaped compensation standards in India, drawing lessons from past cases. Furthermore, the analysis will identify and elaborate upon the practical challenges encountered in securing just compensation for affected families. The overarching goal is to provide a comprehensive understanding of the current legal landscape,

highlighting its strengths and weaknesses, and to propose actionable recommendations for fostering a more efficient, transparent, and equitable compensation process for aviation accident victims in India.

## **II. INTERNATIONAL LEGAL FRAMEWORKS GOVERNING AVIATION COMPENSATION**

The international legal landscape for aviation liability has evolved significantly over the past century, driven by the need for uniformity and predictability in cross-border air travel. This evolution reflects a growing emphasis on passenger protection and carrier accountability.

### **A. The Warsaw Convention (1929): Foundations and Limitations**

The Convention for the Unification of Certain Rules Relating to International Carriage by Air, commonly known as the Warsaw Convention of 1929, represented the first comprehensive international legal framework for air carrier liability.<sup>1</sup> Its primary objective was to unify rules for international air carriage, a critical step during the nascent stages of the aviation industry. A fundamental principle of the Warsaw Convention was to protect this emerging industry by imposing limited liability on air carriers.<sup>1</sup>

Key provisions of the Convention included the mandatory issuance of passenger tickets and baggage checks, a two-year limitation period within which claims had to be brought, and specific monetary limits for personal injury, set at 250,000 French Francs (approximately 16,600 Special Drawing Rights or SDRs).<sup>1</sup> However, as air travel became more common and the industry matured, the limitations of the Warsaw Convention became increasingly apparent. The low liability caps and the requirement for claimants to prove "wilful misconduct" on the part of the airline to secure higher compensation proved to be significant hurdles.<sup>1</sup> The burden of proof largely rested on the passenger to demonstrate that an "unforeseen event" had transpired, which was distinct from merely establishing that death or injury occurred.<sup>12</sup> This framework, while historically significant, eventually became inadequate in addressing the evolving expectations of passenger protection and the complexities of modern aviation.

### **B. The Montreal Convention (1999): Modernizing Carrier Liability**

The Convention for the Unification of Certain Rules for International Carriage by Air, signed in Montreal in 1999 (MC99), was a landmark treaty designed to modernize and supersede the outdated Warsaw Convention system.<sup>1</sup> Its core aim was to re-establish uniformity and predictability in the rules governing international air carriage while significantly enhancing

the protection afforded to passengers. This marked a fundamental jurisprudential shift from prioritizing the protection of a nascent aviation industry to emphasizing greater corporate responsibility and consumer rights.

### **1. Core Principles: Strict Liability vs. Unlimited Liability**

The Montreal Convention introduced a sophisticated two-tier liability system, which fundamentally altered the burden of proof in aviation accident claims.<sup>4</sup>

- **Strict Liability (Tier 1):** Under this tier, air carriers are strictly liable for proven damages up to a certain threshold, irrespective of fault. This means that compensation must be paid to victims or their families without the necessity of proving negligence on the carrier's part, provided the accident causing death or bodily injury occurred on board the aircraft or in the course of embarking or disembarking.<sup>1</sup> This significantly streamlined the initial compensation process for victims.

- **Unlimited Liability (Tier 2):** For damages exceeding the strict liability threshold, the airline can be held liable for an unlimited amount. However, to avoid this unlimited liability, the carrier bears the burden of proving that the damage was not due to its negligence or other wrongful act or omission, or that it was caused solely by the negligence or wrongful act or omission of a third party.<sup>4</sup> This reversal of the burden of proof places a substantial onus on the airline to demonstrate its lack of culpability, ensuring a higher degree of accountability.

### **2. Special Drawing Rights (SDRs) and Compensation Thresholds**

The liability limits under the Montreal Convention are expressed in Special Drawing Rights (SDRs), which are an international reserve asset created by the International Monetary Fund (IMF) and based on a basket of leading currencies.<sup>3</sup> This mechanism allows for periodic adjustments to the compensation values, reflecting global economic changes.

The strict liability threshold has seen several adjustments since the Convention's inception. Initially set at 100,000 SDRs, it was later increased to 128,821 SDRs, and further to 151,880 SDRs from October 18, 2024 onwards.<sup>17</sup> For the recent Air India Flight 171 crash, the minimum compensation mandated under the Montreal Convention is approximately Rs 1.50 crore (based on 128,821 SDRs as of October 2024) to Rs 1.85 crore (based on 151,880 SDRs as of June 2025) per deceased passenger, payable irrespective of fault.<sup>3</sup>

### **3. India's Ratification and Domestic Integration**

India became a signatory to the Montreal Convention on May 1, 2009, with the Convention becoming effective for India on June 30, 2009.<sup>1</sup> This ratification was crucial for aligning

India's aviation liability laws with contemporary international standards. The Convention's provisions were subsequently incorporated into Indian domestic law through the Carriage by Air (Amendment) Act, 2009, which amended the existing Carriage by Air Act, 1972.<sup>1</sup> This legislative action ensures that the Montreal Convention's stipulations are legally binding within India for international carriage. A significant aspect of MC99 is its emphasis on uniform liability, explicitly stating that citizenship plays no role in determining compensation. All passengers, regardless of their nationality (e.g., Indian, British, Portuguese), are treated equally under the Convention, thereby removing nationality-based discrimination in death or injury payouts.<sup>18</sup> While one source suggested that minimum liability might depend on passenger nationality<sup>10</sup>, the overwhelming and consistent information from multiple other sources, and the very intent of the Montreal Convention, confirms that compensation for the strict liability tier is uniform regardless of nationality.<sup>18</sup> It is important to distinguish this from the choice of jurisdiction for filing a claim, which *can* be influenced by the passenger's domicile, offering flexibility to families to seek justice in a convenient or favorable forum.<sup>3</sup>

**Table 1: Key International Aviation Conventions and India's Status**

| Convention Name   | Year Adopted | Key Principles                                    | Liability Limits (Death/Injury)   | Burden of Proof  | India's Status | Domestic Act Integration  | Effective Date in India |
|-------------------|--------------|---|---|--|----------------|---|-------------------------|
| Warsaw Convention | 1929         | Limited Liability; Protection of nascent industry | 125,000 Poincaré gold francs (approx. 8,300 USD at time); 16,600 SDR (after Hague Protocol) | On passenger (to prove "unforeseen event" and "wilful misconduct" for higher | Signed 1947    | Carriage by Air Act, 1972 (initially incorporated Warsaw and Hague) | -                       |

|                                |      |  |  |  |                            |  |                  |
|--------------------------------|------|--|--|--|----------------------------|--|------------------|
|                                |      |  | l)   | claims)  |                            |  |                  |
| Hague<br>Protoco<br>l          | 1955 | Amend<br>ed<br>Warsaw<br>, raised<br>limits  | 250,000<br>Poincar<br>e gold<br>francs<br>(approx.<br>16,600<br>USD at<br>time)  | On<br>passeng<br>er  | Ratified<br>1973           | Carriag<br>e by Air<br>Act,<br>1972                    | -                |
| Montre<br>al<br>Conven<br>tion | 1999 | Two-<br>tier<br>system:<br>Strict<br>Liabilit<br>y &<br>Unlimit<br>ed<br>Liabilit<br>y;<br>Enhanc<br>ed<br>Passeng<br>er<br>Protecti<br>on | Tier 1:<br>100,000<br>SDR<br>(initial);<br>128,821<br>SDR<br>(current<br>);<br>151,880<br>SDR<br>(from<br>Oct<br>2024) | Tier 1:<br>No fault<br>proof<br>needed;<br>Tier 2:<br>Shifts to<br>airline<br>(to<br>prove<br>non-<br>neglige<br>nce or<br>third-<br>party<br>fault) | Ratified<br>May 1,<br>2009 | Carriag<br>e by Air<br>(Amend<br>ment)<br>Act,<br>2009 | June 30,<br>2009 |

The Montreal Convention, while providing a crucial baseline for compensation, implicitly encourages victims to pursue litigation to establish negligence and achieve higher, more "just" compensation. This often leads to protracted legal battles, as the initial minimum payout is frequently not the final amount families are entitled to, particularly if airline or manufacturer fault can be demonstrated.<sup>4</sup>

### **III. DOMESTIC LEGAL REGIMES IN INDIA FOR AVIATION ACCIDENTS**

India's domestic legal framework for aviation accidents operates in conjunction with international conventions, primarily through the Carriage by Air Act, 1972, and offers additional avenues for redress under consumer protection and tort laws.

#### **A. The Carriage by Air Act, 1972: Bridging International and Domestic Law**

The Carriage by Air Act, 1972, serves as India's foundational legislation governing air carriage. Its enactment was specifically aimed at incorporating international conventions, including the Warsaw, Hague, and Montreal Conventions, into the domestic legal system.<sup>1</sup> This Act establishes a structured legal framework that delineates the rights and liabilities of air carriers, passengers, and consignees for both international and, to a specified extent, non-international carriage by air.<sup>1</sup>

The Act includes strict liability provisions, holding carriers responsible for death or bodily injury to passengers sustained on board the aircraft or during the processes of embarking or disembarking.<sup>1</sup> Similar provisions apply to the loss or damage of baggage and cargo. A critical procedural aspect of the Act is the imposition of a two-year limitation period for bringing claims for damages.<sup>1</sup> Furthermore, the Act provides a degree of flexibility by allowing parties to enter into agreements that set higher limits of liability than those statutorily prescribed, reflecting a recognition of varying circumstances and potential damages.<sup>32</sup>

#### **B. Consumer Protection Act, 2019: An Avenue for Victim Redressal**

Beyond the specific aviation legislation, victims' families in India possess an additional avenue for seeking compensation through the Consumer Protection Act, 2019. This Act offers a parallel route to the Montreal Convention, enabling claimants to approach consumer fora for redress.<sup>18</sup> This pathway becomes particularly relevant if "service deficiencies" are suspected, such as those arising from pilot error, mechanical failure, or inadequate maintenance.<sup>18</sup> The Consumer Protection Act broadens the scope of accountability, allowing for claims based on the airline's failure to provide services with due care and diligence, thereby complementing the liability frameworks established by international conventions.

#### **C. Tort Law and Negligence: Claims Beyond Strict Liability**

While international conventions and specific aviation acts establish strict liability up to certain thresholds, civil lawsuits under general tort law provide a critical mechanism for pursuing claims beyond these limits, particularly when negligence, wrongful death, or loss of consortium is suspected.<sup>4</sup> Such claims can potentially lead to compensation amounts that



significantly exceed the caps set by the Montreal Convention, especially if gross negligence on the part of the airline or a defect attributable to the aircraft manufacturer (e.g., Boeing) can be proven.<sup>4</sup>

However, the process of establishing negligence in aviation accidents is inherently complex and often protracted. It requires meticulous investigation and substantial evidence to demonstrate fault, particularly when attempting to prove "wilful misconduct".<sup>26</sup> The technical nature of aviation operations, involving multiple systems and human factors, makes direct attribution of blame challenging. Furthermore, tort law in India is considered by some experts to be relatively underdeveloped compared to its counterparts in jurisdictions like the United States and the United Kingdom, which can add to the complexity and duration of civil suits based on negligence.<sup>4</sup>

An additional layer of legal exposure for airlines arises from third-party liability for ground victims and property damage, as tragically demonstrated in incidents like the Air India Flight 171 crash in Ahmedabad. Claims from individuals on the ground affected by the crash, or for damage to property, typically fall under general tort law and third-party insurance rules.<sup>4</sup>

#### **D. Role of Regulatory Bodies (DGCA, AAIB) in Accident Investigation and Liability**

The effectiveness of both domestic and international legal frameworks in ensuring justice and compensation for aviation accident victims heavily relies on the thoroughness and impartiality of accident investigations conducted by regulatory bodies.

- **Directorate General of Civil Aviation (DGCA):** The DGCA serves as the principal regulatory authority for civil aviation in India. Its mandate encompasses a broad range of responsibilities, including the formulation of safety rules for airlines, airports, and aircraft, the certification of aircraft and pilots, and the investigation of aviation incidents.<sup>19</sup> The DGCA is also responsible for ensuring compliance with international safety standards and plays a crucial role in enforcing the requirement for airlines to maintain adequate aviation insurance, as stipulated by Article 50 of the Montreal Convention.<sup>18</sup> This oversight function is vital for both accident prevention and facilitating the compensation process.

- **Aircraft Accident Investigation Bureau (AAIB):** To ensure independence and adherence to international best practices, the Aircraft Accident Investigation Bureau (AAIB) was established in India in 2012, operating independently of the DGCA.<sup>7</sup> The AAIB is mandated to conduct independent investigations into aircraft accidents and serious incidents in India, in conformity with the Standards and Recommended Practices (SARPs) of the International Civil Aviation Organization (ICAO).<sup>26</sup> The findings of AAIB investigations are

of paramount importance, as they often determine the probable cause of a crash, which is a critical factor in establishing negligence and, consequently, the quantum of compensation in legal claims.<sup>19</sup> The recovery of black boxes and cockpit voice recorders, as seen in the AI171 crash, is a key step in these investigations, although formal reports can take several months to years to be released.<sup>3</sup>

#### **IV. JURISPRUDENTIAL REVIEW OF COMPENSATION IN KEY AIR INDIA CRASHES**

A review of significant Air India crashes provides concrete examples of how domestic and international legal regimes have been applied and interpreted in the context of victim compensation, revealing both progress and persistent challenges.

##### **A. Air India Flight 171 (Ahmedabad, 2025): Immediate Responses and Emerging Legal Complexities**

The crash of Air India Flight 171 in Ahmedabad on June 12, 2025, immediately triggered a series of responses regarding victim compensation. Tata Sons, the parent company of Air India, promptly announced an ex-gratia payment of ₹1 crore to the next of kin of each victim.<sup>3</sup> This was followed by Air India's announcement of an additional interim payment of ₹25 lakh, bringing the total initial offer to ₹1.25 crore per deceased family.<sup>4</sup> Medical expenses for the injured and compensation for ground victims were also pledged.<sup>3</sup>

However, legal experts swiftly advised victims' families against accepting these initial offers as final, emphasizing the potential for significantly higher payouts through legal action in foreign jurisdictions, particularly the US and UK, which are considered more generous than India.<sup>4</sup> The Montreal Convention, to which India is a signatory, mandates a minimum compensation of approximately ₹1.50 crore to ₹1.85 crore per victim, irrespective of fault.<sup>3</sup> More critically, the possibility of unlimited liability arises if negligence on the part of Air India or the aircraft manufacturer, Boeing, is proven.<sup>4</sup> This necessitates thorough investigations by bodies like the AAIB, whose findings will be crucial in determining fault and influencing the final compensation quantum.<sup>19</sup>

The crash also highlighted third-party property damage liability, as the aircraft impacted a medical college hostel.<sup>4</sup> The incident's overall financial impact is substantial, with total insurance claims projected to be around \$475 million, contributing to a predicted 10-30% increase in global aviation insurance premiums.<sup>9</sup>

### **B. Air India Express Flight IX-812 (Mangalore, 2010): The Battle for "Just Compensation"**

The Air India Express Flight IX-812 crash in Mangalore on May 22, 2010, which claimed 158 lives, became a significant case study in the fight for appropriate compensation in India. While Air India Express initially announced interim compensation of ₹10 lakh for adult passengers, the actual amounts received by families were reportedly much lower, around ₹2 lakh for fatalities.<sup>6</sup> Final compensation offers varied widely, often based on the victims' income or age, ranging from ₹25 lakh for children to ₹60 lakh for adults.<sup>6</sup>

Victims' families and their associations argued that they were eligible for a fixed compensation of ₹75 lakh (equivalent to 100,000 SDRs in 2011) under the Montreal Convention, payable automatically without the need to prove fault.<sup>6</sup> The landmark Supreme Court judgment in the Triveni Kodkany case in 2020 was pivotal. Ms. Kodkany, whose husband died in the crash, was awarded ₹7.64 crore with 9% interest from the date of filing, marking one of the largest individual payouts for that crash.<sup>6</sup> The Court acknowledged the airline's strict liability under the Montreal Convention but notably calculated the compensation using principles derived from the Motor Vehicles Act, which considers factors like future prospects. This decision sparked a debate regarding the appropriate legal framework for assessing "sustained damage," which includes non-pecuniary losses such as pain and suffering and loss of future income for dependents.<sup>6</sup> Furthermore, for Non-Resident Indian (NRI) victims, there was an argument that compensation should account for overseas income, assets, and entitlements, reflecting the full financial impact of the loss.<sup>6</sup> Despite the Kodkany judgment, many cases related to the Mangalore crash, including 33 writ petitions in the Kerala High Court and civil appeals in the Supreme Court, remained pending for years, underscoring the protracted nature of such legal battles.<sup>6</sup>

### **C. Air India Express Flight 1344 (Kozhikode, 2020): Judicial Push for Enhanced Payouts**

The Air India Express Flight 1344 crash in Kozhikode in 2020, which resulted in 19 fatalities and numerous injuries, also saw initial interim compensation announcements from the Central and Kerala governments (₹10 lakh for adults, ₹5 lakh for minors).<sup>38</sup> However, similar to previous incidents, these amounts were often perceived as insufficient.

The Supreme Court subsequently issued notices to Air India in response to a petition seeking compensation of at least ₹1.34 crore per victim, aligning with the standards prescribed by the Montreal Convention.<sup>4</sup> This judicial intervention reflected a growing trend of courts pushing

for enhanced payouts beyond initial airline offers. Precedents from the Kozhikode crash itself demonstrated this, with some payouts reaching ₹1.19 crore per victim.<sup>18</sup> The case also highlighted inconsistencies in compensation, with one injured passenger reportedly receiving ₹5 crore, while many families of deceased passengers received less than ₹2 crore.<sup>6</sup> This disparity underscores the challenges in achieving uniform and equitable compensation outcomes, even within the same accident.

#### **D. Air India Flight 182 (Kanishka Bombing, 1985): A Unique Case of Terrorism and State Liability**

The bombing of Air India Flight 182, the "Emperor Kanishka," on June 23, 1985, over the Atlantic Ocean, stands as a unique and tragic event in Air India's history. This act of terrorism, perpetrated by Sikh militants, resulted in the deaths of all 329 people on board, predominantly Canadian citizens.<sup>43</sup> Unlike crashes primarily attributed to operational or mechanical failures, the Kanishka bombing introduced complex questions of state liability and the challenges of prosecuting acts of terrorism.

The investigation and prosecution of this bombing became the longest and most expensive trial in Canadian history, costing nearly C\$130 million, yet resulting in only one conviction for manslaughter (Inderjit Singh Reyat).<sup>43</sup> The Canadian government provided ex-gratia payments to the victims' families. While initial out-of-court settlements averaged around \$75,000 per victim, later, more symbolic ex-gratia payments of \$20,000 to \$25,000 were offered to acknowledge the administrative difficulties and suffering experienced by families.<sup>44</sup> A public inquiry, led by Justice John Major, concluded that a "cascading series of errors" by Canadian government agencies (RCMP and CSIS) allowed the attack to occur, leading to a formal apology from then-Prime Minister Stephen Harper.<sup>43</sup> This case exemplifies the distinct legal and compensatory challenges when an aviation disaster is the result of a terrorist act, involving not just airline liability but also potential state accountability for intelligence and security failures.

#### **E. Judicial Interpretation of Damages: Pranay Sethi and Triveni Kodkany Judgments**

Indian jurisprudence has significantly shaped the determination of damages in aviation accident cases, particularly through landmark Supreme Court judgments.

- **Pranay Sethi Judgment (Supreme Court):** The Supreme Court's judgment in *National Insurance Company Ltd. v. Pranay Sethi* (2017), though primarily concerning motor accident claims, established a crucial formula for calculating final compensation that has since

been applied to aviation cases.<sup>20</sup> This judgment introduced the concept of "future prospects" into compensation calculations, aiming for an "acceptable degree of proximity to arithmetical precision" and ensuring "just compensation" that is neither a "windfall" nor a "pittance".<sup>20</sup> Key factors considered include the deceased's age, employment status, educational background, nature of employment, and the number of dependents.<sup>18</sup> The judgment specifically mandated an addition to the established income for future prospects: 40% for those below 40 years of age and 25% for those between 40 and 50 years, factoring in societal changes, price escalation, and changing life patterns.<sup>20</sup> For minors, the judgment recognized that they cannot be treated "without value," acknowledging their potential as productive assets to their families and the nation.<sup>30</sup>

- **Triveni Kodkany Judgment (Supreme Court, 2020):** Building on the principles of *Pranay Sethi*, the *Triveni Kodkany* judgment (2020) from the Supreme Court further solidified the approach to aviation accident compensation. In this case, related to the 2010 Mangalore crash, the Court awarded Ms. Kodkany ₹7.64 crore with 9% interest, which was the largest individual compensation for that incident.<sup>6</sup> The Court explicitly recognized the airline's strict liability under the Montreal Convention but applied the *Pranay Sethi* guidelines for calculation, which are rooted in motor accident claims. This application sparked ongoing debate among legal practitioners regarding whether compensation for "sustained damage" (including non-pecuniary losses like pain, suffering, and loss of future income) should strictly adhere to Montreal Convention principles or be guided by the Motor Vehicles Act.<sup>6</sup> There is also a strong argument for considering overseas assets and entitlements for Non-Resident Indian (NRI) victims, ensuring that the calculation accounts for all sources of income lost due to the victim's death.<sup>6</sup>

## V. CHALLENGES AND COMPLEXITIES IN COMPENSATION DETERMINATION

Despite the legal frameworks in place, victims and their families often encounter significant challenges and complexities in navigating the compensation process following an aviation accident.

### A. Adequacy of Initial Offers vs. Legal Entitlements

A recurring challenge is the disparity between the initial compensation offers made by airlines and their parent companies, and the full legal entitlements under international conventions or domestic tort law. For instance, following the Air India Flight 171 crash, Tata Sons announced an ex-gratia payment of ₹1 crore, supplemented by Air India's interim payment of ₹25 lakh.<sup>3</sup> While these payments provide immediate relief, legal experts consistently advise

victims' families not to accept them as final settlements. This caution stems from the understanding that the Montreal Convention mandates a higher minimum compensation (currently around ₹1.50 crore to ₹1.85 crore), and actual entitlements can be substantially greater if negligence is proven.<sup>4</sup> The gap between initial offers and potential legal awards necessitates that families seek independent legal counsel to understand their full rights and avoid premature settlements.

### **B. Proving Negligence and Unlimited Liability**

The pursuit of unlimited liability under the Montreal Convention or through tort law hinges on proving negligence on the part of the airline, aircraft manufacturer, or other involved entities. This is a formidable task. Establishing factors such as pilot error, mechanical failure, maintenance deficiencies, or manufacturing defects requires extensive, highly technical evidence.<sup>1</sup> The findings of the Aircraft Accident Investigation Bureau (AAIB) are crucial in this regard, as their reports often determine the probable cause of the crash.<sup>3</sup> However, these investigations are inherently complex and can take many months, or even years, to conclude and release formal reports.<sup>3</sup> Furthermore, the framework of tort law in India is sometimes perceived as less developed compared to jurisdictions like the US and UK, which can make civil suits based on complex negligence claims more challenging and protracted.<sup>4</sup>

### **C. Jurisdictional Challenges and Forum Shopping**

The international nature of aviation accidents often presents victims' families with a choice of jurisdictions for filing claims. Under the Montreal Convention, claims can typically be pursued in the country of destination or departure, the airline's principal place of business, or the passenger's primary residence (if the carrier operates there).<sup>3</sup> This flexibility, while beneficial, also leads to "forum shopping," where families may opt for jurisdictions known for higher compensation awards. For instance, US courts are generally considered more generous, with average settlements for aviation accidents often in excess of \$5-10 million per person, significantly higher than typical awards in the UK (\$2-3 million) or the minimums in India.<sup>28</sup> However, enforcing foreign judgments in India can present its own set of challenges, depending on whether the foreign country is a "reciprocating territory" for the purpose of executing decrees.<sup>49</sup>

### **D. Discrepancies in Compensation for Different Victim Categories**

A notable challenge lies in the varying compensation standards applied to different categories of victims. The Montreal Convention primarily governs compensation for passengers, while ground victims or those suffering property damage typically fall under domestic tort law and

third-party insurance rules.<sup>18</sup> This can lead to disparities in compensation amounts and the legal processes required to obtain them. Furthermore, even among passengers, compensation amounts are not uniform. The Supreme Court's

*Pranay Sethi* guidelines, applied in aviation cases, dictate that final compensation depends on various factors such as the deceased's age, employment status, number of dependents, and future prospects.<sup>18</sup> This individualized assessment, while aiming for fairness, can lead to perceived inconsistencies.

The valuation of non-pecuniary losses, such as pain and suffering, and loss of consortium (loss of companionship and support), remains a complex area, often subject to judicial interpretation and varying across jurisdictions.<sup>3</sup> Additionally, for Non-Resident Indian (NRI) victims, the challenge arises in adequately accounting for their overseas income, assets, and entitlements, which may not be fully captured by domestic calculation methodologies.<sup>6</sup>

#### **E. Protracted Legal Battles and Delays**

Perhaps the most distressing challenge for victims' families is the protracted nature of the legal battles. While interim relief may be disbursed within days or weeks, the process of documentation and claim processing can take 6-12 months, and final settlements typically extend over 1-2 years.<sup>19</sup> However, for cases involving complex negligence claims or disputes over the quantum of damages, the resolution can stretch for many years. The Mangalore crash cases, for instance, saw litigation continuing for 15 years, with some civil appeals still pending in the Supreme Court.<sup>6</sup> This prolonged legal process adds immense emotional, psychological, and financial burden on grieving families, often forcing them to accept lower settlements simply to avoid further protracted struggle.<sup>20</sup>

### **VI. CONCLUSION AND RECOMMENDATIONS**

#### **A. Synthesis of Jurisprudential Findings**

The jurisprudential review of Air India crashes and compensation reveals a dynamic and evolving legal landscape. The shift from the limited liability regime of the Warsaw Convention to the two-tiered strict and potentially unlimited liability framework of the Montreal Convention marks a significant advancement in passenger protection and carrier accountability. India's ratification of the Montreal Convention in 2009 and its subsequent incorporation into the Carriage by Air Act, 1972, demonstrate a commitment to aligning domestic law with international standards.

Indian judicial precedents, particularly the Supreme Court's *Pranay Sethi* and *Triveni*

*Kodkany* judgments, have played a crucial role in shaping and enhancing compensation standards. These rulings have introduced a more nuanced approach to calculating damages, including the consideration of "future prospects" and a push for "just compensation" that is neither excessive nor a mere token. Furthermore, the availability of parallel legal avenues, such as the Consumer Protection Act and general tort law, provides additional recourse for victims to seek redress beyond the strict liability limits, especially when negligence is suspected.

Despite these positive developments, significant complexities persist. The gap between initial airline offers and full legal entitlements, the arduous process of proving negligence, the complexities of multi-jurisdictional claims, and the disparities in compensation across different victim categories continue to pose substantial challenges. The protracted nature of legal battles, often spanning many years, adds immense emotional and financial strain on families already grappling with profound loss.

### **B. Recommendations for Enhancing Victim Redressal and Legal Clarity**

To further strengthen the legal framework and ensure more efficient and equitable victim redressal in aviation accidents, the following recommendations are put forth:

- **Streamlining Domestic Legal Frameworks:**
  - **Dedicated Aviation Accident Compensation Act:** India should consider enacting a comprehensive, standalone aviation accident compensation act. This legislation should explicitly integrate and elaborate upon Montreal Convention principles, while also addressing specific nuances relevant to the Indian context, such as comprehensive guidelines for non-pecuniary damages (e.g., pain and suffering, loss of consortium) and clear provisions for valuing claims of Non-Resident Indian (NRI) victims, thereby reducing reliance on precedents from other areas of law like motor accidents.
  - **Harmonized Compensation for Ground Victims:** Establish clear, harmonized compensation standards for ground victims and property damage that align, as far as practicable, with the principles and values applied to passengers under the Montreal Convention. This would ensure equitable treatment for all those affected by an aviation disaster, regardless of their physical location at the time of the incident.
- **Expediting Investigation and Compensation Processes:**
  - **Enhanced AAIB Resources and Independence:** Strengthen the Aircraft Accident



Investigation Bureau (AAIB) by providing increased resources, advanced technical capabilities, and further reinforcing its independence. This would enable swifter, more thorough, and transparent accident investigations, which are critical for timely liability determination.

- **Mandatory Higher Advance Payments and Strict Timelines:** Implement regulations mandating higher, more substantial advance payments to victims' families within a very short timeframe following an accident. Concurrently, establish strict, legally enforceable timelines for the completion of investigations and the final settlement of compensation claims, thereby minimizing the need for protracted litigation and alleviating the financial burden on affected families.
- **Enhancing Legal Awareness and Access:**
  - **Accessible Information and Guidance:** Develop and disseminate clear, comprehensive, and easily accessible guidelines for victims' families, outlining their legal rights, the various avenues for compensation, and the importance of seeking independent legal counsel. This information should be available in multiple languages and through various channels.
  - **Promote Specialized Legal Aid:** Encourage and support the provision of specialized legal aid and pro bono services for aviation accident victims. This would ensure that all affected families, irrespective of their socio-economic status, have access to expert legal representation necessary to navigate the complex legal landscape and pursue their rightful claims effectively.
- **International Cooperation and Best Practices:**
  - **Continued Engagement with ICAO:** India should maintain its active engagement with international bodies like the International Civil Aviation Organization (ICAO) to continuously review and refine global aviation liability standards. This includes addressing emerging issues, closing any existing gaps in compensation frameworks, and promoting greater international harmonization.
  - **Adopt Best Practices for Damages Assessment:** Systematically study and, where appropriate, adopt best practices from jurisdictions with more developed tort law frameworks, such as the US and UK, particularly concerning the assessment of non-pecuniary damages and the handling of complex liability cases. This adaptation should be carefully integrated into the Indian legal context to ensure compatibility and effectiveness.

- **Proactive Regulatory Oversight:**

- **Intensified Safety Oversight:** The Directorate General of Civil Aviation (DGCA) should intensify its proactive oversight of airline safety, maintenance protocols, and operational procedures. Robust and rigorous safety audits are paramount to preventing accidents, thereby reducing the incidence of compensation claims in the first place.
- **Ensuring Robust Insurance Coverage:** Mandate and regularly review the adequacy of aviation insurance coverage for all carriers operating in India, including sufficient reinsurance arrangements. This ensures that airlines possess the necessary financial capacity to meet their liability obligations for large-scale payouts without undue strain on their operations or delays in victim compensation.

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