

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

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Volume 9 | Issue 2

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2026

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# Grounded and Unprotected: A Legal Vacuum in Safeguarding Consumer and Investor Interests amidst Airline Insolvency - A National and International Legal Perspective

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## ABSTRACT

*The Indian aviation sector has witnessed recurring airline insolvencies in recent years, including high-profile collapses like Jet Airways and GoFirst. These events have exposed a critical gap in both national and international legal frameworks that fail to adequately safeguard consumer and investor interests during such financial crises. In this study, we explore the dual impact of airline insolvency on passengers and shareholders, focusing on the lack of enforceable refund mechanisms for consumers and the absence of sector-specific protections for retail investors. This paper analyses the current statutory landscape in India, including the Consumer Protection Act, 2019; the Insolvency and Bankruptcy Code, 2016; and SEBI regulations, and juxtaposes these with international conventions like the Montreal Convention, ICAO standards, and the UK's ATOL scheme, and examine relevant judicial precedents to demonstrate that existing legal frameworks are ill-equipped to address the complexities of airline insolvency. The research identifies a legislative and regulatory vacuum and proposes targeted reforms, including the creation of a statutory aviation consumer fund, investor disclosure mandates, and a multilateral insolvency response model under ICAO. In conclusion, this paper underlines the need for a cohesive legal response that balances financial viability with the protection of consumer and investor rights in the aviation sector.*

**Keywords:** *Airline Insolvency; Consumer Protection in Aviation; Investor Protection Framework; Insolvency and Bankruptcy Code (IBC); Regulatory Vacuum in Aviation Law*

## I. INTRODUCTION: RISING INSOLVENCIES AND DUAL IMPACT

The aviation sector is a critical driver of modern economies, enabling global connectivity, trade, tourism, and employment. With over 4.5 billion passengers traveling annually pre-pandemic,

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the industry significantly contributes to GDP in both developed and developing nations.<sup>2</sup> However, the sector is inherently volatile subject to fluctuating fuel prices, economic cycles, geopolitical instability, pandemics, and mismanagement. These factors often lead to airline insolvencies, leaving behind disrupted consumers and distressed investors with little to no legal recourse.

India has witnessed multiple high-profile airline collapses in the last decade, including Kingfisher Airlines (2012), Jet Airways (2019), and GoFirst (2023).<sup>3</sup> These events have highlighted a serious policy and legal vacuum: consumers are left without refunds or alternate travel arrangements, while investors many of them retail stakeholders suffer massive capital erosion without sector-specific legal protections. Regulatory authorities such as the Directorate General of Civil Aviation (DGCA) and the Securities and Exchange Board of India (SEBI) are structurally ill-equipped to handle these dual crises.<sup>4</sup>

The global landscape reflects a similar trend. The failures of Thomas Cook Airlines in the UK and WOW Air in Iceland exemplify this pattern: abrupt insolvency, fleet grounding, and significant losses for passengers and investors.<sup>5</sup> Despite international civil aviation agreements like the Montreal Convention of 1999, and organizations such as ICAO and IATA, a comprehensive international framework for managing airline insolvency, from the viewpoints of consumer and investment protection, remains absent.<sup>6</sup>

This paper argues that the existing legal frameworks in India and around the world fail to foresee and deal with the implications of airline insolvency holistically. It compares the existing lacunae in Indian domestic law, i.e., the Consumer Protection Act, 2019, the Insolvency and Bankruptcy Code, 2016, and the SEBI regulations, with international best practices in the field. Using case studies and comparative examination, the research finds the existing legal lacuna that exists and proposes concrete reforms to protect consumer rights and investor confidence in the aviation sector.

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<sup>2</sup> International Air Transport Association, Annual Review 2019, at 6

<sup>3</sup> Neha Tyagi, India's Airline Insolvency Crisis: Legal Framework and Passenger Rights, 4 J. Indian L. & Econ. Pol'y 67, 70 (2020).

<sup>4</sup> Shubham Srivastava, Go First Insolvency Case: A Regulatory and Consumer Rights Analysis, Bar & Bench (May 2023)

<sup>5</sup> Tim Hepher, Airline Failures Put Spotlight on Global Insolvency Protection, Reuters (Oct. 3, 2019)

<sup>6</sup> Abhijeet Joshi, Montreal Convention and the Limits of Consumer Protection in Airline Disruptions, 11 NUJS L. Rev. 123, 132 (2019).

## II. FINANCIAL AND LEGAL VULNERABILITIES OF CONSUMERS DURING AIRLINE INSOLVENCY

Insolvency among airlines is not merely business failure but typically amounts to significant consumer injury. When an airline abruptly shuts down typically because of financial difficulties, managerial ineptness, or breaches of regulatory norms travellers are typically left stranded, and advance payments become irretrievable. This displacement is exacerbated by the lack of a legal framework to guarantee reimbursements or alternative transportation, thereby placing consumers in both legal and logistical peril.

The collapse of Jet Airways in 2019 offers a compelling example. Once India's second-largest airline, Jet ceased operations overnight, citing an inability to secure emergency funding.<sup>7</sup> Consumers who had made future bookings were suddenly left without recourse, as the airline defaulted on refund obligations and directed passengers to claim dues under insolvency proceedings.<sup>8</sup> However, under India's Insolvency and Bankruptcy Code (IBC), 2016, consumers are treated as operational creditors effectively placing them at the bottom of the waterfall hierarchy, behind financial institutions and secured creditors.<sup>9</sup> Consequently, the majority of consumer claims remained unpaid even years after the insolvency resolution process commenced.

The case of GoFirst Airlines in 2023 echoed similar patterns. Despite selling tickets up to the day before grounding its fleet, GoFirst failed to refund customers promptly.<sup>10</sup> While the Directorate General of Civil Aviation (DGCA) issued directions for refund timelines, these lacked statutory backing and enforcement mechanisms.<sup>11</sup> Moreover, because the matter entered the jurisdiction of the National Company Law Tribunal (NCLT) under the IBC, the DGCA's regulatory interventions lost precedence, and consumer concerns were relegated to procedural formalities.<sup>12</sup>

Comparative jurisdictions reveal more proactive models. The United Kingdom, for instance, operates the Air Travel Organiser's Licence (ATOL) scheme, a statutory consumer protection system that refunds customers if an airline or travel company becomes insolvent.<sup>13</sup> During the

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<sup>7</sup> supra Note 3.

<sup>8</sup> Anirban Chowdhury, Jet Airways' Passengers Left in the Lurch as Refunds Dry Up, *The Economic Times* (Apr. 20, 2019)

<sup>9</sup> Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India), § 53

<sup>10</sup> Bar & Bench, Go First Passengers Seek Urgent Refunds; Airline Remains Silent, *Bar & Bench* (May 4, 2023)

<sup>11</sup> DGCA, Civil Aviation Requirements, Section 3, Series M, Part IV, Refund of Airline Tickets (Aug. 2016)

<sup>12</sup> Nidhi Sharma, DGCA's Powers Limited Once Airline Insolvency Starts: Legal Experts, *The Indian Express* (May 5, 2023)

<sup>13</sup> UK Civil Aviation Authority, ATOL Protection Explained

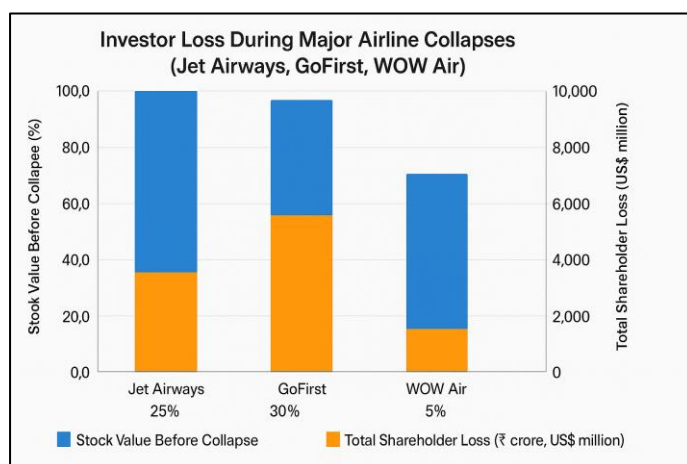
2019 collapse of Thomas Cook Airlines, ATOL enabled over 600,000 travellers to receive refunds or alternate bookings without litigation or insolvency claims.<sup>14</sup> In contrast, India lacks any equivalent statutory fund, relying instead on voluntary refund policies or ambiguous DGCA guidelines.

International treaties also fall short. The Montreal Convention, 1999, which India is a signatory to, provides compensation for baggage loss, delay, and injury but is silent on consumer rights during airline insolvency.<sup>15</sup> Similarly, ICAO and IATA focus primarily on safety and coordination, not financial compensation or refund enforcement.

This fragmented legal environment underscores a serious gap. In the face of rising airline collapses, Indian consumers remain legally unprotected and financially vulnerable. The absence of an enforceable insolvency-specific consumer redressal system reveals the urgent need for structural reforms, both at the national and international levels.

### III. INVESTOR PROTECTION DEFICIT IN THE AVIATION SECTION

Though substantial attention appropriately falls to passenger protection during airline insolvencies, the investors' case specifically retail investors and institutional investors—is a still-untested legal blind spot. Aviation is a shock-sensitive, capital-intensive sector but one not accorded sectoral financial transparency and investor protection. When therefore such an airline collapses, shareholders are left to suffer the consequences of financial mismanagement without warning or substantial legal recourse.



**Figure: 1<sup>161718</sup>**

<sup>14</sup> BBC News, Thomas Cook Collapse: ATOL Steps in to Assist Stranded Passengers, BBC (Sept. 24, 2019)

<sup>15</sup> Montreal Convention for the Unification of Certain Rules for International Carriage by Air, May 28, 1999, ICAO Doc. 9740

<sup>16</sup> Investor Loss During Major Airline Collapses (Jet Airways, GoFirst, WOW Air) created by author using data from Bloomberg, SEBI filings, and news sources (2025)

<sup>17</sup> Thomas Seal, WOW Air Collapse Highlights Investor Risk in Budget Airlines, Bloomberg (Mar. 2019)

<sup>18</sup> Pranav Mukul, Go First Insolvency: Investors Left in Turmoil as Airline Defaults, The Indian Express (May 4, 2023)

The collapse of Jet Airways in 2019 vividly illustrates this. Once considered a blue-chip stock in India's aviation sector, Jet Airways saw its share price plummet from over ₹850 in 2017 to under ₹40 at the time of grounding operations.<sup>19</sup> Shareholders, who had no early warning despite clear signs of financial distress, were left with worthless securities. The Securities and Exchange Board of India (SEBI) did not mandate any sector-specific disclosures that could have alerted investors to the airline's deteriorating financials. Nor were there mechanisms for compensating shareholders misled by overly optimistic public statements from the airline's management.<sup>20</sup>

Likewise, the 2023 GoFirst Airlines insolvency was unexpected to investors. Even after selling tickets and placing ad campaigns only days before being grounded, the company chose voluntary insolvency under Section 10 of the Insolvency and Bankruptcy Code.<sup>21</sup> Lenders and investors suffered a loss of more than ₹6,000 crore, yet there was no systemic procedure via SEBI or the Ministry of Corporate Affairs to examine promoter behaviour or protect investor interests.<sup>22</sup> Further, while banking institutions were able to invoke collaterals and recover half the loss, small shareholders were still left vulnerable in law and process.

International examples follow a comparable pattern. WOW Air, a budget airline based in Iceland, collapsed in 2019 without settling pending investor obligations.<sup>23</sup> In most jurisdictions, including India, investors are not considered "creditors" under insolvency laws unless they hold bonds or debentures thus receiving no prioritization in the liquidation process.<sup>24</sup> Moreover, international civil aviation bodies such as ICAO and IATA do not prescribe financial disclosure norms or protective measures for investors in the aviation sector. Their focus remains limited to safety, logistics, and technical compliance.

The disparity in investor protection is particularly striking when comparing the aviation sector to highly regulated industries such as banking and insurance. Investors in these financial sectors benefit from specific regulatory oversight, stringent disclosure requirements, and dedicated investor protection funds.<sup>25</sup> In stark contrast, the aviation sector largely operates under general corporate law, lacking a specialized protective framework despite its inherent systemic vulnerabilities. Given the significant public shareholding in airlines and the high-profile impact of airline failures, this regulatory gap urgently necessitates legislative reform and focused

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<sup>19</sup> Bloomberg Markets, Jet Airways Stock Performance 2017–2019

<sup>20</sup> K. Sunil Thomas, Jet Airways' Shareholders Left Stranded Without Legal Shield, *Business Today* (May 2019)

<sup>21</sup> NCLT Order, Go Airlines (India) Ltd. v. Creditor Consortium, CP(IB)/204(MB)/2023

<sup>22</sup> *supra* note 18

<sup>23</sup> *supra* note 19

<sup>24</sup> *supra* note 9 § 5(20)–(21)

<sup>25</sup> SEBI, Investor Protection Framework under SEBI Act, 1992

attention.

#### **IV. REGULATORY VACUUM AND COMPARATIVE JURISPRUDENCE**

A comparative analysis of India's approach to airline insolvency reveals a significant gap in legal and regulatory frameworks when contrasted with international jurisdictions that have implemented specific measures to protect consumer interests and minimize investor losses. Although Indian regulatory bodies, including the Directorate General of Civil Aviation (DGCA), the Ministry of Civil Aviation (MoCA), and the Securities and Exchange Board of India (SEBI), function under general statutory guidelines, none provide sector-specific safeguards during an airline's financial distress.

A prime example of adequate consumer protection is the Air Travel Organiser's Licence (ATOL) scheme in the United Kingdom. Administered by the UK Civil Aviation Authority (CAA), ATOL is a statutory mechanism that refunds passengers and arranges alternate flights in case of an airline or travel company's insolvency.<sup>26</sup> When Thomas Cook Airlines collapsed in 2019, ATOL swiftly facilitated refunds and alternate arrangements for over 600,000 stranded passengers, demonstrating the operational viability of such a model.<sup>27</sup> In contrast, India lacks any analogous statutory consumer fund or crisis response system.

At the international level, the Montreal Convention of 1999, although widely ratified, does not address the issue of insolvency. Its focus remains limited to passenger injury, baggage loss, and delay compensation.<sup>28</sup> Similarly, ICAO and IATA guidelines concentrate on safety, air navigation, and technical standards, with no formal provisions for financial defaults or passenger redressal during bankruptcies.<sup>29</sup>

The regulatory gap is not limited to consumers alone. In India, SEBI does not impose heightened disclosure standards on aviation companies despite their well-known financial volatility.<sup>30</sup> In contrast, sectors such as banking and insurance are subject to mandatory financial health disclosures, resolution frameworks, and investor protection mechanisms. The aviation sector's exemption from such oversight despite repeated insolvency events raises concerns about regulatory asymmetry.

The current fragmented global and domestic environment necessitates immediate legislative

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<sup>26</sup> UK Civil Aviation Authority, ATOL Protection Explained

<sup>27</sup> *Supra* note 14.

<sup>28</sup> Montreal Convention for the Unification of Certain Rules for International Carriage by Air, May 28, 1999, ICAO Doc. 9740

<sup>29</sup> International Civil Aviation Organization (ICAO), Standards and Recommended Practices

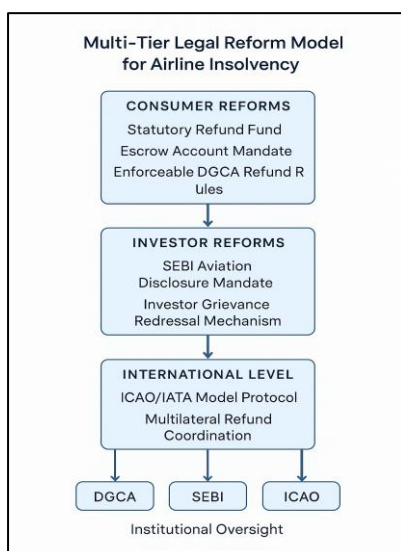
<sup>30</sup> SEBI, Investor Protection Framework under SEBI Act, 1992

innovation. India should evaluate a hybrid model, integrating the advantages of ATOL-like schemes with sector-specific compliance requirements to enhance passenger protection and investor transparency. Furthermore, ICAO should lead multilateral discussions to develop a model insolvency protocol for civil aviation, mitigating the risk of future airline failures leaving stakeholders without recourse.

## V. RECOMMENDATIONS AND LEGAL REFORM PROPOSALS

Considering the recurring instances of airline insolvencies in India and the significant regulatory deficiencies they highlight, this document proposes a comprehensive, multi-faceted legal reform initiative. This strategy is designed to protect consumer interests and investor confidence, focusing on strengthening statutory refund processes, increasing financial transparency within the aviation industry, and incorporating international best practices to bolster overall sector stability.

For consumers, the first step is the establishment of a Statutory Aviation Consumer Protection Fund, modelled on the UK's ATOL scheme. This fund could be financed by a small per-ticket levy collected by airlines and held in escrow under the supervision of the Ministry of Civil Aviation. In the event of insolvency, this fund would allow for immediate refunds or rebooking without requiring passengers to navigate time-consuming insolvency proceedings.<sup>31</sup> Additionally, the DGCA's Civil Aviation Requirements (CAR) must be amended to provide statutory enforceability to refund timelines, especially for airlines entering insolvency.<sup>32</sup>



**Figure 2<sup>33</sup>**

<sup>31</sup> supra note 26

<sup>32</sup> DGCA, Civil Aviation Requirements, Section 3, Series M, Part IV, Refund of Airline Tickets (Aug. 2016)

<sup>33</sup> Figure created by author to represent layered legal reform strategies for consumer, investor, and international

A mandatory escrow account system for prepaid ticket revenues should be implemented. This system would require airlines to deposit a portion of collected fare revenue into a ring-fenced account. Funds in this account would be accessible solely for refund purposes or under direct regulatory instruction, thereby preventing the misuse of consumer funds in the period preceding financial distress or collapse.<sup>34</sup>

For investors, SEBI must introduce aviation-sector-specific disclosure regulations under its Listing Obligations and Disclosure Requirements (LODR). These should include early-warning triggers for deteriorating financial indicators, disclosure of pending insolvency filings, and penalties for suppressing material risk.<sup>35</sup> Additionally, a dedicated Investor Redress Cell within MoCA or SEBI could offer fast-track remedies for investors adversely affected by insolvency, particularly in suspected fraud or promoter misconduct cases.

At the international level, ICAO and IATA should collaborate to create a Model Protocol on Airline Insolvency, encouraging multilateral cooperation and harmonized consumer refund schemes. This would also assist cross-border travellers facing sudden service disruptions due to airline shutdowns in foreign jurisdictions.<sup>36</sup>

Collectively, these reforms would fill the current legal void and introduce a much-needed balance between airlines' financial freedom and their stakeholders' rights.

## VI. CONCLUSION

This paper has demonstrated that the existing legal framework governing airline insolvency in India and globally fails to protect two critical stakeholder groups consumers and investors. Through statutory analysis and comparative case studies, it revealed systemic deficiencies in refund enforcement, financial disclosures, and insolvency preparedness. The proposed reforms including escrow mandates, sector-specific disclosure norms, and a multilateral insolvency protocol are essential to closing this legal vacuum. Ultimately, safeguarding financial and consumer interests in aviation is not only a matter of regulatory efficiency but a prerequisite for sustaining public trust in civil aviation systems.

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regulatory gaps in airline insolvency. (2025)

<sup>34</sup> Ramesh Tiwari, Escrow Account Could Have Protected Go First Consumers, *Financial Express* (May 2023)

<sup>35</sup> SEBI, Listing Obligations and Disclosure Requirements Regulations

<sup>36</sup> SEBI, Listing Obligations and Disclosure Requirements Regulations