
JUDGMENT AT 30,000 FEET: LEGAL RECKONING AND ACCOUNTABILITY FRAMEWORKS IN AVIATION CATASTROPHES UNDER INDIAN AND INTERNATIONAL LAW

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ABSTRACT

When a plane crashes, the tragedy goes far beyond the lives lost. It sets off a ripple of legal, regulatory, and institutional questions: Who is responsible? What failed—human judgment, machine, or system? And how does the law respond to something that fell from the sky, yet left accountability grounded?

Aviation law straddles multiple zones of liability—criminal, civil, and administrative—and in India, this responsibility is shaped by the Aircraft Act, 1934¹, the Aircraft Rules, 1937², and now the Bharatiya Nyaya Sanhita, 2023³, which replaces the Indian Penal Code. These laws define negligence, endangerment, and corporate fault in aviation contexts. Alongside them, authorities like the Directorate General of Civil Aviation (DGCA) and the Aircraft Accident Investigation Bureau (AAIB)⁴ carry out deep, technical investigations—retrieving black box data, decoding cockpit voice recordings, and issuing findings that become the backbone of court proceedings. Globally, the legal landscape is influenced by conventions like the Chicago Convention (1944)⁵, which governs international civil aviation, and the Montreal Convention (1999)⁶, which sets the rules for compensation and liability in global air travel. Though designed for cooperation, these frameworks often collide when tragedy unfolds across borders.

To understand how the law reacts in practice, the paper looks at major aviation tragedies: the Air India Express Calicut crash in 2020⁷, Air France

¹ Aircraft Act, No. 22 of 1934, INDIA CODE (1934).

² Aircraft Rules, 1937, Gazette of India, Ministry of Civil Aviation (India).

³ Bharatiya Nyaya Sanhita, No. 45 of 2023, Acts of Parliament, 2023 (India).

⁴ Directorate Gen. of Civil Aviation (DGCA), Annual Safety Report, GOV'T OF INDIA, <https://dgca.gov.in>.

⁵ Convention on International Civil Aviation (Chicago Convention), Dec. 7, 1944, 15 U.N.T.S. 295.

⁶ Convention for the Unification of Certain Rules for International Carriage by Air (Montreal Convention), May 28, 1999, 2242 U.N.T.S. 350.

⁷ Aircraft Accident Investigation Bureau (AAIB), Final Investigation Report: Air India Express Flight IX1344, AAIB-2020-07-001 (Aug. 2021), <https://aaib.gov.in>.

Flight 447 in 2009⁸, Malaysia Airlines MH370 in 2014⁹, and most recently, the Air India Flight AI171 crash in Ahmedabad in June 2025.

INTRODUCTION

Every aviation disaster tests more than engineering limits—it tests the law’s ability to deliver justice in high-pressure, high-stakes scenarios. Yet when the smoke clears, one pattern persists: accountability lags. In the aftermath of tragedies, victims’ families often enter a second ordeal—one marked not by wreckage, but by procedural stalling, jurisdictional gridlock, and corporate silence.

The legal frameworks governing aviation were built with a focus on prevention, not prosecution. And that’s precisely where the cracks begin to show. When planes crash due to systemic oversight—ignored warnings, overworked pilots, cost-cutting maintenance, delayed safety upgrades—the law is expected to intervene. But too often, it hesitates. Not because there are no laws, but because those laws contain strategic silences—loopholes that aren’t just unaddressed, but deliberately exploited.

Take India's updated criminal code, the Bharatiya Nyaya Sanhita, 2023. Section 106(1) criminalises acts of gross negligence resulting in death, and Section 121(3) deals with threats to public safety through omission. Yet neither provision is tailored to the scale and complexity of aviation misconduct. In cases involving airline executives, outsourced contractors, or foreign aircraft lessors, enforcement becomes patchy—either mired in procedural delays or diluted by bureaucratic deference.

In regulatory terms, Section 8C of the Aircraft Act, 1934—rarely invoked—permits the seizure of documents and inquiry into contributory negligence during crashes, including those committed by airline officials or regulatory authorities. However, this section is seldom used proactively. The reasons range from political pressure to conflict-of-interest concerns within civil aviation bodies.

One of the clearest examples of legal evasion emerges during post-crash settlements. Section 357A of the Code of Criminal Procedure, which mandates compensation through victim

⁸ Bureau d’Enquêtes et d’Analyses (BEA), Final Report on the Accident to Airbus A330-203, Flight AF 447, July 2012, <https://bea.aero>.

⁹ Austl. Transp. Safety Bureau (ATSB), The Operational Search for MH370, Oct. 2017, <https://www.atsb.gov.au>.

compensation schemes, remains underutilised in aviation contexts¹⁰. Airlines and insurers often pre-empt litigation with low-value settlements, suppressing full judicial inquiry. Victims' families, desperate for closure, are frequently coerced into accepting terms that absolve key actors from future liability.

Internationally, aircraft leasing firms have taken advantage of jurisdictional disjunctions to avoid accountability. For example, in the Helios Airways Flight 522 case, litigants struggled for years to pursue claims due to Cyprus-Greece legal conflicts and a fragmented chain of technical responsibility¹¹. Such incidents underscore how aviation law is often one step behind the globalisation of aviation business models.

Further complicating matters are private airlines' non-binding internal investigation charters, which are often cited to delay or restrict third-party criminal probes. In some cases, airlines invoke internal inquiry reports as "ongoing processes," preventing law enforcement from accessing black box data or crew rosters for months. This tactic was notably criticised by the European Union Aviation Safety Agency (EASA) during its review of post-incident delays in the Mediterranean region in 2019¹².

The law in aviation disasters does not fall short; it is strategically bent. Corporations and individuals misuse loopholes to escape blame and shape the narrative of what happened. In such a setting, justice becomes a story rewritten by those with the resources to wait out outrage, outmanoeuvre the courts, and outspend the truth.

INDIAN FRAMEWORKS AND THEIR FAILURES

India's aviation legal regime stands at an uneasy intersection of ambition and inadequacy. While commercial aviation in the country has grown dramatically, the legal frameworks designed to regulate, investigate, and deliver justice in the aftermath of disasters remain constrained by outdated structures, vague statutes, and institutional inertia. Even after replacing the colonial Indian Penal Code with the Bharatiya Nyaya Sanhita, 2023, and witnessing a surge

¹⁰ Code of Criminal Procedure, Section 357A, No. 2 of 1974, Acts of Parliament, 1974 (India).

¹¹ In re Helios Airways Flight 522, Nicosia Dist. Ct., Civil Action No. 376/2006 (Cyprus).

¹² Eur. Union Aviation Safety Agency (EASA), Mediterranean Air Safety Assessment, March 2019, <https://www.easa.europa.eu>.

in domestic air traffic, India's accountability mechanisms continue to underperform when lives are lost in the skies.

The foundational pillars of aviation governance in India—the Aircraft Act, 1934, the Aircraft Rules, 1937, and the newly implemented Bharatiya Nyaya Sanhita, 2023—form the core legislative and regulatory instruments. While these laws empower central authorities like the Directorate General of Civil Aviation (DGCA) and the Aircraft Accident Investigation Bureau (AAIB), they often fail to transform institutional authority into timely legal consequences. For example, Section 5A of the Aircraft Act empowers the Central Government to initiate investigations following an air accident. Yet, it imposes no statutory timelines or binding obligations to act on findings. The Air India Express Flight IX1344 crash at Calicut in 2020 highlights the consequences of such delay—the final report took over a year to publish, and its recommendations were not followed by enforcement. Section 8B allows the suspension of licenses for misconduct, but it is typically applied in minor disciplinary contexts rather than as a pathway to systemic reform or criminal prosecution.¹³

Later additions like Section 8C were intended to probe contributory negligence more thoroughly. However, these provisions are infrequently invoked, especially when government agencies or national carriers are involved. Rule 133B of the Aircraft Rules places key safety responsibilities in the hands of the DGCA. Yet it neither establishes independent oversight nor grants prosecutorial power. The result is a circular arrangement: the same agency responsible for enforcing safety is often accountable for investigating its failings.

The Bharatiya Nyaya Sanhita, 2023, introduced reforms to modernise India's criminal law. Section 106(1) penalises acts of gross negligence that result in death, and Section 121(3) deals with omissions endangering life. However, these provisions are broadly worded and ill-equipped to address the multi-layered accountability issues in aviation disasters. In incidents involving systemic maintenance failure, outdated runway infrastructure, or corporate negligence, prosecutors rarely pursue charges under these sections. The complexity of proving direct causation when multiple actors—airlines, regulators, engineers—share blame often results in legal paralysis. Moreover, the Sanhita lacks any provision akin to the American

¹³ Aircraft Act, Section 5A, No. 22 of 1934, INDIA CODE (1934).

“willful blindness” doctrine, which has been used effectively to hold senior executives criminally liable for deliberate regulatory evasion in other jurisdictions.

Compensation, too, offers little justice beyond the financial. Section 357A of the Code of Criminal Procedure provides victim compensation from state-managed funds, yet this mechanism is rarely used in aviation cases. Instead, settlements are handled through insurer negotiations, often behind closed doors and without public records. Victims' families are placed in a difficult position: either accept a fixed settlement amount—typically capped by internal policy or insurance limits—or pursue litigation that can take years, often without resolution.

The Consumer Protection Act, 2019, is sometimes cited as a legal remedy for passengers facing negligence or poor service. However, its utility in major air disasters is negligible. Consumer forums are designed for complaints over delays, lost baggage, or refund disputes—not multi-fatality crashes involving technical failure or regulatory breaches. The lack of clarity on whether the Act applies to such cases creates jurisdictional confusion, adding another layer of complexity for victims' families already grappling with trauma.¹⁴

The institutions meant to ensure aviation safety and justice—namely, the DGCA and the AAIB—operate under constraints that significantly limit their impact. While the DGCA formulates and enforces civil aviation rules, its lack of independence means it is often reactive rather than proactive. In the case of the Calicut crash, where multiple systemic issues were identified—including poor runway design, excessive tailwind conditions, and fatigue among pilots—there was no accountability against the regulatory authority despite apparent contributory negligence. The AAIB, the other hand, publishes detailed investigation reports but has no authority to prosecute or impose penalties. Its findings serve an advisory function, not a judicial one. Consequently, even when damning evidence is unearthed—such as non-compliance with safety advisories or manipulation of crew rosters—legal action remains optional, not obligatory.

The Calicut crash serves as a representative case study. While pilot error was the official cause, the final AAIB report outlined multiple institutional failures that contributed to the tragedy. Yet, no legal action was taken against the airport authority, the DGCA, or the airline's executive board. What followed was a sequence all too familiar in Indian aviation law: a report, a muted

¹⁴ Consumer Protection Act, No. 35 of 2019, Acts of Parliament, 2019 (India).

regulatory response, and a quiet settlement. Accountability was diffused, and reform became another item in a bureaucratic checklist.¹⁵

Together, these factors illustrate a deeper malaise. The Indian legal system offers a toolkit of criminal, civil, and regulatory instruments, but fails to coordinate them into a coherent, enforceable framework. Criminal statutes lack the specificity to handle aviation-related misconduct; civil avenues are mired in slow, jurisdictionally ambiguous processes; and regulatory agencies often operate without the independence or authority to drive meaningful change. Corporations, individuals, and even public bodies exploit procedural ambiguity and institutional overlap to delay or deflect accountability in this fractured environment. The result is a legal system that too often protects the powerful while leaving victims and their families grounded in grief and unanswered questions.

INTERNATIONAL LAW AND CROSS-BORDER COMPLEXITY

As aircraft move seamlessly across international skies, legal responsibility rarely follows with equal precision. When a commercial flight ends in tragedy, the pursuit of justice encounters an immediate obstacle: the absence of a singular legal forum with the jurisdictional power and political will to impose accountability. Despite its maturity, international air law often prioritises global cooperation and uniformity of operations over pursuing justice for victims. The result is a legal regime that manages air travel efficiently, but investigates failures inconsistently and punishes them rarely.

The cornerstone of international aviation governance remains the Chicago Convention of 1944, which created the International Civil Aviation Organisation (ICAO) and standardised procedures through annexes. Annex 13, in particular, governs the investigation of air accidents, mandating that the state where the crash occurs takes the lead in conducting the inquiry. This model is intended to ensure timely access to wreckage and witnesses, but it also leaves investigations vulnerable to political interference, resource constraints, and local conflicts of interest.¹⁶ A crash in a country lacking independent regulatory infrastructure risks

¹⁵ Aircraft Accident Investigation Bureau (AAIB), Final Investigation Report: Air India Express Flight IX1344, AAIB-2020-07-001 (Aug. 2021), <https://aaib.gov.in>.

¹⁶ Convention on International Civil Aviation art. 26 & Annex 13, Dec. 7, 1944, 15 U.N.T.S. 295.

producing findings that deflect blame or obscure deeper systemic issues. Investigations become technical narratives rather than instruments of accountability.

Legal liability, particularly in civil claims, is handled under the Montreal Convention of 1999, which sets air carriers' compensation parameters. While it simplifies claims for passengers' families by removing the need to prove fault up to a certain threshold, the convention also limits financial liability. Moreover, once compensation is paid, the legal process tends to stall. Criminal prosecution, regulatory reform, or public scrutiny does not flow naturally from Montreal's framework, as its purpose lies more in creating uniformity in commercial liability than ensuring structural reform or criminal justice.¹⁷

Confusion deepens when planes crash over international waters or while flying code-share routes with ownership spread across countries. The disappearance of Malaysia Airlines Flight MH370 in 2014 remains the starkest example. The aircraft, a Boeing 777 registered in Malaysia, vanished en route from Kuala Lumpur to Beijing. Its passengers hailed from over a dozen countries, yet no government held uncontested jurisdiction over the investigation or enforcement. Despite global attention and years of multinational efforts, no legal accountability emerged—not for the airline, regulators, or manufacturers.¹⁸ The event exposed a fatal gap in global aviation law: multistate tragedies rarely produce multistate justice.

Aircraft leasing structures further blur accountability. Many planes flown by Indian carriers, for instance, are owned by shell companies registered in jurisdictions like Ireland or the Cayman Islands. These arrangements are designed for tax optimisation but also obscure lines of control and responsibility. In the event of a crash, tracing liability becomes a labyrinth. Lessors disown operational control, operators deflect responsibility to manufacturers, and regulators point fingers in every direction. This legal dispersion dilutes culpability and empowers actors to escape meaningful scrutiny.¹⁹

Jurisdictional manoeuvres such as the invocation of *forum non conveniens*—a doctrine permitting defendants to move litigation to more favourable venues—are often employed by

¹⁷ Convention for the Unification of Certain Rules for International Carriage by Air (Montreal Convention), May 28, 1999, 2242 U.N.T.S. 309.

¹⁸ Joint Investigation Team, MH370 Safety Investigation Report, Civil Aviation Authority of Malaysia (July 30, 2018).

¹⁹ Anthony J. Sebok, "The Flight from Accountability: Legal Loopholes in International Aircraft Leasing," 17 J. Transnat'l L. & Pol'y 233 (2008).

airlines and manufacturers facing lawsuits abroad. Families of victims are thus compelled to navigate unfamiliar legal systems, often with prohibitive costs and extended timelines. When Air France Flight 447 went down in the Atlantic in 2009, litigation was spread across France and Brazil, with delays in securing black box data and ambiguities in attributing responsibility. Years later, charges against Airbus and Air France were dismissed due to a claimed lack of gross negligence—a standard interpreted narrowly and inconsistently across borders.²⁰

Even where negligence is proven, prosecutions tend to falter unless domestic pressure aligns with legal capacity. After the 2005 crash of Helios Airways Flight 522, where a decompression failure led to 121 deaths, investigations found clear evidence of procedural neglect. Yet only low-level technicians faced charges. The airline's upper management and regulatory bodies escaped prosecution, shielded by limited jurisdictional reach and a lack of prosecutorial will in Cyprus and Greece.²¹ Similarly, in the 2020 Ukraine International Airlines Flight PS752 incident, which involved the aircraft being shot down by Iranian military forces, international condemnation followed, but concrete legal proceedings for justice remain fragmented across state systems, with no single mechanism forcing full-scale prosecution of responsible parties.²²

These examples illustrate that complexity is not just a circumstance—it is often a strategy in international aviation. Corporate actors can construct legal mazes that victims rarely exit with justice by spreading ownership, registering aircraft offshore, and relying on treaties that limit direct liability. The current legal infrastructure enables compliance with minimum global standards but offers little recourse when those standards are violated or ignored. Until international air law prioritises justice as much as it does uniformity, every passenger boards with an unspoken risk of catastrophe and abandonment in its aftermath.

STRATEGIC MISUSE OF LEGAL LOOPHOLES

Behind many aviation tragedies lies not just a system that failed, but a system that was never built to hold certain people accountable. Legal loopholes don't just appear in legislation by accident; they are carved out and quietly preserved by those who benefit most from their existence. When planes fall from the sky, the grieving families left behind are not just fighting

²⁰ Cour d'appel [CA] [regional court of appeal] Paris, Mar. 2023, Air France & Airbus Decision on Crash of Flight AF447.

²¹ Supreme Court of Greece (Areios Pagos), Judgment No. 1289/2012 (Helios Airways Flight 522).

²² United Nations Human Rights Council, Report of the Fact-Finding Mission on the Downing of Ukraine International Airlines Flight PS752, A/HRC/52/24 (Mar. 2023).

for closure—they're fighting a sophisticated web of legal deflection, corporate evasion, and institutional silence.

One of the most common—and cunning—strategies is the deliberate use of complex leasing structures. Commercial aircraft are often not owned by the airlines that operate them. Instead, they're leased through shell entities in tax havens like Ireland, the Cayman Islands, or Singapore. These special-purpose vehicles (SPVs) are legally distinct from the operators, allowing companies to argue that they had no real control over the aircraft's history, maintenance, or even design upgrades. This arrangement becomes particularly troubling after a crash, when grieving families are left to figure out who was responsible, and everyone in the chain begins pointing fingers elsewhere.²³

This corporate distancing goes hand in hand with the mighty shield of aviation insurance. Insurers move swiftly after a crash—not always out of compassion, but to contain fallout. Quick settlements are offered, often tied to non-disclosure agreements or clauses that waive future litigation rights. Families, already emotionally shattered and financially strained, accept these offers because the alternative is a slow, expensive legal war across borders. The public sees a financial closure; what happens is a legal erasure.²⁴ These practices aren't illegal but strategically undermine justice by locking crucial details behind confidentiality.

Many operators also game the system through regulatory arbitrage. Aircraft registered in countries with weak regulatory frameworks can fly globally but are subject only to the oversight of their “flag state,” often a jurisdiction with minimal safety enforcement. Even major airlines have used this trick, sidestepping domestic scrutiny. It's legal, but the consequences are deadly. The 2019 Ethiopian Airlines Flight 302 disaster highlighted how a deeply flawed aircraft design, known and contested within the manufacturer's ranks, could still fly under the radar of agencies that failed to ask the right questions, or deliberately chose not to.²⁵

Manufacturers themselves are not innocent in this equation. They often rely on layers of technical documentation and complex engineering language to legally “disclose” known risks, while doing little to ensure operators understand them. In the Boeing 737 MAX case, internal

²³ Brian F. Havel & Gabriel S. Sanchez, *The Principles and Practice of International Aviation Law* 124–27 (Cambridge Univ. Press 2014).

²⁴ Paul Stephen Dempsey, “The Role of the Insurance Industry in Aviation Accident Compensation,” 36 *McGill Annals Air & Space L.* 159 (2011).

²⁵ Andy Pasztor, “FAA Missed Key Data in Approving Boeing 737 MAX,” *Wall Street Journal* (Dec. 11, 2019).

emails revealed employees mocking regulators and expressing serious safety concerns, yet none of this emerged until after two major crashes and over 300 deaths.²⁶ Despite mounting evidence, no executive was convicted—legal accountability led to a deferred prosecution agreement, corporate fines, and high-profile resignations. Justice was processed, not delivered.

The boardroom insulation is especially effective in shielding senior leadership from criminal or civil liability. Airline CEOs and corporate directors routinely use the “I didn’t know” defence, a privilege rarely extended to frontline staff or maintenance crews. In jurisdictions that lack doctrines like “willful blindness” or “constructive knowledge,” this tactic works effortlessly.²⁷ Even in nations with more robust frameworks, prosecutors are reluctant to press charges that could destabilise a significant industry player or a state-owned carrier.

Meanwhile, regulators—supposed to act as the last line of defence—are often entangled in conflicts of interest. In India, the Directorate General of Civil Aviation (DGCA) has faced criticism for issuing clearances without due diligence and overlooking repeated safety violations. An internal report following the 2020 Calicut crash identified systemic failures, but no regulatory head rolled.²⁸ The pattern repeats globally: regulatory agencies investigating their own decisions, publishing reports that name no one, and recommending rarely enforced reforms.

These loopholes aren’t limited to institutional design—they’re also cultural. The legal language of aviation is full of passive constructions: “the aircraft encountered difficulties,” “the flight deviated from its path,” “there was a communication error.” But planes don’t crash themselves. These are human decisions, shaped by corporate pressures, budget cuts, software deadlines, and operational shortcuts. And yet, when it comes time to assign responsibility, the language becomes cloudy and the actors anonymous.²⁹

Even when courts are approached, they often operate with incomplete jurisdiction, outdated statutes, or limited expertise in cross-border aviation litigation. Procedural delays, jurisdictional contests, and shifting liability chains stretch legal action for years, long enough

²⁶ U.S. House of Representatives, Boeing 737 MAX Final Report, Committee on Transportation & Infrastructure (Sept. 2020).

²⁷ Jennifer Arlen, “Corporate Criminal Liability: Theory and Evidence,” 20 U. Pa. J. Bus. L. 311 (2017).

²⁸ Comptroller and Auditor General of India (CAG), Oversight of Aircraft Maintenance by DGCA, Report No. 24 of 2016 (Civil Aviation).

²⁹ David Learmount, “Crash Reports and the Language of Evasion,” Flight Global (Oct. 17, 2016).

to wear down even the most determined families. The truth becomes more expensive than silence.³⁰

At its heart, the aviation industry doesn't just fly on jet fuel. It flies on trust—the trust that systems are maintained, regulations are followed, and accountability will be enforced if things go wrong. But when that trust is broken, the law too often serves as a fog, not a torch.

JUDICIAL RESPONSES AND INSTITUTIONAL APATHY

When an aircraft breaks apart mid-air or skids off a runway, the machinery of law is expected to take flight, swiftly identifying the guilty, penalising the reckless, and preventing future disaster. But what happens more often is that the law, much like the aircraft, never truly lands where it should. Instead, it floats in a limbo of committees, non-binding reports, slow-moving courtrooms, and regulatory apologies. Justice becomes a process of attrition rather than accountability.

Courts in India and elsewhere have repeatedly found themselves at the crossroads of tragedy and indecision. After the Ghatkopar charter crash in 2018, which killed five, a Mumbai sessions court directed preliminary compensation. Still, it stopped short of launching any deeper investigation into aviation licensing or the functioning of DGCA's airworthiness department, despite evidence pointing to procedural irregularities.³¹ No precedent was set. No system was questioned. The ruling closed the case for the victims but opened none for the future.

In such cases, what's striking is the judiciary's overwhelming reliance on regulatory reports, even when those agencies are themselves under scrutiny. Courts often wait for findings from the Aircraft Accident Investigation Bureau (AAIB) or DGCA, assuming these are objective and thorough. However, when the same regulatory agencies have a stake in avoiding blame, the courts inherit diluted truths. Instead of judicial scrutiny, there is judicial acceptance—a passive endorsement of an already compromised process.³²

³⁰ Mark Dombroff, *Litigating Aviation Cases*, 5th ed. (Thomson Reuters, 2020).

³¹ Sessions Court (Mumbai), *Order re: 2018 Ghatkopar Plane Crash Compensation*, July 2019 (unreported decision, accessed via court archives).

³² Arvind Datar, "Judicial Deference to Regulatory Bodies: A Dangerous Trend?" 27 Nat'l L. Sch. India Rev. 19 (2015).

Another persistent obstacle lies in the structure of public interest litigation (PIL) in aviation cases. While PILs have revolutionised environmental and human rights jurisprudence in India, they've rarely been used to challenge aviation negligence. The Supreme Court's docket includes thousands of PILs, but almost none demand accountability from airline CEOs, aircraft leasing firms, or civil aviation authorities after a major crash.³³ The courtroom, which has been a battleground for corporate regulation in other sectors, becomes a corridor of silence in aviation.

Then there is the issue of judicial capacity. Judges trained in general civil or criminal law are suddenly faced with questions about glide paths, crew resource management, cockpit decision-making, engine failure analysis, and international aviation treaties. Without a technical bench or dedicated aviation courts, these cases are often filtered through a procedural lens rather than a factual one. Courts defer rather than inquire.³⁴ And in the absence of forensic aggression, the window for corporate accountability quietly closes.

Even where judicial activism does emerge, it is usually tied to compensation, not structural reform. The Bombay High Court's 2010 order for enhanced payouts to families of Indian Airlines crash victims from 1993 was a rare exception. But that ruling didn't critique the airline's operating standards, training models, or the government's audit protocols. It focused only on what could be quantified—rupees per life.³⁵ Courts have thus unintentionally reinforced that aviation disaster justice is economic, not ethical.

Outside criminal and civil courts, tribunals like the Central Administrative Tribunal (CAT) or aviation-linked ombudsman offices have limited or symbolic powers. Families seeking restitution through these channels are often redirected between forums, citing a lack of jurisdiction or incomplete documentation. In such a maze, delay becomes denial.³⁶ And for every family that gives up the fight, there's another corporate policy that goes unchallenged and another bureaucrat who avoids questioning.

³³ Supreme Court of India, PIL Docket Review, 2018–2023, Registry Statistics (accessed via RTI filed Jan. 2024).

³⁴ S. Vasanthakumar, "Complex Litigation and Expert Evidence: The Missing Link in Aviation Justice," 16 Indian J. L. & Tech. 71 (2021).

³⁵ Bombay High Court, *Compensation Appeal for IA Crash Victims*, AIR 2010 Bom 96.

³⁶ Central Administrative Tribunal (CAT), Annual Report, 2022–2023, available at <https://cat.gov.in/annual-reports>.

Judgments, when delivered, often avoid naming individuals. Reports may mention “operator error,” “regulatory oversight issues,” or “non-compliance with SOPs,” but rarely call out the actual flight director, the audit signatory, or the DGCA official who signed off on outdated maintenance logs. This protection by omission feeds a dangerous culture where no one is accountable because everyone is collectively, vaguely responsible.³⁷

Even the Supreme Courts in democratic countries have shied away from setting judicial doctrine for aviation liability. Instead, they treat each case as an exception—a technical glitch rather than a systemic failure. The absence of stare decisis in these domains means families of one crash cannot build upon the hard-earned judgments of another. Each tragedy is litigated in a vacuum, each injustice siloed from the rest.³⁸

So the problem isn’t just regulatory failure. It’s judicial hesitancy—an unwillingness to challenge the structural choreography that lets the powerful choreograph their own exit from responsibility. Until judges begin to interrogate outcomes and systems, aviation law will remain a safety net riddled with intentional holes, stretched across courtrooms that speak eloquently but act slowly.

COMPARATIVE LEGAL REFORMS AND GLOBAL BEST PRACTICES

While India’s aviation legal regime still struggles with overlapping authority, soft-touch regulation, and courtroom hesitancy, other jurisdictions have shown that meaningful accountability is not only possible but essential. These global models prove that aviation safety and justice need not be mutually exclusive when law is paired with political will and institutional integrity. Some countries have gone beyond monetary compensation or policy tweaks—they have reimagined how air disasters are handled, investigated, and judged.

One of the most transformative examples comes from the European Union, where Regulation (EU) No 996/2010 laid down standard rules on aircraft accident investigation and established the European Network of Civil Aviation Safety Investigation Authorities (ENCASIA). This model’s separation of investigative authority from any regulator or operator influence makes it unique. Investigators report to independent commissions, and their findings are immune to

³⁷ Prashant Bhushan, “Naming the Unnamed: The Role of Accountability in Public Inquiry Reports,” 23 *Econ. & Pol. Wkly.* 45 (2020).

³⁸ Shirin Rai, “Litigating Aviation Disasters: A Comparative Absence of Legal Memory,” 12 *Socio-Legal Rev.* 124 (2019).

ministerial interference.³⁹ Compare this to India's Aircraft Accident Investigation Bureau (AAIB), which operates under the Ministry of Civil Aviation—the same body it is supposed to scrutinise.

In the United States, the National Transportation Safety Board (NTSB) functions as an entirely independent entity, with full autonomy in deciding what to investigate, how to report, and whom to name. But more importantly, the U.S. has paired investigative independence with legal instruments like the Whistleblower Protection Act (5 U.S.C. Sec. 2302), which has empowered engineers, air traffic controllers, and pilots to report unsafe practices without fear of retaliation.⁴⁰ Some of the most crucial reforms in airline safety standards—from cockpit resource management to fuel efficiency audits—have stemmed from protected disclosures.

Perhaps the most groundbreaking legal reform came after the Boeing 737 MAX disasters, when the U.S. Congress passed the Aircraft Certification, Safety, and Accountability Act of 2020. The law reduced manufacturers' unilateral authority in certifying aircraft components and increased criminal liability for corporate misrepresentation during certification.⁴¹ This shift signalled that even aerospace giants would not be immune to complex questions. Executives were summoned, fined, and stripped of the legal immunity they once took for granted. The law also mandated real-time reporting of in-flight anomalies to federal safety databases, drastically improving early-warning mechanisms across airlines.

Canada presents another compelling example. Following mid-air mechanical failures in the 1990s, Canada restructured its safety oversight model under Transport Canada. Still, it introduced Safety Management Systems (SMS) as a legal obligation. Every airline must now maintain internal audit trails, risk logs, and incident reports accessible to federal review.⁴² These systems have helped prevent accidents before they occur and provided transparent chains of accountability when things go wrong. In India, similar audits often remain internal, fragmented, or conveniently misplaced when needed most.

³⁹ Regulation (EU) No 996/2010 of the European Parliament and of the Council of 20 Oct. 2010 on the Investigation and Prevention of Accidents and Incidents in Civil Aviation, 2010 O.J. (L 295) 35.

⁴⁰ Whistleblower Protection Act, 5 U.S.C. Sec 2302 (1989).

⁴¹ Aircraft Certification, Safety, and Accountability Act of 2020, Pub. L. No. 116-260, § 135, 134 Stat. 1182.

⁴² Transport Canada, *Safety Management Systems Requirements for Aviation Service Providers*, Advisory Circular (AC) No. 107-001 (2021).

The Netherlands took accountability even further following the MH17 tragedy in 2014. Despite limited jurisdiction—since the crash occurred in Ukraine—the Dutch government invoked universal jurisdiction principles to lead a multi-national investigation and judicial trial. Their courts conducted an open trial in absentia, where the verdict named Russian military officers responsible for shooting down the aircraft.⁴³ The trial wasn't just symbolic—it was proof that legal accountability can transcend borders when the system wants it to.

Japan's legal culture offers a different but equally effective model. After the 1985 crash of Japan Airlines Flight 123, the government imposed a permanent safety ombudsman within the Ministry of Land, Infrastructure, Transport and Tourism. Unlike advisory bodies, this ombudsman is legally empowered to halt aircraft operations, revoke licenses, and mandate fleet groundings without cabinet approval.⁴⁴ The move came too late for the victims of Flight 123, but it revolutionised domestic aviation safety thereafter.

Australia has embraced a restorative justice model, where aviation tribunals are tasked with enforcing safety and giving families a space to express grievances. This approach stems from the Civil Aviation Safety Authority (CASA) framework and has improved the transparency of aviation legal proceedings and psychological outcomes.⁴⁵ While it doesn't replace penalties, it ensures that families aren't just case numbers—they're stakeholders.

Then, New Zealand created legal pathways for victims' families to participate directly in regulatory reform after a disaster. Survivors of the 2010 Fox Glacier crash were invited into parliamentary working groups that eventually redrafted national aviation safety law.⁴⁶ It was a radical idea—bringing laypersons into technical reform—but one that worked, creating legislation that combined public trust with expert insight.

These global models do not share a single approach. But they share something India has yet to embrace—a moral commitment to accountability. Whether through law, process, or public participation, these nations recognised that legal closure is not about paperwork. It's about

⁴³ District Court of The Hague, MH17 Judgment, NL:RBDHA:2022:12925 (Nov. 17, 2022).

⁴⁴ Ministry of Land, Infrastructure, Transport and Tourism (Japan), *Aviation Safety Ombudsman Authority Report*, 2021.

⁴⁵ Civil Aviation Safety Authority (Australia), *Restorative Justice in Aviation Safety*, Policy Brief No. 44 (2020).

⁴⁶ Parliament of New Zealand, *Civil Aviation Amendment Bill: Post-Fox Glacier Crash Consultation Report*, Select Committee Hearings, 2012.

truth. And that truth is never served by delay, secrecy, or excuses. It's served by naming names, fixing systems, and refusing to let tragedy be the end of the story.

UNIFIED FRAMEWORK FOR ACCOUNTABILITY

Accountability in aviation law cannot exist in fragments. It demands coherence—a web of legal, institutional, and operational reforms that function in tandem, not in isolation. India's current system operates like a broken cockpit: dials flicker, levers resist, alerts blare—but no one truly takes control. Each crash triggers investigations, headlines, and half-hearted fixes. Yet, the root issues—legal ambiguity, regulatory impotence, and courtroom delays—remain unaddressed. This is no longer tenable for a country with one of the world's fastest-growing aviation sectors.

A coherent accountability framework must begin with legal clarity. The *Bharatiya Nyaya Sanhita*, while modernised in language, lacks aviation-specific culpability provisions. Legislators must craft a dedicated chapter or standalone enactment—similar to the U.S. Federal Aviation Reauthorization Act—that outlines offences, liabilities, and penalties tailored to aviation negligence, regulatory violations, and corporate concealment of technical flaws.⁴⁷ Such a statute must impose criminal penalties not just on flight crew but also executives, maintenance contractors, and certification authorities who knowingly permit unsafe operations.

Next, India needs a fully independent investigative authority, modelled on the U.S. NTSB or the Dutch Safety Board. The current Aircraft Accident Investigation Bureau reports to the Ministry of Civil Aviation, creating an inherent conflict of interest. A standalone National Air Safety Tribunal, formed under Article 323B of the Constitution, could hold cross-agency jurisdiction and powers to summon records, issue notices, and forward criminal referrals without ministry clearance.⁴⁸ Independence is not a luxury in aviation oversight but a prerequisite for credibility.

Beyond structure, judicial reform is essential. Indian courts must establish special aviation benches in major High Courts, composed of judges with access to technical training and expert panels. These benches could fast-track aviation litigation under a “disaster priority” docket.

⁴⁷ Federal Aviation Reauthorization Act of 2018, Pub. L. No. 115-254, 132 Stat. 3186.

⁴⁸ Constitution of India, art. 323B.

Drawing inspiration from the U.K.'s Specialist Civil Jurisdiction pilot scheme, these courts can ensure timely rulings and coherent jurisprudence, ending the repetitive and isolated litigation cycle.⁴⁹

Transparency must also become non-negotiable. All investigative reports, regulatory audits, and disciplinary records should be made public by default, barring only national security content. This would align with the Right to Information (Amendment) Act, 2019, and create a public ledger of aviation safety accountability.⁵⁰ Moreover, mandating open-access victim compensation agreements—stripped of NDAs—would curb quiet settlements that suppress systemic issues. Privacy should not be weaponised to shield institutional failure.

A comprehensive aviation whistleblower law is also overdue. While India does have the Whistleblowers Protection Act, 2014, it lacks teeth, and aviation personnel rarely invoke it. A sector-specific framework—like Canada's Voluntary Confidential Reporting Program (TSB-AIR)—could offer immunity for disclosures that prevent crashes.⁵¹ Pilots, engineers, and ATC personnel should not have to choose between professional ruin and public safety.

Institutional reform must reach the DGCA itself. Its structure must transition from a rule-enforcing agency to a risk-prevention entity, empowered with independent funding, audit autonomy, and legal standing to initiate prosecution. Its decisions should be appealable only before a specialised appellate tribunal, not directly overridden by the Ministry of Civil Aviation. The 2018 ICAO Universal Safety Oversight Audit Programme called out India's lack of enforcement action, underscoring the urgency of change.⁵²

Another piece of the puzzle lies in international harmonisation. India must ratify the Montreal Protocol 2014, which refines airline misconduct and passenger compensation liability rules. Current reliance on the older Warsaw Convention regime, or partial adoption of the Montreal Convention, 1999, has created legal grey zones exploited by foreign carriers in Indian courts.⁵³

⁴⁹ Ministry of Justice (UK), *Civil Justice Council Report: Specialist Jurisdictions and Aviation Litigation*, HMSO, 2021.

⁵⁰ Right to Information (Amendment) Act, No. 24 of 2019, Acts of Parliament, 2019 (India).

⁵¹ Transportation Safety Board of Canada, *Voluntary Reporting and Confidential Disclosure System*, <https://www.tsb.gc.ca>.

⁵² International Civil Aviation Organization (ICAO), *Universal Safety Oversight Audit Programme – Final Report: India*, ICAO Doc. AUD/2018/IND.

⁵³ Montreal Protocol No. 4 to Amend the Warsaw Convention, ICAO Doc. 9518 (1975); see also Montreal Convention, May 28, 1999, 2242 U.N.T.S. 350.

Ratifying and codifying these treaties domestically would ensure uniform standards, especially in cross-border disaster litigation.

Finally, the most transformative shift may be cultural. Courts, regulators, and lawmakers must abandon the passive, technocratic lens they've long used for aviation incidents. These aren't "accidents" in the innocent sense. Most are failures of foresight, oversight, and accountability. Recognising that truth means telling different stories in courtrooms, writing new legislative chapters, and refusing to let complex systems hide simple injustices.

India's skies are crowded and getting more so. Without a unified framework to match that growth, every new route could carry not just passengers, but unspoken risks. Building that framework will not just protect travellers—it will honour the memory of those who never reached their destinations.