
ANALYSING REGULATORY OVERLAP IN INTERNATIONAL AIR CARRIAGE: THE MONTREAL CONVENTION AND CONSUMER PROTECTION LAW IN INDIA

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ABSTRACT

This paper examines the conflict between the Montreal Convention and the Consumer Protection Act, 2019 in relation to disputes arising from international air carriage in India. The Montreal Convention creates a uniform and exclusive system of liability for international flights. It aims to ensure predictability, fixed limits on compensation, and consistency across countries. On the other hand, the Consumer Protection Act provides a broad and accessible remedy to consumers and allows consumer fora to award compensation for deficiency in service. When both laws are applied to the same dispute, tensions arise.

The paper identifies four main areas of conflict. First, the Convention treats itself as an exclusive code, while consumer law allows additional remedies. Second, the Convention fixes monetary limits on compensation, whereas consumer fora have wide powers to grant uncapped damages. Third, the Convention focuses mainly on measurable economic loss, while consumer law recognises mental agony and harassment as separate grounds for compensation. Fourth, the Convention restricts jurisdiction to specific courts, whereas consumer law allows complaints to be filed in multiple forums.

Using a doctrinal analysis of statutes and judicial decisions, the paper argues that these conflicts reflect a deeper structural inconsistency between the two frameworks. It suggests that consumer fora may retain jurisdiction, but the substantive limits and jurisdictional structure incorporated through the Carriage by Air Act, 1972 must be treated as binding. This approach would protect consumer interests while preserving legal certainty in international aviation liability.

Keywords: Montreal Convention 1999, Consumer Protection Act 2019, Carriage by Air Act 1972, International Air Carriage, Statutory Conflict, Aviation Liability, Consumer Fora Jurisdiction.

Literature Review

Scholarship on the Montreal Convention consistently highlights its commitment to uniformity and predictability in international air carriage.¹ Many international commentators portray the Convention as a carefully calibrated system that replaced the Warsaw regime with a more passenger-oriented framework, introducing strict liability up to a defined threshold and revised compensation limits.² From this perspective, the Convention represents a compromise: it strengthens passenger protection while preserving commercial certainty for airlines through capped and structured liability.³

However, there is no complete consensus on whether this balance is genuinely passenger-friendly. Some scholars argue that the retention of monetary caps continues to prioritise airline risk management over full restitution.⁴ Others defend the caps as economically necessary to sustain global aviation markets.⁵ While this debate is well developed in comparative scholarship, Indian writing has largely adopted the dominant narrative of balanced reform without critically interrogating whether the Convention's structure sufficiently addresses passenger vulnerability in practice.⁶

Indian academic analysis primarily focuses on the incorporation of the Convention through the Carriage by Air Act, 1972 (as amended).⁷ The shift is often described as moving from a "carrier-centric" to a more "consumer-sensitive" regime.⁸ Yet, this characterisation is rarely tested against domestic remedial realities. Most discussions concentrate on liability limits and limitation periods, while overlooking the deeper institutional question of how the Convention operates alongside India's expansive consumer protection system.⁹ As a result, the interaction between treaty exclusivity and domestic remedial pluralism remains under-theorised.

¹ Convention for the Unification of Certain Rules for International Carriage by Air, May 28, 1999, 2242 U.N.T.S. 309 [hereinafter Montreal Convention].

² *Id.* arts. 17–21.

³ Eman Naboush, Evaluating the Rights of Air Consumers under International and Regional Instruments with a Focus on Qatar, 12 *INT'L J. CONSUMER L. & PRAC.* art. 9, at 4–8 (2024).

⁴ *Id.*

⁵ *Id.*

⁶ D.N. Saraf, Public Utility Services with Special Reference to Air Services and the Consumer, 31 *J. INDIAN L. INST.* 136, 140–145 (1989).

⁷ Carriage by Air Act, 1972, No. 69, Acts of Parliament, 1972 (India) [hereinafter Carriage by Air Act].

⁸ Dr. Padma Singh, Montreal Convention and Its Applicability in India, 18 *J. ADVANCES & SCHOLARLY RES. ALLIED EDUC.* 1, 5–9 (2021).

⁹ Consumer Protection Act, 2019, No. 35, Acts of Parliament, 2019 (India) [hereinafter Consumer Protection Act].

Judicial decisions have intensified this debate. In *Ethiopian Airlines v Ganesh Narain Saboo*¹⁰, the Supreme Court affirmed that consumer fora retain jurisdiction over disputes involving international carriage, treating the Consumer Protection Act as an additional remedy.¹¹ The reasoning reflects a strong access-to-justice orientation. Yet the judgment does not fully engage with the exclusivity language of the Convention, leaving unanswered whether jurisdictional inclusion affects substantive uniformity.¹²

Similarly, in *Air France v O.P. Srivastava*,¹³ the National Commission recognised that compensation must align with Convention limits while exercising consumer jurisdiction.¹⁴ This suggests an emerging harmonisation model, but doctrinal clarity remains limited. Courts appear to reconcile the two regimes pragmatically rather than through an articulated theoretical framework.¹⁵

Existing scholarship tends to respond selectively to these developments. Some writers celebrate the pro-consumer direction of Indian jurisprudence as strengthening passenger remedies.¹⁶ Others caution that parallel consumer adjudication risks undermining the Convention's goal of global uniformity.¹⁷ Yet these positions often proceed without systematically analysing whether uniformity requires exclusive forums, exclusive liability standards, or both. The debate therefore remains fragmented, focusing either on passenger welfare or treaty discipline, but rarely integrating the two.

This paper advances the discussion by conceptualising the issue as one of regulatory coexistence rather than simple conflict. It argues that the key question is not whether consumer forums may hear such disputes, but how treaty-based liability constraints are internalised within domestic adjudication. By examining doctrinal reasoning, institutional design, and the hierarchy between international and municipal law, the study proposes a clearer analytical framework for understanding the relationship between the Montreal Convention and consumer remedies in India. In doing so, it moves beyond descriptive accounts toward a structured

¹⁰ *Ethiopian Airlines v. Ganesh Narain Saboo*, (2011) 8 SCC 539.

¹¹ *Id.*

¹² Montreal Convention, *supra* note 1, art. 29.

¹³ *Air France v. O.P. Srivastava*, 2018 SCC OnLine NCDRC 548.

¹⁴ *Id.*

¹⁵ Montreal Convention, *supra* note 1, art. 22.

¹⁶ Consumer Protection Act, § 39.

¹⁷ Montreal Convention, *supra* note 1, art. 33.

evaluation of harmonisation in practice.

Introduction

Recent large scale flight disruptions in India, affecting several lakh passengers and leading to substantial facilitation costs for airlines, have once again drawn attention to the vulnerability of air travellers.¹⁸ Such operational failures are not limited to domestic services. Although recent events have largely impacted domestic passengers, international travellers remain equally exposed to delays, cancellations, and baggage related inconvenience. These situations raise an important legal question. When passengers travelling on international routes suffer loss due to delay or cancellation, what legal framework governs their remedies in India.

International carriage by air is regulated globally by the Montreal Convention.¹⁹ The Convention establishes a uniform liability regime with defined conditions and monetary limits, aiming to create predictability and consistency across jurisdictions.²⁰ In India, its provisions have been incorporated through the Carriage by Air Act,²¹ thereby giving the Convention statutory force.²² The design of this regime reflects a balance between passenger protection and controlled airline liability.²³

At the same time, the Consumer Protection Act provides passengers with an accessible and remedial mechanism to challenge deficiency in service, including claims arising from delay, cancellation, and baggage related disputes.²⁴ The Act is consumer oriented and seeks to broaden access to compensation through specialised forums.²⁵

The simultaneous operation of these two frameworks creates a structural difficulty. There is no explicit legislative guidance clarifying how the liability limits and jurisdictional rules under the Convention interact with the broader remedial powers granted under consumer law.²⁶ As a result, uncertainty persists regarding jurisdiction, standards of compensation, and the binding

¹⁸ D.N. Saraf, *supra* note 6.

¹⁹ Montreal Convention, preamble.

²⁰ Montreal Convention, arts. 17–22.

²¹ Carriage by Air Act, § 69.

²² *Id.* § 4.

²³ Eman Naboush, *supra* note 3.

²⁴ Consumer Protection Act, § 35.

²⁵ *Id.* §§ 34, 39.

²⁶ Montreal Convention, arts. 22, 29, 33.

nature of treaty based limits in consumer proceedings.²⁷

Against this background, this paper addresses the following research question. To what extent does the Montreal Convention limit the remedies available to international air passengers in India under the Consumer Protection Act in cases of delay, cancellation, and baggage related disputes.

The central issue is whether the exclusive liability framework under the Convention, as incorporated into Indian law, restricts or overrides the remedies otherwise available under consumer protection legislation.

The analysis is confined to passenger claims arising from delay, cancellation, and baggage disputes in the context of international carriage. Claims relating to bodily injury, death, or cargo liability are outside the scope of this study.

Critical Analysis of the Issue and Identification of Regulatory Gaps

The conflict between the Montreal Convention and the Consumer Protection Act does not arise because passengers lack remedies. Rather, it arises because both frameworks operate simultaneously in international air carriage disputes. The Convention establishes a uniform and limited liability system, while consumer law provides broad remedial powers to domestic fora.

When passengers bring claims relating to delay, cancellation, or baggage before consumer commissions, courts must determine whether the treaty framework merely informs consumer adjudication or whether it strictly limits it. The following sections identify the principal regulatory gaps that emerge from this overlap.

1. Exclusivity of Liability vs Parallel Consumer Remedies

Article 29 of the Montreal Convention provides that any action for damages, “however founded,” must be brought subject to the conditions and limits set out in the Convention.²⁸ This language is wide and indicates that the Convention intends to operate as a self-contained liability code for international carriage.

²⁷ Dr. Padma Singh, *supra* note 8.

²⁸ Montreal Convention, art 29.

In India, the Convention has been incorporated through the Carriage by Air Act²⁹. As a result, its provisions have statutory force. Doctrinally, this suggests that claims arising from international carriage should be adjudicated within the Convention framework alone.

However, section 100 of the Consumer Protection Act states that its remedies are “in addition to and not in derogation of” other laws.³⁰ Consumer fora have relied on this clause to assert jurisdiction over international aviation disputes.

In *Ethiopian Airlines v Ganesh Narain Saboo*,³¹ the Supreme Court upheld the maintainability of a consumer complaint against an international airline. While recognising the Convention’s applicability, the Court treated consumer jurisdiction as supplementary rather than excluded. Similarly, in *Air France v O.P. Srivastava*³², consumer fora exercised jurisdiction while referring to Convention principles.

The result is a structural gap. Article 29 appears to mandate exclusivity³³, yet consumer fora continue to entertain parallel claims. The Convention’s promise of uniformity is weakened when liability can be framed under consumer law, even if treaty principles are partially applied. The system effectively shifts from a single liability code to dual pathways of adjudication.

The structural difficulty becomes clearer when examined through established principles of statutory interpretation. The doctrine of *lex specialis derogat legi generali* provides that where a special law and a general law operate in the same field, the special law prevails to the extent of inconsistency. The Carriage by Air Act, enacted to give effect to the Montreal Convention, is a subject specific statute regulating liability arising from international air carriage. It lays down detailed and self contained rules concerning jurisdiction, limitation, and monetary caps. By contrast, the Consumer Protection Act is a general remedial framework that applies across sectors wherever deficiency in service is alleged.

When both statutes are invoked in the context of international carriage, the special character of the Carriage by Air Act assumes doctrinal importance. This position is further supported by Article 253 of the Constitution of India, which empowers Parliament to enact legislation for

²⁹ Carriage by Air Act.

³⁰ Consumer Protection Act, § 100.

³¹ *Ethiopian Airlines*, (2011) 8 SCC at 548.

³² *Air France*, 2018 SCC OnLine NCDRC 548.

³³ Montreal Convention, art 29.

implementing international treaties. A statute enacted pursuant to this constitutional power carries particular weight, especially where the objective is to ensure international uniformity. Accordingly, while the Consumer Protection Act may supplement procedural access to remedies, it cannot override or dilute the substantive liability structure established under a treaty incorporated through a special statute.

2. Liability Caps vs Expansive Compensation Powers

A central feature of the Montreal Convention is its quantified liability limits under Article 22³⁴. Compensation for delay and baggage loss is capped in Special Drawing Rights (SDRs)³⁵. These limits are not incidental; they form the economic foundation of the treaty system and enable insurers and airlines to assess risk predictably. Because the Convention has statutory force in India³⁶, these caps are legally binding.

By contrast, section 39 of the Consumer Protection Act³⁷ empowers consumer commissions to award compensation for “loss or injury,” including punitive damages, without prescribing any monetary ceiling. The provision grants wide discretion to determine what is “just” compensation.

In practice, consumer fora sometimes treat Convention limits as guiding considerations rather than binding ceilings. In *Air France v O.P. Srivastava*³⁸, compensation was awarded under the consumer framework even while acknowledging the Convention.

The contradiction here is subtle but significant. Consumer fora rarely declare Article 22 inapplicable.³⁹ Instead, they exercise independent remedial discretion, sometimes exceeding treaty limits. This transforms liability caps from mandatory constraints into flexible reference points. The broader consequence is unpredictability. Airlines calculate exposure based on treaty limits. When domestic fora depart from these limits, uniformity is replaced by forum-dependent outcomes.

³⁴ Montreal Convention, art 22.

³⁵ *Id.*

³⁶ Carriage by Air Act, § 4.

³⁷ Consumer Protection Act, § 39.

³⁸ *Air France*, 2018 SCC OnLine NCDRC 548.

³⁹ Montreal Convention, art 22.

3. Economic Loss Model vs Mental Agony Compensation

The Montreal Convention primarily contemplates objectively measurable damage. Article 19 addresses damage caused by delay.⁴⁰ The structure of these provisions indicates a focus on tangible and demonstrable loss. Mental agony or inconvenience does not appear as an independent head of liability within the Convention framework. Compensation is generally linked to physical injury or quantifiable economic damage.

Consumer law adopts a different approach. Under section 39 of the Consumer Protection Act,⁴¹ compensation may include mental agony, harassment, and inconvenience. Consumer jurisprudence treats these as independent grounds for relief in cases of deficient service. In *Air France v O.P. Srivastava*⁴², compensation was awarded not only for delay but also for inconvenience suffered.

This creates a conceptual gap. The Convention is structured around measurable and limited damage. Consumer fora expand liability to include subjective suffering. As a result, identical factual scenarios may produce different compensation outcomes depending on the adjudicatory forum. While this expansion strengthens passenger protection domestically, it moves away from the Convention's uniform and restitution-based philosophy.

It is important to note that the Convention does not expressly prohibit recovery for non-pecuniary harm in all circumstances. In certain foreign jurisdictions, courts have recognised that mental suffering may be compensable where it directly flows from a bodily injury covered under the Convention. However, such recognition remains ancillary to physical harm and does not operate as an independent basis of liability. The Indian consumer framework differs significantly. Deficiency in service is treated as a standalone civil wrong, capable of attracting compensation even in the absence of physical injury or measurable economic loss. This doctrinal distinction widens the divergence between the treaty based model and the domestic remedial approach.

4. Restrictive Treaty Jurisdiction vs Broad Consumer Forum Jurisdiction

Jurisdiction represents one of the clearest areas of conflict. Article 33 of the Montreal

⁴⁰Montreal Convention, art 19.

⁴¹ Consumer Protection Act, § 39.

⁴² *Air France*, 2018 SCC OnLine NCDRC 548.

Convention limits where an action may be brought.⁴³ It specifies a closed list of fora, such as the carrier's domicile, principal place of business, place of contracting, or destination. These restrictions are designed to prevent forum shopping and ensure predictability.

In contrast, sections 34, 47, and 58 of the Consumer Protection Act⁴⁴ allow complaints to be filed where the consumer resides, where the opposite party carries on business, or where the cause of action arises. This decentralised model prioritises consumer access.

In *Ethiopian Airlines v Ganesh Narain Saboo*,⁴⁵ the Supreme Court upheld consumer forum jurisdiction without fully reconciling it with Article 33's restrictive design.

The result is a jurisdictional gap. While the Convention seeks to limit fora, consumer law enables broader access. This permits passengers to choose the most convenient or advantageous forum, potentially undermining the Convention's carefully negotiated jurisdictional balance. Once jurisdiction shifts, subsequent questions of liability and compensation are also shaped by domestic forum practices rather than strictly by treaty discipline

5. Procedural and Structural Tensions

Beyond substantive contradictions, procedural inconsistencies further complicate the interaction. Article 31 of the Convention requires written notice within specified time limits for baggage and delay claims.⁴⁶ Article 35 imposes a strict two-year limitation period that extinguishes the right to damages.⁴⁷

By contrast, section 69 of the Consumer Protection Act⁴⁸ allows delay to be condoned for sufficient cause. This flexibility aligns with consumer welfare principles but sits uneasily with the Convention's extinction-based limitation structure. Additionally, while the Convention adopts a structured liability system, consumer adjudication often operates with broader discretion and equitable reasoning. The cumulative effect is fragmentation of what was intended to be a harmonised international regime.

⁴³ Montreal Convention, art 33.

⁴⁴ Consumer Protection Act, §§§ 34, 47, 58.

⁴⁵ *Ethiopian Airlines*, (2011) 8 SCC at 548.

⁴⁶ Montreal Convention, art 31.

⁴⁷ Montreal Convention, art 35.

⁴⁸ Consumer Protection Act, § 69.

The contradictions identified above demonstrate that the tension between the Montreal Convention and the Consumer Protection Act is structural rather than incidental. The overlap affects jurisdiction, liability limits, heads of compensation, and procedural discipline.

In practice, Indian consumer fora have not rejected the Convention outright. Instead, they have allowed consumer remedies to coexist alongside it, sometimes applying treaty principles selectively.⁴⁹ This has produced a hybrid model in which the Convention formally applies but does not always function as an exclusive and limiting framework.

The resulting system enhances access to justice for passengers but reduces predictability and uniformity for international carriers. The regulatory gaps identified in this chapter therefore raise a broader question: whether the two regimes can continue to operate in parallel without clearer judicial or legislative harmonisation.

Counter Perspective on the Regulatory Gaps

A strong counter argument is that the conflict between the Montreal Convention and the Consumer Protection Act may not be as severe as it appears. What is described as a structural inconsistency may instead be a model of layered protection in which international rules operate within a domestic remedial system.

First, Article 29 of the Montreal Convention provides that claims for damages must be subject to the conditions and limits set out in the Convention.⁵⁰ This clause ensures that liability cannot be expanded by presenting the claim under a different legal label. However, it does not clearly state that only one type of domestic forum may hear such disputes. Once incorporated into Indian law through the Carriage by Air Act⁵¹, the Convention becomes part of municipal law.⁵² Consumer commissions, as statutory adjudicatory bodies, may therefore apply the Convention while exercising their jurisdiction. Jurisdiction and substantive liability can be treated as separate questions.

Second, Section 100 of the Consumer Protection Act states that its remedies are in addition to other laws.⁵³ This suggests that Parliament did not intend to exclude consumer jurisdiction

⁴⁹ *Air France*, 2018 SCC OnLine NCDRC 548.

⁵⁰ Montreal Convention, art. 29.

⁵¹ Carriage by Air Act, § 4.

⁵² *Id.*

⁵³ Consumer Protection Act, § 100.

unless expressly provided. Since the Carriage by Air Act does not clearly bar consumer proceedings,⁵⁴ courts may interpret both statutes harmoniously. In *Ethiopian Airlines v Ganesh Narain Saboo*,⁵⁵ the Supreme Court recognised consumer jurisdiction while acknowledging the relevance of the Convention.⁵⁶ This reflects coexistence rather than conflict.

Third, concerns about liability caps may relate more to inconsistent application than to incompatibility. Article 22 limits compensation⁵⁷, and these limits bind all adjudicatory bodies once incorporated. In *Air France v O.P. Srivastava*,⁵⁸ the Commission referred to Convention principles while awarding compensation.⁵⁹ If consumer fora consistently respect treaty limits, uniformity can be maintained.

Finally, consumer forums provide accessible and affordable remedies.⁶⁰ International passengers are individual consumers. Allowing them to approach consumer commissions strengthens enforcement of rights already recognised under the Convention.

From this perspective, the issue may not be structural incompatibility, but the need for clearer judicial reasoning. With careful application, consumer jurisdiction and treaty discipline can coexist within the same legal framework.

Recommendations for Harmonised Application of Aviation and Consumer Law

The discussion above shows that the tension between the Montreal Convention regime and the Consumer Protection Act, 2019 does not arise only because the two laws are different in nature. The real issue is the lack of clear coordination between them. Both laws serve valid purposes. The Montreal Convention, incorporated into Indian law through the Carriage by Air Act, 1972, aims to create uniform rules for international air travel and to maintain predictability in airline liability. The Consumer Protection Act, 2019 aims to make remedies more accessible and affordable for consumers. Therefore, the objective should not be to choose one law over the other, but to ensure that both are applied in a clear and consistent manner.

⁵⁴ Carriage by Air Act, 1972, No. 69, Acts of Parliament, 1972 (India).

⁵⁵ *Ethiopian Airlines*, (2011) 8 SCC at 548.

⁵⁶ *Id.*

⁵⁷ Montreal Convention, art. 22.

⁵⁸ *Air France*, 2018 SCC OnLine NCDRC 548.

⁵⁹ *Id.*

⁶⁰ Consumer Protection Act, §§ 34, 39.

One possible solution is legislative clarification. Parliament may amend the Carriage by Air Act to clearly state that in cases of international carriage, the liability rules under the Montreal Convention will prevail over any inconsistent provisions of other laws. Such a clarification would not remove the power of consumer commissions to hear aviation disputes. It would only make it clear that while consumer fora can decide these cases, they must apply the liability limits and conditions fixed under the Convention. This would reduce confusion and prevent different consumer fora from applying different standards.

If legislative amendment is not immediately possible, courts and consumer commissions should adopt a careful and consistent interpretive approach. Consumer fora can continue to function as accessible forums for passengers. However, when dealing with international air carriage disputes, they must strictly apply the Convention's rules on liability, compensation limits, jurisdiction, and limitation periods. Consumer law can help in providing procedural access and speedy resolution, but it should not expand the scope of airline liability beyond what the Convention allows. Maintaining this distinction is important to preserve both consumer rights and international uniformity.

Clear guidance from the Supreme Court would also help resolve uncertainty. At present, different forums sometimes follow different approaches. A clear judgment explaining how both statutes should operate together would provide stability and uniformity. The Court can clarify that the Convention based framework is a special law governing international carriage and must be applied accordingly, even when the matter is heard before a consumer commission.

Lastly, compensation should be calculated carefully and consistently. While consumer law recognises claims such as mental agony and inconvenience, such claims must still remain within the monetary limits fixed by the Convention. Awards should not indirectly bypass treaty based caps. Regulatory authorities may also issue guidelines to help consumer fora apply aviation liability rules correctly. Through clearer laws, careful judicial interpretation, and consistent compensation practices, both aviation law and consumer protection law can function together without weakening either system.

Conclusion

This paper has examined the relationship between the Montreal Convention regime, as incorporated through the Carriage by Air Act, 1972, and the Consumer Protection Act, 2019.

The analysis shows that the tension between the two frameworks does not arise because they are fundamentally opposed in purpose. Instead, the friction largely results from the absence of clear guidance on how they should operate together in cases of international air carriage. While the Convention seeks to ensure uniformity and predictability in airline liability across jurisdictions, consumer law focuses on accessibility, affordability, and effective remedies for passengers. Both objectives are legitimate and important within the legal system.

Judicial decisions have at times created uncertainty by not clearly separating questions of jurisdiction from questions of substantive liability. Consumer fora have been recognised as competent adjudicatory bodies. However, the substantive limits, conditions, and monetary caps under the Convention remain binding in cases of international carriage. The real issue, therefore, is not whether consumer commissions can hear such disputes, but whether they consistently apply treaty based standards while doing so.

The counter arguments discussed in this paper demonstrate that coexistence between the two regimes is possible through harmonious interpretation. Consumer jurisdiction need not undermine treaty obligations if liability caps and jurisdictional limits are respected. At the same time, clearer statutory language or authoritative judicial guidance would significantly reduce interpretive confusion.

In conclusion, the perceived regulatory gap is better understood as a problem of coordination rather than incompatibility. With careful legislative clarification, disciplined judicial reasoning, and consistent application of compensation principles, aviation law and consumer protection law can function together in a balanced and coherent manner.