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Industry: A Legal Analysis

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Consent Form

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Declaration

I, **Fatima Naz Binte Hassan**, bearing student ID: 2018-3-66-035, hereby declare that this thesis paper titled, ‘**Examining of Tort Reform on the Aviation Industry: A Legal Analysis**’ is entirely prepared by me under the supervision of Dr. Md. Mehedi Hasan (Chairperson and Assistant Professor of Department of Law, East West University) for my graduation requirement.

I further declare that, this research paper is my original work and the content of this thesis paper has not been submitted or published by any journal, newspaper, or article. The content and materials used for the thesis paper are acknowledged duly and recognized in the references and properly cited.

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List of Abbreviations

WC29	Warsaw Convention 1929
MC99	Montreal Convention 1999
ICAN	International Commission for Air Navigation
ICAO	International Civil Aviation Organization
FAA	Federal Aviation Administration
BASA	Bilateral Air Service Agreements
EU	European Union
ECJ	European Court of Justice
EASA	European Union Aviation Safety Agency
ECAC	European Civil Aviation Conference
IATA	International Air Transport Association
ASEAN	Association of Southeast Asian Nations
ACI	Airports Council International
CASA	Civil Aviation Safety Authority
CAAP	Civil Aviation Authority of Pakistan
ADA	Airports Developments Agency
DCA	Department of Civil Aviation
CAAO	Civil Aviation Authority Ordinance
CAAB	Civil Aviation Authority Bangladesh
IMF	International Monetary Fund
SDR	Special Drawing Rights

Abstract

Domestic and international air travel are seeing rising demand. The greater the air travel volume, the greater the potential for tragedy. Regarding international and domestic regulations accidents and damage in the event of a flying failure, this article will analyze the past and present stages of accident and damages related aviation law. The paper will discuss how several international conventions relate to tort reform in the aviation industry. There will also be an emphasis on Bangladesh's aviation background and the related conventions that have some influence of tort reform on them. The study will also shed light on what other domestic legislations of Bangladesh can be applied in the aviation industry to compensate the victims for their losses and what sort of changes are needed.

Examining the Implications of Tort Reform on the Aviation Industry: A Legal Analysis

Chapter-01

Introduction

1.1 Background of the Study

The aviation sector has faced difficult legal issues since its founding. Given the worldwide character of air travel, an effective legal framework was essential. This led to landmark global conventions like the 1929 Warsaw Convention. As air travel increased and got more complex, aviation law, especially torts, became increasingly difficult. Aviation tort law focuses on air transport accidents and their damages. As early legal arrangements were imperfect after the demanding tort amendments global air travel changed. The relationship between tort reform and international conventions is complex. Reforms have attempted to modernize traditions due to their limitations. As there are several countries involved with the aviation law the interpretations applications, and differences emerged. Even Bangladesh had the challenge of meeting international agreements and local needs. Thus, aviation tort reforms have helped to balance passenger rights, airline duties, and a safe, efficient, and economically viable aviation business. These changes and global conventions like the 1999 Montreal Convention, which followed the Warsaw Convention, suggest worldwide collaboration to improve aviation liability laws. This study examines these changes, their global and local consequences, and their legal significance in the aviation industry.

1.2 Research Questions

What impact does tort reform have on aviation accident and damage related laws, policies and how does Bangladesh associate the challenges and changes?

1.3 Aims and Objectives of the Research

This research paper aims to learn about the international and relatable national impacts of aviation tort law reforms on airline operations and passenger rights. Also, it will examine how existing tort law frameworks, along with some local laws, may best serve to ensure aviation safety while defending the rights of accident victims. Evaluate the impact of international aviation, such as conventions, on domestic tort changes in participating certain countries. Again, to learn more about the difficulties the aviation sector has had adjusting international conventions related to tort reform, particularly in places where the law differs from country to country.

The objective of this research is to analyse the aviation accident, damage related conventions and their impact. Secondly, it will be discussed whether there are any differences or commonalities between international conventions and national regulations.

1.4 Significance of the Research

The significance of this research paper is found in the discussion of how the principles of tort law have been applied in lawsuits and what consequences it had on the aviation sector historically after tort reform. It will explain how the concept of limited responsibility from the international convention is related to tort reform, as well as what kinds of laws are recognized including Bangladesh in case of accident and damage in aviation. Even how applying the ideas of tort law to the process of tort reform has helped to shape and save the aviation industry will be the primary point of concentration. Also, most countries did not participate in tort reform directly, but the acceptance of its positive outcome and continuance to upgrade their industries will be explored. Even what challenges and consequences Bangladesh can have will be discussed along with some recommendations.

1.5 Scope and Limitation of the Research

The scope of this paper covers an in-depth study of the legal framework relating the legal link between tort reform and aviation-related laws focusing on international aviation deals and standards. It dives deep into Bangladesh's internal situation, history, and current responsibility structure regarding aviation-related adopted laws and other related laws. This paper will also discuss some critical law cases, both from a foreign and a Bangladeshi point of view, to highlight the impact on the Aviation industry.

The limitations of this research paper are that it might experience boundaries due to time limitations, which could limit its ability to solve various areas of tort and aviation law along with passenger rights in accident-related situations in the field carefully. Data availability may be affected due to restricted access to confidential documents related to law and case records. The potential limitations of its research findings may arise due to jurisdictional variations in accident, damage related laws in aviation field. Further, the changing nature of legal systems can create difficulties in incorporating the latest aviation advancements. The process of legal analysis involves the interpretation of legal principles and may affect personal aspects, which can result in different points of view. Despite these limitations, this paper will provide valuable opinions how tort reform related with the Aviation industry internationally and domestically.

1.6 Methodology

This thesis paper falls under the qualitative methodology approach. In case of primary and secondary sources, the secondary sources such as books, online journals, newspaper articles, internet resources will be used more rather than primary source. This qualitative methodology seeks to thoroughly examine the relation of tort principles along with tort reform in the aviation field and the impact of it in case of accidents, damages and policies.

The bibliography and footnotes will be followed by the OSCOLA referencing method.

1.7 Literature Review

There are certain study or research papers that are written by different authors worldwide regarding how the tort reform played a major role to save the Aviation industry. Also, several books are available that defines tort principles and tort reform properly. For this research paper I have read certain chapters from several books. From the book named “*Law of Torts*” written by G.S Pandey¹ the meaning of tort was explained and, in another book, named “*Tort Law*” by Mark Lunney and Ken Oliphant² explained the principles of tort and related cases as well. Furthermore, an author named David Crocker in his book titled, “*Dictionary of Aviation*”³ explained the technical terms related with aviation. Equally important another book by the

¹ G.S Pandey, *Law of Torts* (4th edn, Allahabad Law Agency 2016) 2

² Mark Lunney and Ken Oliphant, *Tort Law* (5th edn, Oxford University Press 2013) 103, 107, 199

³ David Crocker, *Dictionary of Aviation* (2nd edn, A&C Black 2010) 28

author Richard Owen in “*Essential Tort Law*”⁴ also explained some principles of tort. A report titled "Saving the General Aviation Industry: Putting Reform to the Test" was authored by John H. Boswell and George Andrew Coats. This study analysed a number of cases involving tort claims in aviation crash incidents, as well as how the United States dealt with this scenario by establishing laws linked with tort reform.⁵ Another paper written by Tory A. Weigand titled "The Modernization of the Warsaw Convention and the New Liability Scheme for Claims Arising out of International Flight"⁶ detailed which international convention was revised by which one and how. Even the reasons as to why the adjustment was essential, as well as the reasons as to why these international conventions were adopted by many different countries, are discussed. Also, for the purpose of completing this research paper I have read limited portions of several studies by different authors which are mentioned in the chapter footnotes. At the same time different related newspaper articles and websites have been used to gain information about related cases. In Bangladesh’s context certain related provisions of the Carriage by Air Act 2020, Constitution of Bangladesh, Principles of Tort Law, Code of Civil Procedure 1908 etc are used with this research topic. Also, the relevancy of Fatal Accident Act, 1885 will be discussed.

1.8 Conclusion

Since aircraft began crossing boundaries, aviation has come across various legal issues. International regulations like the Warsaw Convention optimized things. As more people flew and aircraft improved, these regulations appeared outdated and unfair, particularly when accidents occurred. This led to "tort reforms," to aid passengers and airlines in emergencies. Some nations, like Bangladesh, have particular issues and must ensure their policies meet local

⁴ Richard Owen, *Essential Tort Law* (3rd edn, Cavendish Publishing Limited 2000) 1

⁵ John H. Boswell, George Andrew Coats, ‘Saving the General Aviation Industry: Putting Tort Reform to the Test’ (1994) 60 (2) *Journal of Air Law and Commerce* < https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/jalc60§ion=16 > 535-571 accessed on 19 August 2023

⁶ Tory A. Weigand, ‘The Modernization of the Warsaw Convention and the New Liability Scheme for Claims Arising Out of International Flight’ (2000) *Massachusetts Law Review* < https://www.google.com/url?sa=i&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=0CDkQw7AJahcKEwiAr7zB0v-AAxUAAAAAHQAAAAAQAg&url=https%3A%2F%2Fwww.morrisonmahoney.com%2Fwritable%2Fresources%2Fdocuments%2Fmlr_warsaw.pdf&psig=AOvVaw1900mpyqVRhmkDu4lRMhHe&ust=1693322059724686&opi=89978449 > 175-185 accessed on 19 August 2023

and international conventions. This research has investigated these changes to better understand how the rules have changed with the sky.

Chapter-02

The Relation of Tort Reform with Aviation Field

2.1 Introduction

This chapter will be discussing on how the tort law is involved with the aviation field and when the evolution began and what implementations were putted that helped to grow the advance industry. Tort reform in aviation is important because aviation requires extreme risks and huge damages. This chapter explores tort, aviation and tort reform's definitions, concepts, causes, and effects. Also, it focuses on how these historical legal theories have affected the aviation business and what future reforms may entail by examining historical milestones.

2.2 Concept of Tort and its Reformation in Aviation industry

The term "tort" has its root from the French term "tortam," that means "twisted" and "wrong" in English.⁷ The perfect definition of tort law is yet to be discovered. According to the famous American Judge Oliver Wendell Holmes, torts is not an area that would belong in a law book.⁸ By stating it in a different way, tort responsibility, however, exists lead generally to compensate the victim by making those responsible pay for the damage that was done. The concept of tort reform is to make it more challenging for people to sue or to limit the amount of money that can be given to people who have already won a lawsuit⁹ and it also puts a limitation on the court to provide damages to the plaintiff party. The word 'Aviation' comes from the Latin word 'Avis' meaning 'bird'¹⁰. Technically means that flying an aircraft and aviation law relates to the laws relating to flying.¹¹ All activities involved in the design, development, manufacturing, use, and navigation of aircraft, including airplanes, fall under the umbrella term of aviation. Aviation law is the field of law that deals with flying, manufacture of aircraft, aviation business,

⁷ n1

⁸ Kenneth S. Abraham & G. Edward White, 'Conceptualizing Tort Law: The Continuous (And Continuing) Struggle' (2021) 80 (2) Maryland Law Review

< <https://www.marylandlawreview.org/volume-80-issue-2-articles/conceptualizing-tort-law-the-continuous-and-continuing-struggle> > 298 accessed on 19 August 2023

⁹ 'What is Tort Reform?' (*Forbes Advisor*, 3rd February, 2023) <

<https://www.forbes.com/advisor/legal/personal-injury/tort-reform/> > accessed on 19 August, 2023

¹⁰ 'Aviation' (*Vocabulay.com*) < <https://www.vocabulary.com/dictionary/aviation> > accessed on 19 August 2023

¹¹ n3

travelling by air, and the legal and commercial issues connected with them.¹² If we go back to the early 1900's era we can see that the first act in this industry was the Air Commerce Act 1926 and the purpose was to licensing the pilots and aircrafts¹³ but later in 1929 the Warsaw convention 1929 came in action which is related to tort reform in a way that it put limit on liability to airlines, passenger liability claims on international level.¹⁴ Later in 1999 Montreal Convention came that is related with tort reform in a way that it advanced the liability limit¹⁵ more than the previous Warsaw convention. In America's perspective, the 1994 the General Aviation Revitalization Act came which was drafted by congress back in the early 1980's and it put a time limitation of 18 years in manufactures companies¹⁶ which developed the tort liability system.

2.3 Relating Tort Principles with Aviation

Tort law in the aviation sector is a complicated and ever-developing field that involves the liability of individuals and companies for conduct that causes injury to others. There are certain principles of tort law that involves in the aviation field. The principle of Negligence¹⁷ established from the famous case of Donoghue v. Stevenson¹⁸ and in aviation, negligence means that the pilot, the crew, or the company that made the plane didn't do the act which that was expected from them.¹⁹ In the case of Abdullah v. American Airlines (1999)²⁰ the plaintiff was injured for severe turbulence in the plane. The court held the airlines company liable and said the pilots were negligent while flying. Under the principle of Strict Liability, the airline will be strictly liable which means that if the plaintiff can show he was injured on a flight because of

¹² Mukesh Kumar, 'Aviation Law: Meaning and Applicability' (*Tutorials Point*, 16th January, 2023) < <https://www.tutorialspoint.com/aviation-law-meaning-and-applicability> > accessed on 19 August 2023

¹³ 'Air Commerce Act' (*Kreindler Legal Library*) < <https://www.kreindler.com/library/air-commerce-act> > accessed on 20 August 2023

¹⁴ 'Airline Liability' (*Citizens Information*, 25th May, 2023) < <https://www.citizensinformation.ie/en/travel-and-recreation/air-travel/airline-liability/> > accessed on 20 August 2023

¹⁵ Judy R. Nemsick, 'Montreal Convention Limits of Liability Increased' (*Holland & Knight*, 31st December, 2019) < <https://www.hklaw.com/en/insights/publications/2019/12/montreal-convention-limits-of-liability-increased> > accessed on 20 August 2023

¹⁶ Alan J. Stolzer, 'The General Aviation Revitalization Act Of 1994: An Overview of Tort Reform' (1998) 8 (2) *The Journal of Aviation/Aerospace Education & Research* < <https://doi.org/10.15394/jaaer.1998.1234> > 48-50 accessed on 20 August 2023

¹⁷ n2, n4

¹⁸ Donoghue v Stevenson 1932

¹⁹ Terry Cochran, 'Aviation Negligence: What you need to know' (*Cochran, Kroll & Associates*, 28th June, 2019) < <https://www.cochranlaw.com/accidents-injuries-topics/aviation-negligence-need-know/> > accessed on 19 August 2023

²⁰ Abdullah v. American Airlines, 1999

something outside that was unexpected or unusual, the airline will be responsible. This principle will not apply if the plane's passenger gets injured at a physical disadvantage.²¹ Even a helicopter (Robinson R44) crash happened in California, 2018 where the manufacture company was sued under this principle for manufacturing issues.²² The principle vicarious liability is mainly like master-servant relationship. In the famous case of Dubai Aluminum Co. Ltd v. Salaam²³ this principle was used to determine the relationship of the employer and employee. In aviation, this principle is applicable for example during a flying training the instructor is liable for the activities of the student and for any negligent or mistake the company can be held liable as the instructor is employed by the company.²⁴ *Res Ipsa Loquitur*²⁵ is a principle which relates with aviation field and in the case of Cox v. Northwest Airlines²⁶ this principle was used by the plaintiff, Cox's estate as Cox died. The court let the doctrine apply due to the circumstances suggested negligence, and Cox' estate was granted compensation as the airline failed to prove its side.

2.4 Reason and Consequences of Tort Reform in the Aviation Industry

Tort reformation in the aviation industry was necessary to balance in case of providing compensation to the plaintiff and that fact had effect on many things such as changes in legislation, ups and downs in the economy, insurance premiums maintenance, product liability issues, safety concerns, strictness on proving and reducing attorney liabilities and frivolous suits and overall, a huge change in the aviation industry.²⁷ Between the 1980s to 1990's there were many cases and the industry was almost doomed providing high amounts as compensation even though the manufacture company had no fault and the pilot was negligent. Such as in Cleveland v. Piper²⁸ case, despite the modification and negligence of the pilot the manufacturer company had to compensate the victim's wife 2.5 million dollars. In Ridge v Cessna Aircraft²⁹ case, the wife of the company sued the aircraft company and the jury awarded 5 million dollars

²¹ 'Strict Liability for many in flight accidents' (*Worthington's Solicitors*) <

<https://www.worthingtonslaw.co.uk/strict-liability-for-many-in-flight-accidents/> > accessed on 19 August 2023

²² 'Robinson Helicopter Crashes' (*Wisner Baum*, 9th June, 2023) < <https://www.wisnerbaum.com/aviation-accident/helicopter-crashes/robinson-helicopter-crashes/> > accessed on 19 August 2023

²³ Dubai Aluminum Co Ltd v Salaam, 2002

²⁴ Adam Shehata, 'Vicarious Liability' (*Aviation Solutions*, 5th February 2012) < <https://www.aviationsolutions.net/blog/803> > accessed on 19 August 2023

²⁵ The thing speaks for itself, n2

²⁶ Cox v. Northwest Airlines, Inc 1967

²⁷ n5

²⁸ Cleveland v. Piper Aircraft Corp 1989

²⁹ Ridge v. Cessna Aircraft Company, 1997

although it was concluded that it was the pilot's first solo journey. These sorts of judgements damaged the aviation manufacture industry so it was necessary to investigate the case in more detail rather than just compensating the plaintiff a huge amount of money. When the industry was in a bad shape the legislation introduced tort reform as putting an 18 years' time limitation from the date a general aircraft product was made, the company that made it can no longer be sued for negligence or strict product liability.³⁰ In *Duncan v. Cessna Aircraft Co.*,³¹ the concept of product liability arose and the plaintiff won the case. When the number of cases against manufacture companies increased on the other hand the accident rate in this field was decreasing³² and as a matter of result the manufacturing companies focused more on the safety system which helped to advance the modern aviation field.

2.5 Tort Reform and their Impacts

There were several proposals offered regarding the reformation of tort.³³ The first was time limitation in the manufacture of a product in the USA.³⁴ Comparative fault theory³⁵ was proposed which holds that compensation should be given by considering one's degree of fault compared to manufactures who caused similar injuries. If the pilot is negligent then he is liable. In court, punitive damages are financial awards to penalize the defendant for reckless behavior³⁶ and deter future wrongdoing and in *Delacroix v Doncasters*³⁷ the plaintiffs were awarded a huge amount imposing punitive damage. The proposal to limit the amount of punitive damage was given. Later, the plaintiff had to supply trustworthy proof for punitive damage or strict liability.

³⁰ Victor E. Schwartz, Leah Lorber, 'The General Aviation Revitalization Act: How Rational Civil Justice Reform Revitalized Industry' (2002) 67 (4) *Journal of the Law and Commerce* < https://heinonline.org/hol/cgi-bin/get_pdf.cgi?handle=hein.journals/jalc67§ion=41 > 1270-1271 accessed on 20 August 2023

³¹ *Duncan v. Cessna Aircraft Co.* 1984

³² Expert risk article, 'How aviation safety has improved', (*Allianz*, May 2015) < <https://commercial.allianz.com/news-and-insights/expert-risk-articles/how-aviation-safety-has-improved.html> > accessed on 20 August 2023

³³ n5

³⁴ n16

³⁵ Hennessey support, 'What is comparative negligence?' (*Montero Law Center*, 1st December, 2019) < <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwj18-ji26WBAxWKbmwGHdWtA1wQFnoECBYQAQ&url=https%3A%2F%2Fmonterolaw.com%2Fnews%2Fwhat-is-comparative-negligence&usg=AOvVaw23wWTtCE9HE2VilxqdDsJI&opi=89978449> > accessed on 21 August 202

³⁶ F. Patrick Hubbard, 'The Nature and Impact of the Tort Reform Movement' Hein online < https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjW6L2U0uuAAxVFT2wGHeAHAlIQFnoECC0QAQ&url=https%3A%2F%2Flaw.hofstra.edu%2Fpdf%2Facademics%2Fjournals%2Fflawreview%2Flrv_issues_v35n02_cc1.hubbard.final.pdf&usg=AOvVaw34NV1VSr4qgoF0xnhM75v6&opi=89978449 > ; 497-501 accessed on 21 August 2023

³⁷ 'Punitive Damages in Airline Accidents' (*Carabin Shaw*) < <https://www.carabinshaw.com/punitive-damages-in-airline-accidents.html> > accessed on 21 August 2023

Tort reform system proposed hourly fee for attorneys. Frivolous cases are those cases which particularly has no legal merit³⁸. If attorneys have fewer financial reasons to engage in poor cases, fewer cases like frivolous may be taken to court.³⁹ Tort reform, especially in the U.S., has affected healthcare, products, and aviation. The basic purpose of tort reform is to amend tort law to reduce litigation and lawsuit awards. The positive impacts are such it reduced insurance costs. It shortened product production time, helping companies grow. As the sector recovers, global profit may reach \$22.4 billion by 2023⁴⁰ and controlling the damages balanced the business aviation market. Mushroom production was limited by tort reform. In addition, companies are promoting product improvements that improve safety. Limiting the number of cases will help to cut down on court time. In case of negative impacts too much deduction of compensation may exclude the victims from gaining actual medical fees and other losses. When financial punishments are low, manufacturers may be unwilling to fix unsafe techniques. Victims might be not interested to file lawsuits if the filing of the suit is complex and compensation money is not provided according to their claim. Lessening the attorney fees might discourage to take valid cases that have merit for which the victims might suffer.

2.6 Conclusion

Regarding aviation, tort reform and aviation law are complementary components of a complex puzzle. By reviewing past aviation regulations and landmark cases, we can understand how the evolution of aviation law has influenced how planes fly and how passengers are protected. When planning for the future, it's important to strike a balance between being fair to those who have been harmed and contributing to the development and improvement of the aviation industry. This chapter may help to reveal the previous situation and potential future outcomes.

³⁸ 'Tort Reform & Frivolous Lawsuits' (*Gilman & Bedigian*) < <https://www.gilmanbedigian.com/tort-reform-and-frivolous-lawsuits/> > accessed on 21 August 2023

³⁹ n5

⁴⁰ Pressroom, 'Air Profitability Outlook Strengthens' (*IATA*, 5th June, 2023) < <https://www.iata.org/en/pressroom/2023-releases/2023-06-05-01/> > accessed on 21 August 2023

Chapter-03

International Perspective on Tort Reform in Aviation Field

3.1 Introduction

Laws and rules in the world of flying ensure it is safe and responsible. International conventions belong to the aviation industry and aim to keep it standardized. These norms have been applied to various situations globally and have played a role in shaping the standards governing tort reform. Different parts of the world have their own rules, but there are also regulations that all countries must follow. This chapter goes into more detail about these global agreements or conventions. It also examines how different parts of the world handle aviation-related problems and how international organizations shape aviation laws.

3.2 How International Conventions and Treaties Influence Aviation

International conventions and treaties regulate worldwide aviation, assuring safety and flexibility. They bring together worldwide regulations so aircraft may operate without conflicting requirements. This boosts aircraft security as well as effectiveness worldwide. Conventions deal with several countries, while treaties deal with two or three countries in most cases and more in unusual cases. Both of these words aim to promote peace.⁴¹ Aviation treaties and conventions provide safe, standard, orderly, and efficient international aircraft travel. Standards are consistent as a result of treaties and agreements. With established safety protocols and regulations, these conventions let passengers, cargo, and aircraft navigate borders smoothly.⁴² Such as an international air traffic control system is necessary for smooth global air traffic motion.⁴³ Conventions can also handle legal concerns like which country has jurisdiction in an accident or what passengers should be rewarded for.⁴⁴ Warsaw convention was the first major international convention addressing liability rules for international air carriage. The 1919 convention of Paris developed the ICAN⁴⁵ to regulate worldwide aviation although this convention now only remains in history and later it was replaced by the 1944

⁴¹ Captain Rajeev Jassal, 'Treaty and Convention, how different are these two?' (*My Sea Time*, 16th February, 2017) < <https://www.myseatime.com/blog/detail/what-is-the-difference-between-treaty-and-convention> > accessed on 24 August 2023

⁴² Standards are set by International Civil Aviation Organization globally. Explained in its Annexures.

⁴³ Annexure-11 of ICAO which maintains standard worldwide

⁴⁴ Discussed in the conventions of Warsaw and Montreal

⁴⁵ International Commission for Air Navigation

Chicago Convention.⁴⁶ The Convention of Chicago created International Civil Aviation (ICAO) as an intention to help states achieve finest civil aviation regulation, standard, legal, and organization uniformity.⁴⁷

3.2.1 Warsaw Convention 1929

Thirty-two nations signed a convention on international flight laws in 1929 in Warsaw, Poland, focusing on passenger rights, luggage management, and carrier responsibility for accidents and losses.⁴⁸ The entire Warsaw convention doesn't focus on "tort reform" broadly, but numerous articles deal directly with air carrier responsibility in a way that approaches tort reform.⁴⁹ The Warsaw Convention holds airlines strictly liable for passenger injuries or deaths following an accident on board or getting in or out in the plane and this article sets a strict liability for the international airline company where if a passenger is wounded or dies in an "accident" or if there is "bodily injury" on the aircraft or while getting on or off.⁵⁰ *Air France v. Saks*⁵¹ clarified the term accident does not cover normal operation damage of aircraft. In *Eastern Airlines v. Floyd*.⁵² it was mentioned that bodily injury does not cover mental distress under this convention. *Day v. Trans World Airlines*⁵³ and *MacDonald v. Air Canada*⁵⁴ clarify that liability only applies only while getting in or out of the plane. This article reduces claims and supports carrier insurance. Under this article⁵⁵ carriers will be responsible for damage to checked baggage or products at the airport or within the aircraft. The airline's liability may be excluded if the claimant's carelessness caused the injury.⁵⁶ This article⁵⁷ says that the airlines are responsible for damage or harm caused by delays in providing luggage or goods. This article⁵⁸ protects the carriers from claims as 20(1) exempts the aero plane company from liability if they took all essential safeguards or could not. 20(2) states that the carrier isn't responsible for injury

⁴⁶ Akshat Kothari, 'Evolution of Aviation law', (*iPleaders*, 1st April, 2021) < <https://blog.iplayers.in/evolution-aviation-air-laws/> > accessed on 23 August 2023

⁴⁷ 'The history of ICAO and the Chicago Convention', (*ICAO, Uniting Aviation*) < <https://www.icao.int/about-icao/history/pages/default.aspx> > accessed on 23 August 2023

⁴⁸ Jason Gordon, 'Warsaw Convention explained', (*The Business Professor*, 22nd July, 2021) < https://thebusinessprofessor.com/en_US/global-international-law-relations/warsaw-convention-definition > accessed on 24 August 2023

⁴⁹ n6

⁵⁰ Article-17 of convention of Warsaw 1929

⁵¹ *Air France v. Saks* 1985

⁵² *Eastern Airlines v. Floyd*, 1991

⁵³ *Day v. Trans World Airlines* 1975

⁵⁴ *MacDonald v. Air Canada* 1971

⁵⁵ Article-18 of 1929 Warsaw Convention

⁵⁶ Stephen Blatchford, 'The Warsaw convention and the CITEJA' (1934) 20 (12) JSTOR < <https://www.jstor.org/stable/25710564?seq=2> > 753-754 accessed on 25 August 2023

⁵⁷ Article-19 of convention of Warsaw 1929

⁵⁸ Article-20 of convention of Warsaw 1929

claims if they can prove for items or luggage, they took all reasonable steps. The article⁵⁹ caps compensation for injured or deceased passengers at 125,000 francs unless a particular deal is made with the airline. The limit is 250 francs/kg for cargo, but if the carrier can prove the declared value is too much, they can reduce the compensation. Lastly, in case of amounts the French francs can be rounded in other currencies and it is defined by gold weight.⁶⁰

When the circumstance does not flow with article-18 or 19 then in case of filing suit the rules of this convention have to be followed. Same goes with article 17 and it can be said that this article⁶¹ discusses airline lawsuit regulations on the other hand tort reform influences these lawsuits. Willful misconduct is not explained but this article⁶² restricts the carrier to avoid their liability or the carrier cannot use this Convention to avoid or reduce their duty if they intentionally cause damage and even any employee does the mistake there is no defense under this convention.

3.2.2 Hague Protocol 1995

This protocol came to make some important amendments in the Warsaw convention. It has made some reform in some articles such as-

Article-3 was amended so the passenger would know the terms and limits of the airplane. It mentioned to have more contents in the ticket which will also contain notice of liability limits. When a passenger is not provided detailed ticket under this article then the airlines company can't use article-22 as their defence and as a result they might pay more.⁶³ In this article any negligence part on behalf of the passenger subpoint-02 was removed. The reason of amendment was to make it harder for carrier to avoid liability.⁶⁴ The compensation rate for death or injury was increased for 250000 francs. 250 francs limitation was raised to 500 francs⁶⁵ to balance the outdated compensation limit. In this article⁶⁶ the language was changed from "wilful misconduct" to "act or omission" for clear concept and making it unavoidable for the carrier to avoid.⁶⁷ Even after these amendments the USA did not accept the protocol as the compensation rate was not sufficient for it.

⁵⁹ Article-22 of convention of Warsaw 1929

⁶⁰ George W. Orr, 'The Warsaw Convention', (1945) 31 (2) JSTOR < <https://www.jstor.org/stable/1068712?seq=6> > 429-433 accessed on 25 August, 2023
accessed on 28 August 2023

⁶¹ Article-24 of convention of Warsaw 1929

⁶² Article-25 of convention of Warsaw 1929

⁶³ Article-3 of the Hague Protocol 1955

⁶⁴ Article-20 of the Hague Protocol 1955

⁶⁵ Article-22 of the Hague Protocol 1955

⁶⁶ Article-25 of the Hague Protocol 1955

⁶⁷ Rene' H. Mankiewicz, 'Hague Protocol to Amend the Warsaw Convention', (1956) 5 (1) Oxford Journals < <https://www.jstor.org/stable/838140> > 78-82; accessed on 28 August 2023

3.2.3 Guadalajara Convention 1961

In Guadalajara, Mexico (1961) another international convention was held. This is supplementary of the convention of Warsaw. It clarifies liability when a person other than the passenger or shipper performs a deal of carriage, supplementing Convention. It addressed circumstances where the main carrier differs from the deal or agreement carrier.⁶⁸

3.2.4 Guatemala Protocol 1971

The Guatemala Protocol of 1971 amended the 1929 Warsaw Convention on international air transport. The protocol modernized and addressed Warsaw Convention limits. The Guatemala Protocol increased aviation accident liability limitations to meet concerns that the Warsaw Convention limits were outdated and insufficient. This was replaced by later changes, such as the 1999 Montreal Convention.⁶⁹

3.2.5 Montreal Convention 1999

The Convention of Montreal which is an international treaty, compensates passengers for delays, lost luggage, and injuries/death. Although there were 4 protocols of Montreal before and many more conventions but this Montreal convention 1999 is currently most applicable in many countries and was signed in Canada by 52 countries⁷⁰. In this article⁷¹ it mentions how airlines are responsible for their passengers and their baggage. If someone gets hurt or dies on the plane or while getting on or off, the company is responsible. If the packed luggage gets damaged, gone, or ruined, the airline has to pay for it unless it was broken from the start. The Company will pay only when it is their fault and if the checked bag gets lost for more than 21 days, the airline will pay for it. "Baggage" here refers to both checked and carry-on baggage. This article⁷² is about damage to goods or cargo, and it says that if a package is damaged, the company is responsible. The company don't have to pay if their goods get damaged because of plane packing mistakes, war, or government action. Outside of the airport, travelling by road or sea is not considered "air transport" unless the company changes the mode without authorization. This article is about delays.⁷³ When planes are late with people, bags, or goods/cargo, they have to pay for losses. If the company can prove it tried to fix the problem but could not then it is not required to pay. This article⁷⁴ is a defense for the airline company.

⁶⁸ 'Statutes', < <https://onlinelibrary.wiley.com/doi/pdf/10.1111/j.1468-2230.1963.tb00714.x> > 286-287 accessed on 28 August 2023

⁶⁹ n6

⁷⁰ n6

⁷¹ Article-17 of the Montreal Convention, 1999

⁷² Article-18 of the Montreal Convention, 1999

⁷³ Article-19 of the Montreal Convention, 1999

⁷⁴ Article-20 of the Montreal Convention, 1999

The carrier might not be liable at all, or it may pay fewer, if it can show that the consumer who is asking for money back caused the loss through their own mistakes or unacceptable conduct. If a customer was hurt or killed because of their own actions, the company could not be held fully responsible. This article⁷⁵ discusses passenger compensation for death or accident. If a passenger dies or is injured, the airline may be liable to 100,000 SDRs⁷⁶. The carrier won't pay extra if they can establish it wasn't the carrier's fault or if another person was exclusively responsible. Under this article⁷⁷ it restricts airline accident compensation. Maximum airline passenger compensation for flight delays is generally 4150 SDR. Carrier destruction compensation equals 1,000 SDR until otherwise there is special situation stated. Damage payments for cargo destruction are 17 SDR/kg except a larger value was declared and negotiated in advance. When cargo gets partly damaged, the broken item's weight influences compensation. There are exceptions to this rule if the airline proved careless or reckless in creating the injury and has previously offered compensation already. Legal fees may not be included to the settlement. This article⁷⁸ discusses fast accident financial compensation. If an airplane crash kills or injures passengers, the airline may compensate quickly. This fulfills urgent requirements. The airline can exclude this early compensation from future wages without admitting wrongdoing. Another article⁷⁹ addresses punitive damages and how they might be avoided by the airline. Under this convention, claimants may only seek remedy for actual harms or violations of rights. This article⁸⁰ works as a time limitation in favor of the airline companies such as if the luggage is received without complaint, it's presumed to be OK. The complainant has to report luggage damages within 7 days, cargo damages within 14 days, and delays within 21 days. After that the complainant have to show that there was fraud from the carrier side otherwise no action can be taken against the airline.

Also, the language is much clearer in Montreal than it is in Warsaw. Both the liability and compensation rates have been raised.

⁷⁵ Article-21 of the Montreal Convention, 1999

⁷⁶ 'Montreal Convention', (*Wikipedia*) < https://en.wikipedia.org/wiki/Montreal_Convention > accessed on 28 August 2023

⁷⁷ Article-22 of the Montreal Convention, 1999

⁷⁸ Article-28 of the Montreal Convention, 1999

⁷⁹ Article-29 of the Montreal Convention, 1999

⁸⁰ Article-31 of the Montreal Convention, 1999

3.3 Jurisdiction

The Warsaw convention's this article⁸¹ is about where to file suit and it mentions four provisions as where a lawsuit against an airline can be filed. It can be filed in the airline's home country, where the airline has its main occupation, the country where the ticket of the plane was bought, or the destination of the flight. On the other hand, convention of Montreal's article⁸² added an extra option for the passengers which says that passengers can also sue where they mainly live if the airline flies there.

3.4 Exploring other Countries

Aviation tort reform involves prospective improvements to aviation-related personal injury accidents and wrongful death claims. This discussion is about how different countries are relating with the aviation tort reform and what law and regulations they are following till now.

3.4.1 United States

Till 2003, the Warsaw Convention limited airline liability to bodily injuries. El Al Israel Airlines denied Tsui Yuan Tseng's⁸³ emotional distress claim during a New York search because she was not harmed physically. The Montreal Convention overtook the Warsaw Convention in 2003, boosting airline injury costs. Mental damage is only covered by airlines if there is related physical harm. Mental injury without bodily damage is exempt from payment. USA handled its cases related with manufacturing under the GARA⁸⁴ act where the companies could use Aviation Revitalization Act's 18-year protection.⁸⁵ USA has different organization that work for the betterment for this industry. Such as- ICAO, Federal Aviation Administration (FAA), Montreal & Warsaw Convention, Bilateral Air Service Agreements (BASAs).

3.4.2 European Union

The EU and the 27 members of it are parties of the Montreal Convention. Under the EU regulation⁸⁶ all rules of Montreal convention will be applied which means all countries have

⁸¹ Article-28 of the Warsaw Convention 1929

⁸² Article-33 of the Montreal Convention 1999

⁸³ El Al Airlines, Ltd, v. Tsui Yuan Tseng, 1994

⁸⁴ General Aviation Revitalization Act, 1994

⁸⁵ n30

⁸⁶ 'Regulation No 889/2002 of EU' (*Montreal Convention on air carrier liability*, 31st July, 2018) < <https://eur-lex.europa.eu/EN/legal-content/summary/montreal-convention-on-air-carrier-liability.html> > accessed on 29 August, 2023

to follow it. Another regulation⁸⁷ gives passengers compensation for rejected boarding, cancellation, or extended delays. While not direct tort reform, it affects airline liability. The EU covered some cases under the regulations as in the *Sturgeon v Condor* and *Stefan v Air France SA*⁸⁸ case, ECJ ruled people who are delayed for three hours or more should get money, just like people whose planes are cancelled, unless beyond the control of any airline apply. Adopting Montreal Convention article-19 by EU made the scope of the law clearer, giving the passengers better protection. The national law that implements the Convention of Montreal is similar as “Convention for the Unification of Certain Rules for International Carriage by Air”. The famous organizations are- ICAO, European Aviation Safety Agency (EASA), European Civil Aviation Conference (ECAC).

3.4.4 Asia-Pacific Region

The concept of aviation tort reform in Asia-Pacific can be related with international conventions and agreements that guide various national laws. The region's mentioned countries interpret and apply these requirements differently.

3.4.4.1 China

China accepted the Montreal Convention⁸⁹ in 2005 to address arising issues relating with international passenger rights, baggage or cargo. In many international airline accident cases Chinese citizens lost their lives or got injured and they bought suit under Montreal Convention against the Airline companies. The Montreal convention is nationally implanted in China and familiar as Convention on the Unification of Certain Rules for International Air Transport. China’s aviation laws nationally are handled by its Civil Aviation Law of China. Organizations: - ICAO, Beijing Convention.

3.4.4.2 India

India's aviation sector is worldwide since aviation is international. International conventions and treaties impact on Indian laws such as it adopted the Montreal Convention 1999⁹⁰ which is the updated version of Warsaw convention. The Montreal convention in India was implemented nationally as it is known as Carriage by Air Act, 1972. It was amended in 2009.

Organizations: ICAO, Montreal & Warsaw Convention, IATA.

⁸⁷ ‘Regulation No 261/2004 of EU’ < <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016XC0615%2801%29> > accessed on 29 August 2023

⁸⁸ *Sturgeon v Condor* case and *Stefan v Air France* 2009

⁸⁹ ‘Special provisions for international air transport about China’ (*Rodl & Partner*, June of 26th, 2017) < <https://www.roedl.com/insights/china-special-provisions-international-air-transport> > accessed on 29 August, 2023

⁹⁰ ‘India to ratify Montreal Convention’, (*Ministry of Civil Aviation*, 11th May, 2019) < <https://pib.gov.in/newsite/erecontent.aspx?relid=48665> > accessed on 29 August, 2023

3.4.4.3 Indonesia

Like other countries Indonesia has accepted the Montreal convention. Under this convention Indonesian airlines can't escape their liability when causes wrong against the passenger in case of death, harm and other related matter. In 2014, AirAsia Flight QZ8501⁹¹ destroyed in Java Sea killing 162 human beings. Technical along with pilot errors were found to be the main culprits. AirAsia promised victims' families compensation under international accords like the Montreal Convention. In 2018, Lion Air Flight JT610⁹² crashed, killing all 189 people on board because of problems with the plane's systems. The Montreal Convention under article-21 made sure that families of victims were paid quickly. Organizations: - ICAO, Association of Southwest Asian Nations (ASEAN), Airports Council International (ACI), IATA, BASAs.

3.4.4.4 Australia

Australia has also recognized the Montreal convention which is the standard version of Warsaw convention. These gives improve international air travel liability and compensation determinations. They impose strict (but limited) carrier liability for passenger death or harm, departing from tort rules. In *Garuda v. ACCC*⁹³, Garuda and other airlines were accused by the ACCC of secretly setting air freight pricing. Garuda claimed Article 29 of the Convention of Montreal protected them. It was declared that such rule doesn't apply here. Organizations: - ICAO, Montreal & Warsaw convention, Civil Aviation Safety Authority (CASA), IATA.

3.5 Conclusion

This chapter has talked about the short background of international conventions and their benefits. Even the reasons for changes and the essential articles, like where to file a lawsuit under Warsaw and Montreal, have been discussed. Each country has its legal system, and how these countries treated its cases under these conventions helped modernize its aviation history. Lastly, the effect of foreign organizations on each country's national situation, has been talked about.

⁹¹ Indonesia AirAsia Flight 8501

⁹² Lion Air Flight 610

⁹³ PT Garuda Indonesia Ltd v. Australian Competition and Consumer Commission (2012)

Chapter-04

Domestic Outlook Relating with Tort Reform under Aviation

4.1 Introduction

This part looks at Bangladesh's steps to address air safety issues. It starts with a look back at the history of rules and an investigation of their origins. The topic shifts to discuss how critical international treaties have impacted the aviation regulations in Bangladesh. This chapter will highlight a few cases by discussing how these rules could engage in reality. This chapter does an excellent job of showing the big picture of Bangladesh's efforts to make its skies safe for everyone to travel in.

4.2 Bangladesh's Aviation Law: Historical Context

We were all under the British control before to India and Pakistan's split. East Pakistan was the new name given to the region that is now Bangladesh after the partition of British India in 1947. East Pakistan was governed to all aviation-related laws and regulations that applied to Pakistan. Back then, Pakistan International Airlines was the sole airline operating in both regions. To assure civil aviation's safety, acceptable development, and oversight, a country needs an aviation authority. Because of this, the CAAP⁹⁴ was founded in the 1950s and was applicable to both East and West Pakistan. After a bloody battle, Bangladesh gained its independence from Pakistan in 1971. After gaining independence, it was crucial to create national organizations, such as those in charge of civil aviation. Under the Bangladesh Biman Ordinance⁹⁵, Biman Bangladesh Airlines took to the skies as the nation's primary airline in 1972.⁹⁶ Then, to regulate and control civil aviation in Bangladesh, the CAAB⁹⁷ was accepted in 1985. Ahead of it, DCA⁹⁸ and ADA⁹⁹ handled aviation affairs, but because there were issues

⁹⁴ Pakistan's Civil Aviation Authority

⁹⁵ 'Bangladesh Biman Corporation Ordinance 1977 which is now repealed by The Bangladesh Biman Corporation (Repeal) Act 2023'; (*Laws and Right*, 6th April, 2023) < <https://www.dhakatribune.com/bangladesh/laws-rights/308429/bangladesh-biman-corporation-repeal-act-2023> > accessed on 2 September 2023

⁹⁶ 'Biman Bangladesh Airlines', (*New World Encyclopedia*, 3rd February, 2022) < https://www.newworldencyclopedia.org/entry/Biman_Bangladesh_Airlines > accessed on 2 September, 2023

⁹⁷ Bangladesh's Civil Aviation Authority, 1985

⁹⁸ Department of Civil Aviation which is a Government Organization

⁹⁹ Development Agency of Airport (Company institution); it was developed in 1956 and worked below DCA so it can maintain engineering factors

with adequately managing the sector, the ICAO¹⁰⁰ advised the DCA to become a finer authority. Following this, ADA and DCA became one and CAAO¹⁰¹ 1982 was born. The CAAB succeeded the earlier legislation in 1985, and it continues to be Bangladesh's national authority in the aviation industry.¹⁰² The Ministry of Civil Aviation and Tourism of Bangladesh regulates the CAAB.

4.3 Bangladeshi Domestic Aviation: Tort Law and its Liability

A negligent Bangladesh airline may be liable for injuries or deaths under tort law. An aircraft component manufacturer may be responsible for damage. An airline may be liable for a pilot accident¹⁰³. In these instances, Bangladeshi airlines need insurance. The domestic aviation sector is under CAAB's supervision. They provide guidelines, laws, and suggestions to safeguard the aviation security and safety of the nation. Tort claims involving domestic aircraft would very certainly include CAAB rules.

4.4 Tort Reform's Impact on Aviation from a Bangladeshi Perspective

Bangladesh is not directly engaged with tort reformation in the aviation industry. Back in the 1970s, when the USA was growing its aviation sector, it was primarily a hot subject in that country¹⁰⁴. To enhance the business globally, several international organizations and conventions were established. Later, additional nations accepted these worldwide adopted conventions to construct their own aviation industries. Bangladesh is not an exception, as it has ratified a number of international conventions that place restrictions on both the amount of compensation paid to airline passengers and the liability of air carriers. The Warsaw and Montreal conventions are related.

Warsaw Convention: As part of Pakistan at the time, Bangladesh was not allowed to sign the Warsaw agreement on its own. In 1947¹⁰⁵, Pakistan joined the Warsaw convention, and in 1971, when Bangladesh gained its independence, it also ratified the convention automatically.

¹⁰⁰ International Civil Aviation Organization

¹⁰¹ Civil Aviation Authority Ordinance 1982

¹⁰² 'Civil Aviation Authority, Bangladesh' < <http://www.caab.gov.bd/corporate/histback.html> > accessed on 2 September 2023

¹⁰³ Taqbir Huda, 'US-Bangla Air Crash: A tort law perspective', *The Daily Star* (Dhaka, 27th March, 2018)

¹⁰⁴ n5

¹⁰⁵ 'Statutes of Pakistan and Air Law Instruments' <

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwj5gfib3I6BAxVByDgGHcONCOWQFnoECBQQAQ&url=https%3A%2F%2Fwww.icao.int%2Fsecretariat%2Flegal%2Fstatus%2520of%2520individual%2520States%2Fpakistan_en.pdf&usg=AOvVaw1a59_AHh1rrnma1qiWVb88&opi=89978449 > 4-5 accessed on 2 September, 2023

Montreal Convention: The 2003 implementation date follows a 1999 amendment to the convention. Since Bangladesh gained its independence in 1971, it signed the agreement in 1999, but it wasn't recognized by the ICAO until 2022¹⁰⁶. However, prior to that, the Carriage by Air Act 1966 and the Carriage by Air Act 1934¹⁰⁷ were adopted to put into effect the Warsaw Convention. Bangladesh's cabinet has approved ratifying the convention in 2019. Bangladesh's Carriage by Air (Montreal Convention) Act, 2020 was published in the country's government Gazette during 2021.¹⁰⁸

ICAO: It is also known as Chicago Convention served as the basis for the establishment of ICAO. On the 12th of January the year 1973, Bangladesh joined the ICAO after formally accepting and ratifying the Convention of Chicago. ICAO advocates on a global scale for a variety of concerns related to civil aviation, including safety, security, efficiency, and environmental preservation. Although it is not directly engaged in tort reform, ICAO does set laws for international air travel, including passenger rights and benefits (as addressed in the Montreal Convention) and baggage. The legal system in Bangladesh takes into account and settles upon these requirements¹⁰⁹. The United Nations' ICAO regulates air travel worldwide.

4.5 National Aviation Laws of Bangladesh Related to Tort Reform

The aviation industry in Bangladesh is governed by different statutes and rules, some of which have been repealed as a result of time and progress. Many of these statutes, however, are still in force. Relating with tort reform we have Carriage by Air Act, 2020 now. But the relevant sections of this Act are: Under section-1 of this act, passenger, luggage, and airline cargo are within the scope of this regulation; however, the armed forces, customs brokers, and government of Bangladesh aircraft are excluded. Section-3 mentions that the rights and obligations of air passengers have been made clearer by this Act and the Montreal Convention. According to section 4, a Montreal Convention member appears in court as an individual. Countries must follow the rules laid forth in the CPC, 1908¹¹⁰ while filing lawsuits, and the courts cannot take or sell the plaintiff's property. If a passenger dies in airline service, their

¹⁰⁶ James Jordan, 'Montreal Convention Comes into force in Bangladesh', (*HFW*) < <https://www.hfw.com/Montreal-Convention-comes-into-force-in-Bangladesh-January-2023> > accessed on 3 September, 2023

¹⁰⁷ This act was amended by the 1966 carriage by air act

¹⁰⁸ Keith Richardson, 'Bangladesh Cabinet's Approval of Legislation', (*HFW*) < <https://www.hfw.com/Bangladeshi-cabinets-approval-of-legislation-to-bring-about-ratification-of-MC99-Sep-19> > Accessed on 3 September 2023

¹⁰⁹ 'Civil Aviation Academy', (*Training by ICAO*), < <https://igat.icao.int/ated/TrainingCatalogue/Profile/105> > accessed on 3 September, 2023

¹¹⁰ Code of Civil Procedure, 1908

families are entitled to compensation under section 5 of this Act; nevertheless, each family has only one chance to file a claim in court. The court will determine how much money each relative will get based on the SDR¹¹¹ standard and then translated to Bangladeshi taka. The court has the option of limiting the airline's compensation and may consider suits from both inside and outside of Bangladeshi jurisdiction. Instead of filing a lawsuit, the family of a deceased passenger may submit an application for compensation to the airline under section 6 of this Act. The monetary award the family receives in court shall be same. Distribution of funds shall be made in accordance with section 5 and using a certificate issued according to section 7 of this Act. If the necessary certificate under section 7 is not provided, the airline may request that it be supplied. Section 7 requires that a surviving relative of the deceased passenger must get a succession certificate from the court. If family members cannot agree on how to divide the compensation money, the Succession Act of 1925 states that the court will make the decision using it. Section 8 mentions when the airplane pays the compensation according the certificate then they are free from any sort of further blame.

According to this article¹¹², the Convention's monetary references shall be converted into Bangladeshi currency which is Taka in accordance with the IMF's methodology or the methodology chosen by Bangladesh. If Bangladesh does not want to use this method, it may instead set fixed values based on a particular gold weight and shift these into Bangladeshi currency Taka. This article¹¹³ concerns the periodic review of caps, during which Bangladeshi officials will consider whether fines or compensation should be increased every five years to account for increase in the Bangladeshi market. To avoid having to battle their carrier responsibility issue in a Bangladeshi court, the parties might agree to have it arbitrated instead¹¹⁴ and all arbitration agreements signed in Bangladesh are bound to these guidelines of the act. According to this article¹¹⁵ it states that all airlines operating in Bangladesh must have insurance. There are numerous countries that demand airlines to provide evidence of insurance before they are allowed to fly there. Lastly, this relevant article¹¹⁶ of the Convention grants Bangladesh the ability to withdraw from the Convention by providing written notice to the Depository, which is the ICAO. The notification of withdrawal from the Convention shall take effect 180 days following receipt by the Depository.

¹¹¹ Section 2(b) of the 2020 Carriage by Air Act; n76

¹¹² Article-23 of the Carriage by Air (Montreal Convention) Act, 2020

¹¹³ Article-24 of the Carriage by Air (Montreal Convention) Act, 2020

¹¹⁴ Article-34 of the Carriage by Air (Montreal Convention) Act, 2020

¹¹⁵ Article-50 of the Carriage by Air (Montreal Convention) Act, 2020

¹¹⁶ Article-54 of the Carriage by Air (Montreal Convention) Act, 2020

4.6 Identifying Important Cases in the Bangladeshi Context

The growth of aviation sector indicates that there can be huge number of lawsuits in the upcoming years. However, many rules on this subject have been changed as a result of advancement in technology progress in the sector. Some suits regarding this issue will be discussed. In *Holmes v. Biman Bangladesh Corporation*¹¹⁷ the plaintiff was awarded compensating applying the UK legislation because it paid higher amount than Bangladeshi laws. A Biman Bangladesh Fokker F-27¹¹⁸ crashed due to pilot's negligence and there was no proper information about investigation as well as lawsuit detail. The Biman Bangladesh, a DOUGLAS DC-3¹¹⁹ crashed killing 5 peoples, and Biman's Fokker-28¹²⁰ both crashed and due to weather issue¹²¹ or whatever is the reason that was not disclosed properly but the important thing is people lost their lives. Biman Bangladesh Flight number 60 crashed after landing at Yangon, Myanmar and it was found out later by investigation that the pilot was negligent and failed to communicate with ATC regulations.¹²² Even in the accident of the US-Bangla flight 211 which occurred on March 12th, 2018 the Ministry of Nepal gave a report on the basis of an inquiry that was conducted.¹²³ The pilot was guilty and negligent of breaking the law by smoking in the cockpit and there was confusion on which runway to land on 02 or 20.¹²⁴ As many people died in the incident and lack of advance international legislation in Bangladesh was missing, the Bangladeshi government chose to accept the globally recognized Montreal convention and incorporate it into our standard, giving the case significant weight in the country's aviation sector.

¹¹⁷ 'Holmes v. Bangladesh Biman Corporation: HL 1989', (*Swarb.UK*, 2nd May 2022) < <https://swarb.co.uk/holmes-v-bangladesh-biman-corporation-hl-1989/> > accessed on 4 September 2023

¹¹⁸ '1984 Biman Bangladesh Airlines Fokker f27 Crash', (*Plane Crash Wiki*, 30th August 2023) < https://planecrash.fandom.com/wiki/1984_Biman_Bangladesh_Airlines_Fokker_F27_crash > accessed on 5 September 2023

¹¹⁹ 'ASN Aircraft Accident DC-3', (*Aviation Safety Network*, 10th February, 1972) < <https://aviation-safety.net/database/record.php?id=19720210-1> > accessed on 4 September 2023

¹²⁰ 'Fokker F-28 Crash' (*Aviation Safety Network*, 8th October, 2004) < <https://aviation-safety.net/database/record.php?id=20041008-0> > accessed on 4 September 2023

¹²¹ 'Biman Bangladesh Fokker F-28 plane crash Sylhet, Bangladesh', (*1001crash.com*, 30th January, 2010) < https://www.1001crash.com/transport-page-description-accident-BB_F28-Ig-2-crash-69.html > accessed on 4 September, 2023

¹²² Rumi Kawser, 'Biman Pilots Solely Blamed for 2019 Yangon Crash', *Dhaka Tribune* (Dhaka, 14th January, 2020)

¹²³ 'Final report on the accident investigation' (12th March, 2018) < https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwi5w u2z1peBAXxzDgGHb7xB_cQFnoECBYQAQ&url=http%3A%2F%2Fwww.caab.gov.bd%2Faaig%2F%2F%2FAGU%2520Final.pdf&usq=AOvVaw3OcyGABrTB-ZoBa8cyKI7L&opi=89978449 > accessed on 5 September 2023

¹²⁴ 'US-Bangla Airlines Flight 211' (*Plane Crash Wiki*, 11th August, 2023) < https://planecrash.fandom.com/wiki/US-Bangla_Airlines_Flight_211 > accessed on 5 September 2023

In the above-mentioned cases certain legislations of our country rather than the recent act could have been applied which could let the victims or their families gain compensation such as Tort law¹²⁵, Constitutional Law¹²⁶, Fatal Accident Act 1885¹²⁷, Code of Civil Procedure 1908.¹²⁸

4.7 Conclusion

The history of tort law in aviation in Bangladesh is significant. Warsaw, Montreal, and the ICAO were influential as the country adhered to international norms. Leading cases are analyzed to further demonstrate the intricacy and breadth of tort law's applicability in Bangladesh's aviation sector. The merging of global and domestic perspectives has improved our understanding of aviation tort law and its reformation in the country. These regulations, which guarantee everyone's safety and fair treatment, must evolve and improve as the country progresses.

¹²⁵ n103

¹²⁶ Writ under article-102 of the constitution of Bangladesh for violation of right to life (article-32).

¹²⁷ *ibid*

¹²⁸ S/19 of Code of Civil Procedure, 1908; Suppose the airline damages the victim or their moveable belongings/property. In that case, that victim has the right to file suit under this section of the act, and the jurisdiction is the place of occurrence, the work/business place/residence place of the offender.

Chapter-05

Conclusion

5.1 Introduction

In the closing chapter, the primary focus is on talking about the international conventions in short and pointing out the contrasts between those conventions and the laws our country has accepted and implemented. This chapter will be examining several situations, such as case perspectives from the previous time and modern times, to figure out the gaps and the findings in the sector. There will be a discussion on how the law operates and what laws already exist regarding the new legislation. In conclusion, some recommendations for the future will be offered, with the domestic viewpoint being considered.

5.2 Findings

It is clear that tort reform helped to survive and shape the aviation industry, which also helped to modify accident-related laws and policies. It is entirely relatable to the concept of the US and its domestic laws. However, from the international aspect, the impact of tort reform concept only applies to specific articles of the Warsaw Convention; the primary goal of this convention was to minimize airline liability for accidents, assuring legal stability and possibly lowering litigation costs. So, specific articles of this convention can be relatable with tort reform as it attempts to set regulations and limit damages in air transport accident cases. It limited how much passengers could claim for foreign flight injuries or luggage damage. Later, the Montreal convention came in 1999, which replaced the Warsaw convention. This one updated the compensation rates and made the language more unambiguous. Many countries ratified these conventions domestically for the smoothness and betterment of their jurisdiction in case of filing lawsuits regarding airline accidents for compensation. ICAO suggests nations enforce the Montreal Convention, which amends the rules about how airline companies bear liability when something goes wrong on a global flight. Many countries have agreed to this agreement because ICAO promotes it. This makes the laws about airline liability more evident around the world. In Bangladesh, the Montreal Convention was implemented as an act on 26th November 2020¹²⁹, which means that this act is enforceable from that period. However, the official ratification was done at the end of 2022. After the flight 211 incident, a suit was filed against

¹²⁹ n106

the airline but the airline company refused to give compensation under the Montreal convention as it was not implemented in Bangladesh.¹³⁰The main challenge of accepting this act is determining which compensation rate will be followed when an international dispute arises relating to Bangladesh. The current Montreal convention's compensation rate is updated¹³¹, but Bangladesh follows the old one. It is clear that the old or previous compensation rate is applicable for domestic lawsuits, but for international lawsuits, there needs to be more clarity. So, an update is needed. As discussed earlier, when the Carriage by Air (Montreal Convention) Act 1999 was not applicable, which means before the date of 26th November 2020 for accidents in the airline field, the related provisions of domestic laws such as Tort Law, Constitutional Law, Fatal Accident Act 1885¹³², Code of Civil Procedure 1908 could have been used.

5.3 Recommendations

Day by day the demand of flights is increasing in both international and domestic field. Strict and proper laws can prevent from airline crash and also develop the industry.

The Montreal convention that currently Bangladesh has provision that compensates¹³³ for delays¹³⁴ and suits can be filed for situations like this for the damage.¹³⁵ ICAO suggests that when an airplane is crashed, a proper investigation is needed to avoid the same incident and to know the reason properly¹³⁶. But in our country proper investigation¹³⁷ and professional expertise is needed so the actual reason can be found out. Airline companies should be focused to gain insurance shield to cover up damage liability in case they suffer from any accident. After the US-Bangla air crash incident the carrier got compensation from the insurance

¹³⁰ Sangam Prasain, 'Families of US-Bangla Airlines crash victims file \$19 million lawsuit' *The Kathmandu Post* (Kathmandu, 31st July, 2019)

¹³¹ '2019 Revised Limits of Liability Under the Montreal Convention of 1999, (ICAO; *Uniting Aviation*) < https://www.icao.int/secretariat/legal/Pages/2019_Revised_Limits_of_Liability_Under_the_Montreal_Convention_1999.aspx > accessed on 6 September, 2023

¹³² n103

¹³³ n77

¹³⁴ n73

¹³⁵ Tribune Desk, 'Emergency slide 'mistake' delays flight of Biman's new Dreamliner', (*Dhaka Tribune*, 12th September, 2018) < <https://www.dhakatribune.com/bangladesh/dhaka/155430/emergency-slide-%E2%80%98mistake%E2%80%99-delays-flight-of-biman%E2%80%99s> > accessed 6 September 2023

¹³⁶ 'The Convention on International Civil Aviation, Annexes 1 to 18' < [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKewjVxO7VnKeBAxWcZmwGHc_SDWUQFnoECCsQAQ&url=https%3A%2F%2Fwww.icao.int%2Fsafety%2Fairnavigation%2Fairnavigation%2Fannexes_booklet_en.pdf&usq=AOvVaw2XOkcqMESsqR746L_s-iTt&opi=89978449](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKewjVxO7VnKeBAxWcZmwGHc_SDWUQFnoECCsQAQ&url=https%3A%2F%2Fwww.icao.int%2Fsafety%2Fairnavigation%2Fnavigation%2Fannexes_booklet_en.pdf&usq=AOvVaw2XOkcqMESsqR746L_s-iTt&opi=89978449) > Annex 13 of the ICAO; accessed on 6 September, 2023

¹³⁷ ibid

company.¹³⁸The amendment of the new Carriage Act¹³⁹ is needed in our country where the revised compensation rate is mentioned. But applying that in Bangladesh might be a problem as the rate of compensation money would be too high. The victims along with the carrier should have the knowledge and meaning of the proper laws of Bangladesh. The victim family can take advantage of article-28 for advance payment from the airline but the instant compensation will be deducted later. Only filing suits for compensation is not the only work. In most cases it takes a long time to get the payment¹⁴⁰ so victims' family should get the compensation money as soon as possible.

5.4 Conclusion

In summary, this research has examined the problem from the viewpoints of both local legislation and international conventions. It has brought to light several results and gaps, and it has provided suggestions for more study or possible courses of action. The goal of the paper is to assist a greater awareness of the diverse area of study that was covered.

¹³⁸ 'Airline Receives Compensation' (*Asia Insurance Review*, the month of May, 2018) < <https://www.asiainsurancereview.com/Magazine/ReadMagazineArticle?aid=40871> > accessed on 6 September, 2023

¹³⁹ n106

¹⁴⁰ Shariful Islam, 'US-Bangla plane crash in Nepal: Victims' families face long wait for compensation' *Dhaka Tribune* (Dhaka, 12th June of 2018)

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