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Dark pattern sales deemed 'cybercrime'

Online malpractices by airlines, travel portals are "cybercrime", says Consumer Affairs Secretary; Ministry to examine complaints about paid airline seats, denied boarding, delays in refunds

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Ministry of Civil Aviation has asked low-cost carrier IndiGo to rectify its website. | Photo Credit: Reuters

Following a series of complaints regarding practices by airlines and online travel agents that trick consumers into making unintended purchases — such as paying for seats — while booking flight tickets, which one government official called a "cybercrime", the Ministry of Civil Aviation has asked low-cost carrier IndiGo to rectify its website.



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The rap for the airline that enjoys a 60% market share comes days before a Consumer Affairs Ministry meeting to discuss such complaints from air travellers to be held on November 9. Attendees will include representatives from the Ministry of Civil Aviation, airlines, online travel agents, and NGOs representing consumers.

The agenda of the meeting is to discuss complaints about airlines showing all available seats as paid at the time of purchasing a ticket, incidents of passengers denied boarding despite a valid ticket, as well as delays in refunds for cancelled flights.

'Dark patterns'

When asked whether some of these practices amounted to "dark patterns" where the user interface of websites is designed to dupe consumers, Consumer Affairs Secretary Rohit Kumar Singh told *The Hindu*, "A dark pattern is one where an entity nudges consumers to buy products they didn't intend to, which is an unfair trading practice, and can constitute a cyber-crime." He added that in the current online environment, there seemed to be a systemic practice of fooling consumers.

The Ministry has received nearly 10,000 such complaints through the National Consumers Helpline over the last eight to nine months.

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A cursory analysis of airline websites, apps and online portals by *The Hindu* showed that such "dark patterns" were widely prevalent. Queries sent to IndiGo, SpiceJet and MakeMyTrip went unanswered till the time of going to press.

Manipulating seat selection

For instance, IndiGo's website deploys a technique known as "false urgency" to give consumers booking an air ticket the impression that they have to pay an extra fee of ₹99 to ₹1,500 to buy a seat to complete the purchase, as all free seats are shown as unavailable. Sometimes, there will be four or five free seats available but they are relegated to the bottom of the aircraft cabin and can be harder to locate and navigate to on the webpage.

While passengers can hit the "skip" button at the end of the seat selection page, they are not informed in a transparent manner that free seats will be auto-assigned to them if they do not wish to pay the extra sum.

On IndiGo's mobile application, even the option to "skip" is placed in the top right corner and displayed in a tiny font. Such a practice is also known as "interface interference", where the website design highlights certain specific information and deliberately obscures other information.

Ministry of Civil Aviation sources said on Thursday: "This is a design of IndiGo website template and there is no malafide intent." They added that the airline has now been directed to provide a clear option for auto-assigned seats.

Extra fees

There are other malpractices, such as SpiceJet's booking website goading passengers to buy travel insurance by using phrases such as, "I will risk my trip" if they choose to decline the purchase, inducing fear that doing so could be harmful.

Then there is also “basket sneaking”, such as when MakeMyTrip adds a convenience fee when the consumer reaches the payment gateway after completing their booking. Some other websites provide this information upfront before confirming a booking. An industry source defended the move by saying this was a standard industry practice.

These forms of dark patterns have been defined in the draft guidelines of the Ministry of Consumer Affairs, which was released on September 7 to seek public comments for a period of 30 days.

‘Free seats available for all’

In 2015, the Directorate General of Civil Aviation (DGCA) had issued a circular allowing airlines to “unbundle” airfares for certain items, which can be charged separately. These include preferential seating, meals, access to lounges, and check-in baggage above 15 kgs. However, the DGCA requires these to be offered only on an “opt-in” basis. These products must also have a clear description “without any ambiguity”, it said.

In their reply before a Parliamentary Standing Committee on Transport, Tourism and Culture which released its report on airfares in August, airlines explained that the differential pricing for seat selection was based on factors such as leg room, proximity to exit doors allowing faster boarding and de-boarding, as well as whether they were window or aisle seats. Airlines also said that seats to “all” passengers were given free of cost with random seat allocation, and they were asked to pay only if they selected a preferred seat different from the allocated seat.

Refunds and compensation

Some of the other concerns pertaining to denied boarding and refunds are covered in the Ministry of Civil Aviation’s “Passenger Charter” made public in March 2019, but complaints abound as airlines sometimes fail to implement it. According to the Charter, in case of a flight cancellation, an airline must accommodate a passenger in an alternate flight. If it fails to inform the passenger at least 24 hours before departure, then it has to also pay out an additional compensation of ₹5,000 to ₹10,000. Similarly, for denied boarding, there is a compensation of ₹10,000 to ₹20,000 in certain situations. Refunds have to happen immediately if payment is in cash, or within seven days if through credit card.

The August report of the Parliamentary panel demanded that airlines must display seat-wise airfares to ensure transparency, while also urging the DGCA to ensure proper implementation of the Aircraft Rules, 1934 to ensure that airlines earn only a “reasonable profit” while pricing their tickets. It also called for an effective mechanism to address consumer grievances in a time-bound manner.



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