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**Protection of Consumer Rights in COVID-19 Pandemic  
Airlines & Package Tour Refunds**

*Contribution of*

*Mumbai Grahak Panchayat - MGP*

*India*

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# Protection of Consumer Rights in COVID-19 Pandemic

## Airlines & Package Tour Refunds

By  
Dr. Archana Sabnis  
Adv. Shirish Deshpande

MGP - INDIA  
([mpanchayat@gmail.com](mailto:mpanchayat@gmail.com))  
Website: [mymgp.org](http://mymgp.org)



Paper for 5th Intergovernmental Group of Experts (IGE)  
Conference of UNCTAD - 5th & 6th July 2021

# **PROTECTION OF CONSUMER RIGHTS IN COVID-19 PANDEMIC**

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## **AIRLINES & PACKAGE TOUR REFUNDS**

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**By  
Dr. Archana Sabnis  
Adv. Shirish Deshpande**

**Mumbai Grahak Panchayat  
MGP - INDIA  
([mpanchayat@gmail.com](mailto:mpanchayat@gmail.com)  
Website: [mymgp.org](http://mymgp.org))**

# PROTECTION OF CONSUMER RIGHTS IN COVID-19 PANDEMIC

## CASE STUDY OF AIRLINES & PACKAGE TOURS REFUND

### ABSTRACT

The Covid-19 pandemic has impacted every walk of life in practically every country in the world for the last one and half years. Almost every industry such as food, hotels, construction, aviation, tourism, etc. has been severely impacted by the pandemic. Aviation and Tourism are two most affected industries, which came to complete standstill. Many other industries dependent on aviation and tourism have also suffered the inevitable collateral damages.

Most of the passengers and travelers who had booked Airline Tickets and Tours with the Packaged Tour Operators (PTOs) during this period are being denied their rightful refunds and are therefore forced to face huge financial losses. The Airlines and PTOs are facing financial crunch due to unsustainable cash-flow since there is a virtual standstill of their operations which generate revenue for them. According to estimates by the International Air Transport Association (IATA) the airlines owed \$ 35 billion to passengers of cancelled flights as of June 2020. The amount owed by PTOs to travelers of cancelled package tours globally could be very huge, although no estimates are available.

Refund to airline passengers and tourist travelers involved not only national but global policy issues. It is necessary that consumers are provided equal protection world-over by Member States, when it comes to refund of cancelled flights and cancelled package tours. It involves players of various sectors such as hotel, transport (air, rail, road, water), diplomatic missions (for Visas), tourist sites etc. from different countries. Such a multi-layered issue impacting the refund of billions of dollars to consumers all over the world on one hand and at the same time involving the survival and sustainability of two major industries such as Aviation and Tourism, raises a major challenge before the Member States. Although Force Majeure is invoked by most of the countries, it does not deprive the consumers from his right to full refund, but he will not be entitled to ask for the compensation. This has further complicated the issue.

To discuss such an issue fruitfully, there is no better platform than the Inter-Governmental Group of Experts (IGE) on Consumer Protection of UNCTAD. UNCTAD has a strategic role to play to facilitate and enable discussion among Member States with a view to strike a balance between protection of consumers' right to full refund and survival of the aviation and tourism industry.

*Clause 78 of UN Guidelines for Consumer Protection (UNGCP) recognizes TOURISM as one of the important sectors impacting consumer interest. It provides that Member States should ensure that their consumer protection policies are adequate to address the marketing and goods and services related to tourism, including, but not limited to travel, traveler accommodation and timeshare. Member States should, in particular, address the cross-border challenges raised by tourism including enforcement cooperation and information sharing with other Member States and should also cooperate with relevant stakeholders in the tourism-travel sector.*

*Clause 97 (a) UNGCP, 2015 states that it is the function of the IGE to provide forum for multilateral consultations, discussions and exchange of views between Member States, on matters related to Guidelines, in particular their implementation and the experiences arising therefrom.*

*Clause 97 (b) enables the IGE to undertake studies and research periodically on consumer protection issues related to Guidelines and disseminate them with a view to give greater effectiveness to the Guidelines.*

*Clause 97 (g) empowers the IGE to make appropriate reports and recommendations on the consumer protection policies of Member States, including the application and implementation of these Guidelines.*

It will therefore be most appropriate for the 5<sup>th</sup> IGE Conference to discuss this global issue of refund of packaged tours cancelled due to COVID-19 pandemic.

This Paper by MGP – India should hopefully serve as a trigger for elaborate discussions and action plan to be worked out at the 5<sup>th</sup> IGE being held on 5<sup>th</sup> and 6<sup>th</sup> July 2021.

### 1. INTRODUCTION

Aviation and Tourism are two fastest growing multifaceted global industries with a huge turnover. It is intermingled with and interdependent on multiple other industries like hotels, restaurants, food chain suppliers, local small-scale industries, entertainment industry, amusement parks, museums, guides, restaurants etc. and the transport sector including airways, waterways and roadways (hereinafter referred to as the 'stakeholders'). Livelihood of millions of people (agents, guides, hotel staff, small time shops, handicraft industry etc.) is dependent on Aviation & Tourism industries.

Due to this unprecedented pandemic of COVID-19, travel and tourism has been severely disrupted due to

unforeseen cancellations of flights and tours. A huge amount of passengers' money has been blocked with various airlines. The passengers are, no doubt, entitled for full refund of their air tickets for the flights which got cancelled due to COVID pandemic. But on the other hand, the airlines are facing a cash crunch due to the total suspension of flight operations for almost a year. If the airlines are made to refund huge amounts, many of them may land into insolvency.

Same is true with the Packaged Tour Organizers (PTOs). Travelers are rightfully demanding the refund of their money advanced towards the packaged tours, which were subsequently cancelled due to COVID pandemic. The PTOs contend that they have advanced a large portion of this money to different stakeholders towards such packaged tours, for which they have not received any refund. PTOs have therefore expressed their inability to give any cash refund to the travelers. The complex nature and functioning of tourism, interdependency of many other stakeholders and its global nature has made the issue of refund very complicated, as compared to the refund of the airlines. Considering the fact that the livelihood of millions of people (agents, guides, hotel staff, small time shops, handicraft industry etc.) is dependent on the tourism industry, it is necessary that this industry should survive. But at the same time, travelers' right to full refund also needs to be protected at any cost.

This Paper therefore makes an attempt to showcase how some Member States including UK, US, EU, India etc. have tried to address this situation.

### 1.1 On-line Surveys by MGP India

After receiving multiple complaints about non-refund of the air ticket cost, Mumbai Grahak Panchayat (MGP), a Mumbai-based voluntary consumer organization conducted an on-line survey in 2020. This survey had 1001 participants on behalf of 3954 passengers from 10 countries and 13 States of India.

Name of Airlines	No. of Complaints Recd.	No. of Tickets Booked	Amount involved (INR)
Indigo	266	1149	1,37,99,069
Spice Jet	197	879	1,03,85,577
Air India	178	651	66,41,800
Go Air	112	581	76,24,003
Air Asia	34	116	13,00,733
Air Vistara	41	114	16,22,856
Others	173	464	94,92,456
<b>Total</b>	<b>1001</b>	<b>3954</b>	<b>5,08,66,494</b>

After obtaining the survey results, MGP took up the matter with UNCTAD. UNCTAD issued an Advisory dated 4<sup>th</sup> June, 2020 and called upon Member States to ask the airlines to respect travelers' right to refund. UNCTAD also suggested that airlines may be allowed to issue credit vouchers, provided the same are voluntarily accepted by the travelers. The Supreme Court of India in a Public Interest Litigation gave a landmark judgement and tried to strike a balance to protect the interest of airlines and the passengers.

#### Supreme Court of India harmonizes interests of Airlines and Passengers Supreme Court Endorses Passengers' Right to Full Refund Allows Airlines in Financial Distress to issue Vouchers

The Supreme Court of India, in its landmark order dated 1<sup>st</sup> October 2020, directed all airlines operating ex-India to give full refund to the travelers whose flights got cancelled due to COVID pandemic. Nevertheless, considering the critical financial condition of some airlines, the Supreme Court allowed the airlines in financial distress to issue credit vouchers with flexibility and incentives.

- Credit Shells to be:**
- Transferrable
  - Re-routable
  - Incentivized with value enhancement
  - Valid only up to 31<sup>st</sup> March 2021
  - Encashable after 31<sup>st</sup> March 2021

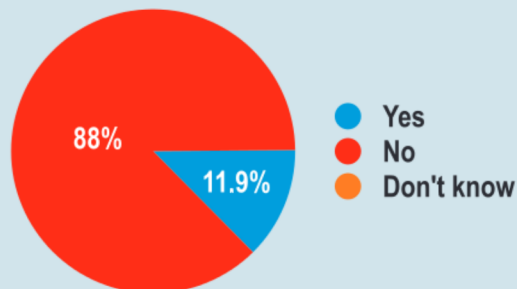
### 1.1.2 Packaged Tours

In the 2nd survey conducted by MGP, 5000 travelers participated, claiming refund of the cancelled packaged tours, out of which 65% were senior citizens and 75% of the tours that were cancelled were international tours. The survey results revealed that \$ 61,607,460 of the travelers' money is blocked with 5 major PTOs towards the advance payment made by the travelers.

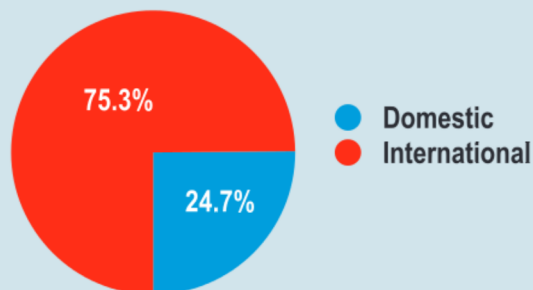
Total Responses 1423	Total travelers 5031	Senior citizens 3054
Type of travel	Domestic 24.7%	International 75.3%
Money blocked	500 Million INR	

Most of the PTOs have offered credit vouchers for future tours to these travelers, instead of full refund. However, 88% of the travelers are not willing to accept these credit vouchers, considering their age, government's travel advisory and uncertainty about future travel plans.

Q. 27. Are you willing to accept the Credit Voucher/Credit Coupon in lieu of refund?  
1,433 responses



Q. 3. Type of your Tour  
1,423 responses



Q. 24. Is your Tour Operator going to deduct any cancellation charges?  
1,375 responses



Considerable money has been advanced towards local transport, hotel accommodation, visa fees and taxes, apart from the air travel. Though this survey comes only from one country, the travelers are affected worldwide as 75.3% of the cancelled tours were international tours. Hence, the issue of refund cannot remain restricted to any one country.

Apart from the stakeholders mentioned above, many PTOs have advanced cross-country payments to the service providers like hotels, local tours, amusement parks, museums, guides, restaurants etc. Considering the universal nature of the problem and the fact that the majority of the cancelled tours involved international travel, it is very difficult for an individual or an individual nation to address this international issue. This issue therefore requires a global platform for effective resolution.

Keeping in mind UN Guidelines for consumer protection as referred earlier, it would be appropriate for IGE of Consumer Protection Law and Policy to step in and facilitate consensus among Member States for protecting consumers' right to refund without jeopardizing the interest of the Aviation and Tourism industry.

## 2.1 Measures Undertaken Globally to Address the Refund Issue

During the pandemic which has created an unprecedented situation, various consumer bodies and the governments have taken actions to achieve the balance between protecting consumers and supporting the Aviation and Tourism industry.

A few countries including Australia, China, UK, USA and Member States of the European Union, have directed their tourism industry to respect consumers' right to a full refund.

European Commission, in its Recommendations dated 13<sup>th</sup> May, 2020 to its Members, has recognized consumers' right to refund. While taking note of the liquidity crunch of the Aviation and Tourism industry, EC has recommended that the airlines may be allowed to issue credit vouchers in lieu of cash refund to the consumers by making such credit vouchers more attractive. EC has also recommended protection against possible insolvency of the airlines or the PTOs with a view to protect consumers' interest. ([EC Recommendation dated 13th May, 2020](#))

UNCTAD has issued the Advisory dated 4<sup>th</sup> June 2020, to the Member States regarding airline refund whereby "right of the consumers to refund" has already been recognized. UNCTAD has suggested that credit vouchers may be offered to the consumers, not as a compulsion, but as a choice of the consumers. This has helped the oppressed passengers to a great extent. This advisory of UNCTAD was also placed by MGP before the Supreme Court in a PIL on airlines refund as referred earlier. The Government of India, though at the belated stage, has now taken steps to support the airlines by extending loan guarantee schemes to airlines.

Though these refund guidelines for the air ticket charges have given relief to some extent to the consumers, the major part dealing with refund of cancelled packaged tour charges remains unaddressed.





## UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

PROSPERITY FOR ALL

### Airlines must respect consumers' rights

04 June 2020



Written by

Pamela Coke-Hamilton, Director of International Trade and Commodities, UNCTAD

Global lockdowns to contain the spread of COVID-19 currently affect half of the world's population and 4.5 million flights are expected to be cancelled until 30 June.

#### Fighting abusive practices, allowing amicable solutions

Governments should intensify their efforts to prevent practices that are damaging to the economic interests of consumers.

They should ensure that manufacturers, distributors and others involved in the provision of goods and services adhere to established laws and mandatory standards, as recommended in the UN Guidelines for Consumer Protection.

Governments must fight abusive practices in all sectors, including aviation.

[China](#) established a free ticket exchange policy for all tickets purchased before January 2020. The [United States](#) warned airlines of their obligation to refund cancelled tickets to consumers and [India](#) gave airlines a 30-day period to make refunds effective.

[Consumers International](#) reports that its member consumer associations from China, Malaysia, Romania, Peru, the United Kingdom and the United States have also called on businesses to respect consumers' right to refunds for travel bookings.

The consumer association [MGP India](#) called for international guidelines to ensure airlines respect consumers' rights.

The [European Union](#) issued a recommendation to make travel vouchers an attractive alternative to cash reimbursement, allowing for vouchers to be issued with a validity of 12 months after which the reimbursement is actionable.

#### Ensuring adequate consumer protection

As governments around the world provide multi-million-dollar state aid to airlines to avoid bankruptcy, airlines should not abuse the rights of affected consumers, especially the most vulnerable ones.

Governments should advise airlines to provide full refunds if consumers don't want to accept vouchers, and to provide appropriate and complete information regarding consumers' options.

In order to adequately protect consumers, UNCTAD calls on governments to:

1. Engage with airlines to design satisfactory voluntary voucher schemes, while respecting consumers' rights;
2. Enforce consumer protection laws against abusive business practices such as penalties or fees and breaches of refund rights;
3. Provide clear, precise and accessible information on consumers' rights in case of cancelled flights, including refunds;
4. Ensure a transparent process for the confirmation, cancellation, return and refund of products and services;
5. Ensure effective dispute resolution and redress systems for consumers, especially through electronic means.



## 2.2 Current situation in various countries

Steps are taken by different countries to support the tourism industry and travelers. These steps vary from declaring various packages to support the industry/ staff, waiver of tax/ accommodation tax, waiver of fees, insurance packages to cover the staff, allowing tour organizers to defer the repayment of their loans, additional fiscal policy to support tourism etc. Governments have been taking unprecedented steps to respond to the crisis through general economics stimulus packages, however, there is still scope for further improvement. Though most of the countries have taken steps to support the tourism industry, unfortunately, there is no sufficient and satisfactory protection awarded to the consumers/ travelers. Also, there is no data available regarding how these measures have helped the travelers/ consumers. Even the extent and nature of help offered to the travelers is not well documented.

Unfortunately, despite the aforementioned measures such as packages, waivers and concessions, travelers' grievances pertaining to refund remain unaddressed.

In the light of this background, welcome steps are taken by the European Commission (Regulation (EC) No 261/2004), USA, CMA-UK and a few other countries, who have recognized Consumers' Right to Full Refund.

Countries like Italy, Lithuania, France, Belgium, Greece have instructed PTOs to issue refund CVs for cancelled trips or to give alternate holiday packages. Lithuania has in addition, instructed for giving transferrable CVs to the consumers.

Few other countries like Turkey, Abu Dhabi, Iceland, Belgium, UAE have given relief to the PTOs in the form of suspension of tourism and municipality fees, rebate on rental values for restaurants, tourism and entertainment sectors, waiver of the accommodation tax and membership fees.

Turkey, in addition to exemption for all vehicles from road toll tariffs until the end of 2020, has also offered insurance to the PTOs to take care of refunds, up to 72 hours before a trip. However, the insurance companies are allowed to break contracts without consequence- alternative and equivalent holidays may be offered.

Bhutan stands out in being the only country to refund the whole tour cost including the visa fees received by Tourism Council of Bhutan, for tours cancelled with effect from 1st January 2020 due to Cononavirus.

Colombia, Croatia, Denmark, Canada are trying to help the PROs by making bank loans available for additional liquidity, as well as offering credit to the tourism sector, including airlines. They are also giving compensation to the PROs.

### **“Refund is a Right and Voucher is a Choice”: asserts European Commission**

The European Commission (EC) in its comprehensive directions dated 13th May, 2020, called upon European member nations to respect Passengers' and Travelers' Right to Full Refund in case of flights and packaged tours cancelled due to COVID-19 pandemic.

EC has observed that passengers and travelers have the choice between cash reimbursement and reimbursement in the form of a voucher. The numerous cancellations entailed by the COVID-19 pandemic have led to an unsustainable cash flow and revenue situation for the transport and travel sectors. The liquidity problems are exacerbated by the fact that they have to reimburse the full price of the package to the traveler while they do not themselves always receive reimbursement of prepaid services that form part of the package. This can de facto result in an unfair sharing of the burden among the tour operators in the travel ecosystem.

If the airlines or PTO becomes insolvent, there is a risk that many passengers and travelers would not receive any refund at all. EC has therefore recommended making credit vouchers more attractive as an alternative to reimbursement in money. This would help to ease problems of the Airlines and PTOs and could ultimately lead to better protection of the interests of the passengers and travelers. EC has therefore also recommended that these credit vouchers should be protected against insolvency.

The bottom line of EC recommendations is:

- Refund is a Right and Voucher is a Choice
- Accepting the Credit Voucher is entirely consumers' choice
- Airlines & PTOs should make Vouchers more attractive
- Government should protect such Credit Vouchers against insolvency.

### Australian Competition and Consumer Commission

Travel Advisory issued mandates the travel agents to be a member of ABTA, which makes it mandatory to give ABTA Bond, to provide for reimbursement to the travelers in case of financial failure of the travel agent.

Refunds or other remedy such as credit vouchers are offered if flights or other travel services such as cruises are cancelled. However, if these services are cancelled due to government restrictions, consumer rights under the consumer guarantees may be impacted.

ACCC encourages all businesses to treat consumers fairly and compassionately.

ACCC welcomes the decision by many businesses to offer refunds to all ticket holders, and expects other event and travel businesses to also offer remedies to all affected consumers when events or travel services are cancelled.

### United Kingdom

CMA-UK has recognized the statutory right of the consumers to get full cash refund within 14 days from termination of their package holiday contract. UK law gives immunity to travelers from losing their money or being stranded abroad. Additionally, the law also mandates to obtain an ATOL license, which provides a full refund for the holiday in case the business collapses while the traveler is on holiday.

Travel insurance purchased before January 21, 2020 with Cancel for Any Reason (CFAR) coverage, covers cancellations for reasons not otherwise covered by a standard travel insurance “such as fear of traveling due to coronavirus or simply not wanting to travel to a country that may be affected,”.

### CMA-UK Directs Full Refund on Cancelled Packaged Tours

In its open letter dated 10th July, 2020 to the packaged travel sector, the Competition and Markets Authority (CMA), UK has called upon all PTOs in the UK to grant full refund to travelers whose packaged tours were cancelled due to COVID-19 pandemic. CMA has emphasized travelers' statutory right to full refund within 14 days without any cancellation charges where the packaged tours are cancelled for circumstances beyond their control.

Despite such an open letter, the CMA has received 23,000 complaints from travelers about non-refund of their tour cost. CMA-UK, therefore, in its latest open letter dated 13th May, 2021, observed that even if the PTOs have not themselves been refunded by third parties like airlines, hotels etc., does not in any way relieve them of their obligations towards the consumers. PTOs are legally obliged to refund consumers in these situations, irrespective of whether funds are first received back from third party service providers.

### 2.3 Visa Fee and Taxes

This is yet another gray area, where a huge amount of consumer money has been blocked. This area needs to be explored as an upcoming issue.

Bhutan is the only country to take a leap forward to refund the Visa fees.

Governments should also consider refunding the taxes paid by the travelers towards the event which never happened or the services which were never utilized.

In case of Visa fees, perhaps an option of re-validating the Visa without any renewal charges could be considered, deducting a reasonable fee towards the administrative expenses.

Packaged tours being a global issue, the UN must step in and issue guidelines to all Member States regarding refund of packaged tour charges including Visa fees, government taxes etc.

### Action by MGP - INDIA

- Conducted on-line surveys of airline passengers and Packaged tour travellers.
- Called upon Tour Operators to give a refund.
- Letters sent to Central Aviation and Tourism Ministers
- Highlighted the issue in the media.
- Meeting with The State Tourism Minister and an MP to seek government intervention and for issue of uniform guidelines.
- Requested UNCTAD to issue an Advisory to Member States for refund.
- Initiated legal battle-
  - Approached Supreme Court for airline refund
  - Filed Class Action Complaint against 5 major PTOs before Central Consumer Protection Authority (CCPA) under the Consumer Protection Act, 2019, claiming refund of the tours cancelled due to COVID-19

### 3.0 Expectations from IGE - UNCTAD

**5<sup>th</sup> IGE conference on Consumer Protection Law and Policy is organised by UNCTAD on 5<sup>th</sup> and 6<sup>th</sup> July, 2021. The IGE is a platform to provide multilateral consultations and exchange of views between the Member States on matters related to UN Guidelines for consumer protection. Clause 78 of UN Guidelines is on a specific area of Tourism. Considering denial of legitimate refund to millions of consumers' worldwide, UNCTAD Secretariat may be pleased to flag this issue for discussion and further action at this IGE conference.**





**MGP – INDIA**

**Is grateful to UNCTAD  
for issuing advisory  
to member states  
calling upon them  
to direct airlines  
to respect  
consumer's right  
to refund**