

TICKET TO (JAIL)? – ADDRESSING TICKET SCALPING IN INDIA

In the months to come, Indian audiences will be privy to performances by several big-ticket artists. These include Coldplay, Diljit Dosanjh, Dua Lipa, Arijit Singh, Bryan Adams, Maroon 5 and Prateek Kuhad, amongst others. In addition to music events, India also hosted the ICC Cricket World Cup last year, attending which seemed to be a sport in itself. Across the world too, the entertainment industry is booming. It has been reported that in the next few years sports and music tourism will represent a 1.5 trillion USD economy. The advent of technology leading to easy digital payments, online ticketing platforms and digital tickets coupled with the increase in international tourism has led to this surge. However, as most new trends go, this has resulted in a worrying issue, that of scalping. Ticket scalping is not a new phenomenon to the entertainment industry. In fact, black marketeering of tickets has existed ever since cinemas gained popularity, as famously portrayed by Aamir Khan in the film ‘Rangeela’. The practice continued with sporting events like cricket matches. Latterly, it has morphed into a more sophisticated and anonymous online form, with the onset of bots and automation.

In the past year we have seen many instances of ticket-scalping online both abroad and at home. Most recently, there was an uproar about the sale of Coldplay tickets in India with tickets actually priced at INR 2500 being resold for over INR 30,000. Fans looking to watch Diljit Dosanjh perform his ultra-successful ‘Dil-luminati’ tour shelled out as much as INR 80,000 for tickets that originally sold at INR 9000. Both instances of ticket scalping have led to intervention from authorities on different levels. The CEO of BookMyShow, the ticketing platform for Coldplay’s India tour was summoned twice by the Mumbai Police’s Economic Offences Wing. Further, the platform itself published an Instagram post warning fans against the sale of ‘fake’ tickets from reselling platforms and distanced themselves from any such resales. In Delhi, the High Court issued a probe into ticket-scalping activities that occurred during the sale of tickets for Dosanjh’s tour, seeking responses from both the state and central government about issues such as trade and taxes.

Abroad, in the United States, Ticketmaster (the country’s foremost ticketing platform) faced immense pressure from users and government authorities after they were sued for fraud and price-fixing allegations post ticket-sales for Taylor Swift’s acclaimed Eras Tour. The scandal has probed Ticketmaster itself to call upon the US Congress to regulate ticket-scalping in a more robust manner. Recently, the European Commission informed Ticketmaster that it could have breached several of the Union’s laws by inflating the price of tickets for the Oasis concerts using its ‘dynamic pricing’ strategies. Further, the United Kingdom’s Competition and Markets Authority also kickstarted an investigation into Ticketmaster’s functioning. Dynamic pricing allows Ticketmaster to increase costs

based on demand, a practice common in the United States but now being adopted in other countries as well. Both bodies reiterated their commitment to transparency and the protection of consumers' rights under the relevant consumer protection laws. The US Justice Department alleged that Ticketmaster is able to make arbitrary decisions owing to its monopoly over the concert market which kick-started anti-trust proceedings. These instances occurred even though the European Union has some of the strictest anti-scalping laws, especially under the newly instituted Digital Services Act which increases obligations on secondary ticketing marketplaces. The Act has introduced measures such as verification of third-party sellers, mandatory reporting by ticket companies, clear indications on platforms that tickets are being sold by third-parties and the all-round prevention of practices that “manipulate consumers into decisions”.

The US presently has no federal legislation preventing ticket-scalping and related issues. States employ legislation such as the Better Online Tickets Sales Act (BOTS) 2016 to prohibit the “use of software to enable scalping” and the purchase of large quantities of tickets. States such as New York, New Jersey, Illinois and Pennsylvania have made reselling tickets without a license illegal. Pertinently, in a case against StubHub (a resale platform that was also under the fire in India due to its involvement in the resale of Coldplay tickets) a state-level appeals court in the US ruled that StubHub was not liable for breaking the law by listing a ticket priced at 260% of its face value. This is because it classified as an intermediary and thus possessed immunity under Section 230 of the Communications Decency Act (similar to Section 69A of India's Information Technology Act).

The French Criminal Code forbids and fines the resale of tickets at a price higher than face value for all sporting, cultural or commercial events without due authorization from the organizer of such event. In Australia, a few states have introduced legislations such as The Major Events Act 2009 which seeks to protect fans from “being ripped off” by scalpers who sell tickets at high premiums. Further, several groups in the country have called on policymakers to shut-down platforms such as Viagogo (a ticket resale platform owned by StubHub) owing to their role in selling tickets at highly inflated amounts. Japan has also introduced a law that penalizes the resale of tickets but provides a required exception for instances in which tickets are sold for ‘personal use’.

With a large young demographic that is increasingly willing to spend money on experiences, it is important to understand where India stands. Presently, we have no legislation directed towards the regulation of ticket scalping. The Consumer Protection Act protects consumers from “unfair trade practices” which include misleading consumers about the price of goods and hoarding or destructing or refusing to sell goods or provide services if such actions would raise or are intended to raise the

price of such goods or services. The Bharatiya Nyaya Sanhita 2023 has the capacity to penalize ticket-scalping in certain instances. For instance, since ‘organised crime’ is an economic offence, an organized effort at scalping tickets, particularly using coercion or fraud, would be illegal. Further ‘cheating’, ‘criminal conspiracy’ and ‘criminal breach of trust’ could also help in regulating ticket-scalping. In *Mandeep Singh v. Union Territory of Chandigarh & Ors.* the High Court punished an individual for selling tickets for a cricket match on eBay at an extremely high price under Section 420 of the Indian Penal Code (‘cheating and dishonestly inducing delivery of property’). Very recently, in response to the furore created by the sale of tickets for the Coldplay concert to be held in Navi Mumbai, the Maharashtra Cyber Department has issued a framework that seeks to set protocols to curb ticket-scalping with effect from 15th December 2024. It includes measures such as random verification of attendee identities, QR codes inscribed with attendee names and the usage of AI to prevent bots, amongst others.

Therefore, while piece-meal regulations do exist, ticket scalping per se has not been penalized in India through the enactment of a single, targeted legislation. However, it has become apparent that as technology continues to develop and the desire to watch one’s favourite artist/sport intensifies and persists, the cleft created by the lack of effective legislation will continue to widen. This will allow resellers to thrive and in-turn defraud and hoodwink consumers. The introduction of dedicated legal provisions that outline the ambit of ticket-scalping, related liabilities and penalties are thus imperative.

For starters, regulations should clearly allot liabilities and determine which entity (platform or reseller) would be responsible in which situation. Specifically, provisions will have to address the sale of tickets in secondary markets and protect consumers from their predatory and profiteering policies. This is challenging considering the extremely tilted and vague operations of these platforms. Needless to say, regulations will have to tackle technical issues such as the use of automated systems that jump queues and purchase tickets in bulk. Compliance could be assured through security audits and quarterly reports detailing ticket take-downs, user blocking and the introduction of grievance redressal mechanisms. Casting specific reporting obligations on reselling platforms, such as under the EU’s Digital Services Act, would be instrumental in ensuring accountability and responsibility. Further, regulations must not only tackle re-sales at exorbitant pricing and processing fees but also rising issues like the lack of transparency and dynamic pricing undertaken by ticketing platforms. At the same time, regulators must be cognizant that burdensome compliances will deter the creation of new platforms, and even possibly result in monopolistic practices. Loopholes in proposed regulations are bound to be exploited. Therefore, the recognition of practical realities and the creative use of technology in the identification of violators and law enforcement is essential while drafting such laws.

Such measures will not only prevent consumers from being cheated but also safeguard artists and law-abiding platforms against disrepute and unnecessary legal exposure while ensuring that genuine fans can watch their favorite artists perform.

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