



The Indian Journal for Research in Law and Management

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Dark Patterns in E-Commerce: India's Regulatory Response and Its Limitations

~*Saksham Bhardwaj*

I. Introduction

The transition from physical shopping to e-commerce has created opportunities for the adoption of dark patterns by online retailers, who've realized the effectiveness of minor adjustments to forms for consent, signing up, and cancelling subscriptions to subtly trick or deceive consumers. The first theory of dark patterns was proposed in 2010 by UX researcher Harry Brignull,¹ who defines dark patterns as designs that prompt an user to act in ways that he or she didn't intend to consent to (such as purchasing something, or signing up for something) because the interface actions are structurally invisible or difficult to regulate.²

This is particularly problematic in India where consumer adoption of the internet is outstripping consumer literacy.³ Provisions regarding false representation currently used for consumer protection apply to products, and cannot adequately address deceptive interface manipulation because such deception is not transparent to consumers. This paper evaluates the efficacy of India's current regulatory response to dark patterns based on the 2019 Act, 2020 Rules, and the 2023 guideline, highlighting its limitations.

II. Legal and Regulatory Framework

¹ Harry Brignull, Dark Patterns: Inside the Interfaces Designed to Trick You, The Verge (Aug. 29, 2013).

² Id.

³ Internet & Mobile Association of India, India Internet Report 2023 (2023), [https://www.iamai.in/sites/default/files/research/INTERNET IN INDIA 2023.pdf](https://www.iamai.in/sites/default/files/research/INTERNET%20IN%20INDIA%202023.pdf).



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The Consumer Protection Act,⁴ 2019 aims to strengthen the Indian consumer protection system through its prohibitions against unfair trade practices, false/misleading advertisements, restrictive trade practices, and other similar unfair practices. The Consumer Protection (E-Commerce) Rules,⁵ 2020 promote transparency and consumer rights in the e-commerce space and are overseen by the Central Consumer Protection Authority (CCPA).

In 2023, the CCPA introduced guidelines identifying thirteen prohibited unfair commercial uses of prescriptive or prescriptive-like practices.⁶ Among these are "false urgency", "basket sneaking", "confirm shaming", "drip pricing", "forced action", and "signup deception". While enforcement of these guidelines lies within the discretion of the CCPA, there is no separate penalties regime to supplement that outlined in the Consumer Protection Act 2019.⁷ Unless these guidelines are converted into binding regulations, their impact remains questionable.

III. Understanding Dark Patterns

By leveraging cognitive biases (loss dislike, status quo bias, and scarcity heuristics), dark patterns can override users' decisions when they are lacking attention.⁸ Some common examples of dark patterns are: false urgency (countdown timer), basket sneaking (unwanted item added), confirm shaming (insulting to deter opt-out), drip pricing (fees added later), and disguised ads (sponsored posts).⁹

⁴ Consumer Protection Act, 2019, No. 35, Acts of Parliament, 2019 (India).

⁵ Consumer Protection (E-Commerce) Rules, 2020, G.S.R. 587(E) (India).

⁶ Central Consumer Protection Authority, Guidelines for Prevention and Regulation of Dark Patterns, 2023 (India).

⁷ Consumer Protection Act, 2019, § 88, No.35, Acts of Parliament, 2019 (India).

⁸ Daniel Kahneman, *Thinking, Fast and Slow* 282–85 (2011) (discussing loss aversion and status quo bias as cognitive heuristics exploitable by interface design).

⁹ Naomi Ziv, *Regulation of Dark Patterns in the Age of Digital Manipulation*, 31 Int'l J.L. & Info. Tech. 85, 90 (2023).



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Each of these designs manipulates and does not honor informed consent, which is a prerequisite to consumers' choices. This is achieved through clever use of information and psychological pressure, rather than outright lies, making enforcement challenging. Generally, one must prove manipulative intent in a design choice in order to claim an "unfair trade practice" – a burden that is rather heavy.

IV. Consumer Rights and Constitutional Concerns

The manipulation employed by dark patterns infringes upon constitutionally protected consumer rights. Article 21 (as interpreted by *Maneka Gandhi v. Union of India*)¹⁰ and *Common Cause v. Union of India* uphold the right to personal autonomy and dignitary autonomy (the right of consumers to unmanipulated choices in the digital realm).¹¹ Article 14 (arbitrariness)¹² suggests that a technically perfect law is problematic in its practical enforcement; where there is a discrepancy between what the law envisages and the reality it perpetuates.¹³¹⁴

V. Challenges in Enforcement

There are two fundamental systemic issues: first, the difficulty for regulators in keeping up with the rapid and unilateral changes made to online interfaces and second, the difficulty the CCPA faces in regulating platforms that transcend national boundaries due to lack of

¹⁰ *Maneka Gandhi v. Union of India* (1978) 1 SCC 248 (India).

¹¹ *Common Cause v. Union of India* (2018) 5 SCC 1 (India).

¹² Arun Mohan, *Justice, Courts and Delays* 178 (2009).

¹³ India Const. art. 14.

¹⁴ Fanny Hidvegi, *Dark Patterns Under the GDPR: The Case of Cookie Consent Banners*, Access Now (Mar. 2022).



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extraterritorial authority.¹⁵ Online interfaces change so rapidly that the 2023 Guidelines could be outdated before they even have a chance to be enforced.¹⁶

Proving manipulation remains a significant hurdle; differentiating a dark pattern from a non-deceptive design requires audits and research capacity that the CCPA currently lacks. Limited consumer awareness in India leads to sparse complaints. The complaint-based system of enforcement for the CCPA can therefore offer little help or intelligence. A deeper flaw is the light penalty structure for the biggest e-commerce sites, which essentially makes the sanctions a "cost of business". For these platforms, fines must match platform revenues for there to be a deterrent effect. Otherwise, the guidelines will merely serve as recommendations.

VI. Comparative Perspective

The EU possesses the strongest regulation, with the Digital Services Act prohibiting dark patterns for platforms with >45M users and requiring algorithm transparency for large platforms.¹⁷ Consent manipulation dark patterns are banned under GDPR if consent isn't "freely given, specific, informed and unambiguous".¹⁸ In the U.S, a staff report by the FTC in 2022 prompted enforcement actions against several large e-commerce sites.¹⁹

The Indian 2023 Guidelines are comparable developments in intent and content, though the EU and US have more significant institutional capacity and higher fines, and a systemic approach:

¹⁵ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services (Digital Services Act), arts. 25–26, 2022 O.J. (L 277) 1.

¹⁶ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data (General Data Protection Regulation), art. 7(4), 2016 O.J. (L 119) 1.

¹⁷ Sonia Livingstone & Alica Blum-Ross, Parenting for a Digital Future 112 (2020).

¹⁸ Consumer Protection Act, 2019, §§ 18, 87088, No.35, Acts of Parliament, 2019 (India).

¹⁹ Colin M. Gray et al., The Dark (Patterns) Side of UX Design, in Proc. CHI Conf. on Human Factors Sys. 1, 6 (2018).



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EU and US regulators are able to conduct proactive audits, whereas the CCPA is limited to complaints and cannot act suo motu.

VII. Way Forward

Reforms to India's current framework would need to involve changes at an institutional level as well as regulatory ones. The CCPA would require specialized digital enforcement units capable of proactively investigating online interfaces where consumer deception occurs away from plain sight. Second, giving statutory force to the 2023 Guidelines through amendments or subsidiary legislation would introduce an independent system of penalties. Third, leveraging platform revenue to scale the level of penalties would ensure they act as deterrents. Fourth, proactive auditing of large platforms and transparent public reporting of audit findings are necessary. Fifth, consumer education should not be an afterthought; it should be a regulatory priority since a complaint-based enforcement system is ineffective when consumers aren't aware that they are being wronged. Awareness campaigns and a simplified complaints and redressal process such as prohibition, will be essential.

VIII. Conclusion

Dark patterns represent a multifaceted threat to the Indian digital marketplace that has only been partially addressed by the 2019 Act, the 2020 Rules and CCPA 2023 guidelines. A significant gap exists between the legislative framework and the capacity to enforce, regulate, and intelligibly adapt policy. The EU and US regulatory experience clearly indicate that for effective consumer protection, proactivity, technical capacity, and the ability to probe underlying system mechanics are paramount, rather than simply prohibiting bad actors. The regulatory intentions behind India's response are commendable, but without stringent enforcement, regular audits, reformed penalties, and consumer awareness, these initiatives may



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remain aspirational rather than actionable. The law must advance at a pace matching the dynamic marketplace it aims to protect.