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DARK PATTERNS IN E-COMMERCE: CONSUMER PROTECTION CHALLENGES IN INDIA

- Prabhleen Kaur

INTRODUCTION

Unsubscribing from some aggregators can be a nightmare, and some purchases result in excessive charges that show up on your credit card. These deceptive aggregators employ what is referred to as 'dark patterns'. I am a law student focusing on consumer protection. I can identify and explain the evasive threat that dark patterns, with their disgusting, consumer unfriendly designs, pose to the Indian consumer. It is one thing to understand the concept of dark patterns. It is a different ballgame to comprehend how the current legal systems do not offer any protection from their misuse.

Dark patterns are, at their core, consumer hostile design elements. Most examples create hurdles for the user seeking to cancel a service, while enhancing the ease of service subscription. Indian e-commerce systems are more amenable to dark patterns due to the striking digital consumer divide. E-commerce systems take advantage of the fact that most consumers are less digitally skilled. Most users will overlook the travel insurance that is being “gifted” to them or, what is worse, that a subscription service was selected on their behalf.

How does Indian law address the concerns of dark patterns? There is no clear answer, as the primary reference point is the Consumer Protection Act, 2019 (“CPA”). The CPA deals with dark patterns and offers the most general of definitions of unfair trading practices. The bulk of these definitions are focused on advertising and the duplicitous conduct of merchants. Unfortunately, the Act offers outdated consumer protection from dark patterns. Section 2(c) of the CPA outlines the designation of "consumer"; Section 6 gives the consumer the right to be protected against bad faith or misrepresentation in trade practices.[1] The problem is that neither judges nor other decision-makers have developed elaborate case law with a focus on dark patterns.

There is an additional layer of regulations created by the e-Commerce Rules, 2020, which govern online shopping in India. These rules guarantee transparency when displaying and pricing products.[2] However, they do not deal with design-related issues. This is a substantive gap, for a platform may comply with every rule dealing with displaying and pricing products, and simultaneously design the platform in such a way that makes it almost impossible for the user to leave the shopping cart or unsubscribe from notifications. The platform may comply with the rules, but still violate consumer protections.

The issue is especially urgent for the average Indian consumer, who suffers from a disparity in informational and technical resources. The dark patterns that are employed on a platform often mean that the consumer is not even aware that they have been misled and may instead think that they made a mistake or simply forgot to cancel a service. In the meantime, the platform enjoys the benefits of increased revenues due to less user churn and greater service utilization, all while remaining largely unaccountable. While some of India's major e-commerce platforms have received complaints about unexpected fees and confusing checkout processes, regulatory action has been highly variable.

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[1] *Consumer Protection Act, 2019*, No. 35 of 2019, §§ 2(c), 6 (India).

[2] *Consumer Protection (E-Commerce) Rules, 2020 (India).*

The Central Consumer Protection Authority ("CCPA") was created to address the issues of the bad faith trade practice and product liability.[3] It has the authority to pursue trade platforms that employ dark patterns. However, in practice, they have been slow to pursue such cases. The Ministry of Consumer Affairs has recently incorporated dark patterns into their scope of work. This move could mean we are finally seeing the effects of regulations, but we are still waiting on something more complete, like amendments to specifically deal with the manipulation of digital design.

Moving forward, India needs clearer legislation specifically targeting dark patterns. This could include mandatory disclosure of design choices, requirements for easy cancellation mechanisms, and penalties for platforms that deliberately obscure consumer choices. Individual consumers filing complaints through the CCPA or approaching consumer commissions is one path, but it's reactive rather than preventive. What we need is proactive regulation that mandates ethical design standards.

This is not just a problem in India. Dark patterns exploit the majority of consumer protection laws around the world. The bright side is that India is still in the middle of a digital revolution. With a lot of people accessing the digital marketplace for the first time, we can make a significant impact by strengthening laws against these practices. With stronger laws, more guidelines, and the creation of laws that directly deal with these manipulative designs, millions of people could be protected. While these laws are getting created, the only thing you can do is be careful. Read what you are signing, be smart about what you are clicking on, and be brave enough to dispute charges that you did not agree to.

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[3] *Consumer Protection Act, 2019*, §§ 60–69 (establishing Central Consumer Protection Authority and powers).