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## PROTECTING ONLINE CONSUMERS: A DEEP DIVE INTO DARK PATTERN REGULATIONS IN INDIA

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**ABSTRACT:** Dark patterns are tricks used in design to confuse or manipulate users, making it hard for them to express real preferences or take desired actions. The current study looks into the widespread occurrence of dark patterns in India, especially concerning internet users amid the country's fast digitization. It covers India's regulatory environment to safeguard customers and goes into the misleading tactics used by online sites. It also looks at foreign laws regarding dark patterns to provide insightful analysis of the Indian legal system as well as suggestions for improvement. Through this investigation, the study aims to highlight the difficulties Indian consumers face online and offer solutions to lessen the negative effects of dark patterns on their digital engagements.

**Index Terms:** Dark patterns, manipulate users, consumers, Indian legal system, foreign laws.

### INTRODUCTION

India is rapidly digitizing, and this trend points to a digital future in which almost everything will be available. As people easily accept the significant changes that are taking place, there is a general sense of acceptance. As digital transformation swept through India, the widespread adoption of e-commerce propelled the country to secure its position as the second-largest online market globally, following closely behind China.

Users of e-commerce platforms frequently run into various pop-ups during the use of some sites, limited-sale alerts, and obtrusive sign-up demands that block progress, and can't even find the reject option. Users looking for a smooth experience may encounter difficulties with certain patterns e-commerce companies use. These are some of the 'dark patterns' designed to manipulate or heavily influence consumers.

Even though this is a problem that many of us face regularly, the idea is still relatively new, and many common Indian citizens are still ignorant of this occurrence. These patterns have been used toward maximizing revenue, gathering user data, or coercing consumers into taking actions against what they should be doing. These kinds of dark patterns are illegal, unethical, and fall under unfair trade practices. The term 'dark pattern' was introduced in 2010 by user experience researcher Harry Brignull from the UK to describe fraudulent strategies used to mislead consumers. Businesses are lowering consumer satisfaction for their benefit by adopting many strategies and unethical practices. The concept of dark patterns is relatively new, and as such, a limited body of literature is available on this emerging topic. This nascent field offers exciting opportunities for further exploration and a deeper understanding of the implications of manipulative design practices in various domains.

This paper explores strategies for individuals to overcome the challenges posed by 'dark patterns' and delves into the rules and laws in India that offer potential solutions to mitigate this problem.

This study's main goal is to learn more about dark patterns and investigate the various kinds of them. It also aims to examine the Indian legal system's dark pattern guidelines by contrasting it with similar international laws of other nations.

## RESEARCH METHODOLOGY

In this research, using doctrinal methods, delving into legal provisions, acts case studies, data reports, and technical considerations, our focus is on identifying rules to address specific issues. This fact and expert observation-based study emphasizes analysis, incorporating extensive research in both legal and cyber domains.

Several tools are available to support the research including statutes (Consumer Protection Act 2019, Information Technology Act 2000, Digital Personal Data Protection Act 2023), policies, guidelines, rules, legal journals, books, case history, research papers, magazines, newspapers, blogs, websites, etc.

Now let's understand about 'Dark Pattern'

### WHAT IS A DARK PATTERN?

In the current scenario, the Internet is exerting control over us rather than us controlling it. One of the tolls to control over us is dark patterns. As a consumer, everybody has a right to choose. But what if the consumers were tricked into buying some product or services that they may not avail, by this dark pattern this is what happening. For this reason, it is an unfair trade practice.

To understand what is a dark pattern clearly, first understand what is UX: user experience. UX is a kind of design for giving meaningful experiences to consumers. It covers everything from getting the product to using it. This includes branding, design, usability, and function. Technology that is simple to use is only one aspect of UX design. It also entails creating associated experiences such as packaging, marketing, and post-purchase assistance. The objective is to ensure that the product serves the needs and solves the difficulties of the user. Good UX revolves around the idea of providing people with interactions that are seamless, enjoyable, and intuitive. To achieve this, a designer should focus on satisfying a user's needs above everything else. However, UX is but a tool. A tool that could be used for good, or for evil. One such category of evil design is "dark patterns."<sup>1</sup>

The Central Consumer Protection Authority (CCPA) notified guidelines for preventing and regulating this kind of practice in online commerce, under section 18 of the Consumer Protection Act 2019, on November 30, 2023. According to the given guidelines definition of "Dark patterns" shall mean 'any practices or deceptive design patterns using UI/UX (user interface/user experience) interactions on any platform; designed to mislead or trick users to do something they originally did not intend or want to do; by subverting or impairing the consumer autonomy, decision making or choice; amounting to the misleading advertisement or unfair trade practice or violation of consumer right'.<sup>2</sup>

### TYPE OF DARK PATTERS AND HOW COMPANIES MANUPULATING PEOPLE THROUGH THIS USE?

In the digital age, as technology evolves, so do the methods of employing dark patterns. Designers are increasingly innovative, creating a variety of deceptive techniques to manipulate user behavior. So, there are many kinds of dark patterns available. The Central Consumer Protection Authority (CCPA) notified guidelines to talk about only 13 types of dark patterns. Those are:

1. **False urgency**- a misleading strategy that inflates popularity or falsely claims limited availability to create urgency and drive speedy consumer response.
2. **Disguised ad** - By purposefully confusing the gap between genuine content and advertising, the deceptive pattern of disguised ads confuses users. To increase the likelihood that users would click on them, these advertisements are frequently made to resemble relevant articles, interface components, or other information that people might find interesting. By doing this, marketers may gain from higher clickthrough rates, which could lead to more purchases, and website owners may make more money from ad impressions.

<sup>1</sup> Dark Patterns in UX: What You Should Know. (n.d.). Adamfard. Retrieved February 8, 2024, from

<https://adamfard.com/blog/dark-patterns-ux#:~:text=The%20term%20E2%80%9Cdark%20patterns%E2%80%9D%20was,signing%20up%20for%20recurring%20bills.%E2%80%9D>

<sup>2</sup> The Consumer Protection Act,2019 (Act 35 of 2019). DARK PATTERN GUIDELINE

<https://consumeraffairs.nic.in/sites/default/files/file-uploads/latestnews/Draft%20Guidelines%20for%20Prevention%20and%20Regulation%20of%20Dark%20Patterns%202023.pdf>  
(last accessed 8<sup>th</sup> February 2024)

3. **Confirmshaming-** It blatantly uses guilt-charged manipulation, confronting users directly. For example, People received statements like "No thanks, I hate saving money" and "No thanks, I hate fun and games" among other instances.
4. **Trick question** - Most certainly, trick questions would be the Riddler's (Batman villain) favorite dark pattern.<sup>3</sup> Some companies use trick questions to entice consumers to buy or subscribe to services they don't want. A significant example of this dark pattern is supporters who donated to the Donald Trump campaign often found themselves unwittingly subscribed to recurring donations. The issue stemmed from a pre-checked box indicating the donation's recurrence, requiring users to notice it, read the disclaimer, and manually uncheck the box to opt for a one-time donation.<sup>4</sup>
5. **Bait and switch-** Bait-and-switch dark patterns attract users to use a product under enticing terms, then after they are engaged, alter the terms and force the user to accept the result—typically a paid service. Several apps use this bait-and-switch tactic to deceive users. Many people face this problem A pop-up window or dialogue box confuses the user into believing that doing as instructed will result in one thing when, in fact, it will accomplish quite another. A commonly used example of this behavior is Microsoft's attempt to market its update to Windows 10.<sup>5</sup>
6. **Basket sneaking-** The term "sneak into basket" describes a dark pattern in which offers or other products are surreptitiously added to a customer's basket without the customer's knowledge or consent. By the time the consumer completes the checkout process, they will either notice that they forgot to add an item or, if they are not careful, they may wind up having to pay for it.<sup>6</sup>
7. **Subscription trap-** this dark pattern making it difficult or impossible to cancel a paid subscription; hiding the cancellation option; forcing users to provide payment information or approving automatic debits to access a free subscription; or developing cryptic, hidden, perplexing, or onerous instructions regarding cancellation a subscription.
8. **Interface interference-** any manipulation of the user interface that privileges specific actions over others, thereby confusing the user or limiting the discoverability of important action possibilities. Interface interference manifests as numerous individual visual and interactive deceptions.<sup>7</sup>
9. **Drip pricing-** denotes a practice wherein certain aspects of prices are withheld from users or are disclosed covertly throughout their interaction; or other similar activities.
10. **Forced action:** When users are pressured into taking actions that will lead to a desired goal, sly or deceptive language is frequently used. LinkedIn's misleading email extraction request during signup is one example.<sup>8</sup>
11. **Nagging-** a dark pattern that causes customers to experience an excessive number of requests, information, alternatives, or interruptions that are unrelated to the intended transaction of buying goods or services, disrupting it.
12. **SaaS billing-** the software as a service (SaaS) business model, "SAAS billing" is the process of creating and retrieving payments from customers on a recurrent basis. This is done by using positive acquisition loops in recurring subscriptions to obtain money from users as covertly as possible.
13. **Rogue malware-** A dangerous design pattern known as "rogue malware" deceives people into installing truly malicious software. It deceives consumers into thinking their machine is infected with a virus using ransomware or scareware. The intention is to trick customers into paying for a phony malware removal program, only for the product to infect their machine with further malware.

Except for these 13 types of dark patterns, some other dark patterns are:

<sup>3</sup> Dark Patterns – Trick questions. (2019, October 31). Mobiversal. Retrieved February 9, 2024, from <https://blog.mobiversal.com/dark-patterns-or-how-ux-exploits-the-user-trick-questions-fake-new-notification.html>

<sup>4</sup> Vinney. (2021, August 5). What Are Dark Patterns in UX Design? Career Foundry. Retrieved February 9, 2024, from <https://careerfoundry.com/en/blog/ux-design/dark-patterns-ux/#trick-questions>

<sup>5</sup> Pfeifer. (2019, February 1). DARK UX: BAIT AND SWITCH. Usertimes. Retrieved February 9, 2024, from <https://usertimes.io/2019/02/01/bait-and-switch/>

<sup>6</sup> Mazumdar, & Bhue. (2022, May). Responsible Design Part 7 of 14: Sneak into Basket. THINK.DESIGN. Retrieved February 9, 2024, from <https://think.design/blog/responsible-design-part-7-of-14-sneak-into-basket/>

<sup>7</sup> Interface Interference. (n.d.). UX2 Dark Patterns. Retrieved February 9, 2024, from <https://darkpatterns.uxp2.com/patterns-2/interface-interference/>

<sup>8</sup> Forced action. (n.d.). Deceptive Pattern. Retrieved February 9, 2024, from <https://www.deceptive.design/types/forced-action>

- **Friend spam-** The term "friend spam" refers to the technique of a business tricking a user into granting access to their data, particularly their contact list, under the pretenses that doing so will benefit them in the long run. The situation deteriorates when the user learns that the corporation using their name has been sending unsolicited emails to their contact list.
- **Privacy Zuckering-** leads people to share more personal information than they originally meant.
- **Price comparison prevention-** Purposefully making product comparisons more difficult to take advantage of users' cognitive biases and make snap decisions that prioritize provider revenue over user desires.
- **Preselection-** A black pattern called preselection displays a "default" option that has already been chosen. A product is shown two alternatives in this pattern, one of which is preselected. It's possible that the pre-selected stuff is not ideal for you.
- **fake social proof-** involves inflating or fabricating endorsements to provide the impression of popularity and authority. Fake activity, phony reviews, and a fictitious following are examples of this.

These dark patterns are frequently used by businesses and are often seen by users exploring internet platforms. But there is a tonne of other kinds of gloomy patterns in digital space.

### INDIAN PERSPECTIVE ON REGULATIONS DARK PATTERN:

Since dark patterns have not received much attention in India, the regulations and guidelines provided under Section 18 of the Consumer Protection Act represent a considerable advancement. Additionally, the regulations are extensive. They encompass a wide range of entities, such as platforms that offer goods and services, advertising, and sellers. They also hold for companies operating outside of India that serve Indian nationals.

Additionally, the standards acknowledge that dark patterns are deceptive and weaken consumer autonomy. Thus, any dark pattern will fall within the current policies protecting consumers. A few objectives are achieved by offering an extensive list of examples. First, users don't always need to demonstrate how a UX pattern or design compromises their autonomy. Second, it aids in placing dark patterns into sectors and scenarios that are well-defined.

Considering the connection between dark patterns and user consent under India's privacy laws, all of these are positive developments. The government and regulators' efforts to protect user privacy include the regulations on dark patterns. To effectively reduce the prevalence of dark patterns outside of traditional consumer domains, the government must address the implications of the Dark Pattern Guidelines concerning the Information Technology Act 2000, the Intermediary Rules 2021, and the Digital Personal Data Protection Act 2023.

- Reducing the use of dark patterns such as confirm shaming, nagging, trick questions, interface interference, and force action since they may violate the DPDP Act, 2023 consent obligation.
- Prohibiting the usage of rogue malware as defined by the dark patterns guidelines from resulting in any offenses against computer resources as defined by the IT Act, 2000, such as tampering or damaging computer networks, altering documents obtained from computers, etc.
- Making sure that the rights and responsibilities of intermediaries under the intermediary rules and the IT Act are protected in the context of dark patterns including forced activities, interface interference, and covert advertising

Stakeholder feedback raised issues<sup>9</sup> with regulatory overlaps, lack of clarity, and overly restrictive measures; yet, the CCPA made little changes to the original Dark Pattern Guidelines draft. These include tying "commercial gains" to particular dark patterns, creating new patterns such as SaaS billing and trick questions, and eliminating clauses that reduced the effect of the recommendations by declaring that the Consumer Protection Act applied to violations of them.

<sup>9</sup>Govt seeks public comments on draft guidelines for regulation of dark patterns on online platforms. (2023, September 7). THE ECONOMIC TIMES. Retrieved February 10, 2024, from <https://economictimes.indiatimes.com/tech/technology/govt-seeks-public-comments-on-draft-guidelines-for-regulation-of-dark-patterns-on-online-platforms/articleshow/103461129.cms?from=mdr>

**WORLD PERSPECTIVE ON REGULATING DARK PATTERN:**

Dark patterns have attracted a lot of attention, particularly in the US. Notably, California changed the California Consumer Privacy Act to prohibit their use to solve this problem<sup>10</sup>. The purpose of this amendment is to protect customers from purposeful and deceptive gathering of personal data.<sup>11</sup> The FTC (Federal Trade Commission), with its power to combat unfair and deceptive acts and practices under section 5 of the FTC Act, is the most obvious existing institution that can regulate dark patterns.<sup>12</sup> The General Data Protection Regulation (GDPR) of the European Union, specifically Article 25, subclauses 1 and 2, regulates this domain. The significance of privacy by design and default in interfaces under the control of data controllers is emphasized in Article 25<sup>13</sup>. This clause may not offer a complete system to control dark patterns, even while it attempts to shield users from unfavorable default settings and undetectable refuse options that could jeopardize personal information. The Digital Markets Act (DMA) and the Digital Services Act (DSA), which are now in effect in the EU, address dark patterns. But this situation is not new; in the past, Dark Patterns have been regulated by consumer and data protection regulations on both sides of the Atlantic to guarantee equitable online interactions between users and corporations.<sup>14</sup> Australia has introduced the Consumer Data Right (CDR) framework, emphasizing secure online data sharing. This system mandates consumer consent before accessing goods and services from third parties.<sup>15</sup>

**CONCLUSION AND SUGGESTION:**

Dark patterns are deceptive and weaken the consumer's anatomy. But in India, the consumer is “king” On the one hand, there is often a repeated statement that the "customer is always right", also other hand, the legal position of a buyer has been expressed in the famous expression "caveat emptor" or "Let the buyer beware."<sup>16</sup> In the case of a dark pattern it is an unfair trade practice, consumer must be aware of their rights are identify to protect themselves from that. taking into account that India has not given dark patterns much thought the recent guidelines for dark patterns in the Indian regulatory landscape have many grey areas that the government should look into. For better regulation dark pattern regulatory pluralism is an effective way. The technology behind dark patterns has advanced significantly, making once expensive and cumbersome corporate tactics now cheap and efficient. This shift parallels arguments made about how grey marketizing and geolocation technologies disrupted traditional assumptions. While marketplace manipulation isn't new, recent developments have exacerbated the issue, as shown by the significant gap between what consumers desire and what they unknowingly consent to. Without robust government intervention, dark patterns will continue to spread unchecked. The CCPA's attempt to control dark patterns in India is a step in the right direction, but guidelines alone might not be enough to stop these deeply embedded habits. Comprehensive regulation necessitates the integration of the Dark Pattern Guidelines with data protection and e-commerce laws. Since this legislation is still in its early stages, it is anticipated to change in the future to more effectively handle issues with dark patterns.

<sup>10</sup> DARK PATTERN. (2023, July 4). In DRISHTI IAS. Retrieved February 11, 2024, from <https://www.drishtias.com/daily-updates/daily-news-analysis/dark-patterns-1>

<sup>11</sup> Sridhar. (2021, April 3). Regulation of Dark Patterns: Lessons for India [PART II]. Indian Journal of Law and Technology. Retrieved February 10, 2024, from <https://www.ijlt.in/post/regulation-of-dark-patterns-lessons-for-india-part-ii>

<sup>12</sup> Luguri, & Strahilevitz. (2019, August 7). Shining a Light on Dark Patterns. SSRN. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3431205](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3431205)

<sup>13</sup> European Union, 2018 <https://gdpr-info.eu/art-25-gdpr/>

<sup>14</sup> (2024, January 2). The collective welfare dimension of dark patterns regulation. EUROPEAN LAW JOURNAL. <https://onlinelibrary.wiley.com/doi/full/10.1111/eulj.12478>

<sup>15</sup> Ishita Sharma Dr. . (2023). DARK PATTERNS IN A BRIGHT WORLD: AN ANALYSIS OF THE INDIAN CONSUMER LEGAL ARCHITECTURE. INTERNATIONAL JOURNAL ON CONSUMER LAW AND PRACTICE, 11.

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<sup>16</sup> Tatineni. (2019). INDIAN CONSUMER: KING OR PAWN. South Asian Law Review Journal, 5–2019(2456 7531). <https://thelawbrigade.com/wp-content/uploads/2019/06/Meher-Tatineni.pdf>

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