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DARK PATTERNS AND THE ILLUSION OF CONSENT IN E-CONTRACTS IN INDIA: A LEGAL ANALYSIS

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I. ABSTRACT

A paradigm shift in the concept of contractual consent, especially in the digital arena, where electronic contracts have gained prominence, but the user consent is typically obtained through interface-based mechanisms, and the issue is whether such consent is informed or merely a product of the interface itself. The current legal regime in India, based on conventional contract and consumer protection laws, is based on the assumption of rational and volitional decision-making. Previous studies have shown the impact of interface-based design and behavioural influence in the decision-making process, especially in the digital arena, through the use of dark patterns. However, not much legal scholarship has been done on the adequacy of the current legal doctrines in India in dealing with the phenomenon of illusory consent in the digital arena. This study is based on a doctrinal research methodology, where the current legal position is analysed in the context of the phenomenon of illusory consent in the digital arena. It is evident from the analysis that the current legal position is not adequate in dealing with the phenomenon of illusory consent in the digital arena, and a shift is needed in the current legal position.

II. KEYWORDS

Dark Patterns, E-Contracts, Illusion of Consent, Consumer Protection Law, Digital Consent.

III. INTRODUCTION

Electronic contracts have become the principal means of engagement between the user and digital platforms. The researcher has observed that such electronic contracts have usually been executed through a single act of consent. Therefore, the issue of informed consent is of critical importance in this regard. It has been observed that the single act

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of consent is usually accompanied by a lack of understanding of the intricacies of the contract.

According to the researcher, the emergence of the concept of “dark patterns,” which refers to the interface of the digital platforms that affects the behaviour of the users of the digital platforms, has created a significant hurdle in the traditional understanding of the concept of consent. It has been observed that such practices have not been accompanied by any misrepresentation on the part of the digital platforms. Therefore, the line of distinction between consent and its manipulation has become thin in such cases.

From a legal point of view, the researcher has observed that the Indian laws on the subject of electronic contracts and consumer protection have traditionally been guided by the principles of free consent and fairness. It has been observed that such principles were traditionally applied in cases where the issue of influence was clearly identifiable. However, the applicability of such principles in the context of digital platforms is limited.

This study aims at critically evaluating the issue of whether the relevant laws on the subject of electronic contracts are sufficient in dealing with the issue of illusory consent in the context of electronic contracts.

A. Research Problem

The exponential rise of digital commerce has, in turn, led to the emergence of electronic contracts through online platforms and electronic commerce websites. Electronic contracts have been recognized under the Information Technology Act, and they are based on the concept of free consent under the Indian Contract Act. However, the existing legal framework has failed to address the new issue of dark patterns, which is a type of electronic interface used to manipulate the acceptance of electronic contracts by inducing consent without a thorough understanding of the implications of the electronic contract, thus creating a false perception of consent in electronic transactions. Therefore, the problem of the existing legal framework is related to the lack of effective regulation of dark patterns and the provision of free consent in electronic contracts.

B. Aim of the Study

The primary aim of this study is to explore the legal implications of dark patterns on electronic contracts, with reference to the Indian legal framework, and assess whether the current legal provisions are adequate enough to safeguard the concept of free and informed consent in electronic contract practices.

C. Objectives of the Study

1. To explore the concept and nature of electronic contracts in the digital world.
2. To analyse the legal implications of free consent in electronic contracts under the Indian Contract Act.
3. To examine the emerging concept of dark patterns and its implications on user consent in electronic contract environments.
4. To assess the adequacy of the current legal provisions on electronic contracts under the Information Technology Act.
5. To suggest possible legal and regulatory guidelines that can be adopted to ensure transparency and fairness in electronic contract environments.

D. Research Questions

1. What is the legal nature and validity of electronic contracts in India?
2. How are dark patterns affecting user consent in electronic contract environments?
3. To what extent are the current legal provisions protecting electronic contract environments from dark patterns?
4. What are the possible legal and regulatory guidelines that can be adopted to strengthen informed consent in electronic contract environments?

E. Research Hypothesis

The use of manipulative digital design practices, commonly referred to as dark patterns, in online platforms undermines the principle of free and informed consent in electronic contracts, which in turn has raised pertinent issues concerning the sufficiency of the existing legal framework in governing electronic contracts in India

in accordance with the provisions of the Indian Contract Act and the Information Technology Act.

F. Scope of the Study

The scope of the study revolves around the existing legal framework concerning electronic contracts in India, including issues of consent and digital interface design. The study aims to examine the concept of dark patterns and its effects on the validity of consent in online contracts. The scope of the study is restricted to the analysis of the provisions of the Indian Contract Act and the Information Technology Act concerning digital contracting practices.

G. Research Methodology

This study adopts a doctrinal research methodology to examine the legal implications of dark patterns on contractual consent in electronic contracts within the Indian legal framework. The research is primarily based on the analysis of secondary sources of law, including statutory provisions such as the Indian Contract Act, 1872, the Information Technology Act, 2000, and the Consumer Protection Act, 2019, along with the 2023 Guidelines issued by the Central Consumer Protection Authority on dark patterns.

Judicial decisions of the Supreme Court of India and other relevant authorities have been examined to understand the evolution and interpretation of the concept of free consent in both traditional and digital contexts. In addition, scholarly articles, research papers, institutional reports, and comparative studies have been relied upon to assess the behavioural and regulatory dimensions of dark patterns.

The analytical approach adopted in this study is qualitative and interpretative in nature, focusing on critically evaluating whether the existing legal doctrines adequately address the issue of illusory consent arising from manipulative digital interface designs. The methodology further incorporates a contextual analysis of emerging regulatory responses to determine the need for doctrinal and policy-level reforms in ensuring informed consent in electronic contracting.

H. Review of Literature

The researcher has reviewed various scholarly works relating to dark patterns, digital consumer behaviour, and electronic contracts. A few important contributions are discussed below:

1. Samyak Jain, Shubham Chaurasia, M. Joshi and Yash Vishwakarma, in their study "Dark Patterns in Digital Marketing and Consumer Manipulation",² examine the prevalence of dark patterns in India through a quantitative survey. Further, the study finds that although consumers frequently encounter manipulative digital practices, their awareness remains significantly low and also emphasizes the need for stricter regulatory mechanisms and enhanced consumer education.
2. Damaraju Pradeep Kumar and Kandukuri Sai Krishna, in their work "Dark Pattern in Online Trading – A Critical Examination of their Legality under Consumer Protection Laws",³ analyse the legality of such practices within Indian consumer law. Using a mixed-method approach, the study concludes that many digital interface practices may amount to unfair trade practices, though legal interpretation remains complex.
3. Jamie B. Luguri and Lior Jacob Strahilevitz, in "Shining a Light on Dark Patterns",⁴ provide experimental evidence demonstrating that dark patterns significantly influence user behaviour. Their findings reveal that manipulative interfaces increase the likelihood of users making unintended decisions, raising concerns regarding informed consent.
4. Swetha Meenal Ananthapadmanaban and Jeanne Paterson, in their comparative study "Can the UK, Australia, and India Master the Defence

² The Bhopal School of Social Sciences, Bhopal et al., *DARK PATTERNS IN DIGITAL MARKETING AND CONSUMER MANIPULATION*, in *Emerging Frontiers in Management and Leadership* 78 (2025), <https://bssspublications.com/Books/IssueDetailPage?IsNo=108>.

³ Damaraju Pradeep Kumar & Kandukuri Sai Krishna, *Dark Pattern in Online Trading – A Critical Examination of Their Legality under Consumer Protection Laws*, GIMRJ (2025), <https://gurukuljournal.com/dark-pattern-in-online-trading-a-critical-examination-of-their-legality-under-consumer-protection-laws/>.

⁴ Jamie Luguri & Lior Strahilevitz, *Shining a Light on Dark Patterns*, SSRN Journal (2021), <https://www.ssrn.com/abstract=3431205>.

Against Dark Patterns?”,⁵ examine regulatory approaches across jurisdictions. The study highlights inconsistencies in legal responses and identifies limitations within India’s consumer protection framework.

5. Nalin Khare and Smita Bharne, in “An Empirical Study of Dark Patterns in Indian Digital Applications”,⁶ analyze 200 mobile applications and identify a high prevalence of manipulative practices such as false urgency and privacy deception, indicating gaps in regulatory compliance.
6. Marius Brenncke,⁷ in his consultation response on India’s draft guidelines, discusses regulatory efforts to curb dark patterns and emphasizes the importance of addressing practices such as subscription traps and basket sneaking to ensure genuine consent.
7. Mark Leiser, in “Dark Patterns: The Case for Regulatory Pluralism”,⁸ argues that dark patterns undermine user autonomy and privacy, advocating for a multi-dimensional regulatory framework combining consumer protection and data governance.
8. Rohan Cherian Thomas,⁹ in his recommendation paper, highlights India’s efforts to define and regulate specific dark pattern practices such as “nagging,” reflecting growing policy attention toward digital manipulation.
9. Literature on standard form contracts in international trade,¹⁰ highlights that non-negotiable terms in digital agreements create power imbalances,

⁵ Swetha Meenal Ananthapadmanaban & Jeannie Marie Paterson, *Can the UK, Australia, and India Master the Defence Against Dark Patterns? A Comparative Study of Jurisdictional Approaches*, 21 IJLT (2025), <https://repository.nls.ac.in/ijlt/vol21/iss1/2/>.

⁶ Nalin Khare & Smita Bharne, *An Empirical Study of Dark Patterns in Indian Digital Applications*, in 2025 IEEE 7th International Conference on Computing, Communication and Automation (ICCCA) 1 (2025), <https://ieeexplore.ieee.org/document/11325315/>.

⁷ Martin Brenncke, *Consultation Response to Draft Guidelines for Prevention and Regulation of Dark Patterns*, Department of Consumer Affairs, Government of India, SSRN Journal (2023), <https://www.ssrn.com/abstract=4647000>.

⁸ Mark Leiser, “Dark Patterns”: The Case for Regulatory Pluralism (July 16, 2020), https://osf.io/ea5n2_v1.

⁹ Dr. Rohan Cherian Thomas, *Recommendation Paper on Dark Patterns – in Response to Public Call for Suggestions by Ministry of Consumer Affairs, 2023*, SSRN Journal (2024), <https://www.ssrn.com/abstract=4692459>.

¹⁰ Research Scholar, University School of Law and Legal Studies, Guru Gobind Singh Indraprastha University, Dwarka, Delhi, *Standard Form Contracts in International Trade: A Legal Analysis of Consent, Fairness, and Enforcement*, 7 Jiclt 425 (2026), <https://jiclt.com/article/standard-form-contracts-in-international-trade-a-legal-analysis-of-consent-fairness-and-enforcement-357/>.

often resulting in illusory consent and limited bargaining capacity for consumers.

10. Johanna Gunawan, Cristina Santos and Irene Kamara, in “Redress for Dark Patterns Privacy Harms?”,¹¹ examine how manipulative interfaces impact privacy and consent, emphasizing the need for stronger safeguards in digital environments.

From the above literature, it is evident that existing studies primarily focus on the prevalence, behavioural impact, and regulatory aspects of dark patterns. However, there is limited analysis on how such practices affect the legal validity of consent in electronic contracts, particularly under Indian contract law.

Therefore, the present research seeks to bridge this gap by examining the impact of dark patterns on contractual consent in e-contracts and evaluating whether such consent satisfies the requirement of free and informed consent under Indian legal frameworks.

IV. CONCEPT AND LEGAL FRAMEWORK OF ELECTRONIC CONTRACTS IN INDIA

A. Evolution of Electronic Commerce and Digital Contracting

The advancement of digital technology has profoundly changed the nature of commercial transactions in modern society. In conventional contract formation, the process involved written contracts and direct negotiations between the involved parties. However, modern commercial transactions have been significantly transformed through technologically mediated interactions. In the digital world, contracts are formed through simple actions such as clicking an “I agree” icon, creating an account on a website, and/or continuing to use a website. These technologically mediated interactions have been referred to as electronic contracts or e-contracts.¹²

¹¹ Johanna Gunawan, Cristiana Santos & Irene Kamara, *Redress for Dark Patterns Privacy Harms? A Case Study on Consent Interactions*, in Proceedings of the 2022 Symposium on Computer Science and Law 181 (2022), <https://dl.acm.org/doi/10.1145/3511265.3550448>.

¹² Stephen Mason & Daniel Seng, *Electronic Signatures in Law* (5th ed. 2021).

Further, the development of electronic commerce has made the formation of contracts indispensable for modern commercial transactions, allowing for rapid transactions, cost reduction, and globalization. However, the changing nature of commercial transactions has raised significant legal issues regarding the authenticity of consent and contract formation through technologically mediated interactions.¹³

B. Legal Basis of Electronic Contracts under Indian Contract Law

The validity of electronic contracts is based on the principles of the Indian Contract Act of 1872. This Act provides the basic essentials for the validity of a contract. They are offer, acceptance, lawful consideration, competency of the parties, and free consent,¹⁴ that are apply equally to traditional contracts as well as e-contracts.

An electronic contract is not a new form of contract. It is only a new way of expressing the intention of the parties. The medium of communication of the intention of the parties does not matter. What matters is the basic essentials of the contract.

In the case of *Trimex International FZE v. Vedanta Aluminium Ltd.*,¹⁵ the Supreme Court of India held that “a contract is binding even if it is entered into by the exchange of informal electronic communications like emails, provided the intention to create a legally binding contract is manifest.” This decision reflects the judiciary’s recognition of modern commercial realities.

Likewise, the Supreme Court of India acknowledged the admissibility of electronic evidence, in the *State of Maharashtra v. Dr. Praful B. Desai*,¹⁶ thereby affirming the growing acceptance of digital processes within the legal system.

C. Statutory Recognition of Electronic Contracts

The evolution of digital commerce has prompted legislative measures to establish the status of electronic transactions. This has been addressed through the Information

¹³ Id.

¹⁴ Indian Contract Act, 1872, s 10.

¹⁵ *Trimex Int’l FZE v. Vedanta Aluminium Ltd.*, (2010) 3 SCC 1.

¹⁶ *State of Maharashtra v. Dr. Praful B. Desai*, (2003) 4 SCC 601.

Technology Act, 2000, as a guiding principle in regulating electronic records and digital agreements in India.

A significant provision in this context is Section 10A of the Information Technology Act, 2000 (inserted by the Information Technology (Amendment) Act, 2008, Act 10 of 2009, w.e.f. 27.10.2009), which provides that “such contract shall not be deemed to be unenforceable solely on the ground that such electronic form or means was used for that purpose.” This provision grants legal recognition to electronic contracts.

Furthermore, the Act, provides a level of recognition to electronic records and digital signatures, which provides a greater level of security to online transactions and these measures have strengthened online commerce to a significant extent.¹⁷

D. Types of Electronic Contracts

Electronic contracts are various forms depending on the level of interaction between users and digital platforms, namely:

1. **Click-wrap agreements**, where users are required to click a button to accept the terms and conditions of use.¹⁸
2. **Browse-wrap agreements**, where users are deemed to have accepted the terms of use through continuous interaction with a website. In most cases, users are given a chance to access the terms and conditions through hyperlinks.
3. **Shrink-wrap agreements** that are mostly common in software products. In this type, users are deemed to have accepted the terms of use upon opening the package. Therefore, these forms of electronic contracts have shown that contract law can adapt to technological advancements. However, they have also raised questions regarding users’ awareness.¹⁹

E. Issues Relating to Consent in Digital Contracting

Despite their efficiency and ease of use, electronic contracts have given rise to significant concerns over the authenticity of consent. In traditional contract law, it has

¹⁷ Id. ss 4–5.

¹⁸ Nancy S. Kim, *Wrap Contracts: Foundations and Ramifications* (Oxford Univ. Press 2013).

¹⁹ Id.

been assumed that parties have adequate time to peruse and comprehend the terms of a contract prior to entering into a legally binding agreement. However, in digital contracts, it has been argued that users are forced to accept a multitude of terms in a short space of time.²⁰

In many cases, users have been found to give consent without proper understanding of the implications of a contract. This has led to a number of questions over the authenticity of free and informed consent. This issue becomes more pertinent in cases where digital platforms have been found to employ interface design that impacts users' decisions in a way that undermines the voluntariness of consent.

The judiciary has been forced to take cognizance of issues relating to fairness and imbalance in contractual relationships. This reflects a broader concern within legal frameworks regarding the protection of consumer interests in evolving commercial environments.

F. Emerging Concerns in Electronic Contracting

The prevalence of electronic contracts has raised critical issues related to transparency, fairness, and consumer autonomy. Although the current framework offers formal recognition to electronic contracts, there are concerns that the framework does not fully address the challenges of electronic interface.

One of the major concerns in this context relates to the use of manipulative interface design strategies, commonly referred to as dark patterns. Dark patterns can potentially influence consumer behaviour by inducing individuals to make decisions that they would not have made in the absence of such influences. This raises critical concerns related to the validity of consent in electronic contracts.²¹

The interface of contract law, consumer law, and electronic technology has thus emerged as an area of critical legal analysis. This highlights the need to adopt a critical approach in regulating electronic contracts by not only recognizing their formal validity but also examining the issue of consent in such contracts.

²⁰ Omri Ben-Shahar & Carl E. Schneider, *More Than You Wanted to Know* (2014).

²¹ Jamie Luguri & Lior Strahilevitz, *Shining a Light on Dark Patterns*, 13 *J. Legal Analysis* 43 (2019).

V. DARK PATTERNS IN DIGITAL PLATFORMS: EVIDENCE OF MANIPULATED CONSENT IN E-CONTRACTS

A. Interface Design as a Tool of Behavioural Influence

In the virtual world, the concept of consent can no longer be based on the principles of the law but also on the design of the interfaces. In other words, the presentation and the choices offered to the user within the interfaces can significantly impact the process of engagement with the contractual terms. It can no longer be seen as a medium but as a tool for influencing the decision-making process.²²

According to the research conducted in the field of behavioural economics, it has been observed that when the user interacts with the online interfaces, they often tend to make decisions based on their intuition, especially when dealing with complex decisions. In this case, it has been found that the choices made by the user can be significantly impacted by the design of the interfaces. Therefore, the process of giving consent can no longer be seen as an act of decision-making but as an action influenced by the interfaces.

This reveals the fact that the concept of consent, as seen in the context of online contracts, can no longer be seen from a single point of view but from a dual point of view, as the design of the interfaces also plays a significant role.

B. Typology of Dark Patterns in Contractual Interfaces

The dark patterns take the form of specific categories of interface manipulation, which directly impact the process of contractual consent. The most prominent dark pattern of interface interference occurs when users are prompted to consent to a contract through dominant interface elements, with less prominent alternatives being less accessible to the users.²³

Forced action, where users are forced to agree to specific terms, such as data sharing or subscription, in order to access a service, is also a prominent dark pattern. Similarly,

²² Omri Ben-Shahar & Carl E. Schneider, *More Than You Wanted to Know* 45 (Princeton Univ. Press 2014).

²³ Harry Brignull, *Dark Patterns: Deceptive User Interfaces*, DARKPATTERNS.ORG (2010).

subscription traps involve automatic renewal of contracts, along with complicated procedures for opting out, which effectively binds users to a specific contract against their will.

These dark patterns, along with false urgency, which creates false claims of limited time offers, further increase the pressure on users. Moreover, pre-selected defaults allow for the processing of a large amount of data, which users need to change if they wish to avoid this, thus placing the burden of informed consent on users who may be unaware of this.²⁴

Therefore, these patterns demonstrate that manipulation is not incidental but structurally embedded within the design of many digital platforms.

C. Empirical Studies and Documented Practices

The existence of dark patterns has also been validated through empirical research studies. A study on a huge data set of e-commerce sites, which analyzed thousands of such sites, found evidence of a high occurrence of deceptive design patterns, particularly in areas related to pricing, subscription, and privacy settings. It was evident that users were being guided to make particular choices that suited the interests of the platforms, often without being transparent about this.²⁵

Moreover, evidence can also be drawn from existing reports of various consumer protection organizations. In their detailed report on the functioning of major technology platforms, the Norwegian Consumer Council found that users' privacy-related decision-making was being manipulated through interface design. Users were being offered simplistic options to "accept all," but in order to opt for privacy-friendly alternatives, users had to undergo a series of processes.²⁶

In the case of the Indian scenario, dark patterns have also been identified in digital platforms such as e-commerce, food ordering, and subscriptions. It is evident that

²⁴ Arunesh Mathur et al., *Dark Patterns at Scale: Findings from a Crawl of 11,000 Shopping Websites*, 3 *PROC. ACM HUM-COMPUTER INTERACTION* 1, 6-9 (2019).

²⁵ *Id.* at 10-12.

²⁶ Norwegian Consumer Council, *Deceived by Design: How Tech Companies Use Dark Patterns to Discourage Us from Exercising Our Rights* (2018).

users are being misled through pricing models, hidden costs, and opt-out processes, which are often uninformed or involuntary in nature.

Therefore, it is evident that the existence of dark patterns in digital platforms is a validation of the argument that digital consent is often not a voluntary decision but is being structurally manipulated.

D. Regulatory Response in the Indian Context

In view of the increasing significance of such practices, Indian authorities have taken specific steps to address them. The Central Consumer Protection Authority, through its guidelines issued in 2023, has formally identified various dark patterns of consumer deception as unfair trade practices.²⁷

In its guidelines, the Central Consumer Protection Authority has specifically addressed various dark patterns, including basket sneaking, subscription traps, interface interference, and hidden advertisements, which, according to the guidelines, affect consumer autonomy. The guidelines have formally recognized that dark patterns of consumer deception affect the process of obtaining consumer consent, which, in a digital environment, may be subject to manipulation.

Further, this move of the Central Consumer Protection Authority reflects a paradigm shift in the evolution of consumer protection law, which has formally recognized the significance of behavioural studies. The move also reflects a growing understanding of the fact that the process of obtaining consumer consent, if subject to manipulation, cannot be valid.

E. Re-examining Consent under Contract Law

The existence of dark patterns calls for a re-evaluation of the concept of consent under contract law. Generally, the Indian Contract Act provides that consent must be free, informed, and not given under coercion, undue influence, fraud, or misrepresentation.²⁸ However, dark patterns do not function in this manner. Rather,

²⁷ Central Consumer Protection Authority, Guidelines for Prevention and Regulation of Dark Patterns, 2023 (India).

²⁸ Indian Contract Act, No. 9 of 1872, ss.13–19, Acts of Parliament, 1872 (India).

they tend to do so in a less direct fashion, beyond the conventional scope of coercion, undue influence, fraud, and misrepresentation.

Reasoning in analogous areas indicates that the courts may now take a closer look at the balance of power and information. For example, in *Central Inland Water Transport Corporation v. Brojo Nath Ganguly*,²⁹ the Supreme Court highlighted the fact that contracts entered into under conditions of unequal bargaining power may be reviewed for fairness, while this case does not involve digital contracts, it is highly pertinent to the context of digital contracts, where users do not have the opportunity to bargain.

Therefore, the concept of consent in the context of digital contracts has to be re-evaluated in the context of technology.

F. Implications for Consumer Autonomy and Legal Reform

The cumulative result of dark patterns, therefore, underscores a critical challenge to consumer autonomy in the context of digital markets. The distinction between free consent and induced behaviour becomes increasingly vague where the design of the interface consistently pushes users toward a desired outcome.

This, in turn, has substantial implications for the enforcement of electronic contracts. Where consent is procured through manipulative means, the fundamental principle of agreement in contract law becomes questionable.

As a result, there exists an increasing need to move beyond the conventional acknowledgment of consent, with a focus on the quality of decision-making processes. Enhanced disclosure, easier opt-out procedures, and design accountability may be critical steps toward addressing the challenge of dark patterns in electronic contracting.

Ultimately, a multidisciplinary effort to balance legal principles, regulatory oversight, and design considerations will be essential to addressing the challenge of dark patterns in electronic contracting.

²⁹ *Central Inland Water Transport Corp. v. Brojo Nath Ganguly*, (1986) 3 SCC 156.

VI. LEGAL AND REGULATORY RESPONSES TO DARK PATTERNS IN INDIA

A. Reframing Consent in the Context of Digital Manipulation

The increased trend of using digital interfaces for the procurement of agreement from users has, therefore, brought a new dimension to the legal perspective, from the existence of consent to the means by which the consent is procured. Indian law has recognized electronic agreements as being valid, subject to the satisfaction of the fundamental conditions of contract, including the existence of free and informed consent.³⁰ However, the development of manipulative interfaces has brought a new dimension to the assessment of whether the consent procured is a true reflection of independent and free decision-making.

Unlike other contractual disputes, where a lack of consent is usually attributed to specific acts, the manipulative nature of digital interfaces does not involve misrepresentation of facts. It is, therefore, a fundamental legal issue of whether consent procured through the architecture of the interface is legally equivalent to consent procured through free and informed decision-making.

B. Limits of Classical Contract Doctrine

Indian Contract Act, which has a well-established framework for assessing the validity of consent, including factors such as coercion, undue influence, fraud, misrepresentation, and mistake, which may be relevant in invalidating a contract.³¹ While these factors are at the core of contract law, it is important to note that these factors are, for the most part, intended to address direct and tangible instances of interference in decision-making.

However, the existence of dark patterns has created a problem in this area, as it has introduced a means of influencing users in a manner that is not necessarily direct or

³⁰ Information Technology Act, No. 21 of 2000, s.10A, Acts of Parliament, 2000 (India); Indian Contract Act, No. 9 of 1872, s.10, Acts of Parliament, 1872 (India).

³¹ Indian Contract Act, No. 9 of 1872, ss.13–19, Acts of Parliament, 1872 (India).

tangible, and which may not easily be encompassed by the traditional categories of factors that may invalidate a contract.

This is a problem in the doctrine of contract, as it presumes that rational thought is at play in decision-making, whereas in the context of dark patterns, it is apparent that decision-making is often circumvented by behavioural triggers, which may not necessarily be rational in nature.

C. Consumer Protection as a Regulatory Tool

In addressing these issues, the consumer protection system in India appears to have developed into a more flexible approach to the regulation of digital market practices. In this regard, the Consumer Protection Act, 2019, is seen to expand the scope of such regulation by providing a definition of ‘unfair trade practices’ that is sufficiently broad to capture deceptive and manipulative practices in digital environments.³²

A notable aspect of this system is the establishment of the Central Consumer Protection Authority (CCPA), which is mandated to investigate, direct, and impose penalties on violative practices, including those that manipulate consumer choice, even in the absence of misrepresentation.

In this regard, the approach to consumer protection appears to provide a more flexible approach to addressing the risks associated with dark patterns, considering that such a system is focused on the effects of commercial practices, rather than their classification, which can provide a basis for addressing such risks, particularly in circumstances where the legal system may not provide a basis for such intervention.

D. Regulatory Recognition of Dark Patterns

The recognition of the existence of dark patterns within the Indian regulatory framework represents an important step change in the regulation of the digital environment. The guidelines introduced by the Central Consumer Protection

³² Consumer Protection Act, No. 35 of 2019, ss. 2(47), 18, Acts of Parliament, 2019 (India).

Authority in 2023 specifically address the various types of manipulative interface design and identify these as unfair trade practices.³³

The guidelines address the following types of unfair trade practices, which are likely to impact the decision-making process of the user in a manner which is not in line with the free consent of the user. These include the creation of false urgency, subscription traps, interference with the user interface, and the creation of disguised advertisements. The guidelines, therefore, recognize the fact that the structure of the decision-making process can significantly impact the contractual outcome between the parties involved. Importantly, the guidelines also go beyond the disclosure-based regulation and address the decision-making process itself.

This reflects the emerging trend towards the recognition of the fact that the structure of the decision-making process can significantly impact the contractual outcome between the parties involved. Thus, the focus of the regulatory environment shifts from the content of the contract to the fairness of the decision-making process.

In addition to the consumer protection framework, the Digital Personal Data Protection Act, 2023 (DPDPA), along with the Digital Personal Data Protection Rules, 2025, introduces a significant statutory dimension to the concept of consent in digital environments. Section 6 of the Act defines consent as a clear affirmative action that must be free, specific, informed, unconditional, and unambiguous, thereby establishing a higher threshold for valid consent in the context of personal data processing. Further, Section 7 recognizes certain legitimate uses, while Section 13 provides data principals with the right to withdraw consent at any time, reinforcing user autonomy.

The relevance of this framework to the issue of dark patterns is substantial. Interface designs that manipulate or obscure user choices may fail to meet the statutory standard of “informed” and “unambiguous” consent under the DPDPA, even where such consent may formally satisfy the requirements of contract formation under the

³³ Central Consumer Protection Authority, Guidelines for Prevention and Regulation of Dark Patterns, 2023 (India).

Information Technology Act, 2000. This creates a normative divergence between contractual validity and data protection standards, highlighting a regulatory gap in addressing illusory consent. Accordingly, the DPDPA framework may be seen as supplementing existing consumer protection mechanisms by imposing stricter conditions on the quality of consent, thereby offering a potential doctrinal basis for challenging manipulative digital practices.

E. Enforcement and Practical Challenges

Despite the formulation of regulatory guidelines, the enforcement of these regulations in relation to dark patterns has proved challenging in a number of ways. One such challenge is the international nature of digital platforms, which may not be easily subject to domestic regulatory control.

Another challenge is the constantly evolving nature of digital interface design, which is subject to a number of changes aimed at enhancing user engagement. This has led to a need to constantly adapt the law to the evolving nature of digital platforms.

Another issue is the burden of proof in the identification and prosecution of dark patterns. Unlike in instances of fraud and misrepresentation, where the manipulation is overt, dark patterns may not be easily identifiable in court.

Moreover, the level of consumer awareness is also a challenge in the enforcement of regulations in relation to dark patterns. This is because the average consumer is not aware of the impact of interface design on decision-making, and this has weakened the overall effectiveness of the regulations.

F. Towards a Behaviourally Informed Regulatory Framework

The challenge of dark patterns, therefore, underscores the need to develop a more sophisticated and forward-thinking policy response to the issue of manipulation. The policy, in this case, has to be dynamic enough to incorporate new ideas from behavioural studies and human-computer interaction to effectively respond to the challenge of manipulation in the digital environment.

In addition, a policy response to the challenge of manipulation might involve the implementation of design standards to support the neutrality of user interfaces, the

need to simplify contractual disclosures, as well as increasing accountability for manipulative intent. Furthermore, increasing consumer awareness through education initiatives might be critical to the overall effectiveness of policy responses to the challenge of manipulation.

In order to effectively address the challenge of manipulation in electronic contracts, therefore, a shift from validation to evaluation might be critical to the overall integrity of the process of seeking consent. The law, in this case, might be able to respond to the challenge of manipulation in a way that respects consumer autonomy while, at the same time, accommodating the evolution of technology.

VII. FINDINGS, SUGGESTIONS AND CONCLUSION

A. Findings of the Study

This doctrinal study titled “Dark Patterns and the Illusion of Consent in E-Contracts in India: A Legal Analysis” examines the extent to which existing legal frameworks address the problem of manipulated consent in digital environments. Based on the analysis undertaken in Chapters II, III, and IV, the following findings emerge:

Firstly, the researcher has found that Indian law has accepted the validity of electronic contracts; however, this is only procedural in nature. Indian law is more focused on the existence of consent rather than its authenticity. Therefore, the digital means of consent, such as the click of the mouse on the “I agree” button, is accepted as valid consent despite the fact that the consent is subject to the manipulative power of the interface.

Secondly, the researcher has found that the concept of free consent under the Indian Contract Act is conceptually limited when applied in the digital environment. The common circumstances that vitiate consent in a contract, such as coercion, fraud, and misrepresentation, are subject to direct and identifiable influences. On the other hand, dark patterns involve indirect and behavioural manipulations of the interface of the digital platform, resulting in the “illusion of consent.”

Thirdly, the researcher has observed that digital platforms have considerable control over the interaction of the user with the digital platform. Therefore, the balance

between the digital platform and the user is compromised in the sense that the free consent of the user is subtly negated despite the fact that the user has consented to the terms of the digital platform.

Fourth, the study reveals that the consumer protection mechanism in India has now begun to recognize these issues. For instance, the recent regulatory guidelines have acknowledged the concept of dark patterns as unfair trade practices, which is a positive sign.

Fifth, it has been noticed that the judicial mechanism has only addressed the issue of electronic contracts in the context of their enforceability and not in the context of the quality of consent. For instance, the courts have held electronic contracts to be valid based on the intention and acceptance, but the issue of consent has not been addressed in the context of manipulative practices.

Sixth, the researcher has noticed some critical structural problems in the current legal mechanism, including the rapidly evolving technology, the borderless nature of digital business, and the level of consumer awareness, which makes the current legal mechanism less effective in dealing with the issue of dark patterns.

Based on the above findings, it has been revealed that the current legal regime in India does not address the issue of illusory consent in the context of electronic contracts. There are a number of legal regimes, but none of them has addressed the issue in the context of behavioural aspects of consent.

B. Suggestions

In the above-mentioned context, the researcher would like to put forward the following suggestions based on the above findings:

1. There is a need to reconceptualize the concept of consent in the context of contract law. It is imperative that the legal standards in this respect extend beyond the concept of acceptance and include the concept of informed consent, which is not subject to manipulative influence.

2. There is a need to include specific statutory recognition of dark patterns in the context of consumer protection laws. This would help in the overall clarity and enforcement of the regulations.
3. There is a need to enhance the technical capabilities and investigative powers of the regulatory authorities to keep a watchful eye on manipulative digital practices. This would help in the overall implementation of the guidelines.
4. There is a need to have a coordinated regulatory response, including consumer protection authorities, technology regulators, and cyber enforcement agencies. This would help in addressing the complexities in digital markets.
5. There is a need to enhance the concept of ethical design standards in the digital industry. This would help in restoring the autonomy of the consumer.
6. There is a need to enhance the level of awareness among consumers through digital literacy. This is imperative in addressing the issue of manipulative digital practices and obtaining informed consent in the digital industry.

C. Conclusion

This study, undertaken under the title “Dark Patterns and the Illusion of Consent in E-Contracts in India: A Legal Analysis,” has critically examined the existing framework in its ability to respond effectively to the challenges of manipulative digital practice. It has sought to examine the interface of contract law and consumer protection, as well as the emerging framework of regulation, in order to assess the efficacy of the free consent doctrine in the context of digital practice. It has been seen that, although Indian law has recognized the existence of electronic contracts, it has continued to rely on traditional concepts of law, which fail to account for the nuances of digital practice. The doctrine of consent has been premised on the notion of rational and informed choice, which is no longer a reality in a digital context, as users are increasingly subject to manipulative factors in their decision-making.

The development of a framework of regulation for dark patterns has therefore been a significant move in recognizing the challenges of manipulative digital practice, although it has been seen that the existing framework has a reactive nature, focusing on the consequences of manipulative practice rather than its prevention at the outset.

The study also further reiterates that the judicial and regulatory mechanisms have a limited scope of addressing the problem. Therefore, the problem of illusory consent remains a structural problem in the context of digital contracts.

Further, this research has reconfirmed the validity of the hypothesis that this research has postulated. It has reconfirmed that the existing legal framework is insufficient to deal effectively with the problem of dark patterns and the resulting illusion of consent in the context of e-contracts.

Thus, to protect the concept of consent in a digital environment, a rethinking of the fundamental principles of the legal framework is required. A move towards a substantive and behavioural understanding of the concept of consent is required to make the concept of legal validity consistent with the concept of actual autonomy. Otherwise, the concept of consent remains a formal concept.

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