

Dark Pattern in Online Trading - A Critical Examination of their Legality under Consumer Protection Laws

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Abstract

This paper critically investigates “dark patterns”, deceptive online design methods that manipulate user choices, as they appear in online trading platforms. It analyses their legal treatment under India's **Consumer Protection Act, 2019**, the **CCPA Guidelines for Prevention and Regulation of Dark Patterns, 2023**, and emerging **SEBI frameworks** governing trading transparency. Recent enforcement actions such as **CCPA Vs. BookMyShow (2025)** and **SEBI Vs. Jane Street Group (2025)** exemplify the transformation of interface ethics into legally actionable misrepresentation. The study integrates doctrinal legal analysis, empirical surveys, and case disposition summaries to examine regulatory gaps and propose enhanced governance pathways aligning with global ethical design standards.

Keywords: Dark Patterns, Online Trading, Consumer Protection, SEBI, CCPA Guidelines, Algorithmic Manipulation, Drip Pricing, Unfair Trade Practice

Importance of the Study

The progression of financial technology has blurred the boundary between market persuasion and digital coercion. As online trading interfaces employ behavioural exploitation through design, consumer autonomy and informed consent face systemic compromise. The significance of this research lies in its attempt to bridge consumer protection law and algorithmic design ethics, situating dark patterns as both economic manipulations and legal violations in India's financial technology sector.

Objectives

- 1) To examine the concept and typology of dark patterns within online trading platforms.
- 2) To evaluate their classification under **Consumer Protection Act, 2019** and **CCPA Guidelines (2023)**.
- 3) To analyse recent Indian case laws dealing with deceptive digital practices.
- 4) To critically assess SEBI's approach to algorithmic misrepresentation and interface manipulation.
- 5) To recommend cross-sector regulatory strategies that enhance consumer rights and transparency.

Research Methodology

This study adopts a doctrinal-empirical hybrid approach:

- **Doctrinal Analysis:** Examination of statutes, regulatory advisories, and court judgments.
- **Comparative Jurisprudence:** Study of International Dark Pattern Regulation (**FTC, EU DSA**).
- **Empirical Component:** **Review of Local Circles 2025** national survey findings revealing that 97% of Indian platforms still use at least one form of dark pattern despite regulatory warnings.
- **Case Analysis:** Evaluation of CCPA orders and SEBI adjudications between 2023–2025.

1. Legal Definition and Conceptual Framework of Dark Patterns

Dark patterns are deceptive interface designs used to nudge, steer or coerce users into decisions beneficial to traders but potentially harmful or unwanted by consumers. The **Federal Trade Commission (FTC)**, in

its 2022 Staff Report, categorized dark patterns as online design tricks that subvert user autonomy, including hidden fees, default-preselected options, obscure cancellation methods, and repeated prompts (“nagging”).

Legally, state and federal regulations (e.g., CCPA, FTC Act) define dark patterns as user interfaces designed to “subvert or impair user autonomy, decision-making, or choice”. However, establishing a precise legal threshold between persuasive and manipulative design remains complex, with courts and regulators relying on intent, effect, and user expectation.

From a doctrinal perspective, courts and regulators grapple with defining the line between permissible persuasive marketing and illegal coercive manipulation. Elements such as user intent deception, the undue difficulty in reversing decisions (e.g., cancellation), and the discrepancy between user expectations and design transparency constitute key standards. Jurisdictions are gradually codifying these standards as statutory prohibitions or regulatory rules. In the U.S., the FTC utilizes **Section 5** of the **FTC Act** to prosecute practices that “**cause or are likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves**” and not outweighed by countervailing benefits, interpreting this ambitiously to target many dark pattern schemes.

2. Legislative and Regulatory Responses in Key Jurisdictions

a. United States

The **CCPA’s 2023 amendment (CPRA)** explicitly outlaws dark patterns in securing consumer consent for data collection, mandating that consent obtained through such manipulative tactics is void. Fourteen states have adopted similar prohibitions, prescribing that opt-outs must be as straightforward as opt-ins. The FTC’s proactive litigation strategy, post-2022, marks a regulatory shift toward aggressive enforcement. Its 2025 Amazon settlement stands as the most significant precedent: charging deceptive enrolment procedures and difficult cancellation flows as violations of **Section 5**, resulting in a historic \$2.5 billion penalty and court-ordered compliance reforms.

b. South Korea

South Korea’s 2025 E-Commerce Act Amendment codifies explicit prohibitions against six dark pattern types: drip pricing, hidden renewal, nagging, preselected options, misleading hierarchies and cancellation obstruction. The **Korea Fair Trade Commission (KFTC)** actively enforces these laws, imposing administrative fines and business suspensions. The regulatory framework aims for clear-cut rules and swift enforcement, with periodic compliance audits and industry guidance to deter manipulative practices.

c. Australia and Other Jurisdictions

With a number of high-profile enforcement proceedings against e-commerce companies in 2023 and 2024, the **Australian Competition & Consumer Commission (ACCC)**, the regulator, brought dark patterns into sharper focus. Although dark patterns are not specifically prohibited by Australian law, enforcement is only possible in cases where their use is so egregious that it satisfies the thresholds for being “**misleading or deceptive**” or “**unconscionable**” under the current provisions of the Australian Consumer Law.

In a ruling against **Ediscom S.p.A. (Garante for la Protezione dei Dati Personali, 2023)**, the **Italian Data Protection Authority (DPA)** specifically mentioned “**dark patterns**”, or online design decisions that influence users’ choices in order to favour digital services. This ruling is noteworthy, for the first time in Europe, a DPA explicitly declares that using DPs violates the GDPR, specifically the principles of lawfulness, transparency, and fairness (**Article 5(1.a)**), consent requirements (**Articles 4(11), 7(2)**), and data protection by design and by default (**Article 25**). Up to now, case law has approved some design

practices (Brignull et al., 2023) without specifically mentioning DPs. This landmark decision establishes a standard for subsequent case law and regulatory rulings.

3. Landmark Case Laws Examining Dark Patterns in Online Trading

a. FTC v. Amazon (2024–2025)

Case Comment: The FTC's historic 2025 enforcement action accused Amazon of “**knowingly duping millions of consumers into enrolling in Amazon Prime by design**” deploying manipulative interfaces that enrolled users into subscriptions and then presenting nearly insurmountable obstacles to cancellation. FTC internal documents revealed intent, “**subscription driving is a bit of a shady world**”, supporting the court's finding of knowing and substantial deception.

Outcome: Amazon settled for \$2.5 billion, including \$1 billion in civil penalties and \$1.5 billion in direct consumer compensation (up to \$51 per affected individual), and was mandated to reform Prime's sign-up and cancellation flows. This settlement is the largest ever for a dark pattern violation and signals the FTC's strict approach to “**subscription traps**” in digital commerce.

b. FTC v. Epic Games (Fortnite) (2023)

Case Comment: The FTC alleged that confusing and inconsistent in-game purchase mechanisms tricked adults and minors into unwanted purchases, with opaque refund and dispute mechanisms (“**Negative Consent**”). The order required Epic Games to pay \$245 million in consumer refunds, discontinue dark pattern designs in their UI, and implement clear, conspicuous, and affirmative consent flows.

Judicial Reasoning: Consent obtained via dark patterns was declared non-consensual; the company's practices were held to be systematically misleading to consumers of all ages. The case is pivotal in extending dark pattern doctrine to “**non-traditional**” settings (video games, child users).

c. South Korea E-Commerce Act Enforcement (2025)

Case Comment: The KFTC targeted drip pricing, pre-checked options, and misleading “**visual hierarchy**” tactics. Six practices were outrightly banned, businesses given a six-month compliance grace period and roundtables with platform operators held to clarify compliance. Administrative fines and business suspensions underscore the seriousness with which South Korea views digital marketplace fairness.

4. Enforcement Challenges and Judicial Interpretations

Enforcement of dark pattern regulations in online trading faces significant hurdles in India and globally, shaped by evolving judicial interpretations and the cross-jurisdictional nature of digital commerce. Below is an advanced analysis, structured, incorporating and leading Indian case laws and international regulatory actions, particularly referencing the **EU Digital Services Act** and **US FTC precedents**.

a. Regulatory Architecture and Enforcement Mechanisms

India's 2023 Dark Pattern Guidelines, framed by the **Central Consumer Protection Authority (CCPA)**, outline prohibited design practices and establish mechanisms like the **Jagriti Dashboard for real-time platform monitoring**, paired with participatory pathways via consumer reporting apps. However, enforcement is hampered by the subtleties of interface manipulation, the prolific diversity of online platforms, and dependence on industry self-auditing which may not always align with consumer interests.

b. Substantive Enforcement Challenges

Despite regulatory clarity, implementation in India is fraught with operational and structural challenges:

- ❖ Subtle manipulations often evade clear detection, particularly as firms iterate on interface design faster than regulators adapt.

- ❖ Illustrative lists in Guidelines (**Annexure 1**) are non-exhaustive, necessitating constant regulatory vigilance and update as digital tactics evolve.
- ❖ Oversight fragmentation between competition, privacy, and consumer authorities often leads to regulatory gaps or conflicting directives.

c. Judicial Interpretation and Case Law Trends

Indian courts have begun referencing manipulative digital practices within the broader rubric of “**unfair trade practice**” under **Section 2(1)(r)** of the **Consumer Protection Act, 2019 (CPA)**. For example:

- ❖ In **Amazon Seller Services Pvt. Ltd. Vs. Amway India Enterprises Pvt. Ltd. (2020)**, the Delhi High Court scrutinized deceptive displays and misleading product placement as potentially unfair under consumer law.
- ❖ Recent consumer disputes, such as complaints addressed by the **National Consumer Disputes Redressal Commission (NCDRC)**, increasingly analyse user interface elements for prima facie evidence of manipulation or coercion, though a landmark case specifically on dark patterns in India is awaited.

d. Global Regulatory Reference Points

i. European Union

The **Digital Services Act (DSA)** requires platforms to guarantee transparent, user-friendly online environments and specifically forbids manipulative interface designs. Inconsistent national interpretations and overlap between consumer and data protection authorities are the root causes of enforcement issues inside the EU. Aspects of dark patterns (such as prohibiting pre-ticked boxes and mandating explicit opt-out procedures) are covered by the **UCPD**, **GDPR** and **DMA**; nevertheless, legal certainty depends on uniform regulations and case-by-case implementation.

ii. United States (FTC)

The alleged use of purposefully complex interfaces to promote Prime subscriptions was the focus of the **Federal Trade Commission's** recent enforcement action against Amazon. These are actionable under **Section 5 of the FTC Act** and the **Restore Online Shoppers' Confidence Act (ROSCA)**, according to the FTC, which describes them as “**unfair or deceptive practices**”. Although case results depend on a thorough examination of consumer damage, consent procedures, and disclosure standards, these moves provide significant advice and show that regulatory focus is becoming more similar on both sides of the Atlantic.

iii. Cross-Jurisdictional Implications and Future Trajectories

Digital commerce's inherently transnational nature means Indian enforcement must not only address domestic actors but also interface with global regimes:

- ❖ Divergent definitions and thresholds for “**manipulation**” create compliance complexities for global platforms.
- ❖ Effective regulation may require bilateral or multilateral agreements on information exchange and cross-border enforcement.
- ❖ Both India and the EU are moving towards principles-based approaches that weigh intent and actual harm over prescriptive, rigid design bans, aiming for future-proof, technology-neutral regulation.

iv. Recommendations for Judicial and Regulatory Evolution

- ❖ Indian courts should develop a coherent jurisprudence treating dark patterns as an extension of established unfair trade practice doctrine, referencing both domestic guidelines and persuasive foreign judgments.

- ❖ Regulators should collaborate to streamline enforcement pathways and ensure rapid response to emergent manipulative tactics.
- ❖ Harmonization, both internally across Indian agencies and externally with international partners, is vital to assure comprehensive consumer protection in the digital age.

5. Policy Implications and Recommendations for Strengthening Consumer Protections

i. Evolution of Legal and Regulatory Frameworks in India

The identification of dark patterns as unfair trade practices in India originates from the **Consumer Protection Act of 2019**. This act, specifically **under Section 2(47)**, grants the **Central Consumer Protection Authority (CCPA)** the authority to investigate, impose penalties, and mandate the cessation of misleading business practices. In response to the increasing complexities of the digital marketplace, the government released the **Guidelines for Prevention and Regulation of Dark Patterns** in 2023. These **guidelines outline 13 specific manipulative digital practices**, including **false urgency, basket sneaking, confirm shaming, forced action, subscription traps, interface interference, bait and switch, drip pricing, disguised advertisements, nagging, trick wording, SaaS billing and rogue malware**. For example, Flipkart's self-audit and public compliance declaration in 2025 set a standard for the industry, demonstrating how leading platforms adhere to regulatory directives, thereby fostering consumer trust and encouraging ethical digital commerce.

ii. Clarity and Enforcement Authority

The 2023 Guidelines under **Section 18** of the **Consumer Protection Act, 2019** clarify that any contravention invites overarching penalties, and disputes in interpretation are settled by the CCPA. This centralization enhances speed and consistency in enforcement. The CCPA's decisive interventions, promptly ordering discontinuation of deceptive advertisements, imposition of fines, and mandating self-audits, demonstrate how regulatory vigilance can curtail exploitative practices and foster a transparent digital ecosystem.

iii. Comparative Insights from EU Regulatory Precedents

The European Union's Digital Services Act (DSA, Article 25) strictly bans dark patterns, requiring platforms not to deceive or manipulate users and insisting on genuine consent and autonomy in user choices. The DSA operates alongside **the General Data Protection Regulation (the GDPR)** and **the Unfair Commercial Practices Directive (the UCP Directive)**, collectively strengthening protection against coercive digital tactics. **The Data Act** and **the AI Act** further outlaw mechanisms that compromise user autonomy or exploit cognitive vulnerabilities, calling for design practices that minimize harm and maximize transparency. Such layered, principled regulation offers a framework for Indian policy to harmonize definitions and enforcement standards at the international level.

iv. U.S. Enforcement: FTC Approaches and Case Law

The U.S. Federal Trade Commission (FTC) defines dark patterns as design tactics that “trick or manipulate users into making decisions they would not otherwise have made”. Enforcement actions against **Amazon (2023)**, **Epic Games**, and **Publishers Clearing House (2022–2023)** highlight regulatory scrutiny of sign-up manipulations, subscription traps, forced consent and cancellation barriers. FTC guidelines mandate clear disclosure, affirmative consent and simple cancellation options, serving as practical models for Indian digital commerce platforms.

v. Integrative Recommendations for Policy Enhancement

a. Harmonization of Definitions and Standards

Indian policymakers should synthesize lessons from the EU DSA and U.S. FTC to construct a comprehensive legal taxonomy of dark patterns, applicable to all digital providers serving Indian consumers, regardless of domicile.

b. Proactive Self-Auditing and Certification

Platforms should be required to undertake periodic self-audits modelled after **Flipkart's 2025 declaration**, signalling voluntary compliance and readiness for regulatory scrutiny. **Ethical-by-design certification** and **public disclosure** must accompany these audits to reinforce user trust and voluntary industry stewardship.

c. Enhanced Regulatory Powers and Inter-Agency Coordination

Empower the CCPA to direct digital businesses to submit audit results and compliance declarations regularly; integrate cooperation with privacy and fair competition authorities as seen in **Cross-Sectoral FTC Endeavors**.

d. User Literacy and Transparency Mandates

Mandatory public awareness campaigns must address manipulative interface tactics, framed around evidence from successful consumer literacy initiatives by the FTC and EU regulators.

e. Judicial and Administrative Specialization

Special benches or training modules for consumer tribunals should be instituted to address digital manipulation claims, leveraging both legal and technological expertise and informed by recent enforcement practices.

f. Global and Bilateral Policy Convergence

India should participate in multilateral forums on digital fairness, ensuring mutual recognition of enforcement results and global harmonization of disclosure and interface design principles.

6. Key Findings

These under mentioned key findings collectively underscore that India's legal and regulatory framework is not only converging with, but also contributing to, international standards for curbing exploitative dark patterns in online trading. Early enforcement actions, industry compliance models and harmonized global precedents mark a significant shift towards greater accountability, transparency and consumer empowerment in the digital marketplace.

a. Statutory Recognition and Prohibition

India acknowledges dark patterns as a substantive legal violation, explicitly recognizing them as unfair trade practices, misleading advertisements or violations of consumer rights under the **Consumer Protection Act, 2019** and its subsidiary rules and guidelines. **The 2023 Guidelines for Prevention and Regulation of Dark Patterns**, issued under **Section 18 of the CPA**, provide a dedicated, legally enforceable framework, defining and prohibiting over a dozen deceptive **UI/UX practices** including false urgency, basket sneaking, confirm shaming, and subscription traps.

b. Regulatory Enforcement and Early Jurisprudence

The Central Consumer Protection Authority (CCPA) has exercised its powers to initiate action under the CPA against platforms deploying dark patterns. Notably, enforcement actions in India include orders to **BookMyShow** (for pre-ticked "basket sneaking" donations) and **IndiGo** (for forced add-ons in digital transactions). Such violations are treated as unfair trade practices under **Section 20 of the CPA**, attracting significant penalties. Repeat offenses may result in imprisonment and fines under **Section 89 of the CPA**, highlighting the seriousness with which the Indian authorities regard dark pattern practices.

c. International Regulatory Benchmarks

India's approach resonates with, but is distinct from, global standards. For instance, the EU's **Digital Services Act (2022)** defines and prohibits "practices that materially distort or impair" user autonomy. The **US Federal Trade Commission (FTC)** has not only set interpretive standards but has imposed substantial fines, such as the \$25 million penalty on Amazon for dark patterns related to the Prime subscription cancellation process. These international precedents reinforce India's regulatory trajectory, lending persuasive value and global consistency to domestic enforcement frameworks.

d. Compliance Initiatives in the Indian Digital Market

Recent compliance efforts, such as Flipkart's publicized self-audit and compliance declaration, set benchmarks for industry best practice in digital design transparency and user autonomy. India's 2023 regulatory directive mandates periodic self-auditing and reporting by e-commerce and digital service platforms, driving market-wide adoption of ethical UX practices and amplifying consumer trust in online trading.

e. Challenges in Harmonization and Prospects for Future Adjudication

Despite recent progress, the Indian regime's evolving jurisprudence faces challenges, particularly in harmonizing emerging digital realities with statutory language and ensuring robust judicial interpretation. Current guidelines resolve regulatory ambiguity by vesting the CCPA with final interpretative authority, but judicial forums will inevitably play a pivotal role in clarifying standards, setting case law precedents, and optimizing consumer protection as digital market practices evolve.

Conclusion: A Critical Legal and Ethical Appraisal of Dark Patterns in Online Trading

a. Affirmation of Legal Prohibition and Enforcement Landscape

The proliferation of dark patterns in online trading unequivocally contravenes established consumer protection frameworks in India, particularly under the **Consumer Protection Act, 2019** and the **operative Guidelines for Prevention and Regulation of Dark Patterns** issued by the **Central Consumer Protection Authority (CCPA)** in 2023. These guidelines identify and proscribe a spectrum of manipulative practices, ranging from false urgency to basket sneaking and confirm shaming, which have been judicially recognized as unfair trade practices. Enforcement actions by the CCPA, exemplified by early orders against entities such as **BookMyShow** for unauthorized basket additions, underscore the regulatory commitment to uphold consumer rights and corporate accountability. Moreover, the stringent penalties under **Section 89** of the Act, including imprisonment and significant fines, emphasize the seriousness with which Indian law addresses deceptive digital conduct.

b. Judicial and Regulatory Precedents Shaping Consumer Autonomy

While case law specifically targeting dark patterns is emergent, Indian consumer courts have increasingly extended the ambit of unfair trade practices to encompass deceptive digital design under the Consumer Protection Act. The legal reasoning aligns with international precedents, such as the **U.S. Federal Trade Commission's enforcement** actions against deceptive digital interfaces and the **EU's Digital Services Act** that frame dark patterns as infringements on informed consent, consumer autonomy, and fair contractual engagement. The regulatory interplay of data privacy statutes, notably the **Digital Personal Data Protection Act, 2023**, further reinforces the prohibition on exploitative consent mechanisms intrinsic to many dark patterns, signalling a multifaceted legal approach to digital consumer protection.

c. Advancing Ethical Governance and Compliance Paradigms

The journey toward equitable digital marketplaces necessitates a culture of ethical design beyond mere legal compliance. Industry leaders' initiatives, such as Flipkart's comprehensive self-audit and public

declaration of dark pattern mitigation, demonstrate emergent best practices that prioritize transparency, fairness, and consumer empowerment. These voluntary compliance efforts, coupled with regulatory vigilance, form the foundation for sustainable consumer trust and digital market integrity. Institutional mechanisms must evolve in tandem, integrating technological, legal, and ethical dimensions to preemptively identify and eradicate manipulative design elements while fostering dialogue among regulators, businesses, and consumers.

In conclusion, the legal landscape governing dark patterns in Indian online trading is dynamically evolving, driven by proactive regulatory frameworks, judicial interpretations, and industry compliance exemplars. This confluence fosters an increasingly robust environment for consumer protection that preserves digital autonomy and combats deception in a rapidly digitizing economy. Continued jurisprudential development and international regulatory harmonization remain imperative to address the complex nuances of dark pattern practices fully. Such advancements will decisively safeguard consumer interests and uphold the principles of fairness and transparency in the digital commerce realm.

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