DARK PATTERNS IN E-COMMERCE: IS CONSUMER CONSENT REALLY FREE?

Jeevitesh Mishra*

ABSTRACT

The growth of e-commerce has made shopping faster and more convenient, but it has also created opportunities for digital interfaces to influence consumers in misleading ways. Such practices, commonly known as dark patterns, may pressure or confuse users into making choices they would not otherwise make. This article examines whether clicking "I agree" or "Buy now" always amounts to meaningful consent. It discusses the Indian Contract Act, 1872, Section 10A of the Information Technology Act, 2000, and the Guidelines for Prevention and Regulation of Dark Patterns, 2023. It also considers common examples, regulatory challenges, consumer awareness and international experience. The article argues that a digital click can be evidence of acceptance, but it should not be treated as the only consideration when assessing whether a consumer's decision was informed and voluntary.

INTRODUCTION

Everyone is a consumer in one way or another. People purchase food, clothing, household products, travel services and subscriptions as part of everyday life. With increasing competition, markets have also witnessed unfair trade practices such as misleading advertisements, adulteration and black marketing. These practices can expose consumers to financial and other risks. The traditional approach of caveat emptor, or "let the buyer beware", has increasingly been supplemented by consumer-protection principles that place greater responsibilities on sellers and service providers.

Consumer shopping habits have changed substantially, particularly following the COVID-19 pandemic. Consumers increasingly use smartphones and online platforms to purchase everyday

*BCOM LLB, FIRST YEAR, LLOYD LAW COLLEGE, GREATER NOIDA.

goods and services. Platforms such as Zepto, Amazon and Flipkart have contributed to the growth of e-commerce and quick-commerce in India. GlobalData estimated the Indian e-commerce market at US$147.3 billion in 2024 and projected a compound annual growth rate of 18.7 per cent through 2028. Digital commerce is therefore an important part of modern economic life.

However, online convenience can be accompanied by new forms of consumer manipulation. Websites and applications can arrange choices, highlight particular buttons, add items during checkout, display countdown timers or make cancellation options difficult to locate. Some design choices help users navigate a service; others may steer, confuse or pressure them into decisions that benefit the platform rather than the consumer. These practices are commonly known as dark patterns.

India has responded to these concerns through the Guidelines for Prevention and Regulation of Dark Patterns, 2023 ("Dark Patterns Guidelines"). They raise an important legal question: if a consumer clicks "I agree", "Subscribe" or "Buy now", can that click always be treated as genuine and meaningful consent? Electronic transactions can be legally recognised, but the circumstances in which a consumer accepts terms may still matter. This article examines dark patterns, consumer consent under Indian law and the practical challenges of regulating manipulative digital interfaces.

UNDERSTANDING DARK PATTERNS

Dark patterns are interface designs that may steer, deceive or pressure people into decisions they might not otherwise make. They can appear on websites, mobile applications, online marketplaces and subscription services. The concern is not simply that a business tries to persuade a consumer. Discounts, recommendations and promotional messages can be legitimate commercial practices. The concern arises when a design obscures important information, disguises a material term or makes a choice unnecessarily difficult.

A useful distinction can be drawn between persuasive and deceptive design. Persuasive design may help a user achieve a goal they have already chosen. For example, a clearly labelled checkout button can make it easier to complete a purchase. Deceptive design may hide an important cost, imply that an offer is about to expire when it is not, or make refusal more difficult than acceptance. Such conduct can interfere with informed consumer choice and may engage consumer-protection rules.

Dark patterns matter because design influences decisions at the point when a consumer chooses whether to buy a product, subscribe, share information or accept an additional service. A person may technically press a button while having an incomplete or misleading understanding of its consequences. The relevant question is whether the interface gives the consumer a fair opportunity to understand the available choices. The Dark Patterns Guidelines identify thirteen specified patterns, although the classification of a particular interface depends on its actual operation and the applicable legal requirements.

COMMON EXAMPLES OF DARK PATTERNS

Basket Sneaking: Unwanted products, services or other items may be added to a consumer's cart without clear consent. The consumer may believe the cart contains only the selected product and discover an extra item at checkout. This can increase the final price and make comparisons difficult. A transparent checkout should identify each item and charge and allow optional additions to be removed before payment.

False Urgency: A platform may create a misleading impression that the consumer must act immediately. Examples include artificial countdown timers or unsupported claims that only a few items remain. Genuine deadlines and limited stock can be relevant information, but fabricated urgency may pressure consumers to decide without considering their needs, price or alternatives.

Confirm Shaming: The interface uses guilt, embarrassment or emotional pressure to influence a decision. For example, the option to reject a promotion may be worded to make a consumer feel foolish for declining it. Consumers should be able to reject optional offers without being shamed.

Forced Action: A consumer is required to perform an unrelated or unwanted action before accessing a desired service or feature. Some steps are legitimately needed for security or payment, but an unnecessary action may limit meaningful choice.

Subscription Traps: Joining a service is made easy while cancellation is made confusing, hidden or unnecessarily difficult. Important cancellation controls may be hard to find, or the user may be directed through repeated steps. Consumers should receive clear information about recurring payments and a reasonably accessible way to cancel.

These examples show that the issue is not merely the appearance of a website or application. The central concern is whether the design interferes with a consumer's ability to make an informed and voluntary choice. Several patterns may also appear together, such as a misleading countdown combined with an extra service and an unclear final price.

CONSUMER CONSENT UNDER INDIAN LAW

The question of whether consent is genuinely free must be considered in light of Indian contract law because online purchases commonly involve contractual relationships. Section 13 of the Indian Contract Act, 1872 defines consent in terms of parties agreeing upon the same thing in the same sense. Section 14 addresses free consent and provides that consent is not free when it is caused by coercion, undue influence, fraud, misrepresentation or mistake, subject to the statutory provisions.

These provisions are relevant to digital transactions because consumers often accept terms through a webpage or application rather than through a paper document or face-to-face discussion. The electronic nature of the interaction does not make contract-law principles irrelevant. The information presented, the terms communicated, and the circumstances surrounding acceptance may all be significant.

It is important not to assume that every dark pattern automatically proves a particular defect in consent under contract law. The legal consequences depend on the facts and applicable provisions. A design may raise concerns under consumer-protection rules even where a separate question remains about the precise effect on the contract. Equally, a consumer's regret after a purchase does not, by itself, establish that consent was legally defective. The focus should be on the conduct, information and circumstances involved.

The distinction between acceptance and meaningful consent is therefore important. A click may show that the consumer performed an affirmative action, but it does not independently prove that the consumer received clear information or was free from a misleading design. The question is broader than whether a button was pressed: it concerns what the consumer was asked to accept and how the choice was presented.

ELECTRONIC CONTRACTS AND THE MEANING OF A CLICK

Section 10A of the Information Technology Act, 2000 recognises electronic contracting by providing that a contract is not to be considered unenforceable merely because proposals, acceptances or other communications were expressed electronically. This is important because many online purchases take place without paper documents or face-to-face negotiations.

A clickwrap mechanism, in which a user actively clicks a button to accept terms, can provide evidence of affirmative acceptance where the terms have been properly communicated. However, recognition of electronic contracts should not be confused with a rule that every click conclusively resolves all questions about consent. Electronic form is one aspect of the transaction; the quality and circumstances of acceptance are separate matters.

Consider a website displaying a "30 seconds left" countdown that is not connected to genuine inventory or an actual expiry of the offer. Such a countdown may create artificial pressure and interfere with the consumer's ability to consider the purchase carefully. If the design falls within a prohibited pattern such as false urgency, consumer-protection rules may become relevant. The legal significance depends on the facts and applicable law.

Similarly, a subscription page might prominently display an acceptance button while obscuring recurring payment terms or making refusal difficult to find. The consumer may have clicked to proceed, but the interface may not have presented the choice transparently. These examples show why a click should be assessed in context rather than treated as the only evidence that matters.

A careful analysis separates three questions: whether an electronic act of acceptance occurred; whether material terms were communicated clearly; and whether the interface involved a prohibited or otherwise legally relevant practice. These questions are connected but not identical. This approach avoids assuming either that electronic consent is always valid simply because a button was clicked or that every confusing interface automatically invalidates a contract.

THE DARK PATTERNS GUIDELINES, 2023

The Guidelines for Prevention and Regulation of Dark Patterns, 2023 are significant because they identify specified manipulative practices in the digital marketplace. By naming practices

such as basket sneaking, false urgency, confirm shaming, forced action and subscription traps, the Guidelines provide a vocabulary for describing conduct that might otherwise be dismissed as a design preference.

Consumer protection in an online environment cannot focus only on the final price or the wording of a conventional advertisement. The way choices are arranged and presented may also matter. If a design steers consumers through deception or pressure, examining the interface may be necessary to understand the transaction.

Identifying a practice by name is only one part of effective regulation. A particular interface must be examined in context. Regulators may need to consider the sequence of screens, the wording of buttons, whether optional items were preselected, how charges were disclosed and whether cancellation or refusal was reasonably accessible. Evidence may be needed to establish how the design operated at the time of the transaction.

The Guidelines are therefore part of a broader consumer-protection framework. Their practical value depends on whether consumers can report problems, businesses understand their responsibilities, and regulators respond consistently to potentially manipulative practices. As interfaces evolve, effective application also requires attention to new variations of familiar patterns.

CHALLENGES IN REGULATING DARK PATTERNS

Distinguishing Persuasion from Manipulation: Businesses use discounts, recommendations and promotional messages to influence choices, and these techniques are not necessarily improper. The difficulty arises when a design misleads consumers, creates artificial pressure or prevents them from understanding important information. Regulators must assess how the design actually operates rather than treating all persuasive techniques as equivalent.

Rapidly Changing Interfaces: Websites and applications can be modified quickly, and different users may see different versions of a page. This can make it difficult to establish what a consumer encountered at the time of a transaction. Investigation may require screenshots, records of the user journey, transaction details and other technical evidence.

Consumer Awareness: Research involving 406 participants found that users were generally aware that manipulative designs could influence online behaviour, but awareness did not

necessarily enable them to resist those influences. Earlier research on mobile applications also found that many participants did not recognise dark patterns unless they were first informed about them. These findings suggest that simply informing consumers about manipulation may not eliminate its effects. A user may recognise pressure and still feel compelled to act because an offer appears valuable or time is limited.

Evidence and Enforcement: Establishing that a design is deceptive may require evidence about the interface and its operation. Regulators may need to determine whether a scarcity claim was genuine, whether an extra item was clearly disclosed or whether cancellation was made unnecessarily difficult. The difficulty of collecting evidence highlights the need for appropriate technical capacity and clear procedures.

Complex Transactions: Online purchases can involve several screens, optional services, payment methods, delivery details and recurring terms. Consumers may focus on the product or headline price and overlook information presented elsewhere. Clear design helps consumers understand a transaction, while fragmented disclosure can make the task harder. Regulation must encourage meaningful transparency without assuming that every lengthy transaction is deceptive.

INTERNATIONAL REGULATORY EXPERIENCE

International developments show that dark patterns have become a concern beyond India. In September 2025, the United States Federal Trade Commission announced a US$2.5 billion settlement with Amazon concerning allegations that consumers were enrolled in Prime subscriptions without informed consent and that cancellation was made unnecessarily difficult. The announced settlement included a US$1 billion civil penalty and up to US$1.5 billion in consumer redress.

This example illustrates regulatory attention to subscription practices and the difficulty consumers may face when joining or leaving a service. It shows that concerns about digital consent can involve both the initial decision to subscribe and the cancellation process. A fair consumer experience should respect the consumer's ability to make an informed decision and, in accordance with applicable terms and law, to end a service.

The United States example does not determine Indian law. Different jurisdictions have different statutes, procedures and enforcement powers, and a settlement in one country should not be

treated as a direct legal precedent for another. Its value is comparative: it demonstrates the importance of accessible cancellation processes and the attention that subscription-related interface practices can attract.

For India, a broader lesson is that consumer protection should consider the complete digital journey. A consumer's experience begins with information shown before purchase, continues through payment and use of the service, and may extend to renewal, cancellation or a request for redress. Examining this journey can help identify where design may undermine informed choice.

RESPONSIBILITIES OF BUSINESSES AND PLATFORMS

Businesses and platforms play a central role in preventing manipulative design. Clear disclosure should be treated as a basic feature of a fair transaction rather than a technical formality. Prices, additional charges, recurring payments and key conditions should be presented so consumers can reasonably understand them before committing.

Optional items should not be added to a cart without clear consent. If an additional service is offered, consumers should be able to understand that it is optional and make a genuine choice. Countdown timers and scarcity statements should be accurate rather than artificial. Refusal buttons should use clear language and should not rely on guilt or embarrassment.

Subscription processes deserve particular attention. Consumers should be informed when payments recur, how much will be charged and what conditions apply. Cancellation instructions should be easy to locate and reasonably straightforward to follow. Making cancellation more difficult than subscription can undermine trust and create avoidable disputes.

Transparent design can benefit businesses as well as consumers. Trust is important in digital commerce, where consumers often cannot inspect goods or negotiate terms face to face before purchasing. Clear and fair interfaces can reduce confusion, complaints and reputational harm while supporting long-term customer relationships.

PRACTICAL STEPS FOR CONSUMERS

Consumers can take practical steps to reduce the risk of being misled, although responsibility for fair design should not rest on consumers alone. Before completing a purchase, users can review the full cart and check whether additional products or services have been included. The

final amount should be compared with the advertised price, taking account of disclosed delivery fees, taxes and other legitimate charges.

Consumers should treat countdown timers and scarcity messages critically, particularly when the claim seems inconsistent, or the same offer appears repeatedly. Comparing products and prices can help prevent a timer from dictating the decision. For subscriptions, consumers should check whether payment is recurring, when renewal occurs and how cancellation works.

Where a consumer believes that an interface involved a prohibited dark pattern or an unfair practice, the appropriate response depends on the circumstances and available complaint mechanisms. Consumers may seek information from relevant consumer-protection authorities or use the platform's complaint process. Informed caution can help, but effective protection also requires responsible business design and appropriate enforcement.

RECOMMENDATIONS FOR EFFECTIVE PROTECTION

First, enforcement should focus on the real consumer experience. A review should consider the sequence of screens and choices rather than looking only at a single button or final receipt. This can help establish whether the interface gave a balanced account of the available options.

Second, businesses should provide clear information about material terms. Optional services, recurring charges and additional items should be distinguishable from the product or service originally selected. Consumers should not have to search through unrelated screens to discover the actual cost or consequences of a choice.

Fourth, platforms should make complaint and cancellation processes accessible. Consumers who encounter problems should be able to locate support information without navigating an unnecessarily complex system. Businesses should also examine recurring complaints as possible indicators that an interface is confusing or misleading.

Finally, regulation must remain responsive to technological change. The Guidelines identify specified patterns, but interface practices can evolve in form and presentation. Regulators, researchers and businesses should continue to examine how new designs affect consumer decisions while applying legal standards carefully. These measures can help preserve legitimate innovation without sacrificing consumer autonomy.

CONCLUSION

Dark patterns present an important challenge to consumer autonomy in the digital marketplace. Online platforms provide convenience, speed and access to a wide range of products and services, but the same environment can be used to pressure or mislead consumers. Basket sneaking, false urgency, confirmation shaming, forced action and subscription traps illustrate how interface design may affect decisions at critical moments.

Indian law provides relevant points of reference. Sections 13 and 14 of the Indian Contract Act, 1872 address consent and free consent, while Section 10A of the Information Technology Act, 2000 recognises that contracts are not unenforceable merely because they are formed electronically. The Guidelines for Prevention and Regulation of Dark Patterns, 2023 identify specified practices that raise consumer-protection concerns.

These frameworks should not be simplified into the proposition that every click is valid in all circumstances or that every confusing interface automatically invalidates a contract. The appropriate assessment depends on the facts, the terms communicated, the way the choice was presented and the applicable legal requirements. A click can be evidence of acceptance, but it is not necessarily a complete answer to whether the consumer's decision was informed and voluntary.

Effective protection depends on consistent enforcement, technical capacity, consumer awareness and responsible business practices. Consumers should be able to understand material terms, reject optional services without pressure and cancel subscriptions through reasonable processes. Businesses should not rely on confusion or artificial urgency to secure transactions.

Ultimately, the issue is not simply whether a consumer clicked a button. It is whether the digital environment allowed the consumer to make a sufficiently informed and voluntary choice. The future of e-commerce regulation will depend on balancing commercial innovation with genuine consumer autonomy. A marketplace built on transparent choices is more likely to sustain consumer trust and support the long-term legitimacy of digital commerce.

REFERENCES

- Indian Contract Act, 1872, Sections 13–14.
- Information Technology Act, 2000, Section 10A.
- Department of Consumer Affairs, "The Guidelines for Prevention and Regulation of Dark Patterns, 2023" (2023). https://consumeraffairs.nic.in/sites/default/files/The%20Guidelines%20for%20Prevention%20and%20Regulation%20of%20Dark%20Patterns%2C%202023.pdf
- US Federal Trade Commission, "FTC Secures Historic $2.5 Billion Settlement Against Amazon" (25 September 2025). https://www.ftc.gov/news-events/news/press-releases/2025/09/ftc-secures-historic-25-billion-settlement-against-amazon
- Bongard-Blanchy K, Rossi A, Rivas S, Doublet S, Koenig V and Lenzini G, "I am Definitely Manipulated, Even When I am Aware of it. It's Ridiculous! – Dark Patterns from the End-User Perspective" in Proceedings of the 2021 ACM Designing Interactive Systems Conference (ACM 2021) 763–776. https://doi.org/10.1145/3461778.3462086
- Di Geronimo L, Braz L, Fregnan E, Palomba F and Bacchelli A, "UI Dark Patterns and Where to Find Them: A Study on Mobile Applications and User Perception" in Proceedings of the 2020 CHI Conference on Human Factors in Computing Systems (ACM 2020) 1–14. https://doi.org/10.1145/3313831.3376600
- Mathur A, Acar G, Friedman MJ, Lucherini E, Mayer J, Chetty M and Narayanan A, "Dark Patterns at Scale: Findings from a Crawl of 11K Shopping Websites" (2019) 3 Proceedings of the ACM on Human-Computer Interaction 81:1–81:32. https://doi.org/10.1145/3359183