

UNPACKING THE ILLUSION: A LEGAL DECONSTRUCTION OF DARK PATTERNS IN FOOD DELIVERY APPS AND INDIA'S CONSUMER EXPLOITATION

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ABSTRACT

Rapid digital adoption and adaptation is occurring in urban consumption on the backdrop of an expanding array of highly intricate electronic marketplace. In this new digitally-driven landscape, food delivery services and other digital interfaces are in process of dictating Indian consumer tastes by using deceitful interfaces referred to as 'dark patterns' which are cognitive-lock-in tactics utilized to influence consumer choice with the aim of cultivating impulse buying behaviors. The present legal research paper, will be discussing the wide ramifications, legal, economic, and regulatory, which emanate from the use of dark patterns in the largest food delivery services of India.

The established doctrines of caveat emptor provided scant remedies for digital manipulation which were hitherto used by market players until the introduction of the new Consumer Protection Act, 2019¹ in India and subsequently guidelines and directions from the Central Consumer Protection Authority (CCPA)² following, to a degree, the benchmarks for addressing platform based manipulations laid by the Digital Services Act in the European Union³.

Notwithstanding to the fact that, a gap in the Indian legal framework on the methods of enforcement of manipulations of interface design and hidden costs of dark patterns presented is discovered in this research paper. This paper is an attempt to observe and bring about the existence of such interface design elements which tricks and draws the Indian consumers into the forced continuity loop usage patterns and bypass the acquiring of an 'informed consent'. Such type of research is performed based on the method of doctrinal and analytical research which resulted after a critical and detailed review of the various statutes, guidelines, industry reports and by taking into account the observation of Parliament Standing Committee Report for

establishing and determining the extent to which, manipulation of software and algorithmic designs can be argued to infringe upon the choices and autonomy of the Indian digital consumer based upon the efficiency and framework established under the Indian regime to counter such form of manipulation.

Through this research paper, it has been noted that the Indian competition regulators acknowledge this problem of misleading user interface design but are unable to address it due to lacuna in enforcement mechanisms and absence of concrete statutory penalties which has to some extent led to the uncontrolled proliferation of such an interface design pattern across India.

This paper finally proposes various policy interventions which must be instituted such as mandatory UI/UX Audits, establishing clear definitions of dark pattern taxonomies and imposing higher penalties and administrative fines.

Keywords : Consumer Protection, Dark Patterns, Digital Marketplaces, Unfair Trade Practices, User Autonomy.

INTRODUCTION

The increase in hyper-local digital trade and rapid delivery applications has transformed eating practices. Now so entrenched into city and daily life practices, there is often a constant stream of consumer behavior to the digital layer that is transacting thousands of orders per day, and under the pristine façade of ease, there exists an organized effort of digital persuasion and in specific, an effort to undermines the decision-making process of the customer through 'dark patterns' in User interface and User experience.

Its legal relevance today arises because manipulation of interface elements, including false urgency, basket sneaking, drips pricing, stealth advertisement , undermines user cognition for decision making and the ensuing consent, in the Indian legal framework .The regime of consumer protection of the earlier era was aligned to the physical world, when consumer protection mechanisms dealt with issues such as fraud and adulteration of physical goods and had enforcement mechanisms to ensure performance as per the contract (which have a clear, tangible basis). The human element and cognitive architecture have to be accounted for and a

move from protection against tangible vices to protection from their digital counterpart, cognitive corruption. The research problem this study seeks to solve is, whether the current Consumer Protection regime in India can effectively check and punish such ‘dark patterns,’ when practiced on DFFP’s. The paper will investigate the shortcomings of Indian statutes in this regard, when contrasted with the research gap in existing legislative and administrative framework (both in India and abroad), regarding prevention and penalization of such practices. The broad objectives of the present paper are: Evaluating the recent guidelines issued by CCPA. Evaluating and comparing the laws in foreign jurisdictions; and making suitable policy recommendations for controlling the influence of digital architectures.

Literature Review

Digital consumer protection literature has surged with the arrival of platform capitalism. Once, this literature was occupied with data protection and the enforceability of e-commerce contracts. In more recent years, building on this interdisciplinary scholarship which marries behavioral economics and the law, literature highlighted the part of design in the manipulation of consumer’s cognitive biases (the interfaces referred to as "dark patterns").

It is a matter of widespread agreement among leading legal scholars⁴ and regulatory actors that the current conception of consent fails to achieve. We have long known since the advent of the internet age that the concept of affirmative consent would become practically impossible to negotiate under a modern, technologically mediated consumer-market transaction where online interfaces are “deliberately designed to obfuscate, confuse and deceive.” Despite this reality, no significant scholastic output to date has thoughtfully addressed the relationship between Indian consumer protection law and platform specific dark patterns, as it relates to food delivery service.

Few commentaries actually engage in the analysis that goes beyond the acknowledgement of an administrative regime and tries to explore what that administrative regime would look like in terms of binding platform operator liability.

This article sets forth to fill in that blank in academic literature by looking into applicable statutes, guidelines, and compliance related issues.

Research Methodology

The research utilizes a doctrinal, analytical and comparative research approach to generate credible institutional and judicial findings based on pure legal provisions and institutional documents.

Research design:

Critical legal examination of the prevailing statutes, administrative rules, and the operational digital market operations.

Data Sources

Primary and Secondary Sources, the former encompasses the consumer protection Act, 2019¹, policy drafted by CCPA,² and the EU Consumer protection laws³; the latter encompasses the consumer forum's analysis,⁵ industry report on deceptive practices, and the academic journal articles regarding behavioral bias, economic research paper on manipulation.

Scope:

Scope is Indian e commerce, but at certain times it draws comparative parallels with the consumer policy of EU.

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Limitations-

The research does not involves primary consumers surveys on perception and behavior but takes in account the notices and warnings I issued and cited at several points in the relevant literature, books on digital legal, empirical findings in books & articles, and reports published by various bodies about the digital market. Analytical framework, thematic critical assessment and appraisal of legal statutes, rules and the gap identified between the regulation and its implementation.

DISCUSSION AND ANALYSIS

1. Defining Dark Patterns and Regulatory Response

What the heck is a dark pattern?

In lay terms, it refers to the deliberate use of design elements in an interface to trick users into making a purchase decision that better serves the service provider than the consumer, sacrificing the autonomy of the customer.

What do these look like on food delivery apps?

- Drip Pricing: Delivery charges, platform fees, as well as surge prices are disclosed in stages and revealed incrementally right before making the final purchase, as part of a checkout process rather than a price upfront
- False Urgency: Countdown timers and fabricated alerts for high demand to nudge users to commit to orders quickly.

- Basket Sneaking: Unauthorized addition of extra items - mandatory donations, packaging costs, pre-added tips, etc. - into your basket without your specific, proactive opt-in and assent.

Identifying these tactics, in 2023, CCPA brought in comprehensive guidelines under the Consumer Protection Act, 2019 outlining several types of dark patterns. One significant drawback to the implementation of CCPA Guidelines, 2023 is that they are admin directives rather than direct penal statutes. This creates a window for platforms to leverage the lacuna and/or to consider nominal penalties as the cost of doing business.

2. Gaps in the Legal Framework under Consumer Protection Act, 2019 The Consumer Protection Act, 2019, via Section 2(47), define “unfair trade practice” to mean a “deceptive practice... adopted for the sale, use or supply of any goods or for the provision of any services.”

Though this wording is sufficiently elastic to incorporate all sorts of algorithmic manipulations, its application to algorithmic interfaces involves a considerable level of evidentiary difficulties. Consumer dispute redressal forums face challenges in computing consumer loss, both psychological and financial. Moreover, an individual consumer is not generally expected to file a legal complaint for minor incremental financial losses.

Hence, when multiplied over millions of transactions day-to-day, it adds to substantial unlawful profit gained by the platform. 3. International Comparison – The Example of the European Union A cursory look at other international jurisdictions demonstrates a clear trend toward tighter legislation. The European Union’s Digital Services Act (“DSA”) plainly forbids any platform from designing, organizing or operating its services, for example, online interfaces, in such a manner that they have the effect of deceiving or manipulating recipients of their service, or otherwise materially distorting or impairing the ability of recipients of their service to make autonomous decisions.

Noncompliance with the DSA’s provisions may result in the imposing of hefty administrative fines (calculated as a percentage of the platform’s global annual turnover).

By way of contrast, India's implementation regime appears to largely remain at the stage of corrective advisories, albeit at an increasingly escalated price point, which lacks equal force.

Findings

Regulatory Vacuum & Lack of Prosecution Lag: Though CCPA has regulations and no such penal provision for interface elements and user manipulation are to be found under the broadly framed Consumer Protection Act, State and district consumer commissions can neither act in prompt prosecution on those grounds of ‘deceptive’ UI. Systemic Manipulation within Consumer Interface of Online Food Ordering Apps: A vast number of mobile applications already design them in a manner that will be termed as infringement upon informed consent. These small nudges add up, given the enormous scale of online food orders to give substantial rewards. Proactive Enforcement Audit required for Food Ordering Apps: Consumer rights in general are enforced on demand or on receipt of complaint from a person, thus there is need for proactive enforcement audit in case of online food ordering apps in relation to digital interface architecture.

RECOMMENDATIONS

In view of this imminent threat of digitization of deceptions in the app’s space for food delivery platforms, it is recommended: • Statutory Codification of Dark Patterns : ‘ Chapter V-A’ needs to be added to the Consumer Protection Act, 2019 prescribing punitive action for a list of specific ‘dark pattern’ typologies coupled with significant revenue share based penalty rates. • Mandatory ‘UI/UX’ – based Consumer Audits: Regulators needs to introduce recurring app-interface’ certifications from consumer welfare panels. These panels, having an established process to analyze and rate interface design for clarity of total price along with the integrity of the ‘opt-in’ choice must periodically carry out these analyses. • Increasing the ‘on-their own’ authority of Consumer Regulators :The CCPA- India must be mandated with better powers of enquiry and that the CCPA needs to have the ability to pass a suo-motu interim injunctions for platforms with deceptive design during peak hours of demand.

Conclusion

The preponderance of “dark patterns” in food delivery apps reveals an obvious problem of inadequate of digital consumer protection in modern age. Even though administrative rules are a

leap in the right direction, digital consumer protection requires diligent enforcement of legal rules supported by tough penalties and proactive governmental initiatives in order to fill legislative void and protect a fair digital environment.

FOOTNOTES

1. Consumer Protection Act, No. 35 of 2019 (India).
2. Central Consumer Protection Authority, Guidelines for Prevention and Regulation of Dark Patterns, (2023).
3. Regulation (EU) 2022/2065 of the European Parliament and of the Council on a Single Market for Digital Services (Digital Services Act).
4. *M.P. Jain, Indian Constitutional Law* 145 (8th edn. LexisNexis 2018).
5. Competition Commission of India, *Market Study on E-commerce in India: Key Findings and Observations* 45 (2020)



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