
THE CONUNDRUM OF PRIVACY AND HEALTHY USAGE OF ONLINE SERVICES

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ABSTRACT

The Consumer Protection Act 2019 was amended to protect the rights of consumers in varied sectors ranging from product deficiency to E-commerce but due to the emergence of new problems in digital space consumers are confronted with issues of “privacy” and unhealthy usage of online services which leads to depression, anxiety, binge watch and other such mental sickness which is a result of excessive use of online services for watching series, movies, etc. for which there is no warning or grievance redressal mechanism. This paper will focus on the aspects of privacy of the consumers and also highlight key instances where, due to the absence of any warning on the digital platforms, the consumers face health-related issues in using online services, which is a neglected aspect today and not much literature has been contributed in this aspect.

I. Introduction

The Consumer Protection Act 2019 (hereinafter referred to as “CPA 2019”) is a benevolent legislation that addresses the problems of consumers ranging from product deficiency to E-Commerce and misleading advertisements but today due to the emergence of digital space and new problems consumers are confronted with issues related to “Dark patterns” which are difficult to tackle easily. For example, in India, the Ministry of Consumer Affairs, Food, and Public Distribution has introduced guidelines related to the prevention of dark patterns.¹ But numerous lacunas are there in it, and it is also unenforceable. This has led to an increase in problems faced in the digital space and unawareness among consumers, which is the biggest drawback of this new emerging issue.² And compromises their privacy in the digital space, which is a new challenge that this legislation has to address.³ The Second issue, which is more prevalent due to the emergence of the digital space, is the absence of cautionary or grievance redressal mechanisms in web shows and platforms such as OTT websites.⁴ Or the absence of any warning, which can be seen on the back label of the products. This has led to instances of Suicide, Binge-Watching, and other harmful effects that consumers face by availing these services.⁵ Due to this, the newly enacted CPA 2019 has its limitations, which became evident with the passage of time and the exigency of the “**Right to Healthy Usage of Online Services**” and the “**Right to Privacy of Consumers in Digital Space**”⁶ Becomes paramount.

II. Right to Healthy Usage of Online Services

The right to healthy Usage of Online Services means that Consumers must be provided access to grievance redressal forums while using online services such as Netflix, MX-Player, and

¹Dep’t of Consumer Affs., *Draft Guidelines for Prevention and Regulation of Dark Patterns 2023* (Ministry of Consumer Affs., Food & Pub. Distribution 2023), <https://consumeraffairs.nic.in/sites/default/files/file-uploads/latestnews/Draft%20Guidelines%20for%20Prevention%20and%20Regulation%20of%20Dark%20Patterns%202023.pdf> (last visited Jan. 16, 2025).

²Consumer Unity & Tr. Soc’y (CUTS), *Comments on Draft Guidelines on Prevention and Regulation of Dark Patterns*, <https://cuts-ccier.org/pdf/comments-on-draft-guidelines-for-prevention-and-regulation-of-dark-patterns.pdf> (last visited Jan. 16, 2025), at 3.

³Dr. Maria Goretti Simoes, *Dark Patterns and Consumer Behaviour: A Study Mapping the Mindset of the Consumer through Critical Analysis*, 12 Russ. L.J. 1 (2024).

⁴*Regulations of OTT Platforms in India: Steps Towards Transparency and Consumer Empowerment*, 39 Competitive Media & L. Pol’y Dig., <https://cmd-journal.hse.ru/index.php/cmd-journal/article/view/20988> (last visited Jan. 16, 2025).

⁵*Are You Still Watching? Exploring Unintended User Behaviours and Dark Patterns on Video Streaming Platforms* <https://dl.acm.org/doi/fullHtml/10.1145/3532106.3533562> accessed 16 January 2025.

⁶Sandeep J. Sharma & Ishita Sharma, *Dark Patterns in a Bright World: An Analysis of the Indian Consumer Legal Architecture*, 11 Int’l J. on Consumer L. & Prac., art. 7 (2023) (last visited Jan. 16, 2025).

Amazon Prime to file their grievances and also warnings must be given for excessive usage of these portals which can also be seen in the products due to which cases of product liability arises. The Right to Safety which is incorporated in Section 2(9) of the CPA2019⁷ which is related to the “purchased goods and services availed that should not only meet their immediate needs but also fulfill long-term interests” has implications because the purpose of this provision is restricted to the “Purchase and Marketing” of goods, products, and services that are hazardous to life and property but access to online forums such as OTT Web series, Netflix, etc. impair the ability of users to focus on their safety effectively and due to this “Binge Watch” they view the recommended Series or Episodes multiple times and automatically the next episode is preselected for viewing.⁸ So, to prevent such occurrences, the Right to Healthy Usage of Online Services must be incorporated so that these companies can also mention the harmful effects of their services, just as it can be seen on the back panel of the products.

The right to healthy Usage of Online Services also becomes paramount not only while browsing the content available on the internet as when the “users” enter into any website they first encounter the cookie preferences, and in some, they encounter the Free Choice Repression or 'Undesirable Restriction' that impose burdens or pressure on users and induces consumers to accept or retain an undesirable entity such as a product sneaking into their shopping carts.⁹

III. Right to Privacy of Consumers in Digital Space

Due to the dearth of literature and cases on aspects related to the privacy of consumers in the digital space in India as well as abroad,¹⁰ there is a need to maintain their privacy to prevent them from harmful instances related to dark patterns, such as confirm shaming,¹¹ Bait and Switch,¹² etc. Recently the imposition of internet handling charges in the final bill amount termed as hidden cost practice of dark pattern, the Hyderabad District Disputes Redressal Commission (hereinafter referred to as “HDDRDC”) used Section 2(47) of the CPA 2019 which defines unfair trade practice and highlighted that the imposition of internet handling

⁷Consumer Protection Act, 2019, § 2(9), https://ncdr.nic.in/bare_acts/CPA2019.pdf (last visited Jan. 16, 2025).

⁸Sharma & Sharma, *supra* note 6.

⁹M. Leiser & W.-T. Yang, *Illuminating Manipulative Design: From “Dark Patterns” to Information Asymmetry and the Repression of Free Choice under the Unfair Commercial Practices Directive*, 34 Loy. Consumer L. Rev. 484, 484–528 (2023), <https://lawecommons.luc.edu/lclr/vol34/iss3/6/> (last visited Jan. 16, 2025).

¹⁰Matthew B. Kugler, Lior Jacob Strahilevitz, Marshini Chetty & Chirag Mahapatra, *Can Consumers Protect Themselves Against Privacy Dark Patterns?* (forthcoming 2025) 23 UNH L. Rev. 18.

¹¹*Unpacking Dark Patterns: Understanding Dark Patterns and Their Implications for Consumer Protection in Digital Economy*, 7(1) RGNUL Student Res. Rev. (2023).

¹² *Unpacking Dark Patterns*, *supra* note 7, at 22

charges in the final bill amount without clearly segregating them is tantamount to an unfair trade practice. This is one of the first cases where an issue incidental to the practice of dark patterns has come to the fore, wherein the interest of the consumer was taken into consideration, but still at its very nascent stage.¹³

The right to privacy remains a contentious issue to be addressed for consumers as the instances of cyber-crime, online frauds, and Scams occur by the sacrifice of the privacy of the consumers in the digital space, and due to the absence of the opposite parties it leads to huge financial loss to the consumer for which there is no redressal or action. The interface of intervention with Blockchain technology or AI tools can thwart dark patterns rather than just consumer awareness programmes.¹⁴ About different dark patterns and their effects.

The Prevention and Regulation of Dark Patterns, 2023 (draft guidelines)¹⁵ Is instead, a commendable step taken by the Ministry of Consumer Affairs (MCA), Food and Public Distribution, Department of Consumer Affairs for tackling the problem of dark patterns at its nascent stage but still some dark patterns such as “nagging dark patterns” that convince users to adopt privacy settings consumers do not prefer, not by persuading consumers to change their preferences, but by making it clear that the user interface will not take no for an answer which will never prompt users to reconsider their choice must be incorporated in the draft guidelines.

IV. Reasons For Proposing Such Rights

Right to Healthy Usage of Online Services

The right to healthy usage of online services is not among the six consumer rights in India, as well among the eight consumer rights recognised worldwide.¹⁶ There have been studies related to E-commerce¹⁷ and the effect of the “sanctity” of medical-based consultations on

¹³Sharma & Sharma, *supra* note 6.

¹⁴Jieshan Chen et al., *Unveiling the Tricks: Automated Detection of Dark Patterns in Mobile Applications*, in *Proceedings of the 36th Annual ACM Symposium on User Interface Software and Technology (UIST '23)* (Oct. 2023), <https://dl.acm.org/doi/abs/10.1145/3586183.3606783> (last visited Jan. 16, 2025).

¹⁵Ministry of Consumer Affairs, Food & Pub. Distribution, *Draft Guidelines for Prevention and Regulation of Dark Patterns* (2023), <https://consumeraffairs.nic.in/sites/default/files/file-uploads/latestnews/Draft%20Guidelines%20for%20Prevention%20and%20Regulation%20of%20Dark%20Patterns%202023.pdf> (last visited Jan. 16, 2025).

¹⁶Consumer Affairs Council of Malta, *The Eight Consumer Basic Rights*, <https://consumeraffairscouncil.gov.mt/the-eight-consumer-basic-rights/> (last visited Jan. 16, 2025).

¹⁷World Trade Organization, *E-commerce: Work Programme and Moratorium* (2023), https://www.wto.org/library/events/event_resources/ecom_0106202310/177_639.pdf (last visited Jan. 16, 2025).

consumers¹⁸ but the harmful effects of online services such as streaming platforms remain a neglected area due to which absence of regulation for the regulators of design patterns gives them the freedom to manipulate consumers in a nick of time.

Right to privacy of consumers in the digital space

The right to privacy was incorporated in India as a fundamental right after the judgment of *Justice K.S. Puttaswamy (Retd.) and Anr. Vs Union of India and Ors.*¹⁹ But it had its implications as it related to “privacy protection against the state”, therefore, this right came under the umbrella of the Right to Life under Article 21 of the constitution but due to this, the disputes involving the *Right in personam* between private parties became free of causing any infringement to the privacy so the companies have freely targeted the privacy of the consumers without any binding conditions or protocols as it is evident from the guidelines of Prevention and Regulation of Dark Patterns, 2023 which are non-binding.

Examples from the international scenario, such as the *California Consumer Privacy Act*²⁰, and the European Union laws are the *General Data Protection Regulation (GDPR)*, in which Article 25 sub-clauses 1 and 2 focus on the maintenance of privacy by data controllers in their interfaces by default as well as by design.²¹ Similarly, in Australia, the *Consumer Data Rights* (hereinafter referred to as CDR), where the consent of consumers is paramount before availing any goods and services or sharing data with third parties, so these models can be adopted in changing circumstances.

V. Mechanism for Enforcing Such Rights

- a) There are numerous drawbacks involved in the Prevention and Regulation of Dark Patterns, 2023, which have been effectively highlighted by the Consumer Unity and Trust Society (CUTS), which mandates the effective enforcement of these guidelines. The government can consider those and work accordingly to tackle the issue of dark patterns. Also, clear

¹⁸Norma Sari, *Consumer Health and Safety on the Internet-Based Medical Consultation*, 26 *Mimbar Hukum* No. 1 (2014), <https://jurnal.ugm.ac.id/jmh/article/download/16062/10608> (last visited Jan. 16, 2025).

¹⁹Supreme Court Observer, *Puttaswamy v. Union of India: Fundamental Right to Privacy Case Background*, <https://www.scobserver.in/cases/puttaswamy-v-union-of-india-fundamental-right-to-privacy-case-background/> (last visited Jan. 16, 2025).

²⁰Sriya Sridhar, *Regulation of Dark Patterns: Lessons for India [Part II]*, *Indian J.L. & Tech. Blog* (Apr. 3, 2021), <https://www.ijlt.in/post/regulation-of-dark-patterns-lessons-for-india-part-ii> (last visited Jan. 16, 2025).

²¹Jamie Luguri & Lior Strahilevitz, *Shining a Light on Dark Patterns*, 13 *J. Legal Analysis* 43 (2021) (U. Chi. Coase-Sandor Inst. for L. & Econ. Rsch. Paper No. 879, U. Chi. Pub. L. Working Paper No. 719).

boundaries related to what would violate consumer protection law and what would amount to acceptable consumer persuasion practices²² have not been demarcated in the guidelines, making them more questionable.

- b) These rights can be enforced when the consumers are made aware of the harmful effects of dark patterns and also when there is a comprehensive prohibition of all sorts of manipulative persuasion faced by the consumers in E-commerce and web portals.²³
- c) The manipulative design patterns can be effectively tackled when the designers are provided with the standard practice of what amounts to “Dark Patterns” and then effectively by creating “Consumer-friendly” portals for the usage of the consumers.
- d) Industry-specific research must be conducted, and statistics related to behavioural patterns of consumers must be detected so that the dearth of research in this aspect for Indian consumers can be reduced and the government can effectively manage to tackle the harmful effects of dark patterns and online services. Furthermore, the government can use Blockchain technology to manage browsing activities and monitor the designs having dark patterns and redress them.
- e) The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021²⁴ Includes the contents that can be classified as “A+Rated” or 18+, but the provisions lack healthy usage of online services, which is not even incorporated in CPA 2019 and affects the health of consumers drastically.

VI. Conclusion

The Right to Privacy and the Right to Healthy Usage of Online Services can be enforced when challenges related to Dark Patterns can effectively be tackled, along with promoting awareness for consumers. The right to privacy remains a contentious issue in the domain of Consumer Jurisprudence, so not only must consumers be protected in sites of “E-Commerce” but also

²²Mark Leiser, *Illuminating Manipulative Design: From "Dark Patterns" to Information Asymmetry and the Repression of Free Choice Under the Unfair Commercial Practices Directive*, 34 Loy. Consumer L. Rev. 484, 526 (2022), <https://lawcommons.luc.edu/lclr/vol34/iss3/6> (last visited Jan. 16, 2025).

²³Leiser & Yang, *supra* note 9, at 526.

²⁴The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, <https://www.meity.gov.in/writereaddata/files/Revised-IT-Rules-2021-proposed-amended.pdf> (last visited Jan. 16, 2025).

when they are browsing websites and then sharing their private information in the form of accepting cookies and making hidden payments. This can lead to effective enforcement of such rights and can effectively impact results in browsing the sites freely and safely. This can be done using Blockchain technology to manage browsing activities, monitor the designs having dark patterns, and address them accordingly.

When we see the back label of products in the market the mention of “caution” is there in the form of “Keep out of reach of children” etc. but in the web streaming platforms and other such online services there is no mention of the harmful effects of such web streaming services because it is out of the ambit of Right to safety as it's only related to “Purchase and Marketing” of goods, products, and services that are hazardous to life and property but not the “usage of online services” so this right can also be incorporated.