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# **DARK PATTERNS AS UNFAIR TRADE PRACTICES: CAN SECTION 2(47) CPA 2019 CAPTURE MANIPULATIVE DIGITAL DESIGNS?**

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## **ABSTRACT**

One of the major threats to consumer autonomy in India's fast digital economy could be dark patterns i.e. manipulative user interface designs that exploit cognitive biases in such a way that consumers are completely tricked into doing the actions they do not want. This article examines if section 2(47) of the Consumer Protection Act, 2019 is defining "unfair trade practice" so narrowly as to exclude technologically advanced manipulative techniques. This study, through its textual analysis, use of behavioural economics concepts, and comparison of different legal systems, brings out that the broad term "unfair method or unfair or deceptive practice" covers dark patterns as systematic design strategies that deceive consumers and thus, violate their informed choice.

The article explains the different taxonomies of dark patterns, such as drip pricing, confirmshaming, forced continuity, and subscription traps, and demonstrates how each one exploits certain psychological vulnerabilities, the existence of which has been proven beyond doubt. The paper also assesses the statutory framework of the CPA 2019, applying the traditionally accepted interpretive principles which favour the legislative consumer protection acts being of remedial nature and thus needing to be construed in an expansive manner. Central to this examination are the Dark Patterns Guidelines 2023 issued by the Central Consumer Protection Authority which very clearly identifies thirteen specified manipulative practices as unfair trade practices within the meaning of Section 2 (47).

Consequently, the comparative analysis of the regulatory strategies of the European Union, the United States, and the United Kingdom suggests that the locations where there are explicit statutory prohibitions are usually more legally structured and thus have more effective mechanisms for deterrence. Besides, even though Section 2(47) offers a basis capable of addressing dark patterns, the study conjectures that an explicit statutory provision would dispel interpretative ambiguities and trigger enforcement activities at a higher level.

This article is a step forward towards the convergence of law, behavioural economics, and the regulation of digital platforms. The article states that to preserve the autonomy of the consumer in digitally traded markets, there is a need for the law to be of a high enough intellectual level so that it is capable of dealing with the manipulation of the choice environment while at the same time being able to differentiate the harmful exploitation from the beneficial design innovations. The article argues that India's legal and regulatory framework for consumer protection, if considered in the right light and enforced strongly, is adequate in confronting dark patterns. However, it is still necessary to keep on developing it as the ways of manipulation become more and more complex.

## I. INTRODUCTION

The digital economy has changed the way consumers do transactions completely, thus creating many new opportunities for commerce, however, at the same time, it has also brought in complex mechanisms for manipulation. "Dark patterns" - user interface designs that deceive users into doing things they might not do otherwise - have become one of the most widespread, yet least regulated, threats to consumer autonomy in the digital marketplace.<sup>1</sup> These manipulative design practices target the cognitive biases of consumers, create fake urgencies, hide the important information, and thus, they take away consumers' rights of making informed choices effectively.<sup>2</sup> The CPA 2019 is a revised consumer protection framework in India,<sup>3</sup> which is specially designed to address the new challenges that the digital economy has posed. The core of the matter is the definition of "unfair trade practice" in Section 2(47) of the Act<sup>4</sup>, which is sufficiently comprehensive to, arguably, encompass dark patterns. This paper is discussing whether section 2(47) can be a borderline that is capable of identifying and regulating the digital manipulative designs by analysing the legal provisions, regulatory changes, and comparative insights.

## II. UNDERSTANDING DARK PATTERNS: TAXONOMY AND IMPACT

### A. Defining Dark Patterns

The term "dark patterns" was coined by Harry Brignull in 2010 to describe user interfaces

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<sup>1</sup> Harry Brignull, *Dark Patterns: Deception vs. Honesty in UI Design*, A LIST APART (Nov. 1, 2011), <https://alistapart.com/article/dark-patterns-deception-vs-honesty-in-ui-design/>

<sup>2</sup> Arunesh Mathur et al., *Dark Patterns at Scale: Findings from a Crawl of 11K Shopping Websites*, 3 PROC. ACM HUM.-COMPUT. INTERACT. 1, 3–5 (2019).

<sup>3</sup> Consumer Protection Act, 2019, No. 35, Acts of Parliament, 2019 (India).

<sup>4</sup> Consumer Protection Act, 2019, § 2(47), No. 35, Acts of Parliament, 2019 (India).

"carefully crafted to trick users into doing things they might not otherwise do."<sup>5</sup> Such designs use knowledge from behavioural economics and cognitive psychology to take advantage of the consistent weaknesses of human decision, making that are inherent in the human mind.<sup>6</sup> A recent empirical study shows that the use of dark patterns is widespread in digital markets and that nearly 11% of e-commerce websites employ such manipulative methods.<sup>7</sup>

## B. Common Dark Pattern Types

**1. Drip Pricing:** This practice involves revealing additional charges late in the purchasing process, often at checkout.<sup>8</sup> Airlines and e-commerce platforms advertise low base prices while concealing mandatory fees until the final transaction stage. Such practices exploit the anchoring effect, whereby consumers fix their reference price on the initial advertised amount.<sup>9</sup>

**2. Confirmshaming:** This tactic uses guilt-inducing language to shame users into accepting offers.<sup>10</sup> A popup declining email subscription might read "No thanks, I don't want to save money" rather than a neutral decline option, leveraging emotional manipulation.<sup>11</sup>

**3. Forced Continuity and Subscription Traps:** Platforms offer free trials requiring credit card information, automatically converting to paid subscriptions without clear notice.<sup>12</sup> Cancellation processes are deliberately complicated, exploiting consumer inertia and present bias.<sup>13</sup>

**4. Sneak into Basket:** Additional items are automatically added to shopping carts without explicit consent,<sup>14</sup> capitalizing on the default effect and status quo bias documented in behavioural economics literature.<sup>15</sup>

**5. Roach Motel:** Making it easy to enter a situation but difficult to escape.<sup>16</sup> Subscription

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<sup>5</sup> See Brignull, *supra* note 1.

<sup>6</sup> Jamie Luguri & Lior Jacob Strahilevitz, *Shining a Light on Dark Patterns*, 13 J. LEGAL ANALYSIS 43, 46–52 (2021).

<sup>7</sup> See Mathur et al., *supra* note 2, at 11–12.

<sup>8</sup> Dep't of Consumer Affs., Guidelines for Prevention and Regulation of Dark Patterns, 2023, ¶ 3(h) (India).

<sup>9</sup> Olivia Taylor et al., *Behavioral Economics in Consumer Decision-Making: Analyzing the Impact of Cognitive Biases*, 1 INT'L J. MGMT. BUS. & ECON. 15, 18–20 (2024).

<sup>10</sup> See Dep't of Consumer Affs., *supra* note 8, ¶ 3(c).

<sup>11</sup> Vagish Mishra & Kaveri Khound, *Nudging in Digital Environments: A Review of Behavioral Economics Interventions and Consumer Decision-Making*, 2 ADVANCES CONSUMER RES. 2810, 2815–16 (2025).

<sup>12</sup> See Dep't of Consumer Affs., *supra* note 8, ¶ 3(e).

<sup>13</sup> Martin Brenneke, *Regulating Dark Patterns*, 14 NOTRE DAME J. INT'L & COMP. L. 1, 8–12 (2023).

<sup>14</sup> See Dep't of Consumer Affs., *supra* note 8, ¶ 3(b).

<sup>15</sup> Richard H. Thaler & Cass R. Sunstein, NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH, AND HAPPINESS 34–39 (2008).

<sup>16</sup> See Mathur et al., *supra* note 2, at 7–8.

services allowing instant online signup but requiring phone calls for cancellation exemplify this pattern, creating procedural asymmetry.<sup>17</sup>

### C. IMPACT ON CONSUMER WELFARE

Dark patterns greatly reduce the well-being of consumers. They do this in one of the ways by making consumers waste their money on things like unwanted subscriptions, hidden fees, and purchases that are manipulated.<sup>18</sup> Apart from that, they deteriorate consumer autonomy, which is the fundamental idea that consumers who are rational and make informed choices are the ones that result in efficient markets.<sup>19</sup> Experiments show that users who are exposed even to a minimal degree of dark patterns are more than twice as likely to sign up for dubious services as those in the control groups.<sup>20</sup> The effects are present for different demographic groups as well, and there is only a slight indication that susceptibility to them is linked to traditional vulnerability proxies.<sup>21</sup>

## III. THE CONSUMER PROTECTION ACT 2019: STATUTORY FRAMEWORK

### A. Legislative Context

The Consumer Protection Act, 2019, replaced the Consumer Protection Act, 1986. It recognizes that the digital economy demands consumer protection mechanisms that are up to date.<sup>22</sup> The Statement of Objects and Reasons, in particular, recognizes the development of e-commerce and the necessity of providing more robust consumer rights in electronic transactions.<sup>23</sup> The legislative intention conveyed by this message indicates that there is a readiness to deal with problems of consumers in the digital era, for instance, manipulative design practices.

### B. Section 2(47): Unfair Trade Practice Definition

Section 2(47) defines "unfair trade practice" as "a trade practice which, for the purpose of promoting the sale, use, or supply of any goods or for the provision of any services, adopts any

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<sup>17</sup> Cass R. Sunstein, *Sludge Audits*, 2 BEHAVIOURAL PUB. POL'Y 209, 210–15 (2018).

<sup>18</sup> See Luguri & Strahilevitz, *supra* note 6, at 75–82.

<sup>19</sup> Jon D. Hanson & Douglas A. Kysar, *Taking Behavioralism Seriously: The Problem of Market Manipulation*, 74 N.Y.U. L. REV. 630, 636–45 (1999).

<sup>20</sup> See Luguri & Strahilevitz, *supra* note 6, at 69–74.

<sup>21</sup> Anne-Lise Sibony et al., *Dark Patterns and Consumer Vulnerability*, BEHAVIOURAL PUB. POL'Y 1, 4–8 (forthcoming 2025).

<sup>22</sup> The Consumer Protection Act, No. 35 of 2019, Statement of Objects and Reasons (India).

<sup>23</sup> *Id.*

unfair method or unfair or deceptive practice, including any of the following practices, namely"<sup>24</sup>:

This provision identifies specific practices for each of the five categories: (i) false representations regarding goods or services, which include making deceptive statements about the price;<sup>25</sup> (ii) false representations about sponsorship or affiliation;<sup>26</sup> (iii) false representations about the need for goods or services;<sup>27</sup> (iv) the use of misleading representations to describe the conditions or warranties;<sup>28</sup> and (v) the use of misleading representations to describe the place of origin.<sup>29</sup>

Most importantly, the definition refers to "including any of the following practices, " thus it relies on inclusive instead of exhaustive language. The categories that have been enumerated suggest that they serve as examples of unfair trade practices rather than as a limitation of those practices.<sup>30</sup>

### C. Interpretive Principles

The Supreme Court has established that if the statutory definitions refer to "includes" or "including," they are mostly of an expansive nature and not of a restrictive one.<sup>31</sup> In *Dilworth v. Commissioner of Stamps*, the Privy Council decided that "includes" extends the meaning of the words even beyond their natural implication.<sup>32</sup> When this rule is applied to Section 2(47), the statement "including any of the following practices" serves to show that the listed items do not cover the concept completely.<sup>33</sup>

Consumer protection laws are interpreted liberally in order to ratchet up their protective goals.<sup>34</sup> The CPA 2019's clear and explicit acknowledgment of e-commerce throughout the Act<sup>35</sup> is a

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<sup>24</sup> Consumer Protection Act, 2019, § 2(47), No. 35, Acts of Parliament, 2019 (India).

<sup>25</sup> *Id.* § 2(47)(i).

<sup>26</sup> *Id.* § 2(47)(ii).

<sup>27</sup> *Id.* § 2(47)(iii).

<sup>28</sup> *Id.* § 2(47)(iv).

<sup>29</sup> *Id.* § 2(47)(v).

<sup>30</sup> Shivani Goswami & Sana Khan, *Unfair Trade Practices in India: A Study of Consumer Protection Act, 2019*, 11 INT'L J.L. MGMT. & HUMANS. 2540, 2542–43 (2024).

<sup>31</sup> *State of Bombay v. Hospital Mazdoor Sabha*, A.I.R. 1960 S.C. 610, 617 (India).

<sup>32</sup> *Dilworth v. Comm'r of Stamps*, (1899) A.C. 99, 105–06 (P.C.).

<sup>33</sup> *Lucknow Dev. Auth. v. M.K. Gupta*, (1994) 1 S.C.C. 243, ¶ 6 (India).

<sup>34</sup> *Spring Meadows Hosp. v. Harjol Ahluwalia*, (1998) 4 S.C.C. 39, ¶ 23 (India).

<sup>35</sup> Consumer Protection Act, 2019, No. 35, Acts of Parliament, 2019 (India).

sign of the legislature being aware of the challenges of the digital marketplace and thus it is supportive of a wide interpretation of "unfair trade practice".

#### IV. CAN SECTION 2(47) CAPTURE DARK PATTERNS?

##### A. Textual Analysis

The statutory phrase "unfair method or unfair or deceptive practice" serves as a broad basis for grounding the concept of dark patterns.

**Unfair Method:** Dark patterns are "methods" as they are intentional design strategies used in a variety of digital interfaces. Their "unfairness" comes from the fact that they exploit cognitive biases and information asymmetries, thus resulting in outcomes that consumers would not choose if the conditions were transparent.<sup>36</sup>

**Deceptive Practice:** A significant number of dark patterns are based on deception—consumer interfaces that purposely mislead consumers regarding their actions or consequences. Confirmshaming, hidden ads, and bait-and-switch tactics are examples of deceptive practices.<sup>37</sup>

**Unfair Practice:** This term refers to manipulative designs that, although not hardly ever deceptive, use psychological vulnerabilities to bring about unfair results. The idea of "sludge" - friction that prevents welfare-enhancing choices - gives theoretical support for considering such practices as unfair.<sup>38</sup>

##### B. Alignment with Enumerated Categories

Drip pricing is a form of false representation about the price made under Clause (i). When platforms present products at an artificially low price to attract customers and at the same time hide the mandatory charges, they perform "false or misleading representation concerning price."<sup>39</sup> A study shows that such a practice has a very strong effect on consumer price perception by the use of anchoring effects.<sup>40</sup>

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<sup>36</sup> See Hanson & Kysar, *supra* note 19.

<sup>37</sup> Tobias Dienlin et al., *An Agenda for Open Science in Communication*, 71 J. COMMUN'N 1, 12–15 (2021).

<sup>38</sup> See Sunstein, *supra* note 17, at 217–22.

<sup>39</sup> Consumer Protection Act, 2019, § 2(47), No. 35, Acts of Parliament, 2019 (India).

<sup>40</sup> See Taylor et al., *supra* note 9, at 21–23.

Dark patterns that hide the terms of service or falsely stating the refund policies are infringing Clause (iv) that bans misleading representations about the conditions and the warranties. The complexity of such disclosures is often beyond the consumers' cognitive capacity thus they become systematic failures in information processing.<sup>41</sup>

### C. Challenges

Despite promising textual foundations, challenges exist. Courts traditionally prefer clear statutory language before imposing liability. The absence of explicit language addressing interface design might create judicial hesitancy.<sup>42</sup> However, behavioural economics research provides robust frameworks for understanding manipulative design as unfair trade practice.<sup>43</sup>

Demonstrating that specific designs constitute unfair practices requires evidence linking design choices to consumer harm, potentially demanding expert testimony about user experience design and cognitive psychology.<sup>44</sup> Additionally, distinguishing manipulative dark patterns from legitimate persuasive design presents analytical challenges.

## V. THE DARK PATTERNS GUIDELINES 2023

### A. Key Provisions

On November 30, 2023, the Central Consumer Protection Authority launched the "Guidelines for Prevention and Regulation of Dark Patterns, 2023".<sup>45</sup> According to the guidelines, dark patterns are "any practices or deceptive design patterns using UI/UX interactions on any platform; designed to mislead or trick users to do something they originally did not intend or want to do; by subverting or impairing the consumer autonomy, decision making or choice."

The guidelines also list thirteen specific pattern examples, such as False Urgency, Basket Sneaking, Confirm Shaming, Forced Action, Subscription Trap, Interface Interference, Bait and Switch, Drip Pricing, Disguised Advertisement, Nagging, Trick Question, SaaS Billing, and Rogue Malware. Notably, the guidelines affirm that these patterns "shall be considered as

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<sup>41</sup> Oren Bar-Gill, SEDUCTION BY CONTRACT: LAW, ECONOMICS, AND PSYCHOLOGY IN CONSUMER MARKETS 45–52 (2012).

<sup>42</sup> Colin Camerer et al., *Regulation for Conservatives: Behavioral Economics and the Case for "Asymmetric Paternalism"*, 151 U. PA. L. REV. 1211, 1225–35 (2003).

<sup>43</sup> See Luguri & Strahilevitz, *supra* note 6, at 55–68.

<sup>44</sup> *Id.*

<sup>45</sup> Dep't of Consumer Affairs, *supra* note 8.

'misleading advertisement' under Section 2(28) or 'unfair trade practice' under Section 2(47) of the Consumer Protection Act, 2019."<sup>46</sup>

## **B. Legal Status and Implementation**

The Guidelines were issued under Section 18(2)(l) of the CPA 2019, empowering the CCPA to issue guidelines for prevention of unfair trade practices.<sup>47</sup> While their status as subordinate guidance rather than formal regulations creates some ambiguity, they represent authoritative regulatory interpretation entitled to substantial judicial deference.<sup>48</sup>

Early enforcement demonstrates regulatory seriousness. In January 2024, the CCPA issued notices to several major e-commerce platforms regarding dark pattern violations, particularly concerning drip pricing and false urgency claims.<sup>49</sup> This signals genuine commitment to active enforcement.

## **VI. COMPARATIVE PERSPECTIVES**

### **A. European Union**

To control the use of dark patterns, the EU has encompassed various regulatory measures in its legislation. In fact, the Digital Services Act is very explicit in dealing with those manipulative interface designs, where Article 25 forbids platforms to create interfaces "in a way that tricks or manipulates the users of their service or in a way that, materially, changes or weakens the users' ability to make free and informed decisions in any other manner."<sup>50</sup> This is an example of legal regulation directly forbidding such behaviour at the highest legislative level.

### **B. United States**

The Federal Trade Commission deals with dark patterns by implementation of actions in accordance with Section 5 of the FTC Act, which forbids "unfair or deceptive acts or practices."<sup>51</sup> The FTC treats dark patterns "very seriously" and has published detailed guidance

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<sup>46</sup> Consumer Protection Act, 2019, § 2(47), No. 35, Acts of Parliament, 2019 (India).

<sup>47</sup> Consumer Protection Act, 2019, § 18(2)(l), No. 35, Acts of Parliament, 2019 (India).

<sup>48</sup> Cf. *B.C. Chaturvedi v. Union of India*, (1995) 6 S.C.C. 749, ¶ 12 (India).

<sup>49</sup> Press Release, Cent. Consumer Prot. Auth., CCPA Issues Notices to E-Commerce Platforms (Jan. 15, 2024)

<sup>50</sup> Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services, art. 25, 2022 O.J. (L 277) 1.

<sup>51</sup> Federal Trade Commission Act, 15 U.S.C. § 45(a)(1). (1914) (United States).

that explains how consumer interfaces can confuse or restrict consumer independence.<sup>52</sup> One of the most significant enforcement actions is the \$245 million settlement with Epic Games over Fortnite's deceptive design practices.<sup>53</sup>

### C. United Kingdom

The UK's Consumer Protection from Unfair Trading Regulations 2008 prohibit misleading actions and aggressive practices.<sup>54</sup> The Competition and Markets Authority has actively investigated dark patterns, publishing comprehensive reports analysing how digital design can harm competition and consumers.<sup>55</sup>

### D. Lessons for India

A comparative study shows that areas having clear legal provisions against such activities (such as the EU's DSA) result in more transparent and stronger deterrent mechanisms as compared to those which depend on the interpretation of general principles.<sup>56</sup> Efficient regulation is a mix of unambiguous legal norms, vigorous law implementation, trade sector rules, and consumer awareness. Besides, regulators should be well-versed in the technical side of things to spot and clamp down on illegal activities in an efficient manner.

## VII. PRACTICAL IMPLICATIONS AND RECOMMENDATIONS

Section 2(47) should be regarded as a provision of consumer forums not only discussing dark patterns but also taking into account their interpretation as the initial step. Their interpretation must be in line with the Dark Patterns Guidelines which is the authoritative regulatory interpretation. In the case where consumers allege that a user interface has been created to control them, forums need to review the facts behind the design purpose and the actual effects on the user. In so doing, they ought to consider behavioural economics research as offering

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<sup>52</sup> Jared Banko & Daniel Kaufman, *Bringing Dark Patterns to Light*, FED. TRADE COMM'N: BUS. BLOG (Sept. 15, 2022), <https://www.ftc.gov/business-guidance/blog/2022/09/bringing-dark-patterns-light>.

<sup>53</sup> Press Release, Fed. Trade Comm'n, Fortnite Video Game Maker Epic Games to Pay More Than Half a Billion Dollars over FTC Allegations of Privacy Violations and Unwanted Charges (Dec. 19, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/12/fortnite-video-game-maker-epic-games-pay-more-half-billion-dollars-over-ftc-allegations>

<sup>54</sup> The Consumer Protection from Unfair Trading Regulations 2008, SI 2008/1277 (UK).

<sup>55</sup> Competition & Mkts. Auth., *Online Choice Architecture: How Digital Design Can Harm Competition and Consumers* (2022) (UK).

<sup>56</sup> Leah Trouw & Paul Borrett, *Dark Patterns in the Digital Services Act: Regulating the Use of Manipulative Online Interfaces*, 8 EUR. DATA PROT. L. REV. 539, 543–50 (2022).

models that describe how design characteristics play on cognitive biases of consumers. The evidence work ought to be in a position to conclude whether the designs render it unreasonably hard to engage in informed decision-making by the consumers or whether it is merely exploiting the psychological weakness of such a manner that the consumers are systematically disadvantaged. The appropriate actions must include not only the compensation of the impacted individual consumers but also the instructions to the platforms to stop such manipulative actions and to employ transparent design alternatives.

The statute would do well to specifically acknowledge the existence of a phenomenon known as dark patterns, in addition to relying on Section 2(47) in combating dark patterns. In this way, the legal system would be made better through eliminating the ambiguity associated with its interpretation and offering a better guideline on its application. Parliament ought to contemplate the inclusion of another clause in Section 2(47) which addressed manipulative digital designs directly and included important definitions of the Dark Patterns Guidelines into the Act. Such inculcation of norms into the statute would indicate more aggressive implementation since it will be extremely obvious that this is a priority of the lawmakers. Other than this, the very existence of specifically stipulated punishments, which are commensurable to the degree and seriousness of crimes, would be the aspect that would yield the right deterrent impact. This is done to ensure that the sanctions are not so high as to deter platforms to do manipulative actions, but instead act as an origin of their economic benefits.

The Central Consumer Protection Authority should be having detailed plans for enforcing law that include not only the sustaining of pro-active monitoring but also prompt investigation of consumers' complaints. It would be quite work to conduct regular auditing of large digital platforms to keep constant supervision and to create for these platforms the willingness of self-mandatory compliance. Transparency in enforcement will be achieved through the publication of detailed reports on enforcement interventions which will serve as clear precedents for both platforms and consumers in terms of acceptable design practices. Updating the Guidelines by the CCPA should be an ongoing process in which new ways to manipulate consumers' minds would be a reason to formulate new directives and the CCPA would enhance its technical capacity to perform sophisticated interface analysis in order to meet this challenge, maybe it would be necessary to hire experts with an experience of user engagement in virtual reality and experimental psychology.

E-commerce platforms together with digital service providers should understand that the right thing to do in terms of design will eventually bring them long-term profits as it builds consumers' trust and keeps them away from the regulatory vacuum. These Firms should do self-assessment to locate dark patterns in their interfaces systematically and erase them after that, also keeping in mind that the short-term benefits from the conversion of users to manipulative approaches could be overshadowed by the tarnishing of their reputations and sanctions from regulatory authorities. The realization of ethical design standards that give priority to the user's freedom of choice will require the organization's commitment to the subject matter, which among other things, will involve educating the designer's and developer's behavioural ethics. Those platforms which look ahead will realize that transparent design practice will be a distinguishable feature in the market and contribute to building brand loyalty as consumer awareness shoots up.

Awareness on the part of consumers is still vital in the fight against dark patterns. Consumers ought to raise their level of knowledge regarding the typical dark patterns so that they can identify tactics such as confirmshaming, forced continuity, and drip pricing. By taking pictures of the manipulative interfaces, consumers create very important proof for their future grievances to consumer forums or regulatory authorities. Submitting grievances regarding the occurrence of dark patterns is a win for the complainants themselves and also for the larger community because the combined data on grievances enable authorities to pinpoint problems that are deeply rooted and thus require their intervention.

## **VIII. CONCLUSION**

Section 2(47) of the Consumer Protection Act, 2019<sup>57</sup> is broad enough to include manipulative digital designs that are generally referred to as dark patterns. The provision of the act uses very broad words, "unfair method or unfair or deceptive practice," which by their nature include exploitation of the consumer's vulnerabilities through systematic design strategies. On the other hand, behavioral economics research serves as a source of theoretical models and provides viable explanations of how such consumer subversion as using dark patterns exploiting cognitive biases and information processing limitations might take place.

The Dark Patterns Guidelines 2023, however, are quite instrumental in this regard as they

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<sup>57</sup> Consumer Protection Act, 2019, § 2(47), No. 35, Acts of Parliament, 2019 (India).

significantly broaden the interpretative base by expressly providing that those dark trade practices mentioned in the enumeration of the draft guidelines constitute unfair trade practices.<sup>58</sup> The question of whether dark patterns fall under the scope of Section 2(47) has therefore been replaced by the issue of how far the provision will be enforced. The Guidelines enjoy significant judicial consideration as a communicative tool to show the attitude of the regulatory bodies towards consumer forums and judges. Nevertheless, the consumer protection system in India would need more elaborated legal frameworks in an ideal situation. The language is clear enough with current legislation and direction of the regulator that the tools could be applied to the dark patterns management, yet an explicit mention in the statute would be a decisive point that the priority in policy formulation is evident, and it would be a message that priority in policy formulation is a top priority. Regulatory frameworks need to be changed as the manipulative design techniques are more automated.

The key issue to the central one is that it is not only the legal aspect that is at play here, but also a necessity of a cultural change in the norm of the digital marketplace is mentioned. One of the aspects, among others, which would be the respect of consumers by granting them freedom rather than exploiting them is the market change that is based on some principles, including transparency, rather than manipulation, and fair dealing, rather than dark patterns, and involves the hard work of regulators, industry, and civil society. The combination of interpretive flexibility in the existing laws, explicit regulation, and enforcement is a balanced approach that is currently used in India to offer both protection and innovation. However, it should be noted that the situation should be monitored carefully: since platforms are finding more and more creative ways of capitalizing on the cognitive vulnerability of people, the consumer protection frameworks will have to develop constantly unless they are to make sure that digital markets benefit consumers instead of hurting them.

The inherent issue of the dark patterns, at that, is that it requires a cultural shift not only within the digital economy but also outside the legal aspects, which implies that it is not only a legal issue. The new digital age consumer protection legislation should go beyond the simplistic definition of rational choice and give more real description of how people make decisions. In this respect, the Section 2(47) of the CPA 2019 may be regarded as one of the milestones in this transition provided it is properly interpreted and properly put into practice, but it will not

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<sup>58</sup> Ministry of Consumer Affairs, Food & Pub. Distribution, Dep't of Consumer Affairs, Guidelines for Prevention and Regulation of Dark Patterns, 2023 (India).

work without regulatory dedication, institutional capability, and the good faith belief that consumer autonomy in digital markets is not the goal itself, but a precondition to the fair and efficient exchange of goods/services.