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DARK PATTERNS THAT PLAGUE INDIAN E-COMMERCE

- Swathi.S* and Sadhana S**

ABSTRACT

This article intends to shed light on the various dark patterns prevalent in the Indian E-Commerce market. We have conducted a survey with a sample size of around 130 consumers, with the aim of spreading awareness regarding the various dark patterns in society and how these practices affect the everyday life of an average consumer and market. A general study of the multiple initiatives implemented at the global level and the differences in the rules and regulations governing traditional and digital markets have also been enumerated. A consolidated study of various ways to enforce positive changes in E-Commerce platforms has been presented.

Keywords: *Dark patterns, Consumer protection, E-commerce, Unfair Trade Practices*

I. INTRODUCTION

We have all used an online platform to purchase goods or avail services. In today's day and age, it is impossible to live without utilizing various e-commerce websites. While these sites seem to have made our lives easier, they have all duped us in some way or another. We have all had to provide data to sites without our consent merely to avail ourselves of a service they offer. Haven't we all had to search for the unsubscribe button/delete button on an e-commerce website? Have you ever added an item to your shopping cart from an e-commerce site because of an apparent offer only to later realize the "offer" did not really lower the price? Have you ever bought something in a hurry merely because the site stated there were only a few products left in stock, only to come back a week later and find it has still not gone out of stock?

These are the consequences of a wide array of unfair trade practices these e-commerce sites use to fool the consumer. It may seem like a smart marketing tool to some, but the reality is

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that these are sinister tricks used to exploit innocent customers. This article investigates the dark practices of various digital platforms and how these practices can be curbed.

II. WHAT ARE DARK PATTERNS

The term "dark pattern" was first coined by a user experience specialist, Harry Brignull in 2010 that describes how websites trick consumers into doing something that is detrimental to their interests. "The US federal commissioner, Rohit Chopra, also recently defined dark patterns as features designed by companies or any online service to deceive, steer, or manipulate users' behaviour in a way that is profitable to the providers."¹ The OECD committee defined dark commercial patterns as "business practices employing elements of digital choice architecture, in online user interfaces, that subvert or impair consumer autonomy, decision-making or choice. They frequently manipulate, coerce, or deceive consumers and are likely to cause direct or indirect consumer harm in a variety of ways, even though it may be challenging or impossible to measure such harm in many cases."

Section 2 clause 1(r) of the Consumer Protection Act, 1986 defines "Unfair Trade Practices" as any trade practice that utilises unfair means to promote the sale, use or supply of any goods or services.² This definition of unfair trade practices can be interpreted to include some kinds of dark patterns. For instance, dark patterns such as misleading or disguised ads would amount to unfair trade practices. In simple words, "dark patterns" are tactics used to make consumers buy a product or subscribe to any service which they did not intend to. Dark patterns also come under the umbrella of "negative option marketing," which refers to terms and conditions that allow the sellers to interpret the consumer's silence as acceptance. Some of the examples include automatic renewal of subscriptions and free trial programs.

¹ Federal Trade Commission, *Dark Patterns in the Matter of Age of Learning, Inc.* Commission File Number 1723186 September 2, 2020

² Consumer protection Act, 1986

2.1. Classification

Dark patterns in various digital platforms take different shapes³ and forms⁴. A study by Princeton found that out of 10,000 websites, 1,200 use dark patterns to influence their consumers. They also identified twenty-two third-party entities that help integrate the dark patterns into websites⁵. It also classifies dark patterns into 15 types. Harry Brignull classifies Dark patterns into 12 types⁶. These include the following:

- Sneak in the Basket: Pre-checked boxes subscribe customers to products/services without informed consent. Instead, suggest additional items that can be added before checkout, allowing consumers to select products consensually.
- Forced Continuity and Expensive Auto-Renewals: Automatic subscriptions and renewals occur without notice. E-commerce websites should notify customers when trial periods expire and renew subscriptions only after voluntary agreement.
- Urgency and Fake Scarcity: False urgency or scarcity is created to rush purchases. Sites should maintain transparency and allow customers to explore all options without pressure.
- Hidden Costs: True costs of products are concealed. All costs should be disclosed upfront in the final cart to enable informed decisions. Unfair Presentation of Alternatives and Price Comparison
- Prevention: Viewing or misrepresenting alternative products is prevented. Sites should allow viewing of all options without presenting fake negative reviews of competitors.

³The Organization for Economic Cooperation and Development, *Highlights Concerns over "Dark Patterns"* - October 29, 2022

⁴ Beni Chugh & Pranjal Jain, *Unpacking Dark Patterns: Understanding Dark Patterns and Their Implications for Consumer Protection in the Digital Economy*, RS RR (Apr. 2021), <https://rsrr.in/wp-content/uploads/2021/04/UNPACKING-DARK-PATTERNS-UNDERSTANDING-DARK.pdf> (accessed Mar. 2, 2023).

⁵ Arunesh Mathur et al., *Dark Patterns at Scale: Findings from a Crawl of 11K Shopping Websites*, 81 ACM (Nov. 2019), <https://arxiv.org/pdf/1907.07032.pdf> (accessed Mar. 10, 2023).

⁶ Harry Brignull, *What are deceptive patterns?* <https://www.deceptive.design/> accessed on 10 March 2023

- **Roach Motel Designing:** It is easy to sign up but difficult to unsubscribe. Simplify the subscription cancelling process and introduce packages that motivate retention.
- **Privacy Zuckering:** Oversharing of personal data is forced. Sites should be truthful about the information required and its purpose, avoiding the sale of private data.
- **Trick Questions:** Confusing language is used to trick consumers. Clear, simple language should be used in questions and forms.
- **Social Proof:** Consumer reviews and testimonials are manipulated. Focus on providing higher quality products instead of relying on fake reviews.
- **Bait and Switch:** Consumers are led to unintended outcomes. Ensure actions lead to expected and intended results.
- **Friend Spam:** Access to contact lists is used to spam friends. Clearly state the intent of accessing contacts and provide opt-out options.
- **Repeated Requests, Nagging, or Confirm Shaming:** Annoying pop-ups and guilt-tripping are used. Show pop-ups sparingly, ensuring they do not disrupt the user experience, and confirm actions with simple, respectful messages.

III. CASE STUDIES OF DARK PATTERNS

Dark patterns are commonly found in the ecommerce industry, where businesses often employ manipulative design techniques to influence consumer behaviour. An examination of case studies of dark patterns can aid in comprehending the commonality and adverse consequences of such practices. A 2019 Princeton University study that analysed 53,000 product pages from 11,000 shopping websites found that 11% of the surveyed sites used dark patterns that were deemed aggressive, misleading, deceptive, and possibly in violation of the law.⁷ The prevalence of these patterns in ecommerce can be attributed to the industry's competitive nature, as businesses often prioritize profits over user experience. However, the use of dark

⁷Arunesh Mathur, Gunes Acar, Michael J. Friedman, Elena Lucherini, Jonathan Mayer, Marshini Chetty, and Arvind Narayanan. *Dark Patterns at Scale: Findings from a Crawl of 11K Shopping Websites*, Article 81 (November 2019), 32 pages <https://arxiv.org/pdf/1907.07032.pdf> accessed on 10 March 2023

patterns can lead to a loss of trust among consumers, which may ultimately harm a company's reputation and long-term success.

In India, consumer complaints regarding E-commerce increased by over 300% over the past few years.

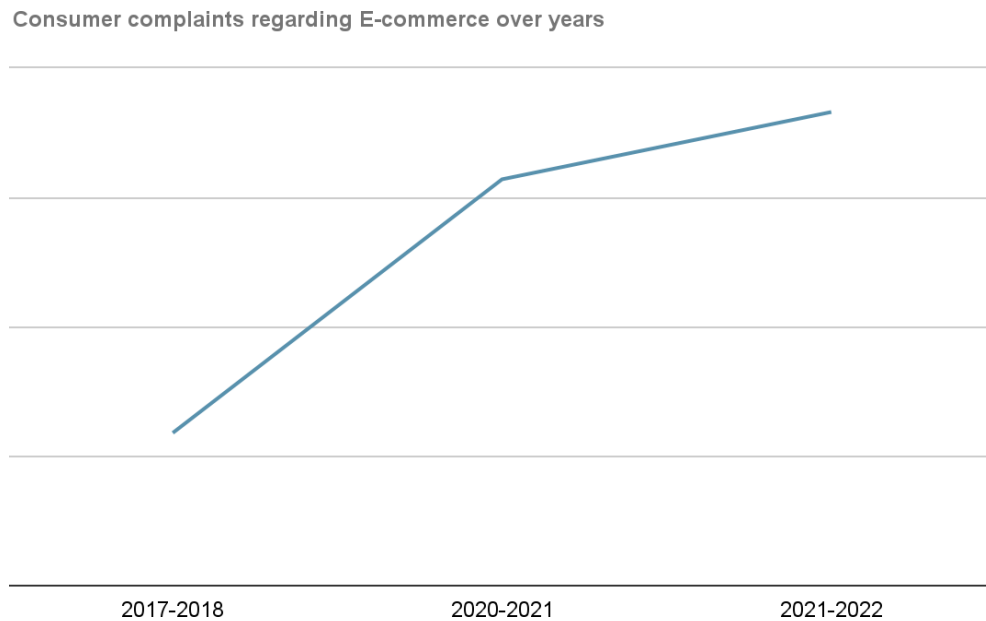


Fig. 2 Indicates the number of e-commerce complaints filed by consumers from 2017 to 2022⁸.

⁸ Indo-Asian News Service, 'UP tops list as e-commerce complaints records 300% spike in last 5 years' *The Economic Times* (Originally published on Aug 21, 2022)

Around 5.12 lakh complaints were filed through National Consumer Helpline between April 2019 to November 2021.⁹

Consumer complaints pertaining to e-commerce

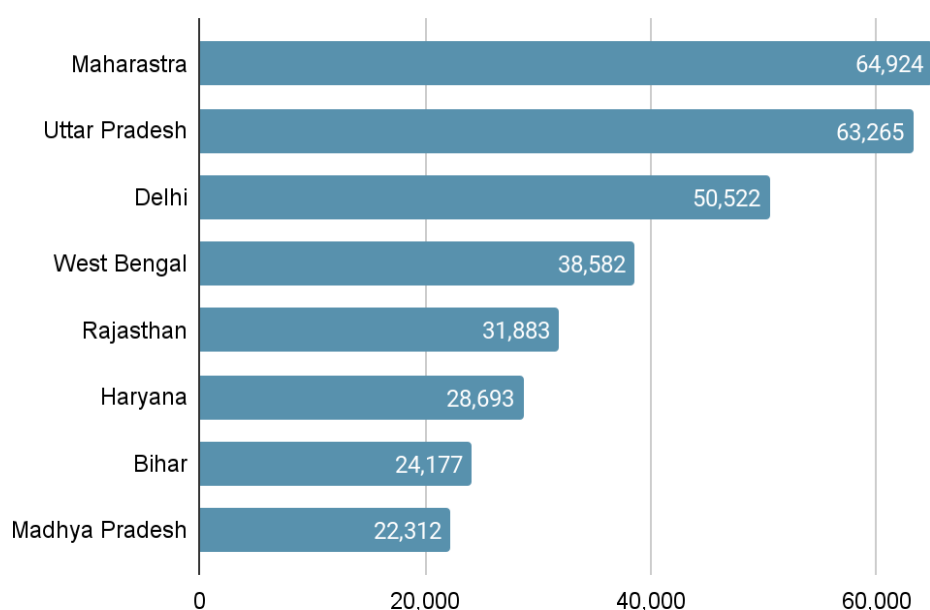


Fig.3 indicates the number of consumer complaints filed all over India through the National Consumer Helpline.¹⁰

3.1. Amazon

Amazon, the largest e-commerce platform on the market, is no stranger to dark patterns. There have been various cases filed against them. In 2014, in the case of *Federal Trade commission, v. Amazon.com, inc.*,¹¹ Amazon faced a legal action by the FTC for their unfair practices. Amazon had released an app for kids which allowed the children to make in-app purchases without the account holder information. These purchases were discussed as “play.” Amazon had to settle for over 70 million dollars.¹²

⁹ *Supra* 12

¹⁰ Outlook, ‘More Than 5.12 Lakh Complaints Registered Against E-Commerce Between April 2019-November 2021’ <https://www.outlookindia.com/website/story/business-news-more-than-512-lakh-complaints-registered-against-e-commerce-between-april-2019-november-2021/405561> accessed on 10 March 2023

¹¹ *Fed. Trade Comm'n v. Amazon.Com Inc.*, No. C14-1038-JCC (W.D. Wash. Feb. 23, 2017)

¹² Shivam, ‘Dark Patterns’ on the Internet’ <https://www.adda247.com/upsc-exam/dark-patterns-on-the-internet/> accessed on 20 March 2023

In *Dorobiala v. Amazon.com, Inc.*(2:22-CV-01600)¹³ a class action suit filed on November 9, 2022, cited a report by Business Insider¹⁴ in March 2022. The report stated that Amazon had reduced their cancellation rate by 14% simply by making the cancellation policy more difficult. They had tried to retain subscribers through a secret project called “Project Illiad.” It prevented people from reaching the last stage of the cancellation process by “adding new offers and multiple layers of questions.” According to the suit to start the cancellation process the user must wade through almost 3 pages and various questions. This is a type of Dark pattern called Roach Motel Designing. Despite the hurdles if a user reaches the last page they are confronted with pop-ups and manipulative messages. This tactic is called confirm shaming. And even after the user reaches the last page to cancel their membership it does not stand cancelled till they click the “end now” button.

3.2. Zomato

Zomato has a policy stating that they will provide on time delivery or the order is free. While this service is abundantly advertised the same is not practised. Instead of making true on this promise Zomato cancels orders that are predicted to be delivered late. This is a dark pattern followed by Zomato and they have been fined for the same.¹⁵

IV. INITIATIVES TO CURB DARK PATTERNS

Dark patterns can be detrimental to consumers, leading to reduced trust in brands, decreased engagement with online platforms. Consumers are becoming more aware of the manipulative tactics used by companies to influence their behaviour and are demanding greater transparency and accountability. Lawmakers and regulatory bodies are also taking notice and introducing new rules and regulations to protect consumers from the harmful effects of dark patterns. By

¹³ *Dorobiala v. Amazon.com, No. 2:22-cv-01600-RSM (W.D. Wash. Jan. 4, 2023).*

¹⁴ *Hannah Towey & Eugene Kim, Amazon used a sneaky tactic to make it harder to quit Prime and cancellations dropped 14%, according to leaked data, Business Insider (Mar. 16, 2022),*

¹⁵ *Aneesha Mathur, ‘Consumer forum asks Zomato to pay Rs 10,000 fine over cancelled pizza order’ India Today (Aug 22, 2022)*

taking steps to curb the use of dark patterns, companies can build trust, loyalty, and long-term relationships with their customers.

4.1. Indian Laws

India's Ministry of Consumer Affairs has enacted The Consumer Protection Act, 2019, and the Consumer Protection (E-Commerce) Rules, 2020, effective since July 2020. These regulations mandate e-commerce businesses to disclose product and seller information, appoint a grievance officer, and acknowledge complaints within 48 hours. The changes empower consumers and enable authorities to take swift action.

4.1.1. Legal Metrology (Packaged Commodities) Rules of 2011

In accordance with the Legal Metrology Act of 2009, the Legal Metrology (Packaged Commodities) Rules of 2011 dictate that any e-commerce entity must take measures to display certain information on their digital and electronic network when conducting transactions. This includes details such as the manufacturer or packer or importer's name and address, maximum retail price (MRP), country of origin, common or generic name of the commodity, net quantity, month, and year of manufacture, as well as customer care details.

4.1.2. Consumer Protection Act 2019

The Consumer Protection Act of 2019 in India has widened the definition of "consumer" to include individuals who purchase or avail goods and services online through electronic means. As a result, consumers who buy products online are entitled to the same protections under the law as those who purchase goods in physical stores. Under this act, e-commerce and electronic service providers are also defined, and provisions are in place for consumers to file complaints against online retailers in case of internet fraud. This allows consumers to seek legal recourse in the event of any fraudulent activities, ensuring that online retailers are held accountable for their actions.

The Act also provides for data protection, and any disclosure of personal information by an electronic service provider is considered an unfair trade practice under Section 2(47)(ix) of the Act. To ensure consumer privacy, online retailers are required to protect the personal information of their customers and are prohibited from sharing this information without the consumer's consent. Another important provision introduced in the Consumer Protection Act

of 2019 is the concept of product liability. Despite the absence of any negligence on the part of the manufacturer, seller, or service provider, this rule permits consumers to pursue compensation for any harm or injury brought on by a product or service. This provision ensures that consumers are adequately protected against harm caused by faulty products and provides them with a legal avenue to seek compensation for any damages incurred. The introduction of product liability has shifted the responsibility from the buyer ("caveat emptor" or "buyer beware") to the seller ("caveat venditor" or "seller beware.")¹⁶

4.1.3. Consumer protection (E-commerce) rules 2020

The rise of e-commerce has created new opportunities for traders to influence consumer behaviour and encourage purchases. However, concerns have also arisen about the potential for unfair or deceptive practices in this online marketplace. In response, the Consumer Protection Rules 2020¹⁷ were introduced, with the aim of safeguarding the interests of both consumers and product/service providers.

Rule 4 of Consumer Protection Rules stipulates the responsibilities that E-commerce entities must adhere to when dealing with consumers. These obligations include refraining from imposing cancellation charges on consumers unless they bear comparable costs, ensuring prompt refund payments in response to consumer requests, and avoiding the imposition of unreasonable and unjustifiable expenses to generate profits.

Rule 5 of the Consumer Protection (E-Commerce) Rules, 2020 mandates that e-commerce entities operating in the marketplace must disclose certain information to consumers, and ensure that the information provided is truthful, accurate, and not misleading. They must also maintain a record of all relevant information. If an e-commerce entity provides false or misleading information, or withholds relevant information from the consumer, they may be subject to penalties and other legal consequences.

In accordance with Rule 6 of the Act, sellers in the online marketplace are prohibited from using any unfair trade tactics when offering consumers products or services. In addition, the

¹⁶Sidharth Sethi, Bindu Janardhanan, *Product Liability Under the Consumer Protection Act, 2019: Let the manufacturer/seller Beware! (Bar & Bench July 25, 2020) Product Liability under the Consumer Protection Act, 2019: Let the manufacturer/seller beware!* accessed on 8 March 2023

¹⁷ *Consumer Protection (E-Commerce) Rules, 2020*

seller must not refuse to accept returns or provide refunds to consumers in cases where such returns or refunds are warranted. They must also clearly specify their return and refund policies to consumers before the purchase is made. The inventory e commerce entities also have the same duties and liabilities under Rule 7.

4.1.4. Advertising Standards Council of India (ASCI) code

In response to the growing issue of disguised ads, the Advertising Standards Council of India (ASCI) urged social media influencers to disclose promotions to ensure transparency and enable consumers to make informed decisions. The blurring of lines between content and ads raises questions about the ability of consumers to distinguish between the two. ASCI found that 29% of ads in 2021-2022 were disguised ads by influencers, which is a form of dark pattern. In 2021, the ASCI established a task force of twelve members to investigate the prevalence of various dark patterns in India's advertising landscape. The task force discussions led to proposed amendments to the ASCI code to address concerns related to advertising practices such as bait and switch, false urgency, drip pricing, and disguised ads.¹⁸

V. JUDICIAL DECISIONS:

***Paras Jain v. Amazon Seller Services (P) Ltd*¹⁹**

Paras Jain had ordered a mobile phone from Amazon and had paid for the shipping charges. However, the phone started heating up soon after he received it, so he decided to return it. Unfortunately, he was unable to do so due to a sudden change in the return policy specifically for mobile phones. Jain argued that this sudden change in policy only for mobile phones amounted to unfair trade practices. He also pointed out that the website advertised an easy return policy, even though it did not apply to mobile phones. Thus, the advertisement is misleading and would attract punitive damages. However, the National Commission rejected Jain's plea, stating that the change in policy was made due to increased misuse by consumers

¹⁸ *DARK PATTERNS The new threat to consumer protection- Discussion Document (ASCI 2022 Report) pg.10 - 13*

¹⁹ *Paras Jain v. Amazon Seller Services (P) Ltd., Consumer Case No. 930 of 2017 (NCDRC 2021).*

and was widely publicized in various newspapers. Therefore, it did not amount to unfair trade practices.

***All India Online Vendors Association vs Flipkart India Private Limited*²⁰**

The Competition Commission of India (CCI) dismissed allegations of abuse of dominance by All India Online Vendors Association against Flipkart entities. CCI defined the relevant market as services provided by online marketplace platforms for selling goods in India, and found that no player was commanding a dominant position in the market. CCI noted that the B2B arrangements of Flipkart were non-exclusive and did not impose any restraints on resellers. The structural link with WS Retail existed only until 2012 and WS Retail was no longer a seller on Flipkart's marketplace. CCI concluded that no contravention of Section 4 of the Act was made out against Flipkart entities, as intervention in the nascent and evolving model of retail distribution in India needs to be carefully crafted to avoid stifling innovation.

***Amazon Seller Services Pvt. Ltd. v. Central Consumer Protection Authority*²¹**

Amazon has been selling pressure cookers without the necessary BIS certification, which is in violation of the CPA 2019. However, the counsel on behalf of Amazon argued that they were not provided with the investigation report, which is required as the basis for action under Section 20 of the CPA. Additionally, it was argued that Amazon could be protected from liabilities under Section 79 of the Information Technology Act of 2000. However, the court rejected the plea and was instructed by the court to inform the buyers of the 2265 pressure cookers that were sold on its platform about the CCPA order. However, any actions related to the recall of these items and reimbursement have been delayed until the next hearing. ***Amazon Seller Services Pvt. Ltd. vs Love Kumar Sahu & Anr*²²**

The complainant purchased a mobile phone from Amazon and requested it to be delivered to another person. However, the phone was found to be defective and was replaced thrice. Finally, the consumer demanded a refund, but Amazon refused, citing their policy of only offering refunds within 15 days of purchase. The complainant filed a complaint against Amazon for not

²⁰ *All India Online Vendors ... vs Flipkart India Private Limited & ...* [2018] 20 of 2018

²¹ *Amazon Seller Services Pvt. Ltd. v. Central Consumer Protection Authority*, [2022] W.P.(C) 13269/2022, CM APPL. 40236/2022 (Delhi HC).

²² *Amazon Seller Services Pvt. Ltd. vs Love Kumar Sahu & Anr.* [2018] FA/2018/05

providing the refund. Amazon argued that the complainant is not considered a complainant under the Consumer Protection Act and that the manufacturer should be held responsible for the defective mobile phone, not the intermediary. However, the court held that both the manufacturer and Amazon are jointly and severally liable for refunding the amount to the complainant.

***Hamdard National Foundation (India) & Anr. vs Amazon India Limited & Anr*²³**

The court directed Amazon sellers to disclose details such as the names of the sellers, their contact details, and the product listing. It also mandated the sellers to guide the consumers in finding the adequate details required for them to purchase the specific product.

***Arun G Krishnan v. Deepinder Goyal*²⁴**

The complainant claimed compensation from Zomato for not delivering the ordered pizza. The complainant contented that he had placed an order and made payment for on time delivery, later it was cancelled by Zomato which would amount to grave deficiency in service and unfair trade practices. Zomato contented that the non-delivery of the order was due to the unavailability of the consumer. However, the Chandigarh State Consumer Disputes Redressal Commission rejected the contention and ordered Zomato to pay reasonable compensation for the consumer.

VI. CONSUMER PROTECTION IN TRADITIONAL COMMERCE AND E-COMMERCE

Consumers are the major components of business growth. The need for protection of consumer rights is also important to ensure the smooth functioning of the business. The Consumer Protection Act of 1986 protects the rights of consumers in India. Lok Sabha made a clear announcement saying, the act will also be applicable to online commerce and the three-tier redressal mechanism shall also deal with the complaints regarding e-commerce as well²⁵.

²³ *Hamdard National Foundation (India) & Anr. vs Amazon India Limited & Anr CS (COMM)[2022] 607/2022 & I.As. 14189-92/2022*

²⁴ *Arun G Krishnan v. Deepinder Goyal,[2022]CC.161/21*

²⁵ *E-commerce now covered under Consumer Protection Act - Times of India (2 Dec 2014)*

Although this announcement partially addressed the problem, there were still many loopholes and jurisdictional concerns. For instance, consumers in traditional commerce can raise a complaint about a defective product or deficiency in service, whereas in online shopping, consumers can only see the product after it has been delivered, and they are unaware of the details of the seller to raise a complaint against.

The Information Technology Act 2000, gives recognition to e-contracts²⁶ under which the commercial activities that take place online are governed. The IT Act only regulates huge business transactions between companies and the government; there is no specific provision for consumer protection under the IT Act 2000. With the increase in e-commerce platforms, the number of consumers availing the services through electronic means has increased leading to an increased need for separate legislation protecting consumer's rights in e-commerce.

The Consumer Protection Bill of 2015 replaced the Consumer Protection Act of 1986 which provided the consumer with the right to file a complaint irrespective of the jurisdiction to which the company belonged.²⁷ The bill addresses the issues faced by consumers in online shopping. The bill also introduced a cooling-off period of thirty days for consumers; however, this does not confer rights directly on consumers; rather, it is being misused by the sellers to refuse to refund or replace the product after thirty days.²⁸

Later, the consumer protection act 2019 was introduced with proposed amendments which addressed the needs of the consumers effectively. Additionally, in July 2020, the consumer protection (E-commerce) rules were introduced in 2020, which imposed duties and liabilities on the business entities to follow. However, since e-commerce entities are open for access across the world, the jurisdiction of the court remains an issue.

In July 2021, the department of Consumer Affairs released draft amendments to the 2020 rules²⁹ which is necessary to curb the widespread cheating and unfair trade practices in e-commerce platforms. According to the act, the e-commerce entity definition was widened to

²⁶ *Information Technology Act 2000, Section 10A*

²⁷ Mrunali Mudoi, *Proposed Amendments to the Consumer Protection Act, 1986*, 26 January 2015 <<http://www.mondaq.com/india/x/368946/Product+Liability+Safety/Proposed+Amendments+To+The+Consumer+Protection+Act+1986> (accessed on 15th March 2016) > accessed on 10 March 2023

²⁸ *Consumer Protection Bill 2015 Clause 2(41)(H)*

²⁹ *Draft Amendments to the Consumer Protection (E-Commerce) Rules, 2020*

include an e-commerce entity involved in the fulfilment of orders and any related party of the entity. This mandates that even small stores that allow orders online should appoint a grievance officer and other officers as prescribed under the rules. The amendment proposed defines cross-selling and mis-selling and restricts the same. It also prohibits misleading advertisements. These draft rules are yet to be implemented and have the following limitations such as, the revised definition of an "e-commerce entity" may now include entities that do not conduct e-commerce operations. The marketplaces may find it nearly impossible to follow the rules. The issue of consumer protection in e-commerce is still partially unresolved despite the many rules and laws that have been passed to regulate it, and certain amendments are required to guarantee consumer protection to the fullest.

VII. CURRENT TRENDS

According to the survey³⁰ taken by us of around 130 consumers, we have deduced various implications of dark patterns and how common they are. This study employed a quantitative research approach, utilizing a structured survey to gather data on consumer experiences with dark patterns in the Indian e-commerce market.

7.1. Survey Design

Objective: The primary objective of the survey was to assess consumer awareness and experiences related to dark patterns on e-commerce platforms.

Sample Size: The survey targeted a sample size of approximately 138 consumers who actively use e-commerce platforms.

Sampling Method: A random sampling method was employed to ensure a diverse representation of participants across different demographics, including age, gender, income levels, and geographical locations.

Survey Instrument: A structured questionnaire was designed, incorporating both closed and open-ended questions. The questions focused on:

- Frequency of e-commerce usage.

³⁰ Unfair practices on E-commerce platforms. (Responses)

- Awareness of dark patterns.
- Experiences with misleading or manipulative practices.
- Impact of these practices on their purchasing decisions.

Data Collection: The survey was distributed through online platforms, leveraging social media and email networks to reach the target audience.

7.2. Limitation

Sample Size: While the sample size of 138 provides valuable insights, it may not be fully representative of the entire Indian e-commerce consumer base.

Self-Reported Data: The reliance on self-reported data may introduce biases related to memory recall or social desirability.

Generalizability: The findings may be more applicable to frequent e-commerce users and may not fully capture the experiences of less tech-savvy consumers.

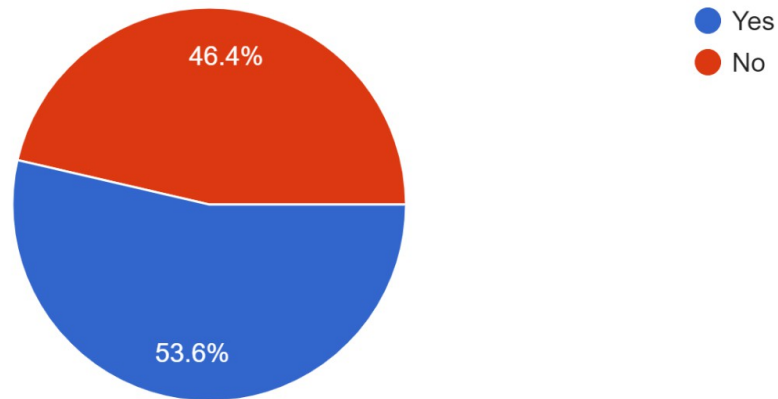
This methodology was designed to provide a comprehensive understanding of the prevalence and impact of dark patterns in Indian e-commerce, contributing valuable insights to the ongoing discourse on consumer protection in the digital marketplace.

7.3. Information gathered and Inferences

As per the survey almost everyone had purchased products from digital platforms and e-commerce websites. 53.6% of the consumers had received wrong or defective products and around 56.5% had experienced dissatisfactory services.

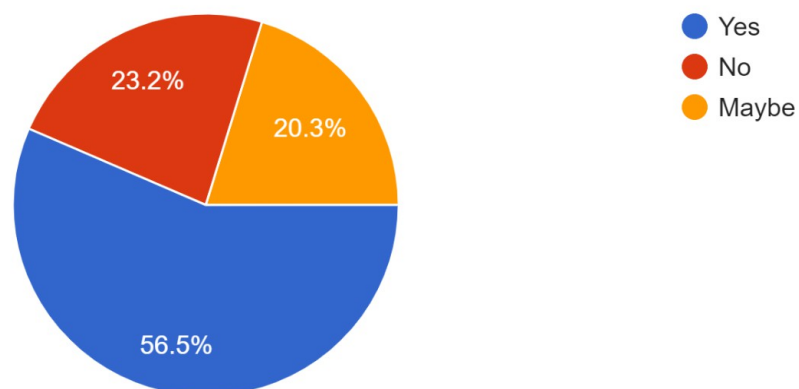
6. Have you ever received wrong product or defective product?

138 responses



7. Have you ever experienced dissatisfactory services?

138 responses



Among these consumers 37% had purchased any product or availed any services based on misleading advertisements. 47% of the consumers had to pay additional charges after the purchase of the goods or availing the services. More than 50% had faced difficulty unsubscribing from any service or cancelling any product ordered. More than 40% had purchased a product or availed a service merely because there was a sale or deal. This reflects the instances of how dark patterns have affected the lives of the consumers who purchase products from e-commerce websites. The information collected in this survey was filled by a majority of consumers who claimed to be aware of the rights available to the consumers. It is

disheartening to realise that even though they have been educated regarding consumer rights they have still been duped by the various dark patterns in e-commerce websites.

Luckily, the same survey shows that only 37% have purchased any product or availed any services based on misleading advertisements and only a mere 22.5 % of the consumers have been tricked by an online website into sharing private information. This shows that the policies framed curtailing the dark practices in e-commerce till now has not been in vain. Proper implementation of necessary rules provides the required results.

VIII. WAY FORWARD

Rules against dark patterns are still ambiguous and lack clarity. Various e-commerce service providers utilise these loopholes and lacunae in the laws to exploit consumers under the guise of persuasive marketing. It is high time for a standardized set of rules and regulations against these dark patterns. A 2022 study³¹ suggests 2 ways forward for policymakers to address this uncertainty. The first approach is standpoint epistemology, and the second is through the pareto approach.

The standpoint of epistemology or perspectival differences investigates the relationship between social identities and knowledge. It states that our views and perspectives are closely related to our social location and, hence our knowledge is only partial. Thus, deciding whether an act is a dark pattern or simply a persuasive marketing technique is largely dependent on the policy maker's standpoint. In such situations the policy makers should not act on the basis of their opinions alone but according to the interests of the consumers.

The second way, the pareto approach,³² benefits everyone not only the policy framers (the companies). According to this approach both the consumers and the companies stand to gain from mitigating dark patterns. The reduction of dark pattern will minimise impulsive buying. This will in turn lower the loss companies face due to returns, chargeback, and such.

³¹Sin R and others, "Dark Patterns in Online Shopping: Do They Work and Can Nudges Help Mitigate Impulse Buying?" [2022] *Behavioural Public Policy* 1 accessed on 11 March 2023

³² MILLS STUART, "Nudge/Sludge Symmetry: on the Relationship between Nudge and Sludge and the Resulting Ontological, Normative and Transparency Implications" (2023) 7 *Behavioural Public Policy* 309 accessed on 11 March 2023

There are three steps that can be taken to combat dark patterns. The first is the passing of rules and regulations by the legislature. The central government passed the Consumer Protection (E-Commerce) Rules, 2020 ("Rules") with effect from 23 July 2020. After the same was passed various interested parties filed complaints. Thus, the draft amendments were passed to curb dark patterns in 2021. Unfortunately, these amendments have still not been implemented. This step is perhaps the most effective

The second step would be to educate consumers regarding these dark patterns. Without the awareness that they are being manipulated consumers would not be able to raise their voice against the dark patterns. While there have been various consumer awareness initiatives against unfair trade practices, awareness regarding the frauds on online platforms are quite low. Additionally, even if consumers are aware of dark patterns they are not sure of how it affects their day-to-day life.

The last step would be to create tailor made solutions according to each dark practice. These solutions would have to be specifically designed considering the dark practice and the consumer's needs and wants. To achieve this various Artificial intelligence and machine learning tools are being developed.

IX. CONCLUSION

Dark patterns in E-commerce affect the consumer's rights which increases the urgency to enact legislation regulating dark patterns. With less awareness about consumer rights, and the new tricks that business entities come up with, the users of e-commerce platforms become vulnerable to the dark patterns employed. As these tactics become more prevalent, it causes consumers to become wary of the online space. In the long term, this damages the overall customer experience, brand image, and loyalty, and leads to increased abandonment. Although it is vital to educate consumers about dark patterns, these tactics evolve quickly, making it difficult to provide adequate protection. Government encouragement to digitize everything would be detrimental if consumers using e-commerce platforms did not have a secure environment.