

From Regulation to Remedy: Bridging the Gap between Dark Pattern Enforcement and Contractual Consent Under Indian Law

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Abstract

The Central Consumer Protection Authority's 2023 Guidelines on Dark Patterns, and its subsequent orders against platforms such as BookMyShow, IndiGo, and McAfee, mark a significant regulatory response to manipulative digital design. Yet this response operates almost entirely on a public-enforcement track: it penalises the platform without disturbing the individual transaction. A consumer who is “basket-sneaked” into a charitable contribution or auto-renewed into a subscription through a banned dark pattern gains no corresponding right, under the Indian Contract Act, 1872, to treat their own contract as voidable — that determination still turns on the considerably harder, fact-specific tests of fraud, misrepresentation, or undue influence under Sections 15 to 19. This paper argues that this is not a minor procedural gap but a structural failure to connect regulatory findings to contractual consequence, leaving the individual consumer without a private remedy even where the state has already established that their consent was engineered. Through doctrinal analysis of Sections 14, 16, and 19 of the Contract Act alongside the CCPA's existing dark-pattern taxonomy, the paper examines whether “undue influence” can be judicially extended to interface-level manipulation, and draws on comparative approaches under the EU's Unfair Commercial Practices Directive and California's consumer-protection framework to test what a bridging mechanism might look like. It concludes by proposing a rebuttable presumption — triggered by a CCPA-classified dark pattern — against the validity of consent obtained through it, restoring the individual consumer's contractual remedy alongside the regulator's public one.

Keywords: Dark Patterns; Free Consent; Indian Contract Act, 1872; Consumer Protection Act, 2019; Undue Influence; Digital Consumer Contracts

I. Introduction

On 1 June 2026, the Central Consumer Protection Authority (CCPA) fined an ed-tech platform, PhysicsWallah Limited, ₹5 lakh. At the platform's checkout a box donating ₹10 to the company's foundation had been ticked in advance; a consumer who did not notice it paid the extra amount, and one who did had to untick it by hand, with a “Know more” prompt nudging her to leave it alone.¹ The CCPA classified the pre-selected donation as “basket sneaking,” treated the surrounding messaging as “confirm

¹ *In re PhysicsWallah Ltd.*, CCPA Order (June 1, 2026) (India); see Anjali Tripathi & Kartik Sharma, *Part I: Small Fines, Big Platforms: The CCPA on PhysicsWallah, McAfee, and the Cost of Getting Caught*, SpicyIP (July 31, 2026), <https://spicyip.com/2026/07/small-fines-big-platforms-the-ccpa-on-physicswallah-mcafee-and-the-cost-of-getting-caught-part-i.html>.

shaming,” held both to be unfair trade practices, and observed that the platform’s later correction of the interface did not extinguish liability for the period in which it ran.² The order is typical of a growing body of enforcement. It is also silent on the one question that matters to the person who paid: is she bound to the donation?

That silence is the subject of this paper. Since the notification of the Guidelines for Prevention and Regulation of Dark Patterns, 2023 (“Dark Patterns Guidelines”),³ India has assembled a public-enforcement apparatus: a statutory-style definition, a list of thirteen specified patterns, a self-audit advisory of June 2025 under which twenty-six leading platforms filed declarations of compliance, and a run of orders against IndiGo, BookMyShow, Zepto, McAfee, PhysicsWallah, SpiceJet and others.⁴ The Government has told the Rajya Sabha that nine platforms have been acted against.⁵ Every one of these orders is addressed to the platform. None addresses the contract.

The Indian Contract Act, 1872 (“Contract Act”) is where the contract lives. It makes an agreement enforceable only if it is made by the “free consent” of competent parties, and it defines consent as free only when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake.⁶ A consumer who is basket-sneaked into a donation, or auto-renewed into a subscription through an interface the CCPA has itself condemned, does not thereby acquire any right to treat her contract as voidable. She must still bring her case within one of the five listed vitiating factors, each of which carries a demanding, fact-specific test. This paper argues that the gap is structural rather than procedural. Regulatory findings and contractual consequences run on separate tracks that never meet, so that the State can establish that consent was engineered without that finding doing anything for the person whose consent it was.

The paper addresses five questions. First, what exactly constitutes a dark pattern contract? Second, does a consumer subjected to a dark pattern actually provide free consent? Third, can sections 13 to 19 of the Contract Act adequately address such consent? Fourth, what happens to the contract when consent has been manipulated? Fifth, should Indian law recognise “manipulated consent” as an independent ground of contractual invalidity, or provide a specialised remedy? Parts III to VII take the first four questions in turn, Part VIII draws on the European Union and California to test what a bridging mechanism might look like, and

Part IX answers the fifth by proposing a rebuttable presumption, triggered by a CCPA-classified dark pattern, against the validity of consent obtained through it.

II. Method and Scope

The study is doctrinal. It reads the Contract Act, the Consumer Protection Act, 2019 (“CPA”), the Consumer Protection (E-Commerce) Rules, 2020, the Digital Personal Data Protection Act, 2023 (“DPDP Act”) and the Dark Patterns Guidelines against the case law on free consent, and it asks what follows for

² *Id.*

³ Central Consumer Protection Authority, *Guidelines for Prevention and Regulation of Dark Patterns, 2023*, guideline 2(1)(e) (notified Nov. 30, 2023) (India) [hereinafter *Dark Patterns Guidelines*]. The Guidelines were issued under section 18 of the Consumer Protection Act, 2019, after a draft released on September 7, 2023 for public consultation.

⁴ Naresh Pareek, Abhishek Nair & Shravan Kalluri, *From Nudge to Notice: What India’s Dark Pattern Orders Mean for Digital Business*, Bar & Bench (Sept. 1, 2026), <https://www.barandbench.com/law-firms/view-point/from-nudge-to-notice-what-indias-dark-pattern-orders-mean-for-digital-business>.

⁵ *CCPA Fines 9 Digital Platforms Including Zepto, IndiGo Over Dark Patterns*, Outlook Business (Aug. 2026), <https://www.outlookbusiness.com/corporate/ccpa-fines-9-digital-platforms-including-zepto-indigo-over-dark-patterns> (reporting the Government’s reply in Parliament).

⁶ Indian Contract Act, No. 9 of 1872, §§ 10, 13, 14, India Code (1872) [hereinafter Contract Act].

consumers who transact through manipulative interfaces.⁷ It uses the CCPA's published orders as evidence of how the regulator classifies conduct, and it uses comparative material from the European Union and California because both have addressed the relationship between dark patterns and consent directly. Behavioural evidence comes from published empirical studies.

The paper is confined to business-to-consumer transactions, because the CPA protects only consumers and the Dark Patterns Guidelines are framed around consumer harm. It does not examine criminal liability, competition law, or the content of unfair standard terms, which the Law Commission of India has treated separately.⁸ Because no Indian court appears to have decided a private claim that treats a dark pattern as a vitiating factor under sections 14 to 19, the conclusions about how courts would respond rest on analogy and are provisional. Part X returns to this and other limits.

III. What Is a Dark Pattern Contract?

A. From design folklore to legal category

The term “dark patterns” was coined by the designer Harry Brignull in 2010 to describe interface tricks that make users do things they did not mean to do.⁹ Researchers soon turned the folklore into taxonomy,¹⁰ and then into measurement. A crawl of roughly 11,000 shopping websites found 1,818 instances of dark patterns on 1,254 of them, about one site in nine.¹¹ A study commissioned by the European Commission reported that 97 per cent of the most popular websites and apps used by EU consumers deployed at least one.¹² The experimental evidence on effect is stronger still. In a large online experiment, Luguri and Strahilevitz found that a mildly manipulative interface more than doubled the rate at which participants accepted a costly data-protection service, from about 11 per cent to about 26 per cent, and an aggressive one raised it to about 42 per cent.¹³

These effects are predictable because dark patterns are built on well-documented features of human decision-making. Defaults are sticky,¹⁴ losses and shame loom larger than equivalent gains,¹⁵ and attention is scarce. Legal scholars have long warned that sellers who can observe and exploit these regularities at scale are doing something different from persuading.¹⁶

B. The CCPA's definition

The Dark Patterns Guidelines define a dark pattern as a practice or deceptive design pattern, using user-interface or user-experience interactions on any platform, that is designed to mislead or trick users into doing something they originally did not intend or want to do, by subverting or impairing consumer autonomy, decision-making or choice, and that amounts to a misleading advertisement, an unfair trade

⁷ Consumer Protection Act, No. 35 of 2019, India Code (2019) [hereinafter CPA]; Consumer Protection (E-Commerce) Rules, 2020, G.S.R. 462(E) (July 23, 2020) (India); Digital Personal Data Protection Act, No. 22 of 2023, India Code (2023) [hereinafter DPDP Act].

⁸ Law Comm'n of India, Report No. 199, *Unfair (Procedural & Substantive) Terms in Contract* (2006).

⁹ Harry Brignull, *Deceptive Design* (formerly *Dark Patterns*), <https://www.deceptive.design> (describing the term's origin in 2010).

¹⁰ Colin M. Gray et al., *The Dark (Patterns) Side of UX Design*, Proc. 2018 CHI Conf. on Hum. Factors in Computing Sys., Paper 534 (2018).

¹¹ Arunesh Mathur et al., *Dark Patterns at Scale: Findings from a Crawl of 11K Shopping Websites*, 3 Proc. ACM Hum.-Comput. Interact. (CSCW) art. 81 (2019).

¹² European Commission, Directorate-General for Justice and Consumers, *Behavioural Study on Unfair Commercial Practices in the Digital Environment: Dark Patterns and Manipulative Personalisation* (2022); see also OECD, *Dark Commercial Patterns*, OECD Digital Economy Papers No. 336 (2022).

¹³ Jamie Luguri & Lior Jacob Strahilevitz, *Shining a Light on Dark Patterns*, 13 J. Legal Analysis 43 (2021).

¹⁴ Eric J. Johnson & Daniel Goldstein, *Do Defaults Save Lives?*, 302 Science 1338 (2003).

¹⁵ Daniel Kahneman & Amos Tversky, *Prospect Theory: An Analysis of Decision under Risk*, 47 Econometrica 263 (1979).

¹⁶ Jon D. Hanson & Douglas A. Kysar, *Taking Behavioralism Seriously: The Problem of Market Manipulation*, 74 N.Y.U. L. Rev. 630 (1999); Ryan Calo, *Digital Market Manipulation*, 82 Geo. Wash. L. Rev. 995 (2014).

practice or a violation of consumer rights.¹⁷ The Guidelines apply to platforms systematically offering goods or services in India, to advertisers and to sellers; they prohibit any person from engaging in a dark pattern; and they list thirteen specified patterns in Annexure 1, which the CCPA may add to.¹⁸ The thirteen are 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.

Two features of the definition matter for what follows. First, it is design-oriented: the pattern must be “designed to” mislead or trick. That wording sits close to the intention to deceive that section 17 of the Contract Act requires for fraud, and it contrasts with California’s deliberate choice to make the designer’s intent not determinative (Part VIII). Second, the Guidelines are not themselves the source of liability. In the orders reviewed for this paper, the CCPA anchors liability in sections 2(9), 2(28) and 2(47) of the CPA, which define consumer rights, misleading advertisement and unfair trade practice, and uses the Guidelines as an interpretive map for what “unfair” or “misleading” looks like on a screen.¹⁹

C. Defining the dark pattern contract

For the purposes of contract law the relevant unit is not the interface but the transaction it produced. This paper therefore uses “dark pattern contract” to mean a contract, or a term, charge, renewal or variation of a contract, whose formation depends on a manifestation of assent procured through an interface that falls within a pattern specified by the regulator. Three features distinguish it from other contracting problems. First, assent exists in form: there is a click, a tick, a continued session or a payment, and a conventional analysis of offer and acceptance would find a contract. Second, the defect lies in the interface and not in the terms. This separates the problem from the unfairness of standard terms discussed in the companion literature on clickwrap and browwrap agreements, where the concern is notice of, and the fairness of, the clauses themselves.²⁰ Third, the harm is typically small per consumer and large in aggregate: the McAfee order recorded 3,55,133 renewals before the interface was changed,²¹ while the sum at stake for any one consumer may be a rupee, a donation of ten, or a month’s subscription fee.

Not every influence on a choice is a dark pattern. Choice architecture is unavoidable, and highlighting a popular plan or flagging a genuine risk can help a consumer decide.²² The line between a nudge and manipulation is usually drawn by asking whether the influence works through the consumer’s capacity to deliberate or around it. Sunstein describes manipulation as influence that does not sufficiently engage or appeal to a person’s capacity for reflective choice,²³ and Susser, Roessler and Nissenbaum define it as hidden influence that exploits vulnerabilities to steer decisions.²⁴ Practitioners reading the CCPA’s orders reach a similar test: the question is not whether the interface influences the consumer but whether it fairly

¹⁷ *Dark Patterns Guidelines*, supra note 3, guideline 2(1)(e).

¹⁸ *Id.* guidelines 3–5 & annex. 1. The Guidelines operate in addition to, and not in derogation of, any other law regulating the same practice.

¹⁹ See Tripathi & Sharma, supra note 1; *Dark Patterns Guidelines*, supra note 3, guideline 2(1)(e).

²⁰ Cf. Christina L. Kunz et al., *Browse-Wrap Agreements: Validity of Implied Assent in Electronic Form Agreements*, 59 Bus. Law. 279 (2003); Margaret Jane Radin, *The Deformation of Contract in the Information Society*, 37 Oxford J. Legal Stud. 505 (2017).

²¹ *In re McAfee Software India Pvt. Ltd.*, CCPA Order (May 20, 2026) (India); see Tripathi & Sharma, supra note 1 (reporting 3,55,133 renewals recorded before the interface changed).

²² Richard H. Thaler & Cass R. Sunstein, *Nudge* (2008); Pareek et al., supra note 4.

²³ Cass R. Sunstein, *Fifty Shades of Manipulation*, 1 J. Mktg. Behav. 213 (2016).

²⁴ Daniel Susser, Beate Roessler & Helen Nissenbaum, *Online Manipulation: Hidden Influences in a Digital World*, 4 Geo. L. Tech. Rev. 1 (2019). ²⁵ Pareek et al., supra note 4.

assists a decision or instead exploits predictable inattention.²⁵ That is the line this paper adopts, and the CCPA's specified patterns supply its legal expression.

D. Three kinds of defect

The thirteen patterns do not damage consent in the same way, and the difference matters for the remedy. Some patterns produce no consent at all. A pre-ticked donation or an automatically added membership puts a charge into the basket that the consumer never agreed to; the problem is formation. Others produce consent that exists but is distorted: false urgency, trick questions, interface interference and confirm shaming all operate on a decision the consumer does make. A third group acts at exit. Subscription traps and abusive recurring-billing designs leave formation intact but make it unreasonably hard to withdraw, so that what is manipulated is the continuation or renewal of the contract. This typology of absence, distortion and exit is used throughout the analysis below.

IV. The Public-Enforcement Track

A. Legal basis and trajectory

The CCPA's dark pattern jurisprudence has moved quickly. The Department of Consumer Affairs wrote to major platforms in June 2023, a draft followed in September 2023, and the Guidelines were notified on 30 November 2023.²⁵ In June 2025 the CCPA directed online platforms to conduct self-audits within three months, remove dark patterns and consider publishing self-declarations; by November 2025 twenty-six platforms had filed them.²⁶ Monetary penalties followed. Zepto was fined ₹7 lakh in December 2025,²⁷ McAfee ₹1 lakh on 20 May 2026, PhysicsWallah ₹5 lakh on 1 June 2026, and SpiceJet ₹1 lakh on 14 July 2026; FirstCry, PharmEasy and a coaching platform, Anuj Jindal, were also penalised, and IndiGo and BookMyShow were given corrective directions without a disclosed penalty.²⁸ The aggregate of penalties to date is about ₹20 lakh across seven platforms.²⁹

B. What the orders find

The orders show a regulator developing a consistent reading of the specified patterns. Pre-selected additions to the basket, such as Zepto's automatic membership, PhysicsWallah's pre-ticked donation, PharmEasy's automatic membership and BookMyShow's pre-ticked ₹1 contribution, are treated as basket sneaking. Prices that rise between the product page and checkout are drip pricing, as with Zepto's handling charges and FirstCry's tax-inclusive prices to which GST was added at checkout. McAfee's "Renew Now" or "Accept Risk" screen, with the decline option in muted grey, and IndiGo's "No, I will take the risk" are confirm shaming and interface interference; a recurring countdown timer used by Anuj Jindal is false urgency.³⁰ Remediation is not a defence. In the McAfee and PhysicsWallah orders the CCPA held that

²⁵ *Dark Patterns Guidelines*, supra note 3; see also ASCI, *Dark Patterns: The New Threat to Consumer Protection* (Discussion Document, Nov. 2022).

²⁶ Pareek et al., supra note 4.

²⁷ *Zepto Fined ₹7 Lakh for Dark Patterns Ahead of IPO*, MediaNama (Dec. 2025), <https://www.medianama.com/2025/12/223-zepto-fined-7-lakh-dark-patterns-ahead-ipo/>.

²⁸ See Outlook Business, supra note 5; *In re InterGlobe Aviation Ltd. (IndiGo)*, CCPA Order (June 19, 2024) (India); *In re BookMyShow (Bigtree Entertainment Pvt. Ltd.)*, CCPA Order (India); *In re SpiceJet Ltd.*, Case No. CCPA-2/19/2024-CCPA, CCPA Order (July 14, 2026) (India), as reported in Moneylife Digital Team, *SpiceJet Penalised ₹1 Lakh for Using Pre-ticked Checkboxes to Enrol Flyers in Loyalty Programme*, Moneylife (July 15, 2026).

²⁹ Pareek et al., supra note 4.

³⁰ Pareek et al., supra note 4; Tripathi & Sharma, supra note 1. ³² Tripathi & Sharma, supra note 1; Pareek et al., supra note 4.

post-notice correction “does not extinguish liability” for the earlier deployment, and in Zepto and PharmEasy it treated late fixes as reactive.³²

Two findings in the SpiceJet order are directly relevant to contract. The CCPA held that the airline’s pre-ticked loyalty enrolment and default consent to promotional communications amounted to an unfair trade practice, an unfair contract and a misleading advertisement, and it observed that consent inferred from pre-ticked checkboxes altered the consumer’s rights and obligations without her express agreement and was therefore legally unacceptable. It also found a breach of rule 4(9) of the E-Commerce Rules, which requires consent to be given by an explicit and affirmative action and forbids recording consent through pre-selected options.³¹ In other words, the regulator has already said, in terms, that consent obtained through the pre-ticked default is no consent. What the order does not say, and could not say, is what that finding does to the contract.

C. What the track delivers and what it does not

The public track penalises the platform and disciplines the interface. Its tools are directions to discontinue practices, reimbursement orders in cases of recall or withdrawal, and penalties of up to ₹10 lakh for a first contravention and ₹50 lakh for each later one under the CPA.³² The penalties imposed so far are modest, which has led commentators to ask whether they can change behaviour at scale.³³ For present purposes the more important limit is that nothing in the track reaches the transaction. A CCPA order does not declare the donation unenforceable, does not entitle the consumer to a refund of the sum she paid, and, so far as the authors have been able to find, carries no statutory presumptive or preclusive effect in a later private claim.

The individual route exists but runs through different doctrine. A consumer may complain to a Consumer Commission that an unfair trade practice caused her loss. In *Emirates Airlines v. Dr. Keshab Nandy*, the Maharashtra State Commission upheld a refund of ₹7,200 and compensation where passengers paid for seat selection without being told that free adjacent seats remained available, and it described the airline’s conduct as fitting the definition of a dark pattern even though the facts pre-dated the Guidelines.³⁴ The result was sound, but the reasoning ran through deficiency in service and unfair trade practice. Whether the airline’s contract for paid seats was voidable for want of free consent was not the question asked. That is the pattern across the Indian material: relief is available, but it is never framed as the consequence of defective consent.

V. Does the Dark Pattern Consumer Give Free Consent?

A. The Indian doctrine of free consent

Section 13 of the Contract Act says that two or more persons consent when they agree upon the same thing in the same sense. Section 14 says that consent is free when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake, and adds that consent is “so caused” when it would not have been

³¹ *SpiceJet*, supra note 29 (as reported by Moneylife).

³² CPA, supra note 7, §§ 20, 21.

³³ Tripathi & Sharma, supra note 1.

³⁴ *Emirates Airlines v. Dr. Keshab Nandy & Anr.*, Appeal No. A/2021/15 (Maharashtra State Consumer Disputes Redressal Comm’n, Mumbai) (arising from CC/07/2018, South Mumbai Dist. Consumer Forum order of Oct. 26, 2020), as reported in IndiaLaw LLP, *Concealment of Free Seats Amounts to Unfair Trade Practice* (Oct. 28, 2025), <https://www.indialaw.in/blog/consumer/emirates-penalized-for-hiding-free-seats-dark-pattern-case/>. The proceedings were under the Consumer Protection Act, 1986.

given but for the existence of the vitiating factor.³⁵ Two features of this scheme shape everything that follows. The list of vitiating factors is closed: a consumer whose consent was unfree for some other reason has no claim under section 14 as drafted. And the causal test is counterfactual. The question is not whether the factor was present but whether the consent would have been given without it.

B. What dark patterns do to the decision

The counterfactual question is unusually answerable in dark pattern cases, because the platforms themselves usually test designs for their effect on conversion. The experimental evidence summarised in Part III shows large behavioural effects from interface changes alone: if a mild nudge moves acceptance from roughly one participant in nine to roughly one in four, then a large share of those who accept under the nudge would not have accepted under a neutral presentation.³⁶ The finding is from a United States experiment on a particular product and should not be transposed to India without caution. But it states, in empirical form, the “but for” inquiry that section 14 asks, and it suggests the kind of evidence, such as A/B test results and interface logs, that platforms hold and consumers do not.

A second line of evidence concerns reading. Most people do not read online terms. In one experiment, 74 per cent of participants skipped a privacy policy by choosing a quick-join option, and those who looked at the terms of service spent an average of 51 seconds on a document that would take fifteen minutes or more to read;³⁷ a study of software shoppers found that only one or two in a thousand opened the licence agreement at all.³⁸ A legal regime that relies on consumer diligence therefore leaves exactly the space that dark patterns occupy. It also has an old answer: a person who signs or clicks is bound whether or not she read.³⁹ That answer assumes that the act of assent was the consumer’s own. Dark patterns attack the assumption.

C. Absence and distortion

The typology introduced in Part III.D produces different answers. Where the pattern produces no assent, the problem is formation. Acceptance must be communicated and absolute, silence is not acceptance, and a person cannot be made to contract by being told that her failure to refuse will count as agreement.⁴⁰ The CCPA’s finding that a pre-ticked box is not consent states this principle for the digital setting. Where consent exists but is distorted, the problem is one of quality, and here the Contract Act’s answer depends on whether the distortion can be fitted within a listed vitiating factor. Many cannot.

D. A qualified answer

The answer to the second question is therefore qualified. A consumer subjected to a specified dark pattern does not ordinarily give the kind of consent that section 14 exists to protect. The factual finding is that her choice was shaped by design rather than by deliberation, and the regulatory finding is that the design was unfair. But whether her consent is legally unfree depends on the category of defect, and for the distortion cases the closed list of section 14 offers no category that fits comfortably. Consent is also a matter of degree. A pre-ticked box that the consumer noticed and left ticked differs from a countdown timer that

³⁵ Contract Act, supra note 6, §§ 13, 14.

³⁶ *Luguri & Strahilevitz*, supra note 13.

³⁷ Jonathan A. Obar & Anne Oeldorf-Hirsch, *The Biggest Lie on the Internet: Ignoring the Privacy Policies and Terms of Service Policies of Social Networking Services*, 23 Info. Comm’n & Soc’y 128 (2020).

³⁸ Yannis Bakos, Florencia Marotta-Wurgler & David R. Trossen, *Does Anyone Read the Fine Print? Consumer Attention to Standard-Form Contracts*, 43 J. Legal Stud. 1 (2014); see also Omri Ben-Shahar & Carl E. Schneider, *More Than You Wanted to Know* (2014).

³⁹ *L’Estrange v. F. Graucob Ltd.*, [1934] 2 KB 394 (CA); cf. *Parker v. South Eastern Railway Co.*, (1877) 2 CPD 416 (CA) (notice of terms).

⁴⁰ Contract Act, supra note 6, §§ 2(b), 7; *Felthouse v. Bindley*, (1862) 11 C.B. (N.S.) 869 (Eng.); *Lalman Shukla v. Gauri Dutt*, (1913) 11 All. L.J. 489 (India) (acceptance by performance requires knowledge of the proposal).

made her hurry, and both differ from a cancellation flow that wore her down over six screens. This is the reason why, in Part IX, the paper proposes a rebuttable presumption and not a rule that every dark pattern vitiates consent.

VI. Can Sections 13 to 19 Adequately Address Manipulated Consent?

The third question is whether the Contract Act's existing machinery can carry the load. This Part tests each vitiating factor against the specified patterns; Table 1 summarises the result.

A. Coercion (section 15)

Coercion requires the committing of, or threat to commit, an act forbidden by penal law, or the unlawful detaining of property, with the intention of causing a person to enter into an agreement.⁴¹ Nothing in a pre-selected checkbox, a countdown timer or a shaming prompt resembles this. The only pattern that comes near is rogue malware, where a false threat of infection is used to extract payment, and that is better analysed as fraud. Section 15 does no work here.

B. Undue influence (section 16)

Section 16 is the most tempting basis for judicial extension, because its language is open-textured. A contract is induced by undue influence where the relations subsisting between the parties are such that one is in a position to dominate the will of the other and uses that position to obtain an unfair advantage.⁴² A person is deemed to be in such a position where he holds real or apparent authority over the other, stands in a fiduciary relation, or contracts with a person whose mental capacity is temporarily or permanently affected by age, illness or mental or bodily distress; and if the transaction appears unconscionable, the burden of proving the absence of undue influence lies on the dominant party.⁴³ The Supreme Court analyses the provision in three steps: whether the relationship is one of dominance, whether the dominant party used it to obtain an unfair advantage, and whether the transaction is unconscionable so as to shift the burden.⁴⁴

The argument for extension runs as follows. A platform that designs the entire choice environment, controls what is shown and in what order, and often holds detailed data about the particular user, occupies a position of informational and architectural dominance that is more real than the "apparent authority" in section 16(2)(a). Where the interface exploits a consumer's distress or haste, as when an airline sells seat selection to a passenger who fears being separated from a spouse who needs assistance, section 16(2)(c) is arguably engaged. The Maharashtra Commission's reasoning in *Emirates*, that the circumstances practically compelled the purchase, uses language close to this.⁴⁵ And the more the interface is personalised, the closer it comes to the "digital market manipulation" that Calo describes.⁴⁶

The argument faces three obstacles. The first is that section 16(1) speaks of "relations subsisting between the parties," and the courts have understood this as a pre-existing relationship of trust, authority or dependence. A single anonymous transaction with a platform is not that. The second is that section 16(3) shifts the burden only where the transaction is unconscionable, and a donation of ten rupees or a one-month renewal is hard to describe as unconscionable, however improperly it was obtained. The third is

⁴¹ Contract Act, *supra* note 6, § 15.

⁴² *Id.* § 16(1).

⁴³ *Id.* § 16(2), (3).

⁴⁴ *Subhas Chandra Das Mushib v. Ganga Prasad Das Mushib*, AIR 1967 SC 878 (India); *see also Lakshmi Amma v. Talengala Narayana Bhatta*, (1970) 4 SCC 196 (India); *Afsar Shaikh v. Soleman Bibi*, (1976) 2 SCC 142 (India).

⁴⁵ *Emirates*, *supra* note 36. The case concerned the 1986 Act and was not decided under the Contract Act.

⁴⁶ Calo, *supra* note 16.

that Indian courts have been reluctant to treat inequality of bargaining power alone as undue influence; where they have policed unfair terms they have done so through constitutional and public-policy reasoning applied to public bodies, not through section 16.⁴⁷ The judicial extension of undue influence to interface-level manipulation is therefore possible but would require a redefinition of the relationship that section 16 presupposes. It is a poor fit for the small, anonymous, high-volume transactions that dark patterns generate.

C. Fraud (section 17)

Fraud covers suggesting as fact what is untrue by one who does not believe it, actively concealing a fact, making a promise without intending to perform it, “any other act fitted to deceive,” and any act or omission the law specially declares fraudulent, in each case with intent to deceive or to induce the other party to contract.⁴⁸ Paragraph (4), “any other act fitted to deceive,” is the natural home for interface-level deception, because it does not require a verbal statement. An interface that renders the decline option in pale grey, or phrases a double-negative opt-out, is an act that is at least arguably “fitted to deceive.” Paragraph (2) catches active concealment, which covers drip pricing and hidden cancellation routes. And the CCPA’s definition, with its requirement that the pattern be “designed to” mislead, supplies a regulatory finding that goes to the intent element.

Fraud nevertheless has limits. It requires proof of intent to deceive, which the English authority that India follows has long treated as a demanding standard.⁴⁹ The explanation to section 17 says that mere silence as to facts likely to affect a party’s willingness to contract is not fraud unless there is a duty to speak or the silence is itself equivalent to speech.⁵⁰ A pre-ticked box is silence of a kind, and the question is whether the platform owed a duty to speak. There is a respectable argument that it did: the E-Commerce Rules and the CPA’s information rights impose statutory duties of disclosure and affirmative consent, and a statutory duty is the natural source of a “duty to speak.” That argument is untested. Finally, fraud is unavailable where there is no deceptive act at all. Confirm shaming and nagging make no false statement and conceal no fact; they pressure.

D. Misrepresentation (section 18)

Misrepresentation has three limbs: a positive assertion not warranted by the maker’s information, any breach of duty that gains an advantage by misleading another to his prejudice without intent to deceive, and causing a party, however innocently, to make a mistake about the substance of the thing agreed.⁵¹ The second and third limbs dispense with intent, which suits the many cases in which the designer says the pattern was an accident of testing. A false “only 2 rooms left” banner falls within the first limb. A trick question that causes a consumer to mistake what she is agreeing to falls within the third. The same difficulty of the “duty” arises under the second limb, and the same statutory-duty argument applies. But like fraud, misrepresentation presupposes a representation or a mistake about substance. Patterns that work through emotion, friction or repetition do not produce either.

E. The limits imposed by section 19 and the law of mistake

Even where fraud or misrepresentation is established, section 19 makes the contract voidable only if the consent was caused by it, and it contains an exception: where the consent was caused by misrepresentation

⁴⁷ Cent. Inland Water Transp. Corp. v. Brojo Nath Ganguly, (1986) 3 SCC 156 (India); Life Ins. Corp. of India v. Consumer Educ. & Rsch. Ctr., (1995) 5 SCC 482 (India); Stelios Tofaris, *The Regulation of Unfair Terms in Indian Contract Law: Past, Present, and Future*, in *The Contents of Contracts and Unfair Terms* 111 (Mindy Chen-Wishart & Stefan Vogenauer eds., 2020).

⁴⁸ Contract Act, supra note 6, § 17.

⁴⁹ *Derry v. Peek*, (1889) 14 App. Cas. 337 (HL).

⁵⁰ Contract Act, supra note 6, § 17 expl.

⁵¹ *Id.* § 18.

or silence that is fraudulent under section 17, the contract is not voidable if the party “had the means of discovering the truth with ordinary diligence.”⁵² This exception is a serious difficulty. A platform will say that the box was visible, the pricing line was on the screen and the cancellation link was in the settings menu, so that any consumer exercising ordinary diligence could have found the truth. The answer must be that “ordinary diligence” is measured against how consumers actually behave in the interface and not against an idealised reader. The evidence discussed in Part V suggests that most do not read,⁵³ and an interface designed around that fact should not be able to invoke the diligence of the consumer it was designed to defeat. Courts have not, so far as the authors are aware, addressed the point.

Mistake offers no refuge. Under sections 20 to 22 a bilateral mistake as to a matter of fact essential to the agreement makes it void, but a unilateral mistake is not a ground for avoidance. A consumer who thinks she has declined an add-on is mistaken unilaterally; the platform knows perfectly well what she has agreed to.⁵⁴

F. Proof, value and the individual-collective mismatch

A final set of difficulties lies outside the elements. Each of the listed factors must be pleaded and proved by the consumer, and the evidence, such as interface logs, A/B tests and design documents, is held by the platform. The sums at stake are usually small, so the cost of civil litigation exceeds the value of the claim. And the Contract Act’s doctrines are individual: they ask whether this consumer’s consent was vitiated, whereas the wrong in a dark pattern case is the systematic exploitation of a population. Kumar has argued more generally that automated, algorithm-driven contracting strains the free-consent doctrine and has suggested presumptions of informed consent and algorithmic transparency in response.⁵⁵ The proposal in Part IX is in the same spirit but anchored to the CCPA’s own taxonomy.

Table 1: The thirteen specified patterns and their closest Contract Act hooks

Specified pattern	Mechanism (paraphrased)	Closest Contract Act hook	Defect / fit
False urgency	False or unsupported scarcity or time pressure	Misrepresentation (s. 18(1)); fraud if known to be false (s. 17(1))	Distortion / good if falsity is proved
Basket sneaking	Add-ons, donations or charges added without consent	No consent at all (ss. 2(b), 7, 13)	Absence / formation failure
Confirm shaming	Guilt, fear or ridicule attached to the decline option	None clear; s. 16 only by analogy	Distortion / poor
Forced action	Unrelated purchase, sign-up or data disclosure made a pre-condition	None in the Contract Act; CPA s. 2(46) (unfair contract)	Distortion / poor
Subscription trap	Cancellation hidden, obstructed or made complex	Concealment (s. 17(2)) in some cases; otherwise CPA s. 2(46)	Exit / partial

⁵² *Id.* § 19 & expl.

⁵³ Obar & Oeldorf-Hirsch, *supra* note 39.

⁵⁴ Contract Act, *supra* note 6, §§ 20, 22.

⁵⁵ Satish Kumar, *Doctrine of Free Consent in Automated E-Contracts: Re-Evaluating Indian Contract Law in the Age of Algorithmic Negotiation*, 5 Int’l J. Civ. L. & Legal Rsch. 142 (2025).

Interface interference	Prominence for the desired option, others obscured	Act fitted to deceive (s. 17(4)); s. 18(3)	Distortion / uncertain
Bait and switch	One outcome advertised, another delivered	Misrepresentation (s. 18(1))	Distortion / good
Drip pricing	Price elements withheld or disclosed after commitment	Concealment (s. 17(2)); misrepresentation as to price	Distortion / good if material
Disguised advertisement	Advertising presented as editorial or user content	Misrepresentation, only if it induced the contract	Distortion / indirect
Nagging	Repeated, persistent prompts to extract a commitment	Undue influence by attrition (s. 16): no authority	Distortion / poor
Trick question	Confusing wording, double negatives	Ss. 17(4), 18(3); unilateral mistake no ground (s. 22)	Distortion / uncertain
SaaS billing	Recurring charges collected surreptitiously	Concealment (s. 17(2)); no consent to renewal (ss. 7, 13)	Exit / partial
Rogue malware	Scareware inducing payment for a fake removal tool	Fraud (s. 17(1), (4))	Distortion / good (also criminal)

Source: authors' analysis of Annexure 1 of the Dark Patterns Guidelines against Contract Act §§ 13–22. The answer to the third question is therefore that the Contract Act addresses manipulated consent only partially and fortuitously. It handles false statements (false urgency, bait and switch, drip pricing, rogue malware) reasonably well, provided the consumer can prove falsity and causation and survives the “means of discovering the truth” exception. It handles the absence of consent (basket sneaking) not through sections 14 to 19 at all but through the law of formation. It handles the largest group, the patterns that exploit attention, emotion and friction, hardly at all. The gap is not that the Act cannot be applied to digital facts. It is that its closed list of defects was drafted for different mischiefs, and its burden of proof falls on the party least able to carry it.

VII. What Happens to the Contract?

A. Voidable, void or never formed

The consequence of manipulated consent depends on the category. Where consent is absent, as in basket sneaking, there is no agreement as to the sneaked item; the consumer owes nothing for it and, if she has paid, can seek its return as money paid without a binding agreement. Where consent is vitiated by fraud, misrepresentation or undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused, who may rescind it or may affirm it and insist on performance.⁵⁶ Rescission is lost by affirmation, which in the consumer setting may mean continued use of the service, and by delay.

B. Restitution and its mismatch with small transactions

A party who rescinds a voidable contract must restore any benefit received under it, so far as may be, to the person from whom it was received.⁵⁷ This rule fits commercial contracts, where benefits are identifiable and restorable. It fits dark pattern cases badly. A consumer who was auto-renewed into a

⁵⁶ Contract Act, *supra* note 6, §§ 2(i), 19, 19A.

⁵⁷ *Id.* § 64; *see also* Specific Relief Act, No. 47 of 1963, §§ 27, 30, India Code (1963).

subscription and used the service for a month received a benefit that cannot be handed back; a consumer who made a ten-rupee donation received nothing at all. Without adaptation, the restitution rule invites a platform to answer a rescission claim by offsetting the value of whatever the interface delivered, and it makes the claim not worth bringing.

C. Severability

Dark patterns usually attach to an add-on, a renewal or a charge and not to the core purchase. A consumer who bought a course and was sneaked into a donation does not want the course rescinded. The remedy should therefore operate on the affected term or charge and leave the rest intact unless the consumer elects otherwise. The Contract Act has no general doctrine of partial rescission for consent defects, and the point would have to be built into any reform.

D. The consumer-law track

The CPA provides remedies that the Contract Act does not. A District Commission may order the opposite party to discontinue an unfair trade practice, return the price, pay compensation and, in appropriate cases, punitive damages, and a single complainant may sue on behalf of numerous consumers with the same interest.⁵⁸ The State and National Commissions may declare unfair terms of a contract null and void, and an “unfair contract” is defined by reference to terms that significantly change the consumer’s rights, such as unreasonable charges, obligations or conditions.⁵⁹ The SpiceJet order’s finding of an “unfair contract” shows that the CCPA is prepared to invoke the label. But the CCPA itself cannot declare a term void; the power belongs to the Commissions, which act only on a complaint, and the definition is directed at the content of terms, not at the way consent to them was obtained.

E. The missing link

The consequence is a gap that the public and private tracks cannot cross on their own. A CCPA finding that an interface was a basket-sneaking pattern does not establish, in the consumer’s own proceeding, that her consent was not free. She must prove the pattern and its effect afresh, using doctrines that were not built for it. Other Indian statutes have shown how the link can be forged. The DPDP Act requires consent to personal-data processing to be free, specific, informed, unconditional and unambiguous and given by clear affirmative action, and provides that any part of a consent that infringes the Act or any other law is invalid to the extent of the infringement.⁶⁰ Parliament has therefore already decided, for data, that consent obtained in breach of a regulatory standard is not valid consent. The same decision has not been taken for consent to the contract itself.

VIII. Comparative Lessons

A. The European Union

The EU handles dark patterns through several overlapping instruments. The Unfair Commercial Practices Directive prohibits misleading actions and omissions and aggressive practices, which include harassment, coercion and undue influence, where they materially distort or are likely to materially distort the economic behaviour of the average consumer.⁶¹ The Digital Services Act adds, in article 25, a prohibition on providers of online platforms designing or operating interfaces in ways that deceive or manipulate

⁵⁸ CPA, *supra* note 7, §§ 35(1)(c), 39. Complaints must be filed within two years of the cause of action. *Id.* § 69. The Consumer Protection (Consumer Disputes Redressal Commissions) Rules, 2020 prescribe no fee for claims up to ₹5 lakh.

⁵⁹ *Id.* §§ 2(46), 49(2), 59(2).

⁶⁰ DPDP Act, *supra* note 7, § 6(1), (2).

⁶¹ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning Unfair Business-to-Consumer Commercial Practices in the Internal Market, 2005 O.J. (L 149) 22, arts. 5–9.

recipients or materially impair their ability to make free and informed decisions, but it yields to the UCPD and the GDPR where those apply.⁶² Under the GDPR, consent must be an unambiguous, affirmative act, and the Court of Justice has held that a pre-ticked box does not produce valid consent.⁶³

For present purposes the most instructive provision is article 11a of the UCPD, introduced by the Omnibus Directive of 2019. It requires Member States to give consumers harmed by unfair commercial practices access to proportionate and effective remedies, including compensation and, where relevant, a price reduction or the termination of the contract.⁶⁴ The EU thus acknowledges that a regulatory finding of unfairness should be able to travel into the individual contract. It leaves the content of that remedy largely to national law, however, and the Commission's own review concluded that the existing instruments leave gaps; a Digital Fairness Act addressing dark patterns, subscriptions and cancellation is expected to be proposed before the end of 2026.⁶⁵

B. California

California went further on the consent question, but in a narrower field. Under the California Consumer Privacy Act as amended by the CPRA, "consent" means a freely given, specific, informed and unambiguous indication of the consumer's wishes, and "agreement obtained through use of dark patterns does not constitute consent." A dark pattern is a user interface designed or manipulated with the substantial effect of subverting or impairing user autonomy, decision-making or choice.⁶⁶ The regulations add that the business's intent is not determinative, though it is a factor, and they require symmetry in choice.⁶⁷ The California rule is clean and consequential, but it has two limits. It governs consent to the processing of personal information, not the formation of contracts generally. And it is categorical: any agreement obtained through a dark pattern is not consent, with no room for the degrees of influence discussed in Part V.

On the contract side, California's Automatic Renewal Law supplies a statutory consequence of the kind the Contract Act lacks: goods or services provided in violation of its requirements are treated as an unconditional gift to the consumer, who need not pay for them.⁶⁸ The federal Restore Online Shoppers' Confidence Act and Section 5 of the FTC Act supply public enforcement, and the FTC's 2025 settlement with Amazon over Prime enrolment and cancellation, reported at \$2.5 billion in penalties and refunds, shows that consumer redress can be built into the enforcement outcome.⁷¹

⁶² Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services, 2022 O.J. (L 277) 1, art. 25(1)–(2); see Mark R. Leiser & Mireille Caruana, *Dark Patterns: Light to Be Found in Europe's Consumer Protection Regime*, 10 J. Eur. Consumer & Mkt. L. 237 (2021).

⁶³ Case C-673/17, *Bundesverband der Verbraucherzentralen v. Planet49 GmbH*, ECLI:EU:C:2019:801 (CJEU Oct. 1, 2019); European Data Protection Board, *Guidelines 03/2022 on Deceptive Design Patterns in Social Media Platform Interfaces* (v. 2.0, adopted Feb. 14, 2023).

⁶⁴ Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019, 2019 O.J. (L 328) 7 (inserting art. 11a into Directive 2005/29/EC).

⁶⁵ See *Digital Fairness Act: A Necessary Safeguard or Unnecessary Duplication?*, A&L Goodbody (Feb. 13, 2026) (reporting that a draft proposal is due by the end of 2026). No proposal had been published at the time of writing.

⁶⁶ Cal. Civ. Code § 1798.140(h), (l). The consequence is spelled out in Cal. Code Regs. tit. 11, § 7004(b) (a business that uses dark patterns to obtain consent "shall be in the position of never having obtained the consumer's consent").

⁶⁷ Cal. Code Regs. tit. 11, § 7004(a), (c); see also Cal. Privacy Prot. Agency, Enforcement Advisory No. 2024-02 (Sept. 4, 2024).

⁶⁸ Cal. Bus. & Prof. Code §§ 17600–17606 (esp. § 17603).

Table 2: Three approaches to dark patterns and consent

Dimension	India	European Union	California
Primary source	CCPA Guidelines (2023) under CPA s. 18; orders anchored in CPA ss. 2(9), 2(28), 2(47)	UCPD (2005/29/EC); DSA art. 25; GDPR	CCPA/CPRA, Civ. Code § 1798.140; 11 CCR § 7004
Test	“Designed to” mislead or trick; subverts autonomy	Material distortion of the average consumer’s transactional decision (UCPD); art. 25 DSA	“Substantial effect” on autonomy; intent not determinative
Effect on consent	Regulatory finding that pre-selection is not consent; no contractual consequence stated	GDPR: no valid consent (Planet49); UCPD: no direct invalidity rule	Agreement obtained through dark patterns “does not constitute consent” (privacy)
Individual remedy	Complaint to Consumer Commission; contract-level remedy undefined	UCPD art. 11a: compensation, price reduction, termination of contract	UCL/CLRA restitution; ARL treats unordered renewals as unconditional gifts

Source: authors’ comparison; see Part VIII for authorities.

C. What India can take

Three design choices emerge. The first concerns intent: the EU asks about effect on the average consumer, California makes intent non-determinative, and India’s definition is design-oriented. A private remedy should not depend on proving the designer’s state of mind, and the Indian presumption should therefore be triggered by the classification of the interface, not by proof of intent. The second concerns categorical or presumptive treatment. California’s per se rule is simple but over-inclusive, and a presumption that the platform can rebut is better suited to a field where influence is a matter of degree. The third concerns the link to the individual contract. The EU’s article 11a and California’s unconditional-gift rule both attach a private consequence to a regulatory violation, and India has no equivalent. As in the companion literature on online terms, what India can take from these systems is the logic and not the text.⁷²

IX. Should Indian Law Recognise Manipulated Consent?

A. Three models

Three routes are open. The first is judicial extension: courts could read section 16 or section 17(4) to reach interface-level manipulation and apply the “ordinary diligence” exception sympathetically. This requires no legislation and may be the quickest. But it is slow, uncertain and case-by-case, it leaves the burden on the consumer, and it cannot reach patterns such as confirm shaming that fit none of the listed factors. The second is a new ground of invalidity in the Contract Act: manipulated consent as a free-standing vitiating factor. It would be doctrinally clear, but a freestanding ground risks over-breadth, since “manipulation” without

⁷¹ 15 U.S.C. §§ 8401–8405; Fed. Trade Comm’n, Bringing Dark Patterns to Light (Staff Report, Sept. 2022); FTC v. Amazon.com, Inc., No. 2:23-cv-00932 (W.D. Wash.) (settlement announced Sept. 2025).

⁷² Cf. Sanjay Rawat et al., Legal Aspect of Click-Wrap and Browse-Wrap Agreements in India: A Comparative

Analysis and the Way Forward, 8 Int’l J. Multidisciplinary Rsch. (2026), <https://doi.org/10.36948/ijfmr.2026.v08i01.66948>.

anchoring could capture ordinary persuasion, and amendments to the Contract Act have historically been rare; the Law Commission’s unfair-terms proposals of 1984 and 2006 were never enacted.⁶⁹ The third is a specialised remedy in consumer law, giving the Commissions power to relieve consumers of dark-pattern charges. It would be practical, fits the existing enforcement structure, and avoids touching the general law, but it would leave the Contract Act untouched, so that a consumer suing in a civil court would gain nothing.

B. A rebuttable presumption

The paper recommends a hybrid that takes the strengths of the second and third models and answers the over-breadth objection by making the rule a presumption. The mechanism is a new section 19B in the Contract Act, with a matching remedial power in section 39 of the CPA. Its core is that where a consumer’s consent to a contract, or to a term, charge, renewal or variation of one, was obtained through an interface employing a pattern specified under the CPA framework, the consent is presumed not to have been free, and the trader may rebut the presumption by showing that the consumer would have given the same consent had the choice been presented neutrally. In draft:

19B. Consent induced by manipulative interface design.—

1. Where a contract, or any term, charge, renewal or variation of a contract, between a consumer and a trader, manufacturer or service provider was concluded through an online interface employing a dark pattern specified under the Consumer Protection Act, 2019 or the guidelines made under it, the consent of the consumer to that contract, term, charge, renewal or variation shall be presumed not to have been free consent within the meaning of section 14.
 2. The presumption may be rebutted by the trader proving that the consumer would have given the same consent had the choice been presented neutrally.
 3. Where the presumption applies and is not rebutted, the contract, term, charge, renewal or variation is voidable at the option of the consumer; sections 19A and 64 apply with the modification that the consumer shall be required to restore a benefit only to the extent that it was actually received and can be restored in kind or in money.
 4. A final finding by the Central Consumer Protection Authority or a Consumer Commission that an interface employed a specified dark pattern is sufficient to engage sub-section (1). Where there is no such finding, the consumer may establish the pattern by reference to the specified list.
 5. No term of a contract, and no design of an interface, shall exclude or limit the operation of this section.
- Each element answers a difficulty identified earlier. The trigger is the regulator’s own taxonomy, so no new, open-ended concept of manipulation is created, and the presumption cannot reach conduct the CCPA has not classified. A final CCPA or Commission finding is enough to engage it, which connects the public track to the private one; and because Annexure 1 can be invoked directly by a consumer where the regulator has not acted, the remedy does not depend on the CCPA’s limited enforcement capacity. The presumption attacks the burden problem identified in Part VI: the platform, which holds the interface logs

⁶⁹ Law Comm’n of India, Report No. 103, *Unfair Terms in Contract* (1984); Report No. 199, *supra* note 8.

and test data, must show that the consumer would have agreed in any event, and a neutral presentation is a standard a compliant platform can meet. The modified restitution rule in sub-section (3) deals with the mismatch discussed in Part VII, and the focus on the “term, charge, renewal or variation” handles severability. The CPA amendment would add to section 39(1) a power to declare that a consumer’s consent to any such term or charge is not binding and to order a refund, so that Commissions, which are the forum where these claims will in practice be heard, can apply the presumption.

C. Aggregate remedies

An individual remedy will not by itself return the sums taken from hundreds of thousands of consumers. The CCPA’s power under section 20 to order reimbursement is framed in terms of recall and withdrawal, and should be extended to authorise class-wide refunds where it finds a specified dark pattern has been used to obtain payment. This would put consumer restitution alongside penalty in the regulator’s toolkit and would respond to the criticism that the present penalties are too small to matter. It would also preserve the logic of the design: the regulator handles the population, the presumption handles the individual who comes forward.

D. Objections

Over-breadth and paternalism. The objection is that the presumption treats consumers as incapable. The answer lies in its limits. It applies only to specified patterns, only to consumers, and only until rebutted; and it rests on a finding that the interface was designed to subvert decision-making, not on a view that the consumer was foolish. The Supreme Court has recognised autonomy as a component of dignity, and an interface designed to defeat that autonomy engages the same value.⁷⁰

Reliability of classification. The CCPA’s classifications are not beyond challenge. Commentators have questioned whether McAfee’s “Accept Risk” was a misleading advertisement at all, given that a lapsed security subscription does leave a device more exposed, and the first penalty to be appealed, Zepto’s, is pending.⁷¹ That is the reason for the presumption’s rebuttability and for tying sub-section (4) to final findings. A platform that can show a neutral presentation, or that the consumer would have chosen the same, keeps its contract.

Floodgates and micro-claims. The sums involved are small, and Commission fees are nil for claims up to ₹5 lakh, so the number of claims could in theory be large. But a presumption lowers the cost of proof, the two-year limitation period bounds exposure, and the principal effect will be to change platform behaviour, because the safest course is to present choices neutrally, which is the compliance outcome the Guidelines already demand.

Business customers. The proposal is confined to consumers. Small businesses that buy standard-form digital services face similar problems but fall outside the CPA’s definition of a consumer, and their position is better addressed through the unfair-terms reform that the Law

Commission recommended and the literature on clickwrap contracts has urged revisiting.⁷²

X. Limitations

Four limits should be stated. First, the analysis of the CCPA orders draws on the orders as reproduced and discussed in published commentary and reports, and several orders are very recent. Second, no Indian court appears to have decided a private claim treating a dark pattern as a vitiating factor under sections 14

⁷⁰ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1 (India).

⁷¹ Tripathi & Sharma, *supra* note 1; CPA, *supra* note 7, § 24 (appeal from the Central Authority to the National Commission).

⁷² CPA, *supra* note 7, § 2(7); Law Comm’n of India, Report No. 199, *supra* note 8.

to 19, so the conclusions about judicial extension rest on analogy and could change with the first reported case. Third, the behavioural evidence comes mainly from the United States and Europe and may not transfer to India without adjustment. Fourth, the field is moving: the Zepto appeal is pending, the EU's Digital Fairness Act has not yet been proposed, and the DPDP Act is being brought into force in stages. The presumption proposed here is a design proposal and has not been tested.

XI. Conclusion

India has built a regulatory response to dark patterns faster than most jurisdictions, and the CCPA's orders have already said what the Contract Act has not: that consent inferred from a pre-ticked box or extracted through a shaming prompt is not the consent the law contemplates. But the response operates on the public track alone. It penalises the platform and leaves the individual transaction undisturbed, and the consumer who was engineered into a charge must prove fraud, misrepresentation or undue influence on her own to be relieved of it. Sections 13 to 19 reach the false statements that dark patterns sometimes contain, reach the absence of consent through the law of formation, and largely miss the patterns that work through attention, emotion and friction.

The answer is not to abandon the doctrine of free consent but to connect it to what the regulator has already found. A rebuttable presumption against the validity of consent obtained through a CCPA-classified dark pattern, paired with a consumer-law power to give it effect and a class-wide refund power for the regulator, would restore the consumer's contractual remedy alongside the State's public one. It would do so without creating an unbounded doctrine of manipulation, because the trigger is the regulator's own list and the presumption can be rebutted. The Contract Act speaks of consent that is free. Where the State has found that an interface was designed to subvert that freedom, the law should treat the resulting consent accordingly.

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