

Interplay of Dark Patterns and Data Privacy in the Digital Era: An Indian Perspective

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Abstract: Dark patterns are deceptive user Interface or user Experience (UI/UX) design choices that are made to nudge, coerce or manipulate users or to play with the users' cognitive bias forcing them to make choices, that are detrimental to, unnecessary for their interest, or which do not show their underlying preference. These patterns specifically target the users' cognitive bias in order to induce superficial engagement. While the dark patterns have been studied somewhat, their interplay with data privacy needs further study. In India, the discourse on dark patterns has been primarily limited to consumer rights. India, having a substantial number of internet subscribers, is a goldmine of personal data. Though India has enacted the Digital Personal Data Protection Act, 2023, it is yet to be implemented, creating a regulatory void that allows dark patterns to facilitate personal data harvesting. Developed jurisdictions, like the EU & the USA, have not only recognized the impact of dark patterns but have also established regulations such as GDPR and the draft DETOUR Act to prevent the same. This article focuses on the various challenges posed by dark patterns for personal data and the data protection regimes by examining the prevalent dark patterns and present regulatory frameworks' effectiveness & limitations. It further argues for the need for an ex-ante regulation dealing with dark patterns, which will not only strengthen the personal data protection regime but will also ensure greater accountability from the data fiduciaries and digital giants.

Keywords: Dark Patterns, Data Privacy, DPDP, GDPR, User Interface, Consent.

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