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CONSENT AS ARCHITECTURE: MANIPULATIVE INTERFACE DESIGN AND THE HOLLOWING OF INFORMATIONAL AUTONOMY UNDER THE DIGITAL PERSONAL DATA PROTECTION ACT, 2023

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Abstract

The Digital Personal Data Protection Act, 2023, builds the lawfulness of processing almost entirely upon a single load-bearing concept: the data principal's consent. That consent must be free, specific, informed, unconditional and unambiguous. This paper argues that the statute, now operationalised by the Digital Personal Data Protection Rules, 2025, treats consent as a procedural event to be documented rather than as a substantive exercise of autonomy to be protected, and that this conception is structurally incompatible with the environments in which consent is actually obtained. Contemporary interfaces are engineered to steer; through manipulative defaults, friction asymmetry, choice overload and confirm-shaming, they do not merely solicit agreement but manufacture it. The result is a recognisable but underexamined pathology: consent that is legally valid yet substantively defective, formally free yet practically engineered. Drawing on the Indian law of free consent, undue influence and unconscionability, and on the constitutional foundation laid in Puttaswamy, the paper contends that Indian data protection law already possesses the doctrinal vocabulary to treat architecture-based steering as a vitiating factor, but has not yet deployed it. It proposes a reorientation built around three instruments: a material influence standard that asks whether the design, not the disclosure, determined the choice; a positive obligation of interface neutrality; and an evidential presumption against consent harvested through recognised manipulative flows. The argument is doctrinal and reconstructive rather than merely critical, and the recommendations are calibrated

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to the existing architecture of the Act, the Rules and the Central Consumer Protection Authority's dark patterns regime.

Keywords: *consent; dark patterns; informational autonomy; DPDP Act 2023; interface neutrality; material influence; unconscionability*.

1. Introduction

1.1 Background and Context

When the Supreme Court located informational privacy within the guarantee of personal liberty, it did so on a premise about the self: that an individual is entitled to decide for herself what becomes known about her, and to whom.[3] The Digital Personal Data Protection Act, 2023, is the legislative inheritor of that premise, and it discharges the inheritance through a single mechanism. Processing of personal data is lawful only where the data principal has given consent, or where a narrow set of legitimate uses applies.[4] Consent, in turn, must be accompanied by a notice and must satisfy a demanding adjectival standard.[5] With the notification of the Digital Personal Data Protection Rules, 2025, that architecture has moved from text to operation, and the question of what consent must actually look like has ceased to be academic.[6]

The difficulty is that the Act inherits the premise of autonomy while regulating only its outward form. It specifies the qualities consent must possess and the disclosures that must precede it, but it says almost nothing about the conditions under which the choice is presented. Yet those conditions are precisely where autonomy is won or lost. The consumer who clicks 'Accept All' beneath a wall of pre-ticked boxes, or who abandons a buried opt-out after the third nested menu, has performed every act the statute requires. The signature is genuine; the agreement is hollow.

1.2 Research Problem

[3] Justice K S Puttaswamy (Retd) v Union of India (2017) 10 SCC 1 [298], [325] (Chandrachud J).
[4] Digital Personal Data Protection Act 2023, s 6(1).
[5] DPDP Act 2023 (n 2) s 5; Digital Personal Data Protection Rules 2025, r 3 (notified 13 November 2025, published in the Gazette of India 14 November 2025).
[6] The Rules were notified by the Ministry of Electronics and Information Technology on 13 November 2025 with a staggered commencement: see Digital Personal Data Protection Rules 2025, r 1(2); the substantive consent and fiduciary obligations take effect eighteen months after notification.

Scholarship on the consent model has tended to diagnose its failure as a problem of comprehension: people do not read privacy policies, policies are too long, the cognitive burden is unmanageable.[7] These observations are accurate but shallow. They locate the defect in the user and treat the interface as a neutral conduit. The deeper problem is that the interface is not neutral and was never meant to be. It is designed, and design is a form of power.[8] The research problem this paper addresses is therefore not why people fail to read, but why a legal regime that purports to protect autonomous choice tolerates environments built to defeat it, and whether the validity of consent can survive the demonstrated fact that the architecture, rather than the principal, produced it.

1.3 Research Objectives

The paper pursues four objectives: to expose the conceptual weakness of a formalistic, procedural account of consent; to evaluate the DPDP Act's consent model against the realities of manipulative design; to examine whether existing legal doctrine can characterise architecture-based steering as a defect in assent; and to propose a principled, implementable framework for assessing meaningful consent in digital environments under Indian law.

1.4 Research Questions

Three questions organise the analysis. First, can consent extracted through dark patterns and manipulative interface architecture genuinely satisfy a standard of free and informed consent, or does the Act mistake procedural compliance for autonomy? Second, do established doctrines of free consent, undue influence, misrepresentation and unconscionability supply the conceptual resources to treat manipulative design as a vitiating factor? Third, what regulatory and doctrinal instruments would allow Indian law to assess the substance of consent without abandoning the workability of a consent-based regime?

1.5 Hypothesis

The working hypothesis is that legally valid consent and substantively defective autonomy can, and routinely do, coexist under the DPDP framework; that this coexistence is not an enforcement

[7] For the foundational account see Daniel J Solove, 'Introduction: Privacy Self-Management and the Consent Dilemma' (2013) 126 Harv L Rev 1880, 1880-83.

[8] Neil Richards and Woodrow Hartzog, 'The Pathologies of Digital Consent' (2019) 96 Wash U L Rev 1461, 1465.

gap but a conceptual one, traceable to the statute's treatment of consent as an event rather than a condition; and that the gap is remediable within the existing law because the doctrinal materials for assessing the quality, and not merely the fact, of assent are already present in Indian private and constitutional law.

1.6 Scope and Limitations

The analysis is confined to consent as a ground for processing under the DPDP Act and is doctrinal in orientation. It draws on behavioural literature only to establish that manipulation is feasible and prevalent, not to advance any empirical claim of its own. Comparative material from the European Union, the United States and the OECD is used selectively, to illuminate the Indian position rather than to catalogue foreign law. The treatment of children's data and of the consent-manager mechanism is incidental to the central argument.

1.7 Research Methodology

The method is doctrinal and analytical. It reads the Act and the 2025 Rules against their stated premise, tests that premise against an established body of design and manipulation scholarship, and reconstructs the consent standard by analogy to settled categories of defective assent in the Indian Contract Act, 1872, and the constitutional jurisprudence of autonomy. The aim is normative reconstruction grounded in positive law, not sociological description.[9]

1.8 Literature Review

The existing literature divides into three currents that this paper seeks to connect. The first, associated with Solove and with Ben-Shahar and Schneider, demonstrates the failure of notice-and-consent and mandated disclosure as autonomy-protecting devices, but stops at diagnosis and rarely engages the doctrinal question of validity.[10] The second, developed by Susser, Roessler and Nissenbaum and by Calo, theorises online manipulation as a distinct wrong directed at the decision-making process itself, yet remains largely outside positive law. The third, Indian and regulatory, comprises the Srikrishna Committee's report, the Central Consumer Protection Authority's dark patterns regime and emerging commentary on the DPDP Act, which addresses

[9] Brett Frischmann and Evan Selinger, Re-Engineering Humanity (CUP 2018) ch 1.

[10] Daniel Susser, Beate Roessler and Helen Nissenbaum, 'Online Manipulation: Hidden Influences in a Digital World' (2019) 4 Geo L Tech Rev 1, 4.

interface design as a consumer-protection matter without integrating it into the validity of consent. The gap this paper occupies is the junction of the three: it treats manipulative design not as a comprehension failure, nor as a freestanding ethical wrong, nor as a discrete consumer grievance, but as a defect going to the validity of consent under data protection law, and it argues that the doctrinal tools to recognise that defect already exist in Indian law of free consent, undue influence and unconscionability.[11] That reframing, and the three-part standard built upon it, constitute the paper's contribution.[12]

2. The Evolution of Consent in Data Protection Law

Consent entered information privacy law as a borrowing from the law of the person. The early American formulation framed privacy as a right 'to be let alone', a right of the individual against intrusion.[13] Westin recast that right in informational terms as the claim of individuals to determine for themselves when, how and to what extent information about them is communicated to others.[14] When the OECD distilled the fair information practice principles in 1980, that claim of control was operationalised as a procedural requirement of knowledge and, where appropriate, consent at the point of collection.[15] The 1995 European Directive carried the same logic into binding law, defining consent as a freely given, specific and informed indication of the data subject's wishes.[16]

Two features of this lineage matter for the argument. First, consent was always conceived as a proxy. It stood in for autonomy because autonomy itself is not directly observable; a recorded choice was treated as evidence that the underlying value had been honoured. Second, the proxy was workable only so long as the conditions of choice approximated the contractual paradigm from which it was borrowed: a discrete transaction, a comprehensible disclosure, a roughly informed and unhurried decision-maker. As those conditions eroded, critics demonstrated that the fair information principles had become a hollow ritual, generating consent that signalled

[11] Indian Contract Act 1872, s 14.
[12] Indian Contract Act 1872 (n 9) ss 16, 19A.
[13] Samuel Warren and Louis Brandeis, 'The Right to Privacy' (1890) 4 Harv L Rev 193, 195.
[14] Alan F Westin, Privacy and Freedom (Atheneum 1967) 7.
[15] Organisation for Economic Co-operation and Development, Recommendation of the Council Concerning Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data (OECD 1980) Annex, para 7.
[16] Council Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1995] OJ L281/31, art 2(h).

nothing about whether any informed decision had occurred.[17] Ben-Shahar and Schneider extended the critique to mandated disclosure generally, showing that the device fails not at the margins but systematically, because it presupposes a reader who does not exist.[18]

The General Data Protection Regulation responded by raising the adjectival bar, requiring consent to be freely given, specific, informed and unambiguous, and adding that it must be as easy to withdraw as to give.[19] Crucially, it began to gesture beyond the moment of clicking: consent is not freely given if the data subject has no genuine choice, and the bundling of consent with the performance of a contract is presumptively invalid.[20] The Court of Justice has since confirmed that market dominance bears on whether consent is truly free, treating the structural conditions of the choice as legally relevant rather than incidental.[21] The trajectory, in short, is from consent as a documented event toward consent as a protected condition. Indian law enters this trajectory late, and, as the next section argues, enters it still tethered to the older, formalistic conception.

3. The DPDP Act and the Formalisation of Consent

India's statutory journey to the DPDP Act ran through the Srikrishna Committee, which framed the individual as a 'data principal' and the processing entity as a 'fiduciary', a vocabulary deliberately chosen to import obligations of trust and care.[22] The fiduciary framing promised a substantive theory of the relationship; the legislation that followed largely abandoned it in favour of a transactional one. The Personal Data Protection Bill, 2019, retained an elaborate consent architecture before being withdrawn, and the Act that finally emerged in 2023 pared the framework to its essentials.[23]

[17] Fred H Cate, 'The Failure of Fair Information Practice Principles' in Jane K Winn (ed), Consumer Protection in the Age of the 'Information Economy' (Ashgate 2006) 343, 358-60.
[18] Omri Ben-Shahar and Carl E Schneider, More Than You Wanted to Know: The Failure of Mandated Disclosure (Princeton UP 2014) 7-9.
[19] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data [2016] OJ L119/1 (General Data Protection Regulation) art 4(11).
[20] GDPR (n 17) art 7(4); recital 43.
[21] Bundeskartellamt v Meta Platforms (Case C-252/21) EU:C:2023:537 [149]-[154].
[22] Committee of Experts under the Chairmanship of Justice B N Srikrishna, A Free and Fair Digital Economy: Protecting Privacy, Empowering Indians (2018) 33-37.
[23] Personal Data Protection Bill 2019, cl 11; that Bill was withdrawn in August 2022.

Under the Act, the personal data of a data principal may be processed only for a lawful purpose for which she has given consent, or for certain legitimate uses.[24] Consent must be 'free, specific, informed, unconditional and unambiguous with a clear affirmative action', and is to signify agreement to processing for the specified purpose and limited to such data as is necessary for it.[25] The principal may withdraw consent at any time, with the ease of withdrawal mandated to match the ease of giving.[26] Every request for consent must be preceded or accompanied by a notice itemising the personal data and the purposes of processing.[27] The 2025 Rules give this skeleton operational flesh, requiring the notice to be a standalone, intelligible account that maps each item of personal data against the specific purpose for which it is sought.[28] A consent-manager mechanism is layered on top, designed to let principals give, review and withdraw consent through a single interoperable point of contact.[29]

On its face this is a demanding regime, and the adjectives are well chosen. The difficulty lies in what the statute regulates and what it leaves untouched. Every operative requirement attaches to the content of the disclosure and the formal attributes of the agreement: the notice must be clear, the data must be itemised, the affirmative action must be unambiguous, the withdrawal must be easy. Not one requirement attaches to the design of the environment in which the affirmative action is taken. The Act assumes, but does not secure, a decisional setting in which the stated qualities can be realised. It legislates the script and ignores the stage.[30]

This is the formalisation of consent: the reduction of an autonomy-protecting standard to a checklist of documentary and behavioural conditions, each verifiable in the abstract and each compatible with a thoroughly engineered choice. Commentators have noted that the Act, for all its rhetorical commitment to the data principal, offers her control that is largely nominal, because the levers of that control are operated within interfaces the fiduciary designs and the principal merely traverses.[31] Empirical work on Indian privacy notices had already shown, before the Act,

[24] DPDP Act 2023 (n 2) s 6(1).
[25] DPDP Act 2023 (n 2) s 6(1), illustration.
[26] DPDP Act 2023 (n 2) s 6(4)-(6).
[27] DPDP Act 2023 (n 2) s 5(1)-(2).
[28] DPDP Rules 2025 (n 3) r 3 and the First Schedule (itemisation of personal data against each specified purpose).
[29] DPDP Act 2023 (n 2) ss 6(7), 13; DPDP Rules 2025 (n 3) r 4 (consent managers).
[30] DPDP Act 2023 (n 2) s 7 (legitimate uses), particularly s 7(a)-(b).
[31] Graham Greenleaf, 'India's Data Privacy Act: Late, Watered Down, but Worth the Wait?' (2023) 184 Privacy Laws & Business International Report 1, 3-5.

that disclosure does little to inform and less to empower.[32] The statute's response is to demand better disclosure, which addresses the comprehension problem and leaves the design problem precisely where it found it. The word 'free' in section 6(1) is asked to do enormous work, and the Act gives it no content beyond the absence of conditionality.[33] Whether a choice is free in any sense that autonomy would recognise depends on how it is presented, and that is the question the statute does not ask.

4. Dark Patterns, Interface Manipulation and Behavioural Steering

The term 'dark pattern' was coined to describe interface choices crafted to trick users into doing things they would not otherwise do, and the phenomenon has since been documented at industrial scale.[34] A crawl of eleven thousand shopping sites catalogued thousands of instances across a stable taxonomy of techniques, demonstrating that manipulative design is not aberrant but ambient.[35] Indian regulation has caught up at the descriptive level: the Central Consumer Protection Authority's Guidelines for Prevention and Regulation of Dark Patterns, 2023, define the term and enumerate thirteen specified patterns, from false urgency and confirm-shaming to subscription traps and interface interference.[36] The Guidelines are issued under the Consumer Protection Act, 2019, and the European Data Protection Board has produced a parallel, more granular taxonomy specific to consent interfaces.[37][38] What follows is not a fresh catalogue but an analysis of why these techniques defeat the statutory consent standard.

4.1 Architecture-Based Coercion

Manipulation, properly understood, is influence that bypasses the target's rational agency, working on her through routes she cannot easily inspect or resist.[39] It is to be distinguished from

[32] Rishab Bailey and others, 'Disclosures in Privacy Policies: Does Notice and Consent Work?' (2018) NIPFP Working Paper No 246, 19-22.
[33] DPDP Act 2023 (n 2) s 6(1) ('free, specific, informed, unconditional and unambiguous').
[34] Harry Brignull, 'Dark Patterns: Deception vs Honesty in UI Design' (A List Apart, 1 November 2011); Harry Brignull, Deceptive Patterns: Exposing the Tricks Tech Companies Use to Control You (Testimonium 2023) ch 1.
[35] Arunesh Mathur and others, 'Dark Patterns at Scale: Findings from a Crawl of 11K Shopping Websites' (2019) 3 Proceedings of the ACM on Human-Computer Interaction (CSCW) art 81, 2.
[36] Central Consumer Protection Authority, Guidelines for Prevention and Regulation of Dark Patterns 2023 (30 November 2023) guideline 2(e) and Annexure 1.
[37] CCPA Guidelines (n 34), issued under Consumer Protection Act 2019, s 18.
[38] European Data Protection Board, Guidelines 03/2022 on Deceptive Design Patterns in Social Media Platform Interfaces (version 2.0, adopted 14 February 2023) paras 8-11.
[39] Ryan Calo, 'Digital Market Manipulation' (2014) 82 Geo Wash L Rev 995, 1018-24.

persuasion, which engages reason, and from coercion, which removes options; manipulation leaves the options formally intact while loading the path between them.[40] The dark pattern is manipulation rendered as architecture. The user is never told she must consent and is never prevented from declining; she is simply routed through a space in which consenting is effortless and declining is laborious, conspicuous or obscured. Because no option is foreclosed, the resulting choice satisfies the statutory requirement of an unconditional affirmative action. Because the path was built to produce it, the choice is not, in any meaningful sense, hers. Sunstein's distinction is useful here: influence that does not sufficiently engage or appeal to the target's capacity for reflection is manipulative even where it is gentle and even where it is, in a thin sense, consensual.[41]

4.2 Consent Fatigue

A second mechanism operates not on the single decision but on the sequence of them. The data principal does not consent once; she consents dozens of times a day, across apps, sites and devices, each request demanding attention she cannot indefinitely supply. The predictable adaptation is to stop deciding and start dismissing, treating the consent dialogue as an obstacle to be cleared rather than a choice to be made. Designers exploit this through continuous prompting[42] and re-prompting, wearing down resistance until the path of least resistance becomes the only path taken.[43] The CCPA Guidelines recognise the technique as 'nagging', the persistent repetition of a request until the user yields.[44] Consent fatigue exposes the artificiality of the statutory model's central image, the discrete and considered decision. Under conditions of fatigue the affirmative action is real but the deliberation it is supposed to signify has been deliberately exhausted, and the Act's demand for a 'clear affirmative action' is satisfied by the very reflex the design was built to induce.[45]

4.3 Manipulative Defaults and Friction Asymmetry

[40] Susser, Roessler and Nissenbaum (n 8) 26.
[41] Cass R Sunstein, 'Fifty Shades of Manipulation' (2016) 1 J Marketing Behavior 213, 216.
[42] Eric J Johnson and others, 'Defaults, Framing and Privacy: Why Opting In-Opting Out' (2002) 13 Marketing Letters 5, 9-12.
[43] EDPB (n 36) paras 71-79 (overloading and 'continuous prompting').
[44] CCPA Guidelines (n 34) Annexure 1, item 10 (nagging).
[45] Solove (n 5) 1888.

The most powerful lever is the default. People overwhelmingly stay with the pre-selected option, whether from inertia, from an inference that the default is recommended, or from the cognitive cost of changing it.[46] A pre-ticked consent box, a privacy setting defaulted to maximum disclosure, an 'Accept All' button rendered prominent while 'Reject All' is buried a layer down, each harnesses this tendency to convert non-decision into consent.[47] Friction asymmetry is the same lever applied to the two paths: the route to consent is smoothed to a single tap while the route to refusal is studded with confirmations, warnings and additional clicks.[48] Data protection by design and by default would invert this, but it is the EU instrument, not the Indian one, that imposes the obligation.[49] Indian law condemns the 'forced action' pattern as a matter of consumer protection, yet the DPDP Act contains no requirement that the refusal path be no harder than the consent path; the symmetry it mandates is one of withdrawal, not of initial choice.[50] The asymmetry is therefore lawful at the moment it matters most.

4.4 The Illusion of User Autonomy

These techniques converge on a single effect: they preserve the appearance of choice while removing its substance. Human decision-making runs largely on fast, automatic, low-effort processes that are highly sensitive to framing, salience and default, and only intermittently on the slow, deliberate reasoning the consent model imagines.[51] Manipulative design is, in essence, the systematic engineering of the automatic system against the deliberate one.[52] The interface presents a choice; the architecture predetermines it. What the user experiences as agency is, in the aggregate and by design, a managed outcome.[53] This is why the comprehension critique misses the point. Even a perfectly informed user, who has read and understood the notice, remains subject to the steering effects of default, friction and salience, because those effects do not operate through misunderstanding. They operate through the predictable architecture of

[46] Idris Adjerid and others, 'Sleights of Privacy: Framing, Disclosures, and the Limits of Transparency' (2013) Proceedings of the Ninth Symposium on Usable Privacy and Security art 9, 6-9.
[47] Richard H Thaler and Cass R Sunstein, Nudge: Improving Decisions About Health, Wealth, and Happiness (Yale UP 2008) 83-85.
[48] GDPR (n 17) art 25; EDPB (n 36) para 13.
[49] EDPB (n 36) paras 50-58.
[50] CCPA Guidelines (n 34) Annexure 1, item 4 (forced action).
[51] Daniel Kahneman, Thinking, Fast and Slow (Farrar, Straus and Giroux 2011) 35.
[52] Eliza Mik, 'The Erosion of Autonomy in Online Consumer Transactions' (2016) 8 Law, Innovation and Technology 1, 14-18.
[53] Tim Wu, 'Blind Spot: The Attention Economy and the Law' (2019) 82 Antitrust LJ 771, 786.

attention and effort, and they would persist even if every disclosure were flawless. The illusion of autonomy is not a failure of information; it is a success of design.[54]

5. The Legal Fiction of 'Free' and 'Informed' Consent

If the foregoing is correct, the consent the DPDP Act collects is, in a substantial class of cases, a legal fiction: a thing the law treats as present because its formal indicia are present, while the value it is supposed to embody is absent. The fiction is not harmless. It launders engineered agreement into lawful processing and, in doing so, converts the statutory protection of autonomy into a protection of the documentation of its surrender.[55]

5.1 Procedural Consent versus Substantive Autonomy

The distinction the Act elides is between consent as procedure and autonomy as substance. Procedural consent asks whether the right boxes were presented and the right action taken. Substantive autonomy asks whether the choice expressed a genuine, self-authored preference under conditions that permitted one. The two ordinarily travel together, which is why the law has been content to verify the procedure and infer the substance. Manipulative design severs them. It produces impeccable procedure atop absent substance, and it does so reliably and at scale, which is precisely what distinguishes architecture-based steering from the ordinary imperfections of human choice.[56] A regime that verifies only the procedure will therefore certify as autonomous a great deal of choice that is nothing of the kind, and will do so not occasionally but structurally.[57]

5.2 Contract Law Analogies and Defective Assent

Indian private law is not, in fact, naive about this gap. The law of contract has long refused to treat the bare fact of agreement as conclusive of its quality. Consent for the purposes of contract requires consensus ad idem,[58] and is treated as 'free' only when not caused by coercion, undue influence, fraud, misrepresentation or mistake.[59] The doctrine of undue influence is especially instructive. Where one party is in a position to dominate the will of another and uses that position

[54] Woodrow Hartzog, Privacy's Blueprint: The Battle to Control the Design of New Technologies (Harvard UP 2018) 21-29.
[55] Julie E Cohen, Between Truth and Power: The Legal Constructions of Informational Capitalism (OUP 2019) 75.
[56] Calo (n 37) 1003.
[57] Calo (n 37) 1031.
[58] Indian Contract Act 1872 (n 9) s 13.
[59] Indian Contract Act 1872 (n 9) s 14.

to obtain an unfair advantage, the resulting transaction is voidable,[60] and once dominance and apparent unfairness are shown the burden shifts to the stronger party to prove that the assent was genuinely free.[61] The conceptual structure maps with uncanny precision onto the platform-principal relationship. The fiduciary controls the architecture; the principal can act only within it; the architecture is built to extract a particular outcome. This is dominance of the will exercised through design rather than through personal ascendancy,[62] and the equitable response, scrutiny of the transaction and a shifting of the evidential burden, is directly transferable.[63]

Misrepresentation and constructive fraud supply a second analogy. A confirm-shaming button that frames refusal as 'No, I don't want to save money', or a trick-worded toggle whose double negative reverses its apparent effect, does not lie outright but creates a false impression by the manner of its presentation.[64] That is the territory of misrepresentation and, where the design is calculated to deceive, of fraud, which the Act of 1872 defines to include any act fitted to deceive.[65] The point is not that every dark pattern is actionable as fraud, but that Indian law already possesses a graded vocabulary, from innocent misrepresentation through undue influence to fraud, for assessing the quality of assent, and that this vocabulary is responsive to exactly the manner-of-presentation defects that dark patterns exploit.

5.3 Cognitive Exploitation and Structural Imbalance

The deepest analogy is unconscionability. The Supreme Court has held that a contract or clause secured through gross inequality of bargaining power, where one party has no real freedom to negotiate and the terms are dictated by the stronger, may be struck down as unconscionable and opposed to public policy.[66] The Court reasoned that the law will not enforce a bargain in which the weaker party's consent is, in substance, no consent at all because the conditions of genuine choice were absent.[67] The digital consent transaction exhibits the same structural imbalance in a sharper form. The principal cannot negotiate the notice, cannot redesign the interface and cannot,

[60] Indian Contract Act 1872 (n 9) s 16(1).
[61] Indian Contract Act 1872 (n 9) s 16(3); see Subhas Chandra Das Mushib v Ganga ProsadDas Mushib AIR 1967 SC 878 [7]-[9].
[62] Lloyds Bank Ltd v Bundy [1975] QB 326 (CA) 339 (Lord Denning MR).
[63] Royal Bank of Scotland plc v Etridge (No 2) [2001] UKHL 44, [2002] 2 AC 773 [8]-[11] (Lord Nicholls).
[64] Indian Contract Act 1872 (n 9) s 18.
[65] Indian Contract Act 1872 (n 9) s 17; Derry v Peek (1889) 14 App Cas 337 (HL) 374 (Lord Herschell).
[66] Central Inland Water Transport Corp Ltd v Brojo Nath Ganguly (1986) 3 SCC 156 [89]-[94].
[67] Central Inland Water Transport (n 64) [93]; see also LIC of India v Consumer Education and Research Centre (1995) 5 SCC 482 [47].

in practice, decline without losing access to services that have become conditions of ordinary life. The imbalance is not merely economic but cognitive: the fiduciary commands the data, the design expertise and the behavioural science, while the principal brings only her finite attention and her exploitable heuristics.[68] Calo's account of digital market manipulation describes precisely this, a systematic exploitation of known cognitive limitation by parties with the information and incentive to exploit it.[69] Read against the constitutional foundation, the stakes become clear. If privacy protects the capacity for self-authorship,[70] and if autonomy is the ability to choose under conditions that are at least minimally one's own,[71] then consent manufactured by architecture does not merely fail a statutory adjective; it inverts the value the statute exists to serve.[72]

6. Comparative and Regulatory Perspectives

Other jurisdictions, having confronted the same fiction, have begun to dismantle it, and their responses map a spectrum of techniques rather than a single model. The value of the comparison is not the borrowing of foreign text but the identification of the lever each system has chosen to pull.[73]

The European Union pulls the validity lever directly. The GDPR's insistence that consent be unambiguous and freely given has been operationalised by the EDPB into concrete design prohibitions, and the Court of Justice has tied the freedom of consent to the structural conditions of the market in which it is given,[74] so that dominance itself becomes relevant to validity.[75] The European move is to treat the design of the consent interface as part of the legal question of whether consent exists at all, not as a separate regulatory matter. California pulls a definitional lever: the California Consumer Privacy Act, as amended, defines a 'dark pattern' in the statute itself and provides that agreement obtained through one does not constitute consent.[76] This is the cleanest available solution, a statutory declaration that engineered agreement is a legal nullity,

[68] Hartzog (n 52) 88-90.
[69] Calo (n 37) 1024.
[70] Joseph Raz, The Morality of Freedom (Clarendon Press 1986) 372-78.
[71] Puttaswamy (n 1) [298] (Chandrachud J), [521] (Kaul J).
[72] Susser, Roessler and Nissenbaum (n 8) 30-32.
[73] Solove (n 5) 1894-99.
[74] Richards and Hartzog (n 6) 1494-99.
[75] GDPR (n 17) art 7(1); EDPB (n 36) para 22.
[76] California Civil Code, s 1798.140(l) (as amended by the California Privacy Rights Act 2020) (definition of 'dark pattern'); s 1798.140(h).

and it requires no doctrinal ingenuity because the legislature has done the work.[77] The OECD and the United Kingdom's regulators pull an analytical lever, supplying frameworks that treat 'choice architecture' as the unit of analysis[78] and harmful design as a measurable distortion of consumer decision-making rather than a property of any single screen.[79]

India's distinctive feature is that it has built the apparatus but split it across two regimes that do not speak to each other. The CCPA Guidelines name and prohibit the very patterns that corrupt consent, but they do so under consumer-protection law, where the wrong is an unfair trade practice and the remedy is regulatory action against the trader. The DPDP Act governs the validity of consent, but contains no reference to design and no mechanism for treating a prohibited pattern as a defect in the consent it produces. The same confirm-shaming button is, simultaneously, a regulated dark pattern under one statute and an irrelevance to the validity of consent under the other. The comparative lesson is that the missing connection, between the design that has been prohibited and the consent that has been corrupted,[80] is exactly the connection Indian law has the materials to make and has not yet made.[81]

7. Reconstructing Meaningful Consent under Indian Law

The reconstruction proposed here does not require a new statute. It requires that the validity standard in the DPDP Act be read, and supplemented by rule and adjudication, so as to recover the substance the formalisation has shed. Three instruments, in ascending order of intervention, would accomplish this.[82]

7.1 A Material Influence Standard

The first and most important instrument is interpretive. The word 'free' in section 6(1) should be construed to ask a substantive question: did the design of the consent flow materially influence the principal's choice, such that the choice cannot be attributed to her settled preference? This is a material influence standard. It directs attention away from whether the disclosure was adequate

[77] California Civil Code, s 1798.135(c)(4).
[78] OECD, Dark Commercial Patterns (OECD Digital Economy Papers No 336, 2022) 36-41.
[79] Information Commissioner's Office and Competition and Markets Authority, Harmful Design in Digital Markets: How Online Choice Architecture Practices Can Undermine Consumer Choice and Control over Personal Information (joint position paper, 2023) 9-14.
[80] EDPB (n 36) para 14 (assessment by reference to the 'average user').
[81] Bundeskartellamt (n 19) [150].
[82] Consumer Protection Act 2019, s 2(9) and s 2(47); CCPA Guidelines (n 34) guideline 2(e).

and toward whether the architecture, rather than the principal, determined the outcome.[83] Its analogue is the structural-effects inquiry already familiar to Indian law: just as competition law asks whether a practice has an appreciable adverse effect on competition,[84] the consent inquiry would ask whether a design has an appreciable steering effect on choice.[85] The standard is administrable because it does not require proof of subjective intent or of any individual principal's state of mind; it asks an objective question about the tendency of the design, assessed by reference to the ordinary user, which is the same standard the EDPB and the CCPA already apply to identify dark patterns. Consent procured through a design with a material steering effect would not be 'free' within the meaning of the section, and the processing it purports to authorise would be unlawful.

7.2 Interface Neutrality Obligations

The second instrument is a positive obligation, capable of introduction through the rule-making power, of interface neutrality. A neutral interface is one that presents the options to consent and to decline with equivalent prominence, equivalent ease and equivalent framing, so that the architecture expresses no preference as between them. Neutrality is the design correlate of the statutory adjective 'free': a choice presented neutrally can be free, while a choice presented through a loaded architecture cannot.[86] The obligation has a ready doctrinal pedigree in the equitable response to unconscionable dealing,[87] where the stronger party who has structured the transaction must show that the weaker party's assent was genuine, and a ready operational template in the EU's data-protection-by-design requirement.[88] Concretely, interface neutrality would prohibit pre-ticked consent boxes, require that 'accept' and 'reject' options be presented at the same level and with the same salience, forbid confirm-shaming framings, and bar friction asymmetry between the consent and refusal paths. The consent-manager mechanism, which the Act and Rules already contemplate, is the natural vehicle for a neutral default interface, since a properly designed manager mediates consent through an architecture the fiduciary does not

[83] DPDP Act 2023 (n 2) s 6(1); the validity standard and the design of the consent flow are presently assessed under separate statutory regimes.
[84] For the analogous diagnosis in EU law see Bundeskartellamt (n 19) [149].
[85] Competition Act 2002, s 19(4); the 'material adverse effect' inquiry offers a structural-effects template transferable to consent design.
[86] Indian Contract Act 1872 (n 9) s 16(3) (shifting of the burden once dominance and apparent unconscionability are shown).
[87] Central Inland Water Transport (n 64) [93].
[88] EDPB (n 36) para 13; GDPR (n 17) art 25(1)-(2).

control.[89] The Act's existing symmetry requirement for withdrawal supplies the principle;[90] interface neutrality extends it, as it must, to the initial choice.[91]

7.3 A Presumption Against Manipulative Consent Flows

The third instrument is evidential and follows directly from the doctrine of undue influence. Where consent is shown to have been obtained through a consent flow exhibiting one or more of the patterns specified in the CCPA Guidelines, a rebuttable presumption should arise that the consent was not free, casting on the data fiduciary the burden of proving that the principal's agreement was nonetheless genuine and unmanipulated. This mirrors precisely the burden-shift that operates once dominance and apparent unfairness are established in an undue-influence claim,[92] and it solves the practical problem that the principal can rarely prove the counterfactual of what she would have chosen under a neutral design. The party that built the architecture, and alone possesses the analytics revealing its effect, is the party properly placed to justify it. The presumption would give the CCPA's catalogue of patterns a second life: having been identified as unfair trade practices under consumer law, the specified patterns would also operate as triggers for the evidential presumption under data protection law,[93] finally connecting the two regimes that India has so far kept apart.[94]

7.4 Regulatory and Judicial Recommendations

Implementation does not await legislative amendment. Three steps are available within the present framework. First, the rule-making power should be exercised to prescribe interface-neutrality requirements for consent flows, building on the notice requirements the 2025 Rules already impose and extending them from the content of the notice to the design of the choice.[95] Second, the Data Protection Board, in exercising its inquiry and penalty functions, should treat the presence of a specified dark pattern in a consent flow as prima facie evidence that the resulting consent was not 'free', shifting the burden to the fiduciary; this is an interpretive choice

[89] DPDP Act 2023 (n 2) ss 6(7), 13; DPDP Rules 2025 (n 3) r 4.
[90] DPDP Act 2023 (n 2) s 6(4) ('as easy to withdraw consent as to give it').
[91] CCPA Guidelines (n 34) Annexure 1, items 4 and 5 (forced action; subscription trap).
[92] DPDP Act 2023 (n 2) s 27(1) (powers of the Data Protection Board); s 33 (penalties under the Schedule).
[93] DPDP Act 2023 (n 2) s 9 (processing of personal data of children); DPDP Rules 2025 (n 3) r 10 (verifiable consent).
[94] DPDP Act 2023 (n 2) s 27; the Board's inquiry function could be exercised on a structural-design basis rather than a transactional one.
[95] Consumer Protection Act 2019, s 21(2); CCPA Guidelines (n 34) guideline 4.

open to the Board on the existing text and requires no new power.[96] Third, the CCPA and the Data Protection Board should coordinate, so that a pattern identified as an unfair trade practice under consumer law is recognised as a vitiating factor under data protection law, ending the regulatory bifurcation that currently lets the same design be condemned in one forum and ignored in the other.[97] None of this abandons the consent model. It rescues it, by insisting that the law verify the condition the model has always claimed to protect rather than the documentation of its surrender.[98]

8. Conclusion

The DPDP Act inherited a premise about the self and discharged it through a procedure. It demands that consent be free, specific and informed, and then secures only the disclosure and the click, leaving the architecture that produces the click entirely unregulated. The result is the legal fiction this paper has traced: consent that is valid because its indicia are present and hollow because its substance has been engineered away. The fiction is not a marginal failure of enforcement but a structural feature of a model that mistakes the proxy for the value, the documentation for the autonomy.

The argument has been that Indian law need not tolerate this. The doctrinal materials for assessing the quality of assent, not merely its occurrence, are already present in the law of free consent, undue influence, misrepresentation and unconscionability, and in the constitutional account of privacy as self-authorship. What is required is to bring those materials to bear on digital consent: to read 'free' as a substantive question about material influence, to impose interface neutrality as the design correlate of freedom, and to presume against consent harvested through patterns the law has already named as manipulative. These are reconstructive proposals, calibrated to the existing Act, Rules and dark patterns regime, and implementable through rule-making and adjudication rather than fresh legislation. They ask the law to do what it claims to do, which is to protect a choice, and not merely to file the record of one.

[96] DPDP Act 2023 (n 2) s 8(4)-(5) (general obligations of data fiduciaries as to accuracy and security), capable of extension by rule to interface neutrality.
[97] Hartzog (n 52) 120-23 (design as a regulable object).
[98] Puttaswamy (n 1) [325]; Richards and Hartzog (n 6) 1500.