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ALGORITHMIC MANIPULATION MEETS CORPORATE LIABILITY: STUDY OF DARK PATTERN WITH COMPANY LAW ANALYSIS OF AI DRIVEN CONSUMER MANIPULATION

AUTHORED BY - ANOUSHKA BANERJEE

1. Abstract:

In new generation of world where usage of AI have been a daily use by common people. This quick and fast integration of such artificial intelligence – AI has enabled big companies and corporation into digital business models which have increased their sales over time. But such companies and corporation has also deployed sophisticated forms of misuse of such systems and committed consumer manipulation through algorithmically optimized “dark patterns”. Dark Patterns are those types of usage of AI which exploits the behavioural biases and influence decision making in such a way that they are often very hard to detect and seems opaque. Whereas the existing and already present laws address such misuse through consumer protection laws and data privacy laws, the aim of this paper is to also hold such AI driven dark patterns to be detected as a matter of corporate liability under company law.

This research paper would deal and examine with algorithmic manipulation which is very much embedded within the corporate and company strategy and will also deal with organizational and corporation misconduct rather than isolated regulatory violation. This paper will also analyse various corporate attribution and fiduciary duties and the oversight obligation of corporation and companies. This paper contends that AI system of dark pattern would amount to breaches of director’s duty of care, loyalty and good faith and such failure to implement adequate supervision and due care would result into system reflecting a breakdown in corporate governance, potentially harming the goodwill of the company and also potentially triggering liability under established principle of duty of oversight.

This research paper would give a doctrinal and comparative analysis about the evolving concept of corporate criminal liability of corporation and companies in the context regarding how dark patterns would effect the corporation’s liability and this paper advocates for integrating AI governance and regulatory policies into company law framework, thereby ensuring accountability at the corporate level. This paper approaches and proposes a shift from

fragmented regulatory response towards a very corporate law approach to algorithmic consumer manipulation.

2. Introduction:

The growing or increasing dependence and reliance on the system of Artificial Intelligence (AI) in the corporate and companies have fundamentally transformed and changed into the manner in which these corporation, companies and business interact with their consumers and usage of digital platform in today's generation is not merely a passive intermediaries but a very active decision making systems that utilize such data analytics of consumer regarding what they like and want to buy while also such system been learning to shape consumer behaviour. Within this evolving system of Artificial Intelligence – AI – the emergence of “dark patterns¹” have taken place. Dark pattern is a system of deceptive user interface design which is intended to manipulate consumer choices. This system of dark pattern of have raised significant legal and ethical concerns. When dark patterns gets powered by AI – these patterns become more discreet and sophisticated, adaptive and difficult to regulate will enable corporation to influence consumer decision – making at a unprecedented scale.

Previously there were regulations and policies for such practices which have been confined to consumer protection law and data privacy laws and regimes. These regulations and frameworks which addresses such use to dark patterns and AI as deception and unfair trade practice, but such regulations and frameworks only captures certain aspects and often fail to regulate and capture these systemic and organizational nature of these AI driven manipulation. These corporate strategies which is aimed at maximizing the engagement and reach and retention with increasing profits – these dark patterns are not isolated and accidental acts. These usages raises a very difficult yet critical question that is should these usage of dark patterns which is associated with the AI usage constitute as merely regulatory violation or they constitute as corporate misconduct which require strict supervision and scrutiny under the companies act? The deployment of such manipulative AI system would reflect problems and deficiencies in risk management and ethical decision making and thereby such regulation ask for director's duties of care, loyalty and good faith. This research study seeks to demonstrate that if such offences are recognised such practices as corporate offences rather than just mere regulation which will ensure accountability in the digital economy and these corporate offence would conduct corporate with the sense and principles of consumer autonomy, fairness and

¹ Central Consumer Protection Authority, *Guidelines for Prevention and Regulation of Dark Patterns*, 2023.

transparency.

3. Conceptual Framework: Algorithmic Manipulation and Corporate Conduct:

3.1 UNDERSTANDING DARK PATTERNS IN THE CORPORATE CONTEXT

Deliberately engineered with the help of the interface which are UI/UX² designs are referred as dark patterns and such patterns are used to make use of consumers and manipulate such consumers into making decisions which are made contrary to the interest of the consumers and such manipulative dark patterns include such practices such as false urgency, interface interference, subscription traps or disguised advertisements. Such traditionally viewed marketing or design tactics which are deeply integrated into these online and digital marketing can reveal a deeper reality and such strategic business tools would deploy corporation to maximize profits.

In these situation, the company law perspective, the main and critical issue is not just about the existence of patterns such as that, but how they are use within such corporate decision making processes and how the result of such dark patterns can be result of individual misconduct. Such use of the dark patterns can act as corporate act and attribute to the company as the separate legal entity.

3.2 AI AS AN ENABLER OF SYSTEMIC MANIPULATION

This use of AI in such dark patterns can significantly affect the effectiveness of such patterns and can increase its impact and reach of such dark patterns. These AI system can regularly analyse the behaviour of the user of such company in real life time and they can manipulate such user based on their individual vulnerabilities while also optimizing the outcome of such through the help of machine learning feedback loops.

The use of such dark pattern with the help of AI would change such dark patterns into adaptive and dynamic system of influence which will be able to target such user with precision and as a result of such manipulation will no longer be uniform but more precise and more individualized which would help in scale such dark patterns which will also raise a complex question of accountability.

In the company law and corporate term, such AI system would function as the operational instruments of the company, more like a agent and employee and such actions would be directed with corporate objectives and would be trained by corporate data and also deployed

² Hammurabi & Solomon Partners, 'Dark Patterns and Its Impact on Businesses' (Legal500, 2023)

within corporate platforms which result into such systems would be seen as a reflection of corporate intent or negligence and rather than technological anomaly.

3.3 Algorithmic Decision – Making as Corporate Action

One of the major challenge which is faced by such dark patterns is whether such algorithm can be used in corporation and company law would hold such corporation liable for the acts of the agents and employees and the linking acts which would help to control minds. And such ai complication would operate very discreetly and autonomously and such decision pathways would very regularly opaque which would also be recognised as “black box problem”. These problems are recognised stating that such liability should be treated as extensions of corporate will and should be considered that the designs and deployment are intentional and such risks were foreseen while also their outcomes align with such corporate incentives. These AI dark patterns can hold corporation liable as corporate conduct arises from the organizational design choices which make them amenable to company law scrutiny.

3.4 From Consumer Harm to corporate Misconduct

The major legal issue which frame dark patterns as a major harm to consumer, which focuses on various deception and unfair trade practice which happens without informed consent and such perspective is valid but is limited and restricted to treat harm as a transactional and individual and such overlooks the systemic and profit-driven nature of manipulation and this leads to reframing the dark patterns where the company law shifts its analysis towards corporate governance failure ad such failures lead to risk management deficiencies and institutionalized unethical practices.

This way the ai driven patterns which will create dark patterns to be viewed as a form of organizational misconduct and such misconduct lays down the foundation for their classification as a corporate offence.

4. Director’s Duties and Algorithmic Governance Failures

4.1 Duty of Care and the Obligation of oversight:

The company law directs the director who are required to use reasonable care and skill which would establish and maintain a proper system which would help to monitor risk and ensure that such legal compliance takes place but in context with Ai driven business models , the duty of reasonable care and other duties extend to design, deployment and supervision of algorithmic system which which it doesn’t take place would led to holding directors liable for failing to

implement proper insights and oversight's mechanisms.

The directors have to ensure that such existence of robust compliance system govern the digital design practices which take place and such directors would be active in monitoring such algorithmic outputs and such impact on consumers which also associating the risks with manipulative design must be identified and mitigated.

4.2 Duty of loyalty and Good faith in the Algorithmic Context

To carry out the duties as a director's, these people have to have a duty and sense of loyalty which will require such directors to act as in good faith and in the best interest of the company and while such interpretation and traditional in nature, it also helps in prioritizing shareholder value and such modern corporate governance helps in growth of recognition which helps in long term corporate interest which are tied to various legal compliance, reputation integrity and ethical conduct.

The deliberate use of such dark patterns would raise various serious concerns in the regard such as when corporation intentionally design and coordinate with manipulative interfaces or when corporation exploit consumer vulnerabilities and conceal material information. These might be engaging the conduct which reflects bad decision making and bad faith, and consumer loses trust and loyalty in the company. Although such strategies and practices may yield as a short-term profit and they expose the company to regulatory penalties, litigation risks and loss of consumer trust. Therefore, the director's who approve or ignore such practices and strategies would lead to breach of their duty of loyalty and where the conduct borders were particularly deceptive or illegal.

4.3 Duty to Prevent corporate Misconduct

Company law increasingly which imposes a very important duty on directors to prevent corporate wrongdoing, especially where the risks are foreseeable and how duty were closely linked to compliance system, internal controls, corporate culture and ai driven patterns of such dark patterns present a unique challenge because misconduct embedded with various system of technology and it continuously executed without direct human intervention and also difficult to detect due to algorithmic opacity and despite all such problems and challenged directors cannot evade responsibility. A failure to do conduct algorithmic audits, implement ethical design standards, establish accountability frameworks for AI system which will reflect not merely negligence but a systemic governance failure, which company law seeks to prevent.

4.4 The Business Judgment Rule: A limited defence

The duties of these directors often rely on the business judgement rule where these directors protect the decisions which are made in good faith with reasonable care and with due care, they believe that they serve company's best interests but such protection is not absolute as such ai driven manipulation would not shield decisions involving illegal or deceptive practices and inapplicable of such ai driven manipulation where there is lack of informed decision making and where such directors fail to act with recklessness or conscious disregard of risk. Such deliberate and negligent of such usage of dark patterns would harm the protected business judgement where such harm to consumer is foreseeable and such regulatory framework explicitly prohibit such conduct.

4.5 Linking Algorithmic Harm to Board-level Responsibility

One of the main concerns of company law is the responsibility of the board of directors who have to be responsible especially when it comes to AI-based decision-making. Algorithms regularly produce a diffusion of responsibility, and it can be hard to identify someone culpable of causing a bad effect. The complexity however does not exonerate the corporation and the directors of the liability. The directors will be held accountable since they will be the ones who will sanction the overall business strategies, resources to be deployed in technological use, and effective risk governance frameworks. Where decisions are made independently by AI systems, the decision to create, adopt and maintain AI systems is of course, a board-level role. This means that any ensuing manipulation of the algorithm is directly attributable to company governance failing, thus establishing the directors under the law of company governance.

5. Corporate Criminal Liability and Dark patterns

5.1 Conceptualizing dark patterns as a corporate offence

Corporate criminal liability occurs when the wrongful acts can be said to be the responsibility of the corporation as a legal person. Historically, this liability has relied on proving either actus reus (the wrongful act) and mens rea (the guilty mind) by named individuals in the company. Nonetheless, AI-based dark patterns disrupt this paradigm by decentralizing decision-making through automated systems. Although this is complex, it is still possible to conceptualize such practices as corporate offences since they are premeditated and implemented by corporations, they are within the context of business operations, and they yield economic gains to the company. Thus, despite the fact that these systems are not designed by human beings at all levels, the very institutional structure, the strategic purpose of their existence meets the needs

of corporate lawlessness.

5.2 Attribution of Liability in Algorithmic Environments

Two of the key questions in corporate criminal law are the allocation of liability, historically regulated by principles like the identification doctrine, developed in *Tesco Supermarkets Ltd v Nattrass*, and vicarious liability, where the companies are liable to the extent that the employees commit the act that is the subject matter of a crime. These principles are made more complex by AI systems since they are autonomous and the decisions made are not easily linked to particular individuals. However, current legal arguments favour extrapolation in cases where the algorithm is a statement of corporate policy or design preference and where senior management has given or not properly overseen its use. Liability in this case can be not a direct result of a definable act but a collective failure in governance which follows the general theory of organizational fault.

5.3 Failure to prevent harm as a basis for liability

The other emerging approach to criminal responsibility is what can be referred to as a “failure to prevent” approach. This is one of the common approaches used for dealing with issues such as bribery and corporate fraud. In a case involving harmful activities being done in a company where sufficient prevention techniques have been overlooked, it would be appropriate to hold such organizations criminally responsible. If this is the case, the failure to utilize preventive measures in relation to AI and dark patterns can easily be seen as a sign of negligence or even complicity.

5.4 Scale, Intent, and Profit: Justifying Criminalization

In contrast to the usual consumer law violations, dark patterns vary vastly in terms of the number of individuals involved, the intent behind the action, and the motive for it. AI makes it possible for businesses to engage in deceitful practices on a massive scale by manipulating thousands or even millions of people simultaneously. Furthermore, these operations are not random occurrences; rather, they are carefully constructed systems that exploit consumer psychological weaknesses and affect purchasing behaviours. Profitability makes dark patterns unique in nature, as the motivation behind them usually lies in generating income and retaining consumers. Overall, these characteristics make such actions more than just a simple case of negligence or malpractice. Instead, they are a form of corporate malfeasance that requires stronger punitive measures to ensure justice for those affected.

5.5 Sanctions and Enforcement under company law

If the use of dark patterns is treated as a corporate crime, then it is possible to impose various sanctions on organizations using company law. This could involve the imposition of fines proportional to the amount of profit earned by the corporation to prevent any gains from illegal activity. Directors could also be disqualified for failing to meet their obligations to their respective corporations. Probation for the organization and mandatory compliance programs could also be considered. In certain circumstances, the criminal prosecution of the responsible individuals within the organization would be necessary.

5.6 Bridging Regulatory Law and company law

Currently, the regulation of laws against dark patterns is done through different regulatory regimes, such as consumer protection organizations, data protection agencies, and advertising standards agencies. However, while these methods deal with different aspects of the problem, they typically target single violations and the measures to be taken in response to these breaches, rather than dealing with the systematic problems that lead to the occurrence of these problems. Consequently, these approaches deal with the symptom and not the root cause of the problem in companies. Incorporating the issue of dark patterns within company law would enable the process of regulation to transcend from focusing on the violation itself to the governance systems and incentive structures within the company.

6. Comparative Legal Approaches: Toward a Company Law Perspective

6.1 India: Regulatory Foundations with emerging corporate Implication

India has made considerable strides in regulation of dark patterns by incorporating provisions in the Consumer Protection Act, 2019, the Guidelines for Prevention and Regulation of Dark Patterns, 2023, and the Digital Personal Data Protection Act, 2023. The provisions in these regulatory frameworks broadly categorize dark patterns as unfair trade practice, misleading advertisement, and consumer rights abuse. But in practice, the enforcement of such provisions does not only serve as a means of ensuring consumer protection but has implications for corporate governance as well. For instance, companies have the duty to conduct audit of user interfaces, obtain proper consent from consumers, and ensure that there is no deception. Failing to comply with these measures will lead to sanctions, which may include fines and imprisonment of individuals.

6.2 United Kingdom: Corporate Governance and “Failure to prevent” Models

The UK corporate liability regime can be traced back through legislation like the Bribery Act, 2010, and the Economic Crime and Corporate Transparency Act, 2023, which make mention of the “failure to prevent” offence. This approach to corporate liability means that corporations can be said to be guilty when they have failed to prevent any wrongdoings within their operations. When considering the use of AI to implement dark patterns, liability will arise from an inability to control such practices, which means that the effectiveness of internal procedures is critical. Finally, there is the corporate governance regime in the UK, where issues such as risk management and internal controls are key factors.

6.3 United States: Fiduciary Duties and Corporate Oversight

Corporate liability in the US has been influenced considerably by Delaware corporation law, which includes the doctrine of Caremark, focusing on the responsibilities of directors in terms of oversight duties. In these contexts, the directors have been held to be responsible for having adequate mechanisms in place to mitigate risks, while not doing so could mean liability. For instance, the Federal Trade Commission has acted against deception in digital environments like dark patterns despite this being an area regulated by consumer protection laws. However, where the deployment of manipulative AI mechanisms has been intentional, it can attract shareholder derivative lawsuits and accusations of breaching fiduciary duty.

6.4 European Union: Digital Regulation with Structural Impact

Comprehensive digital laws such as the Digital Services Act, General Data Protection Regulation, and the upcoming AI Act have been enacted in the European Union. They explicitly ban misleading interfaces, underscore the importance of transparency and user agency, and enforce stringent compliance requirements on firms. While these laws are primarily regulatory, their implementation has an inherent corporate element, as they hold platforms accountable for the actions of users and employees, necessitate changes within firms to ensure compliance, and incur stiff financial penalties on firms that fail to comply. Consequently, they indirectly strengthen the tenets of company law.

6.5 Convergence Toward Corporate Accountability

The convergence toward corporate responsibility is evident across all jurisdictions. In India, the emphasis lies in protecting consumers and data security, with potential consequences on corporate governance. The United Kingdom follows a strict approach to corporate

responsibility through the adoption of a "failure to prevent" offence. The United States centers on fiduciary responsibilities and board oversight, whereas the European Union follows strict digital legislation which makes corporations comply structurally. Though none of the jurisdictions have yet made dark patterns into a corporate crime in company law, there is an evolving trend toward making corporations responsible for such actions.

6.6 Doctrinal Gap and opportunity

However, despite all of these advancements, there still remains a doctrinal issue. While the current legislation clearly articulates what should not be done by businesses, the question of how to interpret and react to such behaviour within the field of company law is underdeveloped. This leaves room to re-imagine dark patterns as misconduct, introduce them into existing doctrines in company law, and apply direct liability for failure to govern. Overcoming the above-mentioned challenge would provide the basis for addressing the structural aspects of the problem.

7. Challenges and Recommendations

7.1 Challenges in applying company law to dark patterns

One of the main issues in establishing liability against corporations in the case of dark patterns facilitated by AI models is the problem of black boxes that characterize algorithms. It is nearly impossible to establish what happens inside these complex programs, how decisions are made, where any negligence or intent can be found, or what actions were performed by individuals like the directors or managers. It makes the use of traditional principles like identification difficult because they rely on being able to find a directing mind within the entity. Another major issue here is the question of what constitutes acceptable persuasion and manipulation. Although businesses use many legal ways to promote their products, like targeted advertisements, there is a blurry boundary here with dark patterns, which use manipulation and deception as tools.

Furthermore, directors could invoke the doctrine of business judgment, which would permit directors to claim that the design of their product falls under the scope of business decision-making for purposes of maximizing profits. Courts would normally be hesitant in stepping in and interfering in any decision made by the board unless it is proven that such an act is done in bad faith, or in violation of statutory requirements, thus establishing a shield for any borderline manipulation carried out by the directors. Another problem is associated with fragmented regulation in that dark patterns fall under different sets of law such as consumer protection

laws, data protection laws, and advertising laws. In addition to that, multinational corporations make enforcement difficult due to differences in jurisdiction and regulatory gaps.

7.2 Recommendation for a company law framework

A solution to such problems can be achieved through the creation of an adequate system of company law that identifies AI-based dark patterns as corporate misbehaviour. With such statutory recognition, legal norms will be established, corporate liability will become possible, and the gap between regulatory and company law perspectives on the issue will be closed. Furthermore, the concept of directors' fiduciary duties should be extended to cover issues of algorithms' control, proper use of artificial intelligence, and constant supervision of the digital world in which corporations now operate.

A "failure to prevent" regime, drawing inspiration from the UK model, could help increase corporate liability by shifting the focus to organization's preparation rather than having to demonstrate the existence of any intentional malpractice. In this context, corporate entities would be responsible for failing to protect against algorithmic manipulation when there is a lack of proper safeguards in place. The enforcement measures could also be increased through the imposition of high financial penalties related to corporate profits, disqualifications of directors due to poor governance, and criminal liabilities due to system abuse. Company law needs to be in harmony with other regulations that already exist in this area.

8. Conclusion

The emergence of dark patterns generated by AI represents a significant change in the dynamics of corporate misconduct, elevating consumer exploitation into a systematic, data-driven, and lucrative form of misconduct. Current legislation, which is based on the principles of consumer protection and privacy, fails to consider the implications from the perspectives of company law and governance. In this paper, it has been argued that dark patterns must be redefined as corporate misconduct under the company law with particular attention being paid to the issue of the directors' fiduciary duties, corporate governance failures, and liability of the organization. The inclusion of algorithmic manipulation in the context of company law allows for a focus on the underlying problems in the structure and management of corporations rather than the individual cases of consumer manipulation. It not only improves enforcement, but also contributes to the promotion of ethical innovation and responsible use of technologies by corporations.