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Fintech – Legal Accountability for AI-Driven "Buy Now Pay Later" and Algorithmic Credit Scoring

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Fintech – Legal Accountability for AI-Driven "Buy Now Pay Later" and Algorithmic Credit Scoring

ABSTRACT

From being an obscure checkout option, Buy Now, Pay Later ("BNPL") is now one of the fastest-growing categories of unsecured consumer credit in India, with the domestic BNPL market valued at around USD 2.7 billion for 2024 and expected to grow at a compound annual growth rate of more than 34 per cent between 2022 and 2025.¹ At every BNPL "no-big-deal" transaction, there is a credit-scoring algorithm that in mere seconds decides whether a consumer is worthy of credit, its terms and its price, and this decision typically amounts to the responsibility of a trained loan officer with statutory requirements of fair lending.² This article explores how this risk is manifested in a lack of accountability when these far-reaching choices are pushed to black-box, self-learning models that are managed by lightly regulated fintech intermediaries. The Reserve Bank of India has taken baby steps, with the Guidelines on Digital Lending (2022), the Default Loss Guarantee Guidelines (2023), consolidated Digital Lending Directions, 2025 and most recently the report of the FREE-AI Committee (August 2025)³ all failing to directly tackle the specific legal liability issue: who is liable when the algorithmic credit-scoring model used in a BNPL loan denies credit due to discrimination or an incorrect score, what disclosure the consumer is entitled to, and how the algorithmic credit-scoring model is to be audited. Using a doctrinal and comparative approach, the article argues that the Indian stance is justified in the context of the European Union Second Consumer Credit Directive, the classification of creditworthiness AI as high-risk under the EU AI Act, and the high-risk classification of AI systems under the EU AI Act, as well as the evolving position of the United States CFPB following the withdrawal of its 2025 interpretive rule on BNPL.

¹ Verified Market Research, India BNPL Market Size Report: Size, Growth, Trends and Forecast (2025–2033) (2026), available at:

<https://www.verifiedmarketresearch.com/product/india-bnpl-market/> (last visited on Aug. 8, 2026).

² ResearchAndMarkets, India Buy Now Pay Later Market Size and Forecast to 2031 (2026), noting a CAGR of 34.2 per cent for the BNPL sector during 2022–2025, available at: <https://www.researchandmarkets.com/report/india-buy-now-pay-later-market> (last visited on Aug. 8, 2026).

³ Reserve Bank of India, Report of the FREE-AI Committee: Framework for Responsible and Ethical Enablement of Artificial Intelligence (Aug. 13, 2025), available at: <https://www.rbi.org.in> (last visited on Aug. 8, 2026).

The article highlights three areas of research gaps classificatory ambiguity, algorithmic opacity and fragmentation in enforcement-and recommends a calibrated statutory and regulatory move for India's credit ecosystem: a mandatory regime of disclosure for adverse actions, periodic audits of algorithms, and a clear cut-out of liability between a regulated entity and its lending-service-provider partners.

KEYWORDS

Algorithmic Credit Scoring; Buy Now Pay Later; Consumer Protection; Digital Lending; Fintech Regulation

1. INTRODUCTION

The transfer of consumer finance in India has happened from the bank counter to the mobile screen in a span of just 1 decade. One of the key instruments in this shift has been the Buy Now, Pay Later model, where a fintech platform pays the merchant's bill immediately and allows the customer to make short-term repayments, often without interest. According to industry estimates, the valuation of India's BNPL market is estimated to be around USD 2.7 billion in 2024, while the small-ticket digital-lending market, of which BNPL is a subset, inked out almost ₹97,000 crore worth of loans in the first half of FY 2025 alone, of which nearly four-fifths were loans below ₹25,000.⁴ This expansion has come amid the stress in other unsecured credit segments, including credit cards, whose outstanding stock grew more than six-fold to around 10.8 crore by end-2024, while NPA grew by more than 28 per cent in the same timeframe.⁵ The allure of BNPL is actually its speed: a credit decision which traditionally took days and required manual documentation is now made in milliseconds, backed by an algorithm that uses some alternative data sources — flows of transactions on Unified Payments Interface, telecom usage, e-commerce activity, and signals from the device — a source of credit which exists outside, if not in addition to, the traditional credit bureau report. This is not a free speed. The consumer was denied credit or credit was extended to them on less favourable terms and there is no meaningful way by which he could ask why because the scoring is a proprietary mechanism and dynamic and often

⁴ Mordor Intelligence, India Buy Now Pay Later Services Market Size and Report Analysis, 2031 (2026), noting that industry-association data recorded digital-lender disbursements of approximately ₹97,000 crore in H1 FY2025, of which roughly four-fifths comprised loans below ₹25,000, available at- <https://www.mordorintelligence.com/industry-reports/india-buy-now-pay-later-services-market> (last visited on Aug. 8, 2026).

⁵ Id. (recording that outstanding credit-card stock more than doubled over five years to approximately 10.8 crore cards by end-2024, with RBI data showing credit-card non-performing assets rising by over 28 per cent during 2024).

outsourced to a lending-service-provider that is not regulated by the RBI. The regulatory framework, which was developed for branch-based lending, with its emphasis on the RBI's Fair Practices Code and the Master Directions for credit cards, was not put in place with these self-learning, continuously retrained models in mind.⁶ The result is a structural accountability gap: the entity that profits from the algorithm is rarely the entity that built it, the entity that built it rarely discloses its logic, and the consumer harmed by it rarely has a forum equipped to interrogate it.

The starting premise in this article is a simple one that's never been explored in detail enough: BNPL is not just a payment innovation, but a credit-decisioning innovation, and Indian law has been a lot more detailed on the payment side than the decisioning side. The RBI's 2022 circular disallowing the loading of prepaid payment instruments through credit lines,⁷ its 2023 Default Loss Guarantee Guidelines,⁸ and the consolidated Digital Lending Directions, 2025⁹ speak little about the process of how the creditworthiness assessment on which the loan is based is created, validated, or challenged. The FREE-AI Committee Report, dated August 2025, is the first RBI-commissioned report to address algorithmic bias and opacity as first-order risks in Indian finance but is still an advisory document with principles and recommendations.¹⁰ These are the goals of this article, which is therefore structured as follows: after mapping the existing legal and regulatory framework on BNPL and algorithmic credit scoring in India, and highlighting some of its structural gaps, this article will situate this framework comparatively with the ongoing development of the European Union's new regime under the Second Consumer Credit Directive and the AI Act, as well as with the shifting regulatory landscape in the United States, and ultimately recommend some specific, implementable, statutory, regulatory and institutional changes to close that accountability gap: while not intended to be an exhaustive list of all

⁶ Reserve Bank of India, Master Direction – Credit Card and Debit Card – Issuance and Conduct Directions, 2022, RBI/DOR/2022-23/89 (Apr. 21, 2022); Cyril Amarchand Mangaldas, *supra* note 4

⁷ Reserve Bank of India, Circular on Loading of Prepaid Payment Instruments (PPIs) through Credit Lines, RBI/2022-23/70 (June 20, 2022); see also Cyril Amarchand Mangaldas, "FIG Paper (No. 13) – RBI Guidance on Loading of PPIs through Credit Lines", corporate.cyrilamarchandblogs.com (June 2022) (last visited on Aug. 8, 2026).

⁸ Reserve Bank of India, Guidelines on Default Loss Guarantee (DLG) in Digital Lending, RBI/2023-24/41 DOR.CRE.REC.21/21.07.001/2023-24 (June 8, 2023), para. 6

⁹ Reserve Bank of India (Digital Lending) Directions, 2025, RBI/DoR/2025-26/xx (May 8, 2025), consolidating the 2022 Guidelines on Digital Lending, the Fair Practices Code circular on digital lending platforms, and the 2023 DLG Guidelines.

¹⁰ Dvara Research, "Summary of the RBI FREE-AI Committee Report" (Oct. 21, 2025), available at: <https://dvararesearch.com/summary-of-the-rbi-free-ai-committee-report/> (last visited on Aug. 8, 2026).

potential measures, it will be clear from the following analysis that there are clear, significant steps that can be taken to address the accountability gap without taking away the financial-inclusion benefits that algorithmic BNPL lending demonstrably affords to India's thin-file, new-to-credit population.

2. LITERATURE REVIEW

Previously, there had been two streams of scholarship and policy debate around digital lending in India. The first track, which is mostly regulatory and industry commentaries, has mostly focused on compliance and structuring aspects of the RBI's interventions, namely the 2022 Digital Lending Guidelines, the PPI credit-line circular, the DLG Guidelines and the 2025 Directions, looking at the permissible lending architectures, the treatment of default-loss guarantees as a synthetic securitisation and disclosure under the Key Facts Statement regime.¹¹ This literature is doctrinally dense, but has tended to treat the credit-scoring algorithm as a black box, separate from the regulatory sphere, and which is not the subject of the contract and prudential relationships between the regulated entity and its lending-service-provider

The second strand, primarily from the research on technology-policy and financial-inclusion, has focused on algorithmic underwriting from the perspective of efficiency and inclusion. AI-driven underwriting has been widely known to have enhanced access to credit for thin-file borrowers and increased approval speeds without any clear evidence that portfolio-level¹² default rates have increased, while also contributing to the significant increase in the credit-card NPA ratio for scheduled commercial banks from around 18 per cent in March 2016 to 25.3 per cent in March 2024.¹³ This literature sets the empirical stakes but seldom touches on the doctrinal one of legal accountability – i.e., whether there is an enforceable Right to Know to the credit model's reasons for rejecting them, and to whom it may be exercised.

The comparative literature on algorithmic fairness in credit markets is much more advanced elsewhere, in particular in the context of the

¹¹ Reserve Bank of India, Master Direction – Reserve Bank of India (Fair Practices Code) Directions (as updated), requiring regulated entities to disclose key terms and conditions of a loan in a Key Facts Statement; Digital Lending Directions, 2025, *supra* note 6.

¹² Mordor Intelligence, Digital Lending Market Size, Growth, Market Trends Analysis (2026), <https://www.mordorintelligence.com/industry-reports/digital-lending-market> (last visited on Aug. 8, 2026).

¹³ IMPRI Impact and Policy Research Institute, "BNPL Boom: Household Consumption Distortions and the RBI's Tightening of Unsecured Credit" (2026), <https://www.impriindia.com/insights/policy-update/bnpl-boom-household-consumption-distortions-and-the-rbis-tightening-of-unsecured-credit/> (last visited on Aug. 8, 2026).

adverse-action notice requirement,¹⁴ under the U.S. Equal Credit Opportunity Act, and the European Union's definition of AI for creditworthiness as a "high-risk" system under the AI Act.¹⁵ However, this comparative literature has not been mapped onto the BNPL-specific fact pattern, where the lender, platform and algorithm developer are often three separate entities each governed by three separate, and largely overlapping, regulatory frameworks in the Indian small-ticket credit (STC) market. The FREE-AI Committee Report admits it, stating that 'algorithmic bias and opacity of decision making pose risks that current RBI supervisory tools are not yet well-positioned to detect and correct',¹⁶ but stops short of prescribing binding obligations. But it doesn't go so far as to impose obligations. It is exactly this nexus – BNPL as a standalone product category, algorithmic credit scoring as a separate credit decisioning technology and accountability as a separate and largely unresolved issue – that you find yourself at in this article.

3. RESEARCH METHODOLOGY

The article uses a doctrinal and comparative legal research approach with an analysis of secondary empirical and industry data. The doctrinal part includes an analysis of the key legislative instruments that regulate digital lending and BNPL in India such as the Payment and Settlement Systems Act, 2007, the Master Directions of the Reserve Bank of India on Prepaid Payment Instruments, Master Directions of the Reserve Bank of India on Credit and Debit Cards, the Guidelines on Digital Lending, 2022, the DLG Guidelines, 2023, the Directions on Digital Lending, 2025, the Consumer Protection Act, 2019, and the Digital Personal Data Protection Act, 2023. The analysis is based on some parallel constitutional and consumer-protection principles, such as the concept of informational privacy that the Supreme Court has recently introduced, and the test of lawfulness, necessity, and proportionality for profiling that *Justice K.S. Puttaswamy (Retd.) v. Union of India*¹⁷ to assess how existing doctrine might extend to automated credit decisions.

The comparative element contextualises the Indian regulatory approach through contrasting regulatory trends in other parts of the world, such as the European Union, where the Second Consumer Credit Directive and the AI Act are building a more prescriptive approach to BNPL and

¹⁴ Equal Credit Opportunity Act, 15 U.S.C. § 1691 et seq.; Regulation B, 12 C.F.R. Part 1002.

¹⁵ Regulation (EU) 2024/1689 (Artificial Intelligence Act), Annex III, point 5(b)

¹⁶ KPMG India, "RBI's FREE-AI Committee Report in the Financial Sector" (Sept. 2025), <https://kpmg.com/in/en/insights/2025/09/rbis-free-ai-committee-report-in-the-financial-sector.html> (last visited on Aug. 8, 2026).

¹⁷ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

creditworthiness AI,¹⁸ and the United States, where the Consumer Financial Protection Bureau's 2024 interpretive rule defining BNPL as a form of credit-card lending was repealed in 2025, highlighting the fragility of regulation-by-interpretation in the absence of statutory regulation.¹⁹ To provide context to the doctrinal analysis, the empirical portion is drawn from sources, specifically from RBI's Financial Stability Report, surveys of regulated entities by the FREE-AI Committee and Mordor Intelligence, Verified Market Research, and ResearchAndMarkets reports on market research. The study does not include any fieldwork, such as consumer surveys or algorithmic audits of particular commercial models, because these are not part of a doctrinal legal study, but are limited to the regulatory instruments, reports and secondary data available to the public as of August 2026.

4. DISCUSSION AND ANALYSIS

4.1 The Indian Regulatory Architecture: Comprehensive on Structure, Silent on Scoring

India has no separate BNPL law. Instead, the regulation of BPLS arrangements takes a multi-layered approach, focusing on the instruments on which it is based, rather than the credit decision itself, but rather targeting the entities involved in the lending chain. Non-compliance with RBI directions issued under the Payment and Settlement Systems Act, 2007 brings penal consequences for prepaid-payment-instruments that may be used to make many BNPL payments.²⁰ In June 2022, the RBI issued a circular that made it clear that non-bank PPIs can no longer be loaded via credit lines, which threw off many BNPL business models, which were essentially using this format, and ushered in a restructuring wave among the industry.²¹ The 2022 Guidelines on Digital Lending²² include disclosure, data-governance and grievance-redress obligations for regulated entities and a standardised Key Fact Statement (KFS) for all digital loans. The risk-sharing arrangement, in the 2023 DLG Guidelines, between a regulated entity and their lending-service-provider is capped at 5 per cent of the relevant loan portfolio, which is done specifically to prevent a lending-service-provider from having disproportionate first-loss risk but still being able

¹⁸ Directive (EU) 2023/2225 of the European Parliament and of the Council of Oct. 18, 2023 on credit agreements for consumers (CCD II), Official Journal of the European Union, L 2023/2225.

¹⁹ Supra note 4.

²⁰ The Payment and Settlement Systems Act, 2007, s. 26 (penal consequences for non-compliance with RBI directions); Reserve Bank of India, Master Direction on Prepaid Payment Instruments, 2021 (as amended), para. 7.5

²¹ Supra note 8.

²² Reserve Bank of India, Guidelines on Digital Lending, RBI/2022-23/111 DOR.CRE.REC.66/21.07.001/2022-23 (Sept. 2, 2022).

to control the underwriting logic.²³ Notably, this cap directly impacts risk allocation, but not the fairness/explainability of the scoring model that produces the risk assessment in the first place.

There is no right to be told which data points were used to make an adverse decision, or a right to see whether there has been testing for disparate impact based on gender, geography or caste-correlated proxies, nor a right to contest an automated score like there is in CCD II for explanations and contestation of adverse decisions based on CDRs.²⁴ While the Reserve Bank Integrated Ombudsman Scheme, 2021 provides a service-specific grievance redressal facility, it was created for redressal of service deficiencies and contractual disputes and not to hold algorithmic bias or force disclosure of the proprietary logic of the algorithms.²⁵ In principle, the definition of "unfair trade practice" and "deficiency" in the Consumer Protection Act, 2019 could cover an opaque or discriminatory credit decision, with no case reported to a consumer forum or case decided by a National Commission that has tested an algorithmic credit-scoring model against either provision, which would be sufficient to show the accountability gap that this article identifies, because it suggests that consumers either cannot identify when their algorithm has been unfair or cannot gain access to the evidence required to make such a claim.²⁶ The stakes in this gap are further exacerbated by the RBI's Financial Stability Report which has underlined the necessity of putting in more stringent risk appetite for unsecured retail credit, especially credit that is thin-file and algorithmically originated.²⁷

4.2 The FREE-AI Committee Report: A Principled but Non-Binding First Step

The RBI's FREE-AI Committee Report dated 13 August 2025 represents the most prominent regulatory recognition of the unique legal and ethical challenges of algorithmic decision-making in finance so far in India. The Report, which was created by an expert committee comprising eight members, is divided into seven guiding principles (Sutras): fairness and equity, accountability and people-first design, and twenty-six

²³ Supra note 9.

²⁴ DLA Piper, "New Consumer Credit Directive CCD 2" (Oct. 13, 2023), summarising the consumer's right, under CCD II, to request a meaningful explanation of an automated creditworthiness assessment and to contest it, available at: <https://www.dlapiper.com/en/insights/publications/2023/10/new-consumer-credit-directive-ccd-2> (last visited on Aug. 8, 2026).

²⁵ Reserve Bank Integrated Ombudsman Scheme, 2021.

²⁶ The Consumer Protection Act, 2019, ss. 2(6) and 2(47).

²⁷ Nexdigm, India Digital Lending Market Report (2025), citing RBI's Financial Stability Report (Dec. 2024) on the tightening of unsecured retail credit; The Consumer Protection Act, 2019, s. 2(47) (definition of "unfair trade practice").

recommendations across six pillars: Infrastructure, Policy, Capacity, Governance, Protection and Assurance.²⁸ The Committee's survey showed that 80 per cent of the regulated entities surveyed were already using AI in credit underwriting, customer support and cybersecurity, while 67 per cent planned to further increase its use – reflecting the fact that algorithmic credit decisioning is not a fringe activity, but a common part of the Indian financial landscape. Importantly, the Report explicitly calls out that bias and opacity of algorithmic decision-making are risks that must be managed through board governance and independent validation of algorithms and in addition, has the element of reporting of incidents.²⁹ However, the Report is, as designed, an advisory framework that should inform future RBI policy and not be a binding direction; it does not establish a private right of action; it does not impose an immediate disclosure requirement that can be enforced by an individual consumer; and it does not provide a clear liability rule for algorithmic harm. The main significance of its entry into a financial regulatory document is that for the first time it makes algorithmic fairness and explainability the legitimate focus of financial regulation, and therefore a basis for binding rules to be built upon, though not a source of enforceable rights.

4.3 Comparative Perspective: The European Union's Convergent Regime

The EU has the most advanced comparative model of regulation of BNPL and algorithmic creditworthiness assessment and it is realised in combination of two different instruments. In October 2023, the EU adopted the second Consumer Credit Directive that mandates extending EU consumer-credit regulation to expressly cover BNPL products, such as interest-free instalment products that were previously out of scope due to low value or short duration.³⁰ Most importantly, CCD II requires a proper assessment of creditworthiness before a BNPL credit is provided, even if the amount of the proposed credit is less than €200, using adequate and current information related to the consumer's income, expenses and existing liabilities, in contrast with the light-touch “soft check” model adopted by many BNPL providers around the world. More importantly, the rights of the consumer included in CCD II are linked to, and complement, the existing rights against solely automated decision-making in GDPR, Article 22; those rights will allow the consumer to ask for and receive a meaningful explanation of the

²⁸ Supra note 3.

²⁹ Supra note 17.

³⁰ FinAPI, "Consumer Credit Directive for Fair Lending: The Consumer Credit Directive CCD2 at a Glance" (2025), noting that CCD II must be transposed by Nov. 20, 2025 and becomes enforceable from Nov. 20, 2026, available at: <https://www.finapi.io/en/consumer-credit-directive-for-fair-lending/> (last visited on Aug. 8, 2026).

assessment, as well as contest it, where the assessment is made using automated processing.³¹ The EU AI Act reinforces this right by also imposing obligations on risk management, data governance, human oversight, and a requirement to log all AI decisions, even when an AI is not the decision-maker but merely acts as an assistant to a human decision-maker, for AI systems classified as “high-risk” according to Annex III, point 5(b), about the assessment of the creditworthiness of natural persons or the establishment of a credit score.³² While the compliance date for these high-risk obligations has been extended from August 2026 to December 2027 under the proposed Digital Omnibus reform, the nature of the obligations and the material substance of the responsibilities are unchanged, a sign of a long-term commitment in the EU to creditworthiness AI being a product-safety-type of regulation and not simply financial-conduct guidance.³³ The interplay of CCD II with the AI Act leads to a structure of two accountabilities: a sector-specific and an explanation requirement, and a horizontal and algorithm-specific requirement on risk management; neither of these requirements exists in the Indian framework.

4.4 Comparative Perspective: The United States’ Deregulatory Retreat

By contrast, the history of BNPL regulation in the United States shows the weakness of accountability systems based on administrative interpretation. In May 2024, the Consumer Financial Protection Bureau issued an interpretive rule that said that the BNPL providers that sold credit using “digital user accounts” were, in effect, credit-card issuers under the Truth in Lending Act and Regulation Z, thus applying to the BNPL consumers the same rights provided to those who use traditional credit cards, including billing dispute resolution and periodic statements.³⁴ In response, the Financial Technology Association (FTA) raised a challenge alleging that the Bureau in effect imposed new legislative responsibility without adhering to the notice-and-comment rulemaking procedure required by the Administrative Procedure Act.

In March 2025, the CFPB announced its plans to revoke the rule; followed by a formal withdrawal of the rule in May 2025 along with sixty-six other

³¹ Regulation (EU) 2016/679 (General Data Protection Regulation), art. 22 (right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects).

³² Supra note 16.

³³ Regulatory AI, “EU AI Act and Credit Scoring – High-Risk Rules, Checklist and Free Check” (2026), noting that the original compliance deadline of Aug. 2, 2026 has been deferred to Dec. 2, 2027 under the Digital Omnibus proposal, available at: <https://www.regulatoryai.eu/ai-credit-scoring/> (last visited on Aug. 8, 2026).

³⁴ Consumer Financial Protection Bureau (U.S.), Use of Digital User Accounts to Access Buy Now, Pay Later Loans, 89 Fed. Reg. 47068 (May 31, 2024) .

guidance documents related to the Truth in Lending Act, Fair Credit Reporting Act, and Equal Credit Opportunity Act in the same month, and an official confirmation in June 2025 that it would not issue a new rule for BNPL products because the open-end credit-card rule was an “ill fit” for those products.³⁵ What remains is the underlying statutory Equal Credit Opportunity Act framework: Disparate treatment on a prohibited basis remains forbidden as does disparate impact; however, recent commentary indicates that the disclosure requirement is still enforceable even though enforcement priorities have been narrowed and even if the decision is produced by a complex or “black-box” model, the mere fact of complexity is not given any particular recognition as a defense to the disclosure requirement.³⁶ The American experience can thus serve as a warning — not a model — to India: The new BNPL-specific accountability regime, defined solely through regulatory interpretation and not at any point in the statute, can be easily overturned by a shift in the administration, while the underlying, statute-based, non-discrimination and disclosure obligations remain.

4.5 The Specific Accountability Gap in Algorithmic BNPL Credit Scoring

The Indian and European viewpoints, when read together, highlight threefold differences in accountability, unique to algorithmic credit scoring in the BNPL context, and not digital lending in general. It is classificatory ambiguity because a BNPL product can be both a prepaid product and a credit card and a short-term personal loan; the Credit Card Master Directions address the card dimension while the payment-instrument dimension has been tackled by the PPI credit-line circular, which was issued under the RBI Regulations on Payment Instruments. Although the consumer may not be aware of the underlying design of the model, and the balance sheet entity may not even be the one responsible for the model, the consumer's only formal counterparty is the balance sheet entity, as it is the one whose balance sheet the loan sits on and that is regulated by the RBI.

The second is algorithmic opacity. Alternative-data BNPL scoring models leverage continuously changing variables that are not always disclosed to consumers, such as device metadata, e-commerce browsing signals, telecom recharge patterns, and UPI transaction cadence, which are not part of a finite set of bureau-reported variables as in a traditional credit-bureau score. The Digital Lending Directions, 2025 and FREE-AI Report do not require, as per the Equal Credit Opportunity Act of the

³⁵ Supra note 4.

³⁶ Timvero, “AI in Lending Compliance: How to Pass a Regulatory Audit” (2026), noting the CFPB's narrowing of disparate-impact enforcement under ECOA in April 2026 while the duty to furnish specific adverse-action reasons continues, available at: <https://timvero.com/blog/ai-lending-compliance-audit> (last visited on Aug. 8, 2026).

United States or CCD II of the European Union, that the consumer be told the type of data that is utilized, or that the consumer be given a particular clear-cut reason for an adverse determination.³⁷ The third is the lack of jurisprudence, technical capacity, and evidentiary tools in each of these fora that are specifically adapted to examining an algorithmic decision where the liability is for an unfair or discriminatory algorithm, and the lack of a pre-deployment fairness audit, like the one in the EU AI Act, for proprietary algorithmic scores.³⁸

4.6 The Data Protection Interface: A Missed Opportunity

The introduction of the Digital Personal Data Protection Act, 2023 ("DPDP Act") was an opportune moment to incorporate a right to be free from purely automated, high-stakes decision-making into the Indian law landscape, akin to Article 22 of GDPR. Rather, the DPDP Act focuses on consent, notice and data-fiduciary duties, while providing no right for a data principal to have their data decision, which is made individually based on data, reviewed by a human being, or even to explain the reasons for the decision.³⁹ This is a huge opportunity missed, as the Supreme Court in Justice K.S. Puttaswamy has established that any action – in this instance, State action – that leads to the profiling of an individual should meet the tests of legality, necessity and proportionality; this is directly applicable to a fintech platform, which continuously profiles a BNPL consumer for its scoring.⁴⁰ This constitutional principle is doctrinally available, yet practically inert, for any single consumer asserting an individual right to vindicate it when a specific algorithmic denial of credit is at issue, for one, because of the difficulties in meeting thresholds for Article 21 litigation against a private fintech entity, and two, because the remedy available for that type of claim is also challenging.

5. FINDINGS

First, the regulatory framework in India with respect to the structural and prudential aspects of lending, such as risk allocation, default-loss guarantees, disclosure of loan terms, etc., is comprehensive, while the regulatory framework with respect to the fairness, explainability, and auditability of the algorithmic credit-scoring model underlying the lending decision is silent.

³⁷ Supra note 15.

³⁸ Supra note 30.

³⁹ The Digital Personal Data Protection Act, 2023, s. 4 read with s. 5 (consent and notice obligations) and s. 8 (obligations of data fiduciaries); the Act does not, however, contain a provision analogous to Article 22 of the General Data Protection Regulation conferring a right against solely automated decision-making.

⁴⁰ Justice K.S. Puttaswamy, supra note 10, per Chandrachud, J.

Second, the FREE-AI Committee Report of August 2025 is indeed a conceptual leap as it is the first RBI report to include algorithmic bias and opacity as risks that should be regulated; its twenty-six recommendations are advisory, however, and there has been no binding direction that translates them into enforceable consumer rights or liability rules.

Third, comparative analysis reveals two regulatory philosophies—one EU is building a dual-layered, statute-based approach to affordability assessment (under CCD II) and algorithmic governance, the other US is showing the fragility of interpretation-based regulation, with the 2024 BNPL interpretive rule already null and void by 2025 as it has been withdrawn, while statutory non-discrimination and disclosure obligations under the Equal Credit Opportunity Act remain intact.

Fourth, the accountability gap in India is also exacerbated by the fact that there is no clear-cut accountability among the RBI-regulated entity, the unregulated lending-service-provider who is often the party building or licensing the scoring algorithm, and the consumer, if a score is displayed to be wrong, black-box or biased.

Fifth, the scale of the problem is growing and is significant: The size of the Indian BNPL market is estimated at USD 2.7 billion and the total amount of small-ticket digital credit disbursed in H1 FY2025 alone is estimated at nearly ₹97,000 crore; the ratio of unsecured credit to scheduled commercial bank portfolios has increased from about 18 per cent in 2016 to over 25 per cent in 2024.⁴¹

6. RECOMMENDATIONS

1. Statutory classification of BNPL as a separate named credit category, regardless of the payment rail used: The RBI should use its powers under the Digital Lending Directions, 2025 to classify BNPL as a separate named credit category, irrespective of the payment rail being used, to remove the classificatory ambiguity that is allowing a single product to be regulated inconsistently based on its nature as a PPI, a card or personal loan. The RBI should revise the Key Fact Statement to include a statement of the principal factors that affected the algorithmic decision, required by the Equal Credit Opportunity Act “adverse-action” notice and CCD II “meaningful explanation” of an adverse decision.⁴²
2. Making the FREE-AI Committee's recommendations on board-approved AI policy, independent model validation and incident reporting as binding directions of authorisation to any regulated

⁴¹ Supra note 14.

⁴² Supra note 10.

entity or lending service provider involved in algorithmic credit scoring, including mandated, RBI-supervised bias audits every so often on disparate impact based on gender, geography, etc. and other variables protected by the law or proxy-correlated.⁴³

3. Defining who is responsible in the liability triangle: RBI regulation should expressly specify that a joint and several liability between the entity regulated by the RBI and the lending service provider for harm caused by a defective or discriminatory scoring model applies, regardless of who actually built or hosts the algorithm, and a consumer should never be left without any identifiable, solvent respondent.⁴⁴
4. Providing an automated-decision-making clause in the DPDP framework: The upcoming rules framed under the Digital Personal Data Protection Act, 2023 must be used to provide practical and substantive statutory content to an otherwise dormant constitutional principle of human review and explanation of a purely automated credit decision with potentially far-reaching economic impacts, following the constitutional standard of profiling that was enunciated in Puttaswamy. The Ombudsman Scheme should include jurisdiction over algorithmic-fairness complaints, and technical capacity to guide a regulated entity to document a model solution of a complaint for a confidential review, not just the 'service deficiency' category.
5. A regulatory sandbox for algorithmic audit methodology: The RBI should create a regulatory sandbox for the standardized, RBI-approved audit methodology for bias, which will create a clear and objective basis for future binding audit requirements, while avoiding the early costs of compliance on a still-developing industry.

7. CONCLUSION

The 'Buy Now, Pay Later' lending journey has empowered millions of formerly unbanked Indian consumers with formal credit, and the algorithmic scores that power the 'Buy Now, Pay Later' loans have made this possible in speed and scale that traditional underwriting could not. However, these very characteristics that render algorithmic BNPL lending 'inclusive' - its dependence on continuously evolving 'alternative data' and self-learning models also render it opaque, and Indian law, so far, has focused more heavily on the transactional architecture of BNPL than the decisional architecture, and who is and

⁴³ Supra note 28.

⁴⁴ Supra note 33.

isn't getting credit and on what terms. The RBI's Digital Lending Directions, 2025 and its FREE-AI Committee Report are good and welcome regulatory intervention in the technology, but they don't give the individual consumer a right to know, or a right to challenge an algorithm's decision as it is. The EU experience shows that a long-lasting, statute-based dual regime (involving an affordability/explanation obligation in a sector-specific approach, and a high-risk algorithmic governance approach in a horizontal approach) is possible without stifling fintech innovation, while the experience in the USA shows the fragility of accountability based on interpretation alone. India is on the verge of making a decision, and it has the opportunity to tread the former path. The proposals put forward in this article recommendations to treat BNPL as a separate credit category; mandatory adverse-action disclosure; binding algorithmic governance requirements; clear liability rules; data-protection rights against purely algorithmic decisions; and an empowered grievance mechanism are meant not only to slow the growth of algorithmic credit in India but also to make that growth legally accountable to the users the credit is meant to serve.