

III. REGULATE NOW BENEFIT LATER: SCRUTINIZING THE REGULATORY CONCERNS IN THE BUY NOW PAY LATER INDUSTRY AND SUGGESTING REFORM

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ABSTRACT

Buy Now Pay Later (“**BNPL**”) is a payment mechanism through which consumers can purchase goods and services immediately and defer their payments for later. The BNPL industry has garnered widespread popularity in recent times thanks to innovation by fintech companies and the advent of online BNPL. This mechanism has the potential to bring about much-needed financial inclusivity in India by helping bring the credit-unserved population into the fold of formalized credit. However, due to their novelty and uniqueness, these BNPL companies currently operate in a regulatory grey area and are majorly unregulated. This unregulated operation of BNPL companies in a vulnerable sector such as payments could lead to infelicitous outcomes. Consumers may take up more credit than they have an appetite for, leading to debt traps, and the companies could issue unchecked credit services and pose security risks to the payment system. Therefore, this paper aims to develop a deeper understanding of this industry which is fast becoming a crucial part of the global payments system. The paper examines the benefits and the need of the BNPL mechanism and its economic structure in India. The paper then discusses regulatory concerns that exist for the functioning of the BNPL industry. Finally, by taking inspiration from present credit regulations and regulations in foreign jurisdictions, the paper suggests a regulatory framework to protect the interests of the consumer and at the same time preserve the innovation in BNPL.

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I. INTRODUCTION

Consumer credit is generally defined as a debt incurred by an individual for the purchase of goods and services, for a short time period, with the promise of repayment including the addition of an interest. The concept is nothing new and it has existed since the genesis of the monetary system. However, with the changing times and with the advent of technology and consumerism, the forms of consumer credit have evolved significantly. From auto lending and installment sales in the early 19th, to credit cards and systematic credit scores in the 21st century, it has come a long way.¹

In 2023, the Buy Now Pay Later (BNPL) system is one of the new and novel ways of extending credit to consumers. BNPL is a form of payment mechanism through which an individual can purchase goods and services at the moment but pay for the same later through small installments, often with no interest.² There are two types of BNPL services, offline and online. Offline BNPL has existed for long services and includes traditional EMI systems with lengthy paperwork and interest payments. While online BNPL companies use an instrument called the Prepaid Payment Instrument (“PPI”) to make this possible.³ PPIs in the form of cards, wallets, internet accounts, etc., with pre-loaded credit lines are issued to the consumers. Then the consumer using these PPIs can make payments seamlessly at payment gateways and pay back the

¹ Steven Finlay, *Consumer Credit Fundamentals*, (2nd ed, Palgrave Macmillan 2005) 33.

² Australian Securities & Investments Commission, ‘Review of buy now pay later arrangements’ (2018) ASIC < <https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-600-review-of-buy-now-pay-later-arrangements/> > accessed 15 March 2023.

³ Sandeep Parekh, ‘Not Buying It On “Buy Now Pay Later”’ (*Mondaq*, 28 February 2023) <<https://www.mondaq.com/india/financial-services/1287658/not-buying-it-on-buy-now-pay-later>> accessed 15 March 2023.

BNPL company at a later date in installments. The online BNPL has garnered widespread popularity in India due to low credit card penetration and lack of access to formal credit to a great majority of the country.

India's credit market is extremely unserved with about 400 million people, or 50% of the total eligible population of the country not having access to formalized credit.⁴ Additionally, a mere 77 million people,⁵ with a credit card penetration rate of 0.02 per capita against 2.01 per capita in the US,⁶ own and use credit cards. This can be attributed to credit cards having very high eligibility criteria, only serving individuals who have an existing and acceptable credit score/history, or generally those who have a great relationship with the few banks that are authorized to issue these cards.⁷ Credit scores can only be built by being a part of the formalized credit industry and therefore it becomes a vicious cycle.

BNPL lenders, contrary to conventional credit card and unsecured loan providers, use alternative data sources to assess creditworthiness and underwrite customers who are new to credit.⁸ This enables a large segment of the country's salaried and self-employed population to obtain point-of-sale credit and finally be brought under the formalized credit system.

⁴ 'Empowering Credit Inclusion: A Deeper Perspective on Credit Underserved and Unserved Consumers' (*TransUnion*, 25 April, 2022) <<https://newsroom.transunioncibil.com/more-than-160-million-indians-are-credit-underserved/>> accessed 16 March 2023.

⁵ ET Spotlight Team, 'As India's Demand for Credit Rises, Can the Credit Card Industry Step Up?' (*The Economic Times*, 2 November 2022) <<https://economictimes.indiatimes.com/wealth/spend/as-indias-demand-for-credit-rises-can-the-credit-card-industry-step-up/articleshow/95255154.cms>> accessed 15 March 2023.

⁶ CNBC Contributor, 'Buy Now Pay Later: A Stepping Stone in Financial Inclusion?' (*CNBC TV18*, 6 October 2021) <<https://www.cnbcvt18.com/personal-finance/bnpl-a-stepping-stone-in-financial-inclusion-11013502.htm>> accessed 18 March 2023.

⁷ Empowering Credit Inclusion (n4).

⁸ BNPL: A Stepping Stone in Financial Inclusion (n6).

Therefore, by lowering the entry barriers for formal credit, BNPL has become a really popular mode of payment in India and worldwide. Many believe that it is the future of payments in India and research estimates that the BNPL industry has the potential to grow 15x from USD 3 - 3.5 billion in 2021 to USD 45 - 50 billion in 2026 with the individuals using BNPL slated to grow from 10 - 15 million to 80 - 100 million in the same period.⁹

However, the success of BNPL on the economic side has not meant that it has had a smooth road on the legal side. The Reserve Bank of India (“**RBI**”) believes that easy access to credit - in a world where e-commerce is extremely popular - will lead consumers into debt traps. Adding to that, there have been various reports of online scams and harassment by digital lenders recently.¹⁰ This has caused the RBI to look at the practices being employed by BNPL companies and on 20th June, 2022, the Central Bank came out with a notification addressed to “Non-Bank PPI issuers” which states that “PPI-MD does not permit loading of PPI from credit line” and that “all companies engaging in such practices must stop immediately”.¹¹

This notification has sent shockwaves to the whole fintech industry. Major BNPL providers such as Slice and Lazypay have been considering pivoting their business models in response to the notification.¹² There have

⁹ Nupur Anand, 'Buy Now, Pay Later Set to Surge Over Ten-Fold in India' (*Reuters*, 8 November 2021) <<https://www.reuters.com/world/india/buy-now-pay-later-set-surge-over-ten-fold-india-2021-11-08/>> accessed 15 March 2023.

¹⁰ Krishnakumar R, 'A Dark Underbelly: Digital Loans, Real-World Extortion' (*Deccan Herald*, 20 August 2022) <<https://www.deccanherald.com/special-features/a-dark-underbelly-digital-loans-real-world-extortion-1137878.html>> accessed 23 March 2023.

¹¹ Press Trust India, 'RBI Stops Non-bank PPI Issuers from Loading Wallets, Cards via Credit Lines' *The Hindu* (India, 21 June 2022).

¹² Bismah Malik, 'Slice's Existential Threat: Can Fintech Unicorns' Shaky Business Model Survive RBI's PPI Notification?' (*Inc42*, 14 July 2022) <https://inc42.com/features/slices-existential-threat-can-fintech-unicorns-shaky-business-model-survive-rbis-ppi-notification/> accessed 18 March 2023.

also been speculations that the future of the BNPL industry is at risk in India.¹³ In light of the same, this paper aims to examine the economic structures of online BNPL and their significance, the legal implications of the RBI notification, and the way forward in regulating BNPL industry in a way that benefits the consumer economy and at the same time mitigates the risks posed by an unregulated BNPL industry.

II. THE NEED, ISSUES, AND THE ECONOMIC STRUCTURE OF BNPL

A. Need for BNPL

It is pertinent to understand why the development of BNPL arrangements has been so popular considering the range of consumer credit and payment options that are already available. The answer to this question lies in the benefit that accrues to both the consumer and the merchant from the usage of BNPL.

First and foremost, BNPL arrangements are made to accommodate the spending habits of younger generations, who are just entering their prime spending years.¹⁴ Due to their propensity for being early adopters of new technologies and greater comfort with online shopping, people between the ages of 18 and 24 are more likely to use BNPL services.¹⁵ This age group also

¹³ Chetan Thathoo, 'Slice, Uni, Banking Partner SBM Bank India to Halt Onboarding New Customers for Prepaid Cards' (*Inc42*, 18 August 2022) <<https://inc42.com/buzz/slice-uni-banking-partner-sbm-bank-india-to-halt-onboarding-new-customers-for-prepaid-cards-report/?s=pre%20paid%20card>> accessed 18 March 2023.

¹⁴ John Gapper, 'How millennials became the world's most powerful consumers' *Financial Times* (London, 6 June 2018).

¹⁵ Kevin Pratt, 'Buy Now, Pay Later: The Stats' (*Forbes Advisor UK*, 30 November 2022) <<https://www.forbes.com/uk/advisor/credit-cards/buy-now-pay-later-statistics/>> accessed 19 March 2023.

tends to have less disposable income, so they may be seeking for more flexible payment alternatives that let them spread out their purchases over time.

Younger customers are also drawn to BNPL services because they frequently don't need a credit check or a credit card, making it simpler for people with bad or no credit history to make purchases.¹⁶ Young customers who want to make purchases but may not have the money to do so all at once may find them to be an appealing option due to the convenience and simplicity of BNPL services.

Second, BNPL can help in serving Indian workers in the unorganized sector. In India, the unorganized sector employs 93% of the workforce, many of whom are not eligible for formal credit.¹⁷ This gap can be filled by BNPL. BNPL services can aid unorganized sector workers in India by enabling them with more flexible payment choices for their purchases. It may be challenging for many workers in the unorganized sector to make larger purchases or obtain credit when they need it since they may have inconsistent incomes and limited access to typical credit lines and credit cards.

By enabling customers to pay for their purchases over time, frequently without the need for a credit check or a credit history, BNPL services can help address this issue. Because they won't have to pay for them all at once, this may make it simpler for unorganized sector workers to make larger purchases like appliances or electronics. Unorganized sector employees may be able to

¹⁶ *ibid.*

¹⁷ Prasanna Mohanty, 'Labour reforms: No one knows the size of India's informal workforce, not even the govt' (*Business Today*, 15 December 2019) <<https://www.businesstoday.in/jobs/story/labour-law-reforms-no-one-knows-actual-size-india-informal-workforce-not-even-govt-214490-2019-07-15>> accessed 23 march 2023.

better manage their finances by delaying their payments over time and avoiding debt or other financial hardships.

Finally, merchants and e-commerce platforms have a huge incentive to incorporate the BNPL service under the payment ecosystem. Since purchases made through BNPL do not require the consumers to pay anything or only a nominal amount at the time of the purchase, the consumer is encouraged to make more spontaneous buys. Additionally, the BNPL providers pay the merchants immediately (after the deduction of a merchant fee),¹⁸ and the complete credit risk is borne by the BNPL providers. Therefore, the merchants enjoy increased sales without having to bear any of the credit risk which is highly beneficial for them.

B. Major Issues related to BNPL

Consumers stand to gain many benefits from using BNPL but its current nebulous nature also brings about a set of issues. Consumers often tend to be myopic focusing only on short-term benefits and overestimate their capability to deal with debt in the long term.¹⁹ Arrangements such as BNPL are also increasingly complex with a multitude of fees in the form of administrative fees, late payment fees, default fees, etc. These make it difficult for the consumer to gauge the true cost of the credit acquired and have the ability to lead them into debt traps.²⁰ Moreover, there is a risk of the BNPL service providers engaging in predatory lending practices, overextending credit, and supplying more credit than consumers can afford. However, the

¹⁸ HDFC Securities, 'FinTech Playbook: Buy Now Pay Later' (2022) HSIE<<https://www.hdfcsec.com/hsl.docs/FinTech%20Playbook%20-%20Buy%20Now%20Pay%20Later%20-%20HSIE-202201111014177249873.pdf>> accessed 22 March 2023.

¹⁹ Iain Ramsay, *Handbook of Research on International Consumer Law eds*, (2nd ed Edward Elgar Publishing Limited 2018) 342.

²⁰ *ibid.*

issues of the consumers are not the only ones concerning the BNPL industry. One of the most fundamental and most recognized issues of the credit market is the one of information asymmetry on the end of the lender.²¹ This means that the consumer has a better awareness of their financial condition but it is the lender that ascertains who is eligible for credit and who is not. This leads to a possibility that creditworthy borrowers may be less prepared to pay a risk premium for loans and withdraw their loan application, customers who actively seek credit and are the ones with a higher risk of default, are more likely to be chosen.²² Such overexposure of the lender to high-risk borrowers can pose a significant risk to the lender and the credit market in itself.

C. Economic Model of BNPL

An instrument that facilitates the purchase of goods and services, financial services, remittance facilities, etc., against the value stored therein is known as a Prepaid Payment Instrument (“PPI”) in India.²³ In other words, the funds of the consumer are being loaded into the prepaid card for future use. A PPI can be issued by any company holding a PPI license and their popular forms include gift cards, travel cards, coupon cards, etc.²⁴ However, due to the lack of clear guidelines over the same, major fintech companies have now started loading PPIs with third-party backed credit lines instead of the consumer’s own money.

²¹ The World Bank, General Principles for Credit Reporting, (*World Bank*, 2011) <<https://www.worldbank.org/en/topic/financialsector/publication/general-principles-for-credit-reporting>> accessed 22 March 2023.

²² *ibid.*

²³ Reserve Bank of India, Master Directions on Prepaid Payment Instruments (2021) RBI <<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/82MDPPIS2708202181CF0A6FCD1B47B88CAE8E92A228B160.PDF>>accessed 22 March 2023.

²⁴ *ibid.*

Therefore, a BNPL in India typically involves three parties, (1) the entity providing credit, generally banks and Non-Banking Financial Companies (“NBFCs”), (2) the PPI issuer (BNPL provider holding PPI license), and (3) the consumer. There are various alternatives that BNPL structures but the functioning of the most common one is as follows:²⁵

- The BNPL provider holding the PPI license ties up with a bank or an NBFC authorized to issue credit.
- The BNPL cards/wallets in the form of PPIs are issued to consumers who are allowed to make payments or withdraw cash through these PPIs.
- Although a utilization limit is provided for the PPI, it does not come with any preloaded cash. It, however, is backed by a credit line by the third-party bank or NBFC.
- When the consumer utilizes the PPI, the credit line would be activated on demand and the payment would be effectuated.

On the consumer end, BNPL has a similar experience to a credit card but as can be seen from above, the backend transaction flow is very different. The credit lines are either set up as basic term loans or as revolving lines of credit, meaning that the credit line is renewed upon repayment.

III. DECODING THE REGULATORY CONCERNS

On 20th June 2022, the RBI issued a notification to the “Non-Bank PPI issuers”. The notification stated that “The PPI-MD does not permit loading of PPIs from credit lines. Such practices, if followed, should be stopped immediately”.²⁶ Through this notification, all current agreements to facilitate

²⁵ FinTech Playbook: Buy Now Pay Later (n 18).

²⁶ RBI Stops Non-Bank PPIs (n 11).

or extend loans through PPIs, including cards and wallets by fintech businesses, wallet providers, and non-banking financial companies have been called to a halt.

While PPIs can be loaded with cash, debits from a bank account, credit cards, and debit cards, according to the RBI, the legal structure that controls their issuance and use prohibits them from being loaded with credit lines. The ban is a close follow-up to RBI's previous clarification from December 2020, which stated that only banks, registered NBFCs, and other state government-regulated statutory bodies can engage in public lending activities.²⁷ The public had also been warned against unregulated digital lending platforms that offered quick, easy, and on-tap loans without the necessary safeguards.

Therefore, the concerns of the RBI about BNPL seem to be twofold. Firstly, BNPL service providers are exploiting the regulatory arbitrage to load PPIs with credit lines which is against the purpose of PPIs. Secondly, entities not authorized to issue credit cards are issuing instruments that function like credit cards without complying with the regulations on the same.

A. PPI-Master Directions and the Directive

- Provisions in the PPI-MD

The RBI Master Directions on PPIs (“**PPI-MD**”) dated 27th August 2021 govern all the affairs concerning PPIs in India.²⁸ Paragraph 7.5 of the aforementioned directions provides that the loading and reloading of PPI should be done through debit to bank account, cash, debit card, and credit card of the PPI holder.²⁹ Additionally, paragraph 7.9 of the same directions

²⁷ Not Buying It On “Buy Now Pay Later (n 3).

²⁸ Master Direction on PPIs (n 23).

²⁹ *ibid.*

provides that the PPI issuers may also load or reload the PPIs issued but it must only be done through the authorized outlets or authorized/designated agents of the PPI issuer and subject to conditions including due diligence, confidentiality, adherence to KYC, etc.³⁰

Although it is clear from Paragraph 7.5 of the PPI-MD that the objective purpose of PPIs is loading the consumer's own money and using it for making payments, BNPL companies have been using Paragraph 7.9 and regulatory arbitrage in the fact that there was no direct prohibition on loading PPIs with credit, to facilitate their business models and now RBI has found objection to the same.³¹

- Applicability of the Directive

The fact that the directive has been addressed specifically to “Non-bank PPIs” has caused a lot of ambiguity on which entities it actually applies to. Multiple interpretations of the directive have said that the central bank intends to create a differentiation between the bank and non-bank PPI and that the directive is inapplicable to the bank-issued PPIs.³² However, paragraph 7.5 of the PPI-MD itself states the permitted ways of loading a PPI are through cash, bank transfer, credit, and debit cards.³³ The recent directive simply clarifies the existing regulation with regard to the same. It can also be seen that paragraph 1.3 of the PPI-MD states that the PPI-MD applies to all PPI issuers.³⁴ Therefore, the language of the directive which states “PPI-MD does not permit loading of PPIs with credit lines” cannot be reasonably understood to be inapplicable to bank-based PPIs. Under the same interpretation, multiple

³⁰ *ibid.*

³¹ Not Buying It On “Buy Now Pay Later (n 3).

³² Digbijay Mishra, 'Fintechs to Ping Government, RBI on Central Bank Note' *The Economic Times* (India, 22 June 2022).

³³ Master Direction on PPIs (n 23).

³⁴ *ibid.*

BNPL companies, including ones based on both bank and non-bank PPIs, have shut down their BNPL operations and have chosen to pivot to co-branding of credit cards.³⁵

Additionally, some of the BNPL companies that have been following the PPI model of issuing credit have proposed a system where the credit will be deposited into the PPI through the PPI holders' bank accounts. Through such a system, credit lines would be routed through various mediums before reaching the PPI so as to make sure it would not directly come under the meaning of credit.³⁶ Prima facie, such a system would be able to circumvent the directive issued by the RBI as the loading of credit would be through a debit to the bank account of the PPI holder which is permissible under paragraph 7.5 of the PPI-MD. However, a larger look at the transaction would reveal that the PPI loading is through credit. Therefore, even such a system would not be consistent with the directive issued by RBI and would need to be stopped immediately.

B. BNPL Instruments as Credit Cards

One other concern of RBI in banning PPIs loaded with credit lines seems to be the fact that companies not authorized to offer credit cards are offering these PPIs that have similar characteristics to credit cards but do not conform with the Master Directions on Credit Card and Debit Cards (“**MD-Credit and Debit Card**”).³⁷ RBI believes that PPI licenses have been granted

³⁵ Tarush Bhalla, 'Exclusive: PayU's LazyPay Mulls Major Shift to Credit Card from Prepaid Card After RBI's Diktat' (*Moneycontrol*, 21 Mar 2022) <<https://www.moneycontrol.com/news/business/exclusive-payus-lazypay-mulls-major-shift-to-credit-card-from-prepaid-card-after-rbis-diktat-8765171.html>> accessed 27 March 2023.

³⁶ RBI Stops Non-Bank PPIs (n 11).

³⁷ Jinni Sinha and Tanushree Bose, Master Direction – Credit Card and Debit Card – Issuance and Conduct Directions 2022 (Mondaq, 22 July 2022) <<https://www.mondaq.com/india/financial-services/1214312/master-directions-on-credit->

to companies so that they can be used as payment instruments but BNPL companies have turned them into credit instruments, even marketing their products as credit card challengers at times.

The concern of RBI is more focused towards non-bank entities issuing PPIs and the recent directive is addressed to them because non-bank entities are not allowed to issue credit cards and even NBFCs are allowed to issue credit cards only with the prior authorization of RBI. Paragraph 21 of the MD-Credit and Debit Card does allow non-bank entities to act as co-branding partners during the issuance of credit cards but they are not allowed to underwrite loans or undertake risk through the same.³⁸ Non-bank entities' role as a co-branding partner is restricted to the distribution and marketing of the credit cards only.

Clause (a) (xii) of paragraph 3 of the Master Direction on Credit and Debit Card states that -

*“Credit Card is a physical or virtual payment instrument containing a means of identification, issued with a pre-approved revolving credit limit, that can be used to purchase goods and services or draw cash advances, subject to prescribed terms and conditions.”*³⁹

BNPL cards and wallets, issued as PPIs with credit lines, have a close resemblance in characteristics to qualify as a credit card in pursuance to the above definition. BNPL instruments are issued in both physical and virtual forms. BNPL instruments are also used to withdraw cash and purchase goods

card-and-debit-card--issuance-and-conduct-directions-2022#:~:text=Reserve%20Bank%20of%20India%20(%22RBI,from%20October%201%2C%202022).> accessed 27 march 2023.

³⁸ *ibid.*

³⁹ *ibid.*

and services. Certain BNPL instruments do have revolving credit lines, where the credit gets replenished upon repayment of previous credit by consumers. While there are BNPL instruments that do not have revolving credit lines and simply function as term loans, the general outlay of BNPL is remarkably similar to Credit Cards.

Therefore, it appears that the BNPL companies have structured their products in this way to bypass the regulatory framework. When a BNPL instrument is issued with a revolving credit line, it becomes a de facto credit card as can be seen from the above-cited definition. Permitting PPIs to operate like credit cards would create an opportunity for regulatory circumvention which is particularly dangerous in a critical industry such as payments.

IV. INTERNATIONAL REGULATION AND REFORM SUGGESTIONS

India intends to become the hub for Fintech in Asia, utilizing technology to boost productivity, open up new opportunities, and more effectively control risks.⁴⁰ The use of fintech must, above all, be focused on enhancing people's lives rather than using it to engage in regulatory arbitrage that is detrimental to society.

The country has revolutionized the global payments industry with the introduction of the Unified Payments Interface (“UPI”).⁴¹ However, the

⁴⁰ 'India Emerging as Asia's Top Fintech Hub: RBI Governor Shaktikanta Das' (*NDTV*, 9 Mar 2021) <<https://www.ndtv.com/business/india-emerging-as-asias-top-fintech-hub-rbi-governor-shaktikanta-das-2398848>> accessed 20 March 2023.

⁴¹ 'Monetary and Capital Markets Department, How India's Central Bank Helped Spur a Digital Payments Boom' (*International Monetary Fund*, 26 Oct 2022) <<https://www.imf.org/en/News/Articles/2022/10/26/cf-how-indias-central-bank-helped-spur-a-digital-payments-boom>> accessed 12 March 2023.

complete ban on BNPL which is gaining widespread prominence around the world would hinder India's hopes of becoming a Fintech hub. Therefore, BNPL must be regulated in India in a way that leverages BNPL's advantages while reducing its attendant risks.

A. Regulation around the world

Due to the worldwide adoption of Buy Now Pay Later services, some nations have begun to propose regulatory frameworks to safeguard customers and ensure ethical lending activities. Here are some instances of how BNPL regulation is being proposed in various regions of the world:

Australia: The Australian Securities and Investments Commission oversees BNPL providers in Australia (“ASIC”).⁴² It aims to propose that compliance with the National Consumer Credit Protection Act of 2009 and an Australian Credit License are prerequisites for BNPL providers. Additionally, providers must check their consumers' credit histories to make sure they have the financial means to repay the loan.⁴³

United Kingdom: The Financial Conduct Authority (“FCA”) oversees BNPL service providers in the UK.⁴⁴ The FCA has proposed new regulations for the sector, including the need to give consumers an adequate amount of time to pay back the debt and the requirement to conduct mandatory affordability checks on customers before extending credit.⁴⁵

⁴² Edward Martins, 'Buy Now Pay Later: Industry awaiting Issues Paper with bated breath' (*Lexology*, 23 September 2022) <<https://www.lexology.com/library/detail.aspx?g=30aa1b9f-cf0b-42ab-9d5f-54bedad4ecd6>> accessed 28 March 2023.

⁴³ *ibid.*

⁴⁴ HM Treasury, 'Consumer protections in the Buy Now Pay Later market: consultation response' (*GOV.UK*, 28 January 2022) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1083547/BNPL_consultation_response__Formatted_.pdf> accessed 28 March 2023.

⁴⁵ *ibid.*

United States of America: In the US, state-by-state regulations govern BNPL services.⁴⁶ Consumer protection legislation such as the Truth in Lending Act and the Fair Credit Reporting Act may apply to BNPL providers in some states. With BNPL services, there isn't a federal regulatory framework, though.

B. Suggested regulations

BNPL is a new and novel payment mechanism and its regulation must be done keeping in mind the unique nature of the same. Regulation must be done in such a way that the key characteristics of the mechanism are preserved.

BNPL is a form of unsecured consumer credit. It has an elevated risk component as compared to a secured loan, where the creditor or the consumer can sell the collateral to recover the debt. Therefore, the suggestions for regulation are made in reference to the existing unsecured credit regulations in the country.

- License requirements

BNPL arrangements involve an inherent credit risk and their stable management is imperative. They may have systemic implications if not managed properly. By requiring licenses, the BNPL providers will be required to adhere to all prudential supervisory rules, including those pertaining to capital adequacy, liquidity management, and stress testing. Additionally, having a licensing requirement will help the regulator ensure that fair lending practices are being followed by BNPL providers such as providing consumers

⁴⁶ Eamonn Moran, 'All signs point to increased US regulation of Buy Now, Pay Later' (*Norton Rose Fulbright*, 20 September 2022), <<https://www.nortonrosefulbright.com/en-us/knowledge/publications/a61f6301/all-signs-point-to-increased-us-regulation-of-buy-now-pay-later>> accessed 23 March 2023.

with clear information on their rights and duties, not using aggressive and harmful debt collection techniques, etc.

Paragraph 2.2 of the Master Circular on Credit Card, Debit Card and Rupee Denominated Co-Branded Prepaid Card Operations of Banks and Credit Card issuing NBFCs (“MC-CC”) - which is the authority on credit cards in India - provides that only banks and NBFCs with a net worth of Rs 100 crore and above may be allowed to issue credit cards.⁴⁷ Such a stipulation would ensure that only credible companies with adequate financial backing are allowed to offer BNPL services to consumers.

- Compliance with KYC norms

Know Your Customers (“KYC”) are certain standards designed to protect banking institutions against fraud, money laundering, corruption, terrorist financing etc.⁴⁸ Most financial services in the country are subject to the KYC norms issued through the Master Direction - Know Your Customer (“KYC”) Direction, 2016.⁴⁹

Paragraph 6 of the MD-PPI already makes PPI issuers and in furtherance, all BNPL providers are subject to the KYC norms, but Paragraph 2.8 provides for small PPIs which can be issued without the KYC of the

⁴⁷ Reserve Bank of India, Master Circular on Credit Card, Debit Card and Rupee Denominated Co-Branded Pre-paid Card Operations of Banks and Credit Card issuing NBFCs (2015) RBI <<https://www.rbi.org.in/commonman/Upload/English/Notification/PDFs/31CA250915F.pdf>> accessed on 23 March 2023.

⁴⁸ 'Society for Worldwide Interbank Financial Telecommunication, "KYC: Know Your Customer" (2023) SWIFT <<https://www.swift.com/your-needs/financial-crime-cyber-security/know-your-customer-kyc/meaning-kyc>> accessed 26 March 2023.

⁴⁹ Reserve Bank of India, Master Direction - Know Your Customer (KYC) Direction (2016) RBI <<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/MD18KYCF6E92C82E1E1419D87323E3869BC9F13.PDF>> accessed 26 March 2023.

consumer.⁵⁰ Various BNPL providers have been making use of this provision to issue BNPL services without proper KYC.

KYC is a critical feature of protecting the security of financial transactions and avoiding fraud and money laundering. Additionally, BNPL providers can determine their customers' creditworthiness and confirm their identities by doing KYC checks on them. This can aid in preventing fraud and ensuring that the supplier is only giving credit to clients who can pay it back. Therefore, BNPL services should be subject to KYC norms like all other financial services in the country.

- Income requirements, credit limits, and credit reporting

The primary purpose of BNPL is to provide a vast majority of Indians who were previously excluded, access to affordable and on-demand credit. Most BNPL providers do not charge interest on credit as long as it is being repaid in the requisite time period. This feature of BNPL services helps prevent customers from being led into a debt trap by credit fees or interest and smooths out any cash flow issues the customer may experience. Thus, BNPL services should not be subject to any minimum income requirement as such a requirement would again lead to the exclusion of certain groups of the population.

In the current scenario, RBI does not prescribe a minimum income requirement for issuing credit cards but credit companies may, according to their policies, come up with income requirements that they deem suitable. For example, HDFC which is one of the largest banks in India, prescribes minimum income requirements ranging from Rs 2 Lakh per annum to Rs 21

⁵⁰ Master Direction: PPI (n 23).

Lakh per annum for its credit card products.⁵¹ Due to there being a reduced risk of consumers falling into debt traps, such requirements should not be present for BNPL services.

However, the RBI may prescribe a maximum credit limit, based on income levels, to protect the interests of the consumers. This would ensure that while everyone will have access to credit, they would not be able to borrow beyond their means. Currently, RBI allows banks and NBFCs to decide the credit limit by themselves, under Paragraph 2.3 of the MC-CC.⁵² In contrast, an aggregate credit limit prescribed by RBI, based on the income level of consumers will allow fair competition between BNPL providers and also ensure that affordable credit is accessible.

- Disclosure requirements

Given the sensitive nature of BNPL services, the providers must be mandated to provide their consumers with uniform information disclosures. If the information regarding interest rates, penalties, administrative fees, etc. is not clear to the consumers, it may lead to information asymmetry and consumers may not be able to gauge the potential costs of using the BNPL service.

Paragraph 5.1 of the MC-CC stipulates that any levy of interest, late fee, or penalties on credit cards must be done in a transparent manner and the methodology and calculation of these charges must be clearly indicated to the consumers.⁵³ Additionally, in the UK, the FCA instructed BNPL providers that they must comply with financial promotion rules and that information

⁵¹ BankBazaar, 'HDFC Credit Card Eligibility Criteria: Check Here for Detailed Information' (BankBazaar, 2023) <<https://www.bankbazaar.com/credit-card/hdfc-cc-eligibility.html>> accessed 25 March 2023.

⁵² Master Circular on Credit Card (n 47).

⁵³ *ibid.*

with regard to repayment, additional charges, etc. must be made clear to the consumers while providing the service.⁵⁴

Therefore, it is imperative for the protection of consumer interests that uniform information disclosures be made available to the consumers. The RBI may draft new rules or extend the credit card disclosure requirements for the purpose.

- Confidentiality

BNPL providers deal with highly sensitive information such as the name, address, and income details of their consumers. The absence of adequate confidentiality safeguards could lead to unauthorized access to this information and have dangerous ramifications such as identity theft, fraud, misuse, etc.

Thus, BNPL providers must put in place sufficient security measures, to safeguard the privacy and confidentiality of consumer data and prevent unauthorized access to information. Paragraph 9 of the MC-CC provides that no information of a consumer shall be divulged to any individual or organization without the specific consent of the consumer.⁵⁵ Additionally, BNPL providers in Singapore⁵⁶ are required to comply with the Info-Communications Media Development Authority Data Protection Trustmark, and the providers in the UK⁵⁷ are required to comply with GDPR.

⁵⁴ Financial Conduct Authority, 'FCA warns Buy Now Pay Later firms about misleading adverts' (*Financial Conducting Authority*, 24 November 2022) <<https://www.fca.org.uk/news/press-releases/fca-warns-buy-now-pay-later-firms-about-misleading-adverts>> accessed 30 March 2023.

⁵⁵ Master Circular on Credit Card (n 47).

⁵⁶ Celia Yuen, 'New Code Of Conduct For Buy-Now-Pay-Later Providers In Singapore To Take Effect On 1 Nov 2022' (*Mondaq*, 2 November 2022) <<https://www.mondaq.com/dodd-frank-consumer-protection-act/1246040/new-code-of-conduct-for-buy-now-pay-later-providers-in-singapore-to-take-effect-on-1-nov-2022>> accessed 30 March 2023.

⁵⁷ Consumer protections in the Buy Now Pay Later market: consultation response (n 44).

In the absence of data protection legislation in India, the RBI may provide specific rules for the use of data or extend the rules available for credit card providers to BNPL services.

- Grievance redressal mechanism

The complete BNPL industry is very new and therefore the possibility of delinquencies is very high. BNPL providers must be required to establish a robust grievance redressal mechanism to address consumer grievances. This would give customers a way to avail relief if they have concerns with the services offered.

Paragraph 12 of the MC-CC provides that consumers may be given a time period of 60 days for referring their complaints/grievances and that designated grievance redressal officers should be mentioned on the credit card bills.⁵⁸ Such a system can also be implemented for BNPL services to ensure that consumer grievances do not go unaddressed.

To sum it all up, it is suggested that regulation of BNPL services in India should focus on maintaining the benefits of the BNPL mechanism but at the same time ensuring transparency, consumer protection, and responsible lending practices. This would encourage the creation of a healthy and sustainable BNPL business in India and assist in preventing excessive consumer debt accumulation that is excessive.

V. CONCLUSION

The BNPL market has seen rapid expansion in recent years, both locally and internationally. The researcher believes that BNPL services have the potential to benefit India significantly. BNPL arrangements provide cheap

⁵⁸ Master Circular on Credit Card (n 47).

and less risky credit to consumers, catering to the demands of risk-averse younger generations, allowing access to credit to the underbanked, and improving the sales of merchants. But, as has been noted in this paper, BNPL arrangements are not governed by consumer credit laws and may provide potential consumer issues that require immediate attention. To guarantee that the BNPL market grows in a way that benefits customers, regulatory control is required.

To this end, this paper proposes adopting an approach that protects the interests of the consumer but at the same time preserves the unique characteristics of the BNPL mechanism. Concerning BNPL arrangements, an attempt has been made to outline in broad brush six key reforms that could be undertaken in India. Therefore, BNPL arrangements should:

- Be subject to licensing requirements;
- Be subject to KYC norms;
- Not be subject to minimum income requirements, but be subject to maximum credit limits;
- Be subject to standardized information disclosure requirements
- Be subject to confidentiality requirements
- Be subject to the establishment of a grievance redressal mechanism.