
BLANKET BANS AND BLURRED BOUNDARIES: A CRITICAL ANALYSIS OF THE DRAFT BULA BILL, 2024

Jainam Shah, Gujarat National Law University

Aahini Gandhi, Gujarat National Law University

“Forty-five per cent of adults in India borrowed, yet fewer than one in three of them did so from a financial institution, using a credit card, or through a mobile money account; 31 per cent of adults (more than 2 in 3 borrowers) borrowed from friends and family. Informal borrowing is evident across South Asia.”¹

ABSTRACT

The draft Banning of Unregulated Lending Activities Bill, 2024 [**BULA Bill**] aims to overcome predatory lending practices, mainly digital lending. However, banning all lending outside the regulatory framework threatens the channels of grassroots financial inclusion. Despite being timely and essential, the Bill fails to effectively distinguish between exploitative digital lenders and community-driven credit systems that fill the void of formal finance.

The paper critically examines the Bill’s scope, vague definitions and punitive enforcement mechanisms. The authors argue that a nuanced regulatory approach is the need of the hour instead of outright banning. India can only foster an inclusive, resilient, and accountable credit system by preserving informal lending while curbing predation.

Keywords: Banning of Unregulated Lending Activities Bill (BULA), Digital Lending, Unregulated Lending, Regulated Lending, Self Help Groups (SHGs), Non-Banking Financial Companies (NBFCs), Reserve Bank of India (RBI), Key Provisions, Critical Analysis.

¹ World Bank Grp., *The Global Findex Database 2021: India Country Brief* (2022), <https://thedocs.worldbank.org/en/doc/4c4fe6db0fd7a7521a70a39ac518d74b-0050062022/original/Findex2021-India-Country-Brief.pdf>.

INTRODUCTION

India's financial ecosystem presents an interplay of formal and informal credit systems. While commercial and formal lending sources remain integral to economic development, informal sources, including moneylenders, Self-help groups and digital lending today, also play a crucial role in extending financial services. Millions of Indians are excluded from formal banking due to strict documentation requirements, collateral requirements and lack of awareness.

Despite progress in financial inclusion, a significant percentage of India's population still depends on informal sources for their requirements. As per the 2021-22 NABARD All-India Rural Financial Inclusion Survey [NAFIS], it was found that nearly 28.3% of rural households rely on informal credit.² These informal credit systems are often built upon community trust and provide credit access where the formal channels fail to reach.

The digital world has further revolutionised the lending landscape. India's digital lending market is projected to grow to \$350 billion in 2025, according to a report by Bain & Company and Omidyar Network India.³ While the online platforms provide loans to many people, who were earlier excluded from the traditional banking systems, many of these employ predatory practices, charge exorbitant interest rates and have unethical recovery practices.

Against this background, the Reserve Bank of India [RBI] established a Working Group on Digital Lending in 2021⁴, leading to guidelines and, ultimately, the introduction of the draft bill on the 'Banning of Unregulated Lending Act' [BULA]. While the legislative intent behind the bill is commendable, the bill has major shortcomings. Banning unregulated sources of lending without providing alternatives will make it more difficult to access credit. The challenge lies not in outlawing the informal credit system but rather in regulating it thoughtfully to strike a balance between consumer protection and financial inclusion.

KEY PROVISIONS OF BULA BILL, 2024

The Department of Financial Services under the Ministry of Finance released the draft BULA

² NABARD, *All India Rural Financial Inclusion Survey 2021-22* (2022), <https://www.nabard.org>.

³ Bain & Co. & Omidyar Network, *Unlocking the \$1 Trillion Opportunity in Digital Lending* (2021).

⁴ Reserve Bank of India, *Report of the Working Group on Digital Lending including Lending through Online Platforms and Mobile Apps*, <https://rbi.org.in>

Bill on 13th December 2024. The following are the key provisions of the draft bill.

A. Definition and Scope of Unregulated Lending

One of the most crucial aspects of the Bill is its definition of unregulated lending. Clause 2(18) of the draft bill defines “*unregulated lending activities*” as all activities not covered under the definition of Regulated lending activities. It is an exclusionary definition since anything not explicitly included in the list of regulated activities is deemed to be unregulated. The Bill is annexed with a first Schedule that lists down the laws and regulations that govern lending activities. For an activity to be a “regulated activity”, it must fall within the activities defined under the First Schedule. Essentially, the Bill prohibits any lending outside the control of existing regulators such as RBI, SEBI and other state-level regulators. Moreover, “*Appropriate Government*” can, by notification, ban certain activities by classifying them as unregulated.

Additionally, the Bill emphasises “*public lending*”, which is defined as financing non-relatives by way of loans, in cash or kind. Firstly, the act doesn’t define who qualifies as a relative. Secondly, it fails to consider that lending money to a non-relative is a standard feature in informal lending systems such as SHGs and microfinance. By banning all lending to non-relatives that are not formally registered, the Bill risks criminalising social lending in communities.

While the goal aligns with the need to protect the consumer, however, the broad definitions could inadvertently target legitimate informal lending, which may not be formally registered but provide essential credit services to the ones for whom formal sources are not yet accessible easily.

B. Enforcement Architecture

At its core, the Bill creates a layered enforcement framework to regulate unregulated lending. The cornerstone of this is the appointment of a **Competent Authority**, which is a body vested with significant procedural and investigative powers. Along with this, the Bill also contemplates the establishment of a **Designated Court** to handle offences under its purview.

Clause 8 of the Bill further empowers the central government to designate an **Authority** to create, maintain and operate an online database. The database shall serve as a facility to search for information about lenders undertaking regulated lending activities as well as a reporting

channel for cloned or illegal lenders. The Bill also mandates that all lenders intimate this authority over their business operations.

The Bill also outlines mechanisms for horizontal coordination between enforcement bodies. Information pertaining to BULA offences, once received by the Competent Authority, shall be shared with higher investigative agencies such as the Central Bureau of Investigation [CBI], and/or the State Police, as well as the Designated Authority appointed by the central government. The success of the enforcement framework will ultimately depend on operational clarity and institutional safeguards embedded in its implementation phase.

C. Offences and Penalties

The Bill prescribes significant penalties for those involved in unregulated lending activities, including imprisonment of up to 10 years and fines of up to 1 crore. The penalties also extend to individuals or entities promoting or advertising unregulated lending services.

The BULA punishes the following six kinds of offences:

1. Engaging in unregulated lending activities is punishable with imprisonment of two to seven years and a fine ranging from 2 lakhs to 1 crore.
2. Engaging in unregulated lending and unlawful loan recovery practices attracts a harsher punishment of imprisonment of three to ten years and a fine ranging from 5 lakhs to 2x the loan amount.
3. Wrongfully inducing a person to transact with an unregulated lender is punishable by one to five years of imprisonment and a fine of up to 10 lakhs.
4. Corporate liability extends to companies and every person in charge of the business at the time of the offence, who shall be deemed to be guilty and liable to prosecution.
5. Offenders who have been previously convicted of any offence under any of the above provisions shall be subjected to enhanced penalties which include imprisonment of five to ten years and fines ranging from 10 lakhs to 50 crores.
6. Failure to inform the designated authority of lending-related business activity will attract a fine of up to 5 lakhs.

Further, irrespective of anything contained in the Bharatiya Nyaya Sanhita, 2023, all offences punishable under the Bill, except for Clause 9 offences, are cognizable and non-bailable. While these penalties are intended to deter fraudulent lenders, they may also be disproportionate to the severity in some cases. Punitive measures of such severity also raise concerns about the overcriminalization of informal lending.

CRITICAL ANALYSIS

A. Ambiguities in Defining “Unregulated” vs “Regulated” Lending

As discussed above, the main objective of the Bill of 2024 is to prohibit unregulated lending activities. However, the definition of unregulated lending activities as per the bill is a definition by exclusion, which creates a lot of ambiguity in what constitutes unregulated lending activities. Section 2(18)⁵ of the Bill defines Unregulated Lending Activities as ‘lending activities which are not covered under the definition of Regulated Lending Activities’, which in turn are those activities covered under laws listed in Schedule I of the Bill. This, in itself, creates a confusing and unclear environment wherein, understanding whether a particular activity falls under “regulated” or “unregulated” activity requires extensive cross-referencing with numerous financial laws, making the whole thing both complex and impractical.

As per the Sigma-OECD guidelines on “Improving the Quality of Laws and Regulations: Economic, Legal and Managerial Techniques”⁶, a foundational principle of sound legislation is that an individual of ordinary prudence should be easily able to discern what is permitted by law and what is not. Further, in the case of criminal prohibitions, this clarity is particularly crucial to avoid leaving citizens in a state of uncertainty with regard to the legality of their actions. Moreover, the definition per the bill also contradicts the legal maxim of “Everything which is not forbidden is allowed”⁷, which is regarded as one of the golden English constitutional principles. The approach of the Bill is that ‘everything which is not explicitly regulated is forbidden’; hence, it basically specifies the actions which are allowed and prohibits all other actions, which is exactly opposite to the legal maxim.

⁵ Banning of Unregulated Lending Activities Bill, cl. 10 (1), No. __, Acts of Parliament, 202x (India).

⁶ SIGMA-OECD, *Improving the Quality of Laws and Regulations: Economic, Legal and Managerial Techniques* (1997), [https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=CCNM/SIGMA/PUMA\(97\)1/REV1&docLanguage=En](https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=CCNM/SIGMA/PUMA(97)1/REV1&docLanguage=En).

⁷Entick v. Carrington (1765) 19 How. St. Tr. 1029 (C.P.).

To understand this gap further, let me put forward an example: Imagine a fintech startup named ‘XYZ Company’, which offers small, instant loans via a mobile app to college students and freelancers. The platform is fully transparent, charges reasonable interest and includes responsible lending practices. However, the issue lies wherein the ‘XYZ Company’ is not big enough to be an MFI or NBFC, nor does it fall under any state money lending act, thus not being covered under Schedule I of the Bill. Hence, it is automatically classified as an ‘unregulated lending activity’ upon which the act puts a blanket ban. However, the ‘XYZ Company’ is not doing anything wrong under the current financial laws. In fact, there is no law or regulation which says that they are doing something wrong. In spite of that, the bill automatically bans them. So, the bill, instead of allowing everything that is not forbidden, which the legal maxim says, basically does the opposite by forbidding everything that is explicitly not allowed. This blanket ban shifts the onus on individuals or companies to ensure that their lending activity comes under a regulated activity, which, under normal circumstances, would be viewed as benign or non-exploitative.

In fact, this view has also been affirmed by the Gujarat High Court in the case of **Nimeshbhai Bharatbhai Desai v. State of Gujarat**, wherein the Court held that *“It is a well-established canon of interpretation of statutes that a penal provision of law must be strictly construed and that no act should be penalised unless it clearly falls within the ambit of the penal provision.”*

⁸ Further, in the case of **Shashimani Mishra v. State of M.P.** the Court held that *“14.....Where the law permits a certain act, there is no doubt that doing of that act would be legal. Similarly, where the law prohibits a particular act, the doing of that act would be illegal. However, where the law does not explicitly permit an act and neither prohibit it, or in other words, where the law of the land is completely silent about the legality or illegality of the act, would the doing of that act be unlawful, only because it is at conflict with the contemporary mores of the society and an overwhelmingly preponderant public perception of what is right? The liberty of an individual to act in any manner where such act is not prohibited under the law, is unfettered and unquestionable.”*⁹,

The ambiguity in defining “unregulated lending activities” and a subsequent blanket ban on those involved in such activities may also invite constitutional challenges under Article

⁸ Nimeshbhai Bharatbhai Desai v. State of Gujarat, 2018 SCC Online Guj 732 (India).

⁹ Shashimani Mishra v. State of M.P., 2019 SCC Online MP 7009 (India).

19(1)(g)¹⁰ of the Constitution, which guarantees the right to carry on any trade or business. Lending is a legitimate profession for many, including NBFCs and moneylenders, and BULA puts a restriction on this right. This may have been fine; however, as mentioned above, the scope of “regulated activities” is not reasonable or clear. By leaving the scope of ‘regulated activities’ undefined and relying on future governmental notifications, the Bill risks overbreadth.

B. Implications for SHGs, MFIs, and Grassroots Lenders

One of the biggest concerns about BULA is its potential impact on microfinance and Self-Help Groups [SHGs] at the grassroots level. Over the last three decades, India has been successful in building a robust ecosystem of SHGs, co-operatives and MFIs that provide small loans to rural and semi-urban communities. While these entities are supported and promoted by various government initiatives, they often operate outside the classical banking system and are not regulated by any particular statute as of now. For instance, the Deendayal Antyodaya Yojana – National Rural Livelihoods Mission (DAY-NRLM)¹¹, which aimed to mobilize funds into rural poor households through SHGs, and as of 31 January 2025, approximately 10.05 crore women have been organized into 90.90 lakh SHGs.

Further, even the RBI has, to some extent, facilitated the integration of SHGs in the formal banking sector through the SHG-Bank Linkage scheme¹², which allows the SHGs, whether registered or unregistered, to obtain loans and access credits from banks. However, the RBI further clarified that the internal functioning and group dynamics of such SHGs should remain unregulated and free from formal structures, which would advocate for a hassle-free operation to their financing.

BULA’s blanket ban on unregulated lending could effectively outlaw the lending operations of all such organizations unless they transition into regulated entities. Former RBI Deputy Governor has explicitly noted that “*the new rules target credit as a business offered by trusts,*

¹⁰ INDIA CONST. art. 19, cl.1(g).

¹¹ Press Release, Ministry of Rural Development, Government of India, Self-Help Groups, <https://rural.gov.in/en/press-release/self-help-groups>.

¹² Reserve Bank of India, Master Circular on SHG-Bank Linkage Programme, RBI/2019-20/08, FIDD.FID.BC.No.05/12.01.033/2019-20, <https://www.rbi.org.in/commonman/English/scripts/Notification.aspx?Id=3012>.

societies, and non-profits such as microfinance firms".¹³ Basically, the faulty drafting of the bill seems to divert from the main aim of the bill. The main aim of the bill should have been to regulate or rather impose a ban on fraudsters; however, faulty drafting has led to a possibility of collateral damage to India's microfinance sector. To understand how much of a huge impact this bill might have, there are 12 million SHGs in India covering more than 14.2 crore families.¹⁴ None of those are registered or regulated. Moreover, according to a World Bank Report, only 10% of Indians have access to formal credit, whereas the other 90% are dependent on the informal sector.

Some might argue that SHGs can be accommodated under existing regulations such as the state banking acts, Section 8 Companies or the RBI's NBFC-MFI framework. However, in practice, formalization hurdles are significant, especially for such a huge number of SHGs. For instance, to become an NBFC-MFI under RBI, an entity needs at least ₹5 crore minimum net-owned funds (which are to be raised to ₹7 crores in April 2025), along with compliance and reporting obligations that rural SHGs could never dream to meet.¹⁵ Further, one cannot introduce a new law putting a blanket ban on such organizations without facilitating formalization methods.

In conclusion, BULA's current form, which seeks to criminalize all lending outside the formal sector, fails to take into consideration the importance of the informal lending sector in India. It fails to recognize that financial inclusion in rural and semi-urban areas has been achieved largely because of these informal institutions. In the opinion of the authors, this is a classic case of the regulatory pendulum swinging too far: from laissez-faire to a near-prohibition that could be equally harmful.

C. Digital Lending, Fintech Platforms, and the DeFi Grey Zone

Another major concern with respect to the impact of BULA is with regard to digital lending ecosystems. Under the current regulatory frameworks, the RBI's Digital Lending Guidelines (2022) mandate that all digital loans must be originated by regulated entities (Banks or NBFCs), with Loan Service Providers [LSPs] merely acting as agents to facilitate the

¹³ Thomas Franco, *BULA to Kill Self Help Movement*, Centre. For Financial Accountability, <https://www.cenfa.org/bula-to-kill-self-help-movement/>

¹⁴ Press Release, Press Info. Bureau, Govt. of India, *Economic Survey Highlights Thrust on Rural Development*, <https://pib.gov.in/PressReleasePage.aspx?PRID=1894901>.

¹⁵ Reserve Bank of India, *Master Directions – Non-Banking Financial Company – Micro Finance Institutions (NBFC-MFI)*, <https://www.rbi.org.in>

transaction.¹⁶ However, many fintech companies have exploited the existing regulatory gaps, often operating as shell companies or operating illegally, due to the prevalent weak enforcement in the sector. Now, as soon as the BULA is implemented, such platforms facilitating unregulated loans will be declared illegal.¹⁷ This would lead to the death of rogue lending apps, potentially forcing app stores to require RBI authorization proof before listing their apps on the store.¹⁸

While the bill is aimed at enhancing consumer protection across the sector, legitimate fintech companies fear that such a strict bill could stifle innovation. Many fintech startups, particularly those that are exploring new-age fast forms of lending such as peer-to-peer [P2P] lending or buy-now-pay-later [BNPL] schemes, will now face significant entry barriers.¹⁹ This is because such startups would need to either secure NBFC licenses or tie up with a bank to launch such services, which could slow the adoption of new ideas and technologies in the sector.

A particularly complex issue that the authors would like to stress is the intersection or interrelation of BULA with cryptocurrency, NFTs and DeFi Lending, a highly growing sector worldwide and even in India, though it currently operates at a smaller scale. The Bill applies to all forms of lending, “whether digital or otherwise”, and thus extends to crypto-backed lending and NFT-backed lending. This further creates the same uncertainty as discussed above with respect to SHGs, as India currently lacks a comprehensive framework or regulation for cryptocurrencies and DeFi Lending.²⁰ If Indian users engage in such lending, they could be deemed to be involved in unregulated lending activities under BULA, despite the fact that such platforms operate globally in decentralized networks, with no central authority to hold them accountable.²¹ DeFi platforms, as a concept, are anonymous and borderless and often operate outside the traditional financial systems. While BULA might be able to deter Indian players, which are almost non-existent, it cannot, howsoever, prevent individuals from accessing the

¹⁶ Reserve Bank of India, *Guidelines on Digital Lending by REs*, <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12359&Mode=0>.

¹⁷ Banning of Unregulated Lending Activities Bill, cl. 3(1), No. __, Acts of Parliament, 202x (India).

¹⁸ Franco, *supra* note 10.

¹⁹ Reserve Bank of India, *Master Directions – Non-Banking Financial Company – Peer to Peer Lending Platform (Reserve Bank) Directions, 2017*, RBI/2017-18/49, <https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=11137&Mode=0>.

²⁰ V. Anand & S. Kapoor, *India's Regulatory Vacuum in Crypto: Time for a Digital Asset Law*, BLOOMBERGQUINT, <https://www.bqprime.com/opinion/crypto-legal-vacuum-india-needs-digital-assets-law>.

²¹ World Economic Forum, *Decentralized Finance (DeFi): Policy-Maker Toolkit* (2021), https://www3.weforum.org/docs/WEF_DeFi_Policy_Maker_Toolkit_2021.pdf.

global DeFi platforms, raising questions as to whether someone commits a crime in such a transaction and whether the stakeholders could be punished.

Furthermore, the Bill's criminal provisions could also lead to regulatory arbitrage, where users, as well as the app makers, would actively seek to depend upon the decentralized DeFi systems for innovations and faster loans to bypass the formal financial system that may carry even greater risks – such as volatility, smart contract failures, and lack of consumer protection. Thus, the Bill's indirect treatment of DeFi lending without clear guidelines highlights a regulatory vacuum that needs to be addressed with specific legislation or guidelines. Thus, while BULA seeks to and will likely cleanse the market from illegitimate digital lenders and fraudsters, its rigid approach could prove to be detrimental to innovation in the sector. A more nuanced approach shall include a regulatory framework instead of a blanket ban for digital lending, including P2P, cryptos and DeFi-based lending, which could not only ensure consumer protection but also promote innovation and growth in the sector.

CONCLUSION

The BULA Bill, 2024 marks a pivotal intervention in India's evolving credit landscape, responding to the growing threat of exploitative digital lending practices. By seeking to bring all lending activities under formal regulatory purview, the Bill aims to protect vulnerable borrowers. However, the legislative framework, in its current form, adopts a broad and prohibitive stance that may adversely affect the underserved communities who have for years relied on informal sources of credit.

The Bill's reliance on exclusionary definitions alongside severe penalties presents significant challenges in the Indian context. Informal lending networks, including SHGs, cooperative societies and emerging fintech models, remain integral to rural and urban economies. Despite being unregulated, these function on community trust. Their unqualified categorisation as illegal under the proposed legislation raises concerns of overreach and risks aggravating financial exclusion rather than remedying it.

To address the shortcomings, firstly, the scope of "regulated activities" should be revisited to accommodate the community-driven lending institutions that operate with transparency and fairness through exemptions or enabling frameworks. Secondly, the legislation should be complemented by an ecosystem approach, including launching financial literacy programs,

investing in AI-based monitoring systems to track illegal lending and mandating disclosures for transparency in borrowing terms.

The long-term viability of India's credit ecosystem hinges not merely on eliminating illegality, but on recognising and preserving the multiplicity of legitimate financial practices that coexist outside the bounds of traditional banking. The BULA Bill must be reframed not as a final word on informal credit, but as a starting point for a more inclusive and adaptive legal architecture.