

Regulating Artificial Intelligence in the Finance Sector in India



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October, 2019

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1. Overview

Financial products and services have perhaps seen the quickest adoption of digital technology among all sectors in India. Regulation in this sector has also traditionally been nimble, if sometimes controversial. The use of Artificial Intelligence (AI) in fintech --- like in any sector based on digital technology --- is also rising.

The report of the Reserve Bank of India's (RBI) Working Group on FinTech and Digital Banking has categorised fintech innovations into: payments, clearing and settlement; deposits, lending and capital raising; market provisioning; investment management; and data analytics and risk management.ⁱ In 2016, NASSCOM and KPMG estimated the value of the Indian fintech market to be USD 1.2 billion, predicting that it would increase to USD 2.4 billion by 2020.ⁱⁱ More recent projections from 2018 suggest that fintech is likely to add USD 700 billion to the country's GDP by 2025.ⁱⁱⁱ As expected, due to differences in digital literacy levels and quality of connectivity infrastructure, fintech has seen greater adoption in urban areas.^{iv}

In keeping with trends worldwide, the Indian ecosystem of fintech innovation includes fintech startups as well as technological innovation within existing financial service companies. Traditional financial institutions and companies are also partnering with fintech startups as part of their business modernisation strategies.^v These new forms of collaborations, however, do not preclude structural change in financial service markets. For example, many analysts predict that banking could change into a platform service, on top of which a variety of other products and services can be built, leveraging the customer data that is generated through digital transactions.^{vi}

This paper analyses key trends in the deployment of AI in the fintech sector in India. First, it discusses the predominant uses of AI in Indian fintech. Then, it moves on to analysing the potential risks of the use of AI in financial products and services, particularly focusing on the exclusion and concentration of economic power that it can trigger. It then moves on to take stock of the adequacy of the existing regulatory framework and concludes by offering a set of recommendations to strengthen the same.

2. Main trends in the use of AI in fintech in the Indian context

The report of the RBI Working Group positions Artificial Intelligence, blockchain and Internet of Things (IoT) as the three technologies that will cause major changes in financial products and services in India.^{vii}

Across industry reports, government documents and media reports, the use of AI in fintech in India seems to revolve around the following (non-exhaustive) list of considerations:

(a) Increasing coverage of credit services: India has a large gap in the demand for, and supply of, credit. People who want to borrow are unable to do so from institutional lenders, because they cannot provide collateral and do not have a documented credit history. Credit scoring is meant to reduce the need for collateral, as it may help predict default. However, according to one estimate, the fact that traditional credit scoring uses only loan repayment data leaves 90% creditworthy people out of the credit net.^{viii} Fintech, often using AI, is able to use alternate data sources to create customer profiles and predict rates of default, thereby helping targeting. Some alternate data sources used are: social media data, payment behaviour on apps and utilities, call logs, location etc.^{ix} AI driven assessment of creditworthiness is also carried out by peer-to-peer lending platforms.^x

(b) Reducing costs: Automation through AI is also helping reduce costs in fintech operations. For example, banks are now partnering with fintech startups to predict farmer behaviour, which reduces the costs of going to farms to assess farmland.^{xi} Financial service firms now also use AI-enabled chatbots to interact with customers, reducing the need to hire personnel for this purpose.^{xii} AI-enabled multilingual chatbots are now being developed for use in rural India.^{xiii} Another example is the use of AI for the backend, including for automation of report writing, accounting, and data entry.^{xiv}

(c) Countering cybersecurity threats. As they continue to digitise, financial institutions are also using AI to counter increasing cybersecurity threats, either by developing these solutions in-house or outsourcing their development.^{xv} A survey of security and IT professionals in India found that 24% of them use some form of machine learning, and most believe that AI will help improve cybersecurity.^{xvi}

(d) Facilitating regulatory compliance: AI can help detect anomalous transactions and flag them for review, thus enabling financial institutions to comply with laws and regulations such as those on anti money-laundering.^{xvii} IBM Watson Financial Services, for example, provides AI technology for complying with changed regulations, Know Your Customer laws and so on.^{xviii}

3. Risks posed by AI in fintech

In the financial sector, the systemic effects of individual actions can be severe, due to interlinkages and the scale of the system. This fact is the basis of most macro-prudential regulation. The introduction of AI into financial decision-making can exacerbate the risk of such system-wide repercussions, given the rapidity of

automated decision-making and difficulties in arresting or reversing its impact. The particular implications of the use of AI in finance are discussed below:

(a) Vicious cycles of financial exclusion: The use of demographic data in credit rating algorithms can, in the first instance and depending on the predictive model used, exclude certain communities from credit, and this exclusion and the resultant deprivation can further nudge algorithms to exclude them, creating a cycle of exclusion. This concern is separate from the concern of algorithmic fairness and bias, but it is related. O'Dwyer (2018) points out how this form of exclusion-by-geography mirrors what used to happen in the US in the 1930s, where entire neighbourhoods were coded by creditworthiness, which further perpetuated exclusion and poverty. Anti-discrimination laws changed these practices. The decision to provide credit or not gets transferred to the algorithm and in the absence of regulations specifically targeting algorithms, there is now a danger of the resurgence of practices described above.^{xxix} While there is no systematic evidence of such exclusion in India yet, fintech startups are already creating alternate credit scores for a large section of the population.^{xxx} It is important for regulators to remain aware of the potential problem and prevent it.

(b) Pro-cyclicality: The use of automated investment advisory services in India is small but is projected to grow faster than the global average.^{xxxi} Automated advisors can execute millions of trades for as many retail investors in a matter of seconds, and exacerbate a downturn. This is the problem of pro-cyclicality. The Financial Stability Board has pointed out that automated advisors could exhibit greater herding behaviour --- a tendency to follow the crowd even if the decision is irrational --- than human advisors, especially if similar risk models are used by many actors.^{xxxii} Besides, automated advisors are aimed at low and middle income investors as they are low cost, which creates a situation of disproportionate harm when the algorithm malfunctions.^{xxxiii} This issue, however, only arises if the algorithms and their uses have not accounted for these possibilities. Algorithms can be required to contain safeguards against pro-cyclicality, or regulators can prevent different risk models from being too similar. However, designing such safeguards is difficult as people behave differently with automated advisors and human advisors. For example, some analysts believe that when dealing with automated advisors, people are more likely to have knee-jerk reactions in bear markets. In the same circumstances, human advisors may be more successful in persuading their clients against such reactions.^{xxxiv}

(c) Unintended and conscious market collusion: OECD finds that algorithms enable certain conditions (such as speed of transactions) for collusion among firms in markets. It also finds that self-learning algorithms, such as those that constitute AI, can unconsciously and unintendedly achieve collusion. Essentially, a cooperative equilibrium can be reached as algorithms quickly learn from and react to competitors' actions in markets that are prone to collusion.^{xxxv} In financial service markets that are already heavily digitalised and automated, the introduction of AI can create a vulnerability to collusion. Of course,

intentional collusion through algorithms may also occur. Ezechia and Stucke (2017) argue that there are three market conditions necessary for conscious algorithmic collusion to arise: markets have to be concentrated with homogenous products, a credible deterrence has to exist to prevent deviation from optimal behaviour (of collusion) and buyer power has to be limited.^{xxvi} Financial markets often fulfil these conditions --- for example, when insurance markets have many similar products across brands --- and regulators need to stay alert to anti-competitive outcomes arising from the use of AI.

(d) Reinforcement of Big Tech domination. Parallel to the development of fintech, or the use of new technology in providing financial products and services, has been the development of techfin, or the provision of financial products and services by technology companies. The entry of technology and e-commerce companies into the financial sector has been called the “Uber moment of finance”.^{xxvii} However, financial services have been crucial to the rise of transnational digital companies for some time now. Alipay, a payments system, helped Alibaba gain market share over its competitors early on. Today, Alipay has been transformed into Ant Financial and offers not only a payments system with 870 million users, but also a money market fund and a credit platform.^{xxviii} Similarly, Amazon offers lending and payments, and Google, Microsoft, Samsung, WhatsApp and Apple all offer payments systems or integration with payments systems.

Sometimes the penetration of technology giants into the financial sector is not obvious: for instance, the voice of HDFC Bank’s chatbot Eva is powered by Amazon’s Alexa.^{xxix} This would, depending on the data sharing arrangement between the involved parties, provide Amazon valuable data on financial transactions. This raises data capture concerns as Amazon is already a data giant. It can easily dominate a sector on the basis of its already existing data, which can allow it to build superior services, such as loans that are targeted to the correct demographic. Libra, the latest development in techfin, has its own set of issues that are beyond the scope of this paper.

Some analysts believe that big tech companies’ “massive customer bases and vast cash reserves” will help them scale faster than other fintech firms.^{xxx} Others expect that technology companies’ agility, depth of data on preferences and behaviour, and user-facing nature allow them to make more nuanced analysis than companies that are financial companies first and technology companies second.^{xxxi}

The likely use of AI in the provision of financial products and services by Big Tech throws up distinct issues for analysis. The use of AI and privately-held big data by technology giants to provide financial products and services, can create competition issues in the financial sector, given that the quality of algorithms is partly a function of the underlying data. Such use can also create (further) competition issues in the technology or e-commerce sectors themselves, as technology and e-commerce companies use (privately held) data from their own financial services to increase efficiency in their business practices.

The lack of close coordination between financial regulators, technology regulators and e-commerce regulators will end up being a condition that creates policy gaps as techfin causes these sectors to merge.

(e) Algorithmic control of behaviour: We have already seen that disparate datasets are used for making lending and insurance decisions by fintech providers in India. The following datasets are already in use: location data is used to verify whether a person works where they claim they work; food delivery and ride hailing app data is used for “behavioural scoring” and to analyse patterns of usage; e-commerce data for how often a customer returns products; mobile data for browsing history and whether it conforms to the customer’s social and professional profile; video and audio data to recognise emotions and determine whether a borrower is being coerced (for example, through an application called Emotional Analytics for Social Enterprises (EASE)); customer facial image data in bank branches to determine service quality, etc.^{xxxii} These technologies are not merely targeted at the urban elite; small business owners in Indian small towns are frequently the target group. EASE, in fact, was developed by Accenture and Grameen Foundation to target rural customers of MFIs. Several digitised MFI products exist that are aimed specifically at rural women.^{xxxiii}

When people know that such different datasets are being used to make decisions as important as the sanctioning of a loan or the determination of an insurance premium, they naturally attempt to manipulate this data through their behaviour. Sometimes this is even the goal, such as in a health insurance scheme that would prefer its beneficiaries to eat healthy. However, with the use of big data, behaviours that have not been linked till today are being linked, and there is no exact precedence to this regulatory challenge.

Selbst et. al. (2018) call the process of the introduction of technology into a social system and the consequent change in existing behaviours and values, the “ripple effect”, and the failure to account for this process while designing technology, the “ripple effect trap.” The algorithm begins to control behaviour in distortionary ways, for example, by privileging quantifiable metrics over qualitative metrics. Certain social values are easier to quantify than others, and there is a risk that when the decision is made algorithmically, these values get privileged just by virtue of their quantifiability.^{xxxiv} Related to the problem of algorithmic control of behaviour is also a lack of control brought in by algorithms, in cases where it is unclear to the subject what behaviour is rewarded and what is punished.

4. Taking stock of the existing regulatory response in India

Regulators in India are taking some gradual steps to grapple with the challenges of fintech. There are regulations around specific fintech products and services, such as peer-to-peer lending (RBI), digital

payments (RBI), automated advisors (SEBI), wearable technology for insurance (IRDAI working group report), virtual currency (Ministry of Finance committee report)^{xxxv} etc. The RBI is also set to introduce a regulatory sandbox for fintech.^{xxxvi} Examples of major regulatory developments in response to the changing nature of the finance sector in India include RBI's framework for licensing of payments banks, and banks being allowed to use the e-Know Your Customer (e-KYC) process for opening accounts.

Government infrastructure has also allowed and shaped the development of fintech. The *Pradhan Mantri Jan Dhan Yojana* created millions of bank accounts, *Aadhaar* and *Indiastack* were launched, and are being used as infrastructure for authentication, payments, document verification, and so on. The Trade Receivable Discounting System (TreDS) was launched to help MSMEs discount their trade receivables and raise funds. The National Data Sharing and Accessibility Policy (NDSAP) set up an Open Data Portal to share government data.

Saman et. al. (2018) provide a comprehensive overview of the existing regulatory framework, its history and how it relates to AI in the Indian financial sector.^{xxxvii} They find that it is unclear how existing regulations apply to fintech service providers, and that fintech companies often challenge the premises of existing regulations, including those related to privacy, security and liability.

5. What does the regulatory response need to be?

Regulation of AI in fintech so far has been mushrooming sector-wise, such as in payments, lending and insurance. This way of regulating nascent industries can be more appropriate than blanket regulations before the implications of a technology become clear. However, such fractured regulation can also serve to create loopholes, encourage gaming and enable forum shopping, that is, companies choosing to classify their activities under the most favourably regulated sector. The regulation of AI must be based on cross-sectoral, clear premises that the government articulates through policy. To this end, the government and regulators need to make choices on a few fundamental aspects of AI in finance:

1. **Data ownership and governance:** As already discussed, the use of big data and AI in finance brings enormous efficiency gains and also facilitates financial inclusion. For these reasons, the use of these technologies will only continue to rise, and banning them, or heavily limiting their use, would mean undoing all their benefits. At the same time, the problems caused or likely to be caused by AI are non-trivial.

One attempt to solve these problems has been through instituting personal data protection measures. These measures seek to empower an individual to consent or not to consent to data use in the market. They also disallow the commercial use of certain categories of data. An example of the consent

thinking turned into fintech policy is the RBI's approval to Account Aggregators, which are entities that share data from people to financial companies, while maintaining a record of consent. At one level, we need the consent framework. All manner of personal data can be used by technology companies, especially social media platforms, to offer or deny financial services. This becomes an issue if financial services get monopolised by these companies, and also because there are privacy concerns with using personal data for this purpose. Legal requirements to prevent such mixing of data need to be strictly enforced.

At another level, there are many well-known issues with the consent framework: it unduly burdens the consumer, often markets do not provide any meaningful choice, and the externalities of individual consent are not taken into account. The concept of group privacy accounts for these externalities: some data, even when about an individual and freely shared by her, has implications on the privacy and well-being of an entire group. Further, the distinction between personal and non-personal data that this framework tries to establish is also unhelpful in many situations. Non-personal, non-sensitive data, when clubbed with other such data, can become personal and sensitive, or at least, its use can have detrimental effects that have nothing to do with whether the data is personal or not.

The personal data protection framework is then inadequate by itself to fix the issues that AI poses in finance. Issues arise from questions that are much more fundamental: who is able to capture the value derived from a new technology? What is the nature of this value capture, and what impact does it have on the people as a whole? What mechanisms exist, or can exist, to operationalise this value capture?

The value of AI can be secured for the public if the underlying resource, data, is owned by the people. The personal data protection framework is not able to answer these fundamental questions because it skirts the issue of data ownership. Countries need to think about models of community data ownership that allow people to extract value from data and AI in ways that are beneficial to them. For example, if communities own their data, they can decide to share it only with insurance providers who do not use the data extractively. They can even create their own, publicly provided insurance products, as the derivation of value from data will no longer be the sole domain of the private sector. Such common ownership would have to be subject to democratic methods of control in order to ensure the realisation of the common interest. This is the question of data governance: what is the best way to govern this new, highly beneficial resource, in a way that ensures that everyone's rights are protected?

Some examples of public provision of data services already exist in Indian fintech. The RBI's public credit registry is a recognition of the fact that infrastructural data services might be best provided publicly.^{xxxviii} The data that the registry uses, its practices, organisational processes, impact, etc., can be open to public scrutiny. In the context of discontent with the way in which private credit rating agencies use data, there have been demands for the creation of such a registry in the US as well.^{xxxix} The registry is certainly open to abuse, but this is more a question of its appropriate governance than a contention about its existence. The question of monopolisation of financial services and products through the introduction of techfin also needs to be examined through this lens, as monopolisation arises partly from data control.

2. Governance of algorithms: AI algorithms might require regulation irrespective of the ownership of regulation around data. There are multiple ways to regulate algorithms:

- (a) First, regulators can ask for algorithms to be transparent. This can be useful to prevent the use of inappropriate or unwanted data to provide a product. Transparency, of course, cannot be accepted uncritically as a regulatory tool. Transparency is frequently impossible, can drown one in too much information, reveal trade secrets, assign agency where there is none and compromise privacy, particularly when sensitive financial data is involved.^{xi}
- (b) Second, regulators can require that the outputs of algorithms correspond with certain minimum standards. These standards can be those of non-discrimination, or regulators can require that the outputs of an algorithm be better than a randomly generated set of outputs. Sometimes, however, these choices are political. People's tolerance for levels of discrimination and quality of output change through time and material conditions. If this decision is made by regulators, there is a danger of mission creep and bureaucratisation of a political process. Regulatory agencies must recognise this and leave such decisions to elected legislative bodies.
- (c) Third, regulations can require that the development and use of algorithms follow a certain process. Regulations on automated financial advisory are of this nature: the responsibility for algorithmic input has to be clearly delineated within the organisation, certain questions have to be asked and incorporated into the algorithm before advice is given, etc. As another example, the IRDAI Working Group on InsurTech recommends that the misuse of data from wearables should be tackled by "robust internal processes" followed by insurers.^{xli} Here regulators need to be careful about turning people into "moral crumple zones", whereby humans unfairly bear liability for automated decisions, as no one can be found to blame.^{xlii} The question of liability is particularly difficult in unconscious and unintended algorithmic collusion, as explained earlier.^{xliii}

These regulations and laws on data ownership need to be developed coherently, with common and commonly-agreed principles in mind.

3. Regulatory Technology or RegTech: As more data and algorithms are used in products, more data and algorithms need to be used in regulation to keep up with the sophistication of industry. The existing means of regulation are considered increasingly inadequate when regulated entities continue to digitise and automate.^{xliv} RegTech can range from simple digitisation of compliance, to statistical modelling for detecting fraud in financial transactions, to complete automation of regulation once instituted. The RBI will soon set up a Data Sciences Lab, which will be a welcome first step towards the use of RegTech.^{xlv} Indian financial regulators must improve their ability to monitor and regulate a fast digitalising sector. Similar recommendations are made in the report of the Steering Committee on Fintech Related Issues set up by the Ministry of Finance.^{xlvi}

6. Conclusion

The promise of fintech has been one of financial inclusion. The sector has seen investments from impact investors because of this promise of a favourable impact on unbanked people.^{xlvii} This promise must not be bought wholesale. With the use of big data and AI, the very process of financial inclusion can exacerbate exclusion of the most vulnerable and can entrench monopoly and exploitation. Financial inclusion must not be seen as a panacea to structural issues of employment, remuneration and livelihoods. At the same time, caution does not mean that the impressive gains possible from AI in finance should not be realised. These gains can be realised in non-extractive ways, and the most effective instrument to do this is through common data ownership, along with modern ways of regulating finance. It is important to tackle these issues now, before widespread use of AI in Indian finance creates a path-dependence of exclusion.

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