

INFORMATION TRANSPARENCY REQUIREMENTS IN INDIAN CONTRACT LAW AND THEIR APPLICATION IN E-COMMERCE – RESULTS FROM AN EMPIRICAL SURVEY

OGNYAN SEIZOV & ALEXANDER J. WULF*

India's e-commerce market is growing at a rapid pace. Online trade depends on pre-contract information notices to put traders and consumers on an equal footing and ensure that transactions are completed with valid consent and under fair terms. However, past research in Western jurisdictions has shown that online information notices often fail to inform consumers well, even if transparency-enhancing measures are implemented. The problem with improving information transparency is often two-fold: legislative bodies do not define information requirements clearly and policymakers do not rely on empirically tested information optimisation measures that are in line with consumer experiences and expectations. In this paper, we review the status quo of online information disclosures in the Indian e-commerce sector. We compare Indian e-commerce information mandates to those of Western jurisdictions, and we identify areas for policy improvement. To concretise these suggestions, we conduct an exploratory survey of Indian online consumers (N=320) that identifies their experiences, opinions, and expectations in the context of contractual information online. We conclude with empirically motivated policy suggestions and directions for future research.

* Berlin School of Management, SRH Berlin University of Applied Sciences, Ernst-Reuter-Platz 10, 10587 Berlin, Germany. Address correspondence to: alexander.wulf@srh.de. This research was funded by the DFG (German Research Foundation; project number: WU 824/1-1). It is part of the research project "The ABC of Online Disclosure Duties. Towards a More Uniform Assessment of the Transparency of Consumer Information in Europe" funded by the DFG and the NWO. We thank Joasia Luzak, Marco Loos and Mia Junuzović for their cooperation in this research project. The authors would like to thank Anshul Dalmia, Bert Eichhorn, Franz Hessel, Ralph Schuhmann, Frank Wittig, and Farzaneh Zoghi for their helpful input on an early draft of this paper. The authors also thank Shriya Kamat for her support in researching relevant Indian case law. Our special thanks go to Vaneeta Patnaik, without whose help this research would not have been possible. All errors are the authors' responsibility.

I. INTRODUCTION

India's online trade sector is booming. A report by the India Brand Equity Foundation stated, "India has the fastest growing e-commerce market and is expected to grow at approximately 1,200% by 2026"¹. According to Keelery, India's online retail market is worth USD 73 billion, and 74% of the country's 687.6 million-strong online population participates in at least one form of e-commerce.² To ensure that online transactions are based on consumers' rational decisions and informed consent, Indian online traders must provide various kinds of pre-contractual information to consumers. The nature and extent of this information vary between trade sectors. Such information obligations have played an important and ever-expanding role in consumer protection legislation for decades³. The notion of bridging the knowledge gap between a business and a consumer through the mandatory provision of pertinent legal information holds a nearly universal appeal, as evident from various jurisdictions⁴. Nevertheless, in the implementation of those disclosure mandates, a number of issues quickly become evident. The vast majority of consumers struggle with the sheer amount and extent of information notices⁵. Many *terms and conditions* and *privacy policies* do more to confuse than to inform with their arcane language and hazy formulations.⁶ Short on literacy and legal training,⁷ consumers habitually invest more effort into looking for 'business integrity shortcuts', such as a trader's reputation, user reviews and recommendations, or endorsements.⁸ In the end, the typical information disclosure seems to serve the purposes of legal compliance rather than consumer

¹ 'E-commerce Industry in India' (IBEF, 30 December 2020) <<https://www.ibef.org/download/E-Commerce-November-2020.pdf>>accessed 20 February, 2021.

² Sandhya Keelery, 'E-commerce in India – Statistics & Facts' (Statista, 4 August 2020) <E-commerce in India - statistics & facts | Statista>accessed 20 February 2021.

³ Ognyan Seizov, A.J. Wulf, J. Luzak, 'The Transparent Trap : A Multidisciplinary Perspective on the Design of Transparent Online Discourses in the EU' (2019) 42(1) Journal of Consumer Policy 149-173 <The Transparent Trap: A Multidisciplinary Perspective on the Design of Transparent Online Disclosures in the EU | SpringerLink> accessed 20 February 2021; Natali Helberger, 'Forms Matter: Informing Consumers Effectively' (BEUC, 1 September 2013) <https://www.beuc.eu/publications/x2013_o89_upa_form_matters_september_2013.pdf> accessed 20 February 2021.

⁴ Omri Ben-Shahar, Carl E. Schneider, *More Than You Wanted to Know: The Failure of Mandated Disclosure* (Princeton University Press 2014).

⁵ Yannis Bakos, Florencia Marotta-Wurgler, David R. Trossen, 'Does Anyone Read the Fine Print? Consumer Attention to Standard-Form Contracts' (2014) 43(1) Journal of Legal Studies <<https://www.jstor.org/stable/10.1086/674424?seq=1>> accessed 20 February 2021.

⁶ Irene Pollach, 'A Typology of Communicative Strategies in Online Privacy Policies: Ethics, Power and Informed Consent' (2005) 62 Journal of Business Ethics 221 <<https://www.dhi.ac.uk/san/way-sofbeing/data/governance-crone-pollach-2005.pdf>>accessed 20 February 2021.

⁷ V. Mak, 'The Myth of the Empowered Consumer. Lessons from Financial Literacy Studies' (2012) 1 EUVR 254-263 <<https://link.springer.com/article/10.1007%2F513590-012-0027-5>> accessed 20 February 2021.

⁸ Steven Furnell, Andy Phippen, 'Online Privacy : A Matter of Policy?' [2012] Computer Fraud & Security 12-18 <<https://www.sciencedirect.com/science/article/abs/pii/S1361372312700830>>accessed 20 February 2021.

information,⁹ an act that is costly and contributes little to consumer protection. We should also note that, across a variety of consumer sectors, bad-faith actors occasionally use information disclosures to mislead consumers with frivolous interpretations and summaries of existing legal statutes.¹⁰ Therefore, despite their best intentions, legislators seem yet to find a successful information disclosure formula.

India has a long and rich legal tradition¹¹ that has, to date, not been studied in the context of online information obligations. An array of US-American scholars have outright dismissed disclosures as illegible and impractical consumer protection tools,¹² while European researchers have presented a more nuanced view of this legal mechanism. While many acknowledge information obligations' current shortcomings,¹³ there is also a relatively recent strand of European scholarship that demonstrates potentially successful optimisation strategies that

⁹ George R. Milne, Mary J. Culnan, 'Strategies for Reducing Online Privacy Risks: Why Consumers Read (Or Don't Read) Online Privacy Notices' (2004) 18(3) *Journal of Interactive Marketing* 15-30 <<https://doi.org/10.1002/dir.20009>> accessed 20 February 2021.

¹⁰ Meirav Furth-Matzkin, 'On the Unexpected Use of Unenforceable Contract Terms: Evidence from the Residential Rental Market' (2017) 9(1) *Journal of Legal Analysis* 2-3 <<https://doi.org/10.1093/jla/lax002>> accessed 20 February, 2021; Tess Wilkinson-Ryan, 'The Perverse Consequences of Disclosing Standard Terms' (2017) 103(1) *Cornell Law Review* 119-120 <<https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=4744&context=clr>> accessed 20 February 2021.

¹¹ Alexander J. Wulf, 'Insights from the German Codification Debate between Thibaut and Savigny for a Uniform Indian Civil Code' (2018) 60(2) *Journal of the Indian Law Institute* 121-136 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3431226> accessed 20 February 2021.

¹² Adam S. Chilton, Omri Ben-Shahar, 'Simplification of Privacy Disclosures: An Experimental Test' (2016) 45(2) *Journal of Legal Studies* 41-67 <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2443&context=law_and_economics> accessed 20 February 2021; Omri Ben-Shahar, Carl E. Schneider, *More Than You Wanted to Know: The Failure of Mandated Disclosure* (Princeton University Press 2014) ; Meirav Furth-Matzkin, 'On the Unexpected Use of Unenforceable Contract Terms: Evidence from the Residential Rental Market' (2017) 9(1) *Journal of Legal Analysis* 1-49 <<https://doi.org/10.1093/jla/lax002>> accessed 20 February 2021; Florencia Marotta-Wurgler, 'Does Contract Disclosure Matter?' (2012) 168(1) *Journal of Institutional and Theoretical Economics* 94-119 <[marotta-wurgler-2012--does-contract-disclosure-matter.pdf](https://www.jstor.org/stable/41484441)> accessed 20 February 2021; Irene Pollach, 'A Typology of Communicative Strategies in Online Privacy Policies: Ethics, Power and Informed Consent' (2005) *Journal of Business Ethics* 221-235 <<https://www.dhi.ac.uk/san/waysofbeing/data/governance-crone-pollach-2005.pdf>> accessed 20 February 2021.

¹³ Natali Helberger, 'Forms Matter : Informing Consumers Effectively' (*BEUC*, 1 September 2013) <https://www.beuc.eu/publications/x2013_089_upa_form_matters_september_2013.pdf> accessed 20 February 2021; V. Mak, 'The Myth of the Empowered Consumer. Lessons from Financial Literacy Studies' (2012) 1 *EUVR* 254-263 <<https://research.tilburguniversity.edu/en/publications/the-myth-of-the-empowered-consumer-lessons-from-financial-literacy>> accessed 20 February 2021; Ognyan Seizov, A.J. Wulf, J. Luzak, 'The Transparent Trap : A Multidisciplinary Perspective on the Design of Transparent Online Discourses in the EU' (2019) 42(1) *Journal of Consumer Policy* <[The Transparent Trap: A Multidisciplinary Perspective on the Design of Transparent Online Disclosures in the EU](https://www.springerlink.com/content/10.1007/s10603-019-0944-4) | SpringerLink> accessed 20 February 2021.

improve consumers' reading rates and knowledge gains, especially in the context of e-commerce.¹⁴

What is largely missing from the disclosure debate is the non-Western perspective. We currently do not know much about online information disclosures in the context of the Indian jurisdiction. This holds true for this regulatory mechanism in general, but also in particular with regard to the transparency of these texts. In this paper, therefore, we present novel insights from an empirical legal study.¹⁵ Our exploratory survey provides data on how Indian consumers use and assess the online disclosures that they encounter in their daily online activities. Our study is exploratory in so far as its results are not representative of all Indian online consumers. Rather than being representative, our aim is to expand our theoretical understanding of online consumer information in the Indian jurisdiction. We hope to thereby lay the groundwork for future legal research on this aspect of Indian consumer contract law.

The remainder of this paper is structured as follows: in Section II, we review the legal basis and relevant case law that describe the status quo of consumer information transparency in the Indian jurisdiction. Based on this overview, in Section III, we identify the information disclosure aspects that are particularly relevant to the Indian jurisdiction. In Section IV, we introduce our research design that takes the form of an Indian consumer survey and aims to uncover the experiences, opinions, and expectations of laypeople in the field when it comes to clarity and fairness in e-commerce. In Section V, we present our findings, which indicate that Indian consumers are generally willing to work with information notices, given certain optimisation measures and policy revisions are implemented. In Section VI, we conclude with a discussion of our results and their significance for more effective online information disclosure and consumer protection in India.

¹⁴ Maartje Elshout, Millie Elsen, Jorna Leenheer, Marco Loos, Joasia Luzak, 'Study on Consumers' Attitudes towards Terms and Conditions (T&Cs) – Final Report' (European Commission, 21 March 2016) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2847546> accessed 20 February 2021; Ognyan Seizov, Alexander J. Wulf, 'Communicating Legal Information to Online Customers Transparently: A Multidisciplinary Multistakeholderist Perspective' (2020) Journal of International Consumer Marketing 1-29 <<https://doi.org/10.1080/08961530.2020.1742841>> accessed 20 February 2021; Ognyan Seizov, Alexander J. Wulf, 'The Principle of Transparency in Practice: How Different Groups of German Stakeholders View EU Online Information Obligations' (2020) 28(5) European Review of Private Law 1065-1092 <<https://kluwerlawonline.com/JournalArticle/European+Review+of+Private+Law/28.5/ERPL2020063>> accessed 20 February 2021; Ognyan Seizov, Alexander J. Wulf, 'Artificial Intelligence and Transparency: A Blueprint for Improving the Regulation of AI Applications in the EU' (2020) 31(4) European Business Law Review 611-640 <<https://kluwerlawonline.com/JournalArticle/European+Business+Law+Review/31.4/EULR2020024>> accessed 20 February 2021.

¹⁵ Alexander J. Wulf, 'The Contribution of Empirical Research to Law' (2016) 29 Journal of Jurisprudence 29-49 <<https://ssrn.com/abstract=3542277>> accessed 20 February 2021.

II. LITERATURE AND LEGAL REVIEW: TRANSPARENT CONSUMER INFORMATION IN INDIA

A. LEGAL BACKGROUND OF TRANSPARENT CONSUMER CONTRACTING IN INDIA

It is common knowledge that, in the general case, online information notices receive little to no consumer attention. In surveys, behavioural experiments, and extensive literature reviews, scholars like Ben-Shahar & Schneider, Elshout et al, Helberger, and Marotta, among scores of others, have all reached that same conclusion: consumers are extremely reluctant readers, and common-sense disclosure simplification brings only marginal benefits with regard to reading rates and understanding.¹⁶ Nevertheless, jurisdictions around the globe continue to rely on information obligations as a major instrument of consumer protection. In India, consumers' right to transparent information is not guaranteed by a single all-encompassing legal statute. Instead, various sector-specific regulators advocate plain-language consumer disclosure, like the Telecom Regulatory Authority of India, the Reserve Bank of India, the Insurance Regulatory and Development Authority of India, or the Food Safety & Standards Authority of India. The Consumer Protection Act, 2019 does not directly address the issue of consumer information transparency. Conversely, sector-specific legislative measures, like the Drugs & Cosmetics Act, 1940 the Personal Data Protection Bill, 2019, and the Sensitive Personal Data and Information Rules, 2011 require that information be provided "in a clear and concise manner that is easily comprehensible to a reasonable person"¹⁷ and consumer consent should be "free, informed, specific, clear and capable of being withdrawn".¹⁸ The Sensitive Personal Data and Information Rules, in addition, require companies' privacy policies to provide "clear and easily accessible statements of its practices and policies".¹⁹ The recently passed Consumer Protection (E-Commerce) Rules require sellers to inform consumers in a clear and accessible way that supports rational decision-making. The underlying piece of legislation that governs consumer contracts, the Indian Contract Act, 1872, is a colonial-era common-law statute that sets out a general contracting framework, amended by the aforementioned Consumer Protection Act

¹⁶ Omri Ben-Shahar, Carl E. Schneider, *More Than You Wanted to Know: The Failure of Mandated Disclosure* (Princeton University Press 2014); Maartje Elshout, Millie Elsen, Jorna Leenheer, Marco Loos, Joasia Luzak, *Study on Consumers' Attitudes towards Terms and Conditions (T&Cs) – Final Report (European Commission, 21 March 2016)* <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2847546> accessed 20 February 2021; Natali Helberger, 'Forms Matter: Informing Consumers Effectively' (*BEUC*, 1 September 2013) <https://www.beuc.eu/publications/x2013_089_upa_form_matters_september_2013.pdf>; Florencia Marotta-Wurgler, 'Does Contract Disclosure Matter?' (2012) 168(1) *Journal of Institutional and Theoretical Economics* 94-119 <[marotta-wurgler-2012--does-contract-disclosure-matter.pdf](https://www.jstor.org/stable/4144444)> accessed 20 February 2021.

¹⁷ Personal Data Protection Bill, 2019, s 7(2).

¹⁸ Personal Data Protection Bill, 2019, s 11(2).

¹⁹ SPDI Rules, 2011, r 4 (1)(i).

(2019); nevertheless, neither act includes concrete information requirements, particularly not ones fit for the digital age.

Therefore, as is also the case in European²⁰ and US-American²¹ information obligations, Indian consumer legislation does not provide specific transparency guidance. Instead, it mandates businesses to inform ‘clearly’ without setting yardsticks. Indian courts have approached the issue from a number of angles. Most commonly, they have revoked the validity of consumer consent given under non-transparent information conditions, thus protecting consumers from detrimental contractual obligations. For instance, in the medical case of *S. Thamil Selvi v Sooriya Kala*,²² the court ruled that medical procedures must be explained in plain, non-medical terms and in the language of the patient for consent to be valid. In a collection of seven different suits, *Amway India Enterprises (P) Ltd. v IMG Technologies (P) Ltd*,²³ the court identified a number of wrongful information practices as unfair, such as presenting misleading product information upfront while hiding the full details in microprint and withholding online traders’ identities and contact details. In *United India Insurance Co. Ltd. v Jai Prakash Tayal*,²⁴ the court ruled an exclusionary clause in a medical insurance policy to be unfair because it was introduced unilaterally in a different document. In *Tilak Raj v National Insurance Co. Ltd.*,²⁵ the court re-emphasised the importance of presenting contract terms in the language of the consumer as opposed to the standard English or Hindi only. In *New India Assurance Co. Ltd. v Usha Yadav*,²⁶ the court mandated that insurance policy terms be simplified in order to improve understanding but did not set a simplification yardstick. In *HDB Financial Services Ltd. v Pankaj Kumar*,²⁷ the court took this principle further and ruled that the overly complicated standard terms of an insurance policy obscured an exclusionary clause to the point of illegibility and, therefore, the consumer could not be bound by it. Similarly, in *HDFC Ergo General Insurance Co. Ltd v Pooja Rani*,²⁸ the court determined that technical jargon and complicated language preclude consumer understanding and mandated the insurance company to better explain its terms to consumers. In *Sudarshan Vohra v LIC*,²⁹ the court required the company to disclose all material facts of a contract and defined ‘material facts’

²⁰ Ognyan Seizov, A.J. Wulf, J. Luzak, ‘The Transparent Trap : A Multidisciplinary Perspective on the Design of Transparent Online Discourses in the EU’ (2019) 42(1) Journal of Consumer Policy <The Transparent Trap: A Multidisciplinary Perspective on the Design of Transparent Online Disclosures in the EU | SpringerLink> accessed 20 February 2021.

²¹ Omri Ben-Shahar, Carl E. Schneider, *More Than You Wanted to Know: The Failure of Mandated Disclosure* (Princeton University Press 2014).

²² 2007 SCC OnLine NCDRC 16 : (2007) NCDRC 16.

²³ 2019 SCC OnLine Del 9061.

²⁴ 2018 SCC OnLine Del 7415 : (2018) 247 DLT 379.

²⁵ (2009) 1 CPJ 80: [2008] SCDRC 1266.

²⁶ 2008 SCC OnLine P&H 594.

²⁷ First Appeal No. – 253 of 2017.

²⁸ [2018] SCDRC 1613.

²⁹ 2010 SCC OnLine Del 899.

to include any detail that may affect a reasonable consumer's decision to enter into said contract. Therefore, we see a strand of case law forming around a call for thorough yet simple contractual information disclosure in a language in which the consumer is proficient and thus capable of providing consent.

Another prominent line of Indian consumer cases stems from the legibility and accessibility of contract terms. The aforementioned *Tilak Raj v National Insurance Co. Ltd.*³⁰ and *Amway India Enterprises (P) Ltd. v IMG Technologies (P) Ltd.*³¹ as well as *Sudhir Deshpande v Elbee Services Ltd.*,³² *Balkar Singh v LIC*,³³ and *Bombay and Lufthansa German Airlines v R. Bhaskaran*³⁴ prominently denounced the use of microprint. In each instance, the courts ruled that legal information that is not printed in a readable format cannot be enforced since the consumer could not read it even if sufficient attention was brought to it – which was also often not the case. While the courts declared microprint terms unenforceable, none of them went as far as setting a hard limit on font sizes or establishing a ‘consumer attention standard’ that would ensure contract terms are not hidden or ignored. Additionally, even when consumer attention is secured, the contract is in a language the consumer masters, and terms are not in microprint, effective information is not guaranteed. Just as the underlying legislation, the court rulings stop short of specifying disclosure simplification or optimisation measures. Hence, we turn to empirical research on the topic in the following section.

B. EMPIRICAL RESEARCH INTO TRANSPARENT INFORMATION NOTICES

In the Western context, number of empirical studies on information obligation. Marotta-Wurgler used clickstream data to analyse the purchasing choices of almost 48,000 buyers of software online and concluded that standard (or ‘boilerplate’) contract terms received little to no attention from consumers and played no role in their final decision to purchase a piece of software. Neither increasing the visibility of the terms’, making consent before purchase mandatory nor the buyer-friendliness of the terms influenced consumers’ choices, illustrating the failure of mandated disclosure to inform and guide online shoppers to better decisions.³⁵ Elshout and colleagues carried out three experiments in 12 EU member states (N=1,000 participants per country) to test whether simplifying online

³⁰ *Supra* note 5.

³¹ *Supra* note 3.

³² I (1994) CPJ 140 (NC).

³³ [2017] SCDRC 1269.

³⁴ 2012 SCC OnLine NCDRC 419 : [2012] NCDRC 419.

³⁵ Florencia Marotta-Wurgler, ‘Does Contract Disclosure Matter?’ (2012) 168(1) *Journal of Institutional and Theoretical Economics* 98-99 <marotta-wurgler-2012--does-contract-disclosure-matter.pdf>accessed 20 February 2021.

terms increased the number of people who read them. They found that more people read the disclosures when they were moderately simplified and shortened. Moreover, a brief comprehension quiz also revealed that they were to some extent better understood. The effect of inserting quality assurance cues from national and European consumer organisations was also tested. They were found to have generally beneficial effects on consumer trust in the different shopping scenarios.³⁶ In the Indian context, Bailey et al³⁷ reviewed the privacy policies of five popular online services (Flipkart, Google, Paytm, Uber, and WhatsApp), concluding that they were drafted poorly and served as compliance instruments rather than consumer information tools, an observation Furnell & Phippen³⁸ previously made in the British context, too. Bailey and colleagues also conducted a survey of N=155 college students in the New Delhi area, one-third of whom were studying law. Each participant was shown one of the five privacy policies the authors analysed and then answered ten knowledge questions about it. The average success rate was 5.3 correct answers, and many participants showed difficulties understanding even basic legal concepts like ‘third party’, ‘business partner’, or ‘affiliate’. The authors concluded that for consent to work as legislatively intended, information notices must be drafted more transparently.

Yet another direction in empirical legal research on the subject proposes the abolition of information obligations as we know them, either without providing a viable alternative³⁹ or by making proposals for practical policy revisions. Among the latter, Hillman⁴⁰ notes that “[standard contract terms] are long, full of legalese, and consumers rationally believe that nothing is likely to go wrong, so they abandon reading”, which gives bad actors the chance to write unfavourable terms to which unaware consumers will blindly consent. Instead of introducing simplification measures, however, the author advocates the adoption of the American Law

³⁶ Maartje Elshout, Millie Elsen, Jorna Leenheer, Marco Loos, Joasia Luzak, *Study on Consumers' Attitudes Towards Terms and Conditions (T&Cs) – Final Report* (European Commission, 21 March 2016) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2847546> accessed 20 February 2021.

³⁷ Rishab Bailey, Smriti Parsheera, Faiza Rahman, Renuka Sane, ‘Disclosures in Privacy Policies: Does ‘Notice and Consent’ Work?’ (2018) NIPFP Working Paper No 246, 1-45 <https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEw-jX7sWD06buAhUFbnoKHWFqDpEQFjAAegQIAhAC&url=https%3A%2F%2Fpapers.ssrn.com%2Fsol3%2Fpapers.cfm%3Fabstract_id%3D3328289&usg=AOvVaw3t2VIXznmRFLNeG-oPD9rbf> accessed 20 February 2021.

³⁸ Steven Furnell, Andy Phippen, ‘Online Privacy : A Matter of Policy?’ [2012] Computer Fraud and Security 12-18 <<https://www.sciencedirect.com/science/article/abs/pii/S1361372312700830>> accessed 20 February 2021.

³⁹ Omri Ben-Shahar, Carl E. Schneider, *More Than You Wanted to Know: The Failure of Mandated Disclosure* (Princeton University Press 2014); Adam S. Chilton, Omri Ben-Shahar, ‘Simplification of Privacy Disclosures: An Experimental Test’ (2016) 45(2) Journal of Legal Studies 41-67 <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2443&context=law_and_economics> accessed 20 February 2021.

⁴⁰ Robert A. Hillman, ‘Consumer Internet Standard Form Contracts in India : A Proposal’ (2017) 29 National Law School of India Review 72 <<https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=2731&context=facpub>> accessed 20 February 2021.

Institute's Principle of the Law of Software Contracts⁴¹, which postulate that consumers can be bound by standard-form contracts only if (a) the terms were "reasonably accessible" prior to contract conclusion; (b) the consumer was given notice of the standard terms prior to contract conclusion; (c) the consumer consented to the terms prior to contract conclusion; and (d) the consumer could save and print the electronically provided terms. In other words, Hillman proposes that consumer awareness of the *existence* of standard terms and the ability to store them for later perusal can serve as sufficient disclosure. A similar argument was made by Wulf & Seizov,⁴² with the addition of a simplified pre-purchase disclosure and a full version of the contract terms that can be saved for post-purchase viewing in case problems arise. However, even if pre-contractual disclosure requirements are relaxed, the combined problems of text length, legalese, and low consumer attention persist, and a degree of effective disclosure optimisation is necessary. Before any concrete measures can be discussed, it is crucial to get a clearer view of the situation in the field. We do so in the following sections.

III. RESEARCH OBJECTIVES

The reviews of the literature, legislation, and case law in Section II identify a number of avenues that Indian policymakers could explore further to specify and standardise their information obligations for e-commerce. A common problem with the Western experience in this regard, as pointed out by Seizov, Wulf, & Luzak,⁴³ is that information policies and transparency standards are formulated with scant empirical input. Given that India's information obligations are less extensive and formalised in comparison to European and US-American counterparts, this is a good moment to include consumers' experiences and expectations in the policymaking process and develop norms and policies that more closely resemble real-life conditions. Experience has shown that legislators tend to merely expand mandates⁴⁴ while ignoring empirical research that demonstrates that this 'more of the same' approach brings little improvement to the status quo.

⁴¹ Robert A. Hillman, Maureen A. O'Rourke, 'Principles of the Law of Software Contracts' (2010) 53(9) Communications of the ACM 26-28 <<https://cacm.acm.org/magazines/2010/9/98016-principles-of-the-law-of-software-contracts/fulltext>> accessed 20 February 2021.

⁴² Ognyan Seizov, Alexander J. Wulf, 'Communicating Legal Information to Online Customers Transparently: A Multidisciplinary Multistakeholderist Perspective' (2020) Journal of International Consumer Marketing 1-29 <<https://doi.org/10.1080/08961530.2020.1742841>> accessed 20 February 2021.

⁴³ Ognyan Seizov, A.J. Wulf, J. Luzak, 'The Transparent Trap : A Multidisciplinary Perspective on the Design of Transparent Online Discourses in the EU' (2019) 42(1) Journal of Consumer Policy 166 <The Transparent Trap: A Multidisciplinary Perspective on the Design of Transparent Online Disclosures in the EU | SpringerLink> accessed 20 February 2021.

⁴⁴ Omri Ben-Shahar, Carl E. Schneider, *More Than You Wanted to Know: The Failure of Mandated Disclosure* (Princeton University Press 2014).

In our exploratory study, we aim to gather first-hand empirical evidence on Indian consumers' experiences, expectations, and evaluations of information notices in the context of e-commerce. We began with the guiding question, "How do Indian consumers use e-commerce information notices currently?" We tackled this question first by asking respondents to self-report on their online purchase frequency and disclosure-reading habits. We then asked Indian consumers to report their satisfaction with various aspects of online information notices that previous research has identified as problematic, e.g., font size, language, information accessibility, and so on.

Our next guiding question was, "How do Indian consumers deal with transaction problems and unfair contract terms?" To develop an effective policy for consumer protection and information, we need insights into how much consumers know about their rights and how they go about solving disputes with traders. In addition, our legal and case law reviews demonstrated that most consumer cases in India are based not directly on transparency requirements but on the identification and invalidation of unfair contract terms. What constitutes an 'unfair term' in the context of the transparency requirement, however, remains a matter of debate, with courts variously identifying microprint, hidden fees, or linguistic complexity as sources of unfairness.

Privacy concerns and personal data processing in Indian e-commerce have already garnered scholarly attention⁴⁵ as well as legislative impetus thanks to the recent Personal Data Protection Bill (2019). Apart from unfair contract terms, Indian consumer legislation strongly emphasises upon privacy protection and sets specific requirements on e-commerce entities in that regard. But what aspects of online data privacy matter most to Indian consumers, and how well protected do they feel overall? We asked a series of questions to that effect.

Finally, we explored Indian consumers' thoughts on one-pagers, a disclosure simplification measure that has been met with mixed feelings in Western contexts. While they offer a considerable level of simplification and accessibility, one-pagers are also often considered legally penetrable and thus not 'safe' enough for many businesses to use.⁴⁶ This legal liability, however, is a product of extant legislation that habitually results in voluminous and detailed disclosure. In the Indian context, disclosure requirements are less extensive and strict; therefore, one-pagers may stand a better chance at seamless implementation into law without creating legal uncertainty. To inform such an attempt, we presented Indian participants

⁴⁵ Robert A. Hillman, 'Consumer Internet Standard Form Contracts in India : A Proposal' (2017) 29 *National Law School of India Review* 70-85 <<https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=2731&context=facpub>> accessed 20 February 2021.

⁴⁶ Ognian Seizov, Alexander J. Wulf, 'Communicating Legal Information to Online Customers Transparently: A Multidisciplinary Multistakeholderist Perspective' (2020) *Journal of International Consumer Marketing* 1-29 <<https://doi.org/10.1080/08961530.2020.1742841>> accessed 20 February 2021.

with the concept of a one-pager, inquired about their attitude towards it, and asked them about what transaction information should be included in there.

Thus, our contribution to the literature is: (a) an exploratory survey of Indian consumers' experiences, attitudes, and expectations when it comes to online information policy; and (b) empirically motivated policy proposals for legislative developments that can set India on a better track with regard to consumer protection and information in its rapidly growing e-commerce sector.

IV. RESEARCH DESIGN

To gauge Indian consumers' experiences and expectations in the context of online information disclosures, we designed an online survey that covered all important aspects of the phenomenon as identified in the previous sections. Based on the review of the literature, legislation, and case law, we inquired about Indian consumers' reading rates when it came to information notices, evaluation of these notices' clarity and legibility, experiences with online shopping disputes, and expectations of what transparent and fair online contracting entails.

We assembled a sample of N=320 Indian consumers via Amazon Mechanical Turk. Participants received financial remuneration for answering the online questionnaire. The characteristics of the sample can be found in Table 1.

Table 1: Characteristics of the Indian consumer sample

<i>Sample Distributions for Qualitative Variables</i>					
Gender	Male 65%		Female 35%		
Education (highest completed)	Highschool 2.5%	Bachelor's 72%	Master's 24.5%	Doctorate 1%	
Occupation	Self-employed 32%	Employed 65%	Working Student 2%	Unemployed 1s%	
Frequency of online shopping	Very Rarely 1%	Rarely 2%	Sometimes 20%	Often 55%	Very Often 22%
Dispute with an online business in the past 2 years	Yes 28%		No 72%		
Daily online time	< 1 hour 2%	1 to 3 hours 27%	4 to 7 hours 37%	> 8 hours 34%	

Note: Total sample size N=320. Age (M=33.86; SD=6.80)

Our sample consists of predominantly male, mid-30s, employed or self-employed, active online shoppers who spend a considerable amount of time on the Internet and are not very likely to have had a dispute with an online business in the past two years. While it is not representative of the Indian population at large, this sample largely matches the profile of the average Indian online consumers established in recent literature.⁴⁷

V. FINDINGS

In this section, we present the findings of the Indian consumer survey according to our guiding questions. We thus group them in four separate sections, each of which contributes an important facet of the big consumer picture in Indian e-commerce

A. INFORMATION NOTICES IN INDIAN E-COMMERCE: THE STATUS QUO

Previous research in and outside of India has repeatedly emphasised the low reading rates of consumer information online, so our first order of business was to check with our participants how often they engage with online disclosures. We differentiated between pre-purchase and post-purchase conditions, since these are distinct disclosure use cases.⁴⁸ As shown in Table 2, over a third of respondents rarely or very rarely ‘read before they proceed’ with an online transaction. The number of non-readers drops to about a quarter in the event of a post-purchase dispute, signifying a growing interest in information notices once a concrete problem needs to be solved, a finding in line with previous research on learning motivation and information retention.⁴⁹

⁴⁷ ‘Digital Consumer Spending in India : A \$100 Bn Opportunity’ (*Boston Consulting Group* February 2018) <<https://media-publications.bcg.com/pdf/BCG-Google-Digital-Consumer-Spending-India-Feb-2018.pdf>> accessed 20 February 2021; *Digital Consumer Profiles: How India’s Most Digitally Savvy will Shop and Spend Online* (*Euromonitor International* August 2018) <<https://www.euromonitor.com/digital-consumer-profiles-how-indias-most-digitally-savvy-will-shop-and-spend-online/report>> accessed 20 February 2021.

⁴⁸ Ognyan Seizov, Alexander J. Wulf, ‘Communicating Legal Information to Online Customers Transparently: A Multidisciplinary Multistakeholderist Perspective’ (2020) *Journal of International Consumer Marketing* 27-28 <<https://doi.org/10.1080/08961530.2020.1742841>> accessed 20 February 2021.

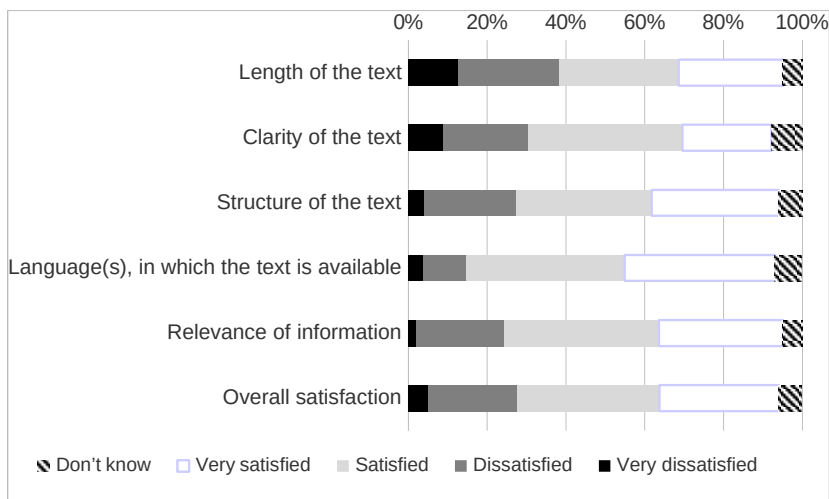
⁴⁹ Mary A. Pyc, Katherine A. Rawson, ‘Testing the Retrieval Effort Hypothesis: Does Greater Difficulty Correctly Recalling Information Lead to Higher Levels of Memory?’ (2008) 60 *Journal of Memory and Language* 437-447 <[http://www.marypyc.com/Pyc%20&%20Rawson%20\(2009\).pdf](http://www.marypyc.com/Pyc%20&%20Rawson%20(2009).pdf)> accessed 20 February 2021.

Table 2: When you make purchases online, how often do you read the Terms & Conditions and other relevant legal information (e.g. – privacy policies)?

	Very rarely	Rarely	Sometimes	Often	Very often
Before purchasing	7.8%	19.1%	30.1%	27.5%	15%
After purchasing (e.g.– in case of a problem)	7.5%	14.1%	33.4%	29.4%	15.6%

After ascertaining that between 74% and 78% of respondents read e-commerce information notices sometimes, often, or very often, we next tapped into their evaluations of these notices (see Figure 1). Somewhat contrary to previous research, the majority of respondents said they were satisfied or very satisfied with the information notices' length, clarity, structure, language, and relevance. Nevertheless, there is a relatively stable quota of 26% to 34% of respondents who report dissatisfaction with information notices across categories and overall. The least controversial category is the information notices' language (usually English), which seems to suffice for our respondents.⁵⁰ Conversely, length and clarity of the text garnered the highest dissatisfaction levels, followed by text structure and relevance of information.

Figure 1: How satisfied are you with the Terms & Conditions and other legal information (e.g. – privacy policies) that are presented to you online?



⁵⁰ Since we recruited them from an English-language participant platform, this is to be expected. In the general Indian population, however, the language of e-commerce information notices is an issue for any consumer not well versed in English or Hindi (see, e.g., Hillman, 2017).

Therefore, it follows that the Indian consumers surveyed show more interest in information notices than what previous research would suggest. While they raise the well-known points of criticism towards disclosures (i.e., length, complexity, verbosity, opacity), they report generally high rates of satisfaction with the information they receive.

B. TRANSACTION PROBLEMS AND UNFAIR CONTRACT TERMS

The relatively good satisfaction numbers notwithstanding, 28% of respondents had a problem with an online transaction in the past two years as reported in Table 1. In their own words, the majority of them had received a product that was either defective or not the one they had ordered. A few indicated they immediately contacted customer support and were swiftly compensated. A few others pointed out they were still awaiting compensation. To find out about all respondents' typical behaviours in case of transaction problems, we then asked them about the likelihood of different courses of action. Contacting customer support was the most likely option, followed by a review of the Terms & Conditions to gain more clarity on the issue at hand. Seeking help from a consumer protection organisation was the third-most likely scenario, while lawyering up or accepting the bad deal and moving on scored the lowest.

Table 3: How likely are you to take any of the following actions in the event of a problem with an online purchase?

	Very unlikely	Unlikely	Likely	Very likely
Contact customer support to demand action or compensation	2.8%	10%	47.5%	39.7%
Review the Terms & Conditions to find out about my rights in this situation	3.8%	14.1%	43.1%	39%
Seek help from a consumer protection organisation.	5.6%	20.3%	47.8%	25.3%
Accept the problem's negative consequence without further action	16.6%	33.1%	42.2%	8.1%
Engage the services of a lawyer.	19.4%	27.5%	34.4%	18.8%

While contacting customer support to address the issue is the natural first choice in many e-commerce markets, it is notable that the second most commonly reported course of action was to read (or revisit) the Terms & Conditions. Combined with the fair levels of satisfactions Indian consumers reported with the quality and content of e-commerce information notices, this finding lends

additional support to information as a viable consumer protection mechanism in this jurisdiction.

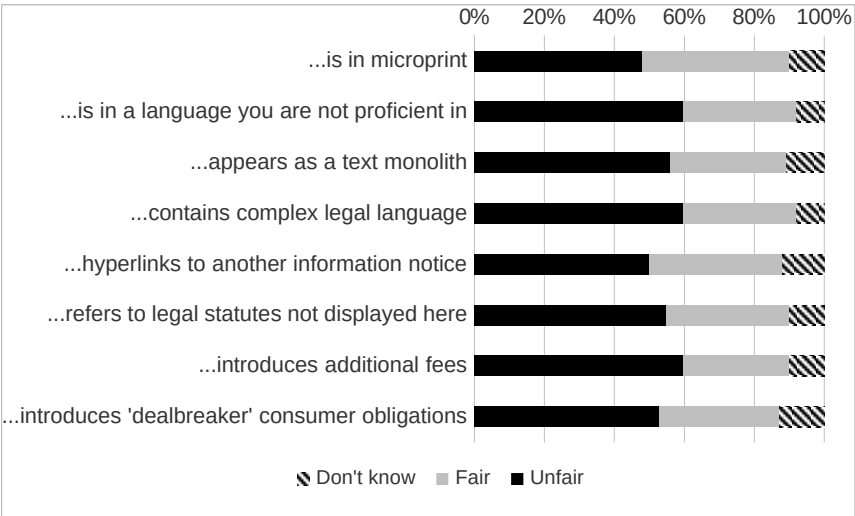
Since Indian consumers seemed keen on reading online disclosures, it was particularly exciting to find out what common issues with information texts they had encountered lately (see Figure 2). The most widely reported problem (57%) pertained to complex sentences and convoluted text forms. The 'usual suspects' like small fonts, lesser-known languages, or information find ability appeared in 38% to 50% of cases. Unexpected negative consequences and missing trader or service information were also common, in the mid-40% range.

Figure 2: In the past two years, have you encountered online information notices or other legally binding transaction details that were...



Since each of the information notice deficiencies above has on occasion been deemed to lead to contract term unfairness by an Indian court, we next tapped our respondents' opinions on what constitutes unfairness (see Figure 3). Foreign language (55%), unexpected additional fees (54.7%) and complex legal language (54%) were the top three sources of unfairness, followed by lumping everything into one large monolithic text block and introducing surprising additional obligations (both at 53%). Referring to legal statutes that are not provided for easy reference and packing further contractual information behind an additional hyperlink were unfair to 48% of respondents. Despite its anecdotal notoriety, microprint was least commonly considered unfair at 41%.

Figure 3: Do you consider contract terms unfair if the information you are supposed to read and consent to during the purchasing process...



Therefore, a majority of respondents considered each of the enumerated negative information practices unfair, with the strongest focus on language choice, linguistic complexity, and hidden fees.

C. CONSUMER PROTECTION AND DATA PRIVACY

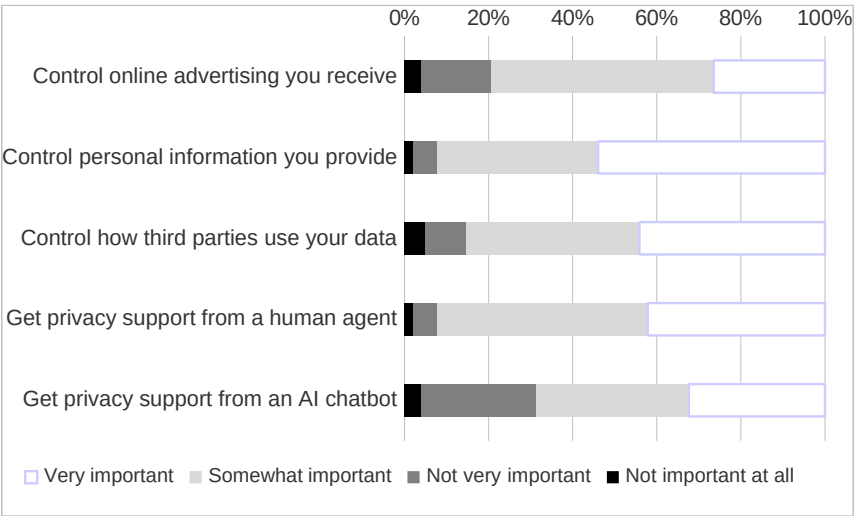
After considering various examples of transaction problems and unfair contract terms, we surveyed Indian consumers on their perceived levels of consumer protection in several specific domains (see Table 4). Abusive or unfair contract conditions, unwanted services, and privacy violations bothered around half of our respondents, while hidden charges were the least present perceived danger. Over 57% of respondents characterised their overall level of consumer protection as high or very high.

Table 4: When shopping online, how low or high do you think your level of consumer protection is against the following potential problems?

	Very low	Low	High	Very high
Abusive or unfair contract conditions	17.5%	38.4%	36.3%	7.8%
Privacy violations	15.6%	31.6%	36.3%	16.5%
Hidden charges	13.8%	30.9%	37.9%	17.4%
Unwanted services	18.3%	32.2%	33.8%	15.6%
What is your <i>overall</i> perceived level of consumer protection online?	6.6%	36.3%	43.8%	13.4%

On the topic of online privacy, we first asked participants the general question, “How concerned are you about your online privacy?” 50% of respondents stated they were concerned, and 39.7%– that they were very concerned about how well protected their personal data and their online activities are. To dive deeper into the many dimensions of online privacy, we asked further questions to check the levels of importance Indian consumers assigned to some of the most common ones (see Figure 4).

Figure 4: In the context of your online privacy and personal data protection, how important do you find the following?



Maintaining control over the personal information they provide and being able to talk to a human customer privacy officer were deemed most important, followed by controlling what third parties receive and use consumers' personal data and what online advertising consumers receive. Getting privacy support from a chatbot was, in comparison, not as important. Nevertheless, every aspect of privacy protection and control was seen as at least somewhat important by a strong majority of respondents. This strong awareness of online privacy may be one explanation as to why Indian consumer legislation, while sluggish in other realms, has safeguarded data privacy with the respective 2019 bill.

D. ONE-PAGERS IN INDIAN E-COMMERCE

After being introduced to the concept, a vast majority of Indian participants (82%) stated that one-pagers should become a mandatory part of consumer information online. A question about the likelihood of reading one-pagers instead of the default, complex Terms & Conditions (see Table 5) showed that over 80% of Indian respondents would do so, both before and after concluding a transaction.

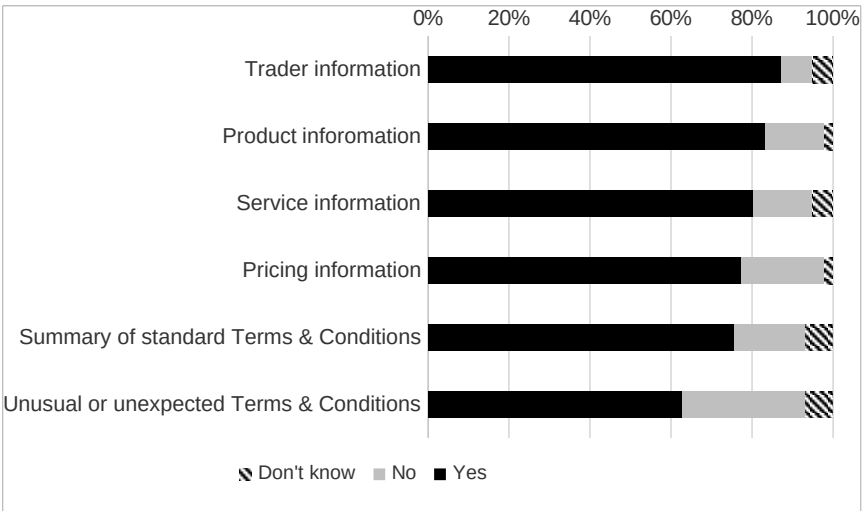
Table 5: How likely are you to read a one-page summary of a long and complex Terms & Conditions and other legal information?

	Very unlikely	Unlikely	Likely	Very likely
Before purchasing?	2.2%	11.3%	54.7%	31.8%
After purchasing (e.g., in case of a problem)?	4.1%	13.4%	33.8%	48.7%

With regard to the kind of information that should be included in a one-pager, Indian respondents mostly expressed the belief it should summarise the most important transaction details (such as trader, product, service and pricing information) and the standard terms (see Figure 5). While some scholars suggest that one-pagers should be used to highlight unusual contract terms that subvert “contractual expectations”⁵¹ and, thus, better support consumer decision-making, our respondents expressed the least support for this idea.

⁵¹ Yonathan A. Arbel, Roy Shapira, ‘Theory of the Nudnik: The Future of Consumer Activism and What We Can Do to Stop It’ (2020) 73(4) *Vanderbilt Law Review* 936 <<https://cdn.vanderbilt.edu/vu-wpo/wp-content/uploads/sites/278/2020/05/23125630/Theory-of-the-Nudnik-The-Future-of-Consumer-Activism-and-What-We-Can-Do-to-Stop-It.pdf>> accessed 20 February 2021.

Figure 5: A ranking of information that should be included in a one-pager



Thus, Indian respondents seemed overwhelmingly positive about the concept of one-pagers and expressed very high readiness to use them. They also largely agreed on what one-pager content ought to be, offering a ready blueprint for policy development in that regard.

VI. DISCUSSION

Our findings hint at a possible path towards consumer policy revisions and disclosure optimisation in the Indian context, which consider its unique characteristics and legal developments. Unlike in European and US-American jurisdictions, Indian online information obligations rest on a limited legal basis that affords policymakers flexibility with regard to revisions and new legislative developments. To begin with, a majority of Indian survey respondents indicated that they read information notices sometimes, often, or very often, against a much smaller quota of non-readers. This finding was held both before and after contract conclusion, suggesting that the disclosure readership baseline in India is higher than in other jurisdictions. This is a favourable precondition for improving the information paradigm rather than discarding it, as has been suggested in the Western context. However, a possible limitation of this finding is that there could be a self-reporting: Indian consumers state they read the fine print, because they feel they are expected to indicate so in the context of our online survey. Other research designs that are invulnerable to opinion bias such as analyses of consumer behaviour as recorded by webpage statistics should thus be carried out to

confirm this finding.⁵² Furthermore, Indian consumers' high rates of satisfaction with current information notices can serve as motivation for policymakers to optimise disclosures further, knowing that a majority of consumers will use them as intended if they were shorter, clearer, and in the appropriate language.

A further test of disclosure usefulness in the Indian context, as in other jurisdictions, is whether they can help consumers in case of a problem. Our results showed that during a dispute with a seller, a majority of Indian respondents would return to the Terms & Conditions in addition to contacting customer support. Since existing Indian legislation defines and mandates transparency only in the most general terms, our review of the case law demonstrated that rulings on unfair contract terms provide a better platform for judging the quality and transparency of information notices. Our survey demonstrated that the courts' and consumers' opinions on what constitutes unfairness – e.g., overly complex texts, disclosure in a language that is foreign to the consumer, vital contractual information presented in microprint or hidden behind a hyperlink, etc. – largely overlap. This agreement means that the further concretisation of transparency and fairness requirements along these lines will meet consumers' approval and afford them an even higher sense of security and protection when transacting online. Our findings regarding Indian consumers' current perceived levels of online consumer protection are generally high, but abusive contracts, unwanted services, and privacy violations remain a problem. Here we ascertain that the key measure for improving these numbers is affording Indian consumers greater and clearer control over the amount and kind of personal information they share and the way this information is passed on to third parties.⁵³

Finally, given that text length and linguistic complexity negatively affect information notices in India as well as in any other jurisdiction, our questions regarding one-pagers provide one concrete alternative. The majority of respondents approved the idea of a mandatory one-pager as part of the online contracting process and affirmed they would read it, both before and after purchasing. In terms of content, consumers ranked a plain summary of all vital contractual details – most highly – a solution that would be a minimal burden to traders but have an outsized potential positive effect on consumer knowledge. Therefore, introducing

⁵² See, for e.g., Yannis Bakos, Florencia Marotta-Wurgler, David R. Trossen, 'Does Anyone Read the Fine Print? Consumer Attention to Standard-Form Contracts' (2014) 43(1) *Journal of Legal Studies* 2 <<https://www.jstor.org/stable/10.1086/674424?seq=1>> accessed 20 February 2021.

⁵³ For a similar line of argumentation in the context of the automated processing of personal data, see also Ognian Seizov, Alexander J. Wulf, 'Artificial Intelligence and Transparency: A Blueprint for Improving the Regulation of AI Applications in the EU' (2020) 31(4) *European Business Law Review* 611-640 <<https://kluwerlawonline.com/JournalArticle/European+Business+Law+Review/31.4/EULR2020024>> accessed 20 February 2021.

one-pagers can answer the call by Bailey et al.⁵⁴ for better-drafted, more accessible information disclosure.

Our study, thus, presents grounds for optimism with regard to transparent information disclosure in the Indian context. It is, however, not without limitations. Its exploratory nature and the relatively small sample size of well-educated, English-speaking participants may conceal the opinions and informational plight of non-English speakers. The importance of providing disclosures in the consumers' first or best language should thus be further empirically investigated and not be underestimated. Another potential pitfall is the self-reporting nature of our results. Particularly in regard to active disclosure readership our data may contain a self-reporting bias. An experimental follow-up study would be appropriate in order to check Indian respondents' answers against their actions in a realistic online purchase situation that applies our policy recommendations and disclosure optimisation strategies and tests them against a control condition.

⁵⁴ Rishab Bailey, Smriti Parsheera, Faiza Rahman, Renuka Sane, 'Disclosures in Privacy Policies : Does 'Notice and Consent' Work?' (2018) NIPFP Working Paper No 246, 1-45 <https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEw-jX7sWDo6buAhUFbnoKHWFqDpEQFjAAegQIAhAC&url=https%3A%2F%2Fpapers.ssrn.com%2Fsol3%2Fpapers.cfm%3Fabstract_id%3D3328289&usg=AOvVaw3t2VIXznmRFLNeGoPD-91bf>accessed 20 February 2021.