
Decrypting Crypto-Currency: A Case Study in The Light of Supreme Court Decision In Internet And Mobile Association of India Vs. RBI

¹Dr. Shilpa Sharma, ²Dr. Sukhvinder Singh Dari, ³Dr. Deepti Khubalkar

¹Assistant Professor in Law
Symbiosis Law School, Nagpur
Symbiosis International (Deemed University)
shilpasharma@slnagpur.edu.in

²Director,
Symbiosis Law School, Nagpur.
director@slnagpur.edu.in

³Assistant Professor in Law
Symbiosis Law School, Nagpur
Symbiosis International (Deemed University)
deeptik@slnagpur.edu.in

Abstract

An innovative technological development has revolutionized the advent of money. The amalgamation of digital cash with block-chain technology has resulted in the concept of crypto-currency. The history of money has witnessed a unique rise. From the times where exchange of goods, piece of paper, animal skins or rendering of services would amount to trade commonly known as the barter system, one saw the light of coinage where coins of copper, silver and gold were utilized for daily transactions. Gradually, coins and notes in the form of physical paper made their way for national and international trade. Remarkably, the economy is introduced to two-fold mechanisms that are, e-payments as well as virtual currency. The Reserve Bank of India, in accordance with its mandate, barred banks and financial entities regulated by it from giving banking services to those associated with crypto-asset transactions, citing regulatory, legal, and operational risks, as well as worries about protection required for consumers, integrity of the market to be kept intact and money laundering, among other things. On 4th March, 2020, the Supreme Court vide its judgment lifted the ban imposed by RBI on trade of virtual currencies on the ground of proportionality, citizens' right to create a new industry of crypto-currencies which is the fundamental right to trade. The present research aims to analyze the judgment passed by Indian apex court along with the concept of crypto-currencies, the arbitrary ban by RBI, lifting of ban by the SC, validation of legal tender of crypto-currency, constitutional provisions, allied enactments, the court's take on self-regulatory mechanism and perspectives of other countries.

Purpose of research: The purpose of this research work is to study the crypto currency under the umbrella of the judicial decision. It also analyses how the stakeholders were affected by the prohibition imposed by the RBI circular and the grounds of the annulment of the ban. This paper tracks and studies the observations and obiter dicta of the Supreme Court of India.

Object of research

1. To understand the evolution of crypto currency
2. To study the trajectory of the precautionary measure of RBI
3. To analyze the verdict of the Supreme Court of India

Keywords: Crypto-currency, Reserve Bank of India, Legal Tender, Analysis, Judgment of Supreme Court of India, Foreign Decisions.

Introduction

An innovative technological development has revolutionized the advent of money. The amalgamation of digital cash with block-chain technology has resulted in the concept of crypto currency which is a form of virtual currency.

The history of money has witnessed a unique rise. From the times where exchange of goods, piece of paper, animal skins or rendering of services would amount to trade commonly known as the barter system, one saw the light of coinage where coins of copper, silver and gold were utilized for day-to-day transactions. Gradually, coins and notes in the form of physical paper made their way for national and international trade. Remarkably, in today's time, the economy is introduced to two-fold mechanisms that are, e-payments as well as virtual currency.

The Bit coin was invented in 2008 by a pseudonymous person named Satoshi Nakamoto in his article "*Bit coin: A Purely Peer-To-Peer Version of Electronic Cash*." The goal of this type of crypto currency is to act as a digital asset that is protected by a decentralized authority that operates a medium of direct exchange of online payments and regulates and manages it using cryptography. In 2022, the Global Crypto currency Market size is approximated to be around USD 915.8 million, which indicates that the growth curve of the crypto market is going to be tremendous and one of the most significant trends in the coming years. N. Satoshi planned a digital equivalent of the archaic model form of gold with a novel way of universal currency which can be owned and retained by every person and thereby it could be spent at anyplace. It was created to work with a decentralized network that was cleverly constructed without the need for a central authority. The idea gained immense popularity in some years since its launch, so much so that in 2021, the estimated global crypto ownership rates were at an average rate of 3.9%, with over 300 million crypto users globally. Currently, the most popular crypto currency worldwide is the bitcoin which has capitulated an increase of 540,000% from 2012 to 2021.

Speaking of Indian economy, it did not have a status for legal tender for the crypto-currency. Nonetheless, the Supreme Court of India made an important judgement on crypto-currency and its legal status in India in the case of "Indian and Mobile Association of India versus Union of India."

Reserve Bank of India

On April 6, 2018, the Reserve Bank of India issued a circular advising its regulated firms to avoid from dealing in virtual currencies or offering services to help anyone deal with or settle virtual currencies. Account management, registration, trading, settlement, clearing, opening accounts with virtual token exchanges, lending against them, using them as collateral, and transferring/receiving money in accounts associated with the purchase/sale of VCs are all possibilities. According to the Circular, entities that are already providing such services must cancel the arrangement within three months of the Circular's publication date.

In paragraph 13 of the Statement, which deals with currency management, the RBI directed entities regulated by the Reserve Bank of India not to deal with or offer services to any person or company that deals with or settles virtual currencies, and (ii) if they already have a relationship with such entities, to end it. It went on to say that regulated businesses that already supply these services must terminate the contract within a certain amount of time.

The RBI established five developmental and regulatory policy measures in the said Statement, namely, strengthening regulation and supervision, expanding and exacerbating financial markets, improving currency management, fostering financial literacy and inclusion, and finally, assisting with data management.

It is vital to highlight that the said circular is prohibitory in nature and statutory in character.

Stakeholders In the Judgement

The stakeholders specifically filed two writ petitions in front of the Supreme Court. The petitioners which represented the interests of the internet and digital services business, were the first stakeholder in the case. Companies with high-tech entrepreneurs who already administer an online crypto-asset exchange platform and are either shareholders or founders of these companies, as well as just few current business operations who are participating in crypto asset trading, were the collective stakeholders in the second petition.

Challenge Before the Apex Court

On March 4th, 2020, a three-judge panel comprised of Justice Rohinton F. Nariman, Justices Anirudhha Bose, and V. Ramasubramanian issued one of the most significant and progressive judgments. The Supreme Court of India, in a judgement written by Justice V. Ramasubramanian, lifted the Reserve Bank of India's ban on the trade of virtual currencies, crypto-currency, and bit coins on the grounds of proportionality, ruling that citizens have the right to create a new crypto currency industry in accordance with the fundamental right to trade enshrined in the Indian Constitution, among other things.

The petitioners in this case argued that while Virtual Currencies [VCs] do not have legal currency status, they are capable of functioning as digital commodities or things, and hence do not fall under the scope of Act of RBI, 1934, and the Act of Banking Regulation, 1949. Similarly, the petitioners also claimed to the court that the VCs cannot be

termed as payment systems and thus they do not fall under the ambit of the Payment and Settlement Systems Act, 2007. The petitioners also resisted that the RBI did not have the power to impose a blanket ban by way of the Circular. It all began in the year June 2003, when RBI took cognizance of the issue in order to deal with virtual currencies. The June 2013 Financial Stability Report culminated in a press release on December 24, 2013, warning virtual currency users and holders. As a result, the Financial Stability Report, released in December 2015, expressed concern about virtual currency valuations' extreme unpredictability and instability.

It also questioned the anonymity of the transaction in light of international money laundering regulations. The December 2016 Financial Stability Report highlighted the hazards of virtual currencies in terms of data security and consumer protection, as well as the impact of monetary policy.

The RBI formed the 'Institute of Development and Research in Banking Technology,' and published a white paper in January 2017 that looked at the pros and cons of virtual currencies, which was mentioned in the RBI's June 2017 Financial Stability Report. During this time, the Reserve Bank of India (RBI) released a press release on February 1, 2017, cautioning virtual currency users, holders, and traders.

In April 2016, a subcommittee of the Financial Stability and Development Council issued a decision, after which the RBI formed an inter-regulatory working group, which published a report in November 2017. Following that, on December 5, 2017, the RBI published a third press release. Following that, on April 2, 2018, the RBI sent the Union government a communication with a note on managing crypto-assets, weighing the benefits and drawbacks of banning and regulating crypto-currencies. As a result, the RBI issued a statement by April 6th 2018, forbidding regulated businesses from providing services to crypto-currency traders. The virtual currency exchangers' accounts were also closed by the RBI.

Analysis

The core essence of e-payment or digital payment systems has institutional control, however crypto currencies are causing a significant upheaval in the global economy today. Before we dive deep into the pool of digital currency it is imperative to understand the meaning and definition of the term 'currency' in the Indian legal system.

According to the Central Goods and Services Tax Act of 2017, "Indian legal tender or any foreign currency, Cheque, promissory note, bill of exchange, letter of credit, draught, pay order, traveler Cheque, money order, postal or electronic remittance or any other instrument recognized by the Reserve Bank of India, when used as a consideration to settle an obligation or exchange with Indian legal tender of a person."

At this juncture, it is therefore important to find an answer to the question that, what is the ultimate identity of the Virtual Currency which makes it distinct? The Bench also discussed the definition of virtual currency as stated in statutory and non-statutory derivatives of governments around the world, including Japan, Malta, Canada, the Bahamas, Estonia, Latvia, Mexico, Israel, Germany, the European Union, the U.K and the U.S, among others.

The petitioners' or stakeholders' main claim was that the Circular was in breach of Articles 19(1)(g) and 14 of the Indian Constitution, which provide the right to trade and equality before the law.

As a result, the highest court concluded that while virtual currencies are not recognized as legal currency, they can perform many of the activities that real money can. However, the court also said that, any legal tender needs a suitable recognition by the law of the land for its functioning to take place. However, the court stated that what a thing is capable of acting as differs from how it is recognized in law. The fact that VCs aren't considered legal tender is as true as the reality that they can perform some or all of the functions of real money.

The bench stated that while documents such as promissory notes, Cheque, bills of exchange, and other similar instruments are not currencies in the proper sense, they are in use as a lawful discharge of an obligation between two people, i.e. peer-to-peer transactions. It is therefore taking this into consideration it cannot be accepted that the Virtual Currencies are merely goods or commodities and not real currency.

One of the point of contention, was that, the Virtual Currencies don't qualify to be termed as currency or money, neither in social sense nor in legal sense and hence it does not further qualify as currency under any of the statutes or the enactments which would further authorize the Reserve Bank of India to prohibit the same. The Bench was of the opinion that, it was not of the consideration that role and powers of the RBI would set the ball rolling only in the case if something acquires the status of legal tender.

Court Observations

The apex court established that, the Reserve Bank of India was inadequate to bring satisfactory data to prove that crypto currencies were detrimental and that there was a degree of harm caused directly or indirectly while dealing with the crypto currencies. The bench decided that the RBI Circular prohibiting banks from supporting crypto currency related transactions is liable to be set aside on the basis of proportionality and in violation of the Indian Constitution.

The court in its judgment has held that, the RBI has the power to issue regulations on the virtual currencies. But the RBI cannot impose a prohibition which is prejudicial and therefore disproportionate. The bench was of the view that, the prohibition which acted as a precautionary step to safeguard the national economy was not backed by material realities to withstand it.

The apex court also stated that, the embargo by the RBI was unreasonable as it surpassed the restriction as necessitated by the Constitution of India. The verdict thus, quashed the prohibition on the basis of the principle of fairness and equality opportunity. It was held that, the powers of RBI in no case can exceed or surpass the freedom and rights provided to the citizens under the Constitution of India as RBI is an authority formed under an enactment. Lastly, the court has ruled that, the imposition by way of ban or such regulation is not an absolute power of the RBI. Therefore, the arbitrary defect in the act of regulation needs to be annulled.

Comparative Jurisprudence of U.K, USA and other Countries with regard to Crypto Currency

The countries in the international spectrum have a different outlook. Many follow various different laws and regulations or rather none with respect to crypto currency. Below are some of the countries' stance and legal framework if any on crypto currency.

In the **United Kingdom**, crypto currency has no status of legal tender and there is no special legislation which regulates and governs the crypto currencies. The country's crypto currency user base grew from 1.5 million in 2018 to approximately 9.8 million in 2021. A six-fold increase clearly indicates the high crypto currency adoption rate in the UK.

Germany is one of those countries which have regularized the crypto currencies in the form of token of exchange. It is governed by Federal Supervisory Agency known as BaFin. Interestingly the crypto currencies are not given the name of currency per se instead the crypto currencies are given the nomenclature of units of accounts as if it is the foreign exchange. The user base of crypto currency in Germany is estimated to be over 2.1 million people, almost 2.62% of Germany's total population.

In **USA** the crypto currency is not given the status of legal tender. It has become a matter of jurisdiction such that whether it will come under the state matter or if it shall be treated as federal matter. Earlier in time, the crypto currencies are considered as transmitters of money while since 2018, USA has considered the crypto currencies as securities.

Australia is already way ahead of the curve. It legalized crypto currency way earlier in 2017, making it a recognized fintech leader globally. However, strict regulations and rules regarding them were enforced by the Australian government to prevent money laundering and terrorism financing.

Surprisingly the countries where crypto currency are used majorly aren't fintech oriented mammoths like US or China but rather it's Nigeria. Data dictates that 32% of its population say they use own or use crypto currency. In Nigeria, using crypto currency is a little bit complicated. In 2021, the Central Bank of Nigeria announced that all commercial banks were restricted from carrying out any crypto transactions. But it isn't necessarily illegal in Nigeria. The people have found a loophole with several great crypto currency exchanges like Quidax, Buy Coins and Patricia and crypto wallets.

Among one of the leaders in crypto currency, **Vietnam's** adoption rate of these digital currencies among its population has been one of the highest compared to other countries. Currently, crypto currencies are neither mentioned in Vietnamese law as a legal means of payment nor is it recognized as an asset or a foreign currency. But the Vietnamese government, unable to ignore the country wide popularity of crypto currencies has initiated the process of devising a legal framework for the same. Vietnam will definitely prove to be one of the largest leaders in fintech growth in the coming years. One million Vietnamese are already using crypto and this figure is expected to increase 30-fold by 2030.

Currently, there is a growing rise in countries such as Marshall Islands, Venezuela, etc. to legalize crypto currencies. Most countries don't recognize crypto currency as a digital asset but nor do they prohibit people from trading them. But, it's a growing market and offers lots of growth opportunities and brings capital and foreign investment in the country and many countries are slowly starting to realize that.

Conclusion

In the present day, there is no absolute rule imposing a prohibition on the Virtual Currencies and its trading. Globally, a majority of the countries are proceeding with taking steps towards monitoring and regulation of the usage and legal tender of the Virtual Currencies. Block chain is increasingly penetrating and getting positive results from the pilot implementation so far. Financial institutions that tried to stay away from bit coin and crypto currencies are now beginning to embrace it on Ethereum network, or even the Bit coin network showing a drastic change in attitude. For the time being, just a few early adopters are interested in taking advantage of this potential technology by moving from proof-of-concept to early phases of full-scale industrial use. More Corporates need to join in to test implements and reap the benefits of the technology. While there's no denying that crypto currencies are better to cash, it's also worth highlighting that the practical issues about evasatory conduct that come from their use aren't all that dissimilar from those that occur from cash transactions. In India, the Prevention of Money Laundering Act, 2002 ('PMLA'), which makes it illegal to attempt to launder money directly or indirectly and carries a maximum term of ten years in prison, already has legislative sanctions in place. India is also a signatory to the Convention on Mutual Administrative Assistance in Tax Matters and several other United Nations Conventions, as well as a member of the Financial Action Task Force ('FATF') on money laundering. As a result of the Supreme Court's decision, stakeholders can now use and exchange virtual currency. This verdict gives crypto exchanges and crypto as an asset class a thumbs up because they have not been found to be in violation of any other laws. So, with the exception of the RBI judgement, it appears that everything else was legal. It also protects (and in some ways decriminalizes) investors who have made crypto investments. Overall, even while it does not condemn regulatory acts, the ruling reduces their arbitrariness. The Virtual Currencies have tremendous potential on one hand from an individualistic view but on the other hand it also has to face innumerable challenges when it comes to its regulation, the legalities involved and with the attitudinal shift in the technology. Therefore, with self-regulation, a proper legal framework the lacunae can be removed and the trading can work smoothly.

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