

**DE JURE NEXUS LAW JOURNAL**

Author:

Kanishk Sharma

Symbiosis Law School, Noida

1<sup>st</sup> Year, BBA LL.B.

**INTERNET AND MOBILE ASSOCIATION OF INDIA V. RESERVE  
BANK OF INDIA**

**Court: The Supreme Court of India**

**Citation: W.P (CIVIL) No. 528/2018**

**Coram: Justices Rohinton Fali Nariman, Aniruddha Bose, V. Ramasubramanian**

**Theme: Cryptocurrency Trade in India**

**Subject: Financial Law**

**Judgement: India**

**BRIEF FACTS OF THE CASE**

The Reserve Bank of India (RBI) issued a Circular on April 6, 2018 titled “Statement on Development and Regulatory Policies”, prohibiting banks and other regulated businesses from dealing in Virtual Currencies (VC), or Cryptocurrencies, and providing services to any individual or entity dealing with or settling VCs. The prohibition had the effect of prohibiting VC exchanges from maintaining and operating bank accounts, effectively ending the business of VC trading that needed conversion from fiat currency via regulated banking channels. In addition, there was no statutory ban on the usage and trading of VCs in India at the time the Circular was released, and VCs were ring-fenced from the official economy by the RBI's prohibition.

The RBI was concerned that VCs could be hacked; that there could be speculation due to the lack of an underlying asset, and that the resulting volatility could result in severe losses; and that VCs could be used for money laundering (ML) and terrorist financing (TF). Before issuing the Circular, the RBI had only issued precautionary press statements since 2013, expressing the same concerns. The RBI did not mention any additional risks when the Circular was released.

This action on part of the RBI, was challenged by the Internet and Mobile Association of India (IAMAI), which is a not-for-profit organisation, aiming to protect the interests and rights of online and mobile value added services industry. The petition challenging the action was based on the grounds that RBI lacks authority to take such a measure, rendering the circular ineffective and unenforceable. Moreover, the petitioners also raised the issue that such prohibition on cryptocurrency trade is violative of Article 19(1)(g) of the Indian constitution which provides for the right to carry out any trade or business freely.

## CASE COMMENTS

Cryptocurrency has gained a reputation over the past couple of decades as a mysterious entity which evades precise definition. Various jurisdictions and organisations have attempted to pinpoint and define its foundational concept and function which was highlighted by the Supreme Court in its judgement. Cryptocurrency is basically a peer-to-peer, decentralised, transaction log that utilises blockchain technology. Blockchain technology would enable cryptocurrency holders to trade freely and anonymously, without a need for trusting a third agency, like the RBI or any other central bank. The idea was first introduced by an anonymous cyberphunk<sup>1</sup> with the pseudonym “Satoshi Nakamoto”, who authored the Bitcoin White Paper, back in August 2008.

Ever since then, Cryptocurrency in general, has been a debating issue for many governments and organisations across the globe. The risks Cryptocurrency was first pointed out by the Financial Action Task Force (FATF) which is an intergovernmental body created in 1989 on the proposal of the Group of seven to promote anti-money laundering strategies. The FATF highlighted the dangers and potential risks associated with cryptocurrency in several reports, as it allowed financial transactions to take place internationally, coupled with anonymity of the parties. FATF was of the view that cryptocurrency provided a platform for global terror funding and money laundering mechanisms. This recognition by the FATF, was a kickstarter for the RBI to take suitable measures to tackle and understand cryptocurrency trade and regulation.

---

<sup>1</sup> Cypherpunk is an activist advocating widespread use of strong cryptography and privacy enhancing technologies, as a route to social and political change. This word was added to the Oxford English Dictionary in November 2006.

The RBI is a pre-constitutional entity with a wide range of powers, duties and rights within its ambit, supplied via the Reserve Bank of India Act, 1934 (hereafter referred to as the RBI Act, 1934). It further draws its powers from the Banking Regulation Act, 1949 which lays down regulations and procedures for effective controlling and operation of the Indian banking system. The Supreme Court has delved deep into these statutes to explore, analyse and limit the powers allotted to statutory bodies like RBI and their executive functions.

## ISSUES

The issues in this case were two-fold.

The first issue that the court had to decide on was whether RBI has acted *ultra vires*, that is, outside its jurisdiction by inviting prohibition on cryptocurrency trade. In this regard, it was important to determine the extent of powers of the RBI as the financial watchdog of the country. This was the primary contention raised by the petitioners, which if deemed valid, would have rendered the impugned notification invalid ab initio. This issue brought within itself another supplemental issue, that is whether Cryptocurrencies satisfy the conditions necessary to be defined as a currency. The petitioners had argued that Virtual Currencies are not legal tender, but in fact tradeable digital commodities/assets as it does not. Because of this reason, RBI has no authority to prohibit the trade of digital commodities as they do not fall within the regulatory framework of neither the RBI Act, 1934 nor the Banking Regulation Act, 1949. To address this issue, RBI had contended that even though there is doubt about the fact that whether VCs satisfy the definition of legal tender currency, the statutory body was well within its rights to take the action, on the grounds that - a) the preamble of RBI provides that the maintenance of price stability is an essential objective of the body, and such price stability could be affected by the Cryptocurrency trade; b) RBI reserves the authority to notifying VCs under the category of "other similar instruments" indicated in Section 2(h) of Foreign Exchange Management Act, 1999 which defines 'currency' to mean "all currency notes, postal notes, postal orders, money orders, cheques, drafts, travelers' cheque, letters of credit, bills of exchange and promissory notes, credit cards or such other similar instruments as may be notified by the Reserve Bank."

The second issue in this case stems from the fact that whether the action taken by RBI was proportionate or not. The right of freedom to practise any profession, occupation, business or trade is enshrined in Article 19(1)(g) of the constitution and any restriction of this fundamental right is required to be reasonable in nature as per Article 19(6). The court had to determine whether the notification issued by RBI exceeded the bounds of reasonableness as mentioned in Article 19(6) of the constitution. RBI has contended that the impugned circular has addressed to, and is applicable to only those financial/non-financial institutions that include the formal banking channels of the country like commercial banks, NBFCs, etc and consequently prohibits them from dealing with Cryptocurrency transactions; nonetheless private entities are free to trade in aforementioned transactions. The petitioners however, who include shareholders and promoters of VC exchanges, contend that the restriction imposed by RBI has indirectly prevented them from exercising their fundamental right to trade even though the circular does not apply to VC exchanges. The reasoning behind their position is the fact that banking and

finance is the lifeblood of any business, and it is practically not possible for trade to take place without being able to access banking services. Therefore, by severing banking ties, RBI has exceeded the bounds of reasonableness.

## JUDGEMENT

In a 180-page judgement, the bench ruled in favour of the petitioners. The court maintained a holistic approach to understand the technicalities of cryptocurrencies and their workings. Definitions and reports issued by various international organisations were observed and recognised. Positions of numerous jurisdictions in the global arena with respect to VCs were also considered.

While addressing the first issue, the Supreme Court was hesitant to accept RBI's contention that Cryptocurrency can be regarded as equal to fiat currency. Nonetheless, RBI being the supreme regulator of the country's financial system, coupled with the statutory powers that have been endowed upon it, which include ensuring financial stability and operating the currency and credit system to its advantage, RBI is well within its rights to regulate and take appropriate actions with respect to Cryptocurrencies.

With regards to the second issue, the Supreme Court was of the view that complete prohibition of Cryptocurrency trade and subsequent but indirect elimination of VC exchanges from the country's industrial set up was not a proportionate measure. It had exceeded the bounds of reasonableness. The Supreme Court had relied on *State of Maharashtra v. Indian Hotel and Restaurant Association*, and held that in order for the RBI to take such an extraordinary measure, there must exist some damage suffered by the regulated entities which must be proven by providing some empirical data regarding the loss and that loss should have been caused by the operation of Virtual Currency exchanges. However, it has been observed that since the last five years, there has been no significant damage caused to the regulated entities.

## CONCLUSION

In conclusion, the ruling in favour of the petitioners had the effect of setting the impugned notification aside. Cryptocurrency exchanges have been allowed to function in their entirety. However, it is important to note that the net effect of this ruling only struck down the particular RBI circular which was in discussion. It did not comment on the legality or illegality of Virtual Currencies. It is a highly volatile industry with little to no regulation or legal influence, which makes it open to judicial interpretation.

The author is of the opinion that since cryptocurrency has the inherent quality of being a decentralised structure since its inception, any attempt to regulate cryptocurrency trade, except for total prohibition, would serve little to no practical purpose. VCs and blockchain technology are designed in such a way that any legal or institutional interference in their workings would disrupt its peer-to-peer interface and the very purpose of their creation, that is, to free currency from the chains of third-party management. A "regulated cryptocurrency" is paradoxical and

in itself an oxymoron. However, the use of blockchain technology, separate from cryptocurrency, could be made use of in the banking and financial set-up to the advantage of RBI and other stakeholders.



# De Jure Nexus

---

LAW JOURNAL