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**Can Virtual Currency Platforms Operate in India – Supreme Court’s Recent Judgement**

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The crypto-currency platforms have been subjected to various governmental actions in the past without the virtual currencies being banned in India. In a huge relief to the crypto-currency exchanges and platforms, the Supreme Court of India in its recent judgment in the matter of *Internet and Mobile Association of India vs. Reserve Bank of India [Writ Petition (Civil) No. 528 of 2018]*, set aside the Reserve Bank of India’s (RBI) circular restricting the dealing in virtual currencies and/or operating the virtual currency exchange in India.

**Background:**

RBI issued a ‘Statement on Developmental and Regulatory Policies’ on April 5, 2018 (**RBI Statement**), which *inter alia* directed the entities regulated by the RBI (a) not to deal with or provide services to any individual or business entities dealing with or settling virtual currencies; and (b) to exit the relationship, in case such relationship exists, with such individuals/business entities, dealing with or settling virtual currencies.

Subsequently, on April 6, 2018, RBI, exercising the powers conferred under the Reserve Bank of India Act, 1934 (**RBI Act**) and Payment and Settlement Systems Act, 2007 (**PSS Act**), issued another circular directing the entities regulated by the RBI not to deal in virtual currencies or provide any services for facilitating any person or entity dealing with or settling virtual currencies (**RBI Circular**). Such restricted services include maintaining accounts, registering, trading, settling, clearing, giving loans against virtual tokens, opening accounts of exchanges dealing with virtual currencies and transfer/receipt of money in accounts relating to sale/purchase of virtual currencies. The RBI Circular thus, effectively, imposed prohibition on dealings related to virtual currencies in India and many banks suspended the current account operations of cryptocurrency platforms following the RBI directions (refer our earlier articles published at <https://www.mondaq.com/india/Technology/834006/End-Of-The-Road-For-Private-Cryptocurrencies-In-India-The->



[Proposed](#)

[Ban;](#)

<http://www.mondaq.com/india/x/583670/fin+tech/Legal+Status+Of+Virtual+CurrenciesCryptocurrencies+In+India>

<http://www.mondaq.com/india/x/608424/fin+tech/Future+Of+Virtual+Currencies+In+India>

The issuance of the RBI Statement and the RBI Circular was preceded by a number of inter-ministerial meetings and circulars to the effect that India does not consider crypto currencies as legal tender and thus intends to eliminate the use of crypto currencies to minimise its use for funding illegitimate activities. The risk posed by growth of crypto currencies was becoming a global concern and the communique issued by G-20 in March 2018, noted that '*crypto assets do raise issues with respect to consumer and investor protection, market integrity, tax evasion, money laundering and terrorist financing. Though crypto assets lacked the key attributes of sovereign currencies, they could, at some point, have financial stability implications.*' The communique resolved for the international standard setting bodies to continue their monitoring of crypto assets and the associated risks.

Aggrieved by the restrictions imposed by the RBI, the Internet and Mobile Association of India (**IMAI**) filed a writ petition before the Hon'ble Supreme Court of India challenging the legality of the RBI Circular. Simultaneously, a separate writ petition [viz. Writ Petition (Civil) No. 373 of 2018] was also filed by shareholders/founders of companies engaged in operating online crypto assets exchange platforms and few individual crypto assets traders.

#### **Contentions of IMAI:**

IMAI, in its writ petition:

1. challenged the RBI's power to prohibit the activity of trading in virtual currencies through virtual currency exchanges, inter alia contending that:
  - virtual currencies are not legal tender but tradable commodities/digital goods, not falling within the regulatory framework of the RBI Act or the Banking Regulation Act, 1949;
  - virtual currencies do not even fall within the credit system of the country, so as to enable RBI fall back upon the preamble to the RBI Act, which gives a mandate to the RBI to operate the currency and credit system of the country to its advantage; and
  - the power conferred upon the RBI under the PSS Act to issue guidelines for proper and efficient management of payment systems is not applicable to virtual currency exchanges, as the services rendered by them do not fall within the definition of 'payment system' under the PSS Act.

2. argued that assuming but not admitting that RBI has the power to deal with the activities carried on by virtual currency exchanges, the mode of exercise of such power can be tested on certain well established parameters, viz. (i) application of mind/satisfaction/relevant and irrelevant consideration; (ii) malice in law/colourable exercise of power; (iii) calibration/proportionality, etc.;
3. stated that all other stakeholders such as the Department of Economic Affairs of the Government of India, Securities and Exchange Board of India, Central Board of Direct Taxes, etc., have actually recognized the positive and beneficial aspects of cryptocurrencies as digital assets and the distributed ledger technology from which crypto currencies emanate and hence have recommended only a regulatory regime, but RBI has adopted a contrary stance without any rational basis;
4. highlighted that many of the developed and developing economies of the world, multinational and international bodies and the courts of various countries have scanned crypto currencies but did not find anything detrimental. In fact, even the Government of India's attempt to introduce a legislation banning crypto currencies is yet to be achieved; and
5. contended that while regulation of a trade or business through reasonable restrictions imposed under law made in the interests of the general public is provided under the Constitution of India, a total prohibition of a business activity, through a subordinate legislation such as a directive from the RBI, is violative of Article 19(1)(g) of the Constitution of India.

**Response of the RBI:**

RBI in its response inter alia stated that:

1. virtual currencies do not satisfy the criteria such as store of value, medium of payment and unit of account, required for being acknowledged as currency;
2. virtual currency exchanges do not have any formal or structured mechanism for handling consumer disputes/grievances;
3. virtual currencies are capable of being used for illegal activities due to their anonymity;
4. increased use of virtual currencies has the potential of eroding the monetary stability of the Indian currency and the credit system; and

5. the decision taken by the RBI was necessitated in public interest to protect the interests of the consumers, interest of the payment and settlement systems of the country and for protection of regulated entities against exposure to high volatility of the virtual currencies.

**Supreme Court's Decision:**

The Supreme Court of India examined the powers of the RBI vis-à-vis issuance of the RBI Statement and the RBI Circular for regulating crypto currencies under various banking regulations, the nature of virtual currencies and the approach adopted by the governments of different countries towards use/regulation of virtual currencies. The Supreme Court noted that there is unanimity of opinion among all regulators and governments of various countries that though virtual currencies have not acquired the status of legal tender, but they do constitute digital representations of value and are capable of functioning as medium of exchange, unit of account and/or store of value.

The Supreme Court concluded that RBI has the requisite power to regulate virtual currencies and opined that the argument of IMAI that other stakeholders such as the Enforcement Directorate, Department of Economic Affairs and Securities and Exchange Board of India do not see any grave threat is not acceptable.

The Supreme Court considered the argument of the petitioner that right to access the banking system is integral to the right to carry on any trade or profession and thus a legislation, subordinate or otherwise whose effect or impact impairs the right to carry on a trade or business, not prohibited by law, would therefore be construed as violative of Article 19(1)(g) of the Constitution of India. It thus emphasised that the measures adopted by the RBI must pass the test of proportionality. The Supreme Court observed that as on date the virtual currencies are not banned, but trading in virtual currencies and functioning of virtual currencies exchanges are severely impacted by the RBI Circular as their lifeline namely, the interface with the regular banking sector has been disconnected. Further, the RBI till date has not come out with a stand that any of the entities regulated by it, viz. the nationalized banks/scheduled commercial banks/co-operative banks/non-banking financial companies have suffered any loss or adverse effect directly or indirectly. As the RBI has been conferred with very wide powers in the economy of the country, which powers are in the form of preventive as well as curative, the Supreme Court concluded that the measures taken by the RBI for issuance of the RBI Circular were not proportionate.

Accordingly, the RBI Circular has been set aside by the Supreme Court of India on the ground of proportionality.

The Supreme Court judgment has brought cheers among the virtual currency exchanges which had overnight gone out of business post the RBI Circular or had shifted to other jurisdictions such as Singapore. The RBI is currently considering filing of a review petition before the Supreme Court for reconsideration of its order as RBI is concerned that the apex court's decision could pave the way for trading in virtual currencies and put the banking system at risk. Till then, the virtual currency platforms can validly operate in India.

**Feedback**

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