



**DECODING THE SUPREME COURTS
CRYPTOCURRENCY JUDGEMENT -
INTERNET AND MOBILE
ASSOCIATION OF INDIA V.
RESERVE BANK OF INDIA**

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ABSTRACT

The latest judgement on crypto-currencies was delivered by the supreme court bench comprising of Justice V. Ramasubramanian, Justice Aniruddha Bose and Justice R.F. Nariman on March 3rd 2020. This judgement was against the circular passed by the R.B.I. banning and restricting the financial and banking regulators for using or dealing in Virtual currency. This Case Comment critically analyses the step taken by the R.B.I. furthermore, analyses the importance of Crypto-currencies in today's time. The Case focuses on the Arguments raised and the submissions made by the Court in order to restore equality in the professional space or trade and commerce.

The Judgement of Internet and Mobile Association of India v. Reserve Bank of India, Writ petition (civil) no.373 of 2018 has raised many questions and queries of the future of the dealer, traders, investors and users of crypto-currency in the field of Technology. With this Case Comment, we will try to critique the following judgement analytically.

INTRODUCTION

Factual Background of the Case -

A series of cautionary advisory in the form of a press release was made by the R.B.I. for its investors, shareholders, traders and other users who are dealing in virtual currencies most commonly referred as crypto-assets and crypto-currencies. The press releases dated December 24th 2013, February 1st 2017 and December 5th 2017 highlighted the risks involved to these potential dealers while dealing with virtual-currency. Because of the financial, operational and legal risks involved in the encouragement of dealing in virtual currencies, the banks were told not to invest with Crypto-Related Businesses.¹

The latest notification released by the R.B.I. illustrated that any activity in the relation of maintaining accounts, trading, registering, clearing giving loans against virtual tokens, or accepting them as collateral and the purchase and sale of virtual-currencies were prohibited. The December 2013 press release of R.B.I. also stressed about the risks involved for the users and traders of virtual currency.

The Internet and Mobile Association of India confronted the circular issued by the R.B.I. along with a few other stakeholders in the Supreme Court. The bench of the Supreme Court comprising of Justice R.F. Nariman, Ramasubramanian and Aniruddha Bose permitted the petition on the ground of proportionality.² The present judgement dated March 4th 2020 lifted the ban imposed by the Reserve Bank of India through its circular dated April 6th 2018, which prohibited the banks and financial institutes from dealing in virtual currencies.

CASE ANALYSIS

¹ Banking Regulation Act 1949, s. 35A, 36(1)a, s.56.

² Constitution of India, Art. 14.



Arguments of the Petitioner -

The grounds for the present petition by the petitioner, i.e., *Internet and Mobile Association of India*, which were against the R.B.I. Circular dated April 6th 2018 were as follows-

1. *Jurisdiction* – the petitioner stated that the R.B.I. lacked jurisdiction to forbid dealings in cryptocurrencies, and the blanket ban was based on the erroneous understanding that it was not possible to regulate cryptocurrencies. Cryptocurrencies are digital currency in which encryption techniques are used for trading.³ These currencies operate autonomously of a central bank like the R.B.I., rendering insusceptible from government interference.⁴
2. *Regulatory Power* - The agreement adopted by the petitioner was that *firstly*, the virtual currency is not a legal tender and thus cannot be regulated by R.B.I. *Secondly*, Services rendered by virtual-currency exchanges do not qualify to be a payment system, thus are not entities regulated by the R.B.I. as per the Payment Settlement and Systems Act 2007.⁵ (hereinafter PSSA)
3. *Non-Application of mind* - The ground for passing the Circular by R.B.I. was not well articulated and that it also violated the fundamental rights to practice the profession, or to carry on any occupation and trade.
4. *Principle of Proportionality* – It was also submitted by the petitioner in the present matter that the R.B.I. Circular did not pass the

test of reasonability or proportionality, and thus should be struck.

Arguments of the Respondent –

The respondent, i.e. *The Reserve Bank of India* is represented by Senior Advocate Shyam Divan in the present matter countered the claims of the petitioners in the following manner –

1. They countered the argument of petitioners regarding crypto-currency not being deemed as 'Currency' in a strict sense but more as a mode of exchange or store of value. The senior advocate submitted that crypto-currency was in fact, under the control/ regulation of the R.B.I. as it was the digital mode of payment, thus putting it into the category of 'Currency'.
2. The R.B.I. further submitted that there had been no violation of the fundamental right of profession/ trade as there cannot be an unfettered fundamental right to do business over an entity under the control of the R.B.I.⁶
3. They negated the argument of non-application of mind submitted by the petitioners. They stated that the R.B.I. Circular was only issued in Public interest and to fore-warn the users, traders and holders of virtual-currency from the potential risks involved. They also submitted that the R.B.I. had been issuing the advisory to the

³ Reserve bank of India Act 1949, s. 45JA, s. 45L

⁴ Tanvi Ratna, 'Dangerous truth about India's Crypto-Currency Verdict' (CoinDesk, March 9th, 2020) <https://www.coindesk.com/the-dangerous-truth-about-indias-cryptocurrency-verdict>

⁵ Payment Settlement and Systems Act 2007, s.10(2)

⁶ *Internet and Mobile Association of India v. Reserve Bank of India*, Writ petition (civil) no.373 of 2018



user of virtual-currency for five years and thus there was the application of mind.

Courts holding on the Issues Raised -

The bench of the Supreme Court highlighted the following points while lifting the ban imposed by the R.B.I. Circular –

1. The bench accepted the respondents view on the issue about the jurisdiction over Cryptocurrency and that R.B.I. does have the power to regulate the virtual-currencies. It was accepted that virtual-currencies are valid modes of payment in the exchange of goods and services.⁷
2. The argument of R.B.I. circular was a part of the PSSA was accepted by the Apex court bench, as the R.B.I. does have the power to make policies and issue directions to the Banks regarding the subject of payment obligations.
3. The bench stated that though the R.B.I. has pervasive powers not only because of the statutory scheme but also given the particular place and role that it plays to improve the economy of the country, these powers can be exercised both in the form of pre-emptive as well as restorative measures.⁸

4. The bench stressed that to take such preventive actions; the R.B.I. must first prove that there is some scope of damage suffered by involvement in virtual-currency. The bench submitted that till date the R.B.I. has not been able to prove that any of its regulated bodies have suffered any damage/loss due to the virtual-currency exchanges. In the judgment of *State of Maharashtra v. Indian Hotel and Restaurants Association*,⁹ it was held by the Supreme Court that there must be some observed data regarding the degree of harm suffered by the regulatory bodies, which was perhaps proven in the Case.

5. The Supreme Court concluded that even though the R.B.I. did release the circular in the public interest, it was not able to establish its reasonability and was not able to satisfy the test of proportionality.

ORDER OF THE COURT

The verdict of the Court based on the submissions made by the two parties in the matter of *Internet and Mobile Association of India v. Reserve Bank of India*¹⁰ was in favour of the petitioners.

⁷ Manish Kumar, 'What does the SC verdict mean for cryptocurrency, fintech innovations' (Economics Times, March 5th, 2020) <https://economictimes.indiatimes.com/markets/stocks/news/what-does-the-sc-verdict-mean-for-cryptocurrency-fitech-innovations/articleshow/74473181.cms?From=mdr>

⁸ Hiral Thanawala, 'verdict on cryptocurrencies: What it means for investors' (Money Control, March 25th 2020)

<https://www.moneycontrol.com/news/business/personal-finance/sc-verdict-on-cryptocurrencies-what-it-means-for-investors-5070381.html>

⁹ *State of Maharashtra v. Indian Hotel and Restaurants Association*, Civil Appeal no. 5504 of 2013, arising out of S.L.P. (c) no.14534 of 2006

¹⁰ Asheeta Regidi, 'The cryptocurrency verdict: on the need for interim clarity as the RBI mulls over regulation' (The First Post, March 23rd, 2020) <https://www.firstpost.com/tech/news-analysis/the-cryptocurrency-verdict-on-the-need-for-interim-clarity-as-the-rbi-mulls-over-regulation-8178911.html>



The Court lifted the ban imposed by the circular issued by the R.B.I. over the regulatory entities which were prohibited from using the virtual- currency.

CRITIQUE OF THE JUDGEMENT

The judgement passed by the Supreme Court has been considered a mixed-bag of risk and rewards by many professionals in the field of law and Technology. Crypto-currencies are the new age-assets which have multiple uses other than just being used as a currency. The financial action task force (FATF) has submitted its guidelines, which state that cryptocurrencies do not pose a threat to the global economy if appropriately regulated.

1. A positive step for fairness and justice

The order of the Supreme Court in the Case of *Internet and Mobile Association of India v. Reserve Bank of India*¹¹ showcases the importance of the principle of fairness and equal opportunity. The act of the Court of actively opposing the restriction policy set by the R.B.I. represents the fairness of our quasi-judicial system. It has been critiqued that the circular of the R.B.I. was limiting the whole innovative industry and posing challenges for the set-up of incumbent players under the regulators' active supervisory umbrella, therefore, not providing equal opportunity to exist and grow.

2. Role and Jurisdiction of R.B.I. - This verdict also helped us understand the role and jurisdiction out regulators have. An act of the Parliament led to the creation of the R.B.I. and that gives it the power to form regulations. Thus, these regulations cannot surpass the fundamental rights and freedoms

of the citizens. It is unconstitutional for the regulators to interfere with the fundamental right to trade to close down industries when these industries, do not violate anything fundamental or are not a fraud. The difficulty in understanding this concept has been stifling the fintech innovation industries, and the SC verdict lifts that veil.

3. Traceability challenge – One of the most common challenges that have arisen is regarding the crypto-accounts can be used for illegal purposes. The concern for traceability is real due to there being no know-your-customer (KYC) requirement. This aspect makes it a troublesome process. Due to the lack of knowledge regarding information technology, the users are prone to high risk and might turn them into potential targets for cybercrime.

4. Safeguard of crypto-currencies - Cryptocurrencies have gained acceptability over specific years. However, all the investors and users of these currencies must be handled with care as they are a double-edged sword in today's unpredictable, risk-averse environment. As there is no central regulatory authority which regulates and managed these crypto-currencies, it is challenging to ensure the security to safeguard crypto-assets.

5. Need for setting up a legal framework for regulating crypto-currency – With the increase in the information technology sector, the need to encourage Indian policymakers to work on creating a crypto regulatory framework. Around the globe, many countries have recognised the need and

¹¹ *Internet and Mobile Association of India v. Reserve Bank of India*, Writ petition (civil) no.373 of 2018



importance of crypto-assets and the need to regulate them. For example, South Korea has recently legalised crypto-related technologies. Even South-Asian countries like Japan and Australia have adopted a positive outlook towards crypto-transactions. The introduction of crypto-regulations in India would be of great advantage to the ever-growing information technology sector of the country. It will lead to the more focused growth and development of blockchain-focused start-ups and more tax revenue for the government.

