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INTERNET AND MOBILE ASSOCIATION OF INDIA**V.****RESERVE BANK OF INDIA¹****Sanyam Jain²****INTRODUCTION AND BACKGROUND**

The Supreme Court declared the circular issued by the Reserve Bank of India (RBI) illegal and declared the circular's instructions inapplicable. The circular orders banks not to manage transactions related to the purchase and sale of virtual currencies. The Hon'ble Supreme Court by declaring the RBI guidelines inappropriate ruled the circular to be unenforceable. Justices Rohinton Nriman, Anirudhha Bose and V. Ramasubramanian are the judges of the Supreme Court of India, by which the decision on the petition filed by the Internet and Mobile Association of India (IMAI) was announced.

The ban issued by the Reserve Bank of India has had a negative effect on the Indian economy, as the means (bank accounts) through which virtual currencies are exchanged can no longer be maintained or operations, thus ending business through virtual currency prevailed. The reason the Reserve Bank of India released the circular is that there are concerns about virtual currency piracy. This can lead to many economic problems such as:

- Loss to the economy
- Money laundering
- Can also encourage terrorist activities.³

Regarding the above concerns raised by RBI, a press release was issued by RBI prior to the issuance of the circular, urging banks and institutions to be careful with trading in virtual currencies, furthermore, there were no new risks identified by the bank (RBI) at the time of issuance of the circular.

¹ 2020 SCC Online SC 275.

² The author is a student at Bennet University, Noida.

³ Tamal Nandi, *RBI clears air on cryptocurrency trading, asks banks to perform customer due diligence*, LIVEMINT (31 May 2021, 07:50 PM IST), <https://www.livemint.com/industry/banking/rbi-issues-circular-to-banks-on-customer-due-diligence-for-transactions-in-cryptocurrency-11622470132712.html>.

FACTS OF THE CASE

On April 6, 2020, the Reserve Bank of India issued a Development Policy and Regulatory Circular in which the RBI expressed concerns about protecting customers from virtual currencies also known as cryptocurrencies. The circular issued by the RBI orders entities not to deal with virtual currencies and prohibits them from providing services to other people or organizations with respect to cryptocurrency trading or payment.

In addition, the RBI also orders entities to end their existing relationship with any person or entity that trades virtual currency within three months. The RBI said the purpose of the virtual currency trading ban is to strengthen financial markets, improve money management, promote financial inclusion and universalization, and facilitate the regulation of processing of monetary data. In turn, these measures will prevent money laundering, data hacking and terrorist activities.

A writ petition has been filed by the Internet and Mobile Phone Association of India challenging the adequacy of the circular issued by the RBI. The petitioner argues that the RBI does not have the legislative power to ban cryptocurrency trading and violates a fundamental right of the Indian constitution.⁴

ISSUE BEFORE THE COURT

The core issue before the court was that whether the RBI have the power to ban cryptocurrency trading and does it rely on such a ban to cause misunderstandings.

ARGUMENTS ADVANCED

PETITIONER

Petitioner argues that the RBI does not have the power to ban cryptocurrency trading because virtual currencies are not legal tender but a commodity that is not covered by the Reserve Bank Act of India of 1934 or the Banking Act of 1949.

Further, the petitioner claims that many national and international economies around the world have tested cryptocurrencies and have not found any related issues. According to the lawyer,

⁴ Nakul Dewan and Rohan Andrew Naik, *Let's Trade Crypto: Indian Supreme Court Quashes Prohibition*, UNIVERSITY OF OXFORD (19 March, 2020), <https://www.law.ox.ac.uk/business-law-blog/blog/2020/03/lets-trade-crypto-indian-supreme-court-quashes-prohibition>.

the circular has no legal basis since it introduces a total ban on virtual currencies, in violation of Article 19 (G) (1) of the Indian constitution which regulates trade and business with limited restrictions under reasonable conditions. Therefore, without any legal provision, the order would only violate the basic rights of individuals.⁵

In his second writ, the petitioner stated that in the absence of any appropriate legislation, such legislation would have serious repercussions on the economy and could lead to a black market. He also said that the RBI does not recognize the different types of virtual currency systems and that because virtual currency has no medium of exchange, store of value, unit of account and is final debt, it could not be disclosed. And therefore RBI does not have the power to regulate it.

RESPONDENT

RBI responded to questions raised by the petitioner, claiming that it has the right to regulate virtual currencies under the Reserve Bank of India 1934, the Banking Regulation Act of 1949 and the Payments and Settlement Act, 2007.

They claim it's not just about cryptocurrencies that it does not exist and does not have structural mechanism for dealing with customer disputes, but it can also be used illegally due to anonymity.

They also added that the RBI's unwarranted decision had a legal basis for it. It does not violate any of the fundamental rights guaranteed by Articles 14, 19 and 21 of the Indian Constitution because

- Entities regulated by the RBI do not have absolute rights and;
- There is no outright ban on virtual currencies

JUDGEMENT

After a thorough analysis of all the issues raised, the Supreme Court ruled that the circular issued by the RBI was unenforceable and illegal on a proportional basis. The court also asked

⁵ Shreya Taneja, *Internet And Mobile Association Of India Vs Reserve Bank Of India*, LAWYERSCLUBINDIA (26 May, 2021), <https://www.lawyersclubindia.com/judiciary/internet-and-mobile-association-of-india-vs-reserve-bank-of-india-5218.asp>.

the RBI to order India's central bank not to freeze the accounts and return the amount with interest to the petitioner.⁶

REASONING OF THE COURT

The Court made a thorough analysis of the issues raised by the applicant which are as follows:

I. The first issue raised by the petitioner is that virtual currency is not legal tender but a commodity for which the RBI has no regulatory authority. For this, the court consulted a definition given by

- The regulatory body of another jurisdiction,
- The governmental, statutory and non-executive authorities of the jurisdictions of other countries and
- The courts of different jurisdictions.⁷

Referring to these definitions given by various regulators, governments and courts, the court found that although virtual currency did not achieve legal tender status, it could be used like real money. The court ruled that the RBI could exercise its power regardless of whether something was legal tender or had all four characteristics of real currency.

II. In the case of *Keshavlal khemchand & sons Pvt. Ltd. v. Union of India*⁸, the court ruled that "the Reserve Bank of India is an expert body responsible for overseeing the country's economic system." Therefore, RBI has the right to regulate and limit issues related to virtual currencies and anything that could threaten the economy of the country.

III. The court also found that the shortened circular did not outright ban the use or trade of virtual currencies. The circular is limited to entities regulated by the RBI and directs them not to trade in or provide services to individuals and organizations dealing in virtual currencies.⁹

⁶ *Supra* note 2.

⁷ Shagun Badhwar and Shubham Parkhi, *Supreme Court's judgment on virtual currencies*, AZB & PARTNERS (06 March, 2021), <https://www.azbpartners.com/bank/supreme-courts-judgment-on-virtual-currencies/>.

⁸ (2015) 4 SCC 770.

⁹ Geetanshi Yadav, *Internet and Mobile Association of India v. Reserve Bank of India*, EDUINDEX (1 August, 2021), <https://eduindex.org/2021/08/01/internet-and-mobile-association-of-india-v-reserve-bank-of-india/>.

IV. There was no malice involved in this action as the RBI had been raising the issue for more than 5 years, raising awareness among stakeholders of the threat related to virtual currency.

V. Referring to other stakeholders, the court said that different stakeholders have different functions and have their own treatment for the same settlement. Therefore, it would be wrong to say that the RBI does not take a similar approach. The court also pointed out that since the RBI is not merely a statutory body but a legislative body, it has the power to delegate and do certain things without central government intervention.

VI. Referring to the question of the different types of VCs and whether to ban anonymous cryptocurrencies, the court said it was for the experts to decide. Additionally, since the RBI does not completely ban VCs, the issue of adopting different approaches has been cast aside.

VII. However, in final argument, the court ruled that with respect to adequacy, the RBI could not represent the injuries or losses suffered by its entities. Alternatively, the RBI could have adopted other less damaging alternatives.

CRITICAL ANALYSIS AND OPINION

Modern day scenario –

The technological leap has conquered the commercial sphere with the advent of cryptocurrencies and block chain technology. Another innovation in its formative years, the promise it contains and its ability to globalize deserve to be mentioned. The question most countries are grappling with right now is whether this technology should be included in our business lives. For India, traditional monetary instruments as well as institutions have governed the country's fiscal policies for centuries. With the advent of virtual currencies (VCs), how to seek reconciliation between a well-established central banking system and such technology-driven economies?

A step taken in the right direction -

A step in the right direction has been taken by the Supreme Court of India (Court), in the recent decision of the Internet and Mobile Association of India v. RBI. Technology still very volatile, we have not discussed enough its flaws, which has led to its unfavourable popularity in the currency circuit.

Concerns related to the matter –

The circular has certainly raised a multitude of concerns, in particular on the part of various stakeholders, whose food sources are threatened. The publication of such a general circular may be due to the fact that the RBI was not aware of the novelty of this technology. Virtual Currency promises the dawn of a new era, with the use of cutting-edge technologies, on which investors have relied to enter this sector, which would now be marginalized.

Uncertainty of this realm –

Although the court legalized the cryptocurrency discussion under this ruling, if this is to be allowed to be incorporated into the functioning of the economy, several other key concerns will need to be clarified. . There are still many uncertainties about how cryptocurrencies work such as anonymity, criminal activity, terrorist financing, among others. Additionally, there is strong evidence that many Bitcoin transactions have been used around the world for illegal trading or tax evasion.¹⁰

Certainly, these shortcomings are an integral part of other sovereign currencies as well, but the pressing concern here is the lack of an adequate framework for effective regulation of VCs. It is strange to think that about 2 billion people in the world do not have a bank account, but about 0% of the population has access to the Internet, and that number is increasing. Therefore, it is necessary to look at the different ways in which VCs can be handled and the only way to do this is to ensure that the legislation is in force and a step-by-step understanding of the different impacts on the economy of them are currently absent.

Progressive decision of the court -

The court ruling launched a fruitful discussion of issues that had never been considered before, and while this is indeed laudable, we must look to the future and anticipate potential risks to the economy. With that in mind, VCs promise a more viable future, especially in an age when people are connected through technology in ways that were previously unimaginable. What we need to do is find the balance and not prevent start-ups from embracing this technology and if this is ignored India might be limited in exploring the opportunities that money has to offer. Instead of avoiding addressing

¹⁰ Prashanth Perumal, *Future of cryptocurrency in India continues to hang in the balance*, THEHINDU (2 June, 2021), <https://www.thehindu.com/business/future-of-cryptocurrency-in-india-continues-to-hang-in-the-balance/article34704676.ece>.

these concerns, we need to be proactive and have a structured policy to address any potential future concerns.

CONCLUSION

The applicant was successful and the court decided the case in his favour. The guidelines issued by the RBI were declared illegal and therefore unenforceable. In light of this, companies can re-enter the industry and thus be able to transact in cryptocurrencies. The court overturned the circular issued by the RBI but did not declare that virtual currencies were legal or illegal, and since there is no law relating to them, virtual currencies remain under control in India. Bill titled Banning of Cryptocurrency and regulation of official Digital currency bill, 2019 was drafted regarding the legal status of virtual currency in India, but the same was not presented to parliament or discussed by members.