

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

[MANU/SC/0264/2020]

In a noteworthy judgement dated 4th March 2020, the Supreme Court of India in Internet and Mobile Association of India v. Reserve Bank of India, quashed a Reserve Bank of India (RBI) circular that imposed a ban on virtual currency (VC) also known as crypto currencies trading in India. The basis for the Court's judgement was that the restrictions imposed by the circular were disproportionate to the concerns raised by the RBI and therefore unsustainable. The court was of the view that the restrictions imposed by the RBI on banks and other entities in regard to the trading of virtual currency is unfair and therefore declared the restrictions to be not feasible. The judgement was given by a bench of three judges including, Justice R. F. Nariman, Justice Aniruddha Bose and Justice V. Ramasubramanian.

1.1 Facts

- Reserve Bank of India (RBI) issued a circular dated 6th April, 2018. The circular prohibits the bank and other entities from trading in virtual currencies. Moreover, the circular puts a bar on banks to provide any kind of services to any individual or entity dealing or setting virtual currencies. The prohibition issued by the Reserve Bank of India had a negative effect on the Indian economy as because the mediums, through which virtual currencies were traded could no longer be maintained or operated therefore and end to the business through virtual currencies do prevailed.
- In reference of the same, at the time of issuance of the circular by Reserve Bank of India there was no legislation passed imposing a ban on the trade of virtual currencies. In other word the virtual currency separated from the assets of the economy. The reason why RBI issued the circular was the concern which related to the hacking of virtual currencies, which could lead to numerous problems in the economy such as, loss to the economy, money laundering and promoting terrorist activities.
- In reference to the above concern of RBI, a press release was done by RBI before issuing the circular, asking the banks and the entities to beware from the trade of virtual currencies.

- On 5th April, 2018 Reserve Bank of India issued a press release raising the concerns about the consumer protection from trade of virtual currencies. They were of the view that trading in virtual currency also referred as crypto currency are prone to hacking and therefore would lead to money laundering, terrorist activities, etc. In this view RBI asked the banks to not to deal with the transactions related to the trading of virtual currency.
- The services which RBI directed the bank not to deal with were- maintaining the accounts, registering, trading, settling, clearing, giving loans against virtual currencies, accepting virtual currency as collateral, opening accounts of exchanges dealing with them and transfer or sale/ purchase of virtual currencies.
- At the time the circular was issued, the RBI did not highlight any new risk. Reserve Bank of India then issued its ban on the banks dealing with crypto business back in April 2018, which took effect in July of that year.
- The RBI notification was then challenged before the Supreme Court of India by the Internet and Mobile Association of India (IAMAI). Pertinently, at the time the circular was issued, there was no legislative ban on the use and trading of virtual currencies in India, and by the RBI's proscription. Virtual currencies were ring-fenced from the formal economy.

1.2 Issues

- Does RBI have the power to regulate the trading of virtual currencies since such currency was only a tradable commodity and not legal tender?
- Is it necessary to issue directions based on the expression “public interest” appearing in a particular provision in a statute should take its colour from the context of the statute?
- Can a decision to prohibit an article under Res Extra Commercio, is a matter to be decided by legislation and not to be by an executive authority?
- Has the circular disproportionately infringed the petitioner's rights?

1.3 Rule

- In the present case of Internet and Mobile Association of India v. Reserve Bank of India, the court cited the case of State of Maharashtra v. Indian Hotel and Restaurant Association [MANU/SC/0045/2019]. In this case the court was of the view that at least some degree of damage suffered by the petitioner in order to pronounce the judgement in their favour.

➤ Doctrine of Proportionality

- Whether the objective of the measure is sufficiently important to justify the limitation of a protected right.
- Whether the measure is rationally connected to the objective.
- Whether the less intrusive measure could have been used without unacceptably compromising the achievement of the objective.
- Whether balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter.

1.4 Application

- Relying on authorities including judgements of the courts in the USA, UK, and Singapore, it was asserted that there were four cumulative hallmarks of money – a store of value, a unit of account, a widely accepted medium of exchange and serving as a final discharge of debt. While the first three insignia were characteristics of money in the social sense. The fourth trait was characteristic of legal tender. While virtual currencies did have the first two characteristics, not being widely acceptable, they were not capable of being classified as money in the social sense. Virtual currencies were also not recognised as a final discharge of debt, and therefore not legal tender.
- The Court in determining these contentions and cognisant of the danger of virtual currencies falling into a regulatory vacuum, noted that the role of the Reserve Bank of India was to regulate the country's monetary system. The Court acknowledged that virtual currencies 'belong to different categories ranging from property to commodity to non-traditional currency to payment instrument to money to fund', but qualified its finding by stating that it did not reflect the position of law in its entirety. While not equating virtual currencies to legal tender or fiat money, the Court was hesitant to accept the contention that virtual currencies 'can never be regarded as real money'. The Court concluded that even if something was not equivalent to currency but functioned as money 'under certain circumstances', the RBI had the power to deal with it in pursuance of its role as the apex regulator of the country's financial system.
- Having held that virtual currencies were amenable to regulation by the Reserve Bank of India, the Court proceeded to examine whether the RBI's circular satisfied the test of proportionality.

- It was argued that the petitioners' fundamental right to trade, as recognised by the Constitution, was affected since the circular had the effect of putting multiple virtual currency exchanges out of business. While the petitioners accepted that the right to trade could be subjected to reasonable restrictions, the restrictions had to be a measure which was proportionate to the concerns. It was highlighted that the doctrine of proportionality required that if alternative and less intrusive measures existed, those should have been adopted.
- The Court accepted the submission and held that the circular was disproportionate because none of the Reserve Bank of India's regulated entities had suffered any loss or adverse effect directly or indirectly, on account of the interface that the virtual currency exchanges had with any of them. Furthermore, by relying on the regulatory approaches in other jurisdictions, the Court held that there were alternative regulatory means through which the Reserve Bank of India could have achieved its stated objectives. The thrust of the Court's conclusion in this regard was that regulation would be a more proportionate response than prohibition
- The Court accepted that the right to trade could be subjected to reasonable restrictions, the restrictions had to be a measure which was proportionate to the concerns. It was highlighted that the doctrine of proportionality required that if alternative and less intrusive measures existed, those should have been adopted.
- The Supreme Court referred to the Report of the European Union Parliament titled 'Cryptocurrencies and Blockchain' of July 2018. The ultimate recommendation made by the EU parliament is not to go for a total ban as there are less harsh alternatives to regulate the system.
- The court held that the circular was disproportionate because none of the Reserve Bank of India's regulated entities had 'suffered any loss or adverse effect directly or indirectly, on account of the interface that the virtual currency exchanges had with any of them'. The thrust of the courts conclusion in this regard was that regulation would be a more proportionate response than prohibition.

1.5 Analysis

- The judgement of the Supreme Court is a respite for the virtual currencies/cryptocurrency industry, which was indirectly impacted by the prohibition imposed by the Reserve Bank of India on its regulated entities.

- The Supreme Court has not adjudicated on the legality of virtual currencies/ cryptocurrency industry, which remain unregulated under India Law.
- The virtual currency industry still faces hurdles as government panel has recently submitted a draft bill, “Banning of Cryptocurrency and Regulation of Digital Currency Bill, 2019.
- This bill is currently under the consideration, if the said bill is passed, it is likely to reinforce the stance taken by the government regarding the legality of virtual currencies / cryptocurrencies in India.

1.6 Conclusion

- Supreme Court held that the Reserve Bank of India has the requisite power to regulate or prohibit any activity of this nature.
- The Reserve Bank of India Circular is primarily addressed to banks who are “system participants” regulated by the Reserve Bank of India under the Payment and Settlement System Act.
- The Supreme Court accepted the contentions of the Reserve Bank of India with regard to the application of mind as the Reserve Bank of India has taken a series of steps over a tenure of 5 years.
- In relation to the alleged violations of Fundamental Rights, the Supreme Court held that any restriction to the freedom guaranteed in article 19(1)(g) of the Constitution of India should pass the test of reasonableness.
- Accordingly, Supreme Court held that the Reserve Bank of India circular is not reasonable or proportionate as, in last five years or more, the Reserve Bank of India has not found any adverse impact of the activities of virtual currency exchanges on the way the regulated entities function and the Reserve Bank of India has taken the stand that it has not banned virtual currencies in the country.
- Therefore, the Reserve Bank of India circular is liable to be set aside on the grounds of proportionality.
- The Court was of the view that although Reserve Bank of India has wide powers and plays an important role in the upliftment of Indian economy, but here they are unable to show any sought of damages suffered by its regulated entities. Therefore, the guidelines issued by the Reserve Bank of India, directing the banks to stop dealing or providing services to the entities trading in virtual currencies are illegal hence unenforceable.
- The Court’s judgement is relevant in ascertaining the role of judicial review in relation to economic policy decisions. Without expanding the

scope of its jurisdiction, the Court has, on a finding of fact, taken a view where it requires statutory authorities to not make policy decisions without objectively reliable empirical data.