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REGULATION OF CRYPTOCURRENCY IN INDIA

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ABSTRACT

This article tries to analyze the developing regulatory environment for cryptocurrency, considering the conflict between technological advancements and ensuring consumer protection. With the Reserve Bank of India's (hereon RBI) restrictions in 2018 and subsequent Supreme Court intervention in *Internet and Mobile Association of India v. Reserve Bank of India (2020)*¹, this article navigates a path of oscillating regulatory stance of India towards digital assets. It analyzes existing frameworks, such as recent taxation policies and regulations, yet emphasizes on the dual imperatives of encouraging blockchain innovation and safeguarding the investors against potential fraud, volatility and illegal actions. It also studies regulatory frameworks in foreign states like European Union, United States and China and suggested a nuanced and prudent framework for Indian governance of proportionality, neutrality of technological advancements and consumer autonomy and empowerment. The article contends that effective regulation of cryptocurrency needs prudent and properly analyzed approaches and methodology including licensing rules, transparency obligations, anti- money laundering regulations and investor protection approaches that allow legitimate and rational innovation while keeping in mind systemic risks and consumer safety.

INTRODUCTION

The emergence of blockchain technology and cryptocurrency has profoundly called into question the conventional ideas of financial systems, intermediaries and regulatory authorities. India has seen significant rise in its trading and investment sector especially regarding cryptocurrency that is further channelized by innovation in technology, greater financial inclusion and growing new economic models. India is one of the globe's fastest and largest

¹ *Internet and Mobile Ass'n of India v. Reserve Bank of India*, MANU/SC/0264/2020 (India).

growing digital economies that stands at a pivotal stage in deciding the regulatory actions towards the possibly disruptive technology. The regulatory strategy to cater cryptocurrency in India has been stuck between the blanket prohibitions and acceptance with certain cautions and conditions, highlighting the need for balance between promoting technological advancements and growth along with ensuring protection of consumer interests and to craft an effective and efficient model that promotes growth in crypto-bitcoin space but at the same time safeguards interests of the investors and ethics of financial system against possible risks or leakages

EVOLUTION OF CRYPTOCURRENCY IN INDIA

The relationship between cryptocurrency and its regulatory framework in India has been characterized by the uncertainty in regulations since its emergence. RBI made its first advisory notification about the virtual currencies in 2013 that cautioned the users, shareholders, traders and other stakeholders of these virtual currencies against the possible financial risks along with other legal, operational and security related threats.² This caution established a tone for following years of administrative skepticism. Another notification came in 2018 that marked as a prominent regulatory action taken when RBI released a circular that had essentially forbidden the regulated financial institutions from offering services to companies or firms or individuals involved or dealing in virtual currencies.³ The notice imposed a de-facto ban on trading of cryptocurrency in India by removing the banking sector that was essential to carry out such transactional activities and imposed that the central bank regulated entities must not engage in or offer services to any firm or person or any entity dealing with virtual currencies and called for existing entities to be dissolved within a period of three months. This circular was later challenged in the case of *Internet and Mobile Association of India v. Reserve Bank of India*⁴, wherein the petitioners before the Supreme Court argued that it is violative of Article 19(1)(g)⁵ of the Indian Constitution under which it guarantees the right to practice any profession, occupation, trade or business. They submitted that this ban was manifestly arbitrary, unjust and unreasonable. The Court in its response struck down this circular, upholding it as unconstitutional and disproportionate in its nature.⁶ The Apex Court used the

² Reserve Bank of India, Press Release: RBI Cautions Users of Virtual Currencies Against Risks (Dec. 24, 2013), <https://www.rbi.org.in/commonperson/English/Scripts/PressReleases.aspx?Id=2522> (last visited Oct. 2, 2025).

³ Reserve Bank of India, Notification: Prohibition on dealing in Virtual Currencies (VCs) (Apr. 6, 2018), <https://www.rbi.org.in/commonman/english/scripts/Notification.aspx?Id=2632> (last visited Oct. 2, 2025).

⁴ *Internet and Mobile Ass'n of India*, *supra* note 1

⁵ India Const. art.19. cl. 1(g).

⁶ *Internet and Mobile Ass'n of India*, *supra* note 1 at 355-60

doctrine or proportionality and reached a rational that RBI had failed to act up that the notification was a proportionate measure for redressing the problems related to flow and trading of virtual currencies. Justice Nariman observed that there was no proof of any negative impact on RBI- regulated entities and hence the blanket ban on the transactions was not reasonable.⁷ After this landmark decision the Indian Government has consistently signaled to enact a full-fledged legislation to govern transactions and trading of cryptocurrency. A draft bill titled as “The Cryptocurrency and Regulation of Official Digital Currency Bill, 2021” was apparently prepared with recommendation to ban all the private cryptocurrencies in India as a proper legal tender while establishing a proper legislation for a central bank issued official legal tender in terms of digital currency. Although there is no official assent from the Parliament yet on this bill but its existence is indicative of government’s stance towards cautious use and trade of private cryptocurrencies. Without any legislation there exists an absence of comprehensive regulatory framework and to bridge the gap the Government of India has taken essential steps to include cryptocurrency within the ambit of tax net. The Finance Act of 2022 brought Section 115BBH, Income Tax Act, 1961 that placed a bracket of 30 percent tax on virtual assets’ transfer income, without any extra deductions apart from the acquisition costs.⁸ A one percent TDS (tax deduction at source) on the payments with respect to digital asset transfers were also made compulsory. These provisions are a pragmatic approach to lay down a regulatory structure without giving a legal tender status to these virtual currencies, it recognizes their existence and economic status by imposing taxes on them, this creates a contradictory scenario in which these transactions are taxed but does not have explicit recognition legally, leaving the market stakeholders in a stand of uncertainty.

THE DEVELOPMENT-PROTECTION DILEMMA

Cryptocurrency and blockchain technology have several advantages that can propel advancements in country’s financial system as blockchain technology brings about transparency and decentralization which can reduce transactions cost and make them more efficient and increase financial inclusion.⁹ In a country like India, where large part of the population is underbanked, cryptocurrency can act as a potential alternative to access advanced financial services. In addition to it, over regulation or over emphasis on strict regulations or

⁷ id. at 340-45.

⁸ Finance Act, 2022, No. 6, Acts of Parliament, 2022, § 47 (India) (inserting § 115BBH into the Income Tax Act, 1961).

⁹ Usha Rodrigues, *Law and the Blockchain*, 104 Iowa L. Rev. 695-705 (2019).

even strict prohibition may discourage emergence of new and innovative models and further cause cryptocurrency- related transactions and professionals to move to cooperative jurisdictions. India has emerged as a critical player in the International blockchain market and cryptocurrency landscape, with considerable investment, businesses and technical growth important in this industry.

With pros there are cons too, similarly cryptocurrency has benefits but it comes with risks that warrant regulatory action to safeguard interests of the consumers. Price fluctuations in cryptocurrency puts investors with low or almost no sophisticated knowledge of these tools. The anonymous character of cryptocurrency dealings is irreversible and implies that fraud or theft victims have very few options to retrieve their losses.¹⁰ Moreover, the absence of investor protection apparatus, such as deposit insurance or investor compensation schemes available for traditional financial outcomes exposes cryptocurrency stakeholders to platform collapse, leakages and fraudulent practices.

The United States has adopted a multi- agency mechanism for regulation of cryptocurrencies, with various dimensions covered under the ambit of each regulatory authority. The Securities and Exchange Commission (SEC)¹¹ supervises cryptocurrencies that clear the ‘Howey test’ as securities while the Commodity Futures Trading Commission¹² is another body that supervises cryptocurrency derivatives. This methodology has generated regulatory complexity but still steered clear of full prohibition, restrictions along with permitting advancements and innovations to take place while addressing to trying to address consumer protection issues through a prudent and focused regulation.

The European Union adopts a more middle-pathed or harmonized approach with Markets in Crypto Assets Regulation also known as MiCA that was introduced in 2023, established as a broad regulatory framework for digital or crypto-assets and imposes governance, authorization, responsibility, transparency and requirements for safeguarding consumer interests.¹³ In contrast to this approach, China has adopted a blanket ban apparatus that outlaws trading of cryptocurrency and mining operations relating to it. This is because China knows the

¹⁰ Financial Action Task Force, *Updated Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers* 5-12 (2021).

¹¹ U.S. Securities and Exchange Commission (SEC)

¹² U.S. Commodity Futures Trading Commission (CFTC).

¹³ Veerle Conings & Hatice Kubra Bicakci, *The Regulation of Crypto-Assets in the EU – Investment and Payment Tokens under the Radar*, 13 Eur. Company & Fin. L. Rev. 449, 452-60 (2022).

importance of capital controls, monetary sovereignty and financial feasibility and stability more than the advantages of cryptocurrency developments. The Chinese approach has largely curtailed domestic cryptocurrency transactions as the center matures its own central bank digital currency or CBDC. This highlights the possibility of brute prohibition in case of nations with high state capacity and capital control along with possible price in context of missed advancements and entrepreneurship in an evolving and developing technology industry.

SECURING DIGITAL FUTURE IN INDIA: ADVANCEMENTS WITH RIGHTS

To be rational in its nexus India's cryptocurrency regulatory policy needs it to be based on core principles that aim and work to balance these digital asset advancements with safeguarding consumer rights and interests. The principle of proportionality requires that a regulatory action can commensurate with the actual threats or risks posed by various crypto-transactions, acknowledging the fact that these assets encompass a range of threat profiles rather than forming a homogenous hazard.¹⁴This risk-based framework is harmonious with contemporary regulations and thinking that has posited that, overly sweeping prohibitions that might push advancements underground as well as fail to resolve genuine issues.¹⁵In lieu of paternalistic restrictions, the country should opt an apparatus for consumer empowerment via stronger exposure and transparency requirements, obligations and extensive education schemes for investors that facilitate choice through information.¹⁶ The fast evolving and changing nature of blockchain mechanism requires regulatory adaptability via principle based mechanisms that are capable of adapting to technological advancements unescorted by a need for constant legislative reformulation, a framework adopted successfully in countries such as Switzerland and Singapore.¹⁷A broad licensing based regulations for cryptocurrency exchanges and custodians to ensure the interest of the stakeholders stand protected and there exists sufficient financial health, safe cyber-space and corporate governance benchmarks are allowed to function¹⁸To cater issues relating to money laundering and counter terrorist financing and

¹⁴ Chris Brummer & Yesha Yadav, *Fintech and the Innovation Trilemma*, 107 Geo. L.J. 235, 258-62 (2019)

¹⁵ Lawrence J. Trautman, *Virtual Currencies: Bitcoin & What Now After Liberty Reserve, Silk Road, and Mt. Gox?*, 20 Rich. J.L. & Tech. 13, 67-70 (2014).

¹⁶ Iris H-Y Chiu, *A Rational Regulatory Strategy for Governing Financial Innovation*, 8 Eur. J. Risk Reg. 743, 755-58 (2017).

¹⁷ Douglas W. Arner, Janos Barberis & Ross P. Buckley, *FinTech, RegTech, and the Reconceptualization of Financial Regulation*, 37 Nw. J. Int'l L. & Bus. 371, 399-403 (2017).

¹⁸ Hossein Nabilou, *Testing the Waters of the Rubicon: The European Central Bank and Central Bank Digital Currencies*, 13 J. Banking Reg. 299, 315-17 (2019).

ensuring protection it should mandate the setting up of specialized grievance redressal centers include dispute resolution authorities and investor safeguarding schemes offering solutions in cases of fraud, software issues, platform or server crash and other operational disputes.¹⁹

CONCLUSION

The question of regulatory framework regarding blockchain technology and cryptocurrency in India present a complex act of balancing technological innovation and growth model along with safeguarding consumers and their rights. The present contemporary landscape highlights uncertainty as these digital assets though lack status of a legal tender but are still taxed. The dilemma to look out for consumer interests but at the same time promote advancing growth models as these innovations on one hand offer financial growth, inclusion, efficiency pros and transparency promises yet on other hand are prone to frauds, leakages, hacking, price fluctuations and irreversible nature of these transactions jeopardizing investor interests and funds. Comparative approaches also show variations globally in nations like U.S, EU and China as one follows multi- agency model or comprehensive and harmonized apparatus while the other focuses or imposes outright ban highlights focus on capital control and monetary sovereignty. India calls for a regulatory model that is structured on proportionality ethics keeping in mind threats and heterogenous characteristics of these digital assets and limit overboard restrictions and promote awareness, protection and consumer education. A balanced regulatory structure can ensure an innovative yet secure cyberspace with an enhanced and inclusive digitalized financial prospect.

¹⁹ Aurelio Gurrea-Martínez & Nydia Remolina, *The Law and Finance of Initial Coin Offerings*, in Research Handbook on Law and Economics in the European Union 105, 125-28 (Klaus Mathis & Avishalom Tor eds., 2021).

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