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CENTRAL BANK DIGITAL CURRENCY (CBDC) AND CONSTITUTIONAL RIGHTS: PRIVACY, SURVEILLANCE, AND FINANCIAL FREEDOM

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ABSTRACT

This paper explores how India's proposed Central Bank Digital Currency (CBDC), known as the Digital Rupee, could reshape the country's financial and constitutional landscape. Introduced as part of the Reserve Bank of India's drive toward a more inclusive and efficient economy, the CBDC also raises serious questions about privacy, individual freedom, and equality. Unlike cash, digital money leaves behind a trace, giving rise to fears of state surveillance and loss of financial autonomy. Using constitutional principles from landmark judgments such as Justice K.S. Puttaswamy v. Union of India, the paper analyses whether the Digital Rupee can coexist with the rights guaranteed under Articles 14, 19, and 21 of the Constitution. Drawing comparisons with China's surveillance-prone digital yuan, the European Union's privacy-focused digital euro, and the United States' cautious legislative approach, the study argues for a rights-based model for India. It recommends clear legal safeguards, limited data access, options for anonymous low-value transactions, and parliamentary oversight to ensure democratic accountability. The paper concludes that the success of the Digital Rupee will depend not only on technological innovation but also on how well it upholds the constitutional values of privacy, dignity, and liberty.

KEYWORDS

Central Bank Digital Currency (CBDC); Digital Rupee; Privacy Rights; Financial Surveillance; Constitutional Law; Democratic Oversight.

INTRODUCTION

In 2022, China's introduction of the digital yuan (e-CNY) placed the world on notice about the transformative potential of Central Bank Digital Currency (CBDC)¹. While celebrated as a technological breakthrough, the Chinese model has drawn criticism for facilitating unparalleled governmental oversight of citizens' financial transactions, sparking global concerns about financial autonomy in the digital age. In this scenario, India's initiative to introduce a CBDC—the Digital Rupee, represents a pivotal moment.

The Reserve Bank of India (RBI), through pilot programs for both wholesale and retail CBDCs, has positioned the Digital Rupee as a tool for financial inclusion, payment efficiency, and reduction of systemic risks². Yet, behind these promises lies the pressing question: can CBDC coexist with the constitutional guarantees of privacy, equality, and liberty? Unlike cryptocurrency, which is decentralized and privately managed, CBDC is state-issued, making its design and regulatory oversight a matter of constitutional concern.

This article argues that while CBDC represents an opportunity for economic modernization, its unchecked implementation may lead to a surveillance-oriented financial system incompatible with the principles enshrined in the Indian Constitution. Using the Supreme Court's jurisprudence on privacy and proportionality as its analytical lens, and drawing on comparative analysis from China, the European Union, and the United States, the article proposes a rights-based framework for India's CBDC adoption.

RESEARCH OBJECTIVES

The objectives of this study are as follows:

1. To examine the concept and functioning of Central Bank Digital Currency (CBDC) in the Indian context.
2. To analyse the constitutional implications of CBDC with reference to Articles 14, 19, and 21 of the Constitution of India.
3. To assess whether the design and implementation of CBDC pose risks to privacy, autonomy, and financial freedom.
4. To study comparative international approaches toward digital currencies and extract relevant lessons for India.

¹ Michael Forsythe & Chang Che, China Launches Digital Yuan Pilot Program, S. CHINA MORNING POST (Nov. 8, 2022), <https://www.scmp.com/economy/china-economy/article/3326928/will-chinas-digital-yuan-centre-be-step-forward-internationalisation>

² Reserve Bank of India, Digital Rupee (₹) – FAQs, <https://www.rbi.org.in/commonperson/english/Scripts/FAQs.aspx?Id=3686> (last visited Sept. 26, 2025).

5. To suggest safeguards and legal measures to ensure that CBDC operates within constitutional limits.

LITERATURE REVIEW

Existing academic discussions on Central Bank Digital Currency (CBDC) largely focus on its technological structure and economic potential. Policy documents issued by the Reserve Bank of India highlight the role of CBDC in improving payment efficiency and expanding financial access. However, scholars have increasingly expressed concerns regarding its implications for privacy and state surveillance. Research on China's Digital Yuan points to the possibility of heightened governmental oversight of individual financial activity, while European studies emphasise embedding privacy safeguards within digital currency frameworks. In the Indian context, scholarly engagement remains limited and largely descriptive, with insufficient attention to constitutional concerns such as privacy, proportionality, and economic freedom. This study addresses this gap by examining CBDC through a constitutional and rights-based perspective.

RESEARCH METHODOLOGY

This study adopts a doctrinal research methodology grounded in legal analysis and constitutional interpretation. The research relies primarily on secondary sources, including constitutional provisions, judicial decisions of the Supreme Court of India, policy documents issued by the Reserve Bank of India, and scholarly articles on digital currency and privacy law. A comparative approach is employed to examine how different jurisdictions particularly China, the European Union, and the United States have addressed the legal and constitutional challenges posed by central bank digital currencies. This comparative perspective assists in identifying best practices and potential safeguards relevant to the Indian legal framework. The research is qualitative in nature and focuses on normative legal analysis rather than empirical or statistical evaluation. By examining constitutional principles such as privacy, proportionality, and equality, the study seeks to assess whether India's evolving CBDC framework aligns with the fundamental values enshrined in the Constitution.

UNDERSTANDING WHAT IS CENTRAL BANK DIGITAL CURRENCY (CBDC)?

In recent years, India has witnessed an unprecedented shift from cash to digital modes of payment. The Unified Payments Interface (UPI), launched in 2016, has become the backbone of this transformation. In fiscal year 2023–24 alone, UPI processed more than 117

billion transactions worth ₹182 trillion, reflecting nearly 60% year-on-year growth.³ This explosion in digital payments indicates a societal transition toward cashless transactions. As physical cash use declines, the need for a sovereign-backed digital alternative has gained urgency, leading to the introduction of Central Bank Digital Currency (CBDC), often described as “e-cash.

CBDC refers to a digital form of legal tender issued by the Reserve Bank of India (RBI). Unlike cryptocurrencies such as Bitcoin or Ethereum, which are privately managed and volatile, CBDCs are state-backed and function as fiat currency. According to the RBI, CBDC is “legal tender issued in digital form, the same as sovereign currency, and exchangeable one-to-one with existing currency.”⁴ This makes CBDC distinct from both cryptocurrency and existing payment platforms such as UPI: while UPI is merely a mechanism for transferring money held in bank accounts, CBDC is the money itself in digital form.

The RBI’s Concept Note on CBDC (2022) outlines two broad categories of CBDCs:

1. The Wholesale Central Bank Digital Currency (e₹-W) is designed for use by banks and other financial institutions rather than the general public. Its primary function is to make large-value transactions and interbank settlements faster, safer, and more reliable. By incorporating features such as programmability and smart contracts, the wholesale model strengthens the overall infrastructure of the financial system and helps reduce settlement risks.
2. In contrast, the Retail Central Bank Digital Currency (e₹-R) is meant for everyday use by individuals and businesses. It seeks to promote financial inclusion and convenience, functioning like physical cash in digital form for daily payments and transactions.

Further, CBDCs can be designed in two models:

- **Account-based:** requiring users to hold accounts with the central bank, with transactions verified against identity.
- **Token-based:** functioning more like cash, transferable peer-to-peer without identity verification for small amounts, thereby preserving a degree of anonymity.⁵

India launched its first CBDC pilots in late 2022. The wholesale pilot, initiated in November 2022, focused on settlement of government securities. Shortly after, in December 2022, the

³ Nat’l Payments Corp. of India, UPI Product Statistics 2023–24, <https://www.npci.org.in/what-we-do/upi/product-statistics> (last visited Sept. 20, 2025).

⁴ Reserve Bank of India, *Concept Note on Central Bank Digital Currency* 6 (Oct. 2022), <https://rbidocs.rbi.org.in> (last visited Sept. 29, 2025).

⁵ Bank for Int’l Settlements, *Central Bank Digital Currencies: Opportunities and Risks* 12 (2021), <https://www.bis.org> (last visited Sept. 28, 2025).

retail pilot was introduced in select cities, involving major commercial banks such as the State Bank of India, ICICI Bank, HDFC Bank, and Paytm Payments Bank. In this pilot, individuals and merchants were able to transact using digital wallets provided by participating banks, replicating the functionality of physical cash in electronic form.⁶

India's e-rupee is now the second-largest CBDC pilot. Digital rupee in circulation rose to ₹10.16 billion (\$122 million) by March 2025, up 334% from ₹2.34 billion (\$28 million) in 2024. In 2025, the Reserve Bank of India is expanding both retail and wholesale CBDCs with new use cases, offline functionality, and broader participation.⁷

The spectrum of reasons for India's central bank digital currency (CBDC) program are various. First, CBDC aims to provide the public with a digital payment system that is risk-free, notably due to the fast adoption of cryptocurrencies, and private e-wallets. Second, it aims to increase the efficiency of cross-border remittances, especially for India, given its large diaspora. Third, it is expected to save costs in printing, distributing and securing physical currency. Finally, the CBDC takes forward the wider Digital India vision to enhance financial inclusion, especially for rural areas that have less banking availability.

CONSTITUTIONAL CONCERNS: VALIDITY OF CBDC UNDER FUNDAMENTAL RIGHTS

The constitutional validity of Central Bank Digital Currency (CBDC) can no longer only focus on policy and economic efficiency. Rather, the design of it presents challenges with respect to fundamental rights under Articles 14, 19, and 21. While the Reserve Bank of India (RBI) contends that CBDC is supposed to facilitate their aims of efficiency and inclusion, it nonetheless risks jeopardizing this position and creating excessive surveillance, diminished financial autonomy, and more pronounced digital exclusion.

1. RIGHT TO PRIVACY UNDER ARTICLE 21

The landmark decision in *Justice K.S. Puttaswamy v. Union of India* recognized privacy as intrinsic to life and liberty.⁸ The Court emphasized informational self-determination, or control over personal data, as a core constitutional value. CBDC, unlike cash, inherently leaves

⁶ Press Release, Reserve Bank of India, *RBI Launches First Pilot for Retail Digital Rupee* (Dec. 1, 2022), <https://rbi.org.in> (last visited Sept. 20, 2025).

⁷ Atlantic Council, *Central Bank Digital Currency Tracker*, <https://www.atlanticcouncil.org/cbdctracker/> (last visited Sept. 20, 2025).

⁸ *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (India).

a digital trail. If designed without anonymity thresholds, every transaction could be visible to the State, creating a “financial surveillance state.”

This concern mirrors the Aadhaar debate, where fears of profiling and data centralization dominated.⁹ Other jurisdictions offer lessons: China’s e-CNY has been criticized for enabling granular state surveillance, while the European Union’s Digital Euro proposal incorporates “privacy-by-design,” including anonymity for small-value payments.¹⁰ Unless India embeds similar safeguards, CBDC risks violating the right to privacy under Article 21.

2. FINANCIAL AUTONOMY AS LIBERTY AND DIGNITY

Article 21 extends beyond bodily integrity to include autonomy in personal choices. In Puttaswamy Case, the Court stressed that dignity requires the freedom to make decisions without undue interference.¹¹ Financial autonomy, the freedom to spend and transact is central to this vision. If every financial action is monitored, individuals may self-censor their economic behavior, producing a chilling effect on liberty. Scholars argue that financial autonomy is part of human dignity itself.¹² To preserve this, CBDC must replicate the qualities of cash by ensuring small-value anonymous or offline transactions. Without such features, the system could erode liberty in everyday life.

3. PROPORTIONALITY AND CONSTITUTIONAL LIMITS

Any restriction on fundamental rights arising from CBDC must pass the proportionality test. As laid down in *Modern Dental College v. State of M.P.*, restrictions must

- (i) pursue a legitimate aim,
- (ii) be suitable,
- (iii) be necessary, and
- (iv) maintain balance between State interest and rights.¹³

CBDC serves legitimate aims such as efficiency, transparency, and anti-money laundering. It may be suitable in achieving these goals. However, universal surveillance is not necessary: less restrictive alternatives exist, such as threshold-based anonymity. Balance also requires ensuring liberty is not sacrificed entirely for efficiency. In *Internet & Mobile Association of India v. RBI*,

⁹ Usha Ramanathan, *Aadhaar and the Right to Privacy*, 59 *Econ. & Pol. Wkly.* 54 (2018).

¹⁰ European Commission, *Proposal for a Regulation on the Establishment of the Digital Euro*, COM (2023) 369 final.

¹¹ *Idib* (2017) 10 SCC at 310.

¹² Gautam Bhatia, *The Transformative Constitution* 152 (HarperCollins 2019).

¹³ *Modern Dental Coll. & Research Ctr. v. State of M.P.*, (2016) 7 SCC 353 (India).

the Court struck down the RBI's cryptocurrency ban as disproportionate to its stated goals.¹⁴ Similarly, an overbroad CBDC framework would risk invalidation.

4. EQUALITY AND DIGITAL EXCLUSION

Article 14 of the Constitution guarantees equality before the law and prohibits arbitrary state action. Any state policy, including the introduction of a Central Bank Digital Currency (CBDC), must therefore satisfy the test of reasonable classification and non-arbitrariness. A CBDC system that is accessible primarily through smartphones, internet connectivity, or digital literacy risks excluding large sections of society, particularly the elderly, rural populations, daily wage earners, and economically disadvantaged groups. Such exclusion may amount to indirect discrimination, even if the policy appears facially neutral.

The Supreme Court has consistently held that classifications must be based on intelligible differentia and must bear a rational nexus to the objective sought to be achieved.¹⁵ If the implementation of CBDC disproportionately burdens those lacking digital access, it may fail this constitutional test. Furthermore, in *E.P. Royappa v. State of Tamil Nadu*, the Court clarified that arbitrariness itself is antithetical to equality.¹⁶ Therefore, unless adequate safeguards such as offline functionality and inclusive access mechanisms are incorporated, CBDC implementation may violate the guarantee of equality under Article 14.

5. FREEDOM OF TRADE UNDER ARTICLE 19(1)(G)

Article 19(1)(g) of the Constitution guarantees citizens the freedom to practise any profession or carry on any occupation, trade, or business. A large segment of India's informal economy, comprising small traders, street vendors, and daily wage earners who continues to rely heavily on cash transactions. A rapid or mandatory transition to Central Bank Digital Currency (CBDC) may indirectly restrict this freedom by imposing technological and infrastructural barriers. Such restrictions, though not explicit, can disproportionately affect economically weaker sections lacking access to digital tools.

The Supreme Court has consistently held that restrictions on trade must satisfy the test of reasonableness under Article 19(6).¹⁷ In *Modern Dental College v. State of Madhya Pradesh*, the Court clarified that regulatory measures must be proportionate and must not impose

¹⁴ *Internet & Mobile Ass'n of India v. Reserve Bank of India*, (2020) 10 SCC 274 (India).

¹⁵ *State of West Bengal v. Anwar Ali Sarkar*, AIR 1952 SC 75.

¹⁶ *E.P. Royappa v. State of Tamil Nadu*, (1974) 4 SCC 3.

¹⁷ *State of Madras v. V.G. Row*, AIR 1952 SC 196.

excessive burdens on the exercise of fundamental rights.¹⁸ If CBDC adoption results in practical exclusion or coerced digital dependence, it may fail this constitutional standard. Therefore, safeguards such as voluntary adoption, offline functionality, and inclusive design are essential to ensure that the right to trade is not undermined in the process of digital transformation.

COMPARATIVE PERSPECTIVES ON CBDC

The global experience with Central Bank Digital Currencies (CBDCs) illustrates divergent constitutional and policy approaches, offering valuable lessons for India's Digital Rupee. China, the most advanced in implementation, has piloted its Digital Yuan (e-CNY) since 2020 under the People's Bank of China, using state-owned banks to distribute wallets to citizens.¹⁹ While the system enhances payment efficiency and strengthens monetary control, it has been widely criticized for enabling comprehensive state surveillance: transactions are fully traceable, raising concerns of "programmable money" that could restrict what citizens purchase or monitor dissenters, a model fundamentally at odds with the right to privacy under Article 21 as affirmed in *Justice K.S. Puttaswamy v. Union of India*.²⁰

In contrast, the European Union has anchored its Digital Euro proposal in privacy-by-design, explicitly mandating anonymity for low-value transactions and subjecting data processing to the strict guarantees of the General Data Protection Regulation (GDPR).²¹ The European Central Bank emphasizes that public trust depends on safeguarding individual liberty, ensuring the Digital Euro complements cash rather than replaces it.²² For India, this underscores the importance of legislative safeguards beyond RBI regulation, given that, unlike the EU, India lacks a comprehensive statutory data protection framework.

Meanwhile, the United States has adopted a markedly cautious stance: the Federal Reserve has issued discussion papers but insists that any issuance of a digital dollar requires congressional authorization, reflecting both separation of powers and deep concern for civil liberties, particularly under the Fourth Amendment right to privacy.²³ Civil society groups such

¹⁸ idib

¹⁹ Fan Yifei, China's Progress in the Development of e-CNY, PEOPLE'S BANK OF CHINA (2021).

²⁰ *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (India); Nicholas Loubere, China's Digital Currency: Surveillance and Control, 231 CHINA Q. 1, 8 (2023).

²¹ European Commission, Proposal for a Regulation on the Establishment of the Digital Euro, COM (2023) 369 final; Council Regulation (EU) 2016/679, General Data Protection Regulation (GDPR).

²² European Central Bank, Progress on the Investigation Phase of the Digital Euro (2022).

²³ Bd. of Governors of the Fed. Reserve Sys., Money and Payments: The U.S. Dollar in the Age of Digital Transformation (Jan. 2022).

as the Electronic Frontier Foundation have warned that a poorly designed CBDC could expand state surveillance in unprecedented ways, undermining liberty without democratic legitimacy.²⁴ Thus, India's path lies between these models: it must reject the surveillance-heavy Chinese approach, adopt privacy-by-design principles akin to the EU (e.g., anonymity thresholds for small payments), and ensure parliamentary debate and statutory authorization as in the U.S. to anchor CBDC within constitutional legitimacy.

RECOMMENDATIONS

For the Digital Rupee to achieve both efficiency and constitutional legitimacy, India must adopt a rights-based approach to CBDC design. First, the legislature should enact a dedicated CBDC law providing clear statutory safeguards for financial privacy, modeled on the proportionality doctrine affirmed in *Justice K.S. Puttaswamy v. Union of India*, ensuring that state access to transaction data is limited, necessary, and justified by legitimate aims.²⁵ Such a law should mandate privacy-by-design, including anonymity thresholds for low-value transactions, aligning India with the European Union's Digital Euro framework.²⁶

Second, CBDC must incorporate inclusion mechanisms—offline functionality, feature-phone access, and assisted models—to avoid marginalizing the rural poor and digitally illiterate, thereby fulfilling equality guarantees under Article 14.²⁷

Third, to preserve financial stability, the RBI should impose statutory caps on CBDC holdings and phase implementation gradually to prevent disintermediation of banks.²⁸ Fourth, democratic legitimacy requires parliamentary oversight: CBDC rollout should not remain an executive experiment but must be debated and authorized by Parliament, similar to the U.S. insistence on congressional approval before a digital dollar.²⁹

Finally, transparency and accountability must be ensured through periodic reports to Parliament and judicially enforceable remedies for rights violations. Taken together, these recommendations ensure that CBDC evolves not only as a tool of financial innovation but also

²⁴ Electronic Frontier Found., *CBDCs and Privacy in the U.S.* (2023).

²⁵ *idib*

²⁶ European Commission, *Proposal for a Regulation on the Establishment of the Digital Euro*, COM (2023) 369 final.

²⁷ *State of West Bengal v. Anwar Ali Sarkar*, AIR 1952 SC 75 (India).

²⁸ Reserve Bank of India, *Concept Note on Central Bank Digital Currency* 30–32 (Oct. 2022).

²⁹ Bd. of Governors of the Fed. Reserve Sys., *Money and Payments: The U.S. Dollar in the Age of Digital Transformation* (Jan. 2022).

as an instrument consistent with India's constitutional values of privacy, dignity, equality, and liberty.

CONCLUSION

The Digital Rupee stands as a transformative step in India's financial journey, offering the promise of efficiency, transparency, and global competitiveness. Yet, the introduction of a Central Bank Digital Currency cannot be viewed purely as a technological shift; it is equally a constitutional and social challenge. Unlike cash, CBDC leaves behind a digital footprint that raises critical questions of privacy, liberty, and autonomy. If not carefully designed, it risks creating a financial system where every transaction is traceable, undermining the very freedoms that form the foundation of India's constitutional democracy.

Global experiences offer valuable lessons. China's e-CNY shows the dangers of excessive state surveillance, while the European Union's Digital Euro demonstrates the importance of embedding privacy-by-design and protecting inclusion. The cautious approach of the United States highlights the need for democratic legitimacy and public trust before launching such a reform. For India, these comparisons underline that innovation must be aligned with constitutional values.

The Digital Rupee already has statutory backing and early pilots demonstrate potential. But legality is not the same as legitimacy. For CBDC to succeed, India must ensure robust safeguards for privacy, accessibility for all sections of society, financial stability for the banking sector, and clear parliamentary oversight. Only then can CBDC evolve into a truly inclusive, secure, and constitutionally sound instrument of monetary reform—one that not only modernizes payments but also strengthens the principles of liberty, equality, and dignity enshrined in India's Constitution.