DIGITAL CURRENCY AND EMERGING TRENDS IN INDIA: A CLOSER LOOK AT IMAI v. UNION OF INDIA

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ABSTRACT

This paper seeks to delve into the intricacies of private digital currencies and the role of bitcoin, etc. in the economic environment of India. It will also deal with the landmark case decided by Hon'ble Supreme Court in *Internet and Mobile Association of India v. Union of India*[1]. It shall include a brief account of how different foreign jurisdictions have different approaches w.r.t. to the identity, usage and trade of Virtual Currencies [hereinafter VCs]. And lastly, analyse the operation of VC in respect of freedom to practice any trade or business under Art. 19(1) (g) of the Constitution. And whether the ban on trade of VCs passes through the test of reasonable restriction under *Art.19* of the Constitution. Through this paper, the reader will be able to understand the nuances of digital currency and the existing legal framework in India.

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[1] Writ Petition (Civil) No.528 of 2018 [hereinafter IMAI v. UoI]

INTRODUCTION

Digital Currency has emerged as a lucrative trade option in current times. The numbers of private crypto currencies are increasing and simultaneously, the investments and trade in crypto units such as bitcoins, dodge coins, ethereum, BAT, SNT, etc. is increasing by multifold. Wherein, it contributes to 1% of Global Gross Domestic Product[2], though not being a significant change in itself. But when a decentralised, no third party and a peer-to-peer mechanism for recording transactions in blockchain is brought in, it is sure to bring in great interest from businessman and the dark web alike. Herein, 10% of Indian population contributing to this trade, amounting to 17 lakh verified users and RS. 1365 crores user funds in trust.[3]

With advent of digitalisation, the Cryptocurrency exchange platforms are trying to make best use of technology. Besides genuine platforms like CoinDCX, WazirX, CoinswitchKuber; there are others that are freely committing fraud in lack of any proper law and regulations. In this paper, we shall be discussing the starting from background history of Digital Currency to its introduction in India and other state responses. We shall be covering present legal framework with respect to existing digital currency, the private crypto currencies; at the same time, we will be delving on approaching future expectations after the much awaited passing of the New Bill, the *Cryptocurrency and Regulation of Official Digital Currency Bill, 2021* (currently under consideration in the Winter Session of 2021) We shall also be discussing

[2] Available at: <https://www.weforum.org/agenda/2021/06/cryptocurrencies-financial-inclusion-help-shape-it/> [last accessed on 12th December, 2021]
[3] IMAI v. UoI, Page 152.

with respect to how bringing in of Central Bank Digital Currency [hereinafter CBDC] will shape as a new emerging economy.

BACKGROUND AND DEVELOPMENT

In 1983, Digital cash was first introduced by David Lee Chaum, an American Computer Scientist and Cryptographer. Based on this research he started a company in 1990 called "Digicash". Later the company filed for bankruptcy in 1998. Problems with this digicash were later solved and a more scientific form of digital currency was introduced by Adam Back in 1997, called "hashcash". As this too had certain issues, Nick Szabo introduced "bitgold". Many such digital currencies were introduced and the most used digital currency is "Bitcoin", which was introduced by Satoshi Nakamoto in 2008.

In India, the Reserve Bank of India (hear after RBI) had published Financial Stability Report in June 2013, taking note of the technological risks involved in emerging business environment. It was mentioned that "Globally, the use of online and mobile technologies is driving the proliferation of virtual banks, virtual currencies and provision of banking and payment services by unlicensed entities."[4] Although this was the first time that RBI had noticed about the growing use of virtual currency, it had observed that developments of this nature will pose challenges in the form of regulatory, legal and operational risks. Besides this, the Financial Action Task Force (FATF) an inter-governmental organization is providing timely guidelines for the member countries to deal with the emerging technology and new payment methods. It provided New Payment Products and Services Guidance, 2013 to address the risk involved in mobile payments and other new payment methods. Following this, a press release was issued by the RBI in December 2013 to warn the users about the potential risks involved in trade or usage with virtual currencies. FAFT has issued similar set of guidelines in 2014 and 2015 as well, highlighting the risks involved in virtual currencies, especially the risk of terrorist financing. Even India had recognized this as a potential risk. The Financial Stability Report, 2016 was circulated by the RBI and it noted the developments that took place in Fin Tech (financial technology) and stressed upon the need to regulate the same. On 01-02-2017, a new press release was released by the RBI in order to caution the users, holders and traders of virtual currencies. Soon after this, the Government of India, Ministry of Finance constituted an Inter-Disciplinary Committee in April, 2017 and it submitted the report on 25-07-2017 with recommendations.

[4] Para 3.60 of the Financial Stability Report, 27th June 2013.

Highlights of the report states that a visible and clear warning should be issued to the public about the potential risks involved in use of such virtual currencies. Simultaneously, SEBI had appointed an advisory panel to study the global fintech development and potential opportunities for Indian securities market. RBI has also appointed an Inter- Regulatory Working Group to study about Fintech and Digital Marketing in November 2017. By this time, the use of Cryptocurrency has increased exponentially and the Government of India and RBI constantly cautioned in public welfare. By 2018, WazirX, a Cryptocurrency exchange platform was acquired by Binance and became India's largest Cryptocurrency exchange. But there is no regulation on the same. So, the Central Board of Direct Taxes (CBDT) submitted a report to the Department of Economic Affairs (DEA), proposing a scheme to ban crypto currencies in a step-by-step process. Then, there was a paradigm shift from understanding Cryptocurrency as 'crypto asset', as a result of G-20 Finance Ministers and Central Bank Governors meeting that was held in March 2018. They opined that crypto assets do not pose risks to global financial stability. Therefore, RBI had noted the same in April 2018 and sent an e-mail to the Government in recognition of regulating 'Crypto Assets'. The Inter-Ministerial Committee drafted a bill i.e. 'Crypto Token and Crypto Asset (Banning, Control and Regulation) Bill, 2018 and submitted along with their report. But, in place of this, a new bill was submitted later in 2019 called 'Banning of Cryptocurrency and Regulation of Official Digital Currency Bill.

On April 6th, 2018 RBI issued circular banning financial entities from dealing with crypto currencies. The Annual Report of RBI (2017-2018) made a specific mention about "Cryptocurrency: Evolving Challenges", stating that "the Cryptocurrency eco-system may affect the existing payment and settlement system which could, in turn, influence the transmission of monetary policy."[5] This circular and press release issued by the RBI are challenged before the Supreme Court of India.

FREEDOM TO CARRY OUT ANY TRADE OR BUSINESS

Art. 19(1) (g) of the Constitution of India states that "All citizens shall have the right to practice any profession, or to carry on any occupation, trade or business. If the government wants to restrict any such practice or business, then it should pass through the test of reasonableness as mentioned under Art. 19(6). Art. 19(6) provides that the state is not

[5]Available at: <https://rbidocS.rbi.org.in/rdocs/AnnualReport/PDFs/0ANREPORT201718077745EC9A874DB38C991F580ED14242.PDF> [Last accessed 10th December, 2021].

prevented from making law in order to impose reasonable restrictions for protecting the interest of general public. These reasonable restrictions in Indian Constitution are akin to the terms "inherent tendency" or "reasonable tendency" in American Phraseology. Does the business of VC fall on part of Art. 19(1) (g) is the question at hand. There is no express mention about the list of trades, occupations or business under Art. 19(1) (g). Therefore the term "any" includes all sorts of business which are in commercial or trading nature, unless prohibited by law. The word "any" read with "freedom" under Art. 19 implies an element of choice. Freedom to choose is implicit in the right to practice any profession, or to carry on any occupation.[6]

Banning the trade of virtual currency by mere circular of RBI, when there is no specific law in force is violative of Art. 19(1) (g) or not was another question. As mentioned, any activity which is not regarded as trade or business will fall outside the purview of the right guaranteed under Art. 19(1) (g). So far, there is no express mention that the use of digital currency is against law and it is not in the nature of business or trade or a commercial activity. This implies that, dealing with virtual currency falls part of Art. 19(1) (g). While taking defense under Art. 19(6), it must be observed that reasonableness of restriction has to be tested from procedural and substantive aspects of the law. Usually, a restriction can be termed as unreasonable if it is arbitrary or has no relation to the objective of law or goes in excess of the objective of law that seeks to impose. In the case of Modern Dental College and Research Centre v. State of Madhya Pradesh, [7] it was observed by the court that any reasonable restriction imposed by the state should be for proper purpose, rationally connected to the fulfilment of that purpose and should have proper relation between the importance of achieving the aim and the importance of limiting the right. But in the case of virtual currency, no legislation was enacted to deal with matters relating thereto. RBI's issuance of press release and circular are in excise of their powers conferred under the RBI Act, Banking Regulation Act and the Payment settlement Act. This should not violate the mandate provided under Art. 19(1) (g).

INTERNET AND MOBILE ASSOCIATION OF INDIA (IMAI) V. UNION OF INDIA (UOI): AN ANALYSIS

[6] State of Karnataka v. Associated Management of English Medium Primary and Secondary Schools, AIR 2014 SC 2094.
[7] (2016) 7 SCC 353.

The Supreme Court judgment of *IMAI v. UOI*[8] was the landmark case that settled the wave of chaos and confusions regarding usage and trade of VCs in India and dealt with aspects like whether the ban imposed by the RBI on VC exchange platforms was legally proportionate. This case lifted the ban imposed by the RBI Circular. The Court examined from perspective of Art. 19 (1) (g) and Doctrine of Proportionality.

ISSUES BEFORE THE COURT OF LAW

I. First Issue before the Court:

Cryptocurrency as a medium of exchange like money. Court tested Cryptocurrency within 4 respects-

a. As a medium of exchange
b. a unit of account
c. Store of value
d. final discharge of debt

And subsequently observed, that it is not a widely accepted mode of exchange and could not be regarded as final discharge of debt thus, not a legal tender. At the same time, they opined that a parallel system not equating with currency but in a scenario with RBI regulating, VC can be regulated.

II. Second issue before the Court:

That RBI step as extreme, does not pass test of proportionality -

W.r.t. trade in Virtual Currencies with banking sector being the intermediary, Court started RBI had no substantial empirical data of actual harm suffered by it. Both Draft Bills contradicted each other and advocated opposite propositions thus, final call can be taken.

BACKGROUND OF THE CASE:

- The RBI Financial Stability Report, 2013- defined Virtual Currency as unregulated digital money, issued and controlled by its developers and used and accepted by the members of a specific virtual community.
- In 2017, RBI issued another Press Release- following which, government of India, Ministry of Finance constituted an Inter-Disciplinary Committee whose task was to -
    1. Take stock of status of Virtual Currency in India and globally

[8] Writ Petition (Civil) No.528 of 2018.

2. Examine existing global regulatory and legal structure
3. Suggest measures for dealing with Virtual Currency

DRAFT BILL RECOMMENDATIONS:

- *Cryptocurrency Token Regulation Bill, 2018* – two major recommendations of this bill included, 1. Prohibition of persons dealing with activities related to Cryptocurrency tokens from falsely posing these products as being securities or investment schemes, offering investment schemes, 2. Regulate VC exchange and brokers where sale and purchase maybe permitted.
- *Cryptocurrency and Regulation of Official Digital Currency Bill, 2019* – proposed to 1. Ban usage of VC as legal tender, prohibited mining, buying, holding, selling, dealing, issuing, disposal or use of Cryptocurrency, 2.RBI issued digital currency.
- *Regulation of Official Digital Currency, 2021*- New Bill proposes to ban private crypto currencies. Currently in discussion in Winter Session of Parliament. Introduction of CBDC – Central Bank Digital Currency will face same risks is what predicted and argued by the petitioners.

FACTS OF THE CASE

A Statement given by RBI followed by Circular u/s 35A r/w S.36(1)(a) and S.56 Banking Regulation Act, 1949 and S. 45JA and S.45L of RBI Act, 1934, S. 10(2) r/w S.18, Payment and Settlement Systems Act, 2007 directed –

i. not to deal with Virtual Currency or provide services for person/ entities dealing with Virtual Currency

ii. exit relationships with these entities if they're already providing such services to them.

Followed by Circular on same note dated 06.04.2018.

WP (C) NO. 373 OF 2018 challenged RBI Circular tagged along with WP(C) NO.S 1071 And 1076 of 2017, where relief sought: ban on Cryptocurrency, regulation on Virtual Currency respectively.

ARGUMENTS ADVANCED FROM BOTH SIDES

PETITONER'S ARGUMENTS

1. Virtual Currency not being a legal tender, under RBI Act, 1934 or Banking Regulation Act, 1949; RBI has no power to prohibit the activity of trading virtual Currency

2. Preamble of RBI, 1934 empowers RBI to give mandate on the currency and credit system of the country but Virtual Currency do not fall into the credit system of the country as of yet.
3. S. 45 JA of RBI Act, 1934- power to regulate financial system of the country and S. 45 L of RBI Act, 1934- power to regulate credit system of the country; they are not elastic enough to be applicable to goods that are not a part of the financial/credit system of the country, contended.
4. Power to issue directions in public interest u/s. 35A (1)(a) of Banking Regulation Act, 1949 and power to auction/prohibit banking companies from entering into any transaction u/s. 36(1)(a)- they do not extend to issue blanket directions denying access by Virtual Currencies
5. S. 10(2) Payment and Settlement System, 2007 – issue guidelines for proper and efficient management of payment system and S. 18 of same Act- lays down policies relating to regulation of payment system and give directions regulating *conduct* of business relating to payment systems, also not applicable since services rendered by Virtual exchanges do not fall under Payment system u/s. 2(1) (i) of the Act.
6. If the problem is regulation of anonymity of the transactions, then only those platforms or exchanges could have been prohibited. This shows RBI decision not based on any study.
7. Under Art. 19(6) reasonable restrictions on trade can be made but a total prohibition then a subordinate legislation when the law itself never declared the Act as "unlawful" is violative of Art. 19 (1) (g).
8. Immediate effect of the Circular was to completely sever the ties between VC market and formal economy without an actual legislative ban. Thus in a way, promoting cash and other black market transactions.
9. The Circular did not take note of difference between various VC schemes such as closed VC, unidirectional flow VC schemes, bidirectional flow VC schemes and it had unreasonably differentiated between unidirectional flow schemes and bidirectional flow schemes by targeting only bidirectional schemes
10. VC does not classify as money when RBI has accepted this stand then they do not have power to regulate it
11. RBI decision of blanket banning was arbitrary, based on a non-reasonable classification, by way of imposing disproportionate restrictions.

12. Decision to prohibit an Art. as *res extra commercium* is a matter of legislative policy, must arise out of Act of legislature, not by a notification by an executive order.

ARGUMENTS ON BEHALF OF RBI:

1. VC do not satisfy criteria of a currency
2. No structure formed to address consumer grievances
3. Due to anonymity, can be used for illegal activities
4. Increased usage can erode financial stability of currency
5. Decision within wide powers conferred under, 1949, RBI 1934 and Payment and Settlement Act, 2007
6. No one has a FR to do business on network of entities regulated by RBI
7. Decision does not violate Art 14, 19, 21
8. Decision not excessive in nature since 3 months window period was given to sever ties also continuous cautions bring circulated time and again since 2013
9. 2013 Circular;
10. Not complete ban but had to be given in interest of consumers and protection of regulated entities, in public interest power to regulate included power to prohibit
11. Virtual Currency transaction cannot be termed as payment system but only involved peer to peer transactions and do not involve system provider as in case of system under Payment and Settlement Systems Act, potential for parallel system present.
12. KYC norms followed- low and ineffective compliance
13. Cross border nature of trade coupled with lack of accountability can impact regulated payment system managed by RBI
14. RBI/ any other government entity would not be able to curtail limit, regulate or control generation of Virtual Currency and their transaction, resulting in inevitable financial risks.

RELEVANT LEGAL PROVISIONS RELIED BY RBI:

- S. 45JA- talks about power of bank to regulate financial system of the country. "The salient feature of S. 45JA is that it empowers RBI, both (i) to determine the policy and (ii) to give directions to all NBFCs in respect of certain matters."
- S. 45L- talks about regulation of credit system to its advantage. Both the Preamble and S. 45L (1) talk in similar lines.

- S.45W- empowers RBI to determine policy relating to interest rates/ interest rate products and give directions accordingly for purpose of regulation of financial system of the country.
- Statement of Objects and Reasons for Banking Regulation Act, 1949's bill talked of widening powers of RBI to enable it to come to aid of banking companies in times of emergency.
- S. 8 Banking Regulation Act, 1949 prohibits a banking company from directly or indirectly dealing in buying or selling or bartering of goods. S. 21 empower RBI to determine policy in interest of public, depositors or banking companies.

Petitioners stand is that VC is not money or legal tender per se but good/tradable commodity thus RBI cannot regulate. RBI is concurrent on the point that VC is not legal tender but they justify their decision on the premise that it had the potential to become a parallel payment system or a medium of exchange, like money.

- S. 35A of the Banking Regulation Act, 1949 empowers the RBI to issue directions to banking companies which is in interest of banking policy, for things of public nature, to prevent affairs that might act detrimental to interests of depositors or entities regulated by RBI (or) any direction necessary to secure proper management of banking company.
- S. 36(1) (a) empowers RBI to caution or prohibit banking companies against entering into any particular transactions (or) class of transactions.
- S. 17 of Payments and Settlements Act, empowers RBI to issue directions to a payment system or a system participant, which, in RBI's opinion, is engaging in any act that is likely to result in systemic risk being inadequately controlled (or) is likely to affect the payment system, the monetary policy or the credit policy of the country.
- S.18 of the Payments and Settlements Act, 2007 empowers RBI to issue directions to system provider or the system participants or any other person generally, to regulate the payment system (or) in the interest of management (or) operation of any of the payment systems (or) in public interest.

From International Monetary Fund Report, the Court deduced that blockchain technology does serve some important advantages in controlling fraud and maintaining privacy but it also opens up avenues for tax evasion and criminal activities.

LEGAL PROVISIONS CONSIDERED BY THE COURT:

S. 2(h) of FEMA defines the term, currency. S. 2(b) of Prize Chits and Money Circulation Schemes (Banning) Act, 1978 defines money. Clause 33 of S. 65B of Finance Act, 2012 also defines money; this definition identifies instruments other than legal tender, which could come within purview what constitutes money. Slave of Goods Act, 1930 does not define money but at the same time, it does exclude money from definition of 'goods'. S. 2(75) of CGST, 2017 also defines money.

The Counsel for petitioners has relied on the book 'Property Rights in Money' by David Fox and a Queen's Bench decision in *Moss v. Hancock*[9] and an US SC decision in *Wisconsin Central Ltd v. US*[10], to argue that VC, not being widely accepted as a medium of exchange cannot be treated as currency under either RBI or Banking Regulation Act or Payment and Settlements Act.

But the Court held that RBI's power is not limited to regulate entities that have acquired the status of legal tender.

DOMESTIC CASE LAWS RELIED UPON:

In *CIT v. Kasturi and Sons Ltd*[11], Court held that money u/S. 41(2) of Income Tax Act, 1961 has to mean physical money or cash and not any other thing or benefit which could be evaluated in place of money. In *Dhampur Sugar Mills Ltd v. Commissioner of Trade Tax*[12], Deciding on an argument advanced that whether an exchange or barter can be said to be a sale; deferred payment or other valuable consideration would also come within the meaning of money for purpose of the Act under discussion.

GLOBAL SCENARIO W.R.T. IDENTITY OF VC:

IMF, FATF, European Central Bank, Canadian Revenue Authority and many other divisions around the world treat VC as digital representations of value. The European Central Bank describes it as unregulated digital money. Internal Revenue Service of US, Dept. of Treasury recognises it as analogous to traditional currency. SEC, USA states it's intended to perform same functions as done today by the USD, Euro or Yen or Yuan. State of Lichtenstein has accepted it as a legal tender. Luxembourg treats it as actual currency. German Financial Supervisory Authority treats VC as financial instruments.

[9] 1899 2 QB 111.
[10] 585 US ___ 2018, 138 S. Ct. 2067 (2018).
[11] 1999 3 SCC 346.
[12] 2006 5 SCC 624.

FOREIGN JUDGEMENTS PERUSED:

A. USA

a. *SEC v. Trendon Shavers*[13]: The Dist. Court of Texas in this case held since bitcoin can be exchanged for conventional currencies thus bitcoin is a currency or form of money. Similar position held in *US v. Ulbricht*[14] and *US v. Faiella*[15].

b. However, a contrasting position of law came from the CFTC- Commodity Futures Trading Commission which said in *In Re Coinflip, Inc.*[16] that VC is commodities. Similar position held in other CFC decisions; *In the matter of TeraExchange LLC*[17] and *In the matter of BFXNA Inc., d/b/a BITFINEX*[18].

c. *United States v. Murgio*[19] held that bitcoins are funds- pecuniary resources, accepted as means of payment or medium of exchange.

d. *Commodity Futures Trading Commission v. My Big Coin Pay, Inc. et al*[20] held that: since future trading in done via VC, it is a commodity. *State of Florida v. Michell Abner Espinoza*[21] the Bench made a foresighted comment- "Florida Legislature may choose to adopt statutes regulating virtual currency in future. At this time, however, attempting to fit the sale of Bitcoin into a statutory scheme regulating money services businesses is like fitting a square peg in a round hole."

B. Singapore

The SIAC Singapore in *B2C2 Ltd. v. Quoine Pte Ltd.*[22] ruled VC can be considered as property that can be put on hold. VC do have fundamental characteristic of intangible property being an identifiable thing of value.

C. UK

[13] Case No. 4: 13-Cv-416 (August 6, 2013).
[14] 31 F. Supp. 3d 540 (2014).
[15] 39 F. Supp. 3d 544 (2014).
[16] CFTC Docket No. 15-29 dated 17-09-2015.
[17] CFTC Docket No. 15-33 dated 24-09-2015 49.
[18] CFTC Docket No. 16-19 dated 02-06-2016.
[19] 209 F. Supp. 3d 698 (2016).
[20] 18-Cv-10077-RWZ dated 26-09-2018.
[21] F 14-2923 decided on 22-07-2016.
[22] [2019] SGHC (I) 3.

The English High Court in *AA v. Persons Unknown & others Re Bitcoin*[23], held that Bitcoin is a property, applying criteria laid down in *National Provincial Bank v. Ainsworth*[24].

Thus, various courts in different jurisdictions have assigned different interpretations to the identity of VC; ranging from property to commodity to payment system to funds. While RBI brought VC u/s 2(h) FEMA under the phrase "other similar instruments".

OBSERVATIONS BY THE COURT

The Court did not accept the contention of the petitioners that VCs are just goods/commodities and can never be regarded as real money. Also, the activity conducted by the VC exchange platforms came under purview of RBI thus it can deal with it, observing this, the Court also rejected the other contention of the petitioners that RBI had no statutory power to deal with carrying on the activity of trading in VC.

Thus anything that may pose a threat or have an impact on the financial system of the nation can be regulated or prohibited by the RBI, despite the activity not being a part of the payment or credit system as the term "management of currency" in S. 3(1) need not be constrained to what is already recognised by law but shall also extend to include what is capable of faking or playing the role of a currency. Here, u/s. 36(1)(a), RBI is clearly entitled to prohibit banking companies against entering into certain class of transactions so the prohibition is not w.r.t. trading in VC but against banking companies dealing with certain class of transactions.
It's a settled principle in law that rules made under a statute must be treated as if contained in the Act itself as held in *Peerless General Finance and Investment Co. Ltd v. RBI*[25]. As aptly stated in this case, *Ganesh Bank of Kurunwad Ltd. & Ors v. Union of India & OR's.*[26], Power of RBI can also be preventive. It's not that only when a series of court proceedings begin, RBI has to take account of the circumstances and form an opinion accordingly.

The persons for whom S. 18 Payment and Settlements Act can be exercised are system providers and system participants. Besides these, "any other person" and "any other agency" are also covered u/s 18. The Circular addressed system participants u/s. 2(1) (p) w.r.t. banks

[23] [2019] EWHC 3556 (Comm).
[24] [1965] 1 AC 1175 at 1248.
[25] 1992 2 SCC 343.
[26] (2006) 10 SCC 645.

since they have a system of payment b/w payer and beneficiary and thus, this falls within meaning of payment system hence, the argument revolving S.18 should fail.

Court observed that RBI had taken note of multinational bodies and regulators eg., CFTS, BIS thus, it cannot be said RBI did not satisfy application u/s.35A(1) of Banking Regulation Act, 1949.

Impugned Circular did not order freezing or closing of accounts of any particular customer. Prohibition was only w.r.t. exiting services b/w banks and did not extend to freezing or closing of accounts. In this regard, the court ordered defreezing of accounts of *Discidium Internet Labs Pvt. Ltd.*, (Petitioner No. 6) in WP (C) No. 373 of 2018 and release the amount with interest.

REASONING GIVEN BY THE COURT

The Hon'ble Court also observed:

To contribute malice, act must have been done wrongfully, wilfully without reasonable ort probable cause. Impugned Circular did not fall under either of them. Thus, the contention that impugned Circular is vitiated by malice or that it is a colourable exercise of power does not sustain. Also, the argument based on M S Gill Test loses potency when larger public interest is involved. Other argument that the decision does not qualify judicial deference also is quashed.

Md Yasin v. Town Area Committee[27], right u/art. 19(1) (g) affected when the impugned measures result in total stoppage of business, both in commercial and practical sense. A major objection by RBI is that petitioner had no FR to trade in VC, court held-

Petitioner is not claiming right to trade in VC but right to a platform for facilitating transaction act which is not yet prohibited by law. The Circular has hit VC exchanges and not the actual trading of VCS. Court held two categories of citizens namely, those who are trading in VC as their occupation or those who are running online platforms; only they can pitch their claims u/art. 19(1) (g).

CONCLUSION OF THE COURT

[27] 1952 SCR 572.

The court applied the *De Frietas Test* and reasoned functioning of VC exchange platforms went to comatose situation with their lifeline disconnected whereas entities regulated by RBI show no semblance of any damage due to services provided taken by the VC exchange platforms. When both bills proposed had opposite standing, in such a case, the impugned Circular cannot be said to be proportionate. Thus, it is set aside on the ground of proportionality.

TAXATION OF DIGITAL/ VIRTUAL CURRENCY

Reports submitted by various committees highlighted about the risks involved in virtual currency like consumer protection, money laundering, cyber security, tax evasion, market integrity, etc. By the time of realization, India was recognized to be the fifth country to have Cryptocurrency users. At present, there are no regulations or guidelines to address the issue of taxation for income gained out of Cryptocurrency. There is no specific provision for Cryptocurrency under the Income Tax Act, 1961. Presently the situation is unclear as Cryptocurrency is not considered as illegal and at the same time no authorized by the Central Authority. Even then, if a person wants to invest in the same, it is at their own risk. It was announced by the Government that it is planning to bring amendments to the Income Tax Act, in order to impose taxes over crypto currencies in 2022 Budget.

As of now, India is considered one of the top four emerging markets globally,[28] which in turn determines the developing state of the nation. There are certain ways in which this Cryptocurrency can be taxed and it depends upon how India is going to treat it i.e. whether Cryptocurrency will be treated as a security or money or asset etc., depending upon the nature of it, taxes can be levied. If a digital token is purchased for the purpose of investments, then it can be treated as capital asset and resulting can be treated as capital gains and be taxed. In USA and UK investments in Cryptocurrency are treated like capital assets.[29] Other possible way for taxation would be, treating the income earned from trading with crypto transactions as business income. All depends upon how crypto currencies are going to be identified. The term 'currency' is defined as "every bank note shall be legal tender at any place in India".[30] S. 2(i) of the FEMA also does not talk about or deal with crypto currencies.

[28] Available at: <https://ggu.libguideS.com/c.php?g=106866&p=693916> [Last accessed 09th December, 2021].
[29] Arham Siddiqui and Divyanshu Jain, Analysing the Taxation of Crypto-Currencies in India: A Critique, 6 KIIT Student L Rev 24 (2019).
[30] S. 26, Reserve Bank of India Act, 1934.

WHAT MORE TO EXPECT IN THE NEW BILL?

The New Bill, namely: the *Cryptocurrency and Regulation of Official Digital Currency Bill, 2021*, is gearing up for passing anytime soon, with the awaiting of Prime Minister's approval. It has been informed by the Minister of State in the Finance Ministry that the Cryptocurrency regulation bill is under finalisation for consideration of the cabinet.[31] Now, a major question of debate would be whether private digital currency and the CBDC co-exist? Unlike our traditional banking systems, the CBDC aims to bring in a parallel system of payment. The positive side would negate the regulation concerns of no underlying assets, no trusted third party and no customer grievance redressal system by tasking RBI with the issuance of digital token which will be recognized as a legal tender. In a situation where the government has already accepted the blockchain technology and using it for various government projects; we can be assured that the CBDC will be utilized to benefit in a similar manner. It will usher in a system which is easier, quicker, cheaper to deploy monetary policies, make real-time payments without having to keep accounts for hefty logistics. Then do we expect an appointment of a Central Authority for blockchain? Does legalisation of CBDC mean banning of private crypto currencies? Or will the Bill place regulations and not propose a blanket ban? These can be only being answered with the Bill coming into public domain. For now, we can only speculate on the announcements. Some report Ethereum to be used as blockchain, some reports speculate on crypto currencies being accorded the status of crypto assets. One aspect to be certainly looking forward to would be ease of cross-border transactions by quicker remittances.

CONCLUSION

This is an era of innovations and everyone is gearing up with technology. Many started investing in and trading with digital currency. This implies that there is dire necessity to regulate the same with proper scrutiny and without affecting the fundamental rights. The case of IMAI v. UOI stood as a precedent for future matters that come before the Court. But, with absence of law on digital currency and rules thereto, it is not possible to deal with such cases. In this case, the Supreme Court struck down the circular of RBI stating that it is illegal and is violative of Art. 19(1) (g) to put a blanket ban on trade or business with Cryptocurrency (Private digital currency). But RBI had not legally authorized the use of Cryptocurrency for

[31] Available at: < https://www.thehindubusinessline.com/money-and-banking/cryptocurrency/bill-on-cryptocurrency-regulation-of-official-digital-currency-under-finalisation-finmin/article37946900.ece> [Last accessed 12th December, 2021].

transaction purposes and as a result of this, person who is dealing with such digital currency are at their own risk. Emerging economy demands the need for regulating virtual currencies in India with proper scrutiny.