

Technology Law Analysis

March 09, 2022

THE RBI STAND ON CRYPTO LACKS BALANCE

This article was originally published in Mint on March 02, 2022.



The central bank's recent tirade ignores many facts that weaken its case for an outright crypto ban

A public authority must be neutral and fair-minded. While some concern over cryptocurrency is understandable, recent Reserve Bank of India (RBI) comments likening crypto to a Ponzi scheme and tulip bubble (or worse), and proposing an outright ban, lack balance.

Cryptocurrencies are a platform technology. Like the internet, they can be used for good and bad. The net facilitates child pornography and terrorism (and cryptocurrency itself), but none calls for a ban on it. Many of the criticisms of cryptocurrencies in the RBI deputy governor's speech of 14 February apply analogously to the internet. The net, like cryptos, can also be associated with an anti-establishment ideology. Recall John Perry Barlow's 1996 'Declaration of the Independence of Cyberspace', asking governments to leave the net alone? Cryptocurrency is criticized for being global, decentralized and bypassing intermediaries. But why should that be bad? Email is global, it disintermediates the post office, and that's useful. We're reminded of a 1995 Newsweek article that said this about the net: "We're promised instant catalog shopping—just point and click for great deals. ... So how come my local mall does more business in an afternoon than the entire internet handles in a month?"

No one expects a eulogy to cryptocurrency from RBI, but one would expect it to take a balanced view, so that it does not gloss over the pros and merely highlights the cons.

The contention of the speech that cryptocurrencies cannot meet any need in the finance space can be debunked. By World Bank data, India was the largest receiver of inward migrant remittances in 2021, at \$87 billion. But the average cost of sending a remittance to India in 2020 was 5.4%. That translates to over ₹30,000 crore in cost, almost thrice our annual midday-meals budget. This money could be saved, given permissive regulations, since several cryptocurrencies allow cross-border transfers at near-zero cost within seconds. Cryptos have also proven useful in a variety of other contexts, including powering schemes by the World Food Programme and Unicef, and helping raise thousands of crore for covid relief in India. In fact, despite the speech claiming that a crypto ban would not hurt blockchain technology, it fails to note that several 'blockchain' innovations are powered by native cryptocurrencies, such as the Maharashtra State Board of Skill Development's certificate verification programme based on Ethereum, and non-fungible token (NFT) offerings by Indian creators and media houses. While the biggest global institutions and academics, including Turing Award winners, and some of the best Indian minds acknowledge the technological breakthrough of cryptocurrency, RBI still appears to be in disbelief.

The speech also missed some relevant facts. While citing a source estimating the value of crimes globally using cryptocurrencies in 2021 at \$14 billion, it did not note that the same source found that illicit activity was just 0.15% of the total crypto transaction volume. The speech also stated that illegal transactions "have been largely filtered out of the formal financial system", but did not cite RBI's own annual report which found that the total quantum of frauds in the Indian banking system in 2020-21 was over ₹1.38 trillion (which exceeds \$14 billion). Yet, no one would call it a "Ponzi scheme".

Even if RBI wished to express a strong dislike for cryptocurrency, a ban call ignores our constitutional scheme. It is a basic constitutional principle that the state does not decide private matters for its citizens. The Supreme Court in a well-known case on the right to privacy declared, "The best decisions on how life should be lived are entrusted to the individual." Citizens have the right to participate in a new technology wave and be part of what has come to be known as the Fourth Industrial Revolution. Millions of Indians are doing so. RBI had already made caustic assertions in the Supreme Court defending its 2018 circular on virtual currencies, which the court found lacking empirical basis, disproportionate, and therefore unconstitutional. A long line of cases has held that there is a high bar for the state to ban something. Mere dislike is insufficient. There was no underlying economic data, including any projections, in the speech to show how cryptocurrency is going to actually "wreck" the economy. There was also no reasoning offered on how a crypto ban in India would solve any of the problems cited that regulation cannot solve. The speech asked how a case of mis-selling would be redressed if cryptocurrency were not banned. Some research would have shown that cases of cryptocurrency fraud have already been prosecuted in India. In fact, law enforcement agencies use a

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combination of publicly-available blockchain logs and information gathered from exchanges and banks to trace culprits. A ban would deprive law enforcement agencies of this information.

An outright ban on cryptocurrency is likely to be excessive and unconstitutional. Even the Finance minister in the Winter Session of Parliament stated that a previous draft bill which proposed a ban is being reworked. The chairperson of the committee which made that proposal also now advocates regulation instead of prohibition. One therefore hopes that RBI will reconsider its extreme stance. Meanwhile, India may need to set up a multi-stakeholder regulatory authority—say, a crypto regulatory and development authority—with expertise in computer science, regulation and economics that could help us take the conversation ahead.

— Nishith M. Desai & Jaideep Reddy

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