

# Legalities of Bitcoin and other Virtual Assets in India

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India, as I write this post, boasts of the highest number of cryptocurrency owners in the world – which is estimated to be about 100.7 million (roughly equivalent to 7.3% of the total Indian population). The distant second under this category is the United States of America, with just about 27.4 million crypto-asset owners. According to reports prepared by various crypto research firms, Indian investments in this sector have grown from USD\$200 million in 2019 to a whopping USD\$40 billion in 2020!

With this information in hand, isn't the following question a perfect no-brainer?

Q. Are owning, transferring, and trading in Bitcoin *legal* in India?

It must be legal, mustn't it? Otherwise, how come the *virtual assets industry* in India did expand so much and so rapidly in the last few years?

No, Sir! Contrary to intuition, the answer to the above question is actually a resounding “No”. Bitcoin transactions (or transactions of any other virtual tokens) are not *legal* in India (as of now). But *lo and behold!* *Not legal* does not necessarily mean that cryptocurrencies are *illegal* in India. It is rather fair to say:

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Cryptocurrencies are neither *legal* nor *illegal* in India. The legal status of it is simply hanging in balance.

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So, for now, it seems okay to do business in virtual assets in India, so long as it does not explicitly violate the existing regulations (especially those laid down by the regulatory bodies such as the SEBI and the RBI). But India certainly needs separate laws – precise, unambiguous, simple and easy-to-implement – focusing solely on the crypto-assets, without which disputes are bound to emerge – as the market grows -- putting the stakes of the traders at high risk.

The main reason for this uncertainty is that we still do not know, for example, whether Bitcoin should be regarded as a currency (aka a legal tender) or an asset; we must recall that a currency is a *store of wealth*, whereas an *asset* is a “thing” that increases its value over time. More specifically, we have not yet agreed on whether a virtual currency belongs in *cash or cash equivalents*, or whether it falls under the category of *securities* (e.g., equity share, bond, derivative, etc.)? Or is it just a form of

what we call an *intangible* asset? There are debates. This uncertainty mainly stems from the longstanding and an *unresolved* question, namely, whether a *virtual currency* has any *intrinsic* value, like, for example, a gold coin has. As noted earlier, the business environment in the crypto sector has been further muddled by the government's inability – despite several attempts -- to enact laws defining the scopes and limits of a virtual currency.

I now put out a timeline of events capturing how India dealt with crypto-assets regulations so far.

1. **[Jan. 2009 – Nov. 2013: No regulation]** The Bitcoin network went live in January 2009, when the pseudonymous Satoshi Nakamoto released the first-ever version of the Bitcoin software. India's first Bitcoin exchange *Unocoin* came into being in 2013 in Bangalore – 3 years after Mt. Gox of Japan, the first-ever crypto exchange of the world, became operational. *Unocoin* certainly started operation without the strangleholds of regulation.
2. **[Dec. 2013: RBI caution in a press release]** At around the end of December 2013, through a *press release* the *Reserve Bank of India* issued a warning to the crypto investors against many of virtual currency's so-called risky behaviours, such as high volatility, money laundering issues, being used for trading over the darknet, etc. This is however the very first occasion, when an authorized government agency attempted to make an official communication to the stakeholders in the crypto space. The press release also indicated that the review of *regulatory frameworks* for virtual assets were actually underway.

No matter how much information this announcement conveys about the negative mindset of the government on the issue of virtual assets, a press release is after all not legally binding, much less a potent weapon to stop the growth of the cryptocurrency markets.

3. **[Nov. 2017: Setting up of the SC Garg committee]** A inter-ministerial committee was set up under the *Chairmanship of Economic Affairs Secretary* Subhash Chandra Garg in 2017 and they were asked to give their recommendation to the Finance Ministry on the *regulatory frameworks* governing the crypto assets. The committee would eventually submit in July 2019 a recommendation, which couldn't have been more nightmarish for the Indian crypto stakeholders (more on this shocker later).
4. **[Apr. 2018: RBI circular banning crypto]** After a hibernation of around half a decade since its publication of a warning through a press release -- and during which watching the rapid developments and growth of the *virtual assets industries* across the globe -- the RBI now woke up -- this time not with a toothless *press release* -- but with a full-fledged *circular* that came close to sounding the death knell for the crypto markets in India. No banks would henceforth be able to deal in virtual currencies or provide any services related to it, the circular said! And it was put

into effect immediately. The RBI also offered the banks a slim time-window of just three months to shut down *even* all the existing businesses concerning virtual currencies. This essentially meant, at the stroke of a pen, all Indian cryptocurrency exchanges went out of business, as the RBI comprehensively cut off the supply lines of Indian rupees into the crypto markets. By the time the ban was implemented, the number of crypto owners in India had already crossed 5 million, and the market cap USD\$ 2 billion.

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*The industry seemed to have been dealt a death blow by the RBI circular!*

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5. **[Jul. 2019: SC Garg committee recommendation]** The recommendation of the SC Garg committee which came in July 2019 did not provide any relief to the crypto market enthusiasts; this was anticipated. In fact, it proved to be more debilitating. They, not only, recommended for an *absolute* ban on all forms of crypto transactions on the soil of India, on top, severe punishments (e.g., 10 years of imprisonment) were proposed to mete out to the offenders, even for minimal violations of the crypto laws.

Having its back now completely pinned to the wall, petitions have been filed with the Honorable Supreme Court of India to overturn these sweeping bans!

6. **[Mar. 2020: Supreme court quashing the RBI ban on virtual assets]** Mar. 4, 2020, was the *aha* moment that the Indian crypto communities have been waiting for an unduly long time. Yes, this was the day when the *Supreme court of India* lifted the blanket RBI bans on virtual currencies, after terming it unconstitutional. Their verdict derived its strength from what was known as the “principle of proportionality.” This means that even if the RBI is empowered to take any decisions to protect the banks it regulates, in the present case, there is no reason to believe that the severity of their bans is in the right proportion to the “imagined” economic harm to the banks.

Since the time of this historic verdict of the *Supreme court*, the Indian *virtual currency markets* have literally been on a roll. The number of investors has skyrocketed, the amount of Bitcoin holdings by the Indians has seen unprecedented surge, even the volumes of virtual assets traded in Indian crypto exchanges have spiked as never before.

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*All these bull runs in the crypto markets are happening even when India does not have any regulation!*

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So, what if we still continue to purchase, exchange and trade in Bitcoin, without bothering about the future regulations. There are many dangers to it. One of the major ones is that there are now no provisions for the owners to lodge any complaints -- such as an FIR -- for financial crimes or fraudulent activities with respect to, for example, stealing or theft of virtual currencies. There is one more thing which might be more spine-chilling: what happens if the Indian government really makes cryptocurrencies completely *unlawful* following in the footsteps of its Chinese peers, who just banned all forms crypto-related transactions in their own country!

The *Indian Cryptocurrency Bill* was supposed to be tabled in the Budget Session (Jan. – Mar.) of the parliament of 2021. But it did not happen and got delayed. The bill was not also tabled in the subsequent Monsoon Session. From what transpired from some of the finance ministry communications, the bill is now ready and on the verge of being tabled very soon. But the text of it is still not available to the public. We hope to see our lawmakers debating over this bill in the upcoming winter session.

This delay – unavoidable or intentional -- in tabling the *Indian Cryptocurrency Bill* has already given birth to various kinds of speculations as regards its content. The most intriguing of them is that this delay in bringing the *crypto assets* regulatory frameworks is in fact an auspicious sign for the businessmen of this sector! They believe that the upcoming law will very much favor the aspirations of the cryptocurrency markets, because the investments in it have now grown too big, and one more ban will only spell a formidable disaster for the economy.

Policymaking is a complex process, more so when it comes to the financial decision-making in a country as large as (and as diverse as) India; parties involved in the process are many, so are their ideas and agendas. Therefore, it may be profoundly wishful thinking by the stakeholders of the cryptocurrency markets in India to assume that the forthcoming *regulatory frameworks* will be *very* friendly, especially when there were precedents of past ban imposed by the RBI and of negative recommendation by an empowered ministerial committee. Nevertheless, there is not much that we can do now, except for waiting for the upcoming winter session of the Indian Parliament, when the *Cryptocurrency Bill* makes its way to the public domain (hopefully), for the lawmakers to debate over it, as well as for the general observers -- like you and me -- to *at least* watch (and not wait any more).

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