

Are Bitcoin, Ethereum, Ripple XRP et al illegal in India?

Rohas Nagpal (rn@asianlaws.org)
Debasis Nayak (dn@asianlaws.org)
Adarsh Agrawal, Mayank Takawane

Abstract. This document explains how Bitcoin, Ethereum, Ripple XRP and other related crypto-currencies and platforms are illegal under the current Reserve Bank of India (RBI) notification and the proposed *Banning of Cryptocurrency and Regulation of Official Digital Currency Act, 2019*. This document also explains that banks are prohibited from providing services to entities working on virtual currency solutions and platforms.

Document version 1.3 dated 24th July, 2019

(c) 2019 Asian School of Cyber Laws. This work is licensed under a Creative Commons Attribution 3.0 Unported License. To view a copy of this license, visit: http://creativecommons.org/licenses/by/3.0/deed.en_US

Table of contents

1. Relevant Indian laws.....	2
2. What is a cryptocurrency?.....	3
3. What's allowed and what's not allowed?.....	4
4. The legal position of Bitcoin et al	5
5. The legal position of the Ethereum blockchain	6
6. The legal position of Ripple XRP	7
7. The legal position of startups working on Ethereum et al	9

Note: As of the date of this document, the *Banning of Cryptocurrency and Regulation of Official Digital Currency Act, 2019* is not in force in India.

1. Relevant Indian laws

This document covers:

- The Reserve Bank of India (RBI) notification titled *Prohibition on dealing in Virtual Currencies* dated April 6, 2018¹.
- The proposed Indian law titled *Banning of Cryptocurrency and Regulation of Official Digital Currency Act, 2019* which seeks to completely ban cryptocurrencies and provides for very stringent punishments – imprisonment upto 10 years and massive fines.

The RBI notification came into effect on April 6, 2018 and applies to all commercial and co-operative banks, payments banks, small finance banks, NBFCs and payment system providers.

These instructions are issued in exercise of powers conferred by section 35A read with section 36(1)(a) of *Banking Regulation Act, 1949*, section 35A read with section 36(1)(a) and section 56 of the *Banking Regulation Act, 1949*, section 45JA and 45L of the *Reserve Bank of India Act, 1934* and Section 10(2) read with Section 18 of *Payment and Settlement Systems Act, 2007*.

Prior to this, the RBI cautioned users, holders and traders of virtual currencies, including Bitcoins, regarding various risks associated in dealing with such virtual currencies².

The proposed law titled “*Banning of Cryptocurrency and Regulation of Official Digital Currency Act, 2019*” forms part of the “*Report of the Committee to propose specific actions to be taken in relation to Virtual Currencies*” prepared by the Department of Economic Affairs, Ministry of Finance, Government of India.

¹ RBI/2017-18/154, DBR.No.BP.BC.104 /08.13.102/2017-18 dated April 6, 2018. Extracts: “2. In view of the associated risks, it has been decided that, with immediate effect, entities regulated by the Reserve Bank shall not deal in VCs or provide services for facilitating any person or entity in dealing with or settling VCs. Such services include maintaining accounts, registering, trading, settling, clearing, giving loans against virtual tokens, accepting them as collateral, opening accounts of exchanges dealing with them and transfer / receipt of money in accounts relating to purchase/ sale of VCs. 3. Regulated entities which already provide such services shall exit the relationship within three months from the date of this circular.”

² RBI issued public notices on December 24, 2013, February 01, 2017 and December 05, 2017.

2. What is a cryptocurrency?

For something to be considered as a cryptocurrency³ under the proposed⁴ *Banning of Cryptocurrency and Regulation of Official Digital Currency Act, 2019* (hereinafter *Crypto Law*), it must satisfy the following 3 conditions:

1	It must be information or code or number or token not being part of any Official Digital Currency.
2	It must provide a digital representation of value.
3	It must make a promise or representation of having inherent value in any business or commercial activity. OR It must function as a store of value or a unit of account.

Note: An Official Digital Currency (the digital rupee⁵ or a foreign digital currency⁶) is not considered to be a cryptocurrency.

³ As per section 2(1)(a) of the proposed *Banning of Cryptocurrency and Regulation of Official Digital Currency Act, 2019*, Cryptocurrency, by whatever name called, means any information or code or number or token not being part of any Official Digital Currency, generated through cryptographic means or otherwise, providing a digital representation of value which is exchanged with or without consideration, with the promise or representation of having inherent value in any business activity which may involve risk of loss or an expectation of profits or income, or functions as a store of value or a unit of account and includes its use in any financial transaction or investment, but not limited to, investment schemes;

⁴ Source: Report of the Committee to propose specific actions to be taken in relation to Virtual Currencies by Department of Economic Affairs, Ministry of Finance New Delhi, India.

⁵ A form of currency issued digitally by the Reserve Bank and approved by the Central Government to be legal tender.

⁶ The Reserve Bank may declare any official foreign digital currency to be recognised as a foreign currency in India. Such a currency would be governed by regulations under the Foreign Exchange Management Act, 1999.

3. What's allowed and what's not allowed?

The *Crypto Law* prohibits the mining, generating, holding, selling, dealing in, transferring, disposing or issuing of crypto-currency for the following activities⁷:

- Crypto-currency related financial products
- Raising funds
- Investments
- Payment systems
- Cryptocurrency related services to consumers or investors which includes registering, trading, settling, clearing or other services
- Trading cryptocurrency with Indian currency or any foreign currency
- Loans and credit
- Advertising or promoting a crypto-currency based payment system.

The following is permitted⁸:

- Using technology or processes underlying any cryptocurrency for the purpose of experiment or research.
- Using technology or processes underlying any cryptocurrency for the purpose of imparting instructions to pupils (Note: Fee payment for such courses cannot be taken in cryptocurrency).
- Using Distributed Ledger Technology for creating a network for delivery of any financial or other services or for creating value, as long as it does not involve the use of cryptocurrency for making or receiving payments.

⁷ Section 8 of the proposed *Banning of Cryptocurrency and Regulation of Official Digital Currency Act, 2019*.

⁸ Section 3 of the proposed *Banning of Cryptocurrency and Regulation of Official Digital Currency Act, 2019*.

4. The legal position of Bitcoin et al

Some of the most popular of the 1000+ cryptocurrencies are Bitcoin, Litecoin, Ether, Zcash, Dash, Ripple XRP, Monero, Bitcoin Cash, NEO, Cardano and EOS.

This would make it illegal, once the Crypto Law comes into force, to use these in India for any of the following purposes:

Prohibited activities	Maximum Punishment ⁹
Cryptocurrency related financial products	Imprisonment upto 10 years. Fine: The higher of 3 times the loss or harm caused by the person or 3 times the gain made by the person. If the loss caused or the gain made cannot be reasonably determined, the maximum amount of fine is Rs. 25 crore.
Raising funds through Initial Coin Offerings (ICOs) etc.	
Investments	
Payment systems based on Cryptocurrency	
Cryptocurrency related services to consumers or investors which includes registering, trading, settling, clearing or other services	
Trading Cryptocurrency with Indian currency or any foreign currency	
Loans and credit	Imprisonment upto 7 years. Fine: The higher of 3 times the loss or harm caused by the person or 3 times the gain made by the person. If the loss / gain cannot be reasonably determined, the maximum amount of fine is Rs. 25 lakh.
Advertising or promoting a Cryptocurrency based payment system	

⁹ As per section 14 of the proposed *Banning of Cryptocurrency and Regulation of Official Digital Currency Act, 2019*, the Court shall take into account the following factors while determining the appropriate period of imprisonment and fine for an offence - (a) the culpability of the person accused of committing the offence; (b) the actual and intended gains made and loss caused; (c) the harm caused to the financial system; (d) mitigating factors; and (e) the repetitive nature of the offence.

5. The legal position of the Ethereum blockchain

Launched in 2015, Ethereum is the world's leading programmable blockchain. Like other blockchains, Ethereum has a native cryptocurrency called Ether (ETH). ETH is digital money and its supply isn't controlled by any government or company - it is decentralized, and it is scarce. People all over the world use ETH to make payments, as a store of value, or as collateral¹⁰.

Ether is a crypto-currency, which is essential for using the Ethereum blockchain. **This would make it illegal, once the Crypto Law comes into force, to use the Ethereum blockchain in India for any of the following purposes:**

Prohibited activities	Maximum Punishment ¹¹
Ethereum related financial products	Imprisonment upto 10 years . Fine: The higher of 3 times the loss or harm caused by the person or 3 times the gain made by the person. If the loss caused or the gain made cannot be reasonably determined, the maximum amount of fine is Rs. 25 crore .
Raising funds through Initial Coin Offerings (ICOs) etc.	
Investments	
Payment systems based on Ethereum	
Ethereum related services to consumers or investors which includes registering, trading, settling, clearing or other services	
Trading Ether with Indian currency or any foreign currency	
Loans and credit	Imprisonment upto 7 years . Fine: The higher of 3 times the loss or harm caused by the person or 3 times the gain made by the person. If the loss / gain cannot be reasonably determined, the maximum amount of fine is Rs. 25 lakh .
Advertising or promoting an Ethereum based payment system	

¹⁰ Source: <https://www.ethereum.org/beginners/>

¹¹ As per section 14 of the proposed *Banning of Cryptocurrency and Regulation of Official Digital Currency Act, 2019*, the Court shall take into account the following factors while determining the appropriate period of imprisonment and fine for an offence - (a) the culpability of the person accused of committing the offence; (b) the actual and intended gains made and loss caused; (c) the harm caused to the financial system; (d) mitigating factors; and (e) the repetitive nature of the offence.

6. The legal position of Ripple XRP

Ripple is a real-time gross settlement system, currency exchange and remittance network created by Ripple Labs Inc., a US-based technology company. Released in 2012, Ripple is built upon a distributed open source protocol, and supports tokens representing fiat currency, cryptocurrency, commodities, or other units of value such as frequent flier miles or mobile minutes. The ledger employs the decentralized native cryptocurrency known as XRP¹².

Since the Ripple system uses a cryptocurrency, it would be illegal, once the Crypto Law comes into force, to use Ripple in India for any of the following purposes:

Prohibited activities	Maximum Punishment ¹³
Ripple related financial products	Imprisonment upto 10 years . Fine: The higher of 3 times the loss or harm caused by the person or 3 times the gain made by the person. If the loss caused or the gain made cannot be reasonably determined, the maximum amount of fine is Rs. 25 crore .
Raising funds through Initial Coin Offerings (ICOs) etc.	
Investments	
Payment systems based on Ripple	
Ripple XRP related services to consumers or investors which includes registering, trading, settling, clearing or other services	
Trading Ripple XRP with Indian currency or any foreign currency	
Loans and credit	

¹² Source: [https://en.m.wikipedia.org/wiki/Ripple_\(payment_protocol\)](https://en.m.wikipedia.org/wiki/Ripple_(payment_protocol))

¹³ As per section 14 of the proposed *Banning of Cryptocurrency and Regulation of Official Digital Currency Act, 2019*, the Court shall take into account the following factors while determining the appropriate period of imprisonment and fine for an offence - (a) the culpability of the person accused of committing the offence; (b) the actual and intended gains made and loss caused; (c) the harm caused to the financial system; (d) mitigating factors; and (e) the repetitive nature of the offence.

Advertising or promoting a Ripple based payment system	Imprisonment upto 7 years. Fine: The higher of 3 times the loss or harm caused by the person or 3 times the gain made by the person. If the loss / gain cannot be reasonably determined, the maximum amount of fine is Rs. 25 lakh.
--	--

7. The legal position of startups working on Ethereum et al

The Reserve Bank of India (RBI) notification titled *Prohibition on dealing in Virtual Currencies (VCs)* dated April 6, 2018 prohibits banks, NBFCs etc. from providing services to any person or entity dealing with or settling virtual or cryptocurrencies.

This would mean that banks, NBFCs etc. are prohibited from providing services to startups working on Ethereum, Ripple XRP, Bitcoin etc.