# The toss of a Bitcoin: How crypto ban will hurt 5 mn Indians, 20K Blockchain developers

BY ROHAN ABRAHAM, ET BUREAU | UPDATED: SEP 16, 2019, 03.37 PM IST

***With corporations and governments around the world moving financial services to the Blockchain, India risks ceding ground to countries that have coopted cryptocurrencies instead of outlawing them.***

*Trade in cryptocurrencies was a regulatory grey area in the past, giving many enterprising individuals a new avenue for investment.*

In 2017, it was reported that the Reserve Bank of India (RBI) was considering a proposal to introduce its own cryptocurrency akin to Bitcoin. The digital token was to be called Lakshmi – after the goddess of wealth. The idea died a premature death. After vacillating over whether to embrace cryptocurrencies or shun its advances, policymakers seem to have opted for the latter, taking an antithetical stance against digital currencies, going as far as outlawing their use, and threatening to incarcerate those who hold them.

The "Banning of Cryptocurrency and Regulation of Official Digital Currency Bill 2019" draft has proposed a 10-year prison sentence for anyone who "mines, generates, holds, sells, transfers, disposes, issues or deals in cryptocurrencies". Trade in cryptocurrencies was a regulatory grey area in the past, giving many enterprising individuals a new avenue for investment. Despite the volatility in its value, many lay investors took to crypto, even paying tax on profits from trade. How will they be impacted if the draft Bill were to become law?

**Capital Flight**

"In our view, the draft Bill takes an extreme position since it proposes to criminalize dealing with an asset in which lakhs of people have invested as a legitimate economic avenue. Jurisdictions like the U.S., E.U. and Japan have found ways to regulate crypto-asset activity to mitigate the risks and promote the benefits. This has also been recommended by the G20 and the Financial Action Task Force, the global anti-money-laundering watchdog," says Jaideep Reddy, Nishith Desai Associates.

He adds that the Bill lends to uncertainty as it does not enumerate ways in which Indian investors can offload their holdings. "In view of the criminal penalty, Indian buyers will not be able to buy and the law does not mention anything about cross-border transfers through banking channels. Another point to note is that the definition of cryptocurrency under the draft Bill is open-ended and may need more precise wording," Reddy opines. He reiterated that there was no reason to panic as the draft Bill is merely the recommendation of a committee, and not a binding decision.

"The committee did not have technical experts on the technology. It is now up to the government to consider what action to take on the basis of the committee's report," he adds.

Some cryptoexchanges have taken the drastic decision to register their companies abroad to skirt adverse legislation in India. “As a startup from India, we always wanted to serve from India, but this recent complication has made it difficult for domestic cryptocurrency exchanges to operate their businesses in India. So, we are now an Estonia-based company, and any Indian law to criminalize crypto will not impact us,” says Rahul Jain, Growth & Marketing – Digital, Bitbns

*Some crypto-exchanges have taken the drastic decision to register their companies.*

**Exit Window**

“The current Bill doesn’t have a “safe harbour” for people who bought or dealt in cryptocurrency before the law (assuming the Bill is enacted in its current form). While the Bill is unlikely to have retrospective effect, there is a real concern amongst investors and traders regarding how to exit their positions post the ban,” reckons Shilpa Mankar Ahluwalia, Partner, Shardul Amarchand Mangaldas. She adds that the Bill does not enlist curbs on selling in the offshore market after the ban, giving an opportunity for Indian investors to exit their positions.

However, Bharat Sharma, Partner, HSA Advocates, believes that the fine print of the Bill is accommodative of the concerns of investors. “All is not lost. Section 26 of the Bill is a transition provision. It states that within a period of 90 days of the Act’s commencement, the concerned person who possesses cryptocurrency must declare and dispose them,” he says.

**‘5 million Indians own crypto’**

Nischal Shetty, founder and CEO of the cryptoexchange WazirX, says that the volume of crypto trading has been rising over the past few years. He adds that an arbitrary decision to criminalize investing in digital tokens could destabilize existing businesses which have been operating legitimately, eroding the wealth of millions. “If the bill becomes a reality then India would be the first large democracy to ban an innovative technology such as crypto. Over 5 million Indians own crypto assets worth thousands of crores. They'll have to simply dispose it off and lose all their wealth,” he says.

Rachna Bakhru, Partner at RNA Technology and IP Attorneys, reckons that Indians who’ve invested in cryptocurrencies have reason to feel hard done by the proposed legislation. The 10-year prison sentence for dealing in cryptocurrencies is higher than the maximum punishment of seven years for money laundering. “In my view, the draft bill is unlikely to be passed in the present shape and form and may be modified after debate on various implications. Considering the nature of the currency, those holding and selling may be difficult to track as well,” she says.

**Taxman’s loss**

The case against the Bill rests on the positive influence of Blockchain on finance, and how legitimate businesses have harnessed crypto as an asset class. Moreover, the government coffers have also received contributions from the crypto industry. Bharat Sharma of HSA says that income generated from crypto trade is taxed under the head, profits and gains of business of profession. In case it is not the main business, it should come under the head capital gains. In case of complexities to decipher the cost of acquisition, it should come under income from other sources.

“Broadly speaking, income tax would be paid as capital gains if the buying and selling was for investment purposes. If the trading was in the course of business, it will be classified under business income. Tax will be calculated accordingly,” says Jaideep Reddy, Nishith Desai Associates. With the volume and value of trade in crypto increasing - however modestly - the loss in tax revenue to the exchequer is likely to be substantial.

*The government has been studying Blockchain-enabled currencies for a while now, but sceptics believe these deliberations were not comprehensive.*

**Legal minefield**

The notification issued by the RBI prohibiting banks and other licensed entities from dealing in any crypto assets has already been challenged in the Supreme Court. Any challenges to the Bill (once enacted) will largely be on the same grounds and will likely be clubbed with the ongoing cases. However, the argument that the ban is a violation of Article 21 of the Constitution (the right to carry on a profession of one's choice) may not find much favour with the Supreme Court, reckons Shilpa Mankar Ahluwalia of Shardul Amarchand Mangaldas.

"The current definition of 'cryptocurrency' in the Bill is very broad, and seeks to ban - perhaps unintentionally - all stored value units whether or not meant to be an alternate form of currency. The far-reaching implications of the Bill will probably face challenge and merit a review by the Supreme Court," she says. The hardline stance is, however, likely to add to the case burden Indian courts are faced with.

Domestic cryptoexchanges, which have largely been free from allegations of financial impropriety, are banking on goodwill earnt over the years to weather, what they believe, is a storm in a teacup. "Older clients have not had chance to complain because of the trust which we have built in the last couple of years. We have been communicating to our clients the implications of the new regulations and the measures taken to counterbalance them. But yes, when it comes to new clients, we have to explain the current market scenario in light of the new regulations, and also how the P2P model works better with current RBI restrictions," says Rahul Jain, Bitbns.

**'No threat to rupee'**

Bharat Sharma, HSA foresees litigation initiated by stakeholders against the proposed legislation. "The Bill does recognize concepts of digital rupee and foreign digital currency. In these cases, they are not outlawed once the Bill becomes an Act," he says. Amit Singhania, Partner, Shardul Amarchand Mangaldas opines that the tax argument is key to understanding and regulating cryptocurrencies, irrespective of the government's take on the committee's report.

While the use and trade of cryptocurrencies has increased in India over the years, it still constitutes a miniscule fraction of the overall digital transactions pie. "For miners the tax issue is more significant because they would have typically made huge investments in technology and super computer infrastructure. It is unclear whether such investment in hardware will be witnessed if a ban is enforced," he says.

The government has been studying Blockchain-enabled currencies for a while now, but skeptics believe these deliberations were not comprehensive. "The RBI circular has a lot of shortcomings due to the fact that the committee had no subject expert. The crypto industry was not consulted. We are always ready to help. Due to these limitations, the report wrongly makes a blanket statement that cryptocurrency is not a currency. The fact is that the crypto community does not see them as currency either. These are digital assets with very specific use cases built into the platforms where they exist. They aren't meant to be used as a currency. There is no threat to the rupee here," Shetty says.

**Industry impact**

A decision to act against cryptocurrencies is likely to have downstream effects, destabilizing the existing infrastructure that processes and facilitates trade in digital tokens. "The move will hurt not just the exchanges. There are tens of thousands of traders who earn a

living through trading in crypto assets. There are YouTubers and influencers who earn a living teaching people about digital currency and crypto trading. There are thousands of developers who are building apps on public Blockchain platforms such as Ethereum. What happens to their future?" asks Shetty of WazirX.

He warns that the government's mistrust of digital tokens could set the country back in its quest to adopt applications based on distributed ledger technology. Switzerland allows its citizens to pay utility bills in crypto while the Monetary Authority of Singapore (MAS) has an interbank system based on Blockchain. The U.K.'s Department of Work and Pensions disburses payments to pensioners through a Blockchain-enabled mobile app. The public sector in India has, in comparison, been wary of Blockchain technology, with innovation being mostly driven by startups.

According to a study by Dappros, a London-based Blockchain consulting firm, India is home to 19,627 Blockchain developers, the second largest hub in the world after the United States. A large section of this talent pool works on developing financial services on the Blockchain, a field that will be rendered redundant if cryptocurrencies are criminalized.

**Mining in the dark**

The mining of cryptocurrencies has also picked up in India, but Shetty reckons that if the government decides to criminalize crypto, the roof could cave in on first movers who invested substantially on setting up mining rigs – specialized computers with high processing power. "Should entrepreneurs be punished for being the innovators in this country? Why should they be penalized for being the early adopters of a cutting edge technology that has provided the highest return amongst any asset class in the last 10 years?" he quips.

Rachna Bakhru of RNA believes that the government will eventually climb down from its extreme position on crypto, giving in to the demands of stakeholders who have campaigned extensively since the RBI circular was made public. "The government may take a more balanced view keeping in mind the future of digital economy in India and interests of society and come up with some regulations or midway to govern digital currency as opposed to making it completely illegal. Also, Facebook's plan to launch crypto currency linked to its platform can change the landscape in future," she says.

**Future-proofing finance**

With corporations and governments around the world moving some essential services to the Blockchain, India risks ceding ground to countries that have coopted cryptocurrencies instead of outlawing them. In February 2019, J.P. Morgan became the first U.S. bank to create and test a digital coin that is pegged to the U.S. Dollar, and representing fiat currency held in accounts operated by JPMorgan Chase N.A. Singapore is testing a system to tokenize its currency across Blockchain platforms, while political parties in Denmark conduct internal elections using Blockchain-based systems to eliminate rigging and enhance transparency.

While the RBI has previously stated that it is conducting research towards the introduction of a rupee-backed digital currency, the draft Bill which seeks to criminalize cryptocurrencies will damage India's reputation as technology hub, hurting its standing in the Ease of Doing Business Index. Despite being in the crosshairs of the law, India's Blockchain sector has received USD 5.3 million in venture capital funding to date, according to report by Incrypt. Moreover, the World Economic Forum estimates that 10 per cent of the global GDP will be stored on Blockchain-based platforms by 2027. If the Indian government pays heed to the committee's recommendations, it would reduce to naught the country's crypto infrastructure, and in the process, make criminals of millions of earnest investors.

"Our clients are worried about the proposed legislation. Being a country largely reliant on the services sector, India will lose its edge as a technological power if the ban on crypto is enforces. Shunning this industry will mean massive job losses and brain drain. India cannot afford to lose money and talent. Crypto is predicted to be a USD 10 trillion industry in the next five years, and if we are to achieve our Prime Minister's goal being a USD 5-trillion economy, then crypto is integral to that vision," Shetty adds.