



Positive step towards freedom of trade, but banks will remain cautious: Lawyers on the Supreme Court's Cryptocurrency judgment

Bar & Bench

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While welcoming the Supreme Court's recent Cryptocurrency judgment, lawyers believe that banks will continue to remain cautious in dealing with virtual currency.

In a judgment passed on Wednesday, Apex Court struck down a circular issued by the Reserve Bank of India (RBI) which directed banks not to deal in transactions involving cryptocurrency.

The verdict was passed in a batch of petitions challenging the 2018 circular. The first writ petition (*Rajdeep Singh v. Union of India*) was filed within ten days of the circular by leading cryptocurrency exchanges at the time, including Koinex and CoinDelta, their founders, shareholders and several individual traders of cryptocurrencies in India. The petition was filed by **Ikigai Law** through Advocate on Record **Avinash Menon**, and was argued by Senior Advocate **Nakul Dewan**.

A second petition was eventually filed by the Internet and Mobile Association of India (IAMAI) through **Nishith Desai Associates** and argued by Advocate **Ashim Sood**.

Sharing his thoughts on the judgment, Dewan said,

“The judgment recognises that the RBI’s circular was not the least invasive measure in order to regulate virtual currencies, and that while the RBI had the power to take pre-emptive measures, it had been unable to show any semblance of damage suffered.”



Senior Advocate Nakul Dewan

The powers of the RBI to regulate virtual currency (VC) was heavily contested in the matter. The Court ultimately held that it is true that despite the fact that virtual currencies are not recognised as legal tender, they are very much capable of performing some of the functions of actual and real currency.

On this aspect, **Tanya Sadana** from Ikigai Law commented,

“The Court has clearly recognised that VCs are capable of performing some or most of the functions of real currency. As such RBI would have the power to regulate it regardless of the fact that it is not ‘legal tender’.”

It is believed that while judgment may provide short-term relief to the industry, the government may overcome this hurdle by drafting a more nuanced law to restrict trade in cryptocurrencies.

Anirudh Rastogi, Managing Partner at Ikigai Law, further cautions that while there are no legal restrictions any more, banks will remain cautious in dealing with exchanges.

One permanent outcome of the ruling is that the accounts of crypto-exchange Koinex, one of the petitioners before the Supreme Court, have been unfrozen. The Court has directed the bank to refund an amount of Rs. 12 crore to be refunded with interest.

On a concluding note, Dewan says,

“The judgment is a positive step towards the freedom of trade in India and also highlights the approach of Indian Courts which is positively tailored to making India’s software industry in sync with countries like the United States, United Kingdom, Singapore and Japan, where the trade in virtual-currency is regulated.”

Nakul Dewan