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INTRODUCTION

The Argus Technology Newsletter discusses recent developments in technological advances or milestones or events. As lawyers, we enjoy delving into the legal nuances and implications of technological changes and analysing their impact on our clients and their activities. It is said that law always lags behind technological advances and there could be some truth behind such statement, but there is no reason for lawyers to lag behind technological advances.

The Argus Technology Newsletter is not meant to be a substitute for your regular technology periodical. Instead, we hope and promise to offer a lawyer's insights into technological change and innovation.

Argus Partners has developed a strong and a robust technology and data privacy practice, which spans transactional advisory, corporate and regulatory advisory as well as contentious matters and disputes. Whilst physically the attorneys are based out of our Mumbai, Delhi & Bangalore offices, the team is servicing clients across the globe on Indian legal issues in technology and data privacy.

Central Bank Digital Currency the future of money: bright or gloomy?

Article Contributed by Rabia Rahim (Associate)



Spreading faster than the corona-virus, is the digital currency fever. Although not a big fan of the private cryptocurrencies, the Reserve Bank of India (“RBI”), like many of its counterparts across the world, intends to introduce a Central Bank Digital Currency (‘CBDC’), which shall be known as the ‘Digital Rupee’.

The Parliament of India had informed the Government of India of a proposal by the RBI, in which, the latter seeks to amend the Reserve Bank of India Act, 1934, in order to enhance the scope of the definition of ‘bank note’ to include currency in ‘digital form’. Shri T Rabi Sankar, the Deputy Governor of the RBI confirmed that the central bank has been ‘working out a plan for a phase-wise introduction of the Central Bank Digital Currency’. While the first phase will introduce CBDC for wholesale transactions (transactions between two banks), the later phase will introduce CBDC for retail transactions (transactions between the bank and the user).

This proposition by the RBI should ideally call for a celebration, considering a large number of factors, including the following:

- (1) Usage of CBDCs will render physical bank to bank transactions consequent to debit/credit card transactions (the delay in which, in the case of international transactions, will lead to variation in the exchange rate) redundant. With their universal access, CBDCs are a step forward to achieving a cashless economy: a dream India has been dreaming for some time now;
- (2) Unlike private cryptocurrencies (some aspects of which are likely to be banned in the near future), CBDCs will be regulated by the RBI, ensuring better protection to the users;

- (3) RBI will be able to control the volatility of CBDCs, as opposed to that of stablecoins pegged on US dollars, etc;
- (4) Introduction of CBDCs will reduce the usage of physical fiat currency and thereby bring down the cost of printing, transporting, storing and distributing currency from the budget; and,
- (5) CBDCs, which will be based on a digital ledger and will enable surveillance of its use, could be a transformative change in the lending industry, permitting lenders to restrict the use of CBDCs to the purpose of borrowing.

But every coin has two sides, and while celebrations may be underway, the commercial banks in India have been sending mayday signals to the central bank, and rightly so, for reasons, including the following:

- (1) Introduction and regulation of the CBDCs, both by the RBI, is bound to render the role played by the commercial banks in Indian banking system, redundant;
- (2) The commercial banks anticipate a decline in their income owing to a potential disruption in their storage-of-currency based operational model; and,
- (3) Potential drop in deposits.

Some other concerns in relation to CBDCs, and with its introduction by the RBI, could be the end-to-end regulation and the digital ledger, access to which can infringe on the privacy of the user of the CBDC; the issue of cyber security, etc.

Albeit, CBDCs are nothing but bank notes in the digital form (according to Shri T Rabi Sankar, Deputy Governor, RBI), a proper legal framework is to be essentially instated before the launch of the CBDCs, which incorporates the principles of privacy and data protection to the best extent possible. Moreover, amendments consequent to the introduction and usage of CBDCs, in order to accommodate the existing and forthcoming principles of privacy, data protection, international transactions in relation to CBDCs, will be required to set the stage for the introduction of CBDCs. Unless and until, such laws and amendments are in place, it would be difficult to analyse whether CBDCs will brighten the future of money or darken it.

Regulation of Crypto Currency Exchanges in India (Or Lack thereof)

Article Contributed by Anurag Prasad (Associate)



Regulation of cryptocurrencies in India

Listing on an Indian stock exchange requires adherence to a strict regulatory framework. Au-
contraire, listing a cryptocurrency on a crypto-currency exchange (“**Exchange**”) is fairly
simple, each Exchange has its own set of basic rules which need to be followed. Usually an
entity desirous of listing its coin/token on an Exchange is required to fill up a form which is
essentially questionnaire about the cryptocurrency. The Exchange then evaluates the
cryptocurrency and decides if it may be listed on the Exchange and traded publicly.

These forms vary for different Exchanges.

A listing form (“**Specimen Form**”) for a prominent Exchange in India WazirX can be found
[here](#).

The Specimen Form is in the form of a google form which asks basic questions about the
cryptocurrency such as name of the project, contact details, Github link, name of competitors,
use cases, current price and market capitalization of the coin etc.

There are two questions with prompts that are worrisome at the end of the Specimen Form.
These are extracted below:

*“1. If we list your coin, will you pay bounty/airdrop to our users? **

Prompt: *Replying with a "Yes" increases your chances of getting listed.*

*2. What amount of your token are you willing to pay as listing fee/bounty? Please add how
much BTC it's worth. **

Prompt: *Token integration takes time and effort. Please mention the listing fee you
propose to pay to expedite the listing process.”*

Paying a listing fee to the Exchange and assuring a bounty to users upon the listing of the cryptocurrency coin/token on the Exchange seem to be key driving factors that determine the successful listing of a cryptocurrency on an Exchange.

The listing form for CoinDCX, yet another Exchange, can be accessed [here](#). The form for CoinDCX has questions mostly similar to that for WazirX, however, it does not have the two questions on 'Listing Fee' and 'Bounty'.

Usually, the Exchange would also prominently display an evaluation criteria for the listing of cryptocurrency, which lists out criterion such as credibility, innovation, liquidity, security testing, legal compliances etc.

Key Issues

- Most of the parameters based on which the decision to permit listing, are subjective and may involve factors that are yet to crystallise at the time of making a determination in respect of listing a cryptocurrency. Further, the element of bias at the time of listing a cryptocurrency and afterwards becomes pertinent in the wake of 'Listing Fee' and 'Bounty'.
- Furthermore, it may be noted that a large number of coins/token that are listed on these Exchanges are speculative tokens with minimal use cases. In absence of specific regulations, it is extremely difficult to curb the listing of these speculative tokens on these Exchange.
- Currently there are no regulations that uniformly apply to all the Exchanges in the country. A self-regulatory code has been put in place by a few Exchanges, which includes voluntary compliance with anti-money laundering, combating against financing of terrorism, and *know your customer regulations*, and other company and taxation laws.¹
- Further, post the listing of a cryptocurrency, various Exchanges across geographies at times exhibit stark differences in trading prices.

For example, in November 2021, Bitcoin's price fell to a low of approximately Rs 34,00,000 (Rupees thirty four lac) on Wednesday morning. It was down over 25% (twenty five percent) from the previous day's close. However, the price of Bitcoin fell only over 2.5% (two and a half) percent to \$56,000 on Binance, the world's largest Exchange by volume.²

Analysis

In June, 2021, the Blockchain and Crypto Assets Council ("**BACC**"), a part of the Internet and Mobile Association of India (IAMAI) had announced that a formal board comprising of eminent jurists, technical specialists and fintech compliance specialists would be set up to oversee the implementation of a self-regulatory code.³

While self-regulation on a large scale might ensure that practices are uniform, fair practices cannot be guaranteed as a result of uniformity. Further, even though India's largest Exchanges, CoinDCX, Unocoin, Paxful, WazirX and ZebPay, are members of

¹ IAMAI-BACC To Set Up Formal Board For Self-Regulation Of Crypto Exchanges In India, last accessed on December 24, 2021 accessible at <https://inc42.com/buzz/iamai-bacc-to-set-up-board-for-crypto-exchange-self-regulation/>

² Explained: Why was bitcoin trading cheaper in India today compared to global prices? last accessed on December 24, 2021 accessible at <https://www.cnbcto18.com/cryptocurrency/explained-why-was-bitcoin-trading-cheaper-in-india-today-compared-to-global-prices-11578612.htm>

³ *Supra note 1.*

BACC, Exchanges are not required by law to be members of BACC and such non-member Exchanges may also choose not to follow the guidelines issued by BACC.

The price differential for the same cryptocurrency on different Exchanges is driven by different demand and supply figures, which opens a tremendous arbitrage opportunity, arguably exploitable by informed traders and experienced professionals at the cost of the novice and amateur retail investors.

At the moment, when a draft legislation is on the verge of being tabled before the Indian Parliament, the core discussion seems to be around the regulation/ban of cryptocurrencies, with debates centred around vices of cryptocurrencies. Cryptocurrencies are technological applications which can be created by any person with the right resources at their disposal. One assumes that some of the cryptocurrencies that are floated shall lack intrinsic value.

The greater responsibility lies not with the developers of the crypto currency, but with the intermediary responsible for bringing these crypto currencies to the retail market. The need of the hour is the regulation of Exchanges, by holding them accountable for the listed instruments, their failures and legal compliances. This may be done by a department at the Reserve Bank of India or a Fintech regulator created by new legislation.

Joint Parliamentary Committee's Report on Personal Data Protection Bill, 2019 Tabled in Parliament.

Article Contributed by Aishwarya Manjooran (Associate)



On December 16, 2021, the Joint Parliamentary Committee (“**JPC**”) report on the Personal Data Protection Bill, (“**PDP Bill**”) 2019 was tabled in both houses of the Parliament, two years after the PDP Bill was first introduced. The 545-page long JPC report contains a clause-by-clause examination of the PDP Bill, proposing 81 recommendations for modifications to the current bill as well as 150 drafting corrections and improvements.

The JPC report also stipulates that until a clear or separate framework is established to govern non-personal data as well, the PDP Bill, should cover both personal and non-personal data. Therefore the report has proposed that the Personal Data Protection Bill be renamed as the Data Protection Bill and the Data Protection Authority (“**DPA**”) established by the PDP Bill shall regulate the processing of both personal data and non-personal data, until the requisite legal framework is set up to distinguish between personal data and non-personal data. .

In 2017, the Supreme Court declared that privacy is a fundamental right under Article 21 of the Constitution, through the Puttuswamy judgement. The apex court directed the government to draft data protection laws, following which a committee of experts was constituted, which was chaired by Justice B. N. Srikrishna (“**Srikrishna Committee**”). The Srikrishna Committee submitted its report, along with a Draft Personal Data Protection Bill, 2018, to the Ministry of Electronics and Information Technology in July 2018. The Personal Data Protection Bill, 2019 was then introduced in Lok Sabha by the Minister of Electronics and Information Technology, Mr. Ravi Shankar Prasad, on December 11, 2019. In December 2019, the Bill was referred to a Joint Parliamentary Committee for further scrutiny on the demand of opposition members.

The winter session was expected to end on December 23, 2021, Thursday. However the session ended a day early on December 22, 2021, without the PDP Bill being taken up during this session. We shall now have to wait for the next Parliamentary session for the PDP Bill to be tabled once again in Parliament and, hopefully, passed.

Read more on this [here](#) find a copy of the JPC report [here](#).

Another Day Another Stay - Madras High Court Restrains Coercive Action Under Part III of the 2021 IT Rules

Article Contributed by Udit Mendiratta (Partner) and Dhruv Bhatnagar (Senior Associate)



Since their promulgation, several petitions challenging different provisions of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (“[2021 IT Rules](#)”) have been filed before constitutional courts across the country, including the Delhi High Court, Madras High Court and Kerala High Court. Recently, pursuant to a petition before the Madras High Court challenging Part III of the 2021 IT Rules, filed by the Indian Broadcasting and Digital Foundation (“[IBDF](#)”), the court [restrained the Central Government](#) from taking any coercive action against the petitioner for non-compliance. An overview of Part III, 2021 IT Rules and analysis of the Madras High Court’s order in the IBDF case is covered below.

Part III of the 2021 IT Rules - why is it considered controversial?

The 2021 IT Rules are broadly divided into two substantive portions: (i) Part II, administered by the Ministry of Electronics and Information Technology, imposes enhanced due diligence obligations on intermediaries and the newly created category of ‘social media intermediaries’ and ‘significant social media intermediaries’; and (ii) Part III, administered by the Ministry of Information & Broadcasting (“[MIB](#)”), prescribes a ‘code of ethics’ for online news and current affairs publishers and online curated content publishers (“[OCCPs](#)”), along with a three-tier mechanism for their regulation.

Various challenges to Part III the 2021 IT Rules, are broadly premised on the following issues arising thereunder:

1. **Ultra vires parent legislation**: The 2021 IT Rules have been promulgated under Sections 87(1)(z) and (zg) of the Information Technology, 2000 (“[IT Act](#)”). The IT Act does not recognise digital news media publishers or OCCPs as distinct entities and does not regulate them. Further, no provision of the IT Act, including the ones cited as a basis for

promulgating the 2021 IT Rules, authorises the Centre to frame regulations for news/current affairs or online curated content. Thus, Part III far exceeds the scope of the IT Act.

2. **Differential treatment with print media:** The 2021 IT Rules create an artificial distinction between digital news publishers and print media, simply on the basis of medium of publication. The 2021 IT Rules fail to recognise that written content on current affairs published online is not fundamentally different from printed content on the same issues/topics, so as to merit an entirely separate regulatory framework. In fact, often the content published on both mediums is identical.
3. **Vague restrictions in the code of ethics:** Both digital news publishers and OCCPs are required to adhere to a 'code of ethics' prescribed in the schedule to Part III, 2021 IT Rules. Some of the publication criteria prescribed therein are widely worded and vague, which may result in a chilling effect on publishers' freedom of speech. These include:
 - a. **For digital news publishers:** Restriction from publishing any content that is "*prohibited under any law for the time being in force*".
 - b. **For OCCPs:** Requirement to take into consideration "*India's multi-racial and multi-religious context*" and "*exercise due caution and discretion*" while featuring activities, beliefs, practices, or views of any racial or religious groups.
4. **Excessive governmental oversight:** The third level of the three-tier regulatory mechanism stipulated in the 2021 IT Rules is an 'inter-departmental committee' ("**Committee**"), headed by an authorised officer of the Central Government, and composed of officials from various ministries. The Committee is empowered to decide complaints referred by the MIB, and also to operate as a second appellate forum for decisions pronounced at Levels 1 and 2 of the 'self-regulatory mechanism'. The Committee can also issue a myriad of recommendations to the MIB regarding content publishers, including for publication of apologies, displaying warnings/ disclaimers, and modification, deletion or blocking of content. The recommendations, if ratified by the MIB through appropriate orders, are binding on the relevant publishers.
5. **Emergency blocking powers:** Rule 16 of the 2021 IT Rules empowers the Secretary, MIB to issue emergency blocking directions for online content to identifiable persons, publishers **or intermediaries**, in cases where "*no delay is acceptable*" and without providing them with a hearing. Pertinently, no provision of the IT Act authorises the MIB or its officials to issue directions of any kind to intermediaries. Thus, this rule has been criticised for being *ultra vires* its parent statute. Further, this rule creates a third mechanism for a Central Government ministry to issue blocking directions to intermediaries, the first being Section 69A of the IT Act read with the [Blocking Rules](#), and second being Rule 3(1)(d) of the 2021 IT Rules read with Section 79(3)(b), IT Act.

Current status of Part III, 2021 IT Rules

The interim relief granted by the Madras High Court in the IBDF case is consistent with similar orders passed by other High Courts hearing challenges against Part III, 2021 IT Rules. Most notably, the Kerala High Court's orders restraining the Centre from initiating coercive action against [LiveLaw](#) and the [News Broadcasters Association](#) for non-compliance with Part III's provisions, and the Bombay High Court's [August 14, 2021 order](#) in a petition filed by Agij Promotion of Nineteenonea Media Pvt. Ltd. (the company which owns the digital news portal, The Leaflet), staying the operation of Rules 9(1) and (3) of the 2021 IT Rules, i.e., the problematically vague 'Code of Ethics' and the self-regulation and oversight mechanism prescribed under Part III.

During a [hearing on September 16, 2021](#) in another petition challenging the provisions of Part III, 2021 IT Rules, filed by the Digital News Publishers Association, the Centre conceded that the Bombay High Court's stay order in the Leaflet case has pan-India effect. Despite this, the Centre has [continued to issue notices](#) to various publishers demanding adherence to Part III, which has necessitated the issuance of stay orders by High Courts *qua* specific litigants/ petitioners/ publishers. The IBDF order, passed in the backdrop of continual attempts by the Centre to enforce Part III's provisions, can be cited by other petitioners seeking similar protective orders before other constitutional courts. The order may also deter the Centre from initiating coercive action against other publishers, at least against those based in Tamil Nadu.

Earlier this year, with a view to avoid conflicting decisions by different High Courts on the legality of the provisions of the 2021 IT Rules, the [Centre filed a transfer petition](#) before the Supreme Court seeking a joint hearing of all petitions against the 2021 IT Rules. Reportedly, in September 2021, the [Supreme Court acknowledged](#) the urgency of deciding the validity of the 2021 IT Rules and directed listing of the transfer petition along with other petitions within six weeks. However, the listing date is still awaited. Considering the Centre's determination to enforce the provisions of Part III, 2021 IT Rules, despite stay orders from multiple High Courts, it is imperative that the Supreme Court hears the transfer petition and pronounces a definitive verdict on the constitutionality of the challenged provisions.

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