

Banning of Cryptocurrency &

Regulation of Official Digital Currency Bill, 2019

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Banning of Cryptocurrency and Regulation of Official Digital Currency Bill, 2019

BE it enacted by Parliament in the Year of the Republic of India as follows: —

An Act to prohibit the use of Cryptocurrency, regulate the Official Digital Currencies and for matters connected therewith or incidental thereto.

PART I
PRELIMINARY AND DEFINITIONS

CHAPTER 1

SHORT TITLE, EXTENT AND APPLICATION

1. (1) This Act shall be called the Banning of Cryptocurrency and Regulation of Official Digital Currency Act, 2019.

(2) It extends to the whole of India.

(3) It shall come into force on such date as may be appointed by the Central Government through notification in the official gazette.

CHAPTER 2

DEFINITIONS

Definitions.

2. (1) In the Act, unless the context otherwise requires, -

(a) "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;

(b) "Central Board" means the Central Board of Directors of the Reserve Bank as defined under section 2(b) of the Reserve Bank of India Act, 1934 (Act. No. 2 of 1934);

(c) "currency" means currency as defined under sub-section (i) of Section 2 of the Foreign Exchange Management Act, 1999 (Act No. 42 of 1999);

(d) "Digital Rupee" means a form of currency issued digitally by the Reserve Bank and approved by the Central Government to be legal tender;

(e) "Distributed Ledger Technology" means any technology that enables transactions and data to be recorded, shared, and synchronized across multiple data stores or ledgers, or a distributed network of different network participants, through the use of independent computers (referred to as nodes) who record, share and synchronize such transactions and data in their respective electronic ledgers (instead of keeping data centralized as in the case of a traditional ledger);

(f) "foreign currency" means foreign currency as defined under section 2(m) of the Foreign Exchange Management Act, 1999 (Act No. 42 of 1999);

(g) "foreign digital currency" means any class, category or type of digital currency recognised as legal tender in a foreign jurisdiction;

(h) "investment scheme" means a scheme or arrangement in which any person invests in a common enterprise with the expectation of profit which is derived from significant effort of third parties;

(i) "Investigating Authority" means a police officer not below the rank of Deputy Superintendent of Police;

(j) "miner" means a person who engages in mining of a Cryptocurrency;

(k) "mining" means an activity aimed at creating a Cryptocurrency and/or validating a transaction of Cryptocurrency between buyer and seller of Cryptocurrency;

(l) "notification" means by notification in the Official Gazette and the term "notify" and "notified" shall be construed accordingly;

(m) "Official Digital Currency" means the Digital Rupee or the foreign digital currency under sub-section 1 of Section 5;

(n) "payment system" shall have the same meaning set out in clause (i) of sub-section (1) of Section 2 of the Payments and Settlement Systems Act, 2007 (51 of 2017);

(o) "person" includes -

- (i) an individual,
- (ii) a Hindu Undivided Family,
- (iii) a company,
- (iv) a firm,
- (v) a trust,
- (vi) a limited liability partnership,
- (vii) an association of persons or a body of individuals, whether incorporated or not,
- (viii) any other entity or authority established under a statute,
- (ix) every artificial juridical person, not falling within any of the preceding sub-clauses, and
- (x) any agency, office or branch owned or controlled by such person;

(p) "prescribe" means prescribed through rules by the Central Government under this Act, and the term "prescribed" will be construed accordingly; and

(q) "Reserve Bank" means the Reserve Bank of India, as constituted under sub-section (1) of section 3 of the Reserve Bank of India Act, 1934 (Act No. 2 of 1934).

PART II

GENERAL PROHIBITION

CHAPTER 3

ACTIVITIES PROHIBITED UNDER THIS ACT

Prohibited transactions.

3. (1) No person shall mine, generate, hold, sell, deal in, issue, transfer, dispose of or use Cryptocurrency in the territory of India.
- (2) Nothing in this Act shall apply to any person using technology or processes underlying any Cryptocurrency for the purpose of experiment or research, including imparting of instructions to pupils provided that no cryptocurrency shall be used for making or receiving payment in such activity.
- (3) Nothing in this Act shall apply to the use of Distributed Ledger Technology for creating a network for delivery of any financial or other services or for creating value, without involving any use of cryptocurrency, in any form whatsoever, for making or receiving payment.

PART III

REGULATION OF DIGITAL RUPEE AND FOREIGN DIGITAL CURRENCY

CHAPTER 4

REGULATION OF DIGITAL RUPEE AS LEGAL TENDER AND CURRENCY AND REGULATION OF FOREIGN DIGITAL CURRENCY

Government authorised Cryptocurrency as legal tender and currency.

4. (1) The Central Government, in consultation with the Central Board of the Reserve Bank, may approve Digital Rupee to be legal tender with effect from such date and to such extent as may be specified.
- (2) The Digital Rupee shall be governed by such regulations as may be notified by the Reserve Bank under the relevant provisions of the Reserve Bank of India Act, 1934 (Act No. 2 of 1934).

Foreign digital currency as foreign currency.

5. (1) The Reserve Bank may by notification declare any official foreign digital currency to be recognised as foreign currency in India to the extent specified in the notification.
- (2) The foreign digital currency recognized as foreign currency in India shall be governed by such regulations as may be notified by the Reserve Bank under the relevant provisions of the Foreign Exchange Management Act, 1999 (Act No. 42 of 1999).

CHAPTER 5

PROHIBITION ON USE OF CRYPTOCURRENCY

Cryptocurrency not to be used as legal tender and currency.

6. (1) No person shall directly or indirectly use Cryptocurrency in any manner, including, as, -
 - (a) a medium of exchange; and/or

(b) a store of value; and/or

(c) a unit of account.

(2) Cryptocurrency shall not be used as legal tender or currency at any place in India.

Prohibition on use of Cryptocurrency for certain activities.

7. (1) No person shall directly or indirectly use Cryptocurrency for activities including, the following-

- (a) as a payment system, whether authorised under Section 4 of the Payments and Settlement Systems Act, 2007 (51 of 2017) or otherwise;
- (b) buy or sell or store Cryptocurrency;
- (c) provide Cryptocurrency related services to consumers or investors which includes registering, trading, settling, clearing or other services;
- (d) trade Cryptocurrency with Indian currency or any foreign currency;
- (e) issue Cryptocurrency related financial products;
- (f) as a basis of credit;
- (g) issue cryptocurrency as a means of raising funds; and/or
- (h) as a means for investment.

CHAPTER 6

OFFENCES

Offences.

8. (1) Whoever directly or indirectly mines, generates, holds, sells, deals in, transfers, disposes of or issues Cryptocurrency or any combination thereof with an intent to use it for any of the purposes mentioned in, or directly or indirectly uses Cryptocurrency for any of the activities mentioned in, clauses (e), (g) and/or (h) of sub-section (1) of Section 7 shall be punishable with fine or with imprisonment which shall not be less than one year but which may extend up to ten years, or both:

Provided however that any direct or indirect acquisition, storage or disposal of Cryptocurrency for the purposes mentioned in sub-section (4) of section 8 shall be punishable in the manner set out therein.

(2) Whoever directly or indirectly mines, generates, holds, sells, deals in, transfers, disposes of or issues Cryptocurrency or any combination thereof with an intent to use it for any of the purposes mentioned in, or directly or indirectly uses Cryptocurrency for any of the activities mentioned in, subsection (1) of Section 7 or clauses (a), (b), (c), (d) and/or (f) of sub-section (1) of Section 7 shall be punishable with fine or imprisonment which may extend up to ten years or both:

Provided however that any direct or indirect acquisition, storage or disposal of Cryptocurrency for the purposes mentioned in sub-section (4) of section 8 shall be punishable in the manner set out therein.

(3) Whoever directly or indirectly promotes, issues any advertisement, solicits, **abets** or induces any participation in any activity involving the use of Cryptocurrency for any of the purposes or activities mentioned in sub-section (1) of Section 6 or sub-section (1) of Section 7 shall be punishable with fine or imprisonment which may extend up to seven years or both.

(4) Whoever directly or indirectly acquires, stores or disposes of Cryptocurrency or any combination thereof with an intent to use it for any of the purposes provided in sub-section (1) of section 6 or sub-section (1) of section 7 on a non-commercial basis shall be punishable with a fine.

Attempt to commit offences, abetting and contravention of other provisions of the Act to be punishable.

9. (1) Whoever having been previously convicted of an offence punishable under this Act, is subsequently convicted of an offence shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to ten years and with fine.

(2) Whoever attempts to commit an offence punishable by this Act or causes such an offence to be committed, and in such an attempt does any act towards the commission of the offence, shall, where no express provision is made for the punishment of such offence, be punished with imprisonment of any description provided for the offence, for a term which may extend to one half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence or with both.

(3) Whoever fails to comply with any provisions of this Act, including any rules made or any notifications issued thereunder in a manner which does not fall within offences described in other sections, shall be liable to a fine

Maximum amount of fine.

10. (1) For the purposes of Sections 8 and 9, the maximum amount of fine that may be imposed upon a person for an offence shall be as follows:

(a) the higher of, –

(i) three times the loss or harm caused by the person; or

(ii) three times the gain made by the person.

(b) If the loss caused or the gain made by the person cannot be reasonably determined, the maximum amount of fine that may be imposed on such persons shall be as specified in First Schedule as against each of the offences under Sections 8 and 9.

PART IV

POWERS OF THE INVESTIGATING AUTHORITY

CHAPTER 7

POWERS OF INVESTIGATION

Investigation.

11. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Investigating Authority shall investigate any offence under this Act.

Provided that the Central Government may notify appropriate levels of police officer for investigation of offences specified under this law.

(2) Save as provided in sub-section (1) of Section 11, every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974)

relating to searches or seizures made under that Code.

PART V

PENALTIES AND PROCEEDINGS

CHAPTER 8

PENALTIES AND PROCEEDINGS UNDER THIS ACT

Penalties.

12. (1) Notwithstanding anything contained in the Code of Criminal Procedures, 1973, all offences under section 8 and section 9, other than offences under sub-section (1) of section 8, shall be non-cognisable and bailable. Offences under sub-section (1) of section 8 shall be cognisable and non-bailable.

(2) If any conduct is punishable under any other law, this Act will be in addition to and not in derogation of such law.

Cognizance of offences by court.

13. (1) No court shall take cognizance of any non-cognisable offence punishable under this Act or any rules made thereunder, save on a complaint made by the Central Government or State Government or by any person.

(2) Notwithstanding anything contained in the Criminal Procedure Code, 1973, an offence under this Act can be taken cognizance of and tried only by, a court not inferior to a Court of Session having jurisdiction over the area in which the offence is committed.

(3) The Central Government, State Government, any appropriate authority or entity established under statute, or any other investigation agency shall share any information or documents relating to any offence under this Act, with the Investigating Authority.

(4) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 shall apply to all proceedings before the Court, including proceedings for compounding.

Factors to be considered for punishment.

14. (1) 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.

Compounding of offences.

15. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), any offence punishable under this Act, not being an offence punishable with imprisonment only or punishable with imprisonment and also with fine, may be compounded, before or after the institution of proceedings, by the Court in which the proceedings are pending.

(2) The Court may compound an offence only on payment by the person applying for compounding, of the specified fee, not exceeding the maximum fine which may be imposed in respect of that class of offences.

(3) Where the Court compounds any offence, –

(a) the court shall give notice of such compounding to the Investigating Authority;

(b) where the offence is compounded before the institution of criminal proceedings, the Investigating Authority must not institute or pursue any proceedings arising out of the cause of action in respect of which compounding has been effected; and

(c) where the offence is compounded after the institution of criminal proceedings, the person in relation to whom the offence is compounded is deemed to be discharged of the offence so compounded.

(4) The Court shall transfer any fee recovered under this section to the Consolidated Fund of India.

Power to grant immunity.

16. (1) The Central Government may, on recommendation by the Investigating Authority, but without being bound by such recommendation, if the Central Government is satisfied, that any person, who is alleged to have violated any of the provisions of this Act or the rules made there under, has made a full and true disclosure in respect of alleged violation, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act, or the rules made there under or also from the imposition of any fine under this Act with respect to the alleged violation:

Provided that no such immunity shall be granted by the Central Government in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of application for grant of such immunity:

(2) An immunity granted to a person under sub-section (1) may, at any time, be withdrawn by the Central Government, if it is satisfied that such person had, in the course of the proceedings, not complied with the condition on which the immunity was granted or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the contravention and shall also become liable to the imposition of any fine or imprisonment or both under this Act to which such person would have been liable, had such immunity not been granted.

PART VI

MISCELLANEOUS

Violations by bodies corporate.

17. (1) Where a violation under this Act has been committed by a body corporate, every officer of the body corporate who at the time the violation was committed, was in charge of, and was responsible to, the body corporate for the conduct of the business of the body corporate, as well as the body corporate, shall be liable for the commission of the violation;

Provided that an officer of a body corporate shall not be liable to be proceeded against for a violation committed by the body corporate under this Act, unless such violation is, –

- (a) shown to have been committed with the consent or connivance of that officer;
 - (b) shown to have been committed with the knowledge of that officer, attributable to such officer due to the internal processes of the body corporate; or
 - (c) attributable to the gross neglect on the part of the officer.
- (2) Any criminal proceedings or enforcement action against either the officer or the body corporate shall not bar proceedings against the other.
- (3) In this section, “officer” includes director, member of the managing committee, chief executive, manager, secretary, individuals in control, and persons who purport to be officers with the knowledge of the body corporate.

Protection of action taken in good faith

18. No suit, prosecution or other legal proceedings shall lie against the Central Government, the State Government or their officers and employees, for anything which is done, or intended to be done, in good faith under this Act.

Act to have overriding effect

19. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Application of other laws not barred

20. The provisions of this Act are in addition to, and not in derogation of, the provisions of any other law for the time being in force.

Power of Central Government to make rules.

21. (1) The Central Government may, by notification, make rules for the purpose of giving effect to the objects of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for-

- (a) the manner of declaration and disposal of Cryptocurrency under Section 25;
- (b) any other matter which is required to be, or may be prescribed, or in respect of which provision is to be made by rules.

Laying of rules.

22. Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree to make any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power to amend Schedules.

23. (1) The Central Government may, by notification, amend the First Schedule by amending the amount of fine,

including the maximum amount of fine, applicable to a particular offence and on and from the date of publication of such notification, such fine shall be deemed to be amended or, as the case may be, omitted from the First Schedule.

(2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

Power of Central Government to remove difficulties.

24. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the official gazette, make provisions as may appear to it to be necessary for removing the difficulty;

Provided that the Central Government shall not notify any provision that is inconsistent with the provisions, intent or purpose of this Act.

(2) The power of the Central Government to issue orders under this Section may be exercised at any time prior to the expiry of three years from the notification of the relevant provision.

(3) The Central Government must lay every order made under this Section before each House of Parliament, as soon as may be possible, after it is made.

(4) The provisions of section 22 shall apply to every order made under this section, as if such order were a rule made by the Central Government.

Power to exempt.

25. (1) If the Central Government is satisfied that it is necessary in the public interest to do so, it may, by notification, exempt generally or subject to such conditions as may be specified in the notification, activities of any specified description from the whole or any part of the provisions of section 3 of this Act.

(2) The provisions of sub-section (2) of section 23 shall apply to every notification made under this section.

Transition provisions.

26. (1) Any person shall, on or after the date of commencement of this Act but on or before the expiry of ninety days from the date of commencement, make a declaration in respect of Cryptocurrency in such person's possession and shall dispose of the same within the aforesaid period.

(2) The Central Government may, through rules, prescribe the form and manner of declaration and disposal of such Cryptocurrency, including any matters connected or incidental thereto, as may be required to be declared by such person under this section.

Amendment to certain enactments.

27. The enactments specified in the Second Schedule shall be amended in the manner specified therein.

THE FIRST SCHEDULE

[(See Section 10)]

Offence	Fine
Under section 8(1)	Upto Rs. 25 crores
Under section 8(2)	Upto Rs. 25 crores
Under section 8(3)	Upto Rs. 25 lakhs
Under section 8 (4)	Upto Rs. 1 lakh
Under section 9 (1)	Upto Rs. 50 crores
Under section 9 (4)	Upto Rs. 25 crores

THE SECOND SCHEDULE

[(See Section 26)]

AMENDMENT TO CERTAIN ENACTMENTS

AMENDMENT TO THE PREVENTION OF MONEY LAUNDERING ACT, 2002

In the Prevention of Money Laundering Act, 2002, in the Schedule, in Part A, after Paragraph 29, the following Paragraph shall be inserted, namely:

PARAGRAPH 30

OFFENCES UNDER THE BANNING OF CRYPTOCURRENCY AND REGULATION OF OFFICIAL DIGITAL CURRENCY ACT, 2019

Section	Description of offence
8(1)	<p>Whoever directly or indirectly mines, generates, holds, sells, deals in, transfers, disposes of or issues Cryptocurrency or any combination thereof with an intent to use it for any of the purposes mentioned in, or directly or indirectly uses Cryptocurrency for any of the activities mentioned in, clauses (e), (g) and/or (h) of sub-section (1) of Section 7 shall be punishable with fine or with imprisonment which shall not be less than one year but which may extend up to ten years, or both:</p> <p><i>Provided</i> however that any direct or indirect acquisition, storage or disposal of Cryptocurrency for the purposes mentioned in sub-section (4) of section 8 shall be punishable in the manner set out therein.</p>
8(2)	<p>Whoever directly or indirectly mines, generates, holds, sells, deals in, transfers, disposes of or issues Cryptocurrency or any combination thereof with an intent to use it for any of the purposes mentioned in, or directly or indirectly uses Cryptocurrency for any of the activities mentioned in, subsection (1) of Section 6 or clauses (a), (b), (c), (d) and/or(f) of sub-section (1) of Section 7 shall be punishable with fine or imprisonment which may extend up to ten years or both:</p> <p><i>Provided</i> however that any direct or indirect acquisition, storage or disposal of Cryptocurrency for the purposes mentioned in sub-section (4) of section 8 shall be punishable in the manner set out therein.</p>

8(3)	<p>Whoever directly or indirectly promotes, issues any advertisement, solicits or induces any participation in any activity involving the use of Cryptocurrency for any of the purposes or activities mentioned in sub-section (1) of Section 6 or sub-section (1) of Section 7 shall be punishable with fine or imprisonment which may extend up to seven years or both.</p>