CBDC AND ITS CONSTITUTIONAL STATUS IN INDIA

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Introduction

The end of the Silver Standard & The Rise of CBDCs (Central Bank Digital Currencies) have sparked a complete metamorphosis regarding monetary policy across the globe, leading all central banks worldwide to reconsider the role and structure of currency in an increasingly digital world. The formal launch of a digital currency retail sandbox in India for 2025, along with the formal introduction of e₹ (digital rupee) as a sovereign-backed digital currency in an unprecedented process that started in December 2022, are some of the reasons more than 100 central banks are exploring modern monetary systems around the world. In the context of India, the RBI is experimenting to find out a way in which money could be stabilized in this digital economy.

The Finance Act 2022 amended the Reserve Bank of India Act, 1934 via growing the definition of the term "forex" to encompass virtual foreign money accordingly, the virtual rupee has been acknowledged in statute but there has been no constitutional instructional or judicial discourse on the legitimacy of the concept of a digital sovereign currency.

Although the Legislative Branch of the Parliament can introduce the bill to regulate the CBDC, the Digital Currency's Constitutional Status will not be changed. There are various constitutional issues that will arise due to the e-launch. One of these is the issue of Data Governance and Privacy. According to Justice K.S Puttaswamy, in a case involving the Union of India, Article 21 of the constitution states that "Data Protection should be a part of the Legislative Process."

Legislative Competence and Sound Currency Status

In the Indian Constitution, the task of regulating money market, issuing currency notes and deciding legal tender are taken care by the Central Government. This has been done through [1]Entry 36 (currency, coinage, legal tender) and [2]Entry 37 (foreign exchange) in the Union List

[1] Entry 36 of Union List
[2] Entry 37 of Union List

of the Seventh Schedule to the Constitution. This shows that the makers of the Constitution were of the opinion that in a country the control of fiscal policy and monetary policy should be with the Central Government and that there should be uniformity in monetary management in the country.

The Reserve Bank of India Act, 1934 as amended by the Finance Act 2022 has been amended with effect from 25th January 2023. As per [3]Section 2(iv) of RBI Act, the word "digital form" has been introduced after the word "currency notes" and "coins". So, RBI can now issue currency in digital form. Again, India is following the footsteps of other countries as well where they are planning to launch their sovereign digital currencies. As an example, the European Central Bank is also planning to launch digital euro. [4]Section 26 of RBI Act, 1934 referred only to physical currency, namely banknotes and coins. The 2022 amendment has expanded the term "legal tender" to also cover digital currency. Thus, when we say that the digital rupee shall be legal tender for the amount of any debt or account, this should also cover its use for payment of other liabilities. That being the case, any contract clause requiring an obligor to accept cash for the discharge of an obligation but to refuse e₹ would clearly run afoul of the principle that the digital rupee has become legal tender. Conversely, as noted before, this should also see to it that settlement finality under the [5]Payment and Settlement Systems Act, 2007, is fully retained.

Making a currency legal tender does not resolve constitutional issues. With a CBDC the fact that it can be made a programmable unit (say with an expiry date), the fact that it will be traceable on the blockchain and the fact that it will be by design transparent, raise a whole host of constitutional issues far beyond those of statutory competence. The principle of anonymity which underpins cash as a means of ensuring the privacy of transactions, will be lost with a traceable CBDC and thus raise issues of surveillance, individual freedoms and the risks of abuse by the State.

Privacy, Proportionality, and Data Governance

In [6]Justice K.S. Puttaswamy v. Union of India (2017), the constitutional right to privacy was definitely made a basic right according to Articles 14, 19, and 21; a nine-judge Supreme Court

[3] Section 2(iv) of RBI Act, 1934
[4] Section 26 of RBI Act, 1934
[5] Payment and Settlement System Act, 2007
[6] Justice K.S. Puttaswamy v. Union of India, AIR 2017 10 SCC 1

group decided that privacy of information is part of people's freedom and respect. The Court also set out a clear test of proportionality to judge if what a government does, limiting privacy, is allowed, this test needs: (i) a law in place; (ii) a sensible reason for the government to act; (iii) a sensible link between the action and the reason; and (iv) that the action is the smallest possible limit on freedom. A CBDC like e₹ - by its nature, puts down transactions on one central record or a spread record, so making a lasting or almost lasting record of money activity. Unlike normal money, which lets people trade without being known, digital rupee trades could possibly be followed, kept, and looked at. This makes it possible for the government to know a lot about what people buy, how they act in the economy, and even what their political and social groups are.

Around the world, other ways of doing things have been put forward, including levels of not being known, where smaller amount transactions (say, under ₹500) get more privacy and different privacy systems that make bigger collections of data unknown. China's e-CNY has tried these ways, but in India, because there aren't clear rules in law, or separate control like a special body to protect data which has clear power over CBDC trades, there's a chance of the government going too far into financial privacy; and this could also, in a roundabout way, harm economic freedom which [7]Article 19(1)(g) protects.

Administrative Responsibility and Democratic Oversight

Besides the issue of privacy, the institutional accountability is also the determinant of the constitutional legitimacy of the digital rupee. As the sole issuer and controller of e-rupee, the RBI possesses a lot of power in the digital monetary flows and data on transactions. Absence of well-written regulations that regulate access, retention and deletion of CBDC data can lead to administrative opaqueness and even executive overreach. Although the issuance of digital currency was sanctioned by the Parliament in terms of the Finance Act, it did not provide specific legislative protection to oversee the management of data, specify access procedures, and provide redress remedies. The existing system is comprised of various acts, which are the RBI Act, 1934, the Payment and Settlement Systems Act, 2007, and the [8]Information Technology Act, 2000. This set up, however, is a gradual evolution of more mature legislation as opposed to a new regulatory framework that considers the peculiarities of programmable

[7] India Const. art. 19, cl. 1(g).
[8] Information Technology Act, 2000

digital currency.

Conclusion

The digital rupee will be a valid constitutionally judged to the extent that Parliament has the legislative capacity under the Union List to control currency, and to give the status of legal tender. The legal approval towards the issuance of the RBI Act is provided through the statutory changes in the Act. However, constitutional legitimacy would not be attained merely through some competency and legal recognition, but also must correspond to the fundamental rights, all in compliance with the doctrine of proportionality enshrined in [9]Puttaswamy, as well as through the establishment of effective institutional protection.

These unreliable questions can ruin the people's trust of which no countrywide introduction of an independent digital currency can take place. The solution would be to think through a principled progression, through which committed CBDC law will establish privacy protection, the designed anonymity model, limiting constraints of data retention and access, openness via audit logs, and the establishment of several levels of control potentially to having parliamentary committees and judicial review systems.

[9] Justice K.S. Puttaswamy v. Union of India, AIR 2017 10 SCC 1

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