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Status of Cryptocurrency in India: A Broader Perspective

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ABSTRACT

With COVID-19 severely affecting the world economy resulting in its potential downfall, crypto market seems to have gained huge popularity in the past few months. Technology is exponentially evolving overtime and people like to stay updated with the latest trends. Cryptocurrency has emerged as a type of open-source based digital or virtual currency which is neither administered nor centralized by the State. Traditional currencies are subject to a great deal of regulations governing them and are also prone to counterfeiting. Cryptocurrencies till now remain unregulated and it is nearly impossible to forge them as they operate on the blockchain technology.

So a prominent question which arises is why people are still afraid to invest in cryptos or why is it that the Indian government wants to ban them and introduce CBDC (Central Bank Digital Currency) and what is it about the new Digital Currency Bill and its impacts on the crypto-market. This article throws light on identifying the scope of the term 'currency' as defined under the laws and analysing whether or not cryptocurrencies fall under the purview of the same. It also focuses on understanding the need and mechanism of cryptocurrency with its thorough interpretation with regards to Indian Legal perspective.

Keywords: *Legality of Cryptocurrency, Blockchain, Global Outlook, RBI And SC On Crypto.*

I. INTRODUCTION

Cryptocurrency is a type of open-source based digital or virtual currency which is neither administered nor centralized by the State. It is a fully encrypted (cryptography) medium of exchange that works through the internet i.e., its control is not confined to the hands of any government. There is a network of users and their computers that maintains a ledger. It is necessary that the exchange of cryptocurrency is approved and validated by the users in the network. Following which the ledger then gets updated to display the transaction. This is called

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the Blockchain technology.²

Virtual currencies like Bitcoin, Ethereum, Dogecoin etc. have gained huge popularity recently. To better understand, think of cryptocurrency as the species and bitcoin as the gene. Bitcoin is the most popular cryptocurrency; it was the first ever of its kind.

II. UNDERSTANDING THE NEED AND MECHANISM OF CRYPTOCURRENCIES

Our traditional currencies are subject to a great deal of regulations governing them. As our currencies are centralised, the decision of when and how much currencies to print lies in the hands of the government which is why our usual currencies are subject to a lot of intervention. The exchange rates also differ from country to country. Cryptocurrency on the other hand is free from all these complications. One can use it anywhere, anytime in the world, without the need for third parties or intermediaries like banks or financial institutions. This can be done so by using the public and private keys on the network.

Traditional currencies are prone to counterfeiting. Unlike them, it is nearly impossible to forge cryptocurrency as it operates on the blockchain technology. Once the transaction is done it is transmitted to a network of peer to peer computers or servers operating around the globe. This network of servers then approves the transaction and its validity is confirmed thereby. After this the transaction is bunched together in the form of blocks. The blocks are made up of encrypted data and are stored in a 'chain' which is the public database. Each block has a unique code which differs from the others. This unique code is known as 'hash'. Blocks containing information are added to the blockchain in a chronological manner. These blocks are chained together, creating a history of the transactions which are legitimate.³ Here, the transaction is complete.

It is almost impossible to break or replace or tamper the blocks as every block has its own unique encrypted code chained together in a sequence. It can be concluded that cryptocurrency is 'fraud proof' which is one of the most important aspect when talking about currencies.

III. INDIAN LEGAL PERSPECTIVE

With an exponential growth in the internet technologies, cryptocurrencies have engrossed public attention and gained huge popularity in not only India but the entire world. The issue here to be discussed is whether Cryptocurrency is legal in India? What is the controversy

² Bitcoin Part 1 -Here's how the cryptocurrency works. www.moneycontrol.com/news/business/personal-finance/bitcoin-part-1-heres-how-the-cryptocurrency-works-6400621.html

³ What Is Blockchain and How Does It Work? December 3, 2020 <https://www.thesslstore.com/blog/what-is-blockchain-how-does-blockchain-work/>

regarding cryptocurrency going on in the Indian state? Whether or not the government is open to it?

In the year 2017, a special Inter-Ministerial Committee was set up under the chairmanship of the then secretary of the Department of Economic Affairs, Sri Subhash Chandra Garg, to study and analyse the state of the digital currency, its taxation possibilities and the legal issues associated with such virtual currency and propose actions to be taken in regards to the same. The committee's report recommended that all the private cryptocurrencies, except any virtual currencies issued by state, should be prohibited in India.⁴

A year later, in 2018, the Reserve Bank of India issued a circular banning all banks and financial institutions from dealing with persons or companies that trade in cryptocurrencies.⁵ Aggrieved by this, the Internet and Mobile Association of India (IMAI) filed a writ petition in the Supreme Court requesting the withdrawal of the RBI's circular. The Supreme Court while hearing the case observed that 'money' has four features, medium of exchange, store of value, unit of account, and its social acceptance. It was contended that virtual currencies do not satisfy the legal definition of money and are not socially accepted as money.⁶

The Supreme Court held that even if three of the four features are satisfied, it'll be sufficient for the virtual currencies to be termed as money. Justice V. Ramasubramanian held that "*VCs have not acquired the status of a legal tender as they are not backed by a central authority, but they constitute representations of value and are capable of functioning as a medium of exchange.*" The Court also opined that the RBI's circular imposing the ban was violative of article 19(1)(g) of the Indian Constitution which talks about freedom to practise any profession, or to carry on any occupation, trade or business. The Court pointed out that the Reserve Bank of India is vested with regulatory powers and itself derives its powers from a legislation formed by the Parliament, the regulations of RBI cannot supersede the rights and freedoms guaranteed to the citizens by the Constitution of India. The regulators cannot act arbitrarily and impose a ban on the entire industry. It is a matter of legislative policy and must only arise from legislation.⁷

The Supreme Court held the RBI's circular to be unreasonable and extremely disproportionate and thus lifted the ban.

⁴ Report of the Committee to propose specific actions to be taken in relation to Virtual Currencies <https://dea.gov.in/sites/default/files/Approved>

⁵ Prohibition on dealing in Virtual Currencies (VCs) <https://rbidocs.rbi.org.in/rdocs/notification>

⁶ Internet And Mobile Association ... vs Reserve Bank Of India, 2020 https://main.sci.gov.in/supremecourt/2018/19230/19230_2018_4_1501_21151_Judgement_04-Mar-2020.pdf

⁷ *ibid*

IV. CAN RBI REGULATE CRYPTOCURRENCY?

The most prominent question here is whether the RBI can exercise its jurisdiction over cryptocurrency or whether Cryptocurrencies fall under the purview of currency?

The RBI act does not explicitly define currency. As per the Foreign Exchange Management Act (FEMA), 1999, Sec 2 (h) 'Currency' includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, travellers cheques, letters of credit, bills of exchange and promissory notes, credit cards or such other similar instruments, as may be notified by the Reserve Bank; Sec 2 (m) defines foreign currency: foreign currency means any currency other than Indian currency; Sec 2(q) defines Indian currency means currency which is expressed or drawn in Indian rupees and Sec 2(i) says currency notes mean and include cash in the form of coins and currency notes.⁸ Therefore, taking into consideration the aforementioned points, it can be concluded that Cryptocurrencies are out of the purview of the FEMA act and cannot be called currency as per the Indian legal system. But an important point to be noted is that cryptocurrency has the characteristics of 'money' but it is just not in the form of bank notes or coins and therefore it is difficult for it to be termed as legal tender. There is no legal framework to regulate cryptocurrencies in India but the absence of a legal framework or regulatory authority does not make cryptocurrency illegal but merely 'unregulated'.

V. CURRENT STATUS

The government is planning to propose a new digital currency bill which will be called "The Cryptocurrency and Regulation of Official Digital Currency Bill 2021". The bill has been drafted by the special Inter-Ministerial Committee headed by Sri Subhash Chandra Garg, former secretary of the Department of Economic Affairs. The new bill aims at banning all private cryptocurrencies and paving a way for the government to introduce its own 'Official Digital Currency' which will be issued and regulated by the RBI.⁹ The bill was about to be introduced in the Parliament during the budget session but was put to hold as the government decided to conduct meetings and discussions with the relevant stakeholders before bringing out the bill.

However, before launching its own digital currency by the RBI, a period of 3-6 months will be provided to investors/crypto-holders/relevant stakeholders to liquidate their crypto assets, after which the bill would criminalize mining, holding, issuing, selling, and trading of

⁸ The Foreign Exchange Management Act, 1999, (42 of 1999)

⁹ <https://techcrunch.com/2021/01/30/india-plans-to-introduce-law-to-ban-bitcoin-other-private-cryptocurrencies/>

cryptocurrencies.¹⁰ The Reserve Bank of India is working on the CBDC or Central Bank Digital Currency project which is a legal instrument in the digital form. Introducing CBDC will be advantageous in the sense that it will help in curbing money laundering, hacking, terror funding, tax evasion etc.¹¹

However, the final draft of the bill has not been worked out yet but it will be finalized and sent to the cabinet soon.

VI. GLOBAL PERSPECTIVE

Cryptocurrency trading can be done anonymously between any account holders, anytime and anywhere in the world and therefore, criminals and terror organizations find it quite attractive. Although cryptocurrency has gained huge popularity, some countries still refuse to determine its legality. Countries like the USA, Canada maintain a crypto-friendly stance while making sure that it is not used for money laundering or other illegal transactions. Bitcoin is categorized as a financial service in Finland. It has been granted a VAT exempt status in Finland¹².

The European Union (EU) is also open to Cryptocurrency. The European Court of Justice held that digital currency trading is a supply of service and is exempt from VAT in all EU member states.¹³ Bitcoin and other cryptocurrencies are recognised as legal property by the Payment Services Act, Japan. In India, bitcoin is already being widely used by the people but there are no explicit regulations governing it. El Salvador is the world's first sovereign nation to adopt bitcoin as legal tender.¹⁴

While cryptocurrencies have enjoyed some success in several countries, China refuses to approve them. The National Internet Finance Association of China, the China Banking Association and the Payment and Clearing Association of China made a joint statement and issued directives banning crypto-exchange, which was posted by the People's Bank of China.¹⁵ The crypto market experienced a huge downfall following China's ban. In Countries like Bolivia, Morocco and Algeria, crypto trading amounts to a punishable offence and is

¹⁰Cryptocurrency And Regulation Of Official Digital Currency Bill, 2021 And Legal Framework Ahead (by Tanuj Hazari) <https://www.livelaw.in/columns/parliament-cryptocurrency-digital-currency-crypto-bill-rbi-sebi-169508>

¹¹ Central Banks Are Hastening The Move Towards Digital Currencies (by Advait Rao Palepu) <https://www.bloomberquint.com/business/central-banks-are-hastening-the-move-towards-digital-currencies>

¹² Where are Bitcoin & cryptocurrencies legal and where are they not? <https://economictimes.india.com/markets/cryptocurrency/where-are-bitcoin-cryptocurrencies-legal-and-where-are-they-not/articleshow/82548574.cms?from=mdr>

¹³ European Court of Justice exempts bitcoin trading from VAT <https://www.internationaltaxreview.com/article/b1f9jndhsr3pkx/european-court-of-justice-exempts-bitcoin-trading-from-vat>

¹⁴ In a world first, El Salvador makes bitcoin legal tender <https://www.reuters.com/world/americas/el-salvador-approves-first-law-bitcoin-legal-tender-2021-06-09/>

¹⁵ China bans crypto services offered by institutions and firms <https://thepaypers.com/cryptocurrencies/china-bans-crypto-services-offered-by-institutions-and-firms--1249157>

prohibited.

There are countries that don't want to miss out on the big gains and are thus, open to cryptocurrency exchanges. But despite the fact that it is welcomed in many parts of the world, some countries still fear authorizing it because of its decentralized nature and high volatility.

VII. CONCLUSION

Cryptocurrency may be leading and trendy and have high returns but it is highly volatile in nature, having anonymity of transacting parties with the absence of proper authority to administer or monitor them. It would not be wrong to say that cryptocurrency has gained popularity in the entire world. Indians are open to new investments and follow the global trends. India has been estimated to have over 10 million cryptocurrency users and the count increases day by day. While some people are held back because of the misinformation about cryptocurrencies, confusing the 'unregulated' sense of cryptocurrencies with them being 'illegal', others are affirming them accepting the element of risk.

Considering all the facts and figures, imposing a complete ban on cryptocurrency would not be a progressive step as millions and millions of people have reckon with it as a significant investment platform while being aware of the uncertainty of the market. Although a ban was imposed on cryptocurrency trading, the Indian government was never against the crypto thing, it intended to prevent the misuse of it.

Further, the Supreme Court's judgment overturning the ban was right and fair in all sense. The New Digital Currency Bill was to be introduced in the Parliament this budget session but was withheld for further discussions and observations. Cryptocurrencies can turn out to be very beneficial for the common man in the coming years if used within the legal boundaries. It is an absolute necessity to form a well-structured legal framework to regulate cryptocurrency rather than banning it altogether.
