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The Legal Landscape of Virtual Digital Asset Contracts in India: Challenges, Milestones and Implications

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Abstract

The global economy was rocked by the 2008 financial crisis, which also permanently changed how the public views conventional banking institutions. Parallel to this, a disruptive force in the shape of virtual digital assets arose, intended to do away with middlemen like banks and completely alter the financial environment. After fourteen years, these virtual digital assets have established an irrefutable presence, and the fight to influence the financial future has reached a captivating stage. The antiquated correspondent banking system, which dates back to the Medici era and still serves as the foundation for the majority of foreign transactions, is at the centre of this transition. However, because it relies on manual transaction records, this outdated system is inadequate to meet the needs of the quickly developing digital payments sector. The effects of this change go well beyond financial institutions; it has the ability to positively impact all facets of society.

India's journey through the virtual digital assets landscape reflects a global struggle to adapt to this digital paradigm shift. The absence of comprehensive regulations leaves room for ambiguity, making it imperative for the Indian government to clarify the legal framework surrounding virtual digital assets. The impact of virtual digital assets extends far beyond national borders, necessitating international cooperation and coordination in regulatory efforts. As the world seeks to adapt to this digital revolution, India's stance on virtual digital assets regulation will have ripple effects on the broader global financial ecosystem. This paper delves into the regulatory landscape of virtual digital assets in India, a nation grappling with the multifaceted challenges posed by this transformative technology. To date, Indian regulations have primarily focused on taxation related to virtual digital assets trading income, alongside guidelines for cryptocurrency-related advertisements. Yet, a crucial ambiguity persists—the legal status of cryptocurrencies in India remains unclear.

Keywords: *Virtual Digital Assets; Cryptocurrencies; Blockchain; Smart Contracts; NFT's.*

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I. INTRODUCTION

The number of innovative digital instruments that promise to make international payments and transfers simpler, faster, and less expensive has multiplied dramatically during the past ten years. This vast (and widening) category of assets includes these digital representations of value and contractual rights. Cryptocurrencies, digital currencies, crypto assets, and virtual digital assets are all words used often in the marketplace to refer to these new products and describe systems for storing and/or collecting value and rights in digital form. Some of the most well-known digital assets are supported by distributed ledger technology (DLT), such as blockchain, to create a ledger (or database) that is maintained across a network and relies on cryptographic technology to safeguard transactions and regulate the creation of extra units[2]. In 2009, Bitcoin was introduced as the first digital cryptocurrency. Since then, a multitude of cryptocurrencies have been launched, each with its degree of success. By November 2021, the total value of the cryptocurrency market had reached an all-time high of $3 trillion[3], illustrating its substantial growth. As of March 5, 2024, the cryptocurrency market's capitalization stands at $2.63 trillion[4]. Notably, several cryptocurrencies now experience daily trading volumes exceeding $1 billion[5], highlighting their liquidity and significance. Additionally, there are over 13,000 different coins[6] available in the market, and more than 10,000 active wallets[7] are engaged in daily transactions related to Non-Fungible Tokens ("NFTs"). In this context, virtual digital assets have become a noteworthy presence in the broader financial landscape, representing a portion of significance rather than being negligible.

Virtual digital assets are a type of digital representation of value that may be exchanged, saved, or traded electronically. They are sometimes referred to as cryptocurrencies, tokens, or digital assets. They are built on blockchain technology, a distributed ledger that keeps track of transactions and guarantees their security and validity. Since they provide numerous advantages like reduced transaction costs, quicker settlement, global accessibility, and more transparency, virtual digital assets have grown in popularity and acceptance over the past few years. However,

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[2]Nadine Schwarz et al., *Virtual Assets and Anti-Money Laundering and Combating the Financing of Terrorism (1): Some Legal and Practical Considerations*, 2 International Monetary Fund 1 (2021).

[3]Yvonne Lau, *Cryptocurrencies hit market cap of $3 trillion for the first time as Bitcoin and Ether reach record highs*, Fortune (Nov. 9, 2021), https://fortune.com/2021/11/09/cryptocurrency-market-cap-3-trillion-bitcion-ether-shiba-inu.

[4]*Cryptocurrency Prices, Charts, and Crypto Market Cap*, COINGECKO (Mar. 5, 2024), https://www.coingecko.com.

[5] *Coin Dance (Home)*, COIN DANCE (Mar. 5, 2024), https://coin.dance.

[6]*Cryptocurrency Prices, Charts, and Crypto Market Cap*, COINGECKO (Mar. 5, 2024), https://www.coingecko.com.

[7]Koba Molenaar, *NFTs Statistics*, Sales, Trends and More [2023] (Sept. 13, 2021), https://influencermarketinghub.com/nfts-statistics/.

they also provide substantial hazards and obstacles in terms of the law, particularly when it comes to contracts.

Contracts are agreements that give parties their legal rights and obligations. They may be spoken or written, explicit or implied, and official or casual. Contracts may be based on a variety of assets, including products, services, cash, or real estate. However, when a contract is based on a virtual asset, it raises a number of issues with regard to its enforceability, performance, interpretation, breach, and remedies. Other virtual digital assets like NFTs and cryptocurrencies also give birth to new legal challenges that cannot be adequately handled by existing legal paradigms. Virtual digital assets are a wholly private entity and are neither issued nor backed by any government agency or authority. Peer-to-peer cryptocurrency transfers take place in secret and do away with the necessity for banks and other financial organisations. Likewise, NFTs are produced privately and have a value which is not regulated or monitored. Due to the lack of a definite and standard regulatory structure, it is difficult to comprehend the legal environment around virtual assets and cryptocurrencies in India. The Indian government and authorities have, until this point, taken a cautious and conflicted stance towards these digital assets, acknowledging both their potential advantages and dangers. Because of this careful approach, virtual assets' legal standing is unclear and confusing because they fall into a legal grey area where they are neither officially forbidden nor fully regulated by any one particular statute. The Indian Contract Act 1872, the Specific Relief Act 1963, the Sale of Goods Act 1930, and the Information Technology Act 2000, among other statutes that govern the current legal environment, do not specifically handle virtual digital assets. As a result, there are a lot of unanswered questions and hazards for everyone concerned regarding the legal ramifications of contracts based on virtual digital assets in India. Due to the absence of legal clarity, it is necessary to examine the legal ramifications of contracts based on virtual digital assets in India and to think about how to handle the corresponding risks and obstacles.

It all started when former finance minister Shri Arun Jaitley said that blockchain technology had great potential but that cryptocurrencies were not recognised to be legal cash. As the bitcoin market grew, more people were involved thanks to a variety of marketing strategies, including TV advertisements, influencer marketing, and celebrity endorsements. The Reserve Bank of India (RBI) imposed a banking ban on cryptocurrency exchanges, which caused significant misunderstanding. This added to the complexity. After being forwarded to the Securities and Exchange Board of India (SEBI), the issue was ultimately ruled to be outside of SEBI's purview because cryptocurrencies did not cleanly fit into any of the existing regulatory categories. Due to this lack of oversight from a single regulatory body, crypto exchanges in India are now in a self-regulatory stage, raising questions regarding the effectiveness of the current regulatory system[8].

II. Key milestones

The Indian Government and its financial regulators have expressed reservations regarding virtual digital assets, as evidenced by the numerous statements and cautionary messages issued since 2020. However, it's worth noting that despite the extensive discourse, there has been no outright ban on virtual digital assets in the past eight years. The closest approach to a ban was in 2018 when the Reserve Bank of India (RBI) directed banks and regulated entities to cease providing services to individuals and businesses involved in virtual digital assets. This action effectively restricted virtual asset exchanges and users from accessing the banking system. However, in 2020, the Supreme Court of India invalidated this circular, citing disproportionality and a violation of the constitutional right to trade[9]. In 2021, discussions about the "Cryptocurrency and Regulation of Official Digital Currency Bill, 2021" raised concerns about a potential ban. The Finance Act of 2022 introduced a tax on digital assets[10] like cryptocurrencies, it also clarified that NFTs are included under the definition of virtual digital assets and shall be taxable in the manner prescribed, this offered some hope for regulatory clarity. India currently lacks specific legislation for regulating virtual currencies. However, it has amended income tax laws in line with the 2022 and 2023 Union Budgets to facilitate the taxation of virtual digital assets which encompasses virtual currencies, including cryptocurrencies and NFTs. Income from such asset transfers is subject to a 30% annual tax rate, with deductions limited to the acquisition cost. Losses cannot offset other income, and gifting digital assets triggers tax liability for recipients. Losses in one virtual currency cannot be used to offset gains in another, and a 1% Tax Deducted at Source (TDS) requirement has been introduced.

India is reported to be ranked first[11] in terms of crypto adoption and ranks twelfth[12] with one of the highest rates of cryptocurrency ownership. Still, due to the lack of clarity on the legality of

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[8]*Taxation of Virtual Digital Assets & Cryptocurrency - All That We Know, Yet*, WIRC (Sept. 16, 2023), https://wirc-icai.org/wirc-reference-manual/part7/Taxation-Virtual-Digital-Assets.html.

[9]*Internet And Mobile Association Of India v. Reserve Bank of India, SCC 275 (Supreme Ct. India 2018).*

[10]The Finance Act, 18 § 115BBH (2022).

[11]Chainalysis Team, *Chainalysis: The 2023 Global Crypto Adoption Index*, Chainalysis (Sept. 12, 2023), https://www.chainalysis.com/blog/2023-global-crypto-adoption-index/.

[12]Maleha Afzal, *25 Countries with the Highest Cryptocurrency Ownership*, Yahoo Finance (Sept. 14, 2023), https://finance.yahoo.com/news/25-countries-highest-cryptocurrency-ownership-122200614.html.

cryptocurrencies, there is no consensus on whether compliance with Indian laws, including foreign exchange regulations and Know Your Customer (KYC) obligations, is necessary. The fundamental question revolves around the status of virtual currencies, are they considered legal tender, commodities, consumer products, payment instruments, or something else entirely? In 2018, the Supreme Court, while overturning the RBI's 2018 circular, refrained from providing a definitive stance on the legality of cryptocurrencies, leaving the matter for legislative consideration. In July 2021, this question was addressed in a Delhi Metropolitan Magistrate Court in which the court ruled that, while cryptocurrencies are not legal tender, all transactions must comply with general laws such as the Foreign Exchange Management Act, of 1999[13]. Apart from this, Indian courts have not yet issued comprehensive rulings on the legal status of virtual currencies.

The world of cryptocurrencies includes an intriguing aspect called advertising. Discussions over the promotion practice without a clear legal categorization have arisen as a result of the profusion of cryptocurrency exchange adverts on social media sites. Advertising that makes false claims of advantages is prohibited by Indian consumer protection laws, and violators may face further legal consequences. In certain situations, media and platforms may also be charged with "abetment." When the Indian government voiced worries over deceptive ads that overstated prospective Bitcoin returns, the issue worsened in November 2021. In the meanwhile, the government encouraged adherence to the Self-Regulating Code published by the Advertising Standards Council of India[14]. The government stated its intention to create laws controlling cryptocurrency ads.

In addition to cryptocurrencies, NFTs, which use blockchain technology to provide distinctive digital assets, have grown in popularity. Unlike cryptocurrencies, each NFT has a unique value and cannot be traded for another NFT directly. NFTs have found use in the entertainment sector, providing coveted works of art and tokenized representations of important occasions, like a storied sporting achievement. Although NFTs have their roots in blockchain technology, it is unclear how they are protected by intellectual property. In addition, concerns over their protection under present intellectual property laws and legal status are anticipated, particularly when courts are asked to rule on the legal status of NFTs[15].

The government's stance on Virtual Digital Assets in India is expected to gain clarity once the

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[13] *Hitesh Bhatia v. Mr Kumar Vivekanand, SCC OnLine 6 (Delhi Dist. Ct. 2021).*
[14] *The code for self-regulation of advertising content in India* ASCI (Jan. 23, 2023), https://www.ascionline.in/wp-content/uploads/2022/11/asci_code_of_self_regulation.pdf.
[15] Rakiya Moore, *NFTs and Intellectual Property*, Practical Law Intellectual Property & Technology (2022).

forthcoming bill titled "The Cryptocurrency and Regulation of Official Digital Currency Bill, 2021"[16] becomes publicly available. Currently in the consultation stage, this bill is anticipated to be a significant step in regulating the rapidly growing blockchain, virtual digital assets, and Web3 industry. To comprehend the present approach of the Indian government, it is essential to consider the concurrent measures taken by various ministries, departments, and representatives[17]. In preparation for presenting consultation papers on digital assets, the government has engaged in discussions with cryptocurrency stakeholders. Additionally, dialogues have been held with international organizations such as the World Bank (WB) and the International Monetary Fund (IMF)[18]. Economic Affairs Secretary Ajay Seth recently announced that the government has completed the consultation papers on cryptocurrency and will present them soon.[19]

III. TYPES OF VIRTUAL ASSET CONTRACTS

1. NFT's

These are essentially asset-backed tokens or digital assets that reflect the ownership and legitimacy of a certain unique tangible or intangible object by way of unique identifying codes and information stored in a blockchain ledger. NFTs are distinguished by their non-fungibility, as implied by their name. The capacity of an asset to be exchanged for other separate assets of the same type to transact value is known as fungibility in economics. The same denomination of fungible assets implies the same worth, so to speak[20]. NFTs, on the other hand, are not interchangeable, unique, or irreplaceable by definition. The idea behind NFTs is to provide some degree of scarcity and limitation among the deluge of apparently limitless virtual goods. NFTs therefore provide the possibility of producing a "digital original" that is unique and can be directly linked to the owner.

A non-fungible token (NFT) is a digital asset that can be used to establish the ownership and

[16] *RBI On State Finances: Latest News, Photos, Videos on Rbi On State Finances*, NDTV.COM (Sep. 20, 2023), https://www.ndtv.com/topic/rbi-on-state-finances.
[17] Nishchal Anand, *Blockchain & Cryptocurrency Laws and Regulations | India | GLI*, (Oct. 30, 2023), https://www.globallegalinsights.com/practice-areas/blockchain-laws-and-regulations/india.
[18] Ritarshi Banerjee, *Industry remains split on the proposed guidelines on digital assets*, Financial Express, (June 1, 2022), https://www.financialexpress.com/business/blockchain-industry-remains-split-on-the-proposed-guidelines-on-digital-assets-2544751/.
[19] Sapna Das, *India to frame cryptocurrency regulations through global consultations: Economic Affairs Secretary Ajay Seth*, CNBCTV18.COM (Sept. 10, 2023), https://www.cnbctv18.com/economy/india-to-frame-cryptocurrency-regulations-through-global-consultations-says-economic-affairs-secretary-ajay-seth-17766981.htm.
[20] Vijay Pal Dalmia, *Non-Fungible Tokens – India Law*, MONDAQ.COM (Nov. 28, 2022), https://www.mondaq.com/india/fin-tech/1255344/non-fungible-tokens--india-law.

value of an underlying digital asset, such as an original image, video, or audio. They are issued on these assets using blockchain technology and smart contracts, which generate unique digital signatures and establish their security[21]. NFTs are currently a highly speculative market to invest in, prone to rapid plunges or upswings and cyber security threats, making them enormously volatile assets to acquire and maintain[22]. The legal implications of NFTs in India are unclear and uncertain, as there is no separate legal framework for NFTs in India and they are currently only governed by the general principles of contract. Some of the legal implications of NFTs in India are:

- The legality of cryptocurrencies: NFTs and cryptocurrencies both use the same blockchain technology, and the NFTs are usually acquired using cryptocurrency. Keeping this in mind, analysis of the legality of cryptocurrencies becomes important to understand the legal implications of NFTs.Cryptocurrencies could be lawfully traded, however, the legal status of cryptocurrency is still uncertain and subject to change.
- The applicability of securities law[23]: The Securities Contract Regulation Act, 1956 (SCRA) may or may not apply to trading in NFTs because there is no official or established legal framework for NFTs, and as a result, there is no classification of NFTs under the SCRA. NFTs are viewed as derivatives by some while contracts by others. If NFTs are deemed to be derivatives, trading in them would be prohibited in India under the SCRA, which only permits the trading of derivatives on recognised stock exchanges.
- The protection of intellectual property rights: NFTs are constructed using underlying digital assets that may be covered by intellectual property rights like copyright, trademark, and patent. Owning and transferring NFTs, however, does not automatically entail owning and transferring the intellectual property rights to the underlying digital goods. An NFT's original creator may maintain ownership of the underlying digital asset's intellectual property rights while granting the NFT's purchaser a restricted licence. Alternatively, the original creator may provide the

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[21] Prashant Kataria & Dhaval Bothra, *Non-Fungible Tokens In India: 6 Legal Implications Buyers Must Consider*, MONDAQ.COM (June 6, 2022), https://www.mondaq.com/india/fin-tech/1198948/non-fungible-tokens-in-india-6-legal-implications-buyers-must-consider.

[22] Manisha Soni & Srishti Shankar, *NFTs and New Economic Opportunities Along With Subsequent Legal Implications*, 3 Jus Corpus Law Journal 406 (2023).

[23] Prashant Kataria, *NFTs in India: Legal implications*, The Hindu BusinessLine (July 17, 2022), https://www.thehindubusinessline.com/business-laws/nfts-in-india-legal-implications/article65636218.ece.

buyer with both the NFT and the intellectual property rights[24]. The breadth and extent of the intellectual property rights involved should be expressly stated in the terms and conditions of each NFT transaction.

- The taxation of NFT transactions: The taxation of NFT transactions in India is another grey area that needs clarity and guidance from the authorities. Depending on how NFTs are classified and valued, they may be subject to different taxes such as income tax, goods and services tax (GST), capital gains tax, etc. For instance, if NFTs are considered as goods or services under GST law, they may attract GST at applicable rates. If NFTs are considered as capital assets under income tax law, they may attract capital gains tax at applicable rates. However, there is no uniform or consistent approach to determining the classification and valuation of NFTs for taxation purposes. However, All virtual digital assets, are subject to a 30% tax levied by the government and NFTs fall under the purview of virtual digital assets.

2. Smart Contracts

Smart contracts are computer codes that execute themselves when certain conditions are met. They are based on blockchain technology, which is a distributed ledger that records transactions securely and transparently. Smart contracts can automate various processes and transactions, such as real estate, voting, supply chain, etc. In India, there is no specific law or regulation that governs smart contracts. However, some provisions of the Indian Contract Act, of 1872, the Indian Evidence Act, of 1872, and the Information Technology Act, of 2000 can be applied to smart contracts. Such as:

- According to Section 10 of the Indian Contract Act, of 1872, a contract is valid if it is made by the free consent of the parties who are competent to contract, for a lawful consideration and with a lawful object, and not declared void by any law. If an agreement has an offer, an acceptance, and a consideration, it qualifies as a contract and is legally binding. Smart contracts appear to be permitted by the Indian Contract Act of 1872 by definition. A smart contract includes an offer, an acceptance, and payment in the form of cryptocurrency as consideration. This raises the question of whether cryptocurrency is recognised as valid compensation under Indian law[25].

[24]Utkarsh Raj & Vaibhav Kashyap, *Legal Implications of Non-Fungible Tokens in India*, (Nov. 13, 2021), https://www.scconline.com/blog/post/2021/11/13/legal-implications-of-non-fungible-tokens-in-india/.
[25]STA Law Firm, *The Enforceability Of Smart Contracts In India*, MONDAQ.COM (Dec. 13, 2019), https://www.mondaq.com/india/contracts-and-commercial-law/874892/the-enforceability-of-smart-contracts-in-india.

- According to Section 10A of the Information Technology Act, of 2000, contracts formed through electronic means are valid and enforceable by law. However, such contracts must be authenticated by electronic signatures that comply with the rules made by the Central Government[26]. Smart contracts may not meet this requirement as they use different identifiers that are not recognised by Indian law.
- According to Section 65B of the Indian Evidence Act, 1872, any information contained in an electronic record is admissible as evidence if it is produced by a computer in the course of its ordinary use and certified by a person who is in lawful control of such computer. Smart contracts may face challenges in proving their authenticity and reliability as evidence in courts as they are not produced by a single computer but by a network of nodes.

Smart contracts in India offer a platform for parties, whether familiar or not, to engage in transactions but carry inherent risks. While they may be enforceable under Indian law, caution is essential when dealing with unknown parties, as there's no comprehensive regulatory framework for smart contracts. Situations, where smart contracts may not be enforceable, include unilateral contracts lacking mutual consideration, which Indian courts require for validity. While smart contracts without mutual consideration can be enforced through code, Indian courts may not recognize breaches due to this lack of mutual; consideration. India permits the use of smart contracts but doesn't provide full legal protection, relying on existing contract law within statutory boundaries[27].

Smart contracts have the potential to revolutionise various sectors and industries in India by providing efficiency, security, transparency, and cost-effectiveness. However, they also pose some legal risks and challenges that need to be addressed by creating a clear and comprehensive regulatory framework that balances innovation and protection.

3. Other Contracts

Some of the categories of contracts based on virtual digital assets are:-

- Decentralized Finance (DeFi)- DeFi contracts are self-executing agreements encoded on the blockchain[28], designed to be immutable and transparent. This

[26]Shristi Roongta, *EXPLAINED: SMART CONTRACTS IN INDIA*, LEXFORTI.COM (Jan. 19, 2022), https://lexforti.com/legal-news/explained-smart-contracts-in-india/.
[27]Shruti Chaurasia, *Here's everything you need to know about smart contracts*, IPLEADERS.IN (Aug. 13, 2021), https://blog.ipleaders.in/heres-everything-need-know-smart-contracts/?noamp=mobile&nonamp=1.
[28]Anuj Kumar, *DeFi, India and are we ready for it?*, (May 24, 2022), https://taxguru.in/corporate-law/defi-india-ready-it.html.

raises questions about their enforceability, validity, and dispute-resolution mechanisms within the existing legal system. Parties may face challenges in proving their identity, consent, and intentions in DeFi transactions, as well as seeking remedies in case of breaches or defaults. DeFi platforms are decentralized applications (DApps) that operate on various blockchain networks, offering a range of financial services. They often operate under community-driven governance models, creating uncertainty regarding their regulatory obligations. Compliance with anti-money laundering, consumer protection, taxation, data privacy, and security regulations becomes challenging. Ensuring accountability, transparency, and fairness in DeFi platform operations while managing regulatory risks across different jurisdictions is a significant concern.

- Token sale contracts- Token sale contracts are used to raise funds through initial coin offerings (ICOs) and security token offerings (STOs)[29]. They define the rules for token creation, distribution, and the fundraising process, including the terms and conditions for investors, prevalent in blockchain ecosystems, and carry legal implications in India shaped by token attributes and relevant laws. Depending on a token's features, it might be categorized as a security, subject to the Securities Contracts (Regulation) Act, 1956 (SCRA) or the Securities and Exchange Board of India Act, 1992 (SEBI Act), necessitating compliance with registration, disclosure, and SEBI regulations. Governed by the Indian Contract Act, of 1872, these contracts must adhere to contract principles, including offer, acceptance, free consent, lawful consideration, object, and capacity. Token purchases may fall under the Consumer Protection Act, of 2019, granting buyers consumer rights if tokens are acquired for personal use, allowing for redressal rights in case of token or issuer service deficiencies or defects. Tax implications impact both issuers and buyers, with token taxability dependent on their nature, classification, and income from sales, requiring adherence to GST, income tax, TDS, and other relevant tax laws. Cross-border token transactions involving Indian and non-Indian entities may be subject to the Foreign Exchange Management Act, 1999 (FEMA), necessitating compliance with FEMA provisions on permissible transactions, reporting, and remittance. Furthermore,

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[29]*Introduction to Token Sales (ICO) Best Practices*, PWC: Audit and Assurance, consulting and Tax Services, https://www.pwc.com/gx/en/financial-services/pdf/introduction-to-token-sales-ico-best-practices.pdf.

token sale contracts, executed digitally using blockchain and cryptography, fall under the purview of the Information Technology Act, 2000 (IT Act), with compliance required for IT Act provisions concerning data protection, privacy, security, and authentication

IV. LEGAL FRAMEWORK FOR VIRTUAL ASSET CONTRACTS

1. Intellectual property laws- Intellectual property (IP) laws protect the rights of creators and owners of intangible assets, such as inventions, designs, trademarks, and artistic works. IP laws grant exclusive rights to use, reproduce, distribute, or license the protected IP assets. IP laws also provide remedies for infringement of IP rights, such as injunctions, damages, or criminal sanctions. virtual digital assets can be subject to IP protection in various ways. For example:

    - Some NFTs that represent digital art or collectables may qualify as artistic works under copyright law if they are original and expressive. This means that the creators or owners of these NFTs have the exclusive right to control how their works are used or reproduced by others.
    - Some cryptocurrencies or tokens that have a recognizable name or logo may qualify as trademarks under trademark law if they are distinctive and used to identify the source or quality of goods or services. This means that the owners of these trademarks have the exclusive right to prevent others from using confusingly similar names or logos for their products or services.

However, IP protection for virtual digital assets also poses some challenges and limitations. For instance:

- Some virtual digital assets may not meet the criteria for IP protection if they are generic, functional, or lack originality. Such as tokens that represent utility functions on a platform may not qualify as trademarks if they are not distinctive or do not indicate a source of origin.
- Some virtual digital assets may be subject to multiple and conflicting IP claims from different parties or jurisdictions. Such as NFTs that incorporate existing IP works may infringe the rights of the original IP owners if they do not have their permission or license.
- Some virtual digital assets may be difficult to enforce IP rights against if they

are decentralized, anonymous, or transnational. Such as cryptocurrencies that operate on a peer-to-peer network may not have a central authority or intermediary that can be held liable for IP violations.

2. Contract Law

Since there is no explicit law or regulation that controls virtual asset contracts in India, it is still unclear what their legal standing is. However, depending on the type and qualities of the virtual digital assets involved, the main rules of Indian contract law may apply to such contracts. The Indian Contract Act, of 1872 codifies Indian Contract Law, which is based on English Common Law. The Act identifies a contract as "an agreement enforceable by law" and outlines the necessary conditions for a binding agreement, including offer and acceptance, consideration, capacity, free consent, lawful object, certainty, and other factors.

Whether virtual digital assets are regarded as goods, services, or intangible property may determine whether Indian Contract Law is applicable to virtual asset contracts. Virtual digital assets might be subject to the Sale of Products Act, 1930, an expansion of the Indian Contract Act if they are deemed to be products. According to the Sale of Goods Act, "every kind of movable property other than actionable claims and money" is good. Virtual digital assets lack any physical existence or possession, hence it's questionable whether they can be categorised as movable property. Additionally, some virtual digital assets might also be considered actionable claims, which are not considered to be goods. An actionable claim is "any claim to any debt or any beneficial interest in movable property not in possession". Such as a token that represents a right to receive a future payment or service may be an actionable claim.

If virtual digital assets are considered as services, then they may fall under the Consumer Protection Act, 2019, which is another extension of the Indian Contract Act. The Consumer Protection Act defines services as "service of any description which is made available to potential users and includes...any activity in relation to any product[30]...". However, this definition may not cover all types of virtual digital assets, as some of them may not be made available to potential users or may not have any relation to any product. Such as a cryptocurrency that is purely used as a medium of exchange or a store of value may not be a service.

Without a specific regulatory framework, virtual digital assets may be subject to the general

[30]*Economic, Business And Commercial Laws,* THE INSTITUTE OF COMPANY SECRETARIES OF INDIA, https://www.icsi.edu/media/webmodules/EP_EBCL_DEC_2019.pdf

principles of Indian contract law if they are deemed to be intangible property. "Property which has no physical existence but may be represented by a document evidencing title or by an entry in an account book" is defined as "intangible property." An example of an intangible asset is a patent or trademark. Applying Indian Contract Law to intangible property transactions presents several difficulties, including identifying ownership, transferability, enforceability, jurisdiction, and dispute resolution. In India, the regulations governing virtual asset contracts are still developing and unclear. A thorough law or regulation that covers the unique problems and difficulties brought on by virtual digital assets and their contracts is required. The parties to such contracts should use prudence and due diligence in negotiating them up until that time.

3. Key Regulatory bodies

- Reserve Bank of India (RBI): As the central bank of India, the RBI plays a central role in the country's financial system. While it doesn't directly regulate cryptocurrencies, it has issued directives in the past restricting banks from providing services to crypto-related businesses. The RBI's stance on cryptocurrencies significantly influences their adoption and usage in the country.
- Registrar of Companies (RoC), Ministry of Corporate Affairs: The RoC is responsible for overseeing the registration and regulation of various business entities, including companies, sole proprietorships, and limited liability partnerships (LLPs). Businesses operating in the virtual digital asset space must comply with the RoC's regulations and reporting requirements.
- Income Tax Department (IT Department), Government of India: The IT Department governs the taxation of income, including that generated from virtual digital assets. Cryptocurrency transactions and holdings are subject to income tax regulations, and individuals and businesses involved in crypto-related activities are required to report their income and pay taxes accordingly.
- Securities and Exchange Board of India (SEBI): SEBI is the regulatory authority overseeing India's securities and commodities markets. While it primarily deals with traditional financial instruments, the regulation of crypto-assets and exchanges may fall within its purview if cryptocurrencies are classified as securities or commodities in the future.
- Advertising Standards Council of India (ASCI): ASCI[31] serves as the self-

[31] *The code for self-regulation of advertising content in India* ASCI (Jan. 23, 2023), https://www.ascionline.in/wp-

regulatory body for the advertising industry in India. It has issued guidelines and standards for the advertising of virtual digital assets to ensure that advertisements related to cryptocurrencies and blockchain technology comply with ethical and legal standards.

V. Challenges

1. Ambiguity in Regulation

The absence of a well-defined and harmonized regulatory framework for virtual digital assets creates uncertainty for businesses and users alike. Regulators face the challenge of adapting existing laws to this rapidly evolving technology. This challenge is particularly evident in countries like India, where the regulatory landscape for virtual digital assets remains uncertain. Without clear and consistent regulations, individuals and businesses are left to navigate a complex and ambiguous legal environment. This can hinder innovation and investment in the virtual digital assets space, as participants may fear unknowingly violating regulations or operating in jurisdictions with uncertain legal status.

2. Jurisdictional Complexity

Virtual digital assets operate on a global scale, transcending national borders. While this global nature is one of their strengths, it also introduces jurisdictional complexities. Determining which jurisdiction's laws apply in a given virtual digital assets-related situation can be challenging. When disputes arise that involve parties in different countries, it can be unclear which legal system should handle the case. International cooperation is essential in addressing these jurisdictional challenges, but it is often easier said than done. Agreements and mechanisms for cross-border enforcement are still evolving in the context of virtual digital assets. Additionally, countries vary in their approach to virtual digital asset regulations. Some nations have embraced cryptocurrencies and blockchain technology, creating regulatory environments conducive to innovation, while others have imposed strict restrictions or outright bans. This diversity adds another layer of complexity for businesses and users operating across borders.

3. Money Laundering

The pseudonymous nature of blockchain transactions can be both a benefit and a challenge for legal enforcement. While cryptocurrencies like Bitcoin offer a degree of privacy and anonymity

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content/uploads/2022/11/asci_code_of_self_regulation.pdf.

through the use of cryptographic addresses, this feature can hinder efforts to identify and hold accountable individuals engaged in illegal activities. Cryptocurrency transactions are recorded on public ledgers, but the identities of the parties involved are not necessarily revealed. This anonymity can be exploited by those seeking to engage in money laundering, fraud, or other illicit activities. Money launderers often employ intricate transaction chains involving multiple wallets and exchanges to obfuscate the source and destination of funds. These complex transaction paths can make it extremely difficult for investigators to trace the illicit flow of funds. The vast majority of virtual digital asset transactions are legitimate and conducted by law-abiding individuals and businesses, however distinguishing between lawful and illicit transactions can be a complex task for authorities, and false positives can burden innocent users with regulatory scrutiny[32]. As a result, law enforcement agencies around the world have been grappling with the challenge of tracing cryptocurrency transactions and identifying individuals behind them. While blockchain's transparency can aid in investigations, it also highlights the need for specialized tools and expertise in digital forensics and blockchain analysis to effectively address illicit activities.

VI. Conclusion

Cryptocurrencies, led by the iconic Bitcoin, have surged into the global financial landscape with unprecedented momentum. They offer promises of financial inclusion, lower transaction costs, and technological innovation. However, these digital assets simultaneously carry substantial risks to macro-financial stability, financial integrity, consumer protection, and the environment. In the complex dance between opportunity and danger, governments, including India's, must carefully navigate the evolving cryptocurrency terrain to harness the advantages while mitigating the hazards. The allure of cryptocurrencies lies in their blockchain technology, which promises cheaper and more inclusive financial services. These digital currencies democratize finance, providing a gateway to financial inclusion for those excluded from traditional banking systems. Nonetheless, governments cannot ignore the flip side of the coin. Cryptocurrencies, if mishandled, can destabilize economies, facilitate money laundering, and pose substantial environmental concerns due to energy-intensive mining. The notion of adopting cryptocurrencies as a national currency has garnered attention, notably sparked by El Salvador's bold move. However, for countries like India, this appears to be an inadvisable shortcut. While

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[32] Vijayendra Pratap Singh & Raghav Seth, *The Indian Anti-Money Laundering Regime: New Compliance Obligations around Virtual Digital Assets*, AZBPARTNERS.COM (June 28, 2023), https://www.azbpartners.com/bank/the-indian-anti-money-laundering-regime-new-compliance-obligations-around-virtual-digital-assets/.

cryptocurrencies hold transformative potential, they also pose risks that require a measured approach. A national cryptocurrency should not be seen as a panacea but as a tool that necessitates a comprehensive regulatory framework and infrastructure. To harness the benefits of cryptocurrencies responsibly, the Indian government must take substantial steps. First and foremost, this involves addressing the regulatory gaps and security flaws that currently exist. A robust legal framework is essential to legitimize cryptocurrency usage while safeguarding citizens' interests. Creating permanent legislation tailored to the unique challenges and opportunities presented by cryptocurrencies is imperative. These laws must not only close regulatory gaps but also establish clear guidelines for transactions and exchanges. By doing so, India can provide legal certainty to cryptocurrency users and businesses, fostering trust in the ecosystem. Smart contracts, built on blockchain technology, are the future of business interactions. Their efficiency and transparency make them a powerful tool for myriad industries. India must adapt its contract law to accommodate and encourage the growth of smart contracts. One significant step would be revisiting Section 10 of the Indian Contract Act, replacing "lawful consideration" with "consideration" to accommodate the unique nature of smart contract agreements.

India's recent introduction of its digital currency is a significant step forward. However, to unlock its full potential, both legislative and technical aspects demand attention. Rather than stifling cryptocurrency use, India should embrace the opportunity to establish itself as a global virtual currency investment hub. Regulation is crucial, but it must strike a delicate balance. Licensing systems for cryptocurrency exchanges, akin to those in Germany and the U.S., can ensure transparency and accountability. A robust Know Your Customer (KYC) procedure is equally essential to monitor users and deter illicit activities. To encourage responsible use, India should consider allowing virtual currency companies to develop self-regulatory frameworks, backed by government oversight. Legislation in this arena should not be formulated in isolation. Collaboration with virtual currency companies and experts is essential to craft laws that promote usage while safeguarding citizens' interests. Clear legislation will not only prevent future conflicts but also provide much-needed clarity to the population regarding virtual currency use. The path forward for India in the realm of cryptocurrencies is one of careful navigation. The allure of financial innovation and inclusion is undeniable, but the pitfalls are equally real. A measured approach, underpinned by comprehensive legislation, is the key to unlocking the full potential of cryptocurrencies while mitigating their risks. India's ascent in the virtual currency space holds tremendous promise, but it must be built on a foundation of regulation, innovation, and collaboration. Balancing these elements will determine India's success in harnessing the transformative power of cryptocurrencies for its people and its future.

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