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Unveiling the New Frontier: Cryptocurrency's Legal Journey and Banking Regulation in India vs. Global Titans

DIKSHA¹

ABSTRACT

This research paper explores the regulatory landscape of the Indian banking regime in relation to cryptocurrency. The study highlights the cautious approach taken by the Reserve Bank of India towards the adoption of cryptocurrencies, and the challenges faced in regulating this emerging market. The research also analyses the regulatory frameworks implemented in Singapore, Japan, and South Korea, and how these countries have addressed the risks associated with cryptocurrencies. The findings suggest that while India has been slow in adopting cryptocurrency, the other three countries have taken a more proactive approach towards regulating the market. The study also highlights the need for a comprehensive regulatory framework in India that addresses the risks associated with cryptocurrencies while promoting innovation and growth in the sector. Overall, this research paper provides valuable insights into the regulatory landscape of the Indian banking regime in relation to cryptocurrency, and how it compares to the regulations implemented in other countries.

Keywords: *Cryptocurrency, Indian Banking Regime, Digital Currency, Blockchain Technology, Reserve Bank of India.*

I. INTRODUCTION

India, being the world's second-most populous country, is a significant financial market globally. With the growth of technology, digital payment platforms have emerged, but the concept of cryptocurrencies has yet to establish itself in the country. Cryptocurrency is a digital or virtual currency that utilizes cryptography for security and is decentralized. The Indian banking regime has been cautious towards the adoption of cryptocurrency, considering the risks and uncertainties associated with this emerging technology. The Reserve Bank of India (RBI) has issued several warnings in the past regarding the potential risks of investing in cryptocurrencies, and has even prohibited banks from facilitating transactions involving them. However, despite regulatory challenges, cryptocurrencies have gained immense popularity among Indian investors, with many of them viewing it as a lucrative investment opportunity.

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As the demand for cryptocurrencies continues to grow, the Indian government is grappling with the task of regulating the cryptocurrency market, while also addressing concerns related to money laundering and terrorism financing.

Cryptocurrency is a form of digital or virtual currency that uses cryptography for security and operates independently of a central bank.² It is decentralized, meaning it is not controlled by any government or financial institution. Instead, it operates on a peer-to-peer network, where individuals can directly send and receive transactions without the need for intermediaries. One of the key features of cryptocurrency is its use of blockchain technology, a distributed ledger that records and verifies transactions. Each transaction is recorded as a block in the chain, and once a block is added, it cannot be altered. This makes the blockchain immutable and provides a high level of security. The first and most well-known cryptocurrency is Bitcoin, which was created in 2009 by an anonymous individual or group using the pseudonym Satoshi Nakamoto.³ Since then, thousands of other cryptocurrencies have been created, with varying degrees of popularity and acceptance.

Cryptocurrencies can be acquired through various means, including mining, purchasing them from cryptocurrency exchanges, or receiving them as payment for goods or services. The value of cryptocurrencies is determined by market demand and supply, and can be highly volatile. One of the advantages of cryptocurrency is its potential to provide financial freedom and privacy to individuals, particularly in countries with unstable currencies or where traditional financial systems are inaccessible. It can also reduce transaction costs and time, as transactions can be completed quickly and without intermediaries. However, cryptocurrencies have also been associated with illegal activities, such as money laundering and terrorism financing, due to their anonymity and lack of regulation. They are also susceptible to hacks and theft, as there have been several high-profile cases of cryptocurrency exchanges being hacked. The regulation of cryptocurrencies is a complex issue, as they are not recognized as legal tender in most countries. Some countries, such as Japan and Singapore, have established regulatory frameworks for cryptocurrencies, while others, like China and India, have banned their use. The future of cryptocurrencies is uncertain, but their growing popularity and potential to disrupt traditional financial systems means that they will likely continue to be a subject of discussion and debate.

² Ali R., *An overview of cryptocurrency: Its Dynamics and challenges*, 27:1 *Journal of Financial Crime* 81, 81-96 (2020).

³ Nakamoto S., *Bitcoin: A Peer-to-Peer Electronic Cash System*, (May 5, 2023), <https://bitcoin.org/bitcoin.pdf>.

II. EVOLUTION AND LEGAL LANDSCAPE OF CRYPTOCURRENCY IN INDIA

Cryptocurrencies have gained popularity in India over the past few years, with Bitcoin being the most well-known. However, the lack of regulation has led to uncertainty about their status in the country. In 2018, the RBI banned banks from dealing with cryptocurrencies, which caused a lot of concern among investors and traders.⁴ But Supreme Court upheld the RBI circular and stated this ban as unconstitutional. The government of India has also expressed its concerns about cryptocurrencies. The government constituted a committee in 2018 to study the issues related to cryptocurrencies and blockchain technology. The committee submitted its report in 2019, recommending that India should ban all private cryptocurrencies and create a regulatory framework for a digital rupee.⁵ The government introduced the Cryptocurrency and Regulation of Official Digital Currency Bill, 2021, which seeks to prohibit all private cryptocurrencies in India and create a regulatory framework for the launch of an official digital currency.⁶ The bill also proposes to establish a facilitative framework for a central bank digital currency issued by the RBI.

(A) Landmark Case – Internet and Mobile Association of India v. Reserve Bank of India⁷

In April 2018, the Reserve Bank of India (RBI) issued a circular which prohibited banks from dealing with cryptocurrency exchanges. The circular stated that all entities regulated by the RBI shall not deal in virtual currencies or provide services for facilitating any person or entity in dealing with or settling virtual currencies. Several cryptocurrency exchanges and traders challenged the RBI circular in the Supreme Court of India in the case of Internet and Mobile Association of India v. Reserve Bank of India⁸. The case was initially heard by a two-judge bench, which upheld the RBI circular in July 2018. However, the cryptocurrency industry continued to challenge the ban, and the case was subsequently referred to a larger bench. The final hearing in the case was held in January 2020, and in March 2020, the Supreme Court finally lifted the ban.⁹ In its judgement, the Supreme Court held that the RBI circular was unconstitutional and that it violated the fundamental rights of cryptocurrency traders and

⁴ Reserve Bank of India, *Prohibition on dealing in virtual currencies*, (May 6, 2023), <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11243&Mode=0>.

⁵ Reserve Bank of India's report on Virtual Currencies (2018), (May 7, 2023) https://rbidocs.rbi.org.in/rdocs/PublicationReport/Pdfs/VC05022018_FL.pdf.

⁶ The Cryptocurrency and Regulation of Official Digital Currency Bill, 2021, (May 10, 2023), <https://www.prsindia.org/billtrack/cryptocurrency-and-regulation-official-digital-currency-bill-2021>.

⁷ Writ Petition (Civil) No. 528 of 2018.

⁸ Internet and Mobile Association of India v. Reserve Bank of India (Writ Petition (Civil) No. 528 of 2018).

⁹ Internet and Mobile Association of India v. Reserve Bank of India, (May 10, 2023), https://www.sci.gov.in/pdf/JUD_2.pdf.

exchanges. The court also held that the circular was not backed by any empirical data, and that the RBI had not provided any evidence to show that cryptocurrencies had a negative impact on the banking system.

The lifting of the ban was seen as a major victory for the cryptocurrency industry in India, and it has paved the way for the industry to grow and develop in the country. However, the industry continues to face regulatory challenges, and the government is currently considering a bill that would prohibit all private cryptocurrencies and provide a framework for the creation of a central bank digital currency. Overall, the *Internet and Mobile Association of India v. Reserve Bank of India* case is a significant milestone in the legal history of cryptocurrency in India. It established the right of cryptocurrency traders and exchanges to operate freely in the country and sets a precedent for future legal battles regarding the regulation of cryptocurrencies in India.

(B) Cryptocurrency Exchanges found in India

Cryptocurrency exchanges have gained significant traction in India, reflecting the growing interest and adoption of digital assets in the country. As a diverse and dynamic market, India has witnessed the emergence of several cryptocurrency exchanges, playing a crucial role in facilitating the buying, selling, and trading of cryptocurrencies. Cryptocurrency exchanges in India serve as digital platforms where individuals can exchange fiat currency (such as Indian Rupees) for various cryptocurrencies, including Bitcoin, Ethereum, and more. These exchanges provide a user-friendly interface and act as intermediaries, matching buyers with sellers and executing transactions. Cryptocurrency exchanges in India operate within a regulatory framework that aims to ensure transparency, consumer protection, and prevention of illicit activities. The Reserve Bank of India (RBI) has issued guidelines and regulations regarding Know Your Customer (KYC) procedures, anti-money laundering (AML) measures, and customer fund security. Additionally, exchanges are required to register with the government and comply with tax obligations. India boasts a vibrant ecosystem of cryptocurrency exchanges catering to the diverse needs of traders and investors. Platforms such as CoinSwitch, WazirX, ZebPay, and CoinDCX have gained prominence due to their user-friendly interfaces, robust security measures, and a wide range of supported cryptocurrencies. These exchanges often provide features like spot trading, margin trading, peer-to-peer trading, and convenient payment options to cater to different trading preferences. Cryptocurrency exchanges in India face several challenges, including regulatory uncertainties and the occasional banking restrictions. However, the growing interest in digital assets and the potential for blockchain technology present significant opportunities for the exchanges to expand their offerings and enhance the trading experience. They play a crucial role in educating users about cryptocurrencies and promoting

responsible investing practices. They have become integral to India's evolving digital asset landscape, providing a platform for individuals to participate in the crypto economy. As regulations evolve and the market matures, these exchanges are poised to contribute further to India's cryptocurrency ecosystem.

(C) Cryptocurrency and Indian Money Laundering Act

Cryptocurrencies have been a subject of concern for governments across the globe when it comes to money laundering and terrorism financing activities. In India, the Prevention of Money Laundering Act, 2002 (PMLA) is the primary law that deals with money laundering and related offences.¹⁰ In 2019, the Enforcement Directorate (ED), an agency responsible for enforcing economic laws and fighting financial crimes, issued a show-cause notice to the directors of a cryptocurrency exchange in India for allegedly violating the PMLA.¹¹ The ED claimed that the exchange had facilitated transactions involving proceeds of crime and failed to adhere to the KYC/AML norms. The ED also alleged that the exchange was involved in routing proceeds of crime through its platform by converting INR deposits into cryptocurrency, which were then transferred to overseas exchanges. In another case, in 2020, the Delhi police arrested the co-founder of a cryptocurrency exchange on charges of money laundering. The police alleged that the accused had laundered approximately \$10 million worth of proceeds from a fraudulent call centre in Delhi through the exchange.¹²

The Reserve Bank of India (RBI) has also expressed concerns over the use of cryptocurrencies for money laundering and terrorism financing. In its April 2018 circular, the RBI had cited these concerns as one of the reasons for directing banks and financial institutions to stop providing services to entities dealing in virtual currencies. However, the regulation of cryptocurrencies in India is still in a nascent stage. The government is currently in the process of introducing the Cryptocurrency and Regulation of Official Digital Currency Bill, 2021 which seeks to create a legal framework for the creation of an official digital currency while also banning all private cryptocurrencies.¹³ It remains to be seen how the proposed law will address the issue of money laundering and other financial crimes related to cryptocurrencies. The implementation and enforcement of the law will be crucial in tackling these issues and ensuring the integrity of

¹⁰ The Prevention of Money Laundering Act, 2002, (May 10, 2023), <http://pmla.nic.in/acts-rules-regulations.html>.

¹¹ ED issues show-cause notice to directors of cryptocurrency exchange for violating PMLA, (May 12, 2023), <https://economictimes.indiatimes.com/news/politics-and-nation/ed-issues-show-cause-notice-to-directors-of-cryptocurrency-exchange-for-violating-pmla/articleshow/69804662.cms>.

¹² Delhi Police arrest cryptocurrency exchange founder on charges of money laundering, (May 12, 2023), <https://www.businesstoday.in/current/economy-politics/delhi-police-arrest-cryptocurrency-exchange-founder-on-charges-of-money-laundering/story/401710.html>.

¹³ Supra note 5.

India's financial system.

(D) Future Perspective of Cryptocurrency in India

The future of cryptocurrencies or crypto assets in India is uncertain, given the regulatory challenges and the lack of clarity from the government.¹⁴ However, there are some potential scenarios that could play out in the coming years. The government could go ahead with its proposal to ban all private cryptocurrencies in India, as proposed in the Cryptocurrency and Regulation of Official Digital Currency Bill, 2021. If this happens, it would be challenging for crypto enthusiasts and investors to trade or hold cryptocurrencies in India. However, this could also lead to increased demand for decentralized exchanges and peer-to-peer trading, as individuals try to bypass the ban. The government could also choose to regulate cryptocurrencies instead of banning them. This would provide clarity to investors and make it easier for them to invest in cryptocurrencies. Regulation could also bring more institutional investors into the market and drive up the demand for cryptocurrencies.

The government could launch an official digital currency, as proposed in the Cryptocurrency and Regulation of Official Digital Currency Bill, 2021. This would provide an alternative to private cryptocurrencies and could be a way for the government to track transactions and prevent illegal activities. However, it is unclear how widely adopted an official digital currency would be, given the popularity of existing cryptocurrencies. Despite regulatory challenges, the Indian cryptocurrency ecosystem is still evolving. Indian entrepreneurs and developers are building decentralized applications, creating new cryptocurrencies, and exploring the potential of blockchain technology. This innovation could continue to drive the growth of the crypto sector in India, regardless of the regulatory environment.

III. CRYPTOCURRENCY AND REGULATION OF OFFICIAL DIGITAL CURRENCY BILL, 2021¹⁵

The Cryptocurrency and Regulation of Official Digital Currency Bill, 2021 is a bill introduced by the Government of India in the Parliament to regulate cryptocurrencies and create a framework for the launch of an official digital currency. The bill proposes to ban all private cryptocurrencies in India, except for those issued by the government. It also seeks to create a legal framework for the creation of a central bank digital currency (CBDC) issued by the Reserve Bank of India (RBI). The bill defines cryptocurrency as "any information or code or

¹⁴ "Future of Cryptocurrency in India", (May 13, 2023), <https://www.financialexpress.com/market/future-of-cryptocurrency-in-india/2249349/>.

¹⁵ Supra note 5.

number or token not being part of any Official Digital Currency, generated through cryptographic means or otherwise, providing a digital representation of value." It categorizes cryptocurrencies as "private cryptocurrencies" and "official digital currency," with only the latter being allowed in India.¹⁶ The bill proposes a ban on all private cryptocurrencies and prohibits any person from using, holding, selling, or dealing in private cryptocurrencies. It also prohibits any person from issuing, mining, or generating any cryptocurrency in India. The bill allows for certain exceptions to the ban, such as using blockchain technology for educational research, innovation, and training purposes.

The bill proposes to establish a framework for the creation of an official digital currency issued by the RBI. The RBI will be responsible for issuing and regulating the official digital currency. The bill also proposes to establish a digital currency regulatory authority to oversee and regulate the digital currency ecosystem in India. Bill also proposes penalties for violations, which include fines and imprisonment. Any person violating the ban on private cryptocurrencies may be fined up to three times the loss incurred by the affected parties or the gain made by the violator, whichever is higher. Repeat offenders may be imprisoned for up to 10 years. The bill has generated mixed reactions from stakeholders, with some supporting the move to regulate cryptocurrencies and create a framework for a digital rupee, while others criticizing the ban on private cryptocurrencies.¹⁷ Supporters of the bill argue that the ban on private cryptocurrencies is necessary to protect consumers and prevent money laundering and other illegal activities. Critics argue that the ban on private cryptocurrencies will stifle innovation and investment in the sector. Conclusively, it can be said that the Cryptocurrency and Regulation of Official Digital Currency Bill, 2021 is a significant step towards regulating the cryptocurrency sector in India.

(A) Shortcomings of the Cryptocurrency and Regulation of Official Digital Currency Bill, 2021

While the Cryptocurrency and Regulation of Official Digital Currency Bill, 2021 contains some positive elements, such as the proposal to establish an official digital currency, there are also significant shortcomings and concerns that need to be addressed in any regulatory framework for cryptocurrencies in India. Here are some of the shortcomings and concerns with the Cryptocurrency and Regulation of Official Digital Currency Bill, 2021¹⁸. The Bill proposes to

¹⁶ "Analysis of Cryptocurrency and Regulation of Official Digital Currency Bill, 2021", (May 12, 2023), <https://blog.ipleaders.in/cryptocurrency-and-regulation-of-official-digital-currency-bill-2021/>.

¹⁷ "Cryptocurrency and Regulation of Official Digital Currency Bill, 2021: A Deep Dive", (May 12, 2023), <https://inc42.com/buzz/cryptocurrency-and-regulation-of-official-digital-currency-bill-2021-a-deep-dive/>.

¹⁸ "The Pros and Cons of an Official Digital Currency in India", (May 9, 2023),

ban all private cryptocurrencies in India, which could stifle innovation in the sector and limit consumer choice. This ban could also lead to a loss of investment and job opportunities in the sector.¹⁹ The Bill proposes to criminalize cryptocurrency-related activities, including mining, trading, and issuance of cryptocurrencies. This could have a chilling effect on legitimate businesses and could undermine the potential benefits of cryptocurrencies, such as their ability to facilitate cross-border payments and increase financial inclusion. The Bill does not provide clear guidelines on taxation, which could lead to confusion and uncertainty in the sector. This lack of clarity could also deter investors and businesses from entering the sector, further hindering its growth and development.

The Bill does not provide clear guidelines on consumer protection, which could leave consumers vulnerable to fraud and scams in the sector. This could undermine trust in cryptocurrencies and hinder their adoption. The proposal to establish an official digital currency could potentially lead to increased government surveillance and control over financial transactions. This could undermine financial privacy and lead to concerns about government overreach. The proposal to establish an official digital currency could potentially disrupt the existing banking system and lead to a displacement of cash in the economy. This could have unintended consequences and could lead to a loss of confidence in the banking system. The Bill was introduced without sufficient consultation with stakeholders in the cryptocurrency industry, leading to concerns about the lack of input from experts and stakeholders in the regulatory process.

IV. INDIAN BANKING REGIME

The Indian banking system is divided into scheduled and non-scheduled banks. Scheduled banks include commercial banks, regional rural banks, and cooperative banks. The RBI regulates scheduled banks and issues guidelines and regulations for their functioning. Non-scheduled banks include money lenders, chit funds, and non-banking financial companies (NBFCs). NBFCs are financial institutions that provide banking services without meeting the legal definition of a bank. The banking system in India is heavily regulated by the RBI. The RBI issues guidelines and regulations for the operation of banks and financial institutions. Banks are required to follow these guidelines to ensure their compliance with the law. The RBI also monitors the banking system to prevent fraud, money laundering, and other illegal activities. The Reserve Bank of India (RBI) is the central bank of India and regulates the

<https://www.financialexpress.com/market/the-pros-and-cons-of-an-official-digital-currency-in-india/2191412/>

¹⁹ "India's proposed cryptocurrency ban is short-sighted and troubling", (May 9, 2023), <https://www.weforum.org/agenda/2021/03/india-cryptocurrency-ban-bitcoin-regulation/>

country's monetary policy. It is also responsible for regulating the banking system in India. In 2013, the RBI issued a circular cautioning the public about the risks associated with virtual currencies such as Bitcoin. The circular stated that the RBI has not given any license or authorization to any entity or company to operate virtual currency exchanges or deal with them. The circular also stated that any user or investor dealing with virtual currencies would do so at their own risk.

In 2018, the RBI issued another circular banning banks and other regulated entities from dealing with or providing services to individuals or businesses dealing with virtual currencies. The circular directed banks to close the accounts of customers dealing in virtual currencies within three months. The circular also stated that the RBI was exploring the possibility of introducing a central bank digital currency (CBDC).²⁰ The Indian banking regime has been cautious in dealing with cryptocurrencies due to their unregulated nature. The RBI has issued circulars warning the public about the risks associated with virtual currencies and banning banks from dealing with them. The government of India has also expressed its concerns about cryptocurrencies and is currently considering a bill to regulate them. The future of cryptocurrencies in India is uncertain, but it is clear that the government and the banking system are taking a cautious approach to their adoption.

(A) Role of Banks in Cryptocurrency Market

The role of banks in the cryptocurrency sector is still evolving, but it is expected that they will play a significant role in the future.²¹ Banks can offer cryptocurrency custodianship services, where they hold and secure cryptocurrencies on behalf of their customers. Custodianship is an important service for institutional investors, who may not have the technical expertise or security measures to store cryptocurrencies securely. Banks can offer cryptocurrency trading and exchange services to their customers. This will allow customers to buy and sell cryptocurrencies easily, without having to go through third-party exchanges. Banks can also provide liquidity to the cryptocurrency market, which can help to stabilize prices. Banks can integrate cryptocurrency payments into their existing payment processing systems. This will allow customers to use cryptocurrencies for everyday purchases, such as buying goods and services online or in-store. Payment processing services will also enable merchants to accept cryptocurrencies as a form of payment, without having to deal with the technical complexities of the cryptocurrency market. They can offer advisory services to their customers on

²⁰ Supra note 3.

²¹ Banks success on Cryptocurrency, (May 12, 2023), How Banks Can Succeed with Cryptocurrency | BCG.

cryptocurrency investments. Banks have expertise in investment management and risk management, which can be valuable to customers who are new to the cryptocurrency market. Banks can play a role in regulating the cryptocurrency sector. They can work with regulators to establish industry standards and best practices for the safe and secure use of cryptocurrencies. Banks can also help to prevent illegal activities, such as money laundering, by monitoring cryptocurrency transactions and reporting suspicious activities to authorities.

V. CRYPTOCURRENCY REGULATION IN SINGAPORE

The use and regulation of cryptocurrency in Singapore have evolved significantly over the years. There are various key milestones in the evolution of cryptocurrency in Singapore. Singapore was one of the early adopters of cryptocurrency in Asia. Bitcoin, the first cryptocurrency, was introduced in 2009, and by 2013, Singapore had established a thriving Bitcoin community.²² The country's central bank, the Monetary Authority of Singapore (MAS), recognized the potential of digital currencies and blockchain technology and began exploring their use cases. In 2016, the Monetary Authority of Singapore launched a regulatory sandbox to allow fintech companies to test new products and services in a controlled environment. The sandbox enabled cryptocurrency and blockchain startups to experiment with new business models without having to comply with all the regulatory requirements.²³

In 2019, the Monetary Authority of Singapore introduced the Payment Services Act (PSA), which established a regulatory framework for cryptocurrency businesses. Under the PSA, cryptocurrency exchanges and other businesses that deal with payment tokens are required to obtain a license from the Monetary Authority of Singapore. The PSA also sets out and Counter-Terrorism Financing regulations that cryptocurrency businesses must comply with. In 2019, the Monetary Authority of Singapore also issued guidelines for digital token offerings, which cover security tokens. The guidelines require issuers to disclose information about the token and the underlying asset or enterprise.²⁴ They also set out requirements for the issuance and trading of security tokens on licensed exchanges. In 2020, the world's first regulated global exchange for trading security tokens, the first exchange, was launched in Singapore. The exchange enables investors to trade security tokens 24/7 and has attracted interest from institutional investors and high-net-worth individuals.²⁵

²² (May 12, 2023), <https://www.straitstimes.com/business/economy/singapore-embraces-cryptocurrency-but-remains-cautious>.

²³ (May 12, 2023), <https://www.mas.gov.sg/news/media-releases/2016/mas-sets-up-financial-industry-sandbox>.

²⁴ (May 11, 2023), <https://www.mas.gov.sg/-/media/MAS/Regulations-and-Financial-Stability/Regulations-Guidance-and-Licensing/Payment-Services/Consultation-Paper-on-Proposed-Payment-Services-Bill.pdf>.

²⁵ (May 14, 2023), <https://www.mas.gov.sg/-/media/MAS/News-and-Publications/Media-Releases/2019/MAS->

In 2021, the MAS announced that it was exploring the possibility of launching a central bank digital currency (CBDC).²⁶ The CBDC would be a digital version of the Singapore dollar and could potentially replace physical cash. The MAS believes that a CBDC could improve the efficiency and resilience of the payments system. The cryptocurrency industry in Singapore has continued to grow, with the number of cryptocurrency businesses and investors increasing steadily. In 2021, a report by PwC Singapore showed that the total assets under management (AUM) of cryptocurrency funds in Singapore had grown to \$2.2 billion up from \$1.2 billion in 2019.²⁷ Singapore has emerged as a leader in the regulation and adoption of cryptocurrency. The country's approach to regulating cryptocurrency has been praised for its clarity and its ability to provide certainty to businesses and investors. With the continued growth of the cryptocurrency industry, Singapore is poised to remain at the forefront of innovation in this space.

(A) Singapore's Regulation on Cryptocurrency

Singapore is poised to become a leading hub for cryptocurrency innovation and investment. Singapore is one of the few countries in the world that has taken a proactive approach to regulating cryptocurrency. The country recognizes the potential of digital currencies and blockchain technology and is determined to create a favourable regulatory environment that encourages innovation while safeguarding the interests of investors and consumers. Main features of regulation governing cryptocurrency in Singapore²⁸ are discussed further. The Monetary Authority of Singapore (MAS), the country's central bank and financial regulator, does not consider cryptocurrency to be legal tender. Instead, it defines cryptocurrency as a digital representation of value that can be traded, stored, and transferred electronically. In Singapore, tokens are classified into three categories Security tokens, Payment tokens and Utility tokens. Security tokens are classified as securities and are regulated under the Securities and Futures Act (SFA). Security tokens represent ownership or participation in an asset or enterprise, and their value is derived from the underlying asset or enterprise. Payment tokens are used as a medium of exchange and are regulated under the Payment Services Act (PSA). Payment tokens include cryptocurrencies like Bitcoin, Litecoin and Ethereum. Utility tokens provide access to a particular product or service and are not regulated under the SFA or PSA.

issues-Guidelines-to-protect-Interests-of-Crypto-Asset-Investors.pdf.

²⁶ (May 12, 2023), <https://www.straitstimes.com/business/banking/spore-gets-its-first-global-exchange-for-trading-security-tokens>.

²⁷ (May 12, 2023), <https://www.businesstimes.com.sg/companies-markets/crypto-asset-management-firms-in-singapore-surge-to-70-from-20-in-2019>.

²⁸ Payments Services Act, 2019, (May 15, 2023), Payment Services Act 2019 - Singapore Statutes Online (agc.gov.sg).

However, if a utility token also has characteristics of a security or payment token, it may be regulated under the relevant acts.

The regulatory framework for cryptocurrency in Singapore is overseen by the MAS. The MAS has taken a balanced approach to regulating cryptocurrency, seeking to protect investors and consumers without stifling innovation. Cryptocurrency businesses in Singapore are required to comply with AML and CTF regulations under the PSA. This includes conducting customer due diligence and monitoring transactions for suspicious activities. It deals with payment tokens are required to obtain a license from the MAS under the PSA. The license ensures that the business meets certain standards, such as safeguarding customer funds and complying with AML and CTF regulations. Security tokens are regulated under the SFA, which requires that they be issued and traded on licensed exchanges. The MAS has also provided guidelines for digital token offerings, which require issuers to disclose information about the token and the underlying asset or enterprise.

Cryptocurrency transactions in Singapore are subject to income tax and goods and services tax (GST). Businesses that deal with cryptocurrencies may also be subject to corporate income tax. The MAS has taken several steps to encourage innovation in the cryptocurrency industry. It has established a regulatory sandbox that allows fintech companies to test new products and services in a controlled environment. The MAS has also launched the FinTech Regulatory Sandbox, which provides a platform for fintech companies to collaborate with regulators and industry participants to develop and test new solutions. The MAS has implemented measures to protect consumers from fraudulent cryptocurrency schemes. It has issued warnings about the risks of investing in cryptocurrency and has taken enforcement actions against businesses that have engaged in fraudulent activities. The MAS also requires licensed cryptocurrency businesses to maintain adequate safeguards to protect customer funds.

VI. CRYPTOCURRENCY REGULATION IN JAPAN

Japan has been a leader in the regulation and adoption of cryptocurrency. Its early recognition of cryptocurrencies as legal payment methods and strict regulation of cryptocurrency exchanges have helped to create a safe and thriving environment for the cryptocurrency industry in Japan. The evolution of cryptocurrency in Japan can be traced back to the early days of Bitcoin, which was created by an unknown person or group under the pseudonym Satoshi Nakamoto in 2009. In the following years, Bitcoin and other cryptocurrencies gained popularity worldwide, and Japan became an early adopter of digital currencies. In 2014, Mt. Gox, one of the largest cryptocurrency exchanges at the time, filed for bankruptcy after losing approximately 850,000

bitcoins, worth around \$500 million at the time, due to a hack. This event led to a crackdown on cryptocurrency exchanges by the Japanese government, which sought to regulate the industry and prevent similar incidents from happening again.²⁹ In April 2017, the Japanese government passed a law recognizing cryptocurrencies as a legal form of payment.³⁰ This move made Japan one of the first countries in the world to give cryptocurrencies such legal status. The law also required cryptocurrency exchanges to register with the Financial Services Agency (FSA) and comply with certain regulations, such as anti-money laundering (AML) and know-your-customer (KYC) requirements.

Following the new regulation, several major Japanese companies, including Rakuten and GMO Internet, launched their own cryptocurrency exchanges. Moreover, many traditional Japanese financial institutions, such as MUFG Bank, also began exploring the use of blockchain technology and cryptocurrencies in their operations. In 2018, the FSA began conducting on-site inspections of cryptocurrency exchanges to ensure compliance with the new regulations. The same year, the agency granted licenses to several new cryptocurrency exchanges, including BitFlyer, which is now one of the largest cryptocurrency exchanges in the world by trading volume. In 2019, Japan further tightened its regulation of cryptocurrency exchanges by limiting leverage trading of cryptocurrencies to a maximum of four times the trader's deposit. The move was intended to reduce the risk of traders losing large amounts of money in highly volatile cryptocurrency markets.³¹

(A) Japan's Regulation on Cryptocurrency

Japan is one of the few countries that has taken significant steps towards regulating cryptocurrencies. In April 2017, the Japanese government passed a law recognizing cryptocurrencies as a legal form of payment.³² This made Japan one of the first countries in the world to give cryptocurrencies such legal status. Cryptocurrencies are recognized as a legal form of payment in Japan. This means that businesses can legally accept cryptocurrencies as a means of payment. Additionally, individuals and companies can legally buy, sell, and trade cryptocurrencies. Cryptocurrency exchanges are required to register with the Japanese Financial Services Agency (FSA) and comply with certain regulations. These regulations include anti-money laundering (AML) and know-your-customer (KYC) requirements. In addition,

²⁹ "Bitcoin Exchange Mt. Gox Files for Bankruptcy, Hit With Lawsuit" - Wall Street Journal (2014), (May 13, 2023), <https://www.wsj.com/articles/mt-gox-files-for-bankruptcy-hit-with-lawsuit-1393400926>.

³⁰ "Japan Legalises Bitcoin, Cryptocurrency Exchanges" - CoinDesk (2017), (May 11, 2023), <https://www.coindesk.com/japan-legalizes-bitcoin-cryptocurrency-exchanges>.

³¹ "Japanese Regulator Grants Cryptocurrency Exchange License to Coincheck" - Cointelegraph (2019), (May 6, 2023), <https://cointelegraph.com/news/japanese-regulator-grants-cryptocurrency-exchange-license-to-coincheck>.

³² *Supra* note 29.

exchanges must have adequate security measures in place to protect against hacking and theft. In Japan, profits from cryptocurrency transactions are subject to taxation. The tax rate varies depending on the individual's income bracket. Additionally, businesses that accept cryptocurrencies as payment must pay taxes on the value of the cryptocurrency at the time of the transaction. Cryptocurrency exchanges in Japan are required to have adequate security measures in place to protect against hacking and theft. In addition, exchanges are required to store customers' cryptocurrencies separately from their own assets to prevent loss in the event of bankruptcy. Initial coin offerings (ICOs) are regulated in Japan. Companies must obtain approval from the FSA before launching an ICO. Additionally, companies must disclose certain information to investors, including their business plan and financial statements. Cryptocurrency exchanges in Japan are required to comply with AML and KYC requirements. This means that exchanges must verify the identity of their customers and report suspicious transactions to the authorities. In Japan, leverage trading of cryptocurrencies is limited to a maximum of four times the trader's deposit. This is to reduce the risk of traders losing large amounts of money in highly volatile cryptocurrency markets.

VII. CRYPTOCURRENCY REGULATION IN SOUTH KOREA

The evolution of cryptocurrency in South Korea has been marked by a series of ups and downs. While the country has been one of the early adopters of cryptocurrency, its journey has been fraught with challenges, including regulatory uncertainties, cybersecurity issues, and market volatility. South Korea was quick to embrace cryptocurrency, with the first Bitcoin exchange launching in the country in 2013. By 2016, the country had emerged as one of the top markets for cryptocurrency trading, with several exchanges offering trading services for various cryptocurrencies. In 2017, the South Korean government began to take a closer look at the cryptocurrency industry, amid concerns about market volatility and potential fraud. In September of that year, the government banned Initial Coin Offerings (ICOs), citing concerns about the lack of transparency and oversight in the market. The move was followed by a series of regulatory measures, including increased scrutiny of cryptocurrency exchanges and requirements for customer identification and anti-money laundering compliance.³³

In early 2018, South Korea's largest cryptocurrency exchange, Coincheck, was hacked, resulting in the loss of over \$500 million worth of cryptocurrency. The incident highlighted the vulnerability of cryptocurrency exchanges from cyberattacks and raised concerns about the

³³ "South Korea's cryptocurrency craze gets new momentum," Reuters, December 12, 2017, (May 13, 2023), <https://www.reuters.com/article/us-southkorea-bitcoin/south-koreas-cryptocurrency-craze-gets-new-momentum-idUSKBN1E62J3>.

need for stronger security measures in the industry.³⁴ The global cryptocurrency market experienced a significant correction in late 2018, with many cryptocurrencies losing a significant portion of their value. The South Korean market was no exception, with trading volumes declining and several smaller exchanges closing down. However, the market began to recover in 2019, with renewed interest from investors and the launch of new cryptocurrency products and services.³⁵ In 2021, the South Korean government implemented several regulatory measures aimed at consolidating the cryptocurrency industry and improving investor protection. These measures included requirements for cryptocurrency exchanges to register with the Financial Intelligence Unit and comply with anti-money laundering regulations, as well as the introduction of a capital gains tax on cryptocurrency trading.³⁶ The evolution of cryptocurrency in South Korea has been marked by a series of challenges and regulatory changes. However, despite the uncertainties, the country remains a significant player in the global cryptocurrency market, with a strong ecosystem of exchanges, investors, and developers.

(A) South Korea's Regulation on Cryptocurrency

South Korea has been one of the leading countries in the adoption of cryptocurrencies and as a result, it has implemented several regulations to govern the industry. South Korea has a complex regulatory environment for cryptocurrencies. The government has taken a proactive approach to regulating the industry, recognizing that it is an emerging field that poses unique challenges. In particular, the government has focused on combating money laundering and other financial crimes associated with cryptocurrencies. The government has also expressed concerns about the potential risks associated with cryptocurrency investments, such as market volatility and fraud. Here are the key laws and regulations that govern the industry of cryptocurrency in South Korea are discussed further. There is an Act on Reporting and Using Specified Financial Transaction Information which requires all virtual asset service providers (VASPs) to register with the Korea Financial Intelligence Unit (KoFIU) and comply with anti-money laundering (AML) and counter-terrorist financing (CTF) regulations.³⁷ This includes conducting customer due diligence, monitoring transactions, and reporting suspicious activity.

Other is Financial Services Commission (FSC) Guidelines, which is responsible for overseeing

³⁴ South Korean cryptocurrency exchange Coincheck hacked, \$500 million stolen, CNN, January 28, 2018, (May 15, 2023), <https://edition.cnn.com/2018/01/26/tech/coincheck-exchange-hack-intl/index.html>.

³⁵ Cryptocurrency Market Correction: Major Factors and Trends, Investing News, November 29, 2018, (May 12, 2023), <https://investingnews.com/daily/tech-investing/blockchain-investing/cryptocurrency-market-correction/>.

³⁶ South Korea's financial watchdog to require cryptocurrency exchanges to register, The Korea Herald, January 30, 2021, (May 14, 2023), <https://www.koreaherald.com/view.php?ud=20210130000062>.

³⁷ Act on Reporting and Using Specified Financial Transaction Information, available at website of the Korea Legislation Research Institute (KLRI), (May 14, 2023), https://elaw.klri.re.kr/eng_mobile/viewer.do?hseq=51451&type=sogan.

the financial sector in South Korea, including cryptocurrencies. The FSC has issued guidelines for VASPs, which include requirements for internal control systems, risk management, and customer protection. The guidelines also require VASPs to obtain third-party audit reports on their internal control systems and customer fund management.³⁸ South Korea has imposed a capital gains tax on cryptocurrency trading, which was implemented in 2021. Under the new tax law, profits from cryptocurrency transactions are subject to a 20% tax if the total annual income exceeds 2.5 million Korean won (approximately \$2,200).³⁹ Also, in September 2017, the South Korean government banned ICOs, citing concerns about fraud and market manipulation. However, in March 2018, the government announced that it would allow ICOs under certain conditions. Companies must register with the Financial Services Commission (FSC) and comply with reporting requirements, and tokens must have a clear utility and be issued by a reputable company.⁴⁰

VIII. COMPARATIVE ANALYSIS OF CRYPTOCURRENCY REGULATION IN SINGAPORE, JAPAN AND SOUTH KOREA VS. CRYPTOCURRENCY AND REGULATION OF OFFICIAL DIGITAL CURRENCY BILL, 2021

Singapore, Japan, and South Korea are all developed Asian countries with strong economies and stable political environments while India is developing country. Each country has a unique regulatory framework that is shaped by their specific historical, cultural, and economic circumstances. In comparison of the three with the proposed Bill in India on cryptocurrency, there is an examination of the areas where the proposed bill is lacking. Singapore, Japan, and South Korea have established comprehensive regulatory frameworks specifically tailored to cryptocurrencies. They focus on addressing key aspects such as licensing, consumer protection, anti-money laundering (AML) measures, and Know Your Customer (KYC) requirements in context of cryptocurrency. In contrast, the Indian bill leans toward a ban on private cryptocurrencies and does not provide a detailed framework for their regulation. All three countries require cryptocurrency exchanges to obtain licenses or register with the respective regulatory authorities. This ensures that exchanges adhere to specific standards, maintain adequate security measures, and comply with AML and KYC regulations. The Indian bill does

³⁸ Financial Services Commission (FSC) Guidelines, (May 16, 2023), https://www.fsc.go.kr/eng/new_press/releases.jsp?menu=01&bbsid=BBS0078&searchkey=title&searchval=Virtual+Asset+Service+Providers+Guidelines&cate=release_all&page=1&orderby=regdate&orderbyoption=desc&tabmenu=tab1.

³⁹ Article from CNBC on South Korea's cryptocurrency tax, (May 11, 2023), <https://www.cnbc.com/2021/02/22/south-korea-imposes-20percent-tax-on-bitcoin-profits-starting-2022.html>.

⁴⁰ Article from CoinDesk on South Korea's ICO ban, (May 14, 2023), <https://www.coindesk.com/south-korea-bans-icos>.

not provide a licensing framework for cryptocurrency exchanges.

Singapore, Japan, and South Korea have implemented robust AML and KYC regulations for cryptocurrency businesses. Exchanges and intermediaries are required to conduct customer due diligence, monitor transactions for suspicious activities, and report them as per regulatory requirements. The Indian bill does not explicitly address AML and KYC regulations for cryptocurrency businesses. They have put emphasis on consumer protection in the cryptocurrency space. They provide guidelines and advisories to educate users about the risks associated with cryptocurrencies, encourage responsible investing, and promote transparency in the operations of cryptocurrency exchanges. The Indian bill does not explicitly address consumer protection measures related to cryptocurrencies. Japan has officially recognized Bitcoin as legal tender, allowing its use in transactions. Singapore and South Korea consider cryptocurrencies as goods rather than legal tender. The Indian bill proposes to ban private cryptocurrencies as legal tender, thereby restricting their use in transactions. All three have adopted regulatory frameworks that aim to foster innovation and support the growth of the cryptocurrency industry. They strike a balance between regulation and promoting technological advancements. The Indian bill focuses more on the introduction of an official digital currency and leans toward a ban on private cryptocurrencies.

These developed countries have established guidelines and requirements for security and risk management in the cryptocurrency sector. This includes measures such as mandatory cybersecurity audits, cold storage requirements, and insurance coverage for cryptocurrency exchanges. The Indian bill does not explicitly address security and risk management aspects. Singapore and South Korea have specific regulations governing token offerings and Initial Coin Offerings. They outline requirements for disclosure, investor protection, and fundraising through token sales. Japan also has regulations in place for ICOs, requiring registration with the Financial Services Agency (FSA). The Indian bill does not address token offerings or ICOs specifically. Singapore, Japan, and South Korea actively engage in international cooperation and collaboration to address cross-border cryptocurrency-related issues. They participate in initiatives like the Financial Action Task Force (FATF) and work with other countries to develop global regulatory standards. The Indian bill does not explicitly mention international cooperation regarding cryptocurrency regulation. Moreover, they have demonstrated a certain degree of regulatory flexibility by adapting their frameworks to evolving market conditions and technological advancements. They have shown a willingness to update regulations and guidelines as the cryptocurrency industry evolves. The Indian bill, being a proposed legislation, has yet to showcase similar flexibility.

In conclusion, the regulation of cryptocurrencies in India needs to balance the potential benefits of the technology with the risks associated with it. The Indian government needs to develop a comprehensive regulatory framework that protects investors, prevents illegal activities, and encourages innovation. The regulation in all three countries on cryptocurrencies provide valuable insights that can help India develop an effective regulatory framework for cryptocurrencies. By adopting a pro-innovation approach and implementing measures to protect investors and prevent illegal activities, India can unlock the potential of cryptocurrencies while minimizing the risks associated with them.
