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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

DECODING LEGALITY: THE EVOLVING LEGAL LANDSCAPE OF CRYPTOCURRENCY IN INDIA

AUTHORED BY - MAYANK TIWARI

Abstract:

This paper examines the legal status of cryptocurrency in India, tracing its historical development, regulatory journey, and global comparisons. It highlights how the emergence of digital currency, especially Bitcoin, disrupted conventional financial systems and challenged national regulators. India's approach has been cautious, marked by fluctuating policies and regulatory uncertainty. While there is no express ban on trading or investing in cryptocurrencies as of 2021, the lack of regulatory clarity and legal backing has created confusion among investors. The judgment in *Internet and Mobile Association of India v. RBI* marked a pivotal point by lifting banking restrictions on crypto-related entities. The study also explores international practices, comparing India's stance with those of the USA, UK, Japan, China, and Russia. Further, it recommends proactive regulatory measures, such as statutory amendments, implementation of regulatory sandboxes, and possible development of a central bank digital currency (CBDC). The paper concludes that while cryptocurrencies present risks, with adequate legal frameworks and policy intervention, India could harness their potential as a driver of digital and economic growth.

Keywords: Cryptocurrency, Legal Status, India, RBI Regulation, Blockchain Technology.

INTRODUCTION

Money has been in operation in human history for about 3000 years, the standard currency has been evolving, from the use of barter systems to metal coins and then to paper money. We have been improving the medium of exchange overtime to meet our needs and make exchanges more convenient.

In the era of digitalization, cryptocurrency has been invented. Cryptocurrency is a virtual currency in which the crypto coins are divided into thousands of blocks that are designed by cyber experts. These blocks, in turn, work on the block-chain mechanism, thus making the

system more secure and safe. It gives traders the liberty to deal with cryptocurrencies transparently without the need of any third party. It is a decentralized currency which neither involves middlemen nor is controlled by the government, thus the traders can trade one to one. The concept of digital coins came in 2008 and it was in 2009 when an anonymous person or group with the name Satoshi Nakamoto created the first bitcoin.

India is also one of those countries trying to explore this new world of digital currency with more than ten million investors. People have wholeheartedly been investing in bitcoin and other cryptocurrencies. The concept of digitalized currencies is largely new to the world and has been a debatable topic on grounds of its legality and security. However, the question that arises is, *Is it legal in India to invest in digital currencies?* The Indian government has been apprehensive of cryptocurrencies because these are private currencies that are not regulated by the government and could be used for criminal activities such as finance terrorism, drug trafficking, etc.

The concept of digital currency mushroomed and proliferated in India after 2012 when various cryptocurrencies (besides Bitcoins) like Litecoin, Namecoin, Ethereum, etc came into the market. Small private cryptocurrency exchanges started in the country by the name of Zebpay, Unicoi, etc enabling people to deal in crypto-coins. Seeing the growing trends, the Reserve bank of India issued a press release in 2013 cautioning the users, traders, and holders of virtual currencies of the financial, legal, operational, and safety-related risks associated with cryptocurrencies as they are not regulated by the central bank.¹ Due to demonetization in 2016, people shifted to investing in cryptocurrency in search of ways of going cashless, which thus increased the crypto market. Meanwhile, the RBI and the Finance Ministry were repeatedly issuing statements claiming the cryptocurrency to be a fraud. The government understood virtual currencies as merely for use of settling transactions and thus discouraged it as it was not a legal tender, but there is more one could do with cryptocurrencies, they could use it for trading and investing as well.

On 5th December 2017 RBI again issued a press release stating that it has not authorized or licensed any entity to deal in virtual currencies. The bank was continuously warning the public against trading in virtual currencies because of the risks associated with it. Then the same

¹ RBI Press Release, 24th Dec, 2013

month income tax raided nine cryptocurrency exchanges in various cities to stop the practice of trading in virtual currencies with the suspicion that they are being used for illegal purposes.

Thus, in 2017 the government formed a committee to understand the market of virtual currencies and other countries' take on it.

On 6th April 2018, RBI issued a circular directing all the financial institutions associated with it to not provide services to those involved in dealing with or settling in virtual currencies. Aggrieved by the circular the Internet and Mobile Association of India which is a body representing the interests of the online and digital service industry and companies running crypto exchange collectively filed a Writ Petition in the Hon'ble Supreme Court Of India on 15th May 2018. The court in *the Internet and Mobile Association of India v Reserve Bank of India* on 5th March 2020 set aside the circular issued by the RBI. The court observed that RBI has wide powers but they differ with the manner and the extent they are applied. They Reserve Bank took a pre-emptive action against future risk without determining the fact that no regulated entities had suffered in dealing with cryptocurrencies. The court found it unjustifiable on their part in restricting banks from providing services to those dealing in cryptocurrencies.

Further, the Ministry of Corporate affairs made changes in schedule iii of the Company's Act, 2013 creating provisions for companies to disclose their investment in cryptocurrency if any. The government also might present the Cryptocurrency and Regulation of Official Digital Currency Bill, 2021 in the coming session, which would ban any kind of dealing, settling or investing in cryptocurrencies. Thus, currently in 2021 trading, investing or dealing in cryptocurrencies is not illegal in India and no criminal charges will be pressed against those involved in such dealings. But it is still unregulated and the government is finding ways to regulate the transactions or investments made in these virtual currencies.

World Scenario

Like India, other countries have also been trying to explore and understand the world of virtual currencies.

The United States of America

America is one of the most economically efficient and developed nations in the world and its

dollar is the most popular exchange rate measurement. America's response to cryptocurrencies has been favorable lately. In 2013, they listed cryptocurrency as a convertible decentralized currency. In 2015 Bitcoin was considered a commodity by Commodities Futures Trading Commissions (CFTC). In *Commodity Futures Trading Commission v. Patrick McDonnell*², the US district court held Bitcoin to be a commodity. In 2018 Bitcoin was made taxable under property tax by the Internal Revenue Service.³ The United States Supreme Court in *Wisconsin Central Ltd v United States* discussed the probabilities of bitcoin being used as currency in the future, although at present it is not considered a legal tender. Discussions on the topic are still continuing, as to widen the scope of cryptocurrencies by the courts but currently, bitcoin has been legal in America.

The United Kingdom

The United Kingdom has somewhere taken a similar stand on virtual currencies. It is not considered as legal tender by the Government of the United Kingdom, but trading in cryptocurrencies has been allowed, even though there have been statements by the Governor of the Bank of England, expressing concern over the risks associated with dealing in cryptocurrencies because of its unregulated circulation and dealing.

The government has classified the cryptocurrency exchanges under Virtual Asset Service Provider (VASP), which needs to be registered under the Financial Conduct Authority (FCA). Further, to regulate the crypto-assets the Bank of England and FCA have made a task force to ensure transparency and financial stability in the system. They also enacted Cryptoassets taxation policy in 2019 thus making crypto-assets taxable. The government is continuously trying to find ways to regulate virtual currencies.

Japan

Japan has most progressively adapted to virtual currencies. It has legalized cryptocurrency as a property and has made it taxable. It has made amendments to its Payment Services Act and Financial Instruments and Exchange Act by adding the term crypto-assets.⁴ The crypto-exchanges are regulated by the Financial Service Agency, which has made it mandatory for

² 18-CV-361

³ <https://economictimes.indiatimes.com/markets/cryptocurrency/where-are-bitcoin-cryptocurrencies-legal-and-where-are-they-not/articleshow/82548574.cms?from=mdr>

⁴ <https://complyadvantage.com/knowledgebase/crypto-regulations/cryptocurrency-regulations-japan/>

exchanges to register themselves. Japan has updated its statutes with the coming of new technology and is the biggest market for Bitcoin.

China

China has not recognized cryptocurrencies as a legal tender and has also restricted its banks from providing any bitcoin-related services to people and has banned all the cryptocurrency-trading platforms.

Russia

Russia had earlier banned the use of cryptocurrency, but with the coming of the new bill on taxation of cryptocurrency, the government allowed virtual currencies to be used as personal assets and people have to disclose the details to the tax authorities on the investment made by them on these cryptocurrencies. Exchanges were also allowed to operate under the supervision of the Central Bank of the Country. Virtual currencies can be traded but currently are not to be used as legal tender. Russia is even planning to develop its own virtual currency by the name of CryptoRubble.

Steps Indian Government should take towards adopting cryptocurrency

India is still lagging with respect to dealing with cryptocurrencies efficiently. It could make amendments in the existing statutes by adding the concept of virtual currencies. Policies should be formulated in consultation with the crypto-experts in order to reduce potential risks like money laundering, terrorism funding, etc. The Reserve Bank Of India could regulate exchanges and keep a check on their work.

Regulatory sandboxes can be used by the government to test the requirements of virtual currency and blockchain mechanism. It is an isolated testing environment that would help the government to understand the framework of the needs of the system and draft policies efficiently. Countries have been actively investing in Central Bank Digital Currencies, India could also be part of it by developing digital versions of its legal tender. India could also develop its own virtual currency which could be used a legal tender in future. With the current Prime minister promoting Digital India an Indian Virtual currency could be a huge step towards it. There will be increased foreign investments and people will go cashless.

Effects of a future ban on existing Crypto-holders

A huge population of the country is currently investing in cryptocurrencies. If the government completely bans these private currencies in the future there would be huge losses. Even though it is predicted that time will be given to settle their assets but how it would be done is still unknown. Thousands of those who are employed in this sector might lose their jobs. The upcoming startups will be shut and it will also block huge opportunities to investors as compared to foreign counterparts.

As every coin has two sides, similarly the world of cryptocurrency is filled with positives and negatives. It will be a boon for India if it legalizes cryptocurrencies, helping it to grow not only economically but also in other various aspects.

CONCLUSION

Cryptocurrency, a product of technological evolution in the financial world, has generated immense interest across the globe, and India is no exception. Over the last decade, the concept of digital currencies has grown rapidly, presenting both opportunities and challenges. India, with a vast population of tech-savvy individuals and a rapidly digitizing economy, has seen increasing participation in the crypto market. Yet, the legal and regulatory response to this phenomenon has remained cautious and uncertain.

The Indian government and regulatory authorities like the Reserve Bank of India (RBI) have taken a skeptical approach towards cryptocurrencies. Their concerns are rooted in issues such as the potential for illegal transactions, lack of investor protection, market volatility, and the absence of a centralized regulatory framework. This apprehension is evident from the various warnings issued by the RBI since 2013 and the 2018 circular that prohibited financial institutions from providing services to crypto entities. However, the Supreme Court's landmark judgment in *Internet and Mobile Association of India v. Reserve Bank of India* (2020) marked a turning point. By setting aside the RBI's ban, the Court upheld the right to trade in cryptocurrencies, thereby affirming that, as of now, dealing in crypto is not illegal in India.

Despite the legality, cryptocurrencies in India remain unregulated, and their future depends heavily on the legislative measures the government might take. The proposed Cryptocurrency and Regulation of Official Digital Currency Bill, 2021 has created significant speculation, as

it aims to ban private cryptocurrencies while supporting the development of an official digital currency by the RBI. The lack of clarity has led to confusion among investors and startups operating in the crypto space, making it essential for the government to establish a clear and progressive regulatory framework. Comparing the Indian scenario with global trends, countries like Japan and the United States have made considerable progress in regulating and integrating cryptocurrencies into their financial systems. These models can serve as references for India in creating a balanced framework that addresses both the potential risks and the technological benefits of cryptocurrencies. Taxation policies, registration of exchanges, and anti-money laundering measures are some of the tools that can be adapted to suit the Indian context.

It is also crucial for India to invest in financial literacy and educate the public about the risks and advantages of crypto investments. Regulatory sandboxes and pilot programs could help test various policy frameworks before full-scale implementation. Moreover, the development of India's own Central Bank Digital Currency (CBDC) could offer a government-backed alternative to private cryptocurrencies, fostering trust while leveraging blockchain innovation.

In conclusion, while cryptocurrency is currently legal in India, it operates in a regulatory vacuum. The future of digital currencies in the country hinges on the government's willingness to embrace innovation while safeguarding national interests. A well-thought-out policy, formulated in consultation with industry experts, legal minds, and technologists, can transform cryptocurrency from a controversial concept to a cornerstone of India's digital economy.