



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2024

Editor-in-Chief – Prof. (Dr.) Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

A

Research Paper

On

Topic

*The potential for cryptocurrencies to be used for illegal activities, and
the legal measures to combat them.*

SUBMITTED BY

MUSKAN SETHIYA

NMIMS, HYDERABAD

TABLE OF CONTENTS

ABSTRACT3

INTRODUCTION.....3

OBJECTIVES4

LITERATURE REVIEW.....4

WHAT ARE THE CHALLENGES AND LEGALITY OF CRYPTOCURRENCY?6

CONCLUSION.....9

REFERENCES10

ABSTRACT

How digitization and technological progress have altered traditional investing strategies. The notion of cryptocurrency has emerged alongside the rise of online trading platforms and payment systems. The term "cryptocurrency" refers to a digital currency that may be used for online purchases, transfers, and stock exchanges. With its debut to the market more than a decade ago, Bitcoin has gained widespread acceptance. One study on cryptocurrencies found that in 2021, just 7.30% of Indian investors were crypto users. There has been a meteoric rise in enthusiasm for investing in cryptocurrencies since the Reserve Bank of India lifted its ban on doing so in March of 2020. As a result, the goal of this study is to determine whether or not business owners in India are familiar with and open to using bitcoin. Different countries have viewed cryptocurrencies in different ways, such as the US laws viewing it as money, while others consider it as property, security, and so on. The study's goal is to gain a better understanding of investors' attitudes on *block chain* technology and cryptocurrencies, as well as the potential for cryptocurrencies to be used for illegal activities, and the legal measures to combat them.

KEYWORDS: *cryptocurrency, digitalization, block chain, legal challenges*

INTRODUCTION

Cryptocurrency is a form of digital or virtual currency that is protected by a cryptographic hash function, making it nearly impossible to engage in double spending or counterfeiting. Cryptocurrencies are based on the *Blockchain* concept and operate on a decentralized network (Distributed Ledger). Transactions in *bitcoin* are conducted directly between users without the need for intermediaries or oversight from governing bodies. Bitcoin proponents make bold claims, such as calling bitcoins "*the next big thing*" after the internet and computers. In the present day, Bitcoin and other cryptocurrencies may not pose a significant danger to India's conventional currency. Many Indians began investing their savings in Bitcoin around that time and remain in debt to exchanges. in both Bitcoins and the blockchain protocol on its own in India. While it's true that *Satoshi Nakamoto* came up with the idea for Bitcoin, it's arguable that the blockchain industry as a whole would benefit greatly from an exchange and wallet that would

make it possible for 100 of millions of Indians to participate in the cryptocurrency market. Numerous such currencies exist, with Bitcoin, Ethereum, and Ripple being among the most well-known. In today's market, one bitcoin is equivalent to sixty grams of gold. Over the past few months, the total market capitalization of all cryptocurrencies has risen from zero to over \$100 billion.

There is currently no regulatory framework in place in India governing cryptocurrency. The development of a legislative framework for digital or crypto-currencies like Bitcoin would allow the government to impose the Tax on Goods and Services on their sale. Now to "promote" a formal tax base and monitor their usage for illegal activities like money laundering, terror funding, and drug trafficking, the government authority SEBI can oversee the trading of cryptocurrencies in the new regime.

OBJECTIVES

How does the government plan to handle cryptocurrencies, what are the potential for cryptocurrencies to be used for illegal activities, and the legal measures to combat them?

LITERATURE REVIEW

In their paper "Cryptocurrency," (Dourado, Eli, and Brito, Jerry, 2014) analyse the history of digital currency's flaws and the development of the technology that allows for cryptocurrency to exist. Issues because of the double payment and Roman generals are discussed. The research reaches the conclusion that, while Bitcoin represents a significant technical success, it is still only a monetary experiment. Perhaps not all fiat currencies will be replaced by cryptocurrencies even if they do survive.

In their 2018 book, "The Economics of Cryptocurrencies: Bitcoin and Beyond," Jonathan Chiu and Thorsten V. Koeppel analyse the pros and cons of cryptocurrencies, including their anonymity and security. It is noted in (Garrick Hileman and Michel Rauch's, 2018) book "Bitcoin: Economics, Technology, and Governance" that there are dangers to investing in cryptocurrencies due to its extreme volatility. According to the research of (L. W. Cong and colleagues, 2018) "Uncertainty for investors and companies due to the absence of regulation in the bitcoin market may slow the technology's mainstream adoption. Yet this might also be a chance to create new and better forms of regulation." Businesses and investors in India are facing

difficulties due to the absence of laws and the unclear legal status of cryptocurrencies. On the other hand, it has prompted creative responses and partnerships in the business world. (Agrawal, R., and Mittal, S.,2019). According to the research of (D. Ratha & B. P. Dash, 2021) "The planned ban on cryptocurrencies by the Indian government has caused uncertainty for companies and investors, but it may also be a chance to construct a clearer and governed cryptocurrency environment in the nation."

THE USE CRYPTOCURRENCY TRADING MAY HAVE A NUMBER OF ADVANTAGES

There are differing perspectives on the future of cryptocurrencies, including bitcoin. While some liberals support cryptocurrency, other authors, economists, and researchers are less enthused about its usage in payments and financial activities. Cryptocurrencies simplify fund transfers between parties through the use of public and private keys for security. These financial transfers have cheap processing fees, avoiding the high fees paid by traditional banks. Many countries now accept bitcoin as a recognized currency. Countries aiming to eliminate cash have a positive outlook on cryptocurrencies. Supporters of bitcoin argue that the market capitalization of bitcoin, ethereum, and other cryptocurrencies is so huge and powerful that restricting them would be prohibitively expensive for any jurisdiction. Opponents of cryptocurrencies argue that they are volatile and can be used to launder money or finance unlawful activities.

The same algorithms employed in online banking are also applied in the *open-source mining* of Cryptocurrency. The sharing of user information is the only distinction between online and traditional banking. The Bitcoin network shares all transaction details, including how and when they are shared, but it does not store any information about the sender or recipient of the coins. Peer-to-peer cryptocurrency networks operate without a centralized server in charge of all activities. Information is shared by two or more program users. Every program that users install is a component of the bitcoins network. Each client keeps track of every transaction and the amount of bitcoins in their wallet. Transactions are processed by hundreds of distributed servers. Governments, banks, and taxes have no authority to regulate how money is exchanged.

Unlimited transaction possibilities: wallet holders can send money to anybody, anywhere, at any time, for any amount. Since the transaction is uncontrollable, you can send money to anyone, anywhere in the world, as long as they have a Bitcoin wallet.

There are numerous other benefits, including *quicker completion of transactions*. Transactions can be completed within a minute. It is *simple to transfer* money and *transparent* because it maintains a record of all previous and current transactions.

WHAT ARE THE CHALLENGES AND LEGALITY OF CRYPTOCURRENCY?

Technology has simplified practically every element of our lives, as well as the lives of criminals. The block chain has created an ecosystem in which criminals can operate anonymously and globally, delaying financial investigations and opening the way for increasing crypto crime.

Malware, such as ransomware, usually enters a system through an embedded link or malicious attachment, or by taking advantage of a security vulnerability. In exchange for a cut of ransom payments, attackers can rent the use of ransomware strains from the companies who created them according to the common Ransomware as a Service (RaaS) model.

If a ransom is not paid, attackers threaten to reveal confidential information or block access to the system. These assaults aim to harm governments and companies, and they might seriously impair vital infrastructure, including hospitals. The fact that cryptocurrency allows for cross-border transactions between numerous parties that want to remain anonymous makes it extremely helpful in both regular ransomware and RaaS assaults.

Dark net markets are websites that are hosted as "onion services" or "TOR hidden services" on the dark web. Because they are only accessible via TOR, thus browsing may be done safely and anonymously. These black markets support a variety of illegal activities, including the selling of stolen data, weapons, drugs, human trafficking, and child sexual abuse materials (CSAM). This type of bitcoin crime is a very alarming illustration of how cryptocurrency is utilized to launder money after being benefited from illegal activity.

The laundering of money in cryptocurrency is a complex procedure in which criminals conceal the source of payments. The idea is to shift money to locations where the original illicit source cannot be tracked.

Thus, lawmakers must enact regulations controlling the trading of bitcoin in order to counteract all of these illegal activities.

The government has varied opinions on bitcoin trading. Some nations approved virtual currency trading, while others sought to limit or ban it due to security concerns.

So to combat this issue, there should be proper laws like-

United States of America – The United States has been pursuing a strategy to safeguard investors from fraud and excessive risks while promoting innovation and growth in blockchain and cryptocurrencies. The Commodity Futures Trading Commission (CFTC) and Securities Exchange Commission (SEC) declared on February 6, 2018, that "we owe it to this new generation of investors to respect their enthusiasm for digital currencies with a thoughtful and rational response, and not a dismissive one." Initial Coin Offerings (ICOs) are subject to U.S. The goal of the SEC's regulation is to shield investors from fraud, reduce investment risk, and potentially hold cryptocurrency ventures accountable for offering unregistered securities to American consumers. In this case, USA is a friendly country with the trading of virtual money where as china is one of the largest country that oppose the trading of cryptocurrency. In 2017, China prohibited cryptocurrency trading on their exchanges.

**THE INDIAN GOVERNMENT INTENDS TO PROHIBIT
CRYPTOCURRENCY USE FOR THE REASONS LISTED BELOW:**

If cryptocurrencies are so secure, then why does India's government seek to outlaw them?

The lack of a consistent regulations for cryptocurrencies is a major cause for worry for the Indian government. The government has raised concerns that cryptocurrency can be used to launder money or fund terrorist operations, and that the absence of regulations makes it impossible to monitor and prevent such actions. The government is worried that because cryptocurrencies are unregulated, their inherent volatility could endanger the financial system even more.

The possibility that people will use cryptocurrencies to evade paying taxes worries the Indian government as well. The incapacity of the government to track down virtual currencies and stop tax evasion has raised concerns about potential revenue losses. The dark web is also a key contributor, as it is where most bitcoin transactions take place, and thus facilitates various types of fraud, including cybercrime. Even though there are numerous problems with cryptocurrencies, the Indian government has not prohibited them. This is because cryptocurrencies are a worldwide phenomenon with growing appeal in India. Policymakers may have legitimate concerns that a ban on cryptocurrency may restrict these advantages. There is currently no central cryptocurrency exchange authority in India. Nonetheless, the Securities and Exchange Board of India (SEBI) has authority over digital asset regulation, and the Reserve Bank of India (RBI) has

issued many circulars on the topic. The Reserve Bank of India (RBI) issued a circular in April 2018 barring financial institutions such as banks from doing business with others or offering services to individuals or businesses involved in the cryptocurrency industry. In March 2020, however, the Supreme Court of India ruled that the RBI's restriction was illegal and overturned the circular. There has been no change in the legal status of cryptocurrencies in India following the Supreme Court's ruling, but the government is apparently drafting a bill that would outlaw all cryptocurrency aside from the digital replica of the Indian rupee. The Indian parliament has not yet enacted the proposed measure, which is titled the Cryptocurrencies and Administration of Official Digital Currency Bill, 2021. During her presentation of the Union Budget 2022 on Tuesday, Finance Minister Nirmala Sitharaman made many significant announcements pertaining to the cryptocurrency and digital asset space. Nirmala Sitharaman made history when she proposed taxing crypto-related profits at a rate of 30%. She also said that the Reserve Bank of India (RBI) will launch a digital currency in the following financial year, commencing in April 2022, to facilitate digital commerce and better manage money.

The sale of goods and services in India that are paid for with cryptocurrencies are subject to a tax known as the Goods and Services Tax (GST). At the moment of the transaction, the value of the items or services being purchased or sold is used to calculate the amount of tax due.

A Proposed Law to Regulate Cryptocurrencies and Official Digital Currencies in the Year 2021: It has been claimed that the government of India is working on a measure that would prohibit the use of cryptocurrencies in general, with the exception of a digital replica of the Indian rupees. The Indian parliament has not yet decided whether or not to enact the proposed measure. The legal framework for virtual currencies in India is now in the process of being developed, and as a result, cryptocurrency dealers and exchanges are operating in a state of dilemma.

The future of cryptocurrency in India:

As technology advances, India may eventually legalize cryptocurrency trading. There are some amendments that can be implemented to validate cryptocurrencies. The Securities and Exchange Board of India can act as a watchdog over the trade of cryptocurrencies or virtual money. Policymakers may include laws relevant to cryptocurrency within the Security and Exchange Board of India Act, 1992.

Some companies that offer virtual currencies, should collect data and information about their customers. Platforms that let users pay with credit cards for virtual currency must also take these rules into account while keeping credit card data. High security and privacy requirements must be followed when storing such data.

In terms of taxation, the government can implement rules under the Income Tax Act or a new act dealing to cryptocurrency regulations or virtual money transactions that cover all aspects of cryptocurrencies, including fraud, and prescribe punishments for it. In order to maintain stability and it will allow investors to make profit from cryptocurrency investments, the government may establish restrictions and requirements for cryptocurrency trading. These rules will aid in the seamless trading of foreign currencies, or all monetary transactions can be overseen by the Central Bank of India. The Indian parliament can pass legislation combining the Security Exchange Board of India and the Reserve Bank of India to improve trade supervision and regulation.

CONCLUSION

In terms of revenue generation for businesses and service providers, cryptocurrency represents a novel, efficient, and alluring payment paradigm. In addition to accepting fiat currency, it offers a variety of other payment options that facilitate transactions including buying, selling, transferring, and exchanging. Despite the fact that cryptocurrency platforms facilitate a wide variety of digital cash transactions and offer a novel currency with novel processes and techniques, they are not subject to the appropriate level of oversight and regulation. The study examined cryptocurrency platforms, eliciting various worries and difficulties that threaten such a financial system. For many, the biggest risk with cryptocurrency systems is the absence of laws protecting investors. My review of the existing cryptocurrency literature and the results of the performed survey have allowed me to provide a nearly complete picture of the scope of cryptocurrency. My research suggests that cryptocurrency will soon replace traditional currency platforms due to the vast amounts of cryptocurrency moving through various systems, the rapid growth in popularity of using and adopting cryptocurrencies, and the numerous advantages offered by cryptocurrency infrastructure. Consumers need to take more care while dealing with bitcoin until it is better regulated and managed. The notion of cryptocurrencies has a bright future, opening up new doors for innovation in the e-business and e-payments industries. There

will be no slowdown in the development of cryptocurrencies due to technological advancements. Moreover, new varieties of digital currency have evolved and spread globally. Cryptocurrency offers numerous research opportunities and requires extensive study to provide scientific content. Further research is needed to examine the relationship between financial regulations and the legal framework for adopting cryptocurrency platforms from diverse perspectives. Additional analysis with large sample sizes is necessary to fully understand adoption and acceptance levels. Further research is needed to better understand the impact of trust and confidence on cryptocurrency trading. Further research might focus on building use-cases for bitcoin in various areas in India.

REFERENCES

- Baidya, S., Potdar, V., Ray, P. P., & Nandi, C. (2021). Reviewing the opportunities, challenges, and future directions for the digitalization of energy. *Energy Research & Social Science*, 81, 102243.
- Singh, A. K., & Singh, K. V. (2018). Cryptocurrency in India-its effect and future on economy with special reference to bitcoin. *International Journal of Research in Economics and Social Sciences (IJRESS)*, 8(3), 115-126.
- Rahman, A., & Dawood, A. K. (2019). Bitcoin and future of cryptocurrency. *Ushus Journal of Business Management*, 18(1), 61-66.
- Jain, S. (2018). The growth of cryptocurrency in India: Its challenges & potential impacts on legislation. *Research gate publication*.
- Kasten, J. (2019). Blockchain application: the dairy supply chain. *Journal of Supply Chain Management Systems*, 8(1), 45-54.
- Tsuchiya, Y., & Hiramoto, N. (2021). How cryptocurrency is laundered: Case study of Coincheck hacking incident. *Forensic Science International: Reports*, 4, 100241. <https://doi.org/10.1016/j.fsir.2021.100241>
- Bunjaku, F., Gjorgieva-Trajkovska, O., & Miteva-Kacarski, E. (2017). Cryptocurrencies—advantages and disadvantages. *Journal of Economics*, 2(1), 31-39.
- Panda, P. C., & Jani, N. (2019, November). Growth of Cryptocurrency and Illegal Activities. In *5th International Conference on Economic Growth and Sustainable Development: Emerging Trends* (pp. 15-16).

- Hughes, S. D. (2017). Cryptocurrency Regulations and Enforcement in the US. *W. St. UL Rev.*, 45, 1.
- Cryptocurrencies legal regulation.
(n.d.). <https://cyberleninka.ru/article/n/cryptocurrencies-legal-regulation/viewer>
- Grau, D. (2023, August 27). Investigating 5 kinds of crypto crime. Cognyte. <https://www.cognyte.com/blog/cryptocurrency-crime/>