



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.

BUILDING THE FUTURE: REGULATING CRYPTOCURRENCIES

The traditional financial landscape has been revolutionized in the recent times with the introduction of digital assets named cryptocurrencies. These digital currencies aim to decentralise the financial systems by making it more accessible and inclusive in nature. They operate on blockchain technology or distributed ledgers which transparently records transactions without the need for any central intermediaries. World's first cryptocurrency, Bitcoin, was introduced in 2009 by Satoshi Nakamoto. Since then, it has experienced exponential growth worldwide. Ethereum, introduced much later in 2015, further expanded the same by enabling the development of decentralized applications and smart contracts.

There are several advantages associated with the use of cryptocurrencies such as financial empowerment bypassing traditional gatekeepers, increased transaction speed, enabling secure data storage, identity management, and supply chain tracking. Additionally, cryptocurrencies facilitate cross-border transactions without the need for intermediaries, making them particularly attractive for global commerce. However, on the other hand, the rise of cryptocurrencies has failed to address the concerns surrounding volatility wherein the prices can fluctuate within seconds, security of the market players, and environmental impact of its long-term viability.

LEGAL POSITION OF CRYPOCURRENCY IN INDIA

As of today, cryptocurrencies do not enjoy legal tender status in India. In 2017, the Reserve Bank of India issued a circular prohibiting regulated entities from dealing with

cryptocurrencies, citing concerns about money laundering and financial stability.¹ In 2019, a draft bill titled “The Cryptocurrency and Regulation of Official Digital Currency Bill, 2019” was proposed.² However, the bill faced backlash and has not been passed yet. In a landmark ruling in 2020, the Supreme Court quashed the RBI's 2017 circular, terming it "disproportionate" and infringing on fundamental rights.³ However, the court refrained from granting legal tender status to cryptocurrencies, emphasizing their unregulated nature. This absence of clear regulations with respect to the cryptocurrency governance continues to cast a shadow in the legal domain.

THE LEGAL CHALLENGES OF UNREGULATED CRYPTO

During the 2022 Budget proposed by the Indian Finance Minister, Ms. Nirmala Sitharaman, the debate surrounding the legality of cryptocurrency got sparked off.⁴ Particularly, the legal characterization of crypto determines its taxation policies – depending on whether these assets should be defined as a commodity, a currency or given a whole new different category to be taxed. The 2022 Union Budget introduced a 30% tax on gains from cryptocurrencies and a 1% TDS (Tax Deducted at Source) on crypto transactions. Another issue faced by the consumers could relate to the potential of data fraud, identity thefts, etc. in a situation of no existing legal framework to regulate the crypto market. In such cases, the question of invoking the jurisdiction of courts also remains a legal limbo due to the unknown nature of the ledger's exact geographical location.

A complete lack of regulation poses several significant risks including but not limited to the conduction of illegal activities like money laundering, corruption, political funding, terrorism, market manipulation, etc. due to the anonymity and volatility associated with the digital currencies. Moreover, it becomes difficult to enforce traditional regulatory measures by

¹ Reserve Bank of India, RBI caution on Virtual Currencies, (December 5 2017), https://rbi.org.in/Scripts/BS_SpeechesView.aspx?Id=1196.

² The Crypto and Regulation of Official Digital Currency Bill, 2019, available at: <https://prsindia.org/billtrack/draft-banning-of-cryptocurrency-regulation-of-official-digital-currency-bill-2019>.

³ Internet and Mobile Association of India v. Reserve Bank of India: https://main.sci.gov.in/supremecourt/2018/19230/19230_2018_4_1501_21151_Judgement_04-Mar-2020.pdf (2020).

⁴ Reuters, “All You Need To Know About India's Crypto Bill, available at: <https://www.reuters.com/world/india/no-issue-with-crypto-india-if-laws-are-followed-minister-2023-01-19/>” (2023).

governments and regulatory bodies around the world due to the decentralized nature of cryptocurrencies. If this gains popularity to the level of traditional money, it would raise serious questions with regards to wealth distribution and accessibility in each nation. Sustainability is another critical aspect of regulating cryptocurrencies. Environmental concerns have been raised regarding the energy-intensive process of cryptocurrency mining, particularly for proof-of-work-based cryptocurrencies like Bitcoin. Regulators can incentivize the adoption of more sustainable mining practices and encourage the development of environmentally friendly blockchain technologies. When it comes to regulating cryptocurrencies, policymakers face a delicate balancing act. On one hand, they must safeguard against illicit activities and protect consumers. On the other hand, they must avoid stifling innovation and impeding the growth of this nascent industry. Hence, regulation is essential to address various issues plaguing this burgeoning industry, to ensure the protection of investors and consumers.

BUILDING TRANSPARENCY THROUGH REGULATION

The governments of different nations need to oversee regulatory operations to encourage the adoption of public blockchains and increase the trust factor amongst the public. By establishing clear guidelines and standards, regulators can mitigate risks, foster market integrity, and promote innovation in a responsible manner. Furthermore, regulation can help legitimize the cryptocurrency industry and pave the way for its broader adoption by institutions and mainstream investors. Implementing the “Know Your Customer (KYC)” regulations on cryptocurrency platforms can help deter illegal activities and identify suspicious transactions. However, the borderless nature of cryptocurrencies necessitates international cooperation to develop consistent and coordinated regulations across jurisdictions, preventing regulatory arbitrage. Recently, El Salvador became the first country to adopt Bitcoin as legal tender in 2021. Towards an extreme, China has taken a stringent stance, banning all cryptocurrency transactions and mining activities within its territory. Therefore, sharing knowledge and experiences between regulatory bodies can accelerate learning and inform effective policy development.

THE ROAD AHEAD

Regulating cryptocurrencies is a complex task that requires a multifaceted approach by investors, technologists, and policymakers alike. By exploring the emerging regulatory trends

and their impact in different countries, one can tackle the challenges posed by decentralized finance (DeFi) and non-fungible tokens (NFTs). This requires the establishment of central bank digital currencies (CBDCs) and government regulation to build the future of cryptocurrencies.