



SUI GENERIS LAW REGARDING CRYPTOCURRENCY; A NEED OF THE HOUR

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ABSTRACT

With growing technology at a dynamic speed, Cryptocurrency has found its way amidst our present centralized currency economy. Hence the requirement to know how it works and by analyzing the legal risks involved, the ability to deal with it becomes easier.

We hope to bring out how this digital currency has developed and understand how it works through this paper. *Firstly*, the authors have explained Cryptocurrency, Blockchain technology, Smart contracts and their working mechanism that functions the transactions. *Secondly*, the authors have discussed if decentralized financial systems are a safe option. *Thirdly*, the current position of Cryptocurrencies in India and the International legal status of Cryptocurrencies amidst different countries have been explored. *Fourthly*, the deficiency in Law to govern the working of Cryptocurrency is addressed along with the legal risks one may encounter in the absence of such Law. Finally, the authors have also briefly discussed a few scams involving Cryptocurrency. In *conclusion*, the authors have emphasized the dynamic growth of Cryptocurrency globally, carrying risks for which India is not prepared for. The authors have also attempted to provide suggestions that might help deal with legal issues that arise from Cryptocurrency.

INTRODUCTION

"MONEY" is a commodity that is universally accepted as a medium of exchange. It plays a very crucial role in the global economy as a whole. We have passed down the passage of the barter system before using currencies as a medium of exchange. Money has been transformed from commodity money to metallic money following the paper money, and now we use bank money. The difficulties faced in one medium have led to the invention of the other. At present, we are marching towards a digitalized society where most of our affairs have become digitalized, such as online shopping, online transactions, and many more. Likewise, the currency we are using is also becoming digitalized with the advent of Cryptocurrency. Cryptocurrency is a digital currency that can be used as a medium of exchange on online platforms. Its diverging uses include purchasing or exchanging goods and services online. It is important to note that all our activities involving an international platform using the internet has disadvantages such as losing your privacy or becoming prey to scams, identity theft etc., similarly, using Cryptocurrency can also have its drawbacks such as a decentralized financial structure being used.

HISTORICAL BACKGROUND OF CRYPTOCURRENCY IN INDIA

The Cryptocurrency Bill is expected to have been taken by the Parliament. Its key purpose is propounded to be the "creation of the official digital currency to be issued by the Reserve Bank of India", according to the bulletin for the Budget session prepared by the Lok Sabha Secretariat.



The Bill also seeks to prohibit all the private cryptocurrencies in India but would permit certain exceptions to promote Cryptocurrency's underlying technology and its uses.¹

The RBI had issued a circular after issues arose about virtual currencies legitimacy given by private parties and hence instructed Banks to ensure the customers dealing in cryptocurrencies were not allowed access to banking services.

The circular was to help convince citizens not to buy cryptocurrencies. In short, the RBI, to remove cryptocurrency investment altogether, barred banks in facilitating any transactions involving cryptocurrencies.²

The intervention of court in RBI's 2018 order to banks

Internet and Mobile Association of India V RBI³

In this case, the Supreme Court had held the imposition of restriction by the RBI concerning Cryptocurrency without the support of legislation would invade the fundamental rights of citizens in carrying out any legitimate trade.

It is pertinent to note that this view of the court might change in future when the legislature passes a bill regarding the same.

HOW CRYPTOCURRENCY WORKS

Bitcoin was the first Cryptocurrency founded by Satoshi Nakamoto in 2008. Other cryptocurrencies include Ethereum, Litecoin, Cardano etc., but bitcoin remains to be the largest Cryptocurrency. First, to make cryptocurrency transactions, one must create a cryptocurrency wallet that enables us to transfer currency and set a private key (i.e.) a password necessary to complete any transaction. Then, using the peer-to-peer network, exchanging currency for cryptocurrencies such as bitcoin, Ethereum etc, is the next step. Subsequently, it can be used to buy online goods or services. Finally, cryptocurrency transactions are recorded using blockchain technology.

Blockchain is essentially a digital database that keeps a record of the totals and the transactions of cryptocurrencies. It is a decentralized digital ledger containing all transactions in the system. In blockchain structure, when a person transacts, it is recorded in his block. Then, a duplicate of the transaction is reflected in all the digital ledgers across the world. The transaction record is called the "block", and the several databases in which they are stored are known as "chain."⁴. This ledger is open to all cryptocurrency users (i.e.) transparent without revealing the identity of the parties.

¹ Anulekha Ray, 'Bitcoin Future in India: Ban or Asset class, Govt. to decide on Cryptocurrency bill soon' (News 18, August 17 2021, 16:18 IST) <<https://www.news18.com/news/business/bitcoin-future-in-india-ban-or-asset-class-govt-to-decide-on-cryptocurrency-bill-soon-4095863.html>> Last Accessed on October 15, 2021.

² Prasanth Perumal, 'Future of Cryptocurrency in India continues to hang in the balance' (The Hindu, June 03, 2021, 12:48 IST) <[https://www.thehindu.com/business/future-of-](https://www.thehindu.com/business/future-of-cryptocurrency-in-india-continues-to-hang-in-the-balance/article34704676.ece)

[cryptocurrency-in-india-continues-to-hang-in-the-balance/article34704676.ece](https://www.thehindu.com/business/future-of-cryptocurrency-in-india-continues-to-hang-in-the-balance/article34704676.ece)> Last Accessed on October 15, 2021.

³ Internet and Mobile Association of India v RBI, MANU/SC/0264/2020.

⁴ 'All You Need to Know About Blockchain Technology and How It Works' (ND TV August 17, 2021; 10.19 a.m.

IST)<<https://www.ndtv.com/business/what-is-blockchain-and-how-does-it-work-find-out-here-2511764>> last accessed on October 15, 2021.



Processes are known as "proof of work" or "proof of stake" are often built into this system to create new blocks and validate transactions. These blockchains are made secure using "**cryptography**". The digital signature of the owner authenticates every transaction in this ledger. Cryptographic codes known as **hashes** link the blocks together to prevent any penetration, thus overcoming the risk of hacking⁵.

A **smart contract** is a self-executing contract with the terms of the agreement between buyer and seller being directly written into lines of code.⁶ The execution and the transactions are controlled by the code contained within the blockchain. These programmes run automatically once the predetermined conditions are met. These contracts are used to achieve the outcome without any intermediary involvement, prevent time loss, and are trackable and irreversible.

ARE DECENTRALIZED FINANCIAL PLATFORMS A SAFE OPTION?

Now that we explored the working mechanism of Cryptocurrency and Blockchain Technology, the next question is how safe is it? In the traditional system the centralized financial institutions, the Reserve Bank of India in case of India, oversee the printing, distribution and exchange of currencies in India. It makes policies and uses other tools to influence the cash circulation in the country and maintain

interest rates and the rate of inflation in the economy. However, Cryptocurrency uses blockchain technology, a **decentralized structure** that remains outside the purview of the Government or any centralized banking institution. Therefore, centralized institutions are replaced by peer-to-peer transactions.

The bitcoin transactions are recorded in a public ledger and visible to those using this decentralized finance system. In this decentralized system, the middlemen such as a broker, forex, and other government bodies are removed, the parties verify and record the transaction using blockchain technology. Unlike a centralized system where borders limit the rules and protocols, blockchain technology uses borderless protocols and open protocols. Jake

While using a decentralized financial platform, one must remember three main features of DeFi; first, DeFi involves digital assets- cryptocurrencies; these transactions are recorded in a digitalized ledger called blockchain rather than a centralized database, thus making the whole process on a **minimal trust platform**. Secondly, **no custodial services are provided**, unlike centralized banking institutions where our currencies and assets are under the bank's custody, where there is no custody of our assets. The investor will not have any control over his assets. Third, the entire transaction uses blockchain technology, and their **services are open, programmable and composed**, which makes it easy to add

⁵ 'Cryptocurrency Explained: How Does Cryptocurrency Work? (MasterClass, June 4, 2021)<<https://www.masterclass.com/articles/cryptocurrency-explained#what-is->

cryptocurrency> last accessed on October 15, 2021.

⁶ Jake Frankenfield, 'Smart Contracts' (Investopedia, May 26, 2021)

<<https://www.investopedia.com/terms/s/smart-contracts.asp>> Last Accessed October 15, 2021.



or combine functions from different services⁷.

One major implication DeFi is likely to make on traditional systems are that of the intermediaries. The main purpose of Defi is to remove the involvement of intermediaries such as banks. When all the intermediary functions are served through software at much cheaper rates, people are more likely to lean towards it. In a world where software and the internet will replace the intermediaries, what will happen to them? It is also important to think if the software and internet are safe options to trust because there will always be loopholes for those who wish to exploit despite the technology used for protection. In any case of cyber fraud or related issues, no separate law governs these transactions.

Here are a few problems or risks involved in using a decentralized financial platform:

a. **Unregulated platform:** these Cryptocurrency transactions made in a decentralized platform are not regulated by the Government (i.e.), there is no supervising body to handle these transactions. All the DeFi mediums display warning that they are unregulated mediums for transactions which mean there exists neither supervision nor any law regulating them. This implies that if any cyber theft or other crimes be committed, there is no legal redressal available to the victims. If a person who has invested in Cryptocurrency has lost his money or the distributor disappears, then the

individual cannot question the RBI nor file a case in the police station. The victim is left hopeless. Any financial structure that is outside the purview of government supervision is not a safe option.

b. **Value of money lost:** in the traditional system, the centralized institutions take up the responsibility of printing and distributing money. Each country will influence the cash flow in the nation, thus maintaining the value of the currency. This prevents any inflation or deflation in the country. However, cryptocurrencies are not controlled by governments. Individuals neither create nor exchange digital currencies, which means that the governments will not control the flow of these currencies nor limit the total Cryptocurrency in their nation. These can have undesirable outcomes in the future.

c. **Economic conditions- in the hands of individuals:** The value of Cryptocurrency is decided on the market conditions rather than the economic conditions of the country, which will affect the purchasing power of the consumers, thereby affecting the economic condition of the nation. These cryptocurrencies are privatized, which means the economic conditions of our nations fall into their hands.

Currencies are a medium of exchange used on a day-to-day basis. The main attribute for a currency is that its value should not increase or decrease rapidly in a small

⁷Kevin Werbach, 'Decentralized finance: the next big threat for the finance sector (Brink News, July 13, 2021) <<https://www.brinknews.com/decentralized->

[finance-the-next-big-threat-for-the-finance-sector/](https://www.brinknews.com/decentralized-finance-the-next-big-threat-for-the-finance-sector/)> last accessed on October 15, 2021.



duration of time. It is for this reason currency notes replaced gold as a medium of exchange. Subsequently, when the price of gold started to increase rapidly, the desire to use it as a medium of exchange faded. Rather people started to save the gold in the hope of huge returns in the future.

Similarly, in the case of cryptocurrencies, with their price rapidly increasing, people will not choose to spend it as currency. Still, they will prefer to purchase it as an asset for huge returns given the limited production of cryptocurrencies. Moreover, depending on digital mining, the rate of cryptocurrencies can either increase or decrease in the future. Thus, it raises the question of whether Cryptocurrency can be used as a currency for exchange.

SCAMS INVOLVING CRYPTOCURRENCY

There have been few cases in cryptocurrencies where people have lost vast amounts of their money. We have discussed a few of them here.

a. **Elon Musk scam**⁸:

This was a personification fraud. In this type of crime, the individual creates a fake account or hake into an existing account and alter the account to make it look like the official account of the celebrity and then they use to scam others. Elon Musk, the CEO of Tesla and Space X has become the most personated celebrity recently. There was a social media account impersonating Musk. The scammers

had asked the followers to transfer their cryptocurrency funds to him on the promise of doubling it in a few days. People believed that the tweet was from Elon Musk himself shared their money and the scammer had disappeared with the money. People have lost more than two million dollars to Elon Musk impersonators in the past six months. Nearly 7000 people had lost their cryptocurrencies in the U.S. in these kinds of frauds since last October.

b. **PlusToken scam in China**⁹:

PlusToken was created in early 2018, it targeted people who wished to make huge money in short durations. Once you sign up in PlusToken you invest in it and they tell you that it will be used to make more cryptocurrencies like such as bitcoins. They promised huge returns on low investments. It was in reality a Ponzi scheme where the early investors are given profits from the later investors. The early investors are made to believe that the profits were made out of legal business activities. In plusToken scam, the fraudsters had taken three million dollars and ran away leaving a message "sorry we have run". The Chinese Government had arrested nearly 109 PlusToken operators and the court had sentenced them to 11 years of imprisonment and payment of fine.

⁸Sarthak Dogra, 'Online scams through fake Elon Musk accounts have stolen over \$2 million in cryptocurrency since October' (India Today, May 18, 2021) <<https://www.indiatoday.in/technology/news/story/online-scams-through-fake-elon-musk-accounts-have-stolen-over-2-million-in-cryptocurrency-since-october-1803982-2021-05-18>> last accessed on October 15, 2021.

⁹Michael, 'Plus Token (PLUS) Scam – Anatomy of a Ponzi' (Boxmining, November 27, 2020) <https://boxmining.com/plus-token-ponzi/#What_is_Plus_Token> last accessed on October 15, 2021.



c. **Cryptocurrency- Money Laundering in China¹⁰:**

In this case the accused Chinese had lured two Indians on promise of some commission. The two Indian accused had created an app in the play store named Power Bank. The app had promised doubled returns within 15 days of investment. The money deposited through the app was transferred to the bank accounts of these two and converted into Cryptocurrency. The app was found to be linked with China. They used to en-cash the cryptocurrencies into their local currency to end the chain of money laundering, which started with duping Indians through the app.

d. **Amit Bharadwaj – Gain Bitcoin scam¹¹:**

Amit Bharadwaj had launched "gain bitcoin" and lured investors on the promise of huge returns. He also made them believe that he had a mining software in China. He promised the investors a return of 10% per month for a period of 18 months. He had duped thousands of people for over three years. He had fled the country with Rs.2000 crore.

e. **Dr. Ruja Ignatova scam¹²:**

Dr. Ruja had claimed to have developed a cryptocurrency of her own named "One coin". She had travelled around several cities luring investors by manipulating that her OneCoin would surpass bitcoin in a few years. Nearly 30 million dollars was invested by U.K. There were also several other people from around the world investing in OneCoin. She made a profit of four billion dollars and had disappeared. She was never seen again.

CURRENT POSITION OF CRYPTOCURRENCY IN INDIA

At present, bitcoins and other cryptocurrencies are not under any legal regulations. The Reserve Bank of India in 2018 issued a circular barring the banks from facilitating a transaction involving cryptocurrencies. Various petitions were filed opposing the circular issued by the RBI. In furtherance of these petitions, the Supreme Court quashed the RBI's circular through its order in 2020. The Government formed an inter-ministerial panel to inspect various issues related to cryptocurrencies. Following the committee's recommendations, **the cryptocurrencies and the Regulation of Official Digital Currency Bill, 2021** is to be tabled in the parliamentary session this year.

¹⁰Kalyan Das, 'China-based online money laundering racket using cryptocurrencies exposed: Cops' (Hindustan Times, June 9, 2021) <<https://www.hindustantimes.com/cities/dehradun-news/china-based-online-money-laundering-racket-using-cryptocurrencies-exposed-cops-101623228591644.html>> last accessed on October 15, 2021.

¹¹Mahendra Singh Manral, 'Delhi: 'Mastermind' in Rs 2,000-crore Bitcoin scam receives extortion call; FIR filed' (Indian Express, September 6, 2021) <<https://indianexpress.com/article/cities/delhi/master-mind-in-rs-2000-crore-bitcoin-scam-receives-extortion-call-fir-filed-delhi-police-7491468/>> last accessed on October 15, 2021.

¹²'The biggest cryptocurrency scandal in history: Ruja Ignatova' <<https://sanctionsanner.com/blog/the-biggest-cryptocurrency-scandal-in-history-ruja-ignatova-414>> last accessed on October 15, 2021.



The Bill aims to create an official digital currency by the Reserve Bank of India and prohibit all private cryptocurrencies in India. The United States of America, Canada, Australia, El Salvador are a few countries that have recognized cryptocurrencies.

WHY THE LAW OF CONTRACTS AND INFORMATION TECHNOLOGY ACT MIGHT NOT BE ENOUGH:

By exploring the various risks involved by using Cryptocurrency, we now have to see how its legal framework is.

The Law of Contracts, 1872 and the Information Technology Act, 2000 were enacted before digital technology's actual growth. With the rapidly increasing development of technology, the introduction of Artificial Intelligence, Digitalization, both the Acts as mentioned earlier have failed to completely meet the demands of the Digital economy. Apart from that, since they lack legislative provisions as to how to deal with problems that arise in a digitalized economy, such as crimes in cyberspace, Cryptocurrency, the possibility of circumvention by the lawbreakers shall increase until and unless there is the presence of proper legislation to prevent the same.

Moreover, the current Law might not be enough to meet the difficulties that might arise from complex technologies such as Blockchain technology and Smart contract.

Some of the ways how they are insufficient are discussed below:

LEGAL RISKS INVOLVED FROM INVESTOR'S POINT OF VIEW¹³

1. Cryptocurrencies as property:

Depending on the Government's definition of what property is, the subsequent liability or asset that it carries with it changes. For example, in the U.S., cryptocurrencies are considered property by the Internal Revenue Service. Then this means that it will be subjected to capital gains tax.

India standpoint on Cryptocurrency as property is quite ambiguous as it is not backed by Law. So first, that has to be clarified to categorize it into a property and impose suitable tax implications subsequently.

2. Decentralized status

Despite the efforts of the Central Government to control and regulate cryptocurrencies, digital currencies have managed to remain free from Jurisdiction or institution.

Though this might be beneficial to the investors, it does carry with it certain potential risks. The firstly would be regarding the issues dealing with ownership. Secondly, the nature of transactions through electronic money has less trust than those backed by Central authority. Thirdly, the possibility of having legal confusion between the parties cannot be ignored. However, resolution of the same can be difficult as they are not backed by centre authorized law.

¹³ Nathan Reiff, 'What are the legal risks to Cryptocurrency Investors' (Investopedia, September 02, 2021) <<https://www.investopedia.com/tech/what->

[are-legal-risks-cryptocurrency-investors/](https://www.investopedia.com/tech/what-are-legal-risks-cryptocurrency-investors/)> Last accessed on October 15, 2021.



In short, if suppose there arises contingent situations requiring attention to the risk involving the ownership of Cryptocurrency, the aggrieved party approaching help through legal means becomes difficult as they are not backed by Centralized authority.

3. Business registrations and Licensing

The requirement to have registration is not mandatory when it comes to financing via cryptocurrencies. However, the same can be sometimes misused as well, such as fraud, the transmission of funds, money laundering. This can be resolved by the presence of special considerations.

When it comes to conventional business transactions, most of them have registration mandated. This is to have an evidence to produce before court during the case of conflict.

With Cryptocurrency, where there is no such requirement, it leaves with a question as to aftermath of transaction.

4. Fraud, Money Laundering and Data theft

It is pertinent to note that not all investors are to commit crimes through the usage of cryptocurrencies. However, the victims of financial crime through Cryptocurrency do not have the same legal benefits as compared to those who are victims of traditional fraud crimes. On top of that, since anonymity is protected, the engagement in illegal activities increases and thereby multiplying its difficulty in detection of the same.

In other words, the treatment given in case conventional cyber crimes involving Fraud, Money laundering and data theft is not found to the perpetrators or victims of those who used Cryptocurrency as a mode of consideration in any financial transaction.

The underlying intention of Cryptocurrency in protecting the anonymity of the user has been misused through the involvement of various illegal activities. Therefore, another dilemma that arises is whether the data protection law and Law regarding financial fraud can solve the complex problems and issues that arise from Cryptocurrency lacks clarity.

Some examples are;

- i. **Theft:** There was a Security flaw in the Ethereum blockchain costing \$ 250 million at risk of theft, according to a researcher at Cornell University.
- ii. **Security:** Around one million email Addresses were compromised in Crypto Wallet Ledger, leading to access to personal information and theft of customers' ledgers.

Usage of "dark market sites" enabling illegal transactions without the exposure of identity has been the deviated purpose of Cryptocurrency. It is pertinent to note that preceding the conversion of illegally acquired Cryptocurrency, there is a requirement to convert them into liquid cash. However, that involves being subjected to anti-money laundering rules wherein the customers are mandated to be identified. But recently, it has been found



that even that can now be circumvented using Over-the-Counter trading (OTC).

5. Jurisdictional Issues¹⁴

One of the significant advantages of Blockchain technology is its ability to retain anonymity as the actual location of the ledger is hard to determine. The different complex issues that can arise are:

- i. Presence of conflicting *legal framework*
- ii. Difficulty in *Determination of residence* country due to the nature of Cryptocurrency software
- iii. The involvement of *transnational and cross-border nature* creates a dilemma in selecting and applying competent Jurisdiction for dispute resolution.
- iv. *National Regulation* becomes insufficient as there is the involvement of cross-border transactions.

By acknowledging the complexity involved in issues relating to Jurisdiction, we can understand the risks involved in a more practical way and become more solution oriented.

6. Contractual issues in "smart contracts."

Smart contracts are set of promises usually specified in digital format that act as the basis upon which the parties in a transaction fulfil specific promises. It facilitates automatic payment as soon as

the performance of contractual duties is done.

The issue is whether the legal framework applicable to conventional contracts can be applied to smart contracts whose unique, complex nature is dynamic, making its Determination an arduous task.

7. Are the current laws regarding privacy sufficient enough to address the issues that arise from Blockchain Technology?

The existing laws relating to privacy are not enough because of their inability to tackle the complicated and dynamic issues that emerge from the Blockchain technology. One best example could be taken from the U.S.

The U.S. has more sector-specific laws when it comes to privacy and data security. For instance, the California Consumer Privacy Act (CCPA). The CCPA is very helpful to centralize controller-based data processing system. However, its inapplicability is found highly predominant to Blockchain technology as the latter's technology is distributed peer-to-peer network architecture, which is totally contradictory of the former's technology based on the centralized nature of technology only.

According to analysis, even the anonymity nature of Cryptocurrency can be interfered with due to improvement in Blockchain Analytic tools. It was even

¹⁴ (Freeman Law) <<https://freemanlaw.com/legal-issues-surrounding-cryptocurrency/>> Last Accessed on October 15, 2021.



confirmed by the Blockchain analytics firm that tracing of majority transactions of Zcash and Dash was also easier thereby proving "privacy coin" to be a misnomer.

In conclusion, one of the incentives of using Cryptocurrency was remaining "Anonymous", however, research shows that with dynamic changes in Blockchain technology, can one still remain anonymous is a debatable question.

8. Intellectual property and Cryptocurrency

Cryptocurrencies' ever-growing popularity in fields of intellectual property intensive fields (pharmaceutical, automotive, luxury and consumer goods) raises certain issues of concern. Firstly, the issue dealing with ownership and authorship, secondly, controlling and tracking of the distribution of registered or unregistered I.P.s. Thirdly, enforceability smart contracts of Ip agreements/licenses/exclusive distribution networks.

Intellectual property Law being an interdisciplinary field involving Law, business, Science and Technology, having a proper legal framework in cases of conflict or other issues will encourage more to take risks. However, is it same in cases of Cryptocurrency transaction has no per se legal answer.

INTERNATIONAL LEGAL STATUS OF CRYPTOCURRENCY¹⁵

The gaining popularity of Bitcoins amidst the other cryptocurrencies raises the question of its legal status nationally and internationally. It's necessary to know what the legal status of Cryptocurrency is Internationally to cross compare it with that of India and make changes so as to handle the risks involved in Cryptocurrency in a better manner. Some of the way it legalized/regulated has been discussed below:

i. **EUROPEAN UNION:** Despite the presence of legislation legalizing bitcoins, it is predominantly accepted in the E.U. After the famous ruling of the European Court of Justice (ECJ), buying and selling digital currencies is considered a supply of services. Therefore it is exempted from the VAT(Value Added Tax) in all the E.U. member states. However, it was observed that where bitcoins are involved for transactions pertaining to products and services, it shall be subjected to VAT/GST and other taxes.

Coinbase, Kraken, Binance etc. were found to be the popular exchanges for Bitcoin.

Status of Bitcoins by the countries who are members of E.U.:

FINLAND: By classifying Bitcoin as a Financial service, it is found to have gained

¹⁵ Hitesh Malviya, 'Where are Bitcoins & cryptocurrencies legal and where they are not?' (Times of India, May 2011, 2021, 05:38 PM IST) <<https://economictimes.indiatimes.com/markets/cryptocurrency/where-are-bitcoin-cryptocurrencies-legal->

and-where-are-they-not/articleshow/82548574.cms?from=mdr> Last Accessed on October 15, 2021.



VAT exemption. It is considered only as a commodity.

BELGIUM: In the Federal Public Service Finance of Belgium like Finland has exempted bitcoins from the scrutiny of VAT.

CYPRUS; Bitcoins are neither controlled nor regulated.

UNITED KINGDOM: By creating a friendly environment approving the stance of bitcoins, the Financial Conduct Authority (FCA) is "Pro-Bitcoin" and is supportive of the digital currency. However, it is subjected to tax regulations.

BULGARIA: The bitcoins are found to have been included under their existing tax laws by the National Revenue Agency (NRA).

GERMANY: Having a friendly and open-minded stance towards the usage of bitcoins and being found legal, it is subjected to taxation. The taxation differs depending on various factors, such as whether the authorities dealing with exchanges are miners, enterprises or users.

ii. **USA:** Bitcoins are legalized in the USA. The Commodity Futures Trading Commission identified Bitcoin in 2015. In 2013, it was found to be a convertible decentralized Cryptocurrency by the U.S. Treasury. In *Wisconsin Central Ltd. V. U.S.*, bitcoin was found as a major concern in the changing the meaning of money. Regulation of cryptocurrencies was subjected to the same rules as the conventional AML/CFT facilitators, financial firms and capital transmitters were regulated. In addition, the rules mentioned in the Bank Secrecy Act amendments of 2020. One of the

recently emerging Cryptocurrency Coinbase worldwide was found most popular Bitcoin Exchanges in the U.S.

iii. **SOUTH KOREA:** Bitcoin is found Legalized here as well. However, it is pertinent to note that only Adults in South Korea are allowed to use Bitcoins. They can do so on registered exchanges using their actual Bank names and accounts where the exchange also has an account. Here duty to check identity and implementation of Anti-money laundering laws are imposed on Bank and Exchange. Lastly, minors and outsiders are restricted from using Cryptocurrency. UPbit, Bithumb and Coinone are some of the popular Bitcoin platforms.

iv. **JAPAN:** Under the Payment Services Act, Cryptocurrency is defined as property value. The act also limits the application of cryptocurrencies to property values electronically stored in Electronic devices and not used as legal tender. Apart from these regulations are prevalent in the following forms; firstly, with Authorization, Cryptocurrency used in Business are to be authorized—secondly, maintenance of records. Thirdly ensuring the implementation of security protocols and finally the protection of customers. In addition, adherence to the Anti-Money Laundering regulations and guidelines is mandatory for transactions involving cryptocurrencies. Some of the



- popular cryptocurrencies are Coinmama, CEX.io, Coincheck.
- v. **CHINA:** Here, there are legislations found serving as regulatory measures for security and financial risk management on cryptocurrencies involved activities. However, there isn't any legislation considering them as legal tender and the banking sector are found neither providing services nor acknowledging services involving them. Initial coin offerings are declared illegal. One of the famous Cryptocurrency's exchanges here are Coinmama, CEX.io, BTCC.
- vi. **INDIA:** Presently, there is no legislation considering cryptocurrencies to be illegal. However, the evolution of Cryptocurrencies from the Cryptocurrencies Regulation Bill that is yet to arrive after RBI BAN in 2018 has never seen the legalization of Cryptocurrency via legislation. Due to the absence of clear Law on the same, there is a state of dilemma. The presence of complexity and fear of cryptocurrencies being banned still lingers on the minds of various investors and business people. However, it has been clarified by the Indian govt. to not wholly ban Cryptocurrency and their intention to allow Blockchain technology for the growth of the financial sector backed by centralized Law might serve as hope. Some of the famous crypto
- exchanges in India are WazirX, CoinDCX and Unocoin.
- vii. **EL SALVADOR**¹⁶: This is the only country that recognizes bitcoin as legal tender. Bitcoins have been accepted as a form of payment after the Country's Congress President NAYib BUkele gives a nod to a proposal approving the same.
- viii. **CANADA:** Here, bitcoin is viewed as a commodity by the Canada Revenue Agency (CRA). In other words, the income generated via the transactions involving bitcoins is considered as Business income. Depending on the nature of the transaction and the underlying intention, the corresponding taxation applies. For instance, is it limited to only investing, or there is an intention to have a buying-selling business. Canada by considering the bitcoin exchanges to be money service business puts them under the scrutiny of Anti- Money Laundering Laws. This means there is a requirement to register with the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), follow the compliance plans, maintain records, and report in the presence of transactions that create suspicion. It is also pertinent to note that certain Canadian Banks are found to have banned the usage of their Debit/Credit cards for bitcoins transactions.

¹⁶ Praveen Bajpai, 'Countries where Bitcoin is legal and Illegal' (Investopedia, August 25, 2021) <<https://www.investopedia.com/articles/forex/04151>

5/countries-where-bitcoin-legal-illegal.asp > Last Accessed on October 15, 2021.



- ix. **AUSTRALIA:** According to the Australian Taxation Office (ATO), Bitcoin is considered an asset for capital gain tax purposes.
- x. Some other nations that have entirely said no to the usage of Bitcoins include;

RUSSIA: No per se Law for regulation of bitcoins is found. However, its usage as payment of goods/services is illegal.

VIETNAM: Like Russia, though there is an absence of Law regarding the regulation, it is not considered a legitimate payment method.

BOLIVIA: El Banco Central De Bolivia is found to have banned the usage of Bitcoins.

COLUMBIA: Bitcoin is neither allowed for usage nor investment

ECUADOR: Through majority vote in the National assembly, bitcoins are found banned.

FUTURE OF CRYPTOCURRENCY:

After observing mixed reactions to legalizing Cryptocurrency Internationally, one can infer that despite the legal risks involved the growing rate of Cryptocurrency is multiplying exponentially.

One important factor to note is that the RBI or any Banking sector holds Monopoly control over the Financial Sector in any Economy. The question that arises is whether the Government or the legislature will be ready to give up their monopolized power over money to third parties who own cryptocurrencies. Considering the chance that it does get banned, the next question is whether it will completely bar the people who want to hold assets or cash in the form of

Cryptocurrency won't circumvent the Law to hold cryptocurrencies. This leads to the final question, are there enough Cyber Laws apart from the Information Technology Act, 2000 that helps in punishment of such circumvention.

Though there is an assurance from the present Finance Minister that there won't be a complete ban on cryptocurrencies, the arrival of Cryptocurrency and Regulation of Official Digital Currency Bill, 2021 in the future is purported to have provisions banning the same.

The future of Cryptocurrency is going to be a tug of war between the Privatized sector wanting it to be free from authority and the Centralized authority wanting it to come within its purview of legal framework to have supervision on it. The question is will it be done in a harmonious manner or will one side overpower the other, which only time can answer.

CONCLUSION:

With dynamic economic changes in society, the growth of Cryptocurrency will keep rising. Evolution and technology have made globalization, communication and interaction easy. Interactions usually lead to transactions, and Cryptocurrency has made these transactions much more accessible and efficient worldwide, but these benefits do come with risks and dangers, as discussed in this paper. With Cryptocurrencies becoming inevitable, it becomes necessary that India takes action by giving recognition to Cryptocurrency via legislation and ensuring there are sufficient cyber laws to prevent the circumvention of loopholes present in the current insufficient cyber laws.

In comparison to other countries that have given a proper status to Cryptocurrencies, be



it legalized or not given the title of legal status, up-to-date cybercrime legislations back up the same. However, despite those laws, the usage of Blockchain technology is still making the current laws in those developed countries insufficient due to its complex and dynamic nature requiring more profound research into the subject.

This puts an even greater pressure on India to catch up to the speed with which the technology is advancing. Possible suggestions from the author's point of view are as follows:

1. RECOGNITION VIA LEGISLATION:

By giving a proper legal status to Cryptocurrencies backed up legislation, the subsequent consequences can be supervised in a better manner.

2. CREATION OF SUI GENERIS LAW:

From analyzing the dynamic nature of Cryptocurrency, it can be deduced that there is a requirement to have a special law governing the same so that its complex nature, dynamic structures and loopholes leading to circumvention of the Law is being addressed.

3. AMENDMENTS IN CURRENT CYBER LAWS:

The only legislation dealing with cyberspace crimes apart from the Indian Penal Code (1803) is Information Technology Act, 2000. Even that requires a lot of changes and additions as the complexities that

arose from technological advancements are not met by the current cyber Law. The impact of lack of proper legislation in cybercrime will be realized in the coming futures, where everything will be digitalized. Hence, preparing ourselves in advance for the future, we can mitigate the risks we might be exposed to with proper planning.

Henceforth, through this paper, the authors want to draw the attention of the viewers by demanding their undivided attention to the growth of Cryptocurrencies, their rising legal status and the risks involved regarding the same.

Hopefully in the coming times, India shall have made its legal framework in a manner where it can tackle the digital currency risks in a better manner through specified legislations and Stringent Cyber Space laws.
