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## IT'S RAINING CRYPTO: THE NEED FOR REGULATORY CLARIFICATION FOR CRYPTO IN INDIA & THE NEW CRYPTO BILL 2021

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### INTRODUCTION

A cryptocurrency is a new form of digital currency and asset which is secured by cryptography through many decentralised networks based on blockchain technology. It uses a highly complex and advanced code system that helps in verifying and securing transactions over a network. All the transaction related to cryptocurrency is recorded in a digital master ledger which is based on blockchain technology. Or we can say that the blockchain of cryptocurrency is its ledger. "Blockchain" earlier known as "block chain" is the "record-keeping" technology or the electronic ledger. If we see it is a chain of many blocks connected. Here digital information in the form blocks is stored on the database (that is chain). Block store information such as time and date of transaction, amount of transaction, name of entities involved in the transaction (here it does not use the actual name but use "digital signature" which is just like a username). With new transactions a new block containing all the information adds itself to other blocks to make a chain of a transaction, hence a blockchain. A chain is publically shared to add an unchangeable record of the transaction. Every block is given a unique code called "Hash" then only it is added to the blockchain. It is highly secured with complex codes.

Most of the time cryptocurrency is not regulated or issued by any central authority, therefore there is very less or theoretically no interference from the government or any other agency. Which make cryptocurrency highly unstable and difficult.

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### **CURRENT SITUATION OF CRYPTOCURRENCY IN INDIA**

If we see the legal status of virtual currencies in India it has never been clear. Authorities and government failed to make their stand clear. For long trade and exchange in virtual currencies were left on their own but on the 6th of April 2018, RBI released a circular banning and prohibiting dealing in Cryptocurrencies. RBI in its circular said that banks and other institutions governed or regulated by RBI will be prohibited from both dealing in Virtual Currencies and from providing services to any person or organization dealing in or settling in Virtual Currencies. Behind this prohibition main concerns of RBI were VCs were prone to hacking and it is very difficult to track the source of money. There might be speculation that there is no underlying asset and that the resulting uncertainty could result in considerable losses. In RBI's view, Cryptocurrencies can also be used for money laundering and terrorist financing as it is not possible to keep track of it. In its ruling published on 25 February 2019, the Supreme Court of India required the government to develop policies for cryptocurrency regulation.

On the 4th of March 2020 in the case of Internet and Mobile Association of India v. Reserve Bank of India, the Supreme Court of India struck down the above-mentioned circular by RBI. According to the supreme court, RBI did not consider other alternative measures to protect people from the risk which cryptocurrency holds. SC is in favour of regulating not banning. Hence SC found the RBI circular unreasonable and disproportionate. In India, VCs remain unregulated because there is no rule or law to do the same. SC, in its judgement, has only struck down the circular issued by the RBI but has not ruled virtual currencies as legal or illegal, besides, as there is no law on the same, so virtual currencies remain unregulated in India.

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Hence, as of now, Cryptocurrencies are not legal tender in India as they lack backing from central authority, while exchanges in Cryptocurrencies are legal.

### **FUTURE SCENARIO OF CRYPTOCURRENCY IN INDIA**

The debate on the legal status of crypto/virtual currencies ("CCs") is a questionable issue in the banking, finance field in India today. The Reserve Bank of India ("RBI"), vide a notification ("Notification"), ordered all RBI regulated agencies not to deal in CCs or provide any facilities to facilitate any individual dealing or settlement with CCs.

The Supreme Court of India ('SC Case') quashed the Notification in March 2020, while the blockchain enthusiasts, crypto-exchanges and individuals keeping CCs across the globe watched in approval, holding that the constraints levied by the Notification were disproportionate to the questions presented by the RBI and thus unsustainable.

However, it was also held that, in the interest of the banking system, monetary stability and sound economic development, the RBI has inherent powers to control the dealing and trading of CCs. Although this development was emblematic of excitement among industry players in India, only CCs had been taken into a grey area by the quashing of the Notification and one could not have preferred that RBI and legislators will be oblivion to any activity relating to CCs in future.

In its current session, Parliament aims to adopt the Blockchain and Control of the Official Digital Currency Bill, 2021 ("Crypto Bill"). The Crypto Bill aims to outlaw all private cryptocurrencies and establishes a legal government/RBI-supported system for the official digital currency in India while making some exceptions to facilitate the underlying technologies driving the digital currency.

### **THE CRYPTO BILL: WHAT WE SEE AHEAD?**

The lack of any legislative/regulatory mechanism or legislation confirming the status of CCs up to date and the legality of trading in and engaging with them challenged their future in India, hanging over a murky system. The Crypto Bill brought a ray of hope, indicating a potential emergence in India of a digital currency and RBI/government control. The Crypto Bill, though, also recommends the prohibition of all private cryptocurrencies. In the cryptocurrency industry, the very news of the launch of the Crypto Bill in the Parliament

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session sent out shivers. Due to the speculative foresight added to the Crypto Bill, and more precisely the prohibition of 'private cryptocurrencies', business practitioners have reached the alarm button.

For now, it is uncertain what a 'private cryptocurrency' is since the proposed Crypto Bill has not been made available to the press. The crypto evangelist bat is a public currency for currencies such as Bitcoin and Ethereum, but there is confusion as to whether the Crypto Bill would allow the use of currencies such as Bitcoin and Ethereum unlawful in India.

Besides, it remains to be seen if CCs are regarded as a 'currency' or a 'stock' or whether there is a complete ban on dealing with them. The proliferators of CCs submit that, without any fair justification, they cannot be separated from other individuals engaged in industry, including prepaid wallets and other electronic money transactions, Purely because they are interested in the use, exchange or dealing of CCs and that the use of CCs by vetoing infringes the right to trade and business and impairs the right to 'fair' and the right to 'trade or service' and the right to 'life and personal freedom' In comparison, the key RBI/government issues that might make CCs nefarious and challenge their acceptability These are the uncertainty and fluctuation of their valuation and the secrecy of transactions that may give rise to cybercrime, money laundering, customer misinformed investments, bribery and funding of terrorism.

### **THE FORWARD STRATEGY**

Indian people have long delved into the use, trading and selling of CCs and have developed highly active companies in the form of crypto exchanges and start-ups powered by blockchain, so CCs can not be entirely signed off. During the pandemic lockdown and trading on crypto exchanges, crypto companies in India have experienced a good period. If, on the one hand, the latest move by the government threatens to undermine the future of this sector once again, the passage of the Crypto Bill would also be a welcome measure. Its performance, however, would rely on different variables, such as identifying 'private cryptocurrencies' Regulatory contours and the authority granted to regulators to control the use and exchange of CCs to determine the fate of CCs in India The government can consult stakeholders at this point before deciding on the status of CCs in India.

In the background of the new technology-driven firms, following the SC Case, the world is now awaiting the next step by the Indian policymakers/legislator in high anticipation to see whether there will be an outright ban or there will be a legislative mechanism on CCs or

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whether and if a hybrid digital currency is funded and controlled by the RBI by the lawmakers/government. A proactive meaning indicates that lawmakers and RBI control CC trading, either by creating a comprehensive law or RBI regulation/policy to regulate and promote CC trading as either a currency or a virtual commodity, maintaining, among other items, the following inclusions-

1. Compulsory notification to RBI of the selling, exchange and use of CCs to ensure the identity of participants and the sums transacted, thus prohibiting cryptocurrency transactions from being anonymous
2. Since the fluctuation of the value of the currency is not good for the economy, the spectrum or bandwidth of the fluctuation of the value of the CCs shall, from time to time, be considered by the RBI for a given period to accept them as a definitive value currency;
3. Mutatis mutandis, the Master Circular released by RBI for Know Your Customer ('KYC') standards, anti-money laundering ('AML') standards and countering terrorist financing can apply to transactions related to CCs to reduce the possible threats found concerning them by RBI;
4. Compulsory registration of crypto exchanges with RBI and an affirmative responsibility to self-regulate and comply with KYC/AML regulations and to make quarterly reports to RBI intimating all transactions in CCs with the necessary information;
5. Alternatively, where a stock status is granted to CCs, the Securities and Exchange Board of India ('SEBI') can authorize, regulate and supervise trade and services in respect of CCs.
6. RBI or SEBI shall create an autonomous unit to review, address and deliberate on emerging technology and market developments regulating CCs and periodically advise RBI/SEBI; and
7. Defining offences related to CCs and providing an efficient system of compliance to protect customers.

## **CONCLUSION**

The most powerful nations in the world are jumping on the bandwagon of blockchain, crypto, and other digital currencies, realizing that they will hold major significance in the tech sector very soon. Being at the forefront of development may make or break a country's ability to

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keep up with technology on a global scale. Cryptocurrencies like Bitcoin and Ether are already popular worldwide. If India's government decides to ban the use of crypto, the country is essentially holding itself back from keeping up with the future.

At the moment, over 7 million people in India own over \$1 billion in digital assets, and thousands of India's citizens work within the crypto sector. The country shows a clear interest in crypto, but government officials seem hesitant to adopt it due to its possible effects on the Indian rupee. Yet most citizens will likely know crypto as an asset that's either bought or sold, which is an aspect of the bill that Indian citizens are very curious to know about.

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