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STANCE OF LEGAL REGULATIONS IN INDIA AND FOREIGN COUNTRIES IN THE SPHERE OF CRYPTOCURRENCY- Gulka Tandon & Bhavesh Singh¹**ABSTRACT**

Over the last few years, Crypto currencies and Bitcoins have always been the subject of debate in the financial industry. Cryptocurrency represents beneficial and hypothetical objects which are used only electronically in multiple applications and networks such as online social networks, online games, virtual worlds, and peer-to-peer networks (P2P). The employment of virtual currency has become omnipresent numerous in numerous different systems in recent years. This paper attempts to make the readers comprehend the very origination of currency, its progression, and its present-day disputed form- Cryptocurrency. It then elucidates the definition and mechanism, of cryptocurrency in a concise form. The paper further analyzes the history of virtual currency and the first cryptocurrency, Bitcoin which later dealt with the competition due to the emergence of new cryptocurrencies.

The paper then goes to explain the current status of cryptocurrency in India and reflects upon the need for a legislative framework to regulate and govern the aspects of the cryptocurrencies as the same play a highly necessary role in uplifting the economy. With regards to India, the standing of cryptocurrency is beneath the evaluation period. In different countries, cryptocurrency is treated distinctly. Each country has its own stand on the issue and legal framework for the regulation of the same. Lastly, the paper covers how Crypto currencies are making room globally and how the future of trading virtual currency appears to be in India.

Keywords: Cryptocurrency, Economy, Digital India, Virtual/Digital Currency, Bitcoin, Regulations, Decentralized, Blockchain, Satoshi Nakamoto, RBI, Supreme Court on India, Digital Currency Bill 2021, Global Overview.

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INTRODUCTION

The economy has invariably advanced through the span of transformation of time immemorial. The age mercantilism that witnessed trade through the exchange of gold and bullion remodelled into a barter system. A barter system is essentially the mode of exchange wherein two people exchange goods and services as per their requirements. Every exchange in the system requires a double coincidence of requisites i.e., each party must have the precise good or services that the other party wants.

Example: X has 15kg of rice and Y has 5 milking cows. They both interchange their respective commodities with each other despite the odd nature of it.

The next stage is the exchange of paper money until today and now we've got the emergence of electronic money (e-money).

Money is an identifiable object that conventionally serves three basic functions:

- a) Acts as a medium of exchange.
- b) A unit of amount.
- c) Store of value.

Money is a larger sense of coins and currency notes. India is a majorly cash-driven economy where paper money is still ruling in Indian society. However, the scenario is rapidly evolving in India. India is embracing a cashless economy by moving towards a less paper money society. The government of India has been taking miscellaneous measures to advance and energize digital instalments within the country. As a segment of the 'Digital India' campaign, the government's objective is to frame a 'digitally empowered' economy that is faceless, paperless and cashless. There are varied categories and modes of digital payments. A portion of these comprises the use of debit/credit cards, internet banking, mobile wallets, digital payment applications, Unified Payment Interface (UPI) service, Unstructured Supplementary Service Data (USSD), bank prepaid cards, mobile banking, etc. Entirely this above-mentioned affair is what manifested in demonetization, announced on November 8th, 2016 whereby 86% of existing currency from circulation was withdrawn so as to curb the jeopardy of a cash-driven economy. People suffered massive extent in that phase but at the same time, they encouraged this step. The road of less-cash society ushered to the cashless economy that itself passes through the heart of a robust digital economy.

It is known unequivocally that the era of information and communication technology has generated many excellent chances in several facets. One of the domains that benefit from these technologies and online connections is the finance and business sector. An amplifying number of online users have switched to virtual word concepts and created new business phenomena. Consequently, new brackets of trading, transactions, and currencies have been arising. One of the remarkable and striding financial forms that have been turned up in the past few years is crypto currency.

Sound complicated? How about we break it to comprehend what this word means, the word 'crypto' comes from the Greek word *kruptós*, meaning 'hidden' or 'secret', and 'currency' refers to the medium of exchange that is to buy or sell goods. This term, in recent years has created chaos around the globe, since it is making alterations to the economy of the countries, therefore impacting its functioning.

ELUCIDATING CRYPTOCURRENCY

Crypto Currency is utilized as cash to make completely decentralized online payments using a well-defined network (not only internet). Crypto Currency is type of a digital currency that is secured by cryptography, accordingly making it tough for anyone to counterfeit the cash. It applies blockchain technology that makes it difficult to hack. The entire ecosystem of crypto currency is developed in an open-source environment. This open-source program can be run and maintained on a wide assortment of computers and cell phones.

Isn't it abstruse? Let us see what the above-mentioned terms mean.

Digital currency is a form of currency that is only accessible in digital or electronic form, consequently making it available only through PCs, mobiles, laptops, and so forth. It is a superset. It is bifurcated into 2 categories- regulated and unregulated. The former one is issued and modulated by the central bank of government. It is additionally called Central Bank Digital Currency (CBDC). Despite the fact that CBDC is still a conceptual structure, England, Sweden, and Uruguay are a few of the nations that intend to dispatch a digital version of their native fiat currencies.

The unregulated segment of digital currency is termed as Virtual Currency. Crypto currency is a virtual currency. Hence, a distinctive component of crypto currency is that they are typically not issued by any central authority, which makes them theoretically insusceptible to government interference or manipulation.

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TERMS THAT ARE USED IN CRYPTO CURRENCY ECOSYSTEM

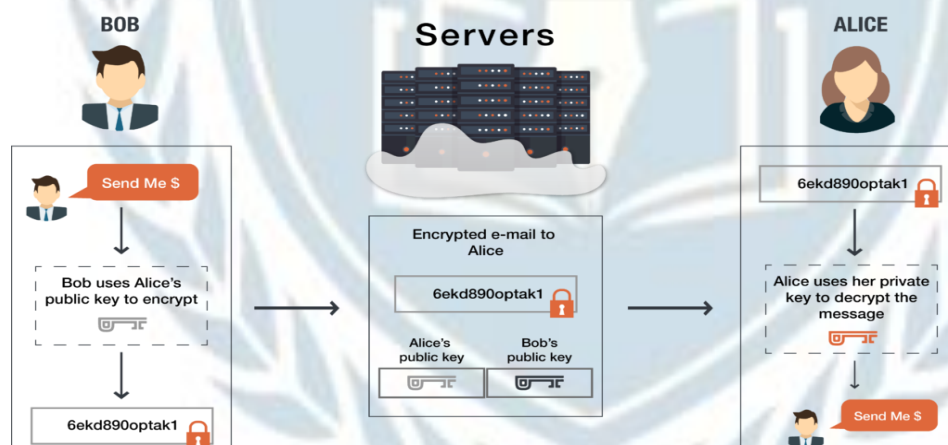
Crypto Currency is a pool of technical concepts that structure the basis of the digital payment ecosystem. This pool of innovation fundamentally incorporates cryptography, public key, private key, the block chain and mathematical function.

1. Private Key

The private key is utilized to both encrypt and decrypt the information. This key is shared between the sender and recipient of the encrypted sensitive data. The private key is additionally called symmetric being common for both parties. Private Key cryptography is quicker than public-key cryptography mechanisms.

2. Public Key

The public key is exercised to encrypt and a private key is exercised to decrypt the information. The private key is divided among the sender and recipient of the encrypted sensitive data. The public key is also identified as asymmetric cryptography.



3. Cryptography

In layman's terms, it is a technique of sending a message securely through unsecure channel i.e. when the communicating channel is controlled by a third party. Using the elliptic curves, their properties and a mathematical trick, the message is coded in such a manner that it can only be decoded by the receiver using the private key. The sender is additionally recognized and cannot deny its obligation.

4. Block Chain

Block chain can be simply considered as a decentralized and distributed open ledger where all the transactions are stored in a block. So, in a full blockchain database, all the transaction from the beginning is accessible and open for all. Anyone can see the transaction yet cannot transform it. This blockchain model has an inbuilt resistance to change and assuming anyone wants to hack the database around there, she/he needs to hack over half of the node which is preposterous. Since a similar database is accessible in every full cryptocurrency node and all participate in the validation process. Blockchains are utilized for recording transactions made with cryptocurrencies.

5. MINING

Undeniably, with the cost of Bitcoin escalating, the question that flashes across one's mind: where do cryptographic forms of money come from? Currencies are actually 'mined' by miners. The easiest method to consider is to think about gold miners. Like they are functioning on extracting or mining gold from the earth. When it is mined, it enters the economy. Cryptocurrency is conceptually the same. Mining is the process by which new forms of money are brought into circulation, yet it is also a chief constituent in the maintenance and improvement of the blockchain ledger. It is carried through with exceptionally progressive computers that take care of extraordinarily complex computational math problems. The miners are paid as mining is painstaking, costly, sparingly rewarding.

VARIOUS TYPES OF CRYPTOCURRENCY

Cryptocurrency is designed to function as a medium of exchange. The quantity of cryptocurrencies accessible over the internet is over 1600 and growing. A new cryptocurrency can be originated at any time. By market capitalization, Bitcoin is presently the biggest blockchain network, followed by Ripple, Ethereum and Litecoin

1. BITCOIN (BTC)

One of the most commonly known currencies, Bitcoin is viewed as the original crypto currency. It was invented in 2009 as open-source software. Using blockchain technology, Bitcoin permits clients to make transparent peer-to-peer transactions. All clients can see over these transactions and they are secured through the algorithm within the blockchain. Whilst everyone can see the transaction, only the possessor of that Bitcoin can do its decryption with a "private key" provided to each possessor. Contrasting to the bank, there is no central

authority figure in Bitcoin. Bitcoin clients control the sending and receiving of cash, which permits anonymous transactions to occur throughout the world.²

2. LITECOIN (LTC)

Litecoin was introduced in October 2011 as an alternative to Bitcoin. Like any other crypto currency, Litecoin is a peer-to-peer virtual currency and open source software project delivered under the MIT/X11 licenses. Litecoin is the ninth-largest cryptocurrency, as estimated by market capitalization. Its creation and transfer are based on an open-source cryptographic convention and it is absolutely decentralized. Litecoin is distinctive from Bitcoin by some means. A few dissimilarities between these digital currencies are: The Litecoin network intends to process a block every 2.5 minutes whereas Bitcoin takes 10 minutes.³ This permits Litecoin to have faster transaction affirmation. The coin limit for Litecoin is 84 million and Bitcoin is 21 million.⁴ The value of one Litecoin was \$310.73 on April 17, 2021. Experts say that Litecoin is more intricately created and more costly to produce on the grounds that it uses a separate algorithm called scrypt and FPGA (Field Programmable Gate Array) and ASIC (Application Specific Integrated Circuit) devices made for mining.

3. ETHEREUM (ETH)

Ethereum is a type of cryptocurrency which was proposed in late 2013 by Vitalik Buterin, a cryptocurrency researcher and programmer. It was initially released in July 2015. It is an open-source, decentralized software platform based on blockchain technology designed for its cryptocurrency, ether. Whilst tracing the ownership of digital currency transactions, the Ethereum blockchain also concentrates on managing the programming code of any decentralized application, assenting it to be utilized by application developers to pay out the transaction fees on the Ethereum network.

4. RIPPLE (XRP)

It is a gross settlement structure, currency trade, and settlement network created by Ripple Labs Incorporation, a US-based organization. Ripple was released in 2012 that plays the part of a cryptocurrency as well as a digital payment network for financial transactions. It's a worldwide settlement network that is formulated to create a fast, secure, and cost-effective

² <https://www.ig.com/en/cryptocurrency-trading/cryptocurrency-comparison>

³ <https://en.wikipedia.org/wiki/Litecoin>

⁴ <https://www.ig.com/en/cryptocurrency-trading/cryptocurrency-comparison>

method of transferring money. Ripple takes account for any sort of currency to be exchanged, from USD and Bitcoin to EUR and gold and associates to banks, in contrast to other currencies. Moreover, Ripple diverges from different kinds of digital currencies since its primary focus is not on person-to-person transactions, rather on moving sums of money on an extensive scale.

5. BITCOIN CASH

Bitcoin Cash is a sort of digital currency that was created to improve certain highlights of Bitcoin. It is the consequence of the bitcoin hard fork occurring in August 2017. Bitcoin Cash was invented to increase the size of blocks, permitting more transactions into a single block.

6. ETHEREUM CLASSIC

Ethereum Classic is a variety of the Ethereum blockchain. It facilitates running smart contracts on a similar decentralized platform. The applications that run meticulously as programmed with no prospective of downtime, censorship, extortion, or third-party interface are called smart contracts. In the same manner, like Ethereum, it offers a value token called “classic ether,” which is utilized to make payments to the clients for goods or services.

HISTORY

Cryptographic money prevailed as a hypothetical construct way before the first digital alternative currencies debuted. Despite the fact that Bitcoin was the first established cryptocurrency, there had been several past endeavours at creating online currencies with ledgers guarded by encryption.

The Pre-Bitcoin years (1998 – 2009)

In the early 1980s, an American cryptographer named David Chaum concocted a “blinding” algorithm that persists central to present-day web-based encryption. The algorithm enables secure, unalterable data exchanges between parties, laying down the preliminary work for future transferral electronic currency. This was otherwise called as “blinded money.” By the late 1980s, after relocating to the Netherlands, he established DigiCash, a for-profit organization that delivered units of currency based on the blinding algorithm. In contrast to Bitcoin and most other modern cryptographic money, DigiCash’s control wasn’t decentralized. Having said that, the first run through the idea or term “cryptocurrency” came in 1998. That year, Wei Dai began to consider developing a new payment technique that

utilized a cryptographic framework and whose main characteristic was decentralization. He published a white paper on b-money, virtual currency architecture. Shortly thereafter, a Chaum associate named Nick Szabo created and delivered a cryptocurrency called Bit Gold, which was outstanding for utilizing the blockchain system that underpins most current cryptographic forms of money. Like DigiCash, Bit Gold never acquired popular traction and was never used as a method of exchange.

Mr.Nakamoto, a pseudonymous person or group (2008)

It was first illustrated in a 2008 white paper titled “Bitcoin: A Peer-to-Peer Electronic Cash System.” issued by Satoshi Nakamoto. This paper manifested compelling arguments and groundwork for the formation of a cyber-currency.

Unveiling Bitcoin (2009)

In early 2009, the first cryptocurrency ‘Bitcoin’ (BTC), was fashioned by anonymous creator or alias a cryptographer named “Satoshi Nakamoto”. Nakamoto delivered Bitcoin to the public, and a group of enthusiastic supporters started exchanging and mining the currency. Do you remember the economic crisis around the world that began more than a decade ago? Yes, the virtual money Bitcoin was brought into the world in response to the outbreak of the worldwide financial crisis in 2008 as a reaction to the disappointment of the financial framework.

Bitcoin is valued interestingly (2010)

As it had never been exchanged, only mined, it was difficult to assign a monetary value to the units of the emerging cryptocurrency. In 2010, someone chose to sell theirs for the first time – interchanging 10,000 of them for two pizzas. If the buyer had clung onto those Bitcoins, at the present costs they would be worth more than \$100 million.

Rival cryptocurrencies arise (2011)

As Bitcoin expansions in marketability and the idea of decentralized and encrypted currencies catch on, the first alternative digital currencies appear. These are sometimes known as altcoin and generally attempt to improve on the original Bitcoin plan by offering more noteworthy speed, anonymity, or some other benefit. Dozens of similar cryptographic currencies

including popular choices like Litecoin – began appearing. Presently, there are over 1,000 cryptocurrencies in circulation with new ones habitually appearing.⁵

LEGAL NATURE OF CRYPTO CURRENCIES

Crypto currency serves as –

1. Money

People who are supporting this find resemblance between some functions of crypto currency and monetary means. According to the regulations of United States, crypto currency can be a unit of payment in which wages are paid. It can be referred as mode of payment for goods and services. The markets in some countries accept and recognize crypto currency as a unit of settlement.

It is believed by the FinCEN (Financial Crimes Enforcement Network) of United States that the exchange of fiat money and crypto currency involved in any transaction should be regulated similarly as they regulate the operations which involves the exchange of fiat money only.

The concept of functional similarity between crypto currency and money is being acknowledged by Japan. As a matter of fact, the government of Japan has come to a decision to develop a regulatory framework so that they can integrate the crypto currency into the banking system.⁶

2. A Money Surrogate

People who oppose the concept of identifying crypto currency as equivalent to the ordinary money put up an argument that it is not a monetary medium as it is not supported by the state, the valuation is not guaranteed and there is no obligation established for the acceptance of it.

The crypto currency is not considered as a licit medium of payment by tax services of Netherland and in 2014, it was announced that Bitcoin is not a currency by the Central Bank of Denmark.

3. Electronic Money

⁵ <https://www.digit.in/features/tech/digit-mag-the-origins-of-cryptocurrency-53723.html>

⁶ <https://www.forbes.com/sites/steveforbes/2021/02/02/bitcoin-is-not-money-yet/?sh=305a607c971c>

In 1998, the European Central Bank (ECB) elucidated the electronic money in a report and fixed it in international law.⁷ A technical device that can widely operate for the purpose of making payments for the issuer as well as for the other companies without the requirement of stipulated bank account usage for the transactions and acts as a prepaid mechanism to the bearer and acts as storage of monetary value is elucidated as electronic money. The fraction supporting this allude that there are no issuers as electronic means of payment for crypto currency. The crypto currency can be reckoned as the cash which one person provides to another traditionally.⁸

4. A Commodity

In economic terms usage of a material or non-material object is known as a commodity. A lot of countries impose tax over crypto currency because it is treated as a property or a commodity. The crypto currency is considered as a qualified infinite immaterial commodity and possesses unambiguous value by the legal systems of these countries.

Crypto currency is not considered as money or foreign currency by the Australian Tax Service. The crypto currency was certified as a commodity by the Commodity Futures Trading Commission (CFTC) in September 2015 and an order was passed stating that crypto currency is a qualified digital unit and it can be used for investment.⁹

5. A Financial Instrument

The German Ministry of Finance said that crypto currency can be a financial instrument and an order was passed in 2013 stating that crypto currency is an official means of settlement. But during the same course of time, law precisely portrayed that in Germany crypto currency is not legal mode of payment. Crypto currency is not representative of cash according to U.S. GAAP and that is the why it is not considered as a financial instrument. A right or an obligation is not established by crypto currency for delivering or receiving cash.

6. A Property

In English law crypto currency is treated as a property as it was established in recent case Robertson v Persons Unknown (unreported, CL-2019-000444) where U.S. 1.2 million were transferred to a fraudster and to assist the victim of fraud, the court held that Crypto Currency is a property. As per the present scenario these decisions are provisional and the outcome

⁷ <https://www.ecb.europa.eu/pub/pdf/other/emoneyen.pdf>

⁸ https://www.ecb.europa.eu/pub/pdf/other/Report_on_a_digital_euro~4d7268b458.en.pdf

⁹ <https://www.natlawreview.com/article/cftc-s-approach-to-virtual-currencies>

might be different after the hearing of main proceedings. If the crypto currency is treated as personal property as the IRS said, then for the purpose of tax, the crypto currency must be treated as a property. In the year 2014, IRS pointed out that the taxation of the crypto currencies will be done on the basis of property not as currency.¹⁰

INDIA'S STANDPOINT ON CRYPTO MONEY

The cryptocurrency is a decentralized, virtually anonymous, substantially unregulated digital currency that has become popular in recent years. The cryptocurrency is promoted by non-government persons or entities using a peer private network, operating on the basis of decentralized autonomy. The anonymous nature of cryptocurrency transactions makes them well-suited for a multitude of despicable activities such as unauthorized transactions, to save the identity of the transactors, illegal transactions, money laundering, and tax evasion. The governments are becoming alarmed and concentrating moreover such transactions. Cryptocurrencies are legal in a couple of nations but not in many nations. It stays uncertain when the government will assume control over any perceived legal shield.

It is fascinating to take note that in India, buying, selling, or exchanging cryptocurrency has never been invalidated. Nobody is aware of precisely when, but the government is presumed to ban all "private" cryptographic forms of money in India and concurrently proclaim a sovereign digital currency sometime "soon". This notwithstanding numerous appeals from the industry and a failed endeavour of the Reserve Bank of India (RBI) at sneaking in a ban in 2018 by prohibiting banks from contacting crypto. The Supreme Court pronounced this ban was unconstitutional last March.¹¹

To comprehend the ongoing contention over cryptocurrency in India, we need to inspect how we got here.

REGULATORY FRAMEWORK FOR VIRTUAL CURRENCY IN INDIA

The prophylactic or the preventive circulars issued by the Reserve Bank of India (RBI) clearly suggests the unwillingness of India regarding cryptocurrency. A set of bills were passed by the Inter-ministerial Committee and they both were contradictory to each other fundamentally. According to the RBI, the possibility of money laundering, terror financing, hacking and frauds was affirmative. The issue was inspected and elucidated by the Supreme

¹⁰ <https://www.coindesk.com/irs-seize-cryptocurrency-property-us-tax>

¹¹ <https://economictimes.indiatimes.com/markets/stocks/news/sc-allows-trade-in-cryptocurrency-quashes-rbi-curb-on-use/articleshow/74470078.cms>

Court of India and a landmark judgment was passed opposing the circulars of RBI and the bills passed by the Inter-Ministerial committee.

The chronological changes in regulations of virtual currency–

A. The Press Releases of Reserve Bank of India:

A press release was made on 24th December 2013 by the Reserve Bank of India as their first show of unwillingness regarding crypto currency through which they cautioned the holders, traders and users of virtual currencies such as the Bitcoins, Litecoins, BBQ coins, dogecoins etc. among other things regarding the operational, legal, potential financial, security threats and protection of customer that they are exposing themselves to.¹² The fundamental concerns that came into light were –

- The payments were unregulated and there was not a single accredited central body to regulate them and on top of that, there was no organized system for rectifying the disputes or problems faced by the customer.
- Risk of high magnitude accompanied with the instability in the value of virtual currencies.
- The loss of passwords, malware attacks, access credentials getting compromised, hacking etc. can lead to the loss of digital wallets.
- It can lead to illegal activities, money laundering or terrorism financing.
- The reports are suggesting that the exchange platforms established for trading the virtual currencies have unclear legal status and, on such platforms, traders are being exposed to financial risks.

The issues regarding usage, trading and holding of VCs were being examined under the extant legal and regulatory framework of the country and Foreign Exchange and Payment Systems laws and regulations – are also included.

B. Rama Subramaniam Gandhi was the Deputy Governor of Reserve Bank of India from 2014 to 2017 and on 26th August 2015¹³, he expressed his concerns regarding crypto currencies that they have capability to reinforce criminal activities like money laundering, evasion of tax and funding of terrorism.

¹² [https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=39435#:~:text=Press%20Releases,-\(152%20kb\)&text=The%20Reserve%20Bank%20of%20India,release%20dated%20December%2024%2C%202013.](https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=39435#:~:text=Press%20Releases,-(152%20kb)&text=The%20Reserve%20Bank%20of%20India,release%20dated%20December%2024%2C%202013.)

¹³ <https://www.medianama.com/2015/08/223-rbi-crypto-currency-bitcoin/>

C. On 1st February 2017¹⁴ and 5th December 2017¹⁵, RBI releases another advisory to caution the users, traders and holders of virtual currencies (VCs). In the advisory, RBI states that there are no licenses or authorizations given to any entity or company to deal with any Virtual Currency.

D. The Digital Asset and Blockchain Foundation of India (DAFI) were jointly formed by some crypto currency start-ups on 27th February 2017, which laid down self-regulatory regimes.¹⁶

E. The bills of Inter-Ministerial Committee:

The centre constituted a committee on 02nd November, 2017 which proposed bills but none of them were implemented. The committee was known as Inter- Ministerial Committee (IMC).

Crypto-token Regulation Bill of 2018 was the first bill drafted and proposed by the IMC Committee. According to the bill, IMC suggested not banning the crypto currency straight away but the suggested option never came into play because of its extreme nature. The bill recommended:

- i. The people dealing with activities associated to crypto tokens should be forbidden from not posing them as investment schemes or securities or offering investment schemes due to lack of regulatory framework.
- ii. The virtual currency (VCs) exchanges and brokers where the VCs will be sold or purchased after it is authorized must be regulated.

The proposals given by the Inter- Ministerial Committee (IMC) in their first bill were never imposed or came into force. A new bill was introduced by the IMC, “the Banning of Crypto currency and Regulation of Official Digital Currency Bill, 2019”.¹⁷ The usage of virtual currency as a legal tender should be banned according to the proposal given by the committee in their second bill. The bill also suggested that there should be a prohibition on holding, selling, dealing in, issuance, mining, buying, disposal or use of crypto currency in the country.

¹⁴ https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=39435

¹⁵ https://rbi.org.in/scripts/BS_PressReleaseDisplay.aspx?prid=42462

¹⁶ <https://timesofindia.indiatimes.com/business/india-business/cryptocurrency-startups-launch-digital-asset-and-blockchain-foundation-of-india/articleshow/57373235.cms#:~:text=CHENNAI%3A%20Cryptocurrency%20startups%20Zebpay%2C%20Unocoin,growth%20of%20virtual%20currency%20market.>

¹⁷ https://prsindia.org/files/bills_acts/bills_parliament/Draft%20Banning%20of%20Cryptocurrency%20&%20Regulation%20of%20Official%20Digital%20Currency%20Bill,%202019.pdf

The usage of crypto currency that was prohibited in the bill:

- i. Use of crypto currency as exchange method, storage of value or unit of account.
- ii. Use of crypto currency as a payment method.
- iii. Tendering services such as registering, trading, selling or clearing of cryptocurrency to individuals.
- iv. Inter-country trading.
- v. Issuance of financial products affiliated to cryptocurrency.
- vi. Usage of crypto currency as basis of credit.
- vii. Issuance of crypto currency as a medium of raising funds.
- viii. Issuance of crypto currency as a medium for investment.

The nature of the second bill was rigid and severe that there were provisions for offences and penalties.

F. Imposition of Ban

A substantial ban was imposed after the Reserve Bank of India released a circular dated April 6, 2019– Prohibition on dealing in Virtual Currencies.¹⁸ According to the circular released by Reserve Bank of India, entities that are regulated by the RBI should not deal in virtual currencies (VCs) or provide services to any person or entity in dealing or settling virtual currencies (VCs) with immediate effect. The registration, maintenance of accounts, giving loans against virtual tokens, trading, settling, clearing, accepting them as collateral, opening accounts of exchanges dealing with them and transfer / receipt of money in accounts relating to purchase/ sale of virtual currencies (VCs) are included in those services that are prohibited. The private individuals or businesses dealing with virtual currencies (VCs) were virtually precluded from continuing their operations as they required assistance from such entities that were regulated by RBI. Additionally, it was issued that within three months from the date of the RBI Circular, the entities that were regulated by RBI and already provided such services should cease their relationship. The prohibition resulted as a massive blow to virtual currency exchanges and the established business collapsed.

G. The Judgment

¹⁸ <https://rbidocs.rbi.org.in/rdocs/Notification/PDFs/NOTI15465B741A10B0E45E896C62A9C83AB938F.PDF>

A division bench of Supreme Court comprising of Justices Rohinton Nariman, Aniruddha Bose and V. Ramasubramanian on March 4, 2020 in Internet and Mobile Association of India v. Reserve Bank of India gave a judgment and lifted the ban imposed by the RBI circular. The Article 19(1) (g) of the Indian Constitution played a crucial role as the matter was examined from the viewpoint of the article mainly, as it gives the right to maintain any occupation, practice any profession, or the doctrine of proportionality and trade or business.

H. Crypto currency and Regulation of Official Digital Currency Bill, 2021

The bill is not yet passed in the Lok Sabha and on 29 January 2021, the second part of bulletin of Lok Sabha¹⁹ was published in which it was stated that The Cryptocurrency and Regulation of Official Digital Currency Bill, 2021 will be introduced. The bill aims to design facilitative framework for creation of the official digital currency which will be issued by the Reserve Bank of India (RBI). The private cryptocurrencies will cease to exist as the bill prohibits it in India but to promote the underlying technology of cryptocurrency and its uses, the bill will permit some exceptions.

MAJOR CONCERNS OF THE CRYPTOCURRENCY AND REGULATION OF OFFICIAL DIGITAL CURRENCY BILL, 2021

The new bill proposes to ban private cryptocurrencies but before doing so it is important to consider the significant growth and interest that India has shown. The estimated contribution of India in cryptocurrency is 2% to 10% worldwide. The ban could cause panic among the investors of virtual currency. The new bill will allow the investors to liquidate their assets within six months hopefully but the medium of liquidation is still not disclosed. The complete disposal of virtual currency unit can be the most feasible consequence of the ban. The misuse of virtual currency for terror financing, money laundering, etc. were the key objectives on which the Reserve Bank of India has emphasized repeatedly. Since, the new bill is willing to ban the private cryptocurrency, it can embark on a black market where the genuine investors can operate as they will not have choice but to operate under unmonitored conditions. The main goal of introducing regulation in virtual currency dealings is to provide a technologically safe zone and a monitored environment but the new crypto currency that will be introduced by the RBI will also face the same risks as the private ones.

¹⁹ <http://loksabhadocs.nic.in/bull2mk/2021/29012021.pdf>

The crypto currency introduced by the Reserve Bank of India will have absolute monopoly as it will be the one and only of its kind in the market. Apart from this a question arises that whether the foreign investors will be allowed to invest or not and what will be the regulations. Thus, certain complications will arise in case the foreign investors are allowed to invest and on the other hand, the Indians will be deprived from investing in foreign virtual currencies. The bill is filled with ramifications and it will require clarification before implementation.

GLOBAL OVERVIEW OF VIRTUAL CURRENCIES REGULATION

Around the globe, a lot of countries regulate or have specific laws for the regulation of crypto currency. I will be listing down some countries along with their regulations as follows:

- **United States:** In US, the crypto currency is regulated by both Federal laws as well as state laws. The Commodity Futures Trading Commission (CFTC), the Financial Crimes Enforcement Network (FinCEN), the Securities Exchange Commission (SEC), the Internal Revenue System (IRS) and the Federal Trade Commission (FTC) are the bodies which regulate Crypto Currency in the country on a federal level.²⁰ The SEC and CFTC conveyed that they have an obligation towards the new generation to respect their zest regarding virtual currencies, with a pensive and steady response and not a contemptuous one on 6th of February 2018. Crypto currency is treated as an event which is taxable by IRS. The SEC in December 2017 pointed out that Initial Coin Offerings (ICOs) are contingent to U.S. Securities regulations, which states that only certified investors will be permitted to take part in ICOs that are not catalogued with the SEC.²¹ As we talk about the State Laws, the Arizona Senate allowed the residents to pay their income taxes with Bitcoin and other state-authorized crypto currencies by passing a bill in February 2018.²² New York, in 2015 announced the “Bitlicense” which was needed to be attained by any virtual currency company that serves the business owners or residents of New York.²³

- **Japan:** In the year 2014 and 2015 a study group and a working group was established in the Financial Services Agency (FSA) on the “sophistication of payment and settlement operations”. The working group came up with a report that recommended that a registration system was needed for the crypto currency exchange businesses. Second recommendation

²⁰ <https://www.globallegalinsights.com/practice-areas/blockchain-laws-and-regulations/usa>

²¹ <https://www.sec.gov/news/public-statement/statement-clayton-2017-12-11>

²² <https://fortune.com/2018/02/10/arizona-bitcoin-taxes/>

²³ <https://www.ibanet.org/Document/Default.aspx?DocumentUId=73B6073F-520D-45FA-A29B-EF019A7D7FC9>

was to make the transactions contingent to money laundering regulations and lastly introducing a system to protect the users of crypto currency. A bill was submitted in the Japans parliament for the amendment of Payments Services Act and it was amended in 2016 and came into force in January 2017. After the hackers stole millions from the Coincheck in NEM tokens, the FSA called upon everyone to attain an authorization from it under the Payment Services Act.²⁴

- Switzerland: The Swiss Financial Market Supervisory Authority (FINMA) on 16th February 2018 under the Swiss anti-money laundering and securities laws issued guidelines for ICOs. A license must be attained by all the crypto currency exchanges in order to direct their operations in the country from the Swiss Financial Market Supervisory Authority, or FINMA. The companies must be registered as a Public Limited Company (Swiss AG) or as Limited Liability Company (GMBH). The companies applying for license must show compliance with the Anti Money laundering Act (AMLA) requirements.²⁵

- China: In the year 2017, China put a ban on every crypto currency trading and made ICO fundraising illicit on Chinese exchanges. This act by China decelerated the market of crypto currency. The usage of foreign crypto currency exchanges came into play as residents turned towards them. An announcement was made on Preventing Financial Risks from ICOs (Initial Coin Offerings) for the purpose of protection of investors and prevention of financial risk on 04th of September 2017 by seven central government regulators of China — the Cyberspace Administration of China (CAC), the State Administration for Industry and Commerce (SAIC), the People’s Bank of China (PBOC), the Ministry of Industry and Information Technology (MIIT), the China Banking Regulatory Commission (CBRC), the China Insurance Regulatory Commission (CIRC) and the China Securities Regulatory Commission (CSRC).²⁶ The crypto currency market in China was blooming as facts say that over 50% of Bitcoin miners were from China and the market growth in China was rapid as compared to other countries when the ban was posed.²⁷

²⁴ <https://www.loc.gov/law/help/cryptocurrency/japan.php#:~:text=III-.Regulation%20of%20Cryptocurrency%20Exchange%20Businesses,the%20business%20information%20they%20hold.&text=The%20state%20of%20such%20management,public%20accountants%20or%20accounting%20firms.>

²⁵ <https://www.loc.gov/law/help/cryptocurrency/switzerland.php>

²⁶ https://www.loc.gov/law/help/cryptocurrency/china.php#_ftn4

²⁷ <https://www.loc.gov/law/foreign-news/article/china-regulators-ban-companies-from-raising-money-through-virtual-currencies/>

• Russia: Back in 2016, in the month of November as per the Federal Tax Service of Russia, Crypto Currency such as Bitcoin is legal. The Deputy Finance Minister of Russia said that accepting payments in the form of crypto currency is “presumably illegal” in September 2017. A bill was drafted by the Finance Ministry of Russia in January 2018 which stated the legalization of digital financial assets. The bill elucidates the extent of regulations of crypto currency and it will allow trading. A bill on digital financial assets was signed by the Russian President Vladimir Putin in the month of July 2020 and it came into force on 1st January 2021. The bill legalized crypto currency but prohibited the usage of crypto currency for the goods and services.

FUTURE OF CRYPTOCURRENCIES IN INDIA

A prominent and questionable issue in the banking and finance sector in India is the legal status of Crypto currency in the country. The future of crypto currency in India is in a state of disorganization and the cause behind it is the absence of regulations and recognition by the government of the country. A new bill on crypto currency is awaited as it was recently revealed by the government of India. The specifics of the Crypto currency and Regulation of Official Digital Currency Bill 2021 are still unknown. In 2018, the crypto currency was banned by the Reserve Bank of India but in March 2020, the Supreme Court of India passed a judgment which lifted the ban since then the crypto currencies are in operational state in India. However, speculations are being made that in the upcoming bill, a complete ban can be imposed on the crypto currency in India. It can impact the investors who are investing in private crypto currencies in current such as Bitcoin. If the recommendation of IMC is explored and considered by the government, there might be chance for this as IMC has stated that private virtual coins is not the replacement of fiat currency because they lack the elements of currency. The “crypto bill” will be setting up a government/ RBI supported system for digital currency in India. RBI is looking to launch a new crypto currency of its own. Anirudh Rastogi, founding and managing partner of Ikigai Law says that in case a ban is imposed over the private crypto currency in the upcoming bill then around three hundred and fifty start-ups will perish in India.

CONCLUSION

Science has consistently assisted with transforming mere imaginations into reality. Cryptocurrency is one such model where the whole concept of money and the function of government have been confronted which has driven governments either to monitor it or to

ban it. In fact, banning cryptocurrencies would not serve well in the long run since more and more nations are beginning to acknowledge it. A cryptocurrency is a new form of money that is still developing and is at a nascent stage. Thus, the question of its availability automatically arises. The ease of exchanging ordinary currency into cryptocurrency and vice-versa plays a significant part in attracting investors and permits for an increment in its utilization.

Gradually, more and more individuals are getting mindful of crypto and want to seek a career in Blockchain. Positive regulations will give a big push to crypto adoption in India with more start-ups building projects on the blockchain. With tech goliaths like JP Morgan, and Facebook getting on board with the crypto bandwagon, in no more than the next few years, crypto will become mainstream, and we'll see increasingly more useful instances of crypto come to life. The existing legal environment must alter itself to incorporate, recognize and regulate cryptocurrencies. It might be astounding to realize that companies like Microsoft are also accepting Bitcoins. Individuals who measure up this innovation to a bubble or a scam are ending up being erroneous. Indeed, in India one of the largest conglomerates Reliance Jio is intending to dispatch its own crypto currency called JioCoin. India would possibly further have a promising cryptocurrency industry if the available assets are amalgamated effectively. The vast I.T Sector is coupled with the execution of viable regulations that would draw in investments, empower new businesses, generate revenues, and build employment.

It seems imperative to quote Dr. Subramanian Swamy's tweet- "If it is unstoppable then develop software to regulate it. Blanket Ban is useless." At this crunch time, it is, therefore, time to subdue the beast and reap the benefits of the chance.²⁸

²⁸ <https://twitter.com/swamy39/status/1235142325820469249?lang=en>.