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Cryptocurrency and Regulations

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Female Blockchain is the tech. Bitcoin is merely the first mainstream manifestation of its potential.

-Marc Kenigsberg

I. INTRODUCTION

The machinery which is using trade transactions as easy as possible have experienced huge change and development. A virtual coin of the country in which the encipher methods are being observed to determine the creation of paper money and prove the validity of transaction of money worked freely for a reserve bank. So, it can be said that this definition can be used to define cryptocurrency which is the other form of currency kept by the people. So, it can be said that crypto currency is another way of credit coin which is virtual for which a specific group of people have specifically agreed that it has some value. It has the basic element of currency but since there is no real value of this type of currency and hence people take it as an investment for need. We all exchange things in the form of money like euro, dollar, rupees etc. In ancient times, the exchange of services is with grains which added the value of services in barter system and vice versa. These current techniques are a form of failure as the agent can easily fool the consumer with the actual value of the wheat and the services taken by him. At present we use printed form of currency. So, we all know the actual value of services, and now consumer can buy the things easily in exchange of the money. Basically currency gave the solution to the problem of exchange system from ancient times.

II. WHY DO CRYPTOCURRENCY SUCH AS BITCOIN ARE VALUABLE?

One of the huge problem with digital currency is that bits are very easy to make and reproduce on computers. For a currency to figure in an economy it must be extremely hard to reproduce. Also to owe value a currency should have some protection against multiple spending of the identical coin – it's to manoeuvre between owners when spent. Reproducing digital currency is way easier than with physical ones. An answer to the current problem is having a trusted central authority that keeps records of transactions with the currency and also certifies each transaction.

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Bitcoin took some other route to stop this complication. Transaction with this currency occurs strictly in user-to-user networks where central authority is certifying these exchanges. User-to-user network is a connection between two computers of users that can interact with each other without connecting to a separate server device. As we have discussed earlier bitcoin relies on open source software i.e. software which is available for everyone. Open source means that the code has some little or no copyright issues, has been used by anyone in the world and to any user who has desire or ability to edit the code. Open source is thus similar to user-to-user networks as the expansion is done by the participants such as programmer's only. By using this open source method and user-to-user networks bitcoin has been able to use substantive measures. As we have already mentioned before all transactions with bitcoin are recorded in a database called block chain. Many companies keep copies of the block chain. Since bitcoin has successfully dealt with the recreation problem it is able to create value for itself.

One reason for using digital currency is how low the cost of money transfer is. Transferring money digitally requires no physical money to be transferred and is also instantaneous. It is difficult to prevent people from bringing their bitcoin wallets into another country and exchanging cryptocurrency with local currency. The marginal benefit of such a transaction can be much higher than the marginal cost². The other reason for the demand of virtual currency is unknowingness.

An online anonymous marketplace named Silk Road was one example of such type of markets. The silk road uses bitcoin as its main exchange currency. The place was used to sell authority controlled substances and illegal items where transactions are hidden behind the anonymity of bitcoin. The demand for virtual currency comes from its unknown nature and for illegal purposes. Although bitcoins are not unknown from the beginning, the owners can take necessary steps to hide their transactions especially through international bitcoin exchanges. The biggest international bitcoin exchange was located in Tokyo named as Mt.Gox. Exchange. With data collected by Mt. Gox it is possible to look at the history of Bitcoin exchanges. Although, much controversy is there regarding the price of bitcoin. If we see the trends it can be said that the price has been very unstable and it tends to increase and decrease a lot. So the digital currencies such as bitcoin thus have value in user-to-user networks to authenticate transactions. Transferring money digitally can be used to get away from government officials and its price is very uncertain which has captured the interest of investors. Usually demand for

²Sindri Leó Arnason, *Cryptocurrency and Bitcoin: A possible foundation of future currency: why it has value, what is its history and its future outlook*, University of Iceland, (April 2015)

<https://oatd.org/oatd/record?record=handle%5C%3A1946%5C%2F20840> (Last visited on May 04, 11:35 IST)

this currency also comes from people who want to spend money on black markets.

III. TYPES OF CRYPTOCURRENCY

Cryptocurrency usually works as the medium of exchange between the people. Over 1600 cryptocurrencies are available all over the internet and growing. Any new cryptocurrency can be created at any time on the internet. On the basis of market capitalisation bitcoin is the largest block chain network, follow by Ripple, Ethereum, Litecoin, MintChip and Ethereum Classic

- **Bitcoin**– Bitcoin is known for its worldwide payment system. It is one of the most commonly known currency It is the currency which is decentralized as the bank system doesn't works here and there is no one administers it singularly. There is user to user networking and the transfer of virtual currency took place without any intermediary help. The transfers are properly verified by the network codes which usesome specialtype of cryptography and blockchain record. An unknown group of people released the currency and it created the software which is open source in nature. Process of rewarding is used in this currency which is known as mining. This technique is also used for a mean of exchange for other currencies.

- **Ethereum**-It can also be defined as ether because of its generation on the platform of ethereum. It is platform which is public with open source and has computing with blockchain. Smart scripting facility is also available here. It works on the of version which is modified in digital currency and has transaction-based payment system. It was first set up in 2013 by VitalikButerin who was programmer and the researcher in digital currency. It's development is funded by a crowd sale between July and august 2014 which also developed a system that goes live on 30 July 2015.

- **Litecoin** –It is that cryptocurrency which is giving tough competition to the bitcoin currently and the main agenda to design this cryptocurrency was to do the transaction for a smaller value in faster way. Charles Lee is the founder of this currency. The main difference between litecoin and bitcoin, the two leading cryptocurrencies is that for the bitcoin mining process is heavy and the fast computing is required on the other hand in litecoin normal computer with slow processing is enough. If we compare both the currencies today,litecoin is four times bigger than bitcoin i.e. 84 million.

- **Ripple** – Ripple was established in 2012 by a company named Open Coin with its founder Chris Larsen. It is a digital currency which has same payment method like bitcoin. It'smechanism payment method is very fast which enables the funds transfer in any currency to another user on the network within seconds. This currency acts both as digital currency and digital payment network. It's a global settlement network that is designed to create a secure,

fast and low-cost method of transferring money. It allows for any type of currency to be exchanged from USD and bitcoin to gold unlike other currencies. It also differs from other types of virtual currencies because its primary focus is not for user-to-user transactions rather for moving sums of money on a big scale.

- **MintChip**—It is the creation of institution like Royal Canadian Mint which is governmental in nature unlike most other digital currencies. MintChip holds the electronic value and transfer it securely from one place to another. Like bitcoin it does not need personal identification but unlike bitcoin is backed by the physical currency like Canadian dollar.

- **Ethereum Classic** is a version of the ethereum block chain. It runs contracts on a decentralized platform. Smart contracts are applications that run without any possibility of fraud, censorship, downtime or third-party interface. It also provides value token named “classic ether” which is used to pay users for services and products.

IV. THREATS REGARDING CRYPTOCURRENCY

In the beginning only some people has information about this type of currency and it is only few of them really knows how does it is worthy. It was mostly used to do transactions by drug dealers, smugglers and black marketers for the transfer of their funds as it is the fastest and safest method to do all over the world. After the introduction of new digital currencies in the world few of the companies started taking interest in it and invented their own digital currencies. India has grown exponentially in the last few years in the digital world but a type of uncertainty is also there in the minds of people. Uncertainties also created different types of complications in the sector of digital assets in country mainly for the online transactions. Various exchanges of virtual had a mission to involve our country into blockchain technology but as per the new central bank guidelines, banks have been instructed not to continue with any services which involve digital currencies which leaves all the digital currencies into the question of legal challenge. It is a type warning sign for all those individuals or companies who wish to invest with these type of virtual currencies in future.

Many risks are involved when one is going to invest in cryptocurrencies. Some of these are as follows: -

- **Entrance is easy but exit is difficult**—As clear from the head it is easy to invest in digital currency because all the things are done digitally so it creates a less barrier and easy path for the digital currency and a high risk is involved if you want to get rid of them.

- **Unsecured and Intangible**—The unsecured and intangible form of nature of cryptocurrencies. The blockchain technology based cryptocurrencies has eliminated

intermediate like the bank and banker which can also solve the issue of unsecured digital currency but this feature doesn't give security which can be assured by banks themselves.

- Manipulation by misinformation-even though the amount is average there is no way that the investors will not be prepared in anyway to lose their partnership as a holder and they easily become victim of misinformation risks. So, market manipulation and misinformation risk are more common in the investment of digital currency.

- Protection, Control and Care-Although cryptocurrencies are ethereal in form and act as an asset which is virtual in nature. It became one of the hefty issue for the control, care and custody of the digital currency as wealthiest investors will invest in security to take care of their digital currency but those who can't afford will become easy target for the hackers and the frauds for the custody of their digital currency.

- Cyber risks are always there-It is obvious that cyber risks will always be there to keep the cryptocurrency. Risks are always involved for the attack and various forms of viruses which can attack to the cryptocurrency and create many problems to the investors.³

- In present world, cryptocurrency is becoming the easy target for the hackers and criminals as they can easily demand from the holders the ransomware in the form of cryptocurrency. It is also becoming preminent because there is no one who can block the address, no one can catch you and moreover there is very small chance of being chased or tracked by the authorities. Web mining is another type of technique which is used in browser with a special script which is already installed in the web browser and the hackers are well known about the fact that it is very easy to upload such form of web page on the browser and can easily mine from the cryptocurrency holders. So the nature of this type of currency is becoming more and more dangerous as cyber attacks are increasing day by day for example by changing the web address of the digital wallet and stealing the digital wallet are the things which can easily be done by the hackers. In other way, it can said that cryptocurrency have opened the new and unparalleled path to monetize the activities which are done maliciously.⁴

V. FUTURE OF CRYPTOCURRENCY IN THE PRESENT WORLD

The market of the cryptocurrency is bigger than any other form of currency in the world. Even the development of blockchain technology is a new concept for all the companies but still all

³ Dante Alighieri Disparte, *Beware of Crypto Risks-10 Risks to Watch*, Forbes, (Jul 21, 2018, 05:34 P.M.)www.forbes.com/sites/dantedisparte/2018/07/21/beware-of-crypto-risks-10-risks-to-watch/amp/ (May 04th, 2018, 11:25 IST)

⁴ *Threat Predictions for Cryptocurrencies in 2018*, Kaspersky, (Nov15, 2017. 10:02 A.M.)
<https://securelist.com/ksb-threat-predictions-for-cryptocurrencies-in-2018/83188/> (Last visited on May 04th, 2020, 10:15 IST)

the new digital currencies are competing with each other to stay in the market of the cryptocurrency. In future it can be said that there will be only three or four types of cryptocurrencies to be in running mode for the entire trading, payment and other banking functions. It will be expected that every person in future will use the technology of Blockchain. Reserve Banks and other banks are of the view that cryptocurrencies are for long run and are here to stay for long period of time. Bitcoins are in the process of converting and to act as real money that will give a high competition to the bodies of government. Bitcoins have a bright future in the upcoming era. This type of currency is of decentralised form and everyone can use it which is waving out the rates of exchange in the world market and makes the future by becoming centralised across the country and the time was no far away when there will be one currency and one world.

VI. LEGAL POSITION OF CRYPTOCURRENCY IN INDIA

The most recent position of law in India regarding the stance of cryptocurrencies has been described in the case of *Internet and Mobile Association of India vs Reserve Bank of India*⁵. The ban was first issued by RBI on bank's commerce with crypto businesses in April 2018 which came into effect from the month of July. The notification was challenged before the apex court by Internet Mobile Association of India (IAMAI). The court while deciding the matter looked at the draft bill which has been proposed but not passed by the parliament namely *banning of Cryptocurrency & Regulation of Official Digital Currency Bill, 2019*⁶. The apex court held that the stand of the parliament cannot be evaluated from this bill as the bill on the one side, imposed criminal liabilities on the users of cryptocurrencies and criminalized certain activities like holding, mining, trade, selling, disposal, issuance or use of cryptocurrency in the country. On the other hand the bill clears the way for the 'Digital Rupee' which is government's own digital currency. The apex court also retreated that the Crypto-Token Regulation Bill, 2018, initially recommended by the inter-ministerial committee contained following proposals:

- (i) To prohibit persons dealing with activities related to crypto tokens from falsely posing these products as not being securities or investment schemes or offering investment schemes due to gaps in the existing regulatory framework proposal

To regulate VC exchanges and brokers where sale and purchase may be permitted. The main aspects of the Crypto-Token Regulation Bill, 2018, found in para 13 of the 'note-precursor to

⁵2020 SCC Online SC 275

⁶Ministry of Finance, PRS India, <https://www.prsindia.org/billtrack/draft-banning-cryptocurrency-regulation-official-digital-currency-bill-2019> (Last visited on May 03rd 2020, 09:45 IST)

report⁷ shows that the inter-ministerial committee was with the idea of allowing the sale and purchase of crypto asset. So the intention of the legislature remains ambiguous on the matter of cryptocurrencies.

The reason given by the Central Bank in regard of notification⁸ in front of apex court is that these currencies might disturb the financial institutions. The supreme court agreed that the central bank had failed to prove that how the functioning of existing institutions could be disturbed through cryptocurrencies. The Supreme Court relied on its decision in *State of Maharashtra v. Indian Hotel and Restaurants Association*⁹ that there must have been at least some factual data about the degree of harm suffered by the regulated entities. It is not the case of central bank that any of the entities regulated by it has suffered on account of the provision of banking services to the online platforms running digital currency exchanges. The apex court further emphasized that the administrative orders like the order in question should be well reasoned be rational and not ambiguous.

Without any sort of reasoning such orders need to be quashed. The apex court then applied the doctrine of proportionality before finally deciding the issue in favour of cryptocurrency. The doctrine of proportionality includes the following:

- (1) The objective of the measure is important sufficiently to justify the limitation of right which is protected,
- (2) The measure is connected rationally to the objective,
- (3) A less invasive measure have been used without unacceptably negotiating with the achievement of the goal
- (4) Balancing the harsh measure's effects on the rights of the persons to whom it applies against the importance of the goal to the extent that the measure will devote.

The impugned order by the RBI was hence quashed and, the order seems well reasoned. It would be a welcome move for cryptocurrencies, blockchain technology and exchanges across the country although the future of the digital currencies still seems to be in the mist because of legislative uncertainties by legislature.

VII. CONCLUSIONS/ REMARKS

Most of the digital currencies use around the world are void in terms of legality and regulated

⁷Subhash Chandra Garg, *Report of the Committee to propose specific actions to be taken in relation to Virtual Currencies*, 13(February 28, 2019)

⁸Reserve Bank of India, *Prohibition in dealing with Virtual Currencies*, RBI/2017-18/154 (Notified on April 6, 2018)

⁹(2013) 8 SCC 519

in the very moment. Some countries have accepted it while some have boycotted them completely. If the reputation of digital currencies increases further more then more countries may rectify them, although it is not the case where many countries are imposing censorship on them. With the exponential growth in user base and recent boom in bitcoin's value which is the most popular digital currency available there are more and more impediments like awareness about the use of wallets, need of a legal framework and regulating authority, transaction pending as well as uncertainty involved in digital currency transaction are rising. Cryptocurrency has potential to replace the old monetary system. In order to accept this phase of cryptocurrency it must first evolve and accept a secure and legal network of currency exchange. So it can be said that cryptocurrencies have high potential to become currency of the world. Even in those countries where its usage is restricted by the concerned authorities it is an issue to diminish the use entirely without internet censorship. So it can be determined that there is high growth potential and benefits of incorporation of digital currencies into the legal frameworks and to the existing fiscal system. Indian banking and financial sector are ready to clout from the capabilities of blockchain technology and distributed ledgers in transaction processing. In the future, more debate over the legality and acceptance of crypto currencies by nations is going to be happening in the next few years.
