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# Cryptocurrency in India with Special Reference to Internet and Mobile Association of India v. Reserve Bank of India

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## ABSTRACT

*The Fintech industry is leading this surge at a time when there are technological advancements progressing at a very high rate. From online stock trading platforms and mobile banking to cryptocurrencies, which is without a doubt the most sought-after. Virtual currencies ("VC's") like Bitcoin, Ethereum, and other similar coins have seen a sharp rise in popularity in recent years, both internationally and in India. Cryptocurrencies' decentralised nature ensures that no single entity, such as a government or central authority, has complete control over the currency. With everything being accessible online, the advent of cryptocurrencies allowed people to purchase, sell, invest, and trade in a type of money that had no physical counterpart. Indians have invested more than USD \$1 billion in the cryptocurrency market, despite the fact that the legal status of cryptocurrencies is still a matter of debate. This lack of clarity on the part of the government about where cryptocurrencies stand today and what their future holds has led to investor confusion. A strategically framed legal framework is required for the regulation of virtual currencies both within and outside of the nation, as evidenced by the rising use and interest of these currencies. VCs decentralised and anonymous nature creates issues with rules and regulations. Other threats are being accelerated by cryptocurrencies, like laundering of money, putting in money for terrorist activities, and evasion of tax, which requires immediate attention. The author has attempted to highlight the legal and public awareness issues surrounding cryptocurrencies. This paper also focusses on the jurisprudence aspect of cryptocurrency by majorly focussing on the case law Internet and Mobile Association of India v. Reserve Bank of India. The legal issues and challenges are highlighted in the paper, along with potential solutions, based on the analysis of the current laws.*

**Keywords:** Cryptocurrency, Technology, RBI, Crypto Regulation.

## I. INTRODUCTION

The term "cryptocurrency" comes from the encryption method which is applied to network security. The conviction of the participant in a market with stable value underpins

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cryptocurrency. The vast majority of cryptocurrencies are networks that are decentralized and are built on blockchain technology, a distributed ledger system, that is decentralized and uses peer-to-peer consensus to record and verify transactions.

A computer programmer by the name of Wei Dai was the first to track the origins of the currency back in 1998. He created the B-Money cryptocurrency system, which he used to first introduce the idea of cryptocurrencies, and which was dispersed anonymously using an electronic decentralized system cash system. By using his pseudonym, Satoshi Nakamoto, the brains behind the first decentralized cryptocurrency and most extensively used today, Bitcoin, gave this idea some final shape in 2009.<sup>2</sup>

Furthermore, the Merriam-Webster dictionary defines cryptocurrency as "Any form of currency that only exists digitally, that typically has no central issuing or regulating authority but instead uses a decentralized system to record transactions and manage the issuance of new units, and that relies on cryptography to prevent counterfeiting and fraudulent transactions,".

Cryptography protects cryptocurrency, which is a virtual or digital currency that is nearly impossible to duplicate or counterfeit. This name "cryptocurrency" is developed from the encryption method of which it is utilized for security of network.<sup>3</sup> There is backing by the participant's convictions to the cryptocurrency in a marketplace that will keep its worth.

The valuation of cryptocurrencies is not set by a central authority. The worth is instead decided by its online users. The term "cryptocurrency" refers to the use of encryption to validate transactions. This implies that bitcoin data storage, transfer, and recording to public ledgers all require complex coding. Offering safety and security are the sole purpose of crypto currency. Due to the usage of blockchain technology, cryptocurrency is thought to be a fairly safe investment. It is a collection of blocks that serve as a digital ledger that is interrupted and reproduced throughout the whole network and records transactions such as who made the transaction to whom. According to the Draft Banning of Cryptocurrency & Regulation of Official Digital Currency Bill, 2019, proposed by the finance ministry, a cryptocurrency is any piece of data, code, number, or token created using cryptographic techniques or in another way that serves as a valuation store or a unit of account and has a digital representation of value.

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<sup>2</sup> Iansiti, Marco and Karim R. Lakhani. 2017. "The Truth About Blockchain." *Harvard Business Review* 95(1): 118–127.

<sup>3</sup> Blockchain and Cryptocurrency: The Emerging Regulatory Framework (<https://www.lexology.com/library/detail.aspx?g=85676d29-5a50-4437-9405-2dd295a69dbd>).

## **II. LEGAL FRAMEWORK REGULATING CRYPTOCURRENCY**

In order to have an understanding of the development of Cryptocurrency in legal practice, it is important to get to know the chronology. The Reserve Bank of India's (The "**RBI**") string of warning or prohibitory circulars shows the pattern of reluctance India has demonstrated. Additionally, an Inter-Ministerial Committee was established, and it offered two proposals that were essentially at odds with one another. The RBI has insisted that there is a lot of risk of fraud, hacking, money laundering, and financing of terrorism. In contrast to earlier RBI circulars and Inter-Ministerial Committee bills, the Hon'ble Supreme Court gave a historic decision in 2020 that reviewed and interpreted the situation from a perspective that was more favourable to cryptocurrencies.

On December 24, 2013, the RBI published a press release advising consumers, owners, and dealers of VCs, comprising Bitcoins, Litecoin, Bbqcoins, Dogecoins, and other VCs, of the possible economic, logistical, regulatory, customer protection, and security dangers they face. This is considered as the first instance of hesitation towards cryptocurrencies. The main issues raised were the lack of an authorized central agency to oversee such payments and the absence of a set framework for handling customer issues, disputes, chargebacks, etc. As a result, digital wallets are vulnerable to losses from hacking, password loss, compromised access credentials, malware attacks, etc.; the seriousness of risk posed is by the significant fluctuation of VCs' value. There is potential for illegal and criminal activity as well as inadvertent failure to abide by anti-money laundering (AML) and countering the financing of terrorism (CFT) rules.

Furthermore, two cautionary press releases by the RBI issued on February 1, 2017 and December 5, 2017, in which it reaffirmed the risks and made it clear that it had not granted any entity or corporation a license or authorization to run schemes, deal in Bitcoin, or work with any other VCs.<sup>4</sup>

### **(A) Bills proposed by the Inter-Ministerial Committee**

An Inter-Ministerial Committee ("**IMC**") was established by the Centre on November 2, 2017 and proceeded to presented two legislations. However, both of these bills were abandoned. The Crypto-token Regulation Bill of 2018 was initially recommended by the IMC ("First Draft Bill"). The IMC did not initially want a ban outrightly and hence did not choose it under the pretence that it is an extreme tool. Due to some gaps in the current regulatory framework, it was advised to forbid individuals involved in crypto-token related activities from (i) misrepresenting

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<sup>4</sup> RBI Cautions Users of Virtual Currencies Against Risks, Press Release : 2013-2014/1261 dated December 24, 2013 available at: [http://rbi.org.in/scripts/BS\\_PressReleaseDisplay.aspx?prid=30247](http://rbi.org.in/scripts/BS_PressReleaseDisplay.aspx?prid=30247).

these goods as securities or schemes of investment, or proposing investment plans, and (ii) regulating VC exchanges and dealers where selling and buying may be permitted. However, the First Draft Bill did not implement these progressive recommendations. Instead, the Second Draft Bill for the Banning of Cryptocurrency and Regulation of Official Digital Currency, 2019 was presented.<sup>5</sup> It suggested completely outlawing the use of Virtual Currencies as legal tender. Additionally, it would be illegal to mine, purchase, store, sell, deal in, issue, dispose of, or utilize bitcoin within the nation as per the Bill. The following uses of cryptocurrency were proposed:

- a) As a means of exchange, accounting unit or store of value;
- b) As a means of payment;
- c) To offer customers and investors cryptocurrency related services like registering, selling, trading, or clearing;
- d) To perform trade with Indian currencies or any other currency;
- e) For issuing products which are related to cryptocurrency;
- f) As a credit basis; and
- g) As a way to raise money

The Second Draft Bill's provisions outlining penalties and offenses made clear how stringent they intended to be. It was also proposed that a digital rupee would be issued by the RBI and used as legal money.

### **(B) Implementation of Prohibition on Dealing in Virtual Currencies**

The precautionary measures intensified when the RBI issued a substantial ban on dealing with VCs via a circular on April 6, 2018 titled "Prohibition on Dealing in Virtual Currencies" (the "**RBI Circular**").

The RBI Circular ordered, with immediate effect, that companies under its regulation shall not engage in venture capital or offer services to assist any person or company in dealing with or settling venture capital. These services incorporated account maintenance, registration, clearing trading and settlement, as well as lending money against virtual tokens and accepting them as security. They also included opening accounts with exchanges that deal with VCs and transferring and receiving funds via accounts related to the procurement and sale of VCs. This effectively barred private persons or firms working with such currencies that required assistance from these groups for maintaining their activities. Furthermore, the assertion made was that the

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<sup>5</sup> RBI Database, "Draft Guidelines for issuance and operation of Prepaid Payment Instruments in India.

modulated organizations that had previously offered these services had to end their contract with one another within three months of the RBI Circular's publication date.

This ban dealt the VC exchanges a severe blow and made it impossible for them to maintain their already successful companies.

In the case of *Internet and Mobile Association of India v. Reserve Bank of India*<sup>6</sup>, there were two grounds where this circular was challenged: first, that VC is not an actual currency but a commodity which is tradable and thus falls out beyond the statutory remits of RBI; and two, that prohibiting a bank on facilitating transactions of VC is a violation of their right as enshrined under Article 19(1)(g) of the Indian Constitution which talks about the right of practicing any profession or carrying out any business or trade or occupation in the country's territory.

To this first issue, the Supreme Court stated that VCs would fall under the RBI's statutory mandate as long as they are recognised as lawful payment in consideration for commodities and services by specific institutions, thus giving power to RBI to regulate and prohibit VC trades. For the second one, the Court proportionality considered if the RBI's policy met the "reasonableness" requirement outlined in 19th Article of the Indian Constitution.

### **(C) The Bill on Cryptocurrency and Regulation of Official Digital Currency**

The Cryptocurrency and Regulation of Official Digital Currency Bill, 2021, is a proposed legislative measure to be introduced by the Parliament in the upcoming Lok Sabha session (The "New Bill"). The New Bill aims to establish a supportive outline for the development of the official VC that the RBI would issue. Additionally, the New Bill aims to outlaw all the other cryptocurrencies which are private in India. To support the cryptocurrency's underlying technology and applications, it does permit some exclusions.

The New Bill intends to outrightly prohibit private cryptocurrencies, despite the fact that it acknowledges the lengthy grey zone in VC legislation and promotes digitization. To put this in context, it must be kept in mind that the Indian public has shown a tremendous interest in virtual cryptocurrencies. Up until recently, estimates placed India's share of the global virtual currency market at 2% to 10%. There will undoubtedly be some fear given the enormous number of VC investors in the nation. It is hoped that the New Bill will give them a 6 month window to sell their holdings. However, it is still unclear how such liquidation will take place. The complete disposal of VC units is the most likely outcome.

The RBI has often emphasized the potential maluses of VCs for backing terrorism financially,

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<sup>6</sup> *Internet and Mobile Association of India v. Reserve Bank of India*, 2020 SCC Online SC 275.

money laundering, etc. However, if the New Bill outlaws private cryptocurrencies, it may actually result in the emergence of a shadow market, forcing legitimate investors to conduct business in unrestricted settings. This would renounce the main objective of passing a regulation, which is to promote a technical environment that is somewhat safer when working with venture capitalists. The cryptocurrencies owned by state, however, will be subject to the similar dangers as other cryptocurrencies because it will be designed to serve the same purposes. So even the creation of a national digital currency might not significantly reduce the risk.

Furthermore, it's important to remember that there is a complete monopoly with the RBI on the market if there is just one digital currency. The issue of whether and how the Indian digital currency will be controlled will also need to be addressed. Additional issues may arise as a result of the potential for international investors to be permitted to make investment in the Indian digital currency while Indian investors' ability to do so is virtually restricted. The current situation demands the introduction of a policy that balances advantages and disadvantages on an overall basis.

#### **(D) Use of Cryptocurrency in Security Contracts: SEBI**

Creating a thorough framework to control every part of bitcoin transaction appears to be a challenging challenge. To establish an administrative presence in the cryptocurrency arena, the RBI may rely on the blockchain architecture. It might also take into account granting licenses to cryptocurrency exchanges, but only after a thorough review of the records and after they have complied with stringent compliance criteria.

Additionally, a framework that, among other things, calls for the reporting, within the RBI, the exchange records within a certain time frame might be put in place. This would assist to increase consumer protection by guaranteeing the security of exchanges and limiting unauthorized usage.

The tax authorities may tax the gains from buying and selling cryptocurrency as capital gains. The trading components of cryptocurrency transactions are also subject to regulation by the Securities and Exchange Board of India (the "**SEBI**"). As a result of knowing that proper required diligence is being done on cryptocurrency transactions, the risk of embezzlement in such transactions would be reduced, which will boost morale for traders' and investors. Additionally, companies can sell initial coin offerings (ICOs), which are similar to IPOs and allow them to raise money by issuing tokens in exchange for cryptocurrencies. For the protection of investors and customers, SEBI may oversee the entire process and provide a refund system in the event that delivery is unsuccessful.

It is thought that bitcoins obtained through the "mining" process are categorized as capitals which are self-generated assets.<sup>7</sup> The taxpayer can profit from the Supreme Court's decision in the B.C. Srinivasa Shetty case from 1981 since the cost of acquiring such Bitcoins is not known (SC). In this case, it was decided that no capital gains could be put upon on the transfer of such assets since the machinery required to compute capital gains would not function if the acquisition cost of the asset could not be determined.<sup>8</sup> Bitcoins produced through the "mining" process may therefore be exempt from taxation.

### **(E) Current Situation in India**

Cryptocurrency is increasingly seen as a form of digital gold. The return on investment in cryptocurrencies is quite substantial. Bitcoin has grown rapidly. Bitcoin's exchange rate fluctuates from USD \$123 on October 1, 2013, to USD \$34000 in January 2021. Gold is highly prized in India. India's gold price is currently between USD \$25,000 to USD \$50,000. When money is invested in gold, it doubles in value, but bitcoin returned 340 times more and is therefore regarded as digital gold.

In India, cryptocurrency banks like Easyfi Network, Vault, and Kasa have begun operations. According to the CEO of Vault, the company has so far provided loans totalling about USD \$25 billion. Cashaa and United, a multistate cooperative society with headquarters in Jaipur, have partnered to create Unicas, a physical crypto bank. It has locations in Delhi, Rajasthan, and Gujarat.<sup>9</sup> Their cryptocurrency banks operate in a way where, say, a person has Bitcoin or Ripple and wants a loan; the person can use the cryptocurrency as security; in that case, taking into account the market value of the cryptocurrency at that time, the person will receive a loan for between 50% and 60% of the cost of the cryptocurrency.

This is due to the likelihood of fluctuation on cryptocurrencies being high. Although it goes without saying that interest must be paid, there is no set deadline for repaying the loan. Another thing that sets cryptocurrencies apart from conventional financial instruments is that, in contrast to banks, which typically charge interest rates of 12% to 24%, cryptocurrency only requires interest rates of 12% to 15%, plus a 2% to 5% processing fee. The procedure of approving a loan in cryptocurrency is instant, and the borrower's CRISIL scores are irrelevant regardless of their creditworthiness. As a result, it is a simpler method of awarding loans. Even better, one

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<sup>7</sup> Vivek Wadhwa, *R.I.P. Bitcoin. It's Time to Move On.*, WASH. POST (Jan. 19, 2016), available at: <https://www.washingtonpost.com/news/innovations/wp/2016/01/19/r-i-p-bitcoin-its-time-to-move-on/>.

<sup>8</sup> Commissioner of Income Tax v. B. C. Srinivasa Shetty 1981 AIR 972, 1981 SCR (2) 938.

<sup>9</sup> Ridhima Saxena, India's Crypto Investors Weigh Options Ahead Of Impending Ban, Bloomberg Quint, February 14, 2021.

can earn 4% interest on their cryptocurrency by storing it in a bank.

It is important to remember that cryptocurrency is not unlawful under the current legal system and that there is no regulatory organization or legal framework in place for it in India. This makes buying, selling, and trading bitcoins are all completely legal in India. A number of players in the Indian cryptocurrency exchange market, including WazirX, ZebPay, and Coinswitch Kuber, among others, have played a significant role in assisting the government and encouraging investors to jump on board by self-regulating and requiring a thorough KYC check for all of their investors. The Cryptocurrency and Regulation of Official Digital Currency Bill 2021 was recently prepared to be introduced in the Parliament during the budget session, however it was postponed as the Government maintained its consultations and talks with all relevant parties. The bill creates a regulatory framework for the introduction of the "official digital currency," which would thereafter be produced or proposed by the RBI.

Furthermore, the RBI is developing a project called "Central bank digital currency" and intends to introduce its own official currency ("CBDC"). However, prior to the implementation of CBDC and the outlawing of private cryptocurrencies, all relevant stakeholders and cryptocurrency holders will be given a window of 3 to 6 months to sell off their holdings; after that time, the bill will strictly penalize and outlaw the mining, trading, and issuance of cryptocurrencies. Although this will take some time, the cryptocurrency market has experienced a huge uptick, particularly at a time when equity markets are reaching record lows.

#### **(F) Drawbacks of Cryptocurrency**

When cryptocurrencies first entered the market, few people were aware of the technology underlying them, and even fewer knew what they were. However, because the user's origin could not be traced, many felt that bitcoin was utilized for all sorts of illicit reasons and on websites like the dark web, to support terrorist operations, to trade narcotics illegally, on black marketplaces, and numerous other such crimes.

Nowadays, a lot of nations are amenable to the use of cryptocurrencies as a means of exchange there; others are neutral; however, a few nations have very strict regulations regarding this. Speaking of India, the government has made some encouraging moves toward regulating cryptocurrencies in the nation after procrastinating for a long time about either outlawing or legalising them.<sup>10</sup>

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<sup>10</sup> Murali, J. (2013). A New Coinage: Can Bitcoin, the global online digital currency, be the precursor of a new monetary system? *Economic and Political Weekly*, 48(38), 77-78. Retrieved from <http://www.jstor.org/stable/23528549>.

a) Unlawful use

Cryptocurrency presents a chance for those who want to avoid paying taxes or engage in money laundering. The WannaCry and Petya viruses, which were used as an easy method of transfer in cyberterrorism and in which USD \$300 in Bitcoin was used to unlock files, are the most well-known examples. WannaCry is an excellent illustration of a cryptocurrency ransom that was used by criminals to extort money online. The hacker's computer was secured, and the hackers demanded cryptocurrency in exchange for ransomware. The same attack was carried out in the Petya attack, and bitcoin was demanded as ransom.

b) Cybersecurity related risk

What makes digital currency investing so exciting also makes it perilous. Since digital currency is decentralised, there is no organisation or administrator in charge of regulating its production, circulation, and management. Depending on the nation they are in, cryptocurrency exchanges—where digital currency is bought and sold—are subject to varying degrees of regulation, if any. They are not even close to being subject to the same level of regulatory control or auditability as conventional banks.

The question of security is another. Numerous exchanges have made news in recent years due to significant security flaws, such as Coincheck, where hackers stole cryptocurrency valued at more than USD \$550 million, or Bithub, where nearly USD \$30 million was lost.

c) Virtual attacks

Anything that is accessible in cyberspace is constantly at risk of hacking. Once the cryptocurrency's security system has been breached, hackers will be able to create a large amount of bitcoins, trade them, and also steal them from other users. A malware threat exists at all times. Being a digital currency, it is vulnerable to hacking, password loss, viruses, and other threats.

d) Financial crime:

Due to the ease with which one can send money from one country to another without being held responsible, people will begin investing in money laundering. According to a research, criminals used cryptocurrency exchanges to launder USD \$2.8 billion in 2019, up from USD \$1 billion in 2018. As per the research available online, a weak KYC was found in over 56% of cryptocurrency users.

e) Uneven economic growth

The process of creating cryptocurrencies differs greatly from the way the economy produces

regular money. For instance, the RBI alone has the power to print money in India. Only after maintaining the Minimum Reserve System and an asset with a value of up to Rs. 200 crore is it able to achieve this. As a result, supply and demand are balanced. This would not be the case with cryptocurrencies.

### **III. JURISPRUDENTIAL NATURE OF CRYPTOCURRENCY**

A new financial system has been developed thanks to digital or "cyberspace" currencies, which have also caught the attention of many nations and are the subject of in-depth research. Only one digital currencies called Bitcoin was there at first, but as time went on, and more and more currencies have come up in the digital currency world and still are, including Ripple, Atrium, Iota, and Dash.

To investigate the jurisprudential character of Bitcoin as a cryptocurrency, it is vital to admit that these cryptocurrencies have monetary worth or may simply be a concept of money that their owners have created. From a legal perspective, property is typically broken down into three categories: object, benefit, and right. (1993, vol. 1/16, Khomeini).<sup>11</sup> Some people think that Bitcoins and other virtual currencies are capital goods because they are utilized to transmit earnings and services in society, as well as to ease trades and the convey of value (2018, Mirzakhani, No. 30).

Because they are not fictitious or the product of illusions, digital currencies are objects and are not regarded as benefits; rather, cyberspace is where they first appeared. Today's world includes a very real and significant portion of cyberspace. Therefore, we cannot accept that it is a fantasy. Virtual rather than real does not imply that it is unreal; cyberspace is a real space, but the reason for calling it virtual is simply that some of the processes involved are not visible. Because the object against debt is absent from our discussion, it appears that when we talk about digital currencies, we are talking about something that is opposed to profit.

#### **(A) Jurisprudential Analysis of Digital Currencies**

There are many ways to judge the legality of digital currencies, but the best way to do so is to have a fundamental understanding of the subject at hand, be aware of the research's fundamental assumptions, and conduct research using those assumptions as a guide. In order to conduct a jurisprudential analysis of digital currencies, it is necessary to look at them from two angles and to then ascertain the obligations of those in authority, even those in control of the Islamic

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<sup>11</sup> Akhavan, Peyman, *Bitcoin Blockchain Digital Currencies and Basic Concepts*, Tehran: Ati Negar Publications, first edition, 2017.

administration as well as those considered imitators.

One is presented from the jurisprudential viewpoint of an individual, while the other is presented from the jurisprudential viewpoint of the government. To determine the duties of imitators, we investigate virtual money using individual jurisprudence. In other words, what will the law be if someone wants to use digital currencies or engage in related activities? The vast majority of authorities do not believe that using and imitating digital currencies is legal or problem-free.

According to government jurisprudence, judgments are decided primarily on corruption and purposes that impact everyone. A state's leader is needed to convey the same broad instruction to individuals in charge of diverse issues. According to this interpretation, the government's chief jurist looks into the possibility that digital currencies can result in both losses and gains. He issues a general ruling on the matter and adjusts this profit and loss to the circumstances of its nation and country. (2017, Andalib, No. 2)<sup>12</sup>

### **(B) Why some Jurists Oppose Digital Currency**

Some academics think that virtual currency transactions are absurd and that there is no justification for using them. They claim that VCs are not property. According to this group of scholars, if we regard digital currency as property, following legal issues would be faced:

- a) Unauthorized usage of property.
- b) The transaction would lack rational intent.
- c) The transaction would be completed using deception. (2018, Mirzakhani, No. 80).

In reaction to the jurisprudence's views on the adoption of virtual money as asset, it should be mentioned that researches have demonstrated that digital currencies, with its current undeniable shortcomings, are a highly positive invention for the coming years of the global economy. Virtual currencies are used by only a small portion of society worldwide. If the downsides are present in the execution or abuses of their advantages, no reasonable explanation will be there for the utter lack of a logical advantage for this desirable phenomena.

It is crucial to remember that they are, Bitcoins and various other cryptocurrencies, still in their developing phase and not yet completely evolved in terms of the concluding Bitcoin exchanges dependent on deception. According to the rationale offered in the bitcoin idea, after all 21 million available bitcoins have been recovered and allocated, their value will be more in line

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<sup>12</sup> Ghezel Biglou, Moslem, "Legitimacy of cryptocurrencies from the perspective of governmental and individual jurisprudence", 9th International Conference on Economics, Management and Accounting with Value Creation Approach, Shiraz: Narun Expert Managers Training Institute (2009).

with reality.

Bitcoins are not mysterious or unclear, and the Bitcoin protocol is very clear from the start of the production and distribution cycle to the very end. Today, there are many ways for people to obtain bitcoins, including mining, buying and selling bitcoins on relevant exchanges, and other means. When compared to the dollar, digital currency prices fluctuate because the dollar's value varies more in Iran than in other nations. However, if Bitcoin price fluctuations occur globally, it can be clearly stated that the use or trade of Bitcoin is based on deception. Digital currencies are property, and the way they are traded is logical and not deceptive.

Under Muslim and Islamic Laws, digital currencies are matched with Jurisprudential rules. These rules are:<sup>13</sup>

a) The Rule of Respect of Muslims' Property

The jurisprudential norm states that Muslims' property, lives, and deeds are to be protected, and that anyone who abuses them commits haram. According to the Islamic prohibition against misusing a Muslim's property, if digital currencies are introduced into the economy of the Muslim community, the production of money will increase in some areas of Islamic society while declining in other areas. It will be considered haram since the imbalanced inflow of this money may result in the loss of rights for a segment of the Muslim community.

b) The Rule of Destruction

The term "waste" has a destructive connotation. The rule states that the guarantor is the person who loses another person's property. In relation to digital currencies, it is important to note that, though the loss of Muslim assets is hypothetical and is instead based on legal precedent, it is possible. In light of the fact that the flaws of digital currencies can readily result in the loss of Muslim property, it is evident that the ruler of Islamic society can ban the circulation of digital currency among Muslims by relying on the rule of loss. (Samadi Largani, 2017, No. 11)

c) No Damage Rule

The no-damage rule states that any damage results in commitment and that the perpetrator is responsible for compensating the victim for the harm he has caused (Yazdi, 1984, 151,154,156). This regulation forbids any action involving digital money. Another rule, known as the rule of dominance, states that people have authority over their assets and have the right to possession of their property. The no-damage rule limits the scope of the rule of dominance in this situation

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<sup>13</sup> Yazdi, Seyed Mostafa Mohaghegh Damad, Rules of jurisprudence, Tehran: Islamic Sciences Publishing Center, 12th edition, 1984.

because digital currencies have drawbacks that can be clearly seen as harmful, which is how it triumphs over the dominance rule. Digital currencies, or any other property, can be exploited according to the rule of dominance.

d) The Rule of Negation of Domination

One of the principal rules having a great impact on the policies and decisions of the society of Islamic is this rule. The negation of domination rule has a considerable impact on interactions amongst an Islamic state's government and foreign governments since it effectively prohibits any partnership that results to foreign supremacy over Muslims. Nevertheless, there are loopholes to this norm that enable a Muslim state to maintain contacts with the world society.

#### IV. PRECEDENTS RELATED TO REGULATIONS OF CRYPTOCURRENCY

##### 1. Internet and Mobile Association of India v. Reserve Bank of India<sup>14</sup>

In April 2018, the RBI published a circular prohibiting financial institutions which are authorized from giving services to enterprises engaged in the cryptocurrency exchange or trade which threw the Indian cryptocurrency trading market into disarray. Various writ challenges filed by crypto-trading organizations disputed the Supreme Court's legitimacy of the directive. In "*Internet and Mobile Association of India v. Reserve Bank of India*" of 2020, the Supreme Court of India by striking down the circular, also deliberated on virtual currencies.

The Supreme Court reviewed the RBIs function in the economy as the central bank in charge of controlling currencies, supply of money, and interest rate, and stated that maintaining price stability is one of the RBIs goals. It highlighted that cryptocurrencies are capable of being accepted as payment for goods and services, and that the RBI can regulate payment systems.

The RBI was inside its own powers to issue the circular, according to the Supreme Court, to meet its legal obligation to protect "public interest, depositor interests, and banking policy interests." The Supreme Court declared, "*Therefore, anything that may pose a threat to or have an effect on the country's financial system may be controlled or forbidden by RBI, even if the activity is not part of the credit system or payment system.*" The Supreme Court dismissed the argument that the RBI had misused its jurisdiction since the circular was considered to have been issued in the interests of banking policy, savers, and the public at large.

The other ground for the challenge was that denying access to persons who deal in cryptocurrencies would violate their Article-19(1)(g) - freedom to engage in any trade or profession. This argument was upheld by the Supreme Court, which stated, "*There can likewise*

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<sup>14</sup> Internet and Mobile Association of India v. Reserve Bank of India, 2020 SCC Online SC 275.

*be no dispute that banking channels are the lifeblood of any business, trade, or profession."* However, a clear distinction amongst three groups of people was made by the Hon'ble Supreme Court: those who deal in cryptocurrencies as a pastime, those who trade in cryptocurrencies professionally and cryptocurrency exchangers. It ruled that the first type, those who acquire and sell cryptocurrencies as a mere pastime, cannot rely on Article 19(1)(g) because it only applies to trade, occupation, or business. It also said that the latter category of people, who trade in cryptocurrencies, cannot claim that the notice had the impact of totally closing down their enterprises since they could still exchange "crypto-to-crypto" combinations or utilize the currencies saved in their pockets to make a payment for the acquisition of goods and services to those who ready to accept them, whether in India or abroad. Therefore, only the third category, namely cryptocurrency exchanges, were negatively affected by the circular, as they had no other means of existence if they were cut off from banking channels.

Although the RBI was found to be within its authority to publish the circular, the absence of evidence of the "proportional damage" incurred by RBI regulated firms in their dealings with cryptocurrency enterprises led to the circular's invalidation. The Court noted that the circular severed ties between the banking sector and cryptocurrency exchanges, despite the fact that the RBI had found nothing wrong with the exchanges' operations. Before publishing the circular, RBI did not consider alternate, less intrusive methods, such as regulating bitcoin trade and exchanges.

The decision has paved the way for market participants to enter the derivatives market. They are necessary for a thriving derivatives market and make sure that danger is passed to someone better qualified to accept it. A market maker must submit to the RBI for authorization after meeting the qualifying conditions. Prior to this, market participants in India were unable to offer services due to a nationwide ban on banks offering financial services. The SCRA further states that for derivative dealing to be lawful and legitimate, contracts must be: (a) traded on a registered stock exchange; and (b) resolved on the registered stock exchange's clearing house. The objective is to provide another layer of control to safeguard investors. This provision, though, does not apply when derivatives are exchanged over the counter.

## **2. Ion Science Ltd and Duncan Johns v Persons Unknown<sup>15</sup>**

In November of 2020, a person who had been the victim of a crypto 'Initial Coin Offering' (ICO) fraud, contacted the specialized investigators at 'Another Day'. The client had lost a substantial amount of money investing in various cryptocurrency investment opportunities. Initially, the

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<sup>15</sup> Ion Science Ltd and Duncan Johns v Persons Unknown, Unreported, 21 December 2020.

client believed there was some truth to the scam because the investment appeared to be successful; however, no investment or profits have been returned. After advising the victim that speed is of the essence when tracing cryptocurrency, they immediately conducted an in-depth investigation into the circumstances leading up to the scam. They traced and tracked the Bitcoin investments across the blockchain to a number of reputable exchange services. Former Metropolitan Police detectives gathered the evidence in an evidentiary and robust format before enlisting the aid of an advocate assisting with High Court applications.

This is thought to be the first ICO fraud case brought before the Commercial Court and the first time the court has granted authorization to serve a Bankers Trust order against cryptocurrency exchanges outside the jurisdiction. A Bankers Trust order is a court order requiring a third party to provide specific information to an applicant. This case is notable in terms of cryptocurrency fraud and asset recovery due to the Court's accommodating approach and assistance to the victims of this sort of scam.

### **3. Santander Bank v. Mercado Bitcoin**

A case against Mercado Bitcoin was appealed by Santander, a prominent Spanish bank, but it was denied by the State of Sao Paulo's Court of Justice. In South America, Mercado Bitcoin, a well-known cryptocurrency exchange that has its roots in Brazil, is where one can trade a variety of cryptocurrencies.

2018 saw the closure of Mercado Bitcoin's bank account by Santander Bank, which made the claim that it was concerned about the money's origin and the actions of the cryptocurrency exchange company.

As previously said, a number of financial organisations believe that the cryptocurrency market is unstable and volatile. The belief that such business dealings are risky, given that they are still mostly unregulated, follows this worry.

A case was filed, and the Spanish bank lost it in court, prompting conflicting opinions. The bank filed an appeal, but the Brazilian cryptocurrency exchange again emerged victorious. The Brazilian court made the case that banks have to have a good reason before closing accounts. The arbitrator contended that the Central Bank of Brazil had not outlawed dealing in digital coins notwithstanding the hazards involved in the storage and exchange of the so-called virtual currency.

The court ruled that the bank had violated Banco Central do Brasil Resolution No. 2,025/93, which requires that a financial institution explicitly identify a cause for taking such measures (freezing and closing an account). Furthermore, the notification of an intention to terminate a

contract should explicitly state the reasons for doing so, according to Bacen's circular No. 3,788/16.

The court previously ruled that the funds from the exchange that were seized and locked should be returned. In addition, the bank is required to pay a monthly penalty for the money that were locked that is equal to 1% interest. More than 1 million Brazilian reais (\$350,000) in locked monies were added to a monthly fine of more than 200,000 reais (\$51,000).

The bank appealed the decision because of the significant fine. The court's verdict upheld the earlier decision and dismissed the bank's appeal. As initially decreed, Santander Bank will return the money and pay the penalties.

#### **4. SEC vs. Trendon Shavers<sup>16</sup>**

The SEC investigated Shaver's, the operator of the Bitcoin Savings and Trust (BTCST), for seeking illegal transactions in bitcoin-related opportunities from several lenders. This case taught the court how to seek damages dominated by bitcoins in the future by using only the price of the bitcoin that was on a daily basis when fraud was uncovered.

#### **5. New York Office of the Attorney General vs. Bitfinex**

The New York OAG was investigating claims of fraud and investment misrepresentation against Bitfinex. Prosecutors stated that the cryptocurrency exchange and its associated stable coin firm, Tether, deceived investors by concealing a \$850 million loss. The Supreme Court's Judge of New York refused to dismiss the investigation into the corporate entities, and the corporate entities responded by stating that they would file an appeal.

## **V. CONCLUSION**

In this era of currencies, the Indian government should take some decisive action since it has the potential to significantly advance technological innovations in India. The income tax department is expected to receive a staggering amount of direct revenue as a result of the tax on cryptocurrencies, which might significantly boost the growth of the economy as a whole.

The Indian government should regulate cryptocurrencies to make them safer, more transparent, and more reliable rather than outright banning them. More investment is anticipated as public awareness of cryptocurrencies grows, especially in a growing and developing nation like India, which has the world's second-largest population. The potential of cryptocurrencies for e-commerce, e-investments, and e-payments is encouraging. In order to create a more safe and

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<sup>16</sup> SEC vs. Trendon Shavers, 13-cv-00416.

user-friendly system to deal with cryptocurrencies, it is crucial that regulations relating to virtual currencies are developed while taking into account the various financial and legal aspects of the nation.

It is clear that there is confusion over cryptocurrency legislation in India based on the conclusions that can be made from the aforementioned facts and the current situation surrounding the world of cryptocurrencies. The need for a well-structured cryptocurrency legislation that takes into account blockchain technology, investors, and those working in the sector is urgent, thus its regulation need more focus.

It's interesting to note that the Draft National Strategy on Blockchain, 2021, released by the Ministry of Electronics and Information Technology, emphasised the advantages of cryptocurrencies. Therefore, it is not the greatest option for the growth of our country to outlaw global virtual money, which has an impact in many countries. To gain the confidence of investors and the general public in the emerging country, the government must act decisively to regulate cryptocurrencies. If a suitable regulatory framework is not put in place, the bitcoin industry in India would continue to be unregulated. While bitcoin start-ups in India are expanding and launching new goods as an outcome of the Supreme Court's decision, there are some concerns due to rumours that the ministry of finance has launched a governmental bill for inter-ministerial debates that might criminalize cryptocurrencies. Even after this , bitcoin start-ups in India remain bullish on the immense promising and future of cryptocurrencies, and they are appealing with the administration not to impose a blanket ban.

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