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# India on Cryptocurrency

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## ABSTRACT

*As cryptocurrency is gaining popularity all over the world including India in a good and bad way it is crucial to understand the validity. Specially in India the government has taken different position from time to time on virtual currencies. Till today there is no solid and exclusive regulation to monitor all the transactions of cryptocurrencies, putting the population of India into a dilemma. Should people deal in digital currencies and what is potential in terms of investment safety is still a question. The below article is a short analysis of whether the cryptocurrency should be legalised and what stand India and its courts has taken till now.*

Cryptocurrency got familiarized to the world in the year of 2008, it was introduced by some unknown person or possibly a group of people named **Satoshi Nakamoto** which was termed as '**Bitcoin**'. In 2008 cryptocurrency got baptized but the idea was coined in the year 1989 and in the early 1990s the development of softwares started to make the thought of digital currency probable. <sup>2</sup> Cryptocurrency in simple words can be termed as a digital currency of which exchange is done using encryption process, it does not follow any statutory or regulatory regime but it does have its decentralised system to monitor its transactions. It is to be noted that anonymity is the key element of Crypto, the system works peer to peer and no intermediary like bank in normal transactions is part of it. All the records of these transactions are recorded on blockchain which can in simple word described as digital ledger. <sup>3</sup>

The validity and risk of Cryptocurrency is questioned from time to time by all the jurisdictions. The reasons behind such distrust are 1) Virtual and no central source 2) price is volatile 3) not accepted worldwide 4) transaction cannot be reversed 5) open to hacking <sup>4</sup>. Further, this crypto system posed a challenge in front of governments all over the world. The regulation and execution of Crypto and stakeholder's protection are important qualms; which brings us down to the easy crime routes. The anonymity factor of virtual currency is giving rise to crimes like

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<sup>2</sup> Guardian Nigeria, *The idea and a brief history of cryptocurrencies*, THE GUARDIAN (July 7, 2022, 12:37 PM) <https://guardian.ng/technology/tech/the-idea-and-a-brief-history-of-cryptocurrencies/>.

<sup>3</sup> Francisco Javier García-Corral et al, *A bibliometric review of cryptocurrencies: how have they grown?*, *Financ Innov* 8, 3-6 (2022).

<sup>4</sup> Krishna Kumar Thakur & G.G. Banik, *Cryptocurrency: Its Risks And Gains And The Way Ahead*, Volume 9 IOSR-JEF 38, 42 (2018).

money laundering, tax evasion and also funding illegal activities including but not limited terrorism.<sup>5</sup>

Countries all over the world are trying to get this system in channel to bring it in line of surveillance. India is struggling to implement the system with its own set of mechanism which can be learned through the case laws, existing regulations and comments by the Govt. of India.

The Supreme Court of India in the case of Internet and Mobile Association of Indian versus Reserve Bank of India<sup>6</sup> averred that the circular issued by Reserve Bank of India curtailing the use of Virtual Currencies cannot be enforced as RBI was unable to prove the adverse effect of such currencies on the entities.

It should be noted here that, Supreme Court in this case didn't talk about legality of the virtual currencies but, it is for sure that such currencies are unregulated in India till the date. Government of India took initiative to draft a bill which prohibits all the private crypto currencies in India. Fortunately, this bill didn't stand and now Indians can only hope for progressive stand from the government.<sup>7</sup>

Some of the important scams in the history of Cryptocurrencies in India are as follows: 1) 2000 crore rupees GainBitcoin Ponzi scheme scam where a businessman named Amit Bharadwaj cheated people by tempting them to invest in crypto to gain very high returns and the same was never fulfilled. 2) Morris Coin Fraud amount to rupees 900 crore rupees where a fake crypto currency was created named Morris coin and was said to be listed on Coimbatore based exchange and all these claims were later found to be false. 3) Karnataka Bitcoin scam amounted to 9 crore rupees, here the prime suspect was illicitly trading the Bitcoin by hacking and using the same to buy drugs from the dark web.<sup>8</sup> These are only few and there are more and now we don't know how many are untraced and still running.

Now the questions are that 1) whether dealing in cryptocurrencies is illegal in India? 2) If not, then are there any remedies or redressal mechanism? 3) Will Cryptocurrencies be accepted as method of payment and settlement in India? No act in India has defined Cryptocurrency or validated it.

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<sup>5</sup> Saman Jafari et al, *Cryptocurrency: A challenge to legal system*, SSRN: <https://ssrn.com/abstract=3172489>, 3 (2018).

<sup>6</sup> Internet and Mobile Association of Indian versus Reserve Bank of India, MANU SC 0264 2020.

<sup>7</sup> Pawan Nahar, *Future of Cryptos in India: A blanket ban or birth of a new age asset class?* THE ECONOMIC TIMES (July 5, 2022, 12:33 PM) <https://economictimes.indiatimes.com/markets/cryptocurrency/future-of-cryptos-in-india-a-blanket-ban-or-the-new-age-asset-class/articleshow/85489406.cms>.

<sup>8</sup> *Crypto crime in India on the rise: A look at major scams in recent years*, CNBC TV 18 (July 7, 2022, 12:56 PM) <https://www.cnbc18.com/cryptocurrency/crypto-crime-in-india-on-the-rise-a-look-at-major-scams-in-recent-years-12573982.htm>.

In the case of Hitesh Bhatia vs. Mr. Kumar Vivekanand <sup>9</sup> the Metropolitan Magistrate, Tis Hazari Court, Delhi made some important remarks 1) the transactions in cryptocurrency will have to comply with in laws in force in India including FERA, NDPS, IPC, PMLA along with the regulations of RBI on KYC, CFT and AML 2) The intermediary is accountable for KYC for any transaction be institutional or peer to peer 3) in case of absence of any code and regulation only legitimate trade and intermediaries can seek protection under Article 19 (i) (g).

The most recent development in India was when some clarity was provided in Parliament's annual fiscal budget announcement in February, 2022 <sup>10</sup> where the finance minister announced that tax on virtual digital asset is set at flat 30 percent with 1 percent deductible at source. And still, we don't know as to what to infer from this. The future of cryptocurrency appears grey in India and considering the past take of Indian Government on Virtual Currency it looks very doubtful. Currently this system is not controlled by any regulatory body of government but by the developer. Maybe in future government will take a progressive and liberal stand and allow it with some check points to keep it safe for the investors. One of the important reasons that many countries are hesitant to give cryptocurrency a legal sanction can be the use of these currencies in committing crimes like sex trafficking, child exploitation, corporate espionage, illicit cross border drug activities, direct and indirect financing to terrorism and much more. <sup>11</sup>

It can be concluded that Cryptocurrency in itself is not a scam but can be used to organise lot of crimes as the identities of the transaction makers remain unknown and it is not controlled by any central authority but by the developer. It is better to find a mid-way to regulate the transactions of such digital and virtual currencies where the mechanism will be subject to some check points and investor will feel safer and more secured. If it works out well then legalising cryptocurrency will not be a problem, but again technologies bring solutions and also challenge along with it and we should be equipped in all ways to deal with it.

Many countries all over the world are taking steps in the direction of regulating the crypto but the success of the same can only be determined in coming years.

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<sup>9</sup> Hitesh Bhatia v. Mr. Kumar Vivekanand, Case No. 3207 of 2020, decided on 1st July 2021.

<sup>10</sup> The Finance Bill 2022, Bill no 18 at 45 (2022).

<sup>11</sup> Greeshma K V, *Crypto Currencies and Cyber Crimes*, 3 Ijetr 1, 3-4 (2015).