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India towards Regularization of Virtual Assets: A Mammoth of Challenges

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ABSTRACT

The easy accessibility and user friendly interface of internet has boosted the growth of E-commerce sector. The ease of digital payment has given birth to the concept of virtual asset. The currency of a country is a legal tender and medium of exchange. It possesses some value and is used to fulfill the financial obligations. The Central Bank of a country issues the currency. The virtual assets are based on blockchain technology which is based on encrypted blocks containing information and data shared across a large network. The data structure helps to maintain unchangeable record of data in time-structured format. The features like anonymity and decentralization has made the countries skeptical about its usage. Indian policy on blockchain technology is positive about adopting the technological changes. The taxation scheme in the Annual Budget for FY-2022-2023 has made stand of the government clear. However, the implementation and adoption of virtual currencies or virtual assets opens the door of huge legal, regulatory and infrastructural challenges. This paper shall contain the analysis of existing legal and regulatory framework. The author would also focus on the challenges pertaining to virtual assets.

Keywords: Blockchain Technology, Virtual Assets, Virtual Currencies, Cryptocurrencies.

I. INTRODUCTION

The inception of blockchain technology and cryptocurrency was pumped up due to increasing digitalization and its accessibility. The concept of Bitcoin, a type of virtual asset was explained by Satoshi Nakamoto in 2008.² The cryptocurrencies gained attraction of the world as it possessed a high value and its usage as mode of payment. The market share of cryptocurrency has surged above \$2 trillion despite the existence of COVID-19 pandemic and Russia-Ukraine war.³ India is also experiencing the exponential spike in market share of cryptocurrencies which could cross \$241 million by 2030 because youngsters have started to consider it as investment option and several start-ups are coming up in the cryptospace.⁴ The countries are

¹ Author is a LLM student at Babasaheb Bhimrao Ambedkar University (a Central University), Lucknow, India.

² Satoshi Nakamoto, *Bitcoin: A Peer-to-Peer Electronic Cash System*, BITCOIN.ORG. (2008), <https://bitcoin.org/bitcoin.pdf>.

³ Chris Morris, *Crypto market cap is once again above \$2 trillion*, FORTUNE (May 10, 2022, 02:30 PM), <https://fortune.com/2022/03/02/crypto-market-cap-2-trillion/>

⁴ THE HINDUBUSINESSLINE, <https://www.thehindubusinessline.com/money-and-banking/indian-cryptocurrency->

skeptical regarding the worth of cryptocurrencies. The Bitcoin has been recognized as legal tender in El Salvador while Cuba is also set to regulate this industry.⁵ However, China has declared all the transactions of virtual currencies illegal.⁶

Blockchain technology is based on digital ledgers which are used for storing data. These ledgers containing the information and data are termed as block. The blocks are attached using cryptography. The cryptography is encrypted codes which are hard to be decoded. The encryption helps in data protection and security. The cryptography is validated by the system at every single step. The system is not verified by any third party over peer-to-peer network but validated and verified by taking into account the history of transactions stored at each node of the network and the accordance of the participants. The modification is impossible as it involves updation in all the records. Therefore, it is impossible to corrupt the system. If the data has to be modified, then such modification cannot be done without being noticed. The entire system is decentralized in nature. The salient characteristics of blockchain technology are pseudonymity, transparency, accountability, guaranteed encryption and distributed ownership. Hence, the services offered with help of this technology are secure, transparent, verified and not corrupted. A cryptocurrency is based on cryptography which makes it impossible to be counterfeited. These currencies or assets are based on decentralized network in which the information of transactions and value are stored in the distributed ledger.

The Indian Government has acknowledged the spotlight of blockchain technology. The Government is in no mood to overlook the scope of its application in various fields like banking and insurance, healthcare, power and energy, governance, etc.⁷ The Government through National Strategy on Blockchain Technology, 2021 and Report of Inter-ministerial Committee, 2019 has accepted the fact that the current legal and regulatory framework is insufficient to regulate the sector of blockchain technology and virtual currency. The Finance Minister of India, Mrs. Nirmala Sitharaman in her speech while presenting Annual Budget said that early bird gets the worm. She said that India is making strategic move to acknowledge the blockchain technology and virtual currencies while an uncertainty is prevailing in the world regarding the same. She announced the taxation of cryptocurrency and launch of Digital Rupee based on blockchain issued by RBI by 2023.

market-likely-to-reach-up-to-241-million-by-2030-nasscom/article36649697.ece (last visited May 10, 2022).

⁵ REUTERS, *Cuba authorizes and seeks to regulate cryptocurrency use*, <https://www.reuters.com/article/fintech-crypto-cuba-idUSL8N2PY5HD> (last visited May 10, 2022).

⁶ BBC NEWS, *China declares all crypto-currency transactions illegal*, <https://www.bbc.com/news/technology-58678907> (last visited May 10, 2022).

⁷ MINISTRY OF ELECTRONICS & INFORMATION TECHNOLOGY, *National Strategy on Blockchain 2021*, https://www.meity.gov.in/writereaddata/files/National_BCT_Strategy.pdf (last visited May 12, 2022, 03:15PM).

II. LEGAL AND REGULATORY CHALLENGES AND FRAMEWORK

India has traversed from banning the virtual asset to regulating them. In 2013, the Reserve Bank of India (hereinafter referred as RBI) warned the people trading and using virtual currencies about the risk associated with virtual currencies.⁸ The risks enumerated by the RBI were regarding cyber security issues pertaining to virtual currencies; lack of mechanism for resolving consumer disputes; high volatility of virtual currencies; uncertainty regarding legality of trade exchange of bitcoins; and money laundering and terrorism issues. According to 2013 notification, the RBI started to ponder about the system and mechanism of decentralized virtual currencies. It clarified that it is examining and analyzing the legal and regulatory framework of virtual currency from the lens of foreign exchange and payment system laws. The RBI did not approve the usage of virtual currencies or digital currencies as a mode of exchange or mode of payment.

In 2017,⁹ RBI again cautioned the people about use of virtual currencies. The RBI notified that it has not approved of any scheme for investment in virtual currencies. The RBI directed the people to refer the 2013 notification regarding the risks relating to virtual or digital currencies.

In 2018, RBI imposed a blanket ban on dealing in virtual currencies via a notification.¹⁰ The notification stated that the RBI has cautioned its users regarding the risks associated with virtual currencies. In view of these risks RBI imposed a total ban on any service regarding virtual services, trading, lending in form of virtual currencies, transfer or receipt of any money to sell or buy the virtual currencies. The RBI gave a transitional period to exit from such services within three months of issue of such circular. The RBI took this step under the provisions of Banking Regulation Act, 1949, Reserve Bank of India Act, 1934 and Payment and Settlement Systems Act, 2007.

The ban was lifted due to Supreme Court's decision in the case of *Internet and Mobile Association of India v. Reserve Bank of India*¹¹. The Supreme Court of India protected the interest of investors as well as Government by lifting the ban. The legislature has made its intention clear to the entire world by imposing tax on transfer of virtual assets. The Government is in no mood to miss the opportunity to make India advanced in terms of technology and

⁸RESERVE BANK OF INDIA, <https://rbidocs.rbi.org.in/rdocs/PressRelease/PDFs/IEPR1261VC1213.PDF> (last visited May 12, 2022, 04:35PM).

⁹ RESERVE BANK OF INDIA, <https://www.rbi.org.in/commonman/Upload/English/PressRelease/PDFs/PR2054EN010217.PDF> (last visited May 12, 2022, 05:55PM).

¹⁰ RESERVE BANK OF INDIA <https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NOTI15465B741A10B0E45E896C62A9C83AB938F.PDF> (last visited May 12, 2022, 06:23PM).

¹¹ *Internet and Mobile Association of India v. Reserve Bank of India*, 2020 SCCOnLine SC 275.

finance.

Taxation

The Union Budget for FY2022-2023 imposed a hefty tax of 30% on virtual assets and additional TDS of 1%. The amendments were made into Income Tax Act, 1961 through the Finance Act, 2022 to shed light on taxation of income from virtual digital asset. Therefore, the Income Tax Act, 1961 now defines virtual asset and envisages the provision relating to tax on income from virtual asset and payment on transfer of virtual asset. The income from virtual asset is taxed under the head, income from capital gains. The Act neither gives the assessee any relief in case of loss incurred by investing in these virtual digit assets nor gives any relief in form of deduction, exemption or rebate.

The “virtual asset”¹² is a digital asset having some value. It is any token or information or code which is not an Indian currency or foreign currency according to provisions of sub-section (h), (m) and (q) of Section 2 of Foreign Exchange Management Act, 1999. It generated via cryptographic means which can be exchanged with or without consideration. These virtual assets are represented digitally. Its value can be used in any investment or financial transaction. It is not restricted to investment scheme. These assets can be transferred, stored or traded electronically. It also includes Non- Fungible Token and any other digital asset as notified by Central Government in Official Gazette.

“The earnings of the assessee from the transfer of virtual digital asset shall be taxed at thirty percent. The income from virtual digital asset shall not be subjected to any deduction other than the cost of acquisition. Neither loss shall be set off nor it shall be carried forward to succeeding assessment years as per the provisions of the Act.”¹³ “If any person is dealing in with the transfer of virtual digital asset for sum amount of consideration with a resident assessee then such person has to deduct an amount of one percent of such income. The tax shall be deducted at the time of payment or at the time of credit of such sum to the account of resident whichever is earlier.”¹⁴ However, the person is exempted from TDS-

- “1. If consideration is payable by any person (other than a specified person) and its aggregate value does not exceed Rs. 10,000 during the financial year
2. If consideration is payable by a specified person and its aggregate value does not exceed Rs. 50,000 during the financial year

¹² Income Tax Act, 1961, §47A, No. 43, Acts of Parliament (India).

¹³ Income Tax Act, 1961, §115BBH, No. 43, Acts of Parliament (India).

¹⁴ Income Tax Act, 1961, §194S, No. 43, Acts of Parliament (India).

Meaning of “specified person” – An individual or a HUF, whose total sales, gross receipts does not exceed Rs. 1 crore in case of business or Rs. 50 lakh in case of a profession, during the financial year immediately preceding the financial year in which such virtual digital asset is transferred An individual or a HUF who does not have any income under the head profits and gains of business or profession.”¹⁵

The government has not cleared the taxability of virtual digital assets under the Goods and Services Tax (GST). The Central Goods and Services Tax Act, 2017 [CGST Act, 2017] defines “money” as “the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value”.¹⁶ On analyzing the definition, it is construed that cryptocurrencies satisfies only one condition that is it stores some value but it does not satisfy the other two conditions that is of legal tender and recognition by RBI. Therefore, cryptocurrencies cannot be regarded as “money”.

The cryptocurrencies cannot be considered as “securities” under CGST Act, 2017. “Securities shall have same meaning as assigned under Section 2(h) of Securities Contracts (Regulation Act), 1956.”¹⁷ On perusal of definition of securities under Securities Contracts (Regulation Act), 1956 too, cryptocurrencies cannot be considered as securities.

The issue whether virtual currencies can be considered as goods or services can be examined on perusal of definition of goods or services. The cryptocurrency cannot be considered as goods because it is neither a movable property nor it is an actionable claim.¹⁸ “Services means anything other than goods, money and securities but it includes activities related to money use or conversion of currency or denomination for which separate consideration is charged.”¹⁹ Therefore, cryptocurrencies can be considered as services but there is no clarity from the government on the same.

Intellectual Property Law

As the Union Budget imposed a big tax obligation on the assesses on the transfer of “virtual digital assets”. The legislature has intended to treat the cryptocurrencies and NFTs as virtual

¹⁵ *Id.*

¹⁶ Central Goods and Services Act, 2017, §2(75), No. 12, Acts of Parliament (India).

¹⁷ Central Goods and Services Act, 2017, §2(101), No. 12, Acts of Parliament (India).

¹⁸ Central Goods and Services Act, 2017, §2(52), No. 12, Acts of Parliament (India).

¹⁹ Central Goods and Services Act, 2017, §2(102), No. 12, Acts of Parliament (India).

digital assets and not as a currency or legal tender. The legislature has also proposed a Bill to regulate the cryptocurrency to deal with the volatile nature of these cryptocurrency. The volatility of these cryptocurrency can be kept under the check by extending them the IP protection. The famous and one of the first cryptocurrency, bitcoin has not been patented. The major criticism of not extending the IP protection to the cryptocurrency is that it is self regulated and should remain in the open source. The IP protection of cryptocurrencies can be used to determine the ownership of such virtual digital assets.

NFTs are included under the definition of “virtual digital assets”. NFTs have posed a challenge related to copyright. The NFTs have made its space into headlines when celebrities like Amitabh Bachan, Salman Khan, Rajnikant have involved in trading of NFTs.²⁰ The famous designer Manish Malhotra have also showcased his collection through NFTs.²¹ The copyright law envisages the power for reproducing and distributing original work. The blockchain technology creates ownership rights. The moot issue is regarding ownership of copyright. There is a tussle between the buyer and creator of NFT. For an instance, a purchaser of painting only acquires the right to showcase and not reproduce the copies of the painting unless the such right is expressed by the copyright owner in writing.²² If anyone mints the NFT without permission of licensee or owner then copyright is said to be infringed as a consequence the licensee or owner can claim damages and injunction.²³ If the buyer of NFT procures the license to use the copyrighted work then such buyer can use the NFT as per the terms of license. NFTs open the door of challenge relating to anonymity if one mints NFT on a public domain. In such a case, one pretends to be the owner of the work. The verification of the person becomes difficult.²⁴ The intermediaries involved in the listing of NFTs such as OpenSea, COINDCX, etc. have to be cautious regarding the authenticity of NFT.²⁵ As the NFTs are available in India and internationally both it can give rise to numerous issues relating to intellectual property.²⁶

The crypto-currencies are based on blockchain technology. The decentralized highlight of this

²⁰ THE HINDU, *Bollywood stars, Indian celebrities launch NFTs amid global craze*, <https://www.thehindu.com/sci-tech/technology/internet/bollywood-stars-indian-celebrities-launch-nfts-amid-global-craze/article37160982.ece> (last visited May 15, 2022).

²¹ *Id.*

²² Copyright Act, 1957, §51, No. 14, Acts of Parliament (India).

²³ LEGAL 500, *Commercialising copyright: Nfts - does popularity mitigate legal risks*, https://www.legal500.com/developments/thought-leadership/commercialising-copyright-nfts-does-popularity-mitigate-legalrisks/#_edn4 (last visited May 15, 2022).

²⁴ BIRD & BIRD, *Non-fungible tokens (nfts) and copyright law*, <https://www.twobirds.com/en/news/articles/2021/australia/nonfungible-tokens-nfts-and-copyright-law> (last visited May 15, 2022).

²⁵ IPR LAW INDIA, *Interface Between NFT And Copyright Law*, <https://iprlawindia.org/interface-between-nfts-and-copyright-law> (last visited May 16, 2022).

²⁶ Person & Kelley S. Gordon Gregory J. Chinlund, *What Are The Copyright Implications Of NFTs?* REUTERS, <https://www.reuters.com/legal/transactional/what-are-copyright-implications-nfts-2021-10-29/> (last visited May 17, 2022).

technology has a major drawback of lack of central ownership/agency. The philosophy behind trademark law is “one source one mark one proprietor”²⁷. There is a wide range of cryptocurrencies and exchanges. A casual user may be mesmerized with the amazing returns of cryptocurrencies. It is possible that such user may encounter numerous exchanges dealing in exchange of cryptocurrencies. It is essential to protect the casual user of internet from the fake exchange who claims to exchange bitcoins for a valuable consideration of money. The trademark law can prevent such frauds. The trademark law can prevent the fraud happening due to deceptively similar name. In order to apply trademark law on blockchain technology, it has to be brought under the domain of “collective marks”. “A collective mark is a form of trademark or service mark owned by a collective, whose members use the collective mark to identify their goods and services and to distinguish their goods and services from those of non-members, and to indicate membership in the group. A collective can be a cooperative, an association, or any other collective group or organization.”²⁸ However, a re-look on the concept of collective marks would be required from the perspective of data protection. If the regulators mandate the registration as collective mark it would certainly safeguard the investors against misleading and unscrupulous practices.²⁹

Company Law

The Ministry of Corporate Affairs (MCA) issued a notification³⁰ on March 24th, 2021 to amend Schedule III of Companies Act, 2013. The notification stated that the companies have to reveal their investments made in virtual or cryptocurrency during the financial year. They have to disclose the profit/loss on investment, amount of currency held as on reporting data, deposits or advances for the purpose of trading or investing in the virtual currencies or cryptocurrencies.

Cyber Law

The Cyber Security Directions were issued on April, 28th, 2022³¹ under Section 70B of Information Technology Act, 2000. These directions addressed matters relating to ‘information security practices, procedures, prevention, response and reporting of cyber incidents for Safe & Trusted Internet’. According to the directions, “the virtual asset service providers, virtual asset exchange providers and custodian wallet providers (as defined by Ministry of Finance

²⁷ M/s.Power Control Appliance & Ors. vs. Sumeet Machines Pvt. Ltd., (1994) 2 SCC 448.

²⁸ Trade Marks Act, 1999, §2(1)(g), No. 27, Acts of Parliament (India).

²⁹ Arun C Mohan, *Trademarks for Digital Currencies*, SPICYIP <https://spicyip.com/2020/04/trademarks-for-digital-currencies.html> (last visited May 18, 2022).

³⁰ MINISTRY OF CORPORATE AFFAIRS, https://www.mca.gov.in/Ministry/pdf/ScheduleIIIAmendmentNotification_24032021.pdf (last visited May 19, 2022, 04:35PM).

³¹ PRESS INFORMATION BUREAU, <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1820904> (last visited May 19, 2022, 07:10PM).

from time to time) shall mandatorily maintain all information obtained as part of Know Your Customer (KYC) and records of financial transactions for a period of five years so as to ensure cyber security in the area of payments and financial markets for citizens while protecting their data, fundamental rights and economic freedom in view of the growth of virtual assets”.³²

The maintenance of such records would mean that the organizations dealing in virtual digital asset sector have to exist for minimum five years. The sector is obliged to maintain accurate records not restricted to information regarding identity of relevant parties, time zones, IP address, time stamps, date of transaction alongwith the amount of transaction, transaction ID, public keys (or equivalent to indentifiers), addresses or accounts involved (or equivalent indentifiers).

The Digital Signature are essential part of blockchain technology and application. The Digital Signatures are governed under Information Technology Act, 2000. The Schedule I of the Information Technology Act, 2000 provides for transactions or documents on which the Act is inapplicable. These transactions involve negotiable instruments other than cheques, power of attorney, trust, will and conveyance of immovable property. The conflict would arise if the technology has to be used for aforesaid mentioned transactions.

The Section 43A of the Act has a loophole when perceived from the angle of privacy when applied to blockchain. The distinguishing feature of the data protection legislation like Data Protection Bill, 2018 is ‘right to be forgotten’. The major contradiction between blockchain technology and data protection legislation is the inherent characteristic feature of blockchain that is the information cannot be deleted and its history is always available and accessible.

Cryptocurrency and Regulation of Official Digital Currency Bill, 2021

The central government constituted an “Inter- Ministerial Committee on Virtual Currencies” on November 2, 2017 to assay the issues relating to virtual currencies and steps required to be taken. The report of the Committee was published on July 22, 2019.³³ The Report contained an overview of Distributed Ledger Technologies; overview of virtual currencies which contained the explanation of virtual currencies launched globally, global regulatory framework for virtual currencies and virtual currencies as a medium of exchange or legal tender; proposal for Central Bank Digital Currency, its issues, risks and legal framework for the same.

³² CERT-IN https://www.cert-in.org.in/PDF/CERT-In_Directions_70B_28.04.2022.pdf (last visited May 20, 2022, 07:20AM).

³³PRS LEGISLATIVE RESEARCH, https://prsindia.org/files/bills_acts/bills_parliament/1970/Report%20of%20the%20Inter-Ministerial%20Committee%20on%20Virtual%20Currencies.pdf (last visited May 21, 2022, 09:43PM).

The recommendation of the committee is as follows:

- Virtual currencies can hold some value which can be used as mode of exchange but cannot be used as a legal tender.
- The Committee explained that the virtual currencies cannot be used as a legal tender because of volatility, market fluctuations, decentralization, lack of regulatory framework, vulnerability of consumers towards cyber- attacks, phishing and ponzi schemes, lack of redressal mechanism for wrong transactions, lack of energy resources to support the technology, anonymity which leads to terrorist funding and money laundering.
- The Committee reviewed the regulatory framework around the world. It was observed that Switzerland, Thailand and Japan have allowed the use of virtual currencies as a mode of payment. It is used as a mode of exchange (barter system) and not as a mode of payment in Russia. China has imposed a blanket ban on virtual currencies. It observed that virtual currencies have not been declared as legal tender in any country. The Committee recommended imposing a blanket ban on all private cryptocurrencies. It excluded its ban on any cryptocurrency issued by the State. The Committee advised to criminalize the activity associated with cryptocurrencies. It recommended constituting a Standing Committee to track the technological advancements globally and locally and to study the issues related to virtual currencies whenever required.
- The Committee highlighted pros of official digital currency which included cheaper alternative of cross-border transaction of payments; accessibility of payment records and safe and easy distribution. The Committee also focused on cons which included infrastructural investment, high electricity consumption, high computation power and high speed internet connectivity. Although, Committee highlighted pros and cons of having official digital currency, still it recommended the government to keep an open mind for it. It recommended that Ministry of Finance, some officials of RBI and Ministry of Information Technology (MEITY) to collaborate together for the study and development of model for digital currency in India.
- The Committee recommended the use of Distributed Ledger Technology as it has potential to identify duplicate transactions which could be used for fraud detection, KYC purposes, insurance management, maintaining land records. It suggested that Department of Economic Affairs should facilitate the usage of this technology. The same technology can be used by financial sector regulators also.

- The Committee proposed a draft Bill named ‘Banning of Cryptocurrency and Regulation of Official Digital Currency Bill, 2019. The Bill prohibited the use of virtual currencies as a legal tender and also restricted the buying, holding, mining, issuance and disposal of these currencies. It banned the use of cryptocurrency as payment system, mode of exchange, means of credit or raising of funds and investment scheme. The Bill also imposed penalties and punishment in contravention of provisions of the Bill. It also proposed that ‘Digital Rupee’ would be issued by RBI which would be considered as legal tender.

The Parliament intended to introduce ‘The Cryptocurrency and Regulation of Official Digital Currency Bill, 2021’ for discussion. This intention was reflected in the Lok Sabha Bulletin dated January 29, 2021.³⁴ The Bill, 2021 is unavailable in public domain. The Bulletin stated that Bill was to facilitate creation of official digital currency to be issued by RBI. The Bill was sought to prohibit all private cryptocurrencies in India. The Bill permitted particular exceptions to propagate the technology of cryptocurrencies and its uses.

Advertising Standard Council of India

The Advertising Standard Council of India (ASCI) is a body to self-regulate the advertisements and protect the consumers. The ASCI Social regulates the digital content creators and influencer marketing.³⁵ The Advertising Council of India issued “Guidelines for advertising of Virtual Digital Assets and linked services” on 23.02.22.³⁶ These Guidelines are applicable on advertisements on and after April 01, 2022. Moreover, the advertisements in contravention with these Guidelines have to be taken down before April 15t, 2022. These Guidelines are for relevant advertisers, digital media marketing houses owners as well as celebrities and prominent persons who endorse Digital Assets. These Guidelines were framed to counter the risks and volatility associated with virtual digital assets as it is not backed by any tangible asset. These Guidelines are issued to protect the consumers from misleading advertisements and exaggeration of advertisements which is framed to abuse their trust. The major highlights of the Guidelines are as follows:

- The Cryptocurrencies and NFTs are unregulated. The loss incurred in transactions has no formal recourse. Therefore, disclaimers regarding the risk have to highlighted in print advertisements, audio advertisements and video advertisements very clearly. This

³⁴ LOK SABHA, <http://loksabhadocs.nic.in/bull2mk/2021/29012021.pdf> (last visited May 25, 2022, 10:34PM).

³⁵ ASCI SOCIAL, <https://asci.social/about> (last visited May 25, 2022, 11:57PM).

³⁶ ASCI, <https://ascionline.in/images/pdf/vda-guidelines-23.02.22.pdf> (last visited May 26, 2022, 00:25AM)

guideline is also applicable on social media posts. The disclaimers have to be made in dominant language.

- The advertisers are prohibited to use terms related with regulated products or assets like depositaries, securities, currencies, custodians, etc.
- The advertisements or marketing initiatives undertaken by the advertisers shall not contradict the disclaimers or warning. The advertisements must not claim virtual digital assets to be more profitable than traditional and regulated assets and investment options.
- The advertisements should not promise or guarantee future gains. It should contain clear, accurate and updated information.
- The advertisement should not contain past performance of virtual assets in a biased manner. The returns of less than twelve months should not be incorporated in the advertisement.
- The advertisement should contain the accurate and legible information of advertisers with their name, phone number and email address.
- The minors or anyone who appears to be minor must not be featured in the advertisements.
- The virtual digital assets must not be portrayed as a solution to financial, personality or other types of problems.
- The guidelines put liability on celebrities and prominent personalities to do their due diligence about the claims made by them in advertisements.

III. CONCLUSION

The fate of cryptocurrencies had been very dicey over the past. The government notified the people about the risks associated with virtual currencies. The introduction of hefty crypto-tax regime in the country it is anticipated that the government shall not lose the opportunity to adopt the technology which would help India to become a global leader. The regulators in India have neither considered the virtual assets illegal nor legal. However, the Government has denied recognizing the private virtual currencies vide Cryptocurrency and Regulation of Official Digital Currency Bill, 2021. However, the MCA notification and Annual Budget for FY2022-2023 may indicate the legality of the same and establish confidence amongst investors. There is uncertainty as to Cryptocurrency and Regulation of Official Digital Currency Bill, 2021 attaining the force of law but MCA notification and Annual Budget for FY2022-2023 has undoubtedly showed some ray of hope to settle the ambiguity pertaining to

legality of private virtual currencies.

The major concern relating to nature of virtual currencies is that there is neither the backing from any physical asset nor it is backed by any sovereign. The issue of high volatility is another challenge. The misuse of virtual currencies can be done to fund terrorists. The money laundering to deal in these cryptocurrencies can severally affect the stability of an economy. The feature of anonymity and decentralized mechanism eliminates the need for any central authority. The task of identification in crypto network cannot be allocated to any other institution. Lack of redressal forum always put consumers' hard earned money in the jeopardy. The environmental impact due to mining process cannot be overlooked as it can increase the carbon-footprints. At a macro- economic level, these virtual assets increase the risk of money laundering and terrorism if accepted as a legal tender.

The Finance Minister announced launch of 'Digital Rupee' in the Annual Budget speech.³⁷ It was announced that RBI shall launch a Central Bank Digital Currency (CBDC)-Digital Rupee soon. This shall be based on blockchain technology. It shall be a legal tender similar to fiat currency that is the paper currency. The CBDC can be exchanged with any other fiat currency. CBDC shall be backed by the traditional banking system. The government should thoroughly evaluate the implementation of such crucial decision. The quick implementation of Digital Rupee may result in more losses than gains.³⁸ The RBI has to play a crucial role to curate the conflicting goals of accountability, privacy, transparency, scalability and security. The launch of Digital Rupee may be a boon provided strict know your customer (KYC) are implemented. "The fate of CBDCs and cryptos are somewhat intertwined, but it is too early to predict if they can possibly coexist, or one would emerge as the clear winner."³⁹

As the technology is evolving and the government is trying to evaluate the implications of the technology, it is duty of government to focus on regulatory aspects from the lens of infrastructure, testing and certification, research, environment, technology and capacity building.

³⁷Pranav Mukul, *Explained: What is Digital Rupee announced by Sitharaman in budget*, INDIANEXPRESS, <https://indianexpress.com/article/explained/explained-what-is-the-digital-rupee-announced-by-sitharaman-in-budget-7751109> (last visited May 29, 2022)

³⁸ T C A Srinivasa Raghvan, *Why Digital Rupee is a distraction and India ought to go slow on it*, BUSINESSSTANDARD https://www.business-standard.com/article/opinion/a-digital-rupee-is-a-distraction-and-india-ought-to-go-slow-on-it-122051400167_1.html (last visited May 30, 2022)

³⁹ Venkateswaran Narayanan, *Cryptos as an asset class: the road ahead*, KPMG <https://home.kpmg/in/en/blogs/home/posts/2022/04/crypto-as-asset-class-settlement-risk-mantra.html> (last visited May 31, 2022)