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Legal status of Cryptocurrency in India

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ABSTRACT

This article aims at providing a brief idea of the history of cryptocurrency trading scenarios in India along with an idea of how to do cryptocurrency trading in India and also its legality in India and the future of the virtual currency trading market in India. The need to regulate cryptocurrency with a governing body has also been mentioned below and the risks to the country if it is not governed soon.

Keywords: *Cryptocurrency, Trading in India, Virtual Currency.*

I. INTRODUCTION

The fluctuating prices of the very famous Bitcoin, a cryptocurrency, has brought up a heap of questions and fascination about the topic yet again in the public. Cryptocurrency has made money in millions for a large number of its users who have developed a knowledge about the same over the years, however, the legal status of the same remains quite uncertain. With RBI banning it in the year of 2018, and the government now stating that it is not illegal to trade in virtual currencies, the investors of crypto in India have had a big roller coaster ride. The exact legal status remains uncertain in India with a number of bills going on for regulating the same and also imposing a complete ban on the same.

II. RBI BAN ON VIRTUAL CURRENCY

In the year of 2013, the RBI had issued a press release in order to caution any of the VC users, holders and traders due to the medium of payment not being authorised by any central bank or monetary authority which may pose certain risks. As virtual currencies are not backed by any asset and have no real underlying asset value, unlike stocks, the government wanted to discourage the same in order for the peoples financial security. A big turn took place in this matter when the case of Internet and mobile association of India² arised, when The RBI also issued a statement in the year 2018 as the respondent, on the regulatory policies which stated that any business or entity should not be dealt with or provide services of selling or trading in

¹ Author is a student at MIT World Peace University, India.

² A.I.R 2020 10 S.C 274.
https://main.sci.gov.in/supremecourt/2018/19230/19230_2018_4_1501_21151_Judgement_04-Mar-2020.pdf.

virtual currencies³. The reason behind their views were the following:

- Increased use of virtual currencies would eventually erode the monetary stability of the Indian currency and the credit system
- RBI forewarned clients, traders or holders of cryptocurrency about the potential monetary, operational, lawful, client assurance and security related dangers they were incriminating themselves to.
- The Reserve Bank of India or any other government agency will not be able to manage, restrict, regulate or control the generation of risk capital and its transactions, which will lead to permanent and unavoidable financial risks.
- virtual currencies do not fulfill the standards together with keep of value, medium of charge and account units, required for being stated as currency.

The Petitioners arguments in the case of Internet and mobile association of India v. Reserve bank of India⁴ were:

- RBI has no power to prohibit the activity of trading in virtual currencies through VC exchanges
- Virtual currencies are not legal tender but tradable commodities/digital goods, not falling within the regulatory framework of the RBI Act, 1934 or the Banking Regulation Act, 1949⁵.⁶
- Virtual currencies do not even fall within the credit system of the country, so as to enable RBI to fall back upon the Preamble to the RBI Act 1934, which gives a mandate to RBI to operate the currency and credit system of the country to its advantage.

III. LEGAL STATUS OF VIRTUAL CURRENCY IN INDIA

The Supreme Court lifted the ban put by the RBI in 2019, expressing that it disregarded business and profession freedom under Article 19(1)(g) of the Constitution. From that point forward, digital currency has been working in a legitimate province. This has put a stop to various illegal activities and trading in the black market due to increased transparency as the ban from the virtual currency was lifted by the government. This does not mean that trading in virtual currencies is now regulated in India but it only means that it is just not illegal to trade

³ <https://rbi.org.in/Scripts/NotificationUser.aspx?Id=11243>.

⁴ *Supra* note 1.

⁵ The Banking regulation act, 1949.

<https://rbidocs.rbi.org.in/rdocs/Publications/PDFs/BANKI15122014.pdf>.

⁶ INDIA CONST. art. 19.

in the same. This still poses various risks for the over 75 lakh cryptocurrency owners in India who have a total holding of around 1 billion as they are the ones who will fall prey to any frauds that take place as, there is no regulatory body that governs the same in India yet, or if the government poses another ban on the virtual currency trading. Inconsistent signals keep on evading Indians dealing with virtual currency. From one perspective, organisations are currently needed to unveil their crypto holding and ongoing reports suggesting that the public authority is likewise comprising another board to suggest on crypto regulation whereas, big banks like ICICI and more are not letting crypto exchanges go through. The government has come up with a bill in 2021 called the cryptocurrency and regulation of official digital currency in India bill 2021⁷, this bill was planned to be proposed in the lok sabha, however it has not been yet, but it does portray the government is keen on coming up with a law on crypto assets, the purpose of the law is however not yet known to anyone. The honourable finance minister, Nirmala Sitharaman did mention in the news how the cryptocurrency has to be regulated⁸, and the fact that there won't be a complete go one way or the other but a more calibrated decision, as the world technology is moving fast, and in order to stay vigilant, we need to develop and be open to changes and experiments in the cryptocurrency field are bound to happen.

IV. HOW TO TRADE CRYPTOCURRENCY IN INDIA?

There are various platforms to trade cryptocurrency in India. The most popular of the lot are:

- Zebpay
- WazirX
- CoinDCX GO
- Coinswitch
- Binance
- coinbase

Binance and coinbase are international platforms. Cryptocurrency trading is open 24/7, not like the stock market trading. This lets the traders or investors buy or sell crypto at any hour of the day and any day of the week. The cryptocurrency transactions where there have been big amounts of profits have to be taxed which was one of the reasons for the government to remove the ban from the same, in order to maintain transparency.

⁷ <http://loksabhadocs.nic.in/bull2mk/2021/29012021.pdf>.

⁸ All windows on cryptocurrencies not be closed: Nirmala Sitharaman, INDIA Tv (March 16, 2021 15:13 IST) <https://www.indiatvnews.com/business/news-all-windows-on-cryptocurrencies-not-be-closed-nirmala-sitharaman-691367>

V. THE NEED TO REGULATE CRYPTOCURRENCY TRADING IN INDIA

The ambiguity caused by the Indian government will unnerve the damnation of numerous beginners who have entered the crypto market as of late as there is no lucidity on what's going on around. This may also lead to people bidding farewell to the market due to the increased risk of investors and the government's uncertainty and this will only hurt the market and development of the economy and India's technology. Millennials would never be able to experience the virtual currency market ecosystem that resides in the economies out of india and the rest of the world will have developed. If the government puts a ban on the trading of virtual currencies, then the people who feel like trading the same would do it anyhow as, they may think the decision of the government as unreasonable. Trading in the black market will also increase substantially if not supported by the government, this will lead to an unprecedented increase in more illegal activities and frauds which would only cost the investors more than the other way around. The government also has to develop its technology in order to compete with other developed nations who are much ahead in technology even though India has been recognised for its FinTech and regulating VC's would help India hold that image up globally and not falsify that reputation. One of the most important reasons why the RBI had put a ban on trading crypto was due to the underlying risks like increase in illegal activities, black market trading, scamming and increased frauds taking place, however, imposing more of a ban would only increase such activities as The scammers will not change course, and those who just want to make money will keep on going and finding new ways to do so. The regulation will also act like a capital protection for the investors and give them the confidence to increase their investment and wealth which will only benefit the economy. It will also educate a lot more people about the international virtual currency trading market which is a relatively new concept and also very popular amongst the intellectuals of the world.

VI. CONCLUSION

Therefore, the government needs to usher into a new era where they support the use of cryptocurrency as this will not only induce development of the technology and economy of India but also encourage the investors to trade as, they will be supported by the governing or regulating body created by the government, this will lead to more educated people and also help keep up with other countries development. Just like every other thing, there will always be a bad side to anything and everything and in this case too but that does not mean the government should completely discourage the trading of crypto, as It is wrong to stop the growth of many people, because few people are doing the wrong thing, these people will always

do the same no matter what the government decides, and regulating cryptocurrency will only help the government to trace back these frauds and be able to catch these people, reducing the number of scams and also increase transparency in the market along with satisfied traders who can now focus on trading rather than being scared of cryptocurrency being banned and give crypto more legitimacy and give the traders a sense of safety for their investments. It's miles pretty clean that the benefits of regulating the crypto marketplace surely outweigh the cons.
