

INDIA'S UNEASINESS WITH BLOCKCHAIN-BASED CRYPTOCURRENCY: IDENTIFYING THE VOID ON THE LEGALITY OF BITCOINS

Written by *Akash Bagh** & *Abhinav K. Shukla***

* *Research Scholar, Amity Law School, Amity University, Raipur, India*

** *Assistant Professor & Research Scholar, Amity School of Law, Amity University, Raipur, India*

ABSTRACT

In the absence of a specified regulatory structure, cryptocurrency is a digitally created financial instrument used as a means of exchange without the authority of a bank, with no physical structure and legal tender, in some ways disrespecting sovereign boundaries and authorities. Bitcoin is the first blockchain-based currency created in 2009 and is the highest-priced on crypto exchanges worldwide. Bitcoin was introduced in India in 2012 and has been one of the tops searched words on Google last year in India. Since the government's Demonetization announcement, Indian Bitcoin adoption has been on the rise. However, the increasing use of Bitcoins in terrorism funding, ransomware, the illegal drug trade, and cybercrime has prompted concerns among security and law enforcement authorities. In 2013, the Reserve Bank of India (RBI), the Indian economy's watchdog and apex banking body, warned cryptocurrency users about the risks and threats they could face. In May 2017, the Ministry of Finance held a public consultation on virtual currency laws. In 2018, RBI banned banks from facilitating the activities of cryptocurrency exchange platforms. This move of RBI has stunned the whole industry based on Blockchain financial activities. The decision of RBI is the Supreme Court of India for hearing. The paper discusses the challenges to Bitcoins in India beyond the RBI's ban & way forward. The paper also provides a legal and regulatory perspective of cryptocurrencies, mainly Bitcoins in India, compared to positive crypto countries.

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BITCOINS: AN OVERVIEW

Satoshi Nakamoto, a highly advanced crypto-currency, was debuted in 2009 under the name Bitcoin. It has issued a document outlining some of bitcoin's properties, processing techniques, and other helpful information, such as the fact that any central bank does not govern bitcoins, government, or authority and relatively easy to move across borders.ⁱ It is carried out via the blockchain, which is a distributed ledger system. It also defined the term “wallet” as a file in which bitcoins are saved, which is related to bitcoin transactions.ⁱⁱ

The three methods suggested in the study for obtaining bitcoins are as follows:

- i. Bitcoins can be purchased in exchange for currency.
- ii. Bitcoins can be obtained through mining, a complex process through which we can provide input for difficult problems related to mathematics.
- iii. Bitcoin can be obtained by getting into a transaction with another Bitcoin User, e.g. selling any commodity in exchange of Bitcoins.

Blockchain technology usually governs the Bitcoins and the mining process related to them. The blockchain governing the bitcoins is made up of several blocks which contains properly recorded transactions which later gets validated by a process called mining, which requires huge processing power. Following the validation process of the transaction, a new block gets added to the existing chain of the block. This blockchain which has been created prohibits any kind of change in the history of a previously created block. The process of mining is a process which validates or rather authenticate the bitcoin transactions by determining the accurate input for the complex mathematical calculations the transaction carries.

INDIA'S BITCOIN MARKET REVIEW

One of the most promising and progressive economy in world is India’s economy and the market has shown this by absorbing new trends on several occasions. Bitcoins are a new way

of doing business in India that was introduced in 2009 and has seen a considerable increase in users in a short period. To regulate bitcoins after their meteoric rise in popularity and use in 2018, the Reserve Bank of India (RBI) issued a complete prohibition on the use of Bitcoins and other cryptocurrencies in India, claiming that it would harm the country's economic growth and be linked to a variety of criminal activities. India's largest cryptocurrency exchange, ZebPAY, was recently shut down.ⁱⁱⁱ The blanket ban hurts freshly established start-ups and workforces interested in blockchain technology. These entities are forced to migrate to other countries that encourage blockchain technology and cryptocurrency due to the non-approval of bitcoins.^{iv} Furthermore, Indian banks announced in 2018 that cryptocurrency users' accounts would be suspended, and State Bank of India, Axis Bank, HDFC Bank, ICICI Bank, Yes Bank, Kotak Mahindra Bank, and other institutions have blocked the accounts of their customers who had engaged in any bitcoin transactions.^v

The entire situation will isolate India in the worldwide market, where other significant governments have adopted bitcoin. By prohibiting bitcoins, India's approach to providing market and other security is worse than enacting rules; it would harm the Indian economy in the worldwide market by reducing the number of investors and poses a security risk.

BITCOINS TRANSACTIONS & INDIA LEGAL INFRASTRUCTURE

In 2018, the Reserve Bank of India, in its circular, denied accepting bitcoins as a legal tender in India as well as they put a prohibition ban on the use of any virtual currency in India. It does not specify the category it falls into, such as goods or commodities, to apply laws and other implications.

This section is divided into two parts; in the first part, the authors have attempted to classify bitcoins in the categories such as legal tender, currency, goods, security, property, etc. In the second part, the authors attempted to check whether any transaction made by Indian resident in bitcoins outside India is permissible or not.

THE CLASSIFICATION OF BITCOINS

a) Reserve Bank of India act, 1939

Legal tender is not defined anywhere under Indian Laws. Although, Certain characters of the legal tender has been listed under Section 26 of the RBI act, 1939. According to section- 26, all the bank's notes, except mentioned in section- 6A of the RBI Act of 1939, shall be deemed a legal tender of India. This section also states that the Central Government can create another legal tender in India by notifying Gazette. Besides, The RBI has unqualified power to issues banknotes which shall be treated as legal tender. Although in this case, these banknotes won't get considered as legal tender mainly two reasons: Firstly, the banknotes are not in their actual form, and secondly, the central government hasn't notified this as legal tender of India.^{vi}

b) The Sales of Goods Act, 1930

Goods are defined in the Sales of Goods Act, 1930; according to the definition, the term "goods" means "*every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.*"^{vii}

The definition which the act provides highlights various elements to qualify or fall in the category of goods in India. As per the definition the good shall be moveable goods, other than any form of money and actionable claims. The nature of the bitcoins is moveable and may be treated like goods in India until the precise regulation has been notified.

c) Foreign exchange management act, 1999

The statute defines "currency" as all "*currency notes, postal notes, postal orders, money orders, checks, drafts, travelers' cheques, letters of credit, bills of exchange and promissory notes, credit cards, and other similar instruments as the Reserve Bank may notify*"^{viii}.

Bitcoins won't fall under the above-mentioned definition of currency mainly for two reasons. Firstly, it does not fall in the categories mentioned above, which are enlisted in the definition of the currency. Secondly, it also does not qualify in the second category where RBI notifies other instruments as currency. In its recent statement on April 6, 2018, where RBI denied

providing legal tender status to Bitcoins or all other types of cryptocurrencies. It put a complete prohibition on all the financial banks of India from transacting in bitcoins.^{ix} The act also defines foreign currency, and according to the definition, it includes all currency except the Indian currency. Bitcoins are foreign to Indian market however it should not be treated as the foreign currency because it is not associated with any jurisdiction around the globe.

d) *The Benami Transactions (Prohibitions) Act, 2016*

Benami transactions (Prohibition) Amendment Act, 2016 defines “Property” in section 4(26), which means “*all types of assets which can be movable or immovable, tangible or intangible, corporeal or incorporeal and it holds any right or interest or legal documents or instruments evidencing title to or interest in the property and where the property is capable of conversion into some other form, then the property in the converted form and also includes the proceeds from the property*”.^x

The definition of property in the abovementioned section is inclusive, and bitcoins have the nature of intangible and movable so with regards to this context we can conclude that in India bitcoins falls under the definition of property. If it is treated as property in India, it will fill the vacuum which has surfaced due to the absence of any legislation and will benefit in tax collection.

e) *The Securities Contracts Regulations Act, 1956*

Securities Contracts Regulations Act, 1956; defines “security” in section- 2(h) of the act, which means i. “*shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or another body corporate; it. Derivative; ib. Units or any other instrument issued by any collective investment scheme to the investors in such schemes; ic. Security receipt as defined in clause (zg) of section 2 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; id. Units or any other such instrument issued to the investors under any mutual fund scheme; ii. Government securities iii. Such other instruments as may be declared by the Central Government to be securities; iv. Rights or interest in securities*”.^{xi}

There is no underlying value of bitcoins, and it is mandated as per the definition such form of property should have an underlying value. Moreover, it is constructed through mining. Hence, it shall be considered as security under SCRA.^{xii}

f) *Income Tax Act, 1961*

Income Tax Act (ITA), 1961 applies to incomes and profits earned on the income. The imposition of bitcoins under ITA depends upon the nature that the RBI has assigned. If the treatment of Bitcoins is similar to income, then it should fall under the category of “Income” defined as per section-2(24) of the act.^{xiii} It means profits and gains. Profit and gains include buying and selling, transferring or acquiring assets, and taxable in India.

g) *The Customs Act, 1962*

The act Levies tax on all physical form of software imports which are subjected to the customs duty.^{xiv} So, if the bitcoins get considered as software’s, they will be subject to customs duties under the act. It is, however, remitted solely through an internet site, except for the customs duty on software. As a result, bitcoin software imports are exempt from customs duty.^{xv}

WHETHER BITCOINS CAN BE USED IN EXCHANGE FOR ANY TRANSACTION MADE BY A RESIDENT OF INDIA TO OUTSIDE INDIA

a) *Foreign Exchange Management (Manner of Receipt And Payment) Regulations, 2016*^{xvi}.

Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016 listed different modes of payment for foreign trade.

Regulation 5 of the Regulations describes the modes for payment of imports in India. It says that:

- i. “where the goods are shipped from the Asian Clearing Union (ACU) member, but the supplier is resident of a country other than a member of ACU (other than Nepal and Bhutan), payment may be made in rupees to the account of a bank situated in any country other than an ACU member or any freely convertible currency,
- ii. in all other cases, payment shall be made in a currency appropriate to the country of shipment of goods.
- iii. Any other mode of payment as may be prescribed by the Reserve Bank of India from

time to time.”^{xvii}

To understand the section's applicability on the bitcoins, the determination of the 'freely convertible currency' is necessary. “Freely Convertible Currency” is defined in the Para 2. of the Exchange Control Manual Permitted Currencies and Methods of Payment which states that “*the expression ‘permitted currency’ is used in the Manual to indicate a foreign currency which is freely convertible which means a currency which is permitted by the rules and regulations of the country concerned to be converted into major reserve currencies like US Dollar, Pound Sterling and for which a fairly active market exists for dealings against the major currencies.*”^{xviii}

The above definition of the free currency convertible does not mention bitcoins or any cryptocurrency. By looking at the current scenario, cryptocurrency cannot be considered the significant currency reserve because against the primary freely convertible currency; Authorized Banks have to maintain a certain reserve. However, in the case of bitcoins, RBI put a blanket ban. Hence, bitcoins will not be considered the freely convertible currency, and for the same reason, they shall not be permitted to use in the non-ACU members for imports.

Payment shall be made in the currency relevant to the country of shipment of goods in all other situations, according to the regulation. This can be tricky to determine, for the fundamental question is what if the importing country allows the payment in bitcoins or any other cryptocurrency. In this case, the current circular issued by RBI will be acknowledged, and according to that circular, the exchange and usage of bitcoins are permitted. The current legal framework also shows a vacuum for the usage of bitcoins in the Indian market. Hence, till time there will be no guidelines or precedents issued by the Legislature and Judiciary, such exchange is not permissible.

Hence, any Bitcoin exchange for export or import of goods shall be considered in violation of the Foreign Exchange Management Act, 1999.

b) Foreign Exchange of Management Act, 1999

FEMA, 1999 deals with the Current and Capital Account transactions. To determine the meaning of the above two terms is necessary to apply FEMA to India's bitcoin transactions. Section-2(j) defined “*Current Account Transaction*”, which means that:

- i. *“a transaction other than a capital account transaction and without prejudice to the generality of the preceding such transaction includes,*
- ii. *payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business,*
- iii. *payments due as interest on loans and as net income from investments,*
- iv. *remittances for living expenses of parents, spouse, and children residing abroad, and*
- v. *expenses in connection with foreign travel, education and medical care of parents, spouse and children;”^{xix}*

Whereas section- 2(e) of the act defines capital account transaction, which means “*a transaction which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of persons resident outside India, and includes transactions referred to in sub-section (3) of section 6;”*

Section 6(3) states that:

- i. *“transfer or issue of any foreign security by a person resident in India;*
- ii. *transfer or issue of any security by a person resident outside India;*
- iii. *transfer or issue of any security or foreign security by any branch, office, or agency in India of a person resident outside India;*
- iv. *any borrowing or lending in foreign exchange in whatever form or by whatever name called;*
- v. *any borrowing or lending in rupees in whatever form or by whatever name called between a person resident in India and a person resident outside India;*
- vi. *deposits between persons resident in India and person resident outside India;*
- vii. *export, import, or holding of currency or currency notes;*
- viii. *transfer of immovable property outside India, other than a lease exceeding five years, by a person resident in India;*
- ix. *acquisition or transfer of immovable property in India, other than a lease not exceeding*

five years, by a person resident outside India;

- x. *giving of a guarantee or surety in respect of any debt, obligation or other liability incurred— (i) by a person resident in India and owed to a person resident outside India; or (ii) by a person resident outside India.*^{xx}

In this part, whether bitcoins are permitted to use for transactions including exports and imports. To check the applicability of bitcoins under FEMA, the classification of bitcoins under capital or current account transactions are necessary. The classification can be generated solely on the grounds of treatment of bitcoins as goods or assets. Bitcoins shall be treated as goods or assets. Hence, the applicability is solely dependent on the notification by RBI, and due to the absence of such notification, such treatment shall not be permitted.

CURRENT LEGAL POSITION OF BITCOINS IN INDIA

The Reserve Bank of India (RBI) cleared its intention by issuing various notifications and press releases regarding the status of bitcoins as legal tender in India. On December 24, 2013, the Reserve bank of India issued a press release in which it outlawed all transaction relating to virtual currency shall be prohibited in India. In addition, it cleared that such currencies do not hold any legal and monetary value in India. So, it shall not be used as legal tender.^{xxi} RBI mentioned reasoning for the blanket ban is to safeguard the people's interest and curb illicit activities associated with virtual currencies. In many instances, RBI has warned citizens about the volatile nature of all virtual currencies, including bitcoins, and suggested they avoid any type of usage and transaction in bitcoins. It has also pointed out that bitcoins are highly prone to losing it through online hacking.^{xxii}

Furthermore, the RBI has stated that virtual currencies are involved in a variety of illicit activities, including money laundering and terrorism financing. Because virtual currencies do not divulge their owners' identification and work through a peer-to-peer network, laws like Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) have not been proven effective in controlling criminal actions carried out with them.^{xxiii}

On April 6, 2018, RBI issued another notification regarding bitcoins transactions in India, in which it put a blanket ban on dealing of virtual currencies in India. In this notification, RBI mentioned that “*it shall not deal in VCs or provide services for facilitating any person or entity in dealing with or settling Virtual Currencies*”.^{xxiv} In support of the notification, RBI advised regulated firms that already provide such services to terminate the arrangement within three months of the circular's publication date.^{xxv} This will lead to the similar consequences of indirectly banning an organized cryptocurrency sector in India.^{xxvi}

The Internet and Mobile Association of India (IAMAI) and others filed a suit with the Supreme Court of India, challenging the circular above. IAMAI contested the circular's constitutional legitimacy, claiming that it is a constitutional breach that infringes on their fundamental rights provided by Articles 19 (1) (g) and 14 of the constitution. On September 12, 2018, RBI issued a reply to the contention of IAMAI and, in its reply, chooses to remain silent for banning cryptocurrency. However, it argued that no other legal system categorizes cryptocurrency in their recent working format, so why India will categorize.^{xxvii} To issue the final order Supreme Court demanded to

file the counter affidavit from the government of India regarding the publication of the Subhas Chandra Greg Committee's report, but the regulations were still not drafted.^{xxviii} The matter is still pending for the final arguments and will be decided by the end of February 2019. However, this prohibition forced the interested entities to question the powers of RBI. RBI associated bitcoins and other virtual currencies with many crimes and illegal activities but putting an absolute ban on Bitcoins does not solve the issues associated with bitcoins. RBI, by issuing various circular, will not control the actions of bitcoins enthusiast because there are various other variables to deal in it.^{xxix}

On the same issue, Nishith Desai Associates (NDA), who represents the IAMAI in Supreme Court, addressed their views regarding enacting a regulation instead of a complete ban on bitcoins. NDA and ZebPay cleared the current status of bitcoins which does not accept as legal tender in India, but it shall not be considered illegal.^{xxx} NDA further pointed out some adverse consequences that the Indian legal system might face due to a complete ban, such as eventually bitcoin enthusiast starts transacting in exchange for cash. This will hamper the transparency of the transaction, or they start dealing through overseas means. It will create a loss in the tax

collection of the country.^{xxxii} It forwards its views that bitcoin transactions in India should be partially allowed subject to comply with specific rules such as extensive KYC norms compliance.^{xxxii}

Moreover, regarding bitcoins, the Law Commission of India, in its 276th report on “*Gambling and Sports Betting Including in Cricket in India*,” favored bitcoins in gambling transactions. Law Commission, in its report, stated that a complete ban would result in hiking in the crime rate.^{xxxiii}

The current scenario is entirely acceptable, bitcoins are the modern currency and future of the world, and the national scenario does not allow accepting the modern currency to the fullest. There are risks associated with the acceptance of bitcoins. However, complete prohibition generates no good impact on the economy. It will raise the black market-based transaction in India. However, if such transactions are legalized in India, our country's tax collection can be benefitted from the implementation of the tax on every cryptocurrency transaction. The present petition represents the liberalized and modern rules for the governance of the country. Through this petition, the Honorable Supreme Court of India addressed the vacuum for the cryptocurrency laws in India. It relied on the Subhas Chandra Garg Committee and Law Commission of India's suggestions on bitcoins in cricket gambling. With the actions and reference of the most prominent institutions of India, the conclusion can be deduced that bitcoins/cryptocurrencies are the modern currency, and any nation should not avoid them.

A COMPARATIVE STUDY BETWEEN BITCOINS POSITIVE AND NEGATIVE NATIONS

Positive nations

It includes a list of few nations which allow the bitcoins as their legal tender or provide some status like good or property etc., in their legal system. Some of the nations which are favorable to the bitcoin's transactions are listed below:

- ***United States of America***

In the United States of America, Financial Crimes Enforcement Networks (FinCEN) and Internal Revenue Service issued specific additional guidelines to safeguard online transactions of virtual currency. In March 2013, in USA Financial Crimes Enforcement Networks (FinCEN), legislators issued non-binding regulations for the governance of virtual currencies, including bitcoins.^{xxxiv} In 2014, FinCEN issued two additional guidelines for addressing the same issue; in the first guideline, it exempted certain bitcoins users from registration under the category of “*money service business*”. This exemption is applicable exclusively for the users who generate bitcoins through mining^{xxxv} for a reason; mere mining of bitcoins does not constitute a business transaction. The second guideline targets business transactions are consisting of monetary exchange for bitcoins. This guideline mandates such transactions to be registered under the category of “*money service business*”^{xxxvi} subjects to a specific exception like the investment, which falls under non-commercial investment.^{xxxvii}

Internal Revenue Services (IRS) also issued guidelines regarding virtual currencies. It put virtual currency in the category of the “property” for imposing federal taxes. In addition to the property tax on bitcoins, it added the tax on monetary gain receives during the exchange or sale of virtual currency in the market.^{xxxviii} This treatment of the virtual currency requires compulsory recording of any property loss or gain that occurred. To avoid tax liability on virtual currency, American legislation put forward a new rule that will exempt the federal government from imposing a tax on virtual currency for five years.^{xxxix}

- ***Australia***

On April 11, 2018, the Australian agency AUSTRUC introduced a new law to regulate the exchange providers of digital currency. AML/CTF Australia’s Financial Intelligence Agency and Anti-money Laundering and Counter-Terrorism Financing Regulator. Such kind of regulation aims to make it mandatory for all the digital currency exchanges with a business operation in Australia to register themselves with the authority and comply with all the compliances and reporting requirements of AMLCTF.

Furthermore, the 2006 Act obliged regulated firms to acquire and record any information about their clients necessary to authenticate their identification, monitor their transactional activity, and report to AUSTRAC any suspicious transactions or activities involving \$10,000 or more.

DCEs must register and report to AUSTRAC in order to comply with the regulation. The authority can keep an eye on and put a stop to any acts that appear to be linked to terrorism financing or money laundering.^{xl}

- **Japan**

Japan has accepted bitcoins as legal cash, and the Financial Services Agency of Japan has recently established a legal framework for cryptocurrency and Initial Coin Offering regulation. In this framework, the FSA mentioned that they require crypto exchanges to strengthen the “*management and maintenance of customer property*,” like the management of private keys.^{xli} Additionally, it also pointed out those exchanges should “*have net assets equal to or more than the amount equivalent to the currency and repayment funds*” to protect their customers from hacking.^{xlii} The framework has also listed various solutions addressing other issues such as hacking and countermeasures against crypto exchanges going bankrupt etc.^{xliii}

Apart from the aforesaid salient features, the framework has categorized the regulation in the three headings to regulate cryptocurrencies efficiently; they are listed below:

a. Self-Regulation

Under the Self-Regulation category, it has been mentioned that “*more members should join to join the certified [self-regulatory] association and construct their system in compliance with the rule.*”^{xliv}

In addition, the framework gives absolute power to FSA to refuse or cancel the registration of operators in case of any non-compliance with the rule.^{xlv}

b. Deemed dealers

The term “*Deemed Dealers*” is added and defined in the framework, which includes “*companies that have been allowed to operate crypto exchanges while their applications are being reviewed*”.^{xlvi} To regulate deemed dealers, the FSA suggested some measures which include compulsory registration for expanding their businesses or listing additional coins.

c. Other Measures

Other measures include the other ways not listed in the above two categories through which cryptocurrency can be used. To regulate cryptocurrency as a whole, the FSA levy some restrictions on privacy coin listings, derivate transactions and margin trading, etc. Moreover,

this framework specifies that the rules of ICO will govern securities. However, ultimately depending on the token nature, it will be regulated following the provisions of the Financial Instruments and Exchange Act or the Fund Settlement Act. It also provides powers to the third-party organizations to enact a framework for token issuers.^{xlvi}

Moreover, several procedures have been advised by FSA advising the businesses which are not covered by the regulations, such as internal control system, registration system, separating the customers crypto currencies and the exchange management, publication of actions taken against hacking incidents, and allocation of funds for payback formalities.^{xlvi}

Negative nations

China is one among many nations which do not allow bitcoins to govern in their nation. They did not accept it as legal tender, and recently they announced specific measures to avoid the usage of bitcoins. Following is the detailed study of the Chinese government's announcement regarding bitcoins and their threats.

- ***China***

In its 2013 circular, China's government declared bitcoins as one of the virtual commodities, but they did not accept it as a legal tender. In various instances, China took regulatory measures to curb all activity suspects associating with cryptocurrency.^{xlix} Some of the regulatory measures targeting bitcoins and other cryptocurrency are as follows:

THE BAN ON INITIAL COIN OFFERING (ICO)

In 2017, some of the Chinese Central Government regulators such as the People's Bank of China (PBOC), the Cyberspace Administration of China (CAC), the State Administration for Industry and Commerce (SAIC), the Ministry of Industry and Information Technology (MIIT), and others had announced for implementing the complete prohibition on Initial Coin Offering under Preventing Financial Risks from Initial Coin Offerings (ICO Rules).¹ The announcement also consists of the government's opinion regarding the refusal of bitcoins as legal tender compared to fiat currencies.^{li} In addition, the announcement also described the government's position to shut down any website which fails to comply with the ICO rules.

THE BAN ON FINANCIAL INSTITUTIONS

In 2013 the Chinese government put a complete ban on financial institutions and non-financial institutions to deal or trade in bitcoins. In their notification on Precautions Against the Risks of Bitcoins, they mentioned that any kind of use of bitcoins for selling, buying, clearing tools, etc., shall not be allowed to use in their country.

Moreover, on July 6, 2018, the People's Bank of China acted further and removed approximately 88 virtual currencies from their platform. However, they are planning to issue their digital currency, and Zhou Xiaochuan, the then governor of the PBOC, said that the digital currency would have the same legal value as fiat currency.^{lii}

The Court of International Arbitration in China contradicted the current stand of the written laws and recognized bitcoins as valuable personal property, and ruled that it should be protected under Chinese law.^{liii}

ANALYSIS

Registration of bitcoin transaction and its users are the common step taken by all the countries. Every nation adopted a different mechanism to implement such regulations, such as the USA. It adopted a classification based on the usage of generation of bitcoins, which permits non-registration only for non-commercial purposes. In contrast, in Australia, they enacted a limit of \$10,000. After that, every user has to register. Japan enacted a different set of regulations, reasoning that the exchange should have net assets equal to or more than the amount equivalent to the currency and repayment funds. All these nations are contributors to the global economy, and these nations' positive approval and certain restrictions admit that bitcoins are the future of the global economy. With specific regulations, they can be controlled and regulated. However, another major contributor to the global economy, China puts a complete ban on bitcoins' transaction, which also shows a traditional approach; these actions affect the nation in specific ways such as it will badly impact the nation's foreign investment ratio in the coming future.

India indeed chose to follow China's path, but illegal transactions are still conducted in both nations; there is no complete stoppage on the bitcoin's transactions.

Moreover, the authors have a standard view on the acceptance of bitcoins. The positive nations have taken a calculated step to regulate the illegal use of bitcoins and promote their investment in their nations.

WAY FORWARD

The Indian legal system is refusing to recognize Cryptocurrency. The Reserve Bank of India has outright banned bitcoins, and the Indian judiciary has yet to rule on the legality of bitcoin transactions. In the absence of any legislation, illegal activity will increase. As a result, the writers sought to suggest some of the regulations and guidelines that apply to bitcoins in India in this section. These recommendations are based on the conclusions reached in the classification and applicability of laws to bitcoins section, as well as the rules enacted by the positive nations of the United States, Japan, and Australia, as well as NDA's recommendations. Following are some of the Indian legislations which will apply to the bitcoins. However, such applicability is entirely dependent on the notification issued by the Central Government because bitcoins do not have any status in India. So, to apply any regulation, recognition is mandatory.

a) The Prevention of Money Laundering Act, 2002

The Prevention of Money Laundering Act (PLMA) of 2002 regulates money laundering in the country and allows for the confiscation of all assets associated with such conduct. Banking businesses, financial institutions, and intermediaries were required to keep track of all transactions, their nature, and value every month under Chapter IV of the Act. It also instructed all of the aforementioned institutions to keep records of their clients in the event that they formed any suspicions about a link between their transactions and the internal system.^{liv}

Bitcoins are the polar opposite of PLMA; they are a decentralized currency that does not save any information about the user or other details. As a result, it breaches section 12 of the act, as

well as the act's core purpose, by failing to record every transaction detail in its central system. In the current framework, this activity is not possible. However, a change to the PLM Act could be introduced to apply it to bitcoin transactions by establishing a minimum value.

b) The Central Goods and Services Tax (GST), 2017

Goods and Services Tax, 2017 is levied on the supply of goods and services. Bitcoins' do not fall under the category of "services"; however, it may befall under the category of goods defined under section- 2 (52) of the act, which means "every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply" are consider as goods.^{lv}

As discussed, earlier bitcoins can be fall under the category of 'goods. Hence, GST will be applicable on bitcoins as goods subject to the guidelines of the central government.

c) Income Tax Act, 1961

In the present scenario, bitcoins are charged under capital gain taxes, but in some instances where the cost determination of bitcoins is challenging to assess, then it should be taxed based upon the mining process under the head of business income.^{lvi}

Other than the above scenario, as discussed earlier, bitcoins can be classified as property. Hence, the tax regulations associated with the property should be charged upon the bitcoins. However, it again depends on the notification issued by the central government.

THIS SECTION IS BASED ON THE STEPS ADOPTED BY THE POSITIVE NATIONS TO REGULATE BITCOIN TRANSACTIONS AND NDA'S SUGGESTIONS

The self-regulation

Japan, a self-regulation system is proposed and adopted, in which a recognized self-regulatory organization is given the authority to set rules. This should be applied in India, and associations would be granted the authority to set rules. The RBI, on the other hand, should have the last say. Operators who do not join "the accredited association and conform to the self-regulation"

and are unable to put in place internal measures to comply with the self-regulatory regulations risk having their registration denied or cancelled. The self-regulation mechanism was used by ZebPAY, UnicoIn, and other cryptocurrency exchanges, however they were forced to abandon the market due to the blanket ban on bitcoins.

Registration

In Japan, it has been suggested and executed. This law requires regarded dealers to register for each service they will supply. It will alleviate the problem of lack of transparency in bitcoin transactions by requiring considered dealers to register in order to comply with the laws. The government will be able to monitor bitcoin transactions and curtail all unlawful activity if this rule is implemented in India, as the RBI warned in a press release dated December 24, 2013.

The Imposition of Tax

Some powerful nations like the USA, Singapore, etc. they classify the nature of bitcoins and levy taxes accordingly. Indian government levy an only capital gain tax on bitcoins which affects the tax collection value. So, it is essential to classify bitcoins in any category and levy more taxes. It will also reduce the number of bitcoin transactions and also add more value to government revenue.

Other measures

Establishing a registration system, maintaining an internal control system, separating the management of exchanges' and customers' cryptocurrency, publishing reaction plans in the event of hacking problems, and keeping funds for payback are among the control measures enacted in Japan to regulate such firms that do not come under any category of current regulations.

a. Balanced Approach

In which existing laws in India, including in Chapter IV, shall be enforced on bitcoins.

b. Prevention of Money Laundering Act

The Anti-Money Laundering and Counter-Terrorism Financing Act 2006 was recently implemented in Australia, requiring regulated enterprises to get the necessary information to authenticate their customers' identities, monitor their transactional activity, and report any suspicious transactions or activity to AUSTRAC. All digital currency exchanges will be required to keep and submit records in order to comply with the rule. This will address the issue

of bitcoin fraud as well as other illegal acts involving bitcoins. Similar legislation should be enacted in India.

CONCLUSION

The bitcoins market in India was growing tremendously. RBI's current regulation put the bitcoin market and currency exchanges at a halt for a certain period. However, bitcoin enthusiasts encountered new ways to trade in bitcoins. These new trends and approaches will affect the country's legal structure more poorly than the damages assumed by the RBI and encourage more illicit activities like black marketing. In the absence of any regulation to deal with such measures, the country will face drastic effects when it peaks.

In addition, the approach of the authorities is to avoid and to stay in the orthodox past and not adopt the future. Bitcoins are widely accepted as a very effective means of trade and investment. Many powerful nations such as the USA, Japan and Switzerland, etc., scrutinize the potential demand of bitcoins and then enacted rules to regulate its transactions in their nation. On the other side, India took a step back and completely bans bitcoin transactions. This avoiding danger by altogether banning will shake the Indian economy very severely and leave it isolated from many potential investments and developments.

Moreover, the reason stated by the RBI for a blanket ban on bitcoins is that they are associated with many illicit activities. However, the vacuum of any law to regulate it will raise many other crimes. So, enactment of regulation is essential to avoid other damages that could happen in the legal and economic system of the country.

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