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CRYPTOCURRENCY AND ITS FUTURE IN INDIA: THE ROAD AHEAD

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Bitcoin, etherum, doggecoin are a few common names related to cryptocurrency. Cryptocurrencies are peer-to-peer virtual currencies that are decentralised and bartered. With Tesla's acceptance of this digital currency, it went from being a financial black market to gaining public awareness. The number of bitcoin investors in India has steadily climbed. The 2018 RBI circular, which instructed NBFCs and banks not to deal in currency, posed a threat to investors, prompting the Supreme Court to intervene. From the 2019 bill which bans the cryptocurrency to the 2021 bill banning private cryptocurrency, the situation has shifted slightly, permitting the currency in the Indian market. This articles examines the threat posed by digital currency, and the need to regulate virtual currencies in India.

Introduction:

The fintech business has seen significant expansion as a result of technical advancements. From minor purchases to stock market investments, online transactions are the way of the future. With the invention of Bitcoin by Santhoshi Namakato in the year 2008, the virtual currency, also known as cryptocurrency, which is decentralised and peer to peer, came into life. Cryptocurrencies are a sort of virtual currency that validates and secures transactions using cryptographic methods. A distributed ledger, such as a blockchain, is used to digitally record the transactions³. In India, cryptocurrency has gained traction, with investments of up to Rs.10.07 crores, which is significantly higher than in the United States⁴.

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³ Jenny Gesley, New Report on "Regulation of Cryptocurrency Around the World" Published, The Library of Congress, <https://blogs.loc.gov/law/2021/12/>

⁴ EXPLAINED: Where India Stands On Cryptocurrencies, What New Bill Will Mean For Bitcoin And Company, Nov 24 2021, 11.36 IST, <https://www.news18.com/news/explainers/explained-where-india-stands-on-cryptocurrencies-what-new-bill-will-mean-for-bitcoin-and-company-4480625.html>

Historical Background:

In the year 1998, the notion of online currencies was developed using encrypted ledgers. Attempts to transform Bit gold and B-money into full-fledged currencies were unsuccessful⁵. An anonymous person named Santoshi Nakamoto introduced Bitcoin for email lists in 2008. Initially, Bitcoins were mined to be created, but they had no market value. By 2010, the value of Bitcoin had only begun to rise when the generated coins were used to purchase goods. The fintech industry gradually saw the rise of various new coins, one of which Ethereum (second most popular bitcoin)⁶ was sold through an initial coin offering (ICO) (Initial coin offerings)⁷. These virtual money have come a long way from being outlawed in certain nations to being accepted in others.

Owning cryptocurrency in India:

Exchanges like as Zebpay and coindesk allow users to purchase digital money. Investors can buy these coins by filling out a KYC form and linking it to their Aadhar and Pan cards. NEFT, RTGS, debit cards, and credit cards can all be used to purchase cryptocurrencies⁸. These currencies are kept in cryptowallets and can be utilised in future transactions such as transfers and sales. Hot and cold wallets are two types of cryptocurrency wallets. Hot wallets require active internet connection contrary to the cold wallet. Hot wallets includes Destop wallets, web wallets and mobile wallets⁹.

Timeline of cryptocurrency in India:

With 10.07 crore crypto owners, India leads the world leader board, followed by the United States (2.74 crore), Russia (1.74 crore), and Nigeria (1.74 crore) (1.30 crore). In terms of user numbers, India's largest stockbroker, Zerodha, has been surpassed by some of the country's most popular crypto exchanges. At the moment, Zerodha has more than seven million users, compared to 11

⁵ Bernard marr, A Short History Of Bitcoin And Crypto Currency Everyone Should Read, <https://www.forbes.com/sites/bernardmarr/2017/12/06/a-short-history-of-bitcoin-and-crypto-currency-everyone-should-read>, Dec 6, 2017, 12:28am EST

⁶ Elizabeth Lopatto, How Bitcoin grew up and became big money, <https://www.theverge.com/2019/1/3/18166096/bitcoin-blockchain-code-currency-money-genesis-block-silk-road-mt-gox>, Jan 3 2019, 11.00 am EST

⁷Brian Martucci, What is Cryptocurrency – How it works, History & Bitcoin Aletrnatives <https://www.moneycrashers.com/cryptocurrency-history-bitcoin-alternatives/>

⁸ Bitcoin Investment in India: What is Bitcoin, How to Buy and How Transaction Works <https://www.news18.com/news/business/bitcoin-investment-in-india-what-is-bitcoin-how-to-buy-and-how-transaction-works-4139183.html>, Sep 19 2021, 11.41.IST

⁹ How to Buy Bitcoins in India?, <https://groww.in/blog/buy-bitcoins-india/>, 02 Nov 2021

million for CoinSwitch Kuber and 8.3 million for WazirX¹⁰.

After 2012, the cryptocurrency began to gain traction in India. Zebpay, Coinsecure, Unocoin, Koinex, Pocket Bits, and Bitxoxo are examples of cryptocurrency exchanges. In 2013, India's reserve bank issued a warning to the public about dealing with virtual currencies. With the demonetization of high-value currencies and the promotion of digital payment methods, a true spike in digital money occurred. By 2017, the number of people investing in cryptocurrency had risen, prompting the Reserve Bank of India to issue an addendum to its 2013 press release, stating: "The Reserve Bank of India advises that it has not granted any licence / authorisation to any entity / company to operate such schemes or deal with Bitcoin or any virtual currency. As a result, anyone interacting with Virtual Currencies, whether as a user, holder, investor, trader, or otherwise, does so at their own risk¹¹.

In 2017, Siddharth Dalmia and Dwaipayan Bhowmick became the first to bring crypto currency cases before the Supreme Court. Mr. Siddharth Dalmia and Mr. Vijay Pal Dalmia filed the first Writ Petition in the Supreme Court, seeking a ban on the sale and purchase of cryptocurrency on the grounds that it is used in anti-national, illegal, and nefarious activities such as terrorism funding, illegal arms and drug trade, bribery, money laundering, tax evasion, ransom payment, and so on. Mr. Dwaipayan Bhowmick filed a second Writ Petition in the public interest, requesting a directive to regulate the flow of cryptocurrency, ensure that cryptocurrency is accountable to the exchequer, and establish a panel to determine the framework of regulations on bitcoin and other cryptocurrencies in India¹².

The RBI and the Ministry of Finance published press statements in December 2017 warning the public about the dangers and risks associated with cryptocurrencies, with the Ministry of Finance claiming that cryptocurrencies are similar to ponzi schemes and that they are not currencies or coins. It's worth noting that, up until the end of March 2018, the RBI and the Finance Ministry both published press releases warning people about the dangers of cryptocurrencies, but neither

¹⁰India has the highest number of crypto owners in the world at 10.07 crore: report, <https://www.livemint.com/market/cryptocurrency/india-has-highest-number-of-crypto-owners-in-the-world-at-10-07-crore-report-11634110396397.html>

¹¹ Press Release: 2016-17/2054, https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=39435, Feb 1 2017

¹² Neeraj Dubey, Virtual Currency: State of pandemonium continues, <https://www.lakshmisri.com/insights/articles/virtual-currency-state-of-pandemonium-continues/>, 26 NOVEMBER 2018

of them took any legal action or issued any enforceable instructions against them¹³.

The 2018 RBI circular stating a complete ban on the banks dealing with the virtual currencies forced the stakeholders to approach the Supreme Court. The Reserve Bank circular stated that the RBI “has frequently warned users, holders, and traders of virtual currencies, including Bitcoins, in public notices dated December 24, 2013, February 1, 2017, and December 5, 2017, about the different hazards associated with dealing with such virtual currencies. Due to the accompanying dangers, it has been decided that organisations regulated by the Reserve Bank would not trade in VCs or provide services to assist anyone in dealing with or settling VCs, effective immediately. Maintaining accounts, registering, trading, settling, clearing, lending against virtual tokens, taking them as collateral, opening accounts with exchanges that deal with them, and transferring / receiving money in accounts connected to the purchase/ sale of VCs are all examples of such services. Regulated entities that already supply such services must end the arrangement within three months of this circular's publication”¹⁴.

A writ suit was filed in the Supreme Court after the RBI issued a circular in 2018 prohibiting the financial industry from dealing with virtual currencies. On the basis of proportionality, the Supreme Court granted the Internet and Mobile Association of India's petition against the Reserve Bank of India. The petitioner argued that the RBI lacks the authority to prohibit crypto-currency trading. The second argument was that cryptocurrencies was a store of value or medium of exchange rather than a currency note or coin¹⁵. The Apex court held that, the Reserve Bank of India has broad powers and plays an essential role in the development of the Indian economy, in the current case it is unable to demonstrate any harm to its regulated firms. As a result, the Reserve Bank of India's directives urging banks to stop engaging with or providing services to organisations trading in virtual currencies are illegal and so unenforceable.

Inter-Ministerial Committee

Shri Subhash Chandra Garg, Secretary, Department of Economic Affairs, Ministry of Finance, chaired a high-level Inter-ministerial Committee in November 2017 that included Shri Ajay Prakash Sawhney (Secretary, Ministry of Electronics and Information Technology), Shri Ajay

¹³ Vipul Kharbanda, Cryptocurrency regulation in India – A brief history, <https://cis-india.org/internet-governance/blog/cryptocurrency-regulation-in-india-2013-a-brief-history>, 05 March, 2020

¹⁴ Notification, <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11243>, April 6 2018

¹⁵ Internet And Mobile Association of India v. Reserve Bank Of India, SC 0045/2019, <https://indiankanoon.org/doc/12397485/>

Tyagi (Chairman, Securities and Exchange Board of India), and Shri B.P. Kanungo (Chairman, Securities and Exchange Board of India) (Deputy Governor, Reserve Bank of India). The Committee's mission was to look at a variety of concerns surrounding virtual currencies and make recommendations for specific measures that may be implemented.

The Crypto-token Regulation Bill of 2018 ("First Draft Bill") was the first draft bill suggested by the Interministerial committee¹⁶. It was suggested that these goods be classified as securities or investment schemes, and that virtual currency exchanges and brokers, where sales and purchases are permitted, be regulated. Due to deficiencies in the existing legal framework, it is suggested that anyone dealing with crypto token-related activities refrain from fraudulently claiming that these items are not securities or investment schemes, or from offering investment schemes.

In July 2019, the Committee issued a report suggesting that private cryptocurrencies be banned in India. The Banning of Cryptocurrency and Regulation of Official Digital Currency Bill, 2019 ("Second Draft Bill"), however, came after that. It advocated that the use of VCs as legal money be prohibited. Mining, buying, holding, selling, dealing in, issue, disposition, or usage of cryptocurrencies would also be outlawed in the country. The use of cryptocurrencies (i) as a medium of exchange, store of value, or unit of account; (ii) as a payment system; (iii) for offering cryptocurrency-related services to customers/investors such as registration, trading, selling, or clearing; (iv) for trading with Indian or foreign currencies; (v) for the purpose of issuing cryptocurrency-related financial products; (vi) as a source of credit; (vii) for the purpose of generating funds; and (viii) for the purpose of investment was recommended to be forbidden¹⁷. The measures that provided for fines and offences demonstrated the strictness of the Second Draft Bill. It also advocated the introduction of a digital rupee, which would be issued by the RBI and used as legal money.

The Cryptocurrency and Regulation of Official Digital Currency Bill, 2021:

The government has introduced a bill in Parliament's Winter Session to outlaw all private cryptocurrencies and make it easier to introduce a central bank digital currency (CBDC). "The

¹⁶ Raj Katwala, Understanding the crypto Law Landscape, <https://thefinancialpandora.com/understanding-the-crypto-law-landscape/> May 18, 2021

¹⁷ **Committee Report Summary**, <https://prsindia.org/policy/report-summaries/virtual-currencies-india>

Cryptocurrency and Regulation of Official Digital Currency Bill, 2021" is the title of the bill¹⁸. The ban on private crypto currency can and will cause panic, causing many people to sell all of their crypto holdings. However, a huge portion of the investors will not sell their assets and will instead be forced to work in unregulated surroundings, contributing to the establishment of a shadow economy. It will move to darker places, where threats like money laundering and terrorist financing may emerge as regulators lose sight of the operation. This would be exacerbated by the Indian government's inability to identify and track down these markets. A global network of computers mining bitcoin and maintaining blockchain ledgers cannot be seized or accessed by the authorities. To impose such a broad prohibition, authorities will need to set up an intrusive surveillance system that tracks all digital and internet activities in the country. It is preferable to develop the legal and policy infrastructure to govern certain traits rather than adopting legislation to prohibit them¹⁹.

Conclusion:

India has the most crypto investing population in the world, hence the need for regulation of the market is crucial. Instead of a ban on the crypto market a system of regulation is indeed the need to promote the investment. It's worth noting that the MEITY's Draft National Strategy on Blockchain, 2021, highlights the benefits of bitcoin. According to the report, blockchain technology delivers transparency, security, and efficiency in company processes, as well as a unique layer of trust across the Internet, which was initially explored for cryptocurrency application Bitcoin. Cryptocurrency was also identified as one of the Blockchain's possible applications. As a result, the Indian government must take a cohesive approach on this subject. These Virtual Currencies can be promoted in the Indian market with a well-regulated market similar to that of Japan, as well as a solid legal structure.

¹⁸ Bill on cryptocurrency, regulation of official digital currency under finalisation: FinMin, <https://www.thehindubusinessline.com/money-and-banking/cryptocurrency/bill-on-cryptocurrency-regulation-of-official-digital-currency>, Dec 14, 2021

¹⁹ Kazi Ashique Azfar, Impact of banning cryptocurrency on investors, <https://blog.ipleaders.in/impact-banning-cryptocurrency-investors/>, May 13, 2021