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# **THE REGULATION OF BITCOIN IN INDIAN MARKETS- WITH REFERENCE TO AMERICAN REGULATORY MECHANISMS**

AUTHORED BY - MANASA VISHWANATH

Cryptocurrency in India is a highly unregulated and volatile market tool of the modern international financial economy. The market has existed for over a decade from the launch of Bitcoin in 2009; however, the regulation and legal control over the same is poorly developed in comparison to the staggering growth of the value of cryptocurrency and its prevalence in the market. It has now developed into a non-traditional financial institution whose purpose and function is not privy to fundamental norms of traditional finance and banking institutions. Every attempt in regulation of these volatile and unpredictable assets seems to be a clear disregard to its very purpose as a financial entity which functions in a decentralized market. This paper seeks to analyze and study the regulation of cryptocurrency, particularly Bitcoin, in the Indian economy. It seeks to analyze and interpret the nature of cryptocurrency and the regulation of its trade, sale, generation, holding and transfers. This paper includes a study of the American legal system and its regulatory mechanisms in relation to securities and commodities classifications of cryptocurrency with reference to which regulatory propositions for the Indian legal system are made.

KEYWORDS – Bitcoin, Cryptocurrency, Regulation, India

## **INTRODUCTION**

India is a country whose financial institutions have been primarily traditional in nature, controlled majorly by banking systems, investment banks, credit unions, brokerage firms, etc. These financial institutions in a capitalistic economic system aid in the regulation of the economy, ensure fair financial practices, and most importantly provide banking, investment opportunities and capital-raising avenues.<sup>1</sup> The traditional financial institutions govern and control various aspects of financial assets and instruments in trusted and centralized means. The world of financing and investment has however in modern times grown beyond the traditional limits of

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<sup>1</sup> Melissa Horton, *Different Types of Financial Institutions*, INVESTOPEDIA, (October 15, 2023, 6:00 p.m) <https://www.investopedia.com/ask/answers/061615/what-are-major-categories-financial-institutions-and-what-are-their-primary-roles.asp>.

these institutions to non-traditional financial institutions (NTFIs). These NTFIs are also known in the market as decentralized finance platforms – DeFi Platforms which function using a decentralized verified block chain technology which carried units of financial value in the market without any traditional form of centralized regulation.<sup>2</sup> The most esteemed of the blockchain financial institutions is Bitcoin.

Bitcoin is a ‘virtual currency’ that was introduced in an academic paper by an anonymous person or group of people named Satoshi Nakamoto<sup>3</sup> in 2009; which functioned in a manner beyond traditional financial institutions that the world economy conformed. The functional intent and purpose of Bitcoin was not privy to traditional institutional norms. In 2017 Bitcoin became “one of the markets greatest speculative crazes”<sup>4</sup> and it has only been on the volatile increase since then. The Bitcoin price reached an all-time high in 2021, as values exceeded over 65,000 USD in November 2021<sup>5</sup>. An individual can obtain Bitcoin in three ways – mining, purchase in an exchange, and in exchange of goods and services.<sup>6</sup> Mining is the primary source of Bitcoin, where ‘miners’ are awarded with Bitcoins as a result of solving complex mathematical problems. The Bitcoin mining and peer-to-peer exchange is recorded in a public ledger known as the blockchain, which is a “shared database populated with entries that must be confirmed and encrypted,”<sup>7</sup> which functions a public access document with each block forming a logically connected chain. Miners all compete to solve highly complex mathematical problems to get the ‘privilege’ to add the set of latest transactions to the blockchain, and are awarded Bitcoin as a result of successful computation.

Due to the decentralized nature of Bitcoin and the peer-to-peer nature of the transactions, it is an unbacked and unregulated form of digital currency. The Indian legal system does not have a special legislation or set of regulations that particularly address and control the cryptocurrency financial institution<sup>8</sup>. This paper will focus particularly on the regulation and governance of

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<sup>2</sup> Nicole Willing, *Traditional Finance*, TECHOPEDIA, (October 15, 2023, 6:00p.m , ) <https://www.techopedia.com/definition/traditional-finance-tradfi#:~:text=What%20is%20TradFi%3F,entities%20that%20operate%20within%20it..>

<sup>3</sup> Satoshi Nakamoto, *Bitcoin: A Peer-to-Peer Electronic Cash System*, BITCOIN, (October 15, 2023, 6:00 p.m) <https://bitcoin.org/en/bitcoin-paper>.

<sup>4</sup> Paul Vigna, *For Bitcoin, A Year Like No Other*, WALL STREET JOURNAL (October 15, 2023, 6:00 p.m) <https://www.wsj.com/articles/for-bitcoin-a-year-like-no-other-1514721601>.

<sup>5</sup> STATISTA , (October 15, 2023, 6:00 p.m) [https://www.statista.com/statistics/326707/bitcoin-price-index/#:~:text=Bitcoin%20BTC%20FUSD%20price%20history%20up%20until%20Oct%2009%2C%202023&text=Bitcoin%20\(BTC\)%20price%20again%20reached,65%2C000%20USD%20in%20November%202021](https://www.statista.com/statistics/326707/bitcoin-price-index/#:~:text=Bitcoin%20BTC%20FUSD%20price%20history%20up%20until%20Oct%2009%2C%202023&text=Bitcoin%20(BTC)%20price%20again%20reached,65%2C000%20USD%20in%20November%202021).

<sup>6</sup> Jonathan B Turpin, *Bitcoin: The Economic Case for a Global, Virtual Currency Operating in an Unexplored Legal Framework*, 21, INDIANA JOURNAL OF GLOBAL LEGAL STUDIES, 335, 340-341, (2014).

<sup>7</sup> Andrew Meola, *Understanding Blockchain Technology, Bitcoins and the Rise of Cryptocurrency*, BUS. INSIDER (October 15, 2023, 6:00 p.m) <http://www.businessinsider.com/blockchain-technologycryptocurrency-explained-2017-8>.

Bitcoin (BTC) and relevant laws. Regulatory provisions, their effectiveness and functioning will be analyzed with reference to the nature of function of Bitcoin and its blockchain technology.<sup>9</sup> The paper explores in Part I the regulatory environment in India. In Part II it analyses the system in the United States of America and the possible reproduction of American systems and suggestive reforms in the Indian environment. Through this paper I aim to probe into the shortcoming and advantages of crypto regulation and the ways the Indian legal system may be interpreted to regulate BTC and novel approaches towards achieving the same in line with the American legal system.

## I – REGULATION OF BITCOIN IN INDIA

### A) HISTORY OF INDIA AND CRYPTOCURRENCY

At present, cryptocurrency is not expressly prohibited under Indian law, but historically the Reserve Bank of India had banned dealings in cryptocurrency in 2018 which had banned all “entities regulated by the Reserve Bank shall not deal in Virtual Currencies (VCs) or provide services for facilitating any person or entity in dealing with or settling VCs”<sup>10</sup>. RBI opined that cryptocurrencies were ‘stateless digital currencies’ which were independent from state intervention and control.<sup>11</sup> Later, by result of a pronouncement of the Supreme Court in 2020<sup>12</sup> the Crypto Ban Notification was set aside and the ban was lifted. The Apex Court has also rendered a decision wherein it states that virtual currencies are not recognized as legal tender although they are “capable of performing some of most of the functions of real currency”<sup>13</sup>. However, the legality of crypto still lies within a grey area as there isn’t a firm prohibition but there is also a lack of affirming legislation on the same. There was a proposed bill in Lok Sabha – Cryptocurrency and Regulation of Official Digital Currency Bill, 2021 which aimed to create a favorable framework for the regulation of the blockchain and virtual digital asset industry<sup>14</sup>. RBI has also been considering the creation of India’s own Central Bank Digital Currency (CBDC)

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<sup>9</sup> Bitcoin possesses dominance in the global cryptocurrency market, thus I am using Bitcoin as the main denomination of cryptocurrency/virtual currency in consideration; see – Global Cryptocurrency Market Cap Charts (October 15, 2023, 6:00 p.m.) <https://www.coingecko.com/en/global-charts#:~:text=The%20global%20cryptocurrency%20market%20cap,a%20Bitcoin%20dominance%20of%2047.89%25>.

<sup>10</sup> Reserve Bank of India, ‘Prohibition on dealing in Virtual Currencies (VCs)’, 2018, (October 15, 2023, 6:00 p.m.) <https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NOTI15465B741A10B0E45E896C62A9C83AB938F.PDF>

<sup>11</sup> Nand Gopal Anand, Harshit Dusad, Vrindesh Patel, *Regulating Cryptocurrency In India*, (October 15, 2023, 6:00 p.m.) [https://www.ibanet.org/article/2E4FB646-4FFD-4660-A5BE-5E41E79C5576#\\_edn6](https://www.ibanet.org/article/2E4FB646-4FFD-4660-A5BE-5E41E79C5576#_edn6)

<sup>12</sup> Internet and Mobile Association of India v. Reserve Bank of India, (2020) 10 SCC 274 .

<sup>13</sup> Id at 6.62 .

<sup>14</sup> GLOBAL LEGAL INSIGHTS, (October 15, 2023, 6:00 p.m.) [https://www.globallegalinsights.com/practice-areas/blockchain-laws-and-regulations/india#\\_edn3](https://www.globallegalinsights.com/practice-areas/blockchain-laws-and-regulations/india#_edn3) .

using blockchain technologies. India has been exploring the use of blockchain technologies and its application and development across various platforms<sup>15</sup>. Coming back particularly to the regulation of crypto, the Indian government has also taxed the income from trade of crypto through Income Tax and Goods and Services Tax – wherein a 30% tax will be charged on the earnings from the transfer of digital assets with a 1% tax deducted at source<sup>16</sup>.

The scheme of Indian cryptocurrency regulation is however not absolute and there is a need for more comprehensive and clear legislation, regulation and governance. The next subsection explores the need for regulation in light of Bitcoin as the primary concern cryptocurrency.

## B) NEED FOR REGULATION

1. Inherent ‘problems’ of Bitcoin- Bitcoin by its very nature and function is decentralized, trustless and unregulated. Although the technical features of the protocol “create and inherent level of security”<sup>17</sup> it is still a security-less financial institution. All the transactions occur in a peer-to-peer format, with every block of transactions being verified by a computation and addition to the public blockchain ledger with no regulating intermediary or central power verifying the transactions. The value of Bitcoin is also extremely volatile, fluctuating to extreme highs and lows. It does not derive value from the government; its value is wholly dependent on transactions – as a function of supply and demand<sup>18</sup>. This also makes Bitcoin particularly susceptible to currency manipulation as there is no overseeing central body.<sup>19</sup>
2. Black market potential – Due to the central importance accorded to anonymity in Bitcoin transactions, it became a hub for illegal black market operations. The most prolific virtual black market was Silk Road. A dark web site where users could deal drugs and illegal substances using Bitcoin transactions. In India the Narcotic Control Bureau along with the Central Board of Indirect Taxes and Customs discovered drug trafficking crypto payments amounting to INR 2.2 crores<sup>20</sup>.

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15 MINISTRY OF ELECTRONICS & INFORMATION TECHNOLOGY *Government of India, NATIONAL STRATEGY ON BLOCKCHAIN Towards Enabling Trusted Digital Platforms*, (October 15, 2023, 6:00 p.m) [https://www.meity.gov.in/writereaddata/files/National\\_BCT\\_Strategy.pdf](https://www.meity.gov.in/writereaddata/files/National_BCT_Strategy.pdf) .

16 Nikita Tambe, *All You Need to Know About India’s Crypto Bill*, FORBES ADVISOR, (October 15, 2023, 6:00 p.m) <https://www.forbes.com/advisor/in/investing/cryptocurrency/crypto-bill/#:~:text=ls%20Cryptocurrency%20In%20India%20Legal,is%20done%20at%20invest>.

17 Misha Tsukerman, *The Block is Hot A Survey of the State of Bitcoin Regulation and Suggestions for the Future*, 4, BEREKELY TECHNOLOGY LAW JOURNAL, 1127-1170, (2015).

18 Id at 1132.

19 Maya Kosoff, *Could Price Manipulation be Killing Bitcoin?*, VANITY FAIR (October 15, 2023, 6:00 p.m) <https://www.vanityfair.com/news/2018/02/could-price-manipulation-be-killing-bitcoin;>

20 LOK SABHA QUOTES ANNEX, (October 15, 2023, 6:00 p.m) <http://164.100.24.220/loksabhaquestions/annex/178/AU5222.pdf>.

3. Bitcoin exchanges – Bitcoin exchanges are platforms wherein Bitcoin can be exchanged for other assets such as other forms of cryptocurrencies or fiat currencies. They act in a manner similar to stock exchanges.<sup>21</sup> Since these platforms are new developments they are susceptible to hackers<sup>22</sup>; Mt. Gox was of the oldest Bitcoin exchanges, however in 2014 it was hacked and approximately 8,50,000 Bitcoins were stolen.<sup>23</sup> Indian virtual asset exchange providers such as WazirX, CoinDCX, CoinSwitch, BuyUCoin, etc. are all required to mandatorily maintain information of customers – KYC- all records of financial transactions for the past 5 years<sup>24</sup>.
4. Vehicle for Tax Evasion and Money Laundering - Tax evaders who have traditionally used offshore accounts and shell companies as means to facilitate tax evasion, have a novel opportunity in Bitcoin for the same.<sup>25</sup> In the Indian system since transaction and gains from such taxations are taxed under the Income Tax Act, it does not preclude the possibility of the use of Bitcoin for evasion of tax. Bitcoins also “seems to provide a more effective vehicle for money laundering”<sup>26</sup> where the aim to obscure the source of illegally obtained monetary gain.
5. Fraud and Theft - Bitcoin related fraud has also been in the rise, with exchanges getting hacked and large amounts of Bitcoin being stolen and subsequently untraceable. All Bitcoins are stored virtually in ‘digital wallets’, this has also led to the development of fake wallets to lure Bitcoin users. Many have also been victims to fake exchanges to extract funds from unwitting investors<sup>27</sup>.
6. The questionable nature of Bitcoin- The nature of Bitcoin as a virtual asset is extremely confusing as it is not recognized in the Indian jurisdiction as legal tender. However, it is not prohibited; trade and exchange in the same is allowed, supported, taxed and slightly regulated. To properly formulate regulations on the same, the ascertaining of the nature of Bitcoin and its categorization into a particular financial asset is of utmost importance and requirement. It is observed in the American legal system that the categorization of

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<sup>21</sup> BITCOIN, (October 15, 2023, 6:00 p.m) <https://www.bitcoin.com/get-started/how-bitcoin-exchange-works/>.

<sup>22</sup> Supra note 17 .

<sup>23</sup> Takashi Mochizuki & Eleanor Warnock , *Mt. Gox Head Believes No More Bitcoins Will Be Found*, WALL ST. J. (October 15, 2023, 6:00 p.m) <http://online.wsj.com/articles/mt-gox-head-believes-no-more-bitcoin-will-be-found-1403850830>.

<sup>24</sup> Supra note 14.

<sup>25</sup> Omri Y. Marian, *Are Cryptocurrencies Super Tax Havens?*, 112 MICH. L. REV. FIRST IMPRESSIONS 38, 39 (2013).

<sup>26</sup> Jonathan M. Warren, *A Too Convenient Transaction Bitcoin and Its Further Regulation*, 8, JOURNAL OF LAW AND CYBER WARFARE, 5-29, (2020).

<sup>27</sup> Antonio Madeira, *7 Ways Criminals Can Steal Your Bitcoins*, BITCOINIST (October 15, 2023, 6:00 p.m) <http://bitcoinist.com/7-ways-criminals-steal-your-bitcoins/>.

Bitcoin into securities, stocks or commodities has a stark effect in the form and method of its regulation.

The need for regulation as mentioned above focuses mainly on the problems and the possible misuse of Bitcoin by members of a capitalistic profit-oriented economy. The need for regulation goes far beyond the control of parties and their actions to prevent financial crime; it also touches the sphere of consumer protection of the Bitcoin user. It must also be kept in mind that although Bitcoin and other cryptocurrencies have been victim of regulatory oversight, the “authority of regulators faces certain limits”<sup>28</sup>. As observed in Bohme et al in the aforementioned cited paper, if one country proposes excessive regulations onto cryptocurrencies the same if not more developed crypto-services will develop in a more lenient regulatory jurisdiction.

## II- THE AMERICAN REGULATORY SYSTEM AND ITS POSSIBLE APPLICATION IN INDIA

This section follows an analysis of the regulatory mechanism in the American legal system and regulatory environment in relation to cryptocurrencies and Bitcoin. There is a categorical analysis of the nature of cryptocurrency either as a security or as a commodity. The regulatory implications in each case are also observed. Then I have analyzed the same in the light of Indian legislation and policy reforms.

### A) Through the Lens of Securities –

The Securities Exchange Commission is the regulatory body that enforces federal security laws in the USA. The Howey Test; which was established in the Supreme Court ruling in SEC v. W.J. Howey Co<sup>29</sup>, determines whether cryptocurrencies offered by companies in Initial Coin Offerings<sup>30</sup> are considered to be securities for the sake of regulation of investment. This interpretation is not direct as cryptocurrencies are not enumerated in the Securities and Exchange Act it is interpreted as “investment contract”<sup>31</sup>. The test sets out a set of requirements which must all be satisfied in order to identify whether the asset in question is to be considered as security in the regular meaning of the Securities Act<sup>32</sup>. The test is divided into four prongs - first, there must

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<sup>28</sup> Rainer Bohme, Nicolas Christin, Benjamin Edelman, Tyler Moore, *Bitcoin: Economic, Technology, and Governance*, 29, JOURNAL OF ECONOMIC PERSPECTIVES, 213-238, (2015).

<sup>29</sup> SEC v. W.J. Howey Co, 328 U.S. 293 (1946).

<sup>30</sup> An initial coin offering (ICO) is a type of capital-raising activity in the cryptocurrency and blockchain environment. The ICO can be viewed as an initial public offering (IPO) that uses cryptocurrencies.

<sup>31</sup> Supra note 28 .

<sup>32</sup> Jiaying Christine Jiang, *Regulating Blockchain? An Ex-Post Regulatory Impact Assessment of the U.S. Blockchain Regulatory Regime*, 8, JOURNAL OF LAW AND CYBER WARFARE, 5-58, (2022).

be an investment of money or something of value to obtain the virtual asset in question. It is observed that cryptocurrencies which dish out ICOs satisfy this requirement. Bitcoin obtained by way of exchanges also satisfy this requirement. Second, the investment must be in a common enterprise which also includes the fourth prong which will be discussed forthwith. The third prong is the expectation of profits which is more particularly return on investment into the digital asset rather than the profit that the issuer of the cryptocurrency may earn.<sup>33</sup> The fourth and last prong is the efforts of others (common enterprise). American Courts have interpreted this to mean the managerial or entrepreneurial efforts of individuals that contribute to profit raising activities.<sup>34</sup> The nature of decentralized cryptocurrency is to be free from market and entrepreneurial control and regulation tokens like Bitcoin would not satisfy this prong<sup>35</sup> and would thus fail the test to qualify as a security. However, certain ICOs are still controlled in value by their capital source companies and thus can qualify to be regulated by the SEC as securities.

In India the definition of securities includes an array of assets as described in Securities Contracts (Regulation) Act, 1956<sup>36</sup>. A security is a financial instrument that is used to raise capital funds and enable the flow of capital resources to areas of economical requirement.<sup>37</sup> It was observed in Internet and Mobile Association of India that the “SEBI can step in only when the transactions involve securities within the meaning of Section 2(h) of the SCRA”<sup>38</sup> the court also observed that the Crypto-token Regulation Bill, 2018 “initially recommended ... a proposal to prohibit persons dealing with activities related to crypto token from falsely posing these products as not being securities...”<sup>39</sup>. Section 2(h) sub clause (ii)(a) grants the Central Government the power to declare other instruments as securities under the Act.<sup>40</sup> Thus, adopting the Howey Security test into Indian legislation cryptocurrency and Bitcoin that qualify as securities may be regulated by the Securities Exchange Board of India and other relevant legislations.

## B) Through the lens of Commodities –

The Howey test is employed to establish an asset as security as explained above; it necessarily requires full satisfaction of its fourfold requirements - of investment, common enterprise, profit

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<sup>33</sup> SEC v. Edwards, 540 U.S. 389, 394 (2004).

<sup>34</sup> SEC v. Koscot Interplanetary, Inc., 497 F.2d 473, 479-84 (5th Cir. 1974).

<sup>35</sup> Marco Iansiti & Karim R. Lakhani, *The Truth About Blockchain*, HARV BUS REV (2017) at 118.

<sup>36</sup> Securities Contracts (Regulation) Act, 1956, s.2(h), No.42 Acts of Parliament, 1956 (India).

<sup>37</sup> NATIONAL INSTITUTE OF SECURITIES MARKETS, (October 15, 2023, 6:00 p.m) , [https://www.nism.ac.in/knowledge\\_base/understand-the-basics-of-securities-markets/](https://www.nism.ac.in/knowledge_base/understand-the-basics-of-securities-markets/)

<sup>38</sup> Supra note 12 at 179 .

<sup>39</sup> Id at 219

<sup>40</sup> Supra note 35 - (ii) such other instruments as may be declared by the Central Government to be securities.

and human effort. If even one of these elements is not satisfied the virtual asset in consideration is not a security. Which is the case when Bitcoin is traditionally mined (not obtained from platform exchanges). Thus, these assets are considered to be commodities like gold and other such minerals. It is also observed that the value of commodities such as gold depends on market forces of demand and supply and not the managerial efforts or common enterprise of an organization of individuals.<sup>41</sup> Thus the value of virtual asset such as cryptocurrency depends not on the efforts and actions of those behind ICOs but the forces of supply and demand in the market the effects of the same on the value of the digital currency. It was also held by the Commodities Future Trading Commission (CFTC) which is the overseer of the options and commodities futures markets in America<sup>42</sup> that virtual currencies including Bitcoin were commodities under the Commodities Exchange Act.<sup>43</sup> It held that "Section 1a(9) of the Act defines 'commodity' to include, among other things, 'all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in'<sup>44</sup>.

In the Indian legal system, the consideration of commodity will not arise but the same will be taken under the purview of the Goods and Services Act, 2017. The Central Board of Indirect Taxes and Customs has issued a clarification which mentioned that cryptocurrencies would be considered as goods and services as they were not ever considered to be currencies. Additionally any exchange of cryptocurrency would incur the levy of the GST tax. The definition of 'Goods' under the Act<sup>45</sup> mentions that it does not include 'money and securities'; the delineation between securities and goods is clear in Indian jurisprudence. The definition of 'Service'<sup>46</sup> also does not include money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, to another form. The GST Act does not have an explicit mention of cryptocurrencies or virtual digital assets. The latter has however been defined in the Finance Bill, 2022 as "any data, code, number, or token created using cryptographic methods that serves as a digital representation of value traded and can be applied to any financial transaction."<sup>47</sup> Since Virtual Digital Assets cannot be described as either money or security it will be considered as "goods" under the GST Act and transactions will be taxed accordingly.

The implication of considering Bitcoin as either a security or good will bring the cryptocurrency under the respective regulatory authority and applicable legislations will govern the trade,

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<sup>41</sup> R.G. Reynolds, 952 F.2d at 1135; Belmont Reid , 794 F.2d at 1391; Noa, 638 F. 2d at 79.

<sup>42</sup> Supra note 31.

<sup>43</sup> Neil Tiwari, *The Commodification of Cryptocurrency*, 117, MICHIGAN LAW REVIEW, 611-634 (2018)

<sup>44</sup> In re Coinflip, Inc., CFTC No. 15-29 at 7 U.S.C. § 1(a)(9) (2012)).

<sup>45</sup> Goods and Services Act, 2017, s.2(52) , No. 12 Acts of Parliament, 2017(India).

<sup>46</sup> Goods and Services Act, 2017, s.2(102) , No. 12 Acts of Parliament, 2017(India).

<sup>47</sup> Finance bill 2022, Bill no. 18 Lok Sabha, 2022 (India).

transactions, holding and taxation of the virtual asset. This will mean the adoption of the non-traditional financial asset into a traditionally regulated financial system. This posits a direct challenge to the very nature of Bitcoin as a decentralized blockchain based financial asset. However important the need for regulation is, the adoption of Bitcoin into the securities or goods regulatory mechanism may bring in means of taxation and trade control; but as mentioned earlier if Bitcoin users face the burden of excessive regulation under these traditional regulatory authorities and mechanisms they will simply shift to another virtual financial asset service which faces lesser regulatory lag.

## **CONCLUSION**

In conclusion this paper has set about to explore the regulatory environment of cryptocurrencies and digital assets that is present in India and the United States, with particular focus on Bitcoin. It has long been observed that traditional financial institutions in India have had the forefront responsibility to regulate the economy, ensure fair financial and trading practices, providing banking and investment opportunities, and capital raising avenues. However, the world economy of financing and investment as we know it has grown far beyond the traditional limits to grow into and give space to the growth and development of non-traditional financial institutions, which are also known as decentralized financial platforms or DeFi Platforms. These platforms host cryptocurrencies or virtual digital assets that function using a decentralized blockchain technologies which support and act as a ledger for novel units of financial value that do not follow the traditional form of centralized regulation and control.

The paper has explored the potential benefits and drawbacks of using decentralized finance platforms for investment and capital-raising. It also recognizes the need for regulation of cryptocurrencies and their exchange platforms. While these platforms offer greater accessibility, transparency, and efficiency, they also pose significant risks, including security concerns, lack of regulation, and potential for fraud and scams.

The American legal system has established a set of regulatory mechanisms for cryptocurrencies and Bitcoin. The system first encapsulates the determination of whether the virtual asset in consideration is a security or a commodity. In the case of the former the Securities Exchange Commission (SEC) is the regulatory body that enforces federal security laws in the USA. The Howey Test, which determines whether cryptocurrencies offered by companies in Initial Coin Offerings (ICOs) are considered to be securities for the sake of regulation of investment, has been established in the Supreme Court ruling in SEC v. W.J. Howey Co. Contrastingly, if the asset in question does not satisfy the Howey Test it is considered to be a 'commodity' and regulated thus

so. The same classification and regulatory mechanism has been attempted to be visualized in the Indian financial jurisprudence. The regulatory implications of cryptocurrencies as securities or commodities have been analyzed in the American legal system, and the same has been analyzed in the light of Indian legislation

However, this paper has some limitations. The regulatory environment for cryptocurrencies is forever constantly evolving, and the findings presented in this paper may become outdated quickly due to developments in the law and in the technology of the cryptocurrencies in the market. Additionally, the paper has focused primarily on Bitcoin and may not be applicable to other cryptocurrencies and Initial Coin Offerings. Finally, the paper has not explored the potential impact of cryptocurrencies on the broader international; economy and society. In conclusion, this paper has provided a comprehensive overview of the regulatory environment of cryptocurrencies, with a particular focus on Bitcoin, in India and the United States. While decentralized finance platforms offer significant benefits, they also pose significant risks, and it is essential to establish effective regulatory mechanisms to ensure their safe and responsible use.

