

ISSN: 2582-6433



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis



IJLRA

EDITORIAL TEAM

EDITORS

Megha Middha



Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmanagarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmanagarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

IJLRA

Cryptocurrency and Indian Taxation Laws: An Assessment of the Applicability and Enforcement of Tax Regulations

Authored By- Vardhan Gupta

School of law, Christ University

Abstract:

The initial emergence of cryptocurrencies as a result of the technology's rapid advancement has drawn international trade in a variety of ways. The popularity of these currencies as a result of their use in the digital economy has increased demand for them. Cryptocurrencies are now a target of security risks as a result of the lack of explicit legal compliance. These circumstances have necessitated considerations about drafting legislation to regulate these currencies, which can aid in developing nations' ability to grow their economies at a rate consistent with technical innovation and while reducing unanticipated security dangers.

The legality of cryptocurrencies in India has been a hot topic of conversation. The Government of India has made a number of acts that clearly demonstrate their intention to provide cryptocurrencies a recognised legal status.

The RBI issued a circular prohibiting bank, NBFCs, and providers of payment systems from dealing with virtual currencies and offering their services to virtual currency exchanges as the first step in the process. In response, cryptocurrency trading platforms filed a writ petition with the Supreme Court. In the case of Internet and Mobile Association of India v. Reserve Bank of India, the Supreme Court ruled that the RBI circular was unconstitutional and overturned the prohibition.¹

"Any revenue from transfer of any virtual digital asset should be taxed at the rate of 30%," the Indian finance minister declared in the Union Budget 2022. "Tax deduction at source at the rate

¹ [Jidesh Kumar], [Legal Cryptocurrency in India],

of 1% has also been recommended for transactions using cryptocurrencies." The minister added that taxing a virtual digital asset does not imply that cryptocurrencies are now recognised legally.

Introduction:

Money is a widely used trade medium and is required to operate the market². With the development of technology with the growth of e-commerce, fiat currency was replaced by various types of easily traded currencies using electronic methods. The move to digital dealing has aided in a number of areas, including cost reduction, market expansion, and trade-related activities have drawn more people. ³Due to the many benefits that come with using electronic money, The market appeared to have given traditional forms of trade a back seat. Additionally, the focus on digital currency also grown as a result of how easy technology has made trade possible even when the parties to an agreement are not in the same room at the same time.

Cryptocurrency is a type of written code used to create digital or virtual money that relies on cryptography and is unrelated to a single central bank. In order to assure transparency and the inability of any transaction to be changed after it has been published, it is made possible by blockchain technology, which enables users to record transactions in a distributed public ledger. It was developed as a person-to-person issuance and transaction system that makes use of both private and public keys for safe transactions and authentication. "Milton Friedman, author of a notable book on the relationship between money, macroeconomics, and Governmental action foretold a time when the internet will contribute to the development of a new currency. Fiat money is typically utilised in centralised trading activities that are governed by regulatory bodies that the national government has allowed. Fiat Currency values are based on the value of gold. Thus, by the development of new trade methods in modern times, currency that operates independently and does not derive its value.

Due to the exorbitant prices at which these forms of currency have been seen trading on trades in India and around the world, they have come into the spotlight of the past decade and have been drawing the attention of expense specialists.⁴ The administrative tool of tax assessment must be resolved to look at the current legal scene.

² Lerner A.P., Money as a Creature of State, The American Economic Review, 37 (2), (1947) 312.

³ Nishith Desai Associates. Bitcoins, A Global Perspective: Indian, Legal & Tax Consideration, (2005) P.7.

⁴ Chetna Alagh & Vibhuti Sharma, Taxation of Cryptocurrency in India, 1 Jus Corpus L.J. 187 (2020).

In the case of India, blockchain technology expands the possibility of safe state-level digital transactions. The growing number of investors and owners of crypto - assets in India is evidence that the population there has also demonstrated a substantial interest in virtual currencies. The Indian government initially rejected any cryptocurrency. As a result of its uncertain unregulated character, investments and trading. There even existed an countrywide prohibition on the use of cryptocurrencies however, COVID-19's introduction Investments in these virtual assets have spread like a plague throughout the world's markets wave, making cryptocurrencies an essential component of both national and international economies economy. This paper deals with taxation issues in the crypto currencies and the complications involved in cryptocurrency transactions.

Merits and Demerits of Cryptocurrency:

The key benefit of digital currencies like bitcoin is that they have no intrinsic value and no reserves, operating only on the fundamentals of supply and demand. Cryptocurrencies therefore guarantee open transactions with complete anonymity.⁵ However, cryptocurrency's distinctive nature could also be a boon because it can be used for a number of criminal activities, including tax evasion, money laundering, illegal trading, and funding for terrorists. In addition to this, there are several other issues such as dearth of traders and merchants who accept cryptocurrencies, volatility in the value and delay in authorising the transaction etc.

Legal aspects and Regulations:

The RBI has not recognised cryptocurrencies as currencies, and no particular legislation or legislation pertaining to cryptocurrencies has been introduced.

in India as until now. Cryptocurrencies are now governed by a number of provisions of applicable legislation due to the lack of a clear legal definition for them. The Indian Copyright Act of 1957 includes "computer programme" as a definition that could apply to cryptocurrencies. This is a set of instructions that can be expressed in other ways, such as computer-readable media like words, codes, schemas, or computers, and which carry out specified tasks or produce certain outcomes. However, there is still some ambiguity around cryptocurrency taxation, and the regulatory

⁵ International Monetary Fund, Virtual Currencies and Beyond: Initial Considerations, available at <https://www.imf.org/external/pubs/ft/sdn/2016/sdn1603.pdf>

framework is also unpredictable. The purchase of cryptocurrencies by Indian citizens can be viewed from the perspective of currency control law as the importation of software or computer programmes into India. This necessitates adherence to all relevant exchange control legislation, including RBI's importation regulations. Regarding goods produced in India that are intangible.

Depending on the country, there are different legal aspects of virtual currencies to take into account. They are categorised in some nations as money and considered to be legal, in others as an asset and considered to be legal, and in some nations like India they are categorised as neither legal nor unlawful with no established legal structure. ⁶In nations like Cryptocurrency is forbidden, just as it is in Bangladesh and Russia. Its position is relatively murky in other nations. For instance, it is permitted for personal use in China but prohibited for commercial usage. Due to existing legislation, cryptocurrencies are prohibited in various nations, including Iceland. Cryptocurrencies are currently unregulated and without a legal framework in India, like in many other countries.

Legal concerns associated with Cryptocurrencies are as follows:

1. **Decentralized Nature:** Unlike government-issued money (such as banknotes, coins, etc.), which is directly under the control of the issuing authority and derives its value from the promise of the issuing authority and gold reserves, cryptocurrencies are decentralised in nature, making it difficult for the government to regulate them.
2. **Volatility of Virtual Currencies:** As seen by recent variations in the value of the most well-known cryptocurrency, bitcoin, which had a base value of \$ 0.30 in 2010 and grew to approximately \$ 4000 in 2017, virtual currencies have an irregular price graph that contributes to market and economic instability.
3. **Independent Wallets:** Private corporations that are independent of any authority build and maintain wallets that hold bitcoins and are used in transactions. Absence of any internationally enforceable legislation. Therefore, they are not responsible for any client losses or financial crimes that are carried out as a result of using these wallets.

⁶ Legality of bitcoin and cryptocurrencies (<https://bitconnect.in/legality-bitcoin-cryptocurrency/>)

4. **Money Laundering:** When discussing cryptocurrency, the legal framework of a nation is frequently taken into account. However, since its inception, numerous countries have faced problems related to cryptocurrency-based money laundering. Due to the ease with which digital currencies can be moved between nations with little to no oversight, money laundering is a major legal issue. Institutions are able to track virtual currency purchased through banks, but it is more challenging when cash or other difficult to identify means are used to buy or sell the coins.

5. **Spoofing and Phishing Payment Information:** Just as with regular e-money, phishing attacks have an impact on cryptocurrency users since they may be sent to a fraudulent website that asks for their crypto-wallet user id and password. While copying a wallet address for a transaction that is substituted by malware and the user is unaware of the alterations because not everyone is alert to double check a long address copied by them, an attacker can do transaction spoofing.

Taxation of Cryptocurrency:

The number of Crypto transactions is growing exponentially every day, and the public exchequer is losing money because these transactions are not taxed. Because the Income Tax Act of 1961 does not distinguish between income gained legally and income obtained illegally, both types of income are subject to the same taxation. Taxing an illegal income does not, however, relieve the assessed of their criminal responsibility. However, it is still unclear if using cryptocurrencies is unlawful or not, thus in order to prevent the profits from such transactions from not being taxable, the cryptocurrency transactions must be subject to taxation.

The Income Tax Act 1961⁷ under Section 14 lays down heads of Income as follows:

- Income from Salary
- Income from House Property
- Profits and Gains of Business and Professions
- Capital Gains
- Income from other source

Cryptocurrencies have not yet been categorised as either assets or products. On the other hand, profits and revenues from the sale of cryptocurrencies are subject to income tax since, according to Indian law, software is regarded as a "good" and can be taxed as such. Similar to other capital

⁷ Income Tax Act 1961

assets, selling cryptocurrency will trigger capital gains tax. The holding period, trading frequency, holding size, and accounting treatment are taken into consideration to make this determination.

The Tariff Schedule for Goods has a category for residual commodities, although virtual currencies are not yet included in that list. Therefore, virtual currencies might be considered residuals. The Goods & Services Tax ["GST"] system applies to goods supplied in the course or advancement of business. Because there are so many virtual currencies and each transaction is different, choices about how to apply the GST must be made individually. GST must be added to invoices for those who sell goods as part of their line of work and are required to register for GST.

In addition, services provided in connection with the sale and acquisition of virtual money are subject to GST. There shouldn't be any negative effects from GST when someone sells virtual currency for recreational purposes. GST shouldn't be due when previously owned virtual currency is sold for investing purposes.

Additionally, there is the problem of cross-border bitcoin transactions and the relationship between withholding tax and double taxation agreements. Due to the transfer of cryptocurrency tokens between wallets, exchanges, and international boundaries, there are still unresolved legal issues on how to effectively tax the sale of cryptocurrencies globally.

Various Challenges while Regulating Cryptocurrency

Such ambiguous conditions necessitate the adoption of a legal framework for cryptocurrency regulation in India. The RBI has consistently opposed cryptocurrency trade and has taken action to outlaw cryptocurrencies in India through a number of notices. Through its press releases, RBI has repeatedly advised all dealers not to trade in cryptocurrencies.⁸ The danger associated with crypto trading has been examined by RBI, and as a result, it is discouraged. The digitalized nature of cryptocurrencies might be a threat to online security. When there are no established regulatory procedures to protect rights from such dangers, the situation becomes more serious. Such circumstances may result in the irreversible loss of digital currency without the possibility of

⁸ Agarwal, M.. India on Cryptocurrency. Jus Corpus LJ, 1, 215 (2020).

applying any available legal remedies.⁹ Additionally, since the transaction was completed online, there is once again no method for resolving consumer protection disputes. Another factor is the speculative nature of cryptocurrencies, which means that their prices are completely determined by supply and demand without any support from underlying assets. This can lead to volatility and uncertainty. Not all jurisdictions have accepted that cryptocurrencies are legal tender. Due to the lack of legal protection for cryptocurrency investors and dealers in nations that have not fully or partially recognised the legality of cryptocurrencies, this can put their finances at danger. Due to the fact that cryptocurrency cannot be purchased in tangible form, no KYC standards can be implemented. As a result, because the transactions cannot be tracked or seen, they may draw money laundering activity. According to reports, with the creation of cryptocurrencies, the digital currency is utilised as a tool for appropriating money unlawfully by using different money-laundering strategies, which has been the main concern of most countries¹⁰

Conclusion:

It could be concluded from this study that cryptocurrency is riding the new wave of technology. Its significance is growing throughout the in order to prepare for the future digital revolution age. Despite the fact that this digital currency carries a number of hazards, billions of dollars have been invested in it because of its ongoing transparency, traceability, low transaction costs, absence of processing fees, and status gains. A general ban is one thing, but if they forbid the use of digital currency, it will be problematic for investors. The Cryptocurrency and Regulation Act's current draught Among other things, the Official Digital Currency Bill, 2021 ("draught Bill") aims to outlaw all personal cryptocurrencies in India.

It is important to note that the decentralised nature of the cryptocurrency ecosystem is its fundamental component. Without the use of an intermediary, many exchanges are kept active by peer-to-peer and crypto to crypto transaction. Explicit legal restrictions on the misuse of cryptocurrency mechanisms may be part of this. Cryptocurrencies use the blockchain to implement them, therefore their verification processes are similarly open. The identification of unlawful transactions, for instance, is one of the difficulties India also encounters in relation to

⁹ Yousuf Javed, M., Hasan, M., & Khan, R.. Future of bitcoin in India: Issues and challenges. *Journal of Statistics and Management Systems*, 23(2), (2020) 207-214.

¹⁰ Chudinovskikh, M., & Sevryugin, V.. Cryptocurrency regulation in the BRICS countries and the Eurasian Economic Union. *BRICS law journal*, 6(1), (2019) 63-81.

cryptocurrencies. In other cryptocurrencies like Bitcoin, this information is still confidential. Currently, there are more trades being made using cryptocurrency. With a better legal framework and regulations, cryptocurrencies can benefit India greatly thanks to their rising popularity in the country.

Indian government should take necessary steps to manage such digital currency, which is the way forward for profitable business and productiveness of the economy.

