

Cryptocurrency and Criminal Law in India: Unraveling the Legal Land Scape of Virtual Currency

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ABSTRACT

Most aspects of our lives revolve around the internet, the same way blockchain technology and other decentralized apps will become main stream solution to our world in the future. Now the transactions regarding financial services as buying, selling and different kinds of trading are also being made available on online platforms with the use of new technology of cryptocurrency. Cryptocurrency is a new kind of intangible property which can be used as an alternative of physical currency for all the purpose that we can serve with the later. Policy decision on crypto should be made from perspective of the innovation ecosystem could trigger, not just basic speculation but the adverse financial impact unleash. This research paper looks at the application of present Indian payment system policies and regulatory model on virtual currency in India. Although India is not having any structured regulatory framework for regulating the use of this currency but Indian government has restricted its use. Supreme Court of India has also been note worthy regarding this. It's true, only banning cryptocurrency in India wouldn't achieve the goals of the legislature and Reserve Bank of India. Instead, it would increase cryptocurrency fraud in India because of the lack legal framework . In this present paper it has been analysed that the current model and policies, when amended, present a wide range of possibilities for regulating virtual currency in India.

KEYWORDS

cryptocurrency ; Bitcoin; regulations on cryptocurrency; virtual currency ; Indian payment system; policies; Reserve Bank of India; block chain technology.

INTRODUCTION

Cryptocurrency is significantly disrupting the established financial sector, offering potential benefits such as decentralized transactions and enhanced security.

However, it's anonymity and borderless nature have also made it attractive to criminals, posing significant challenges for law enforcement agencies worldwide. This research paper delves into the complex intersection of cryptocurrency and Criminal law in India, examining the existing legal frame work, emerging trends in crypto related crime, and challenges in enforcement of legal policies while addressing this evolving landscape. As of 2025, India does not have a specific law explicitly govern crypto currencies. This lack of clarity has created both

opportunities and challenges. While the absence of a clear legal framework has allowed the crypto market to flourish, it has also created a regulatory vacuum that criminals can exploit. The Indian government has taken a cautious approach to cryptocurrencies, expressing concerns about their potential use for illicit activities. RBI now repeatedly cautioned against the use of cryptocurrencies, citing concerns about money laundering, terror financing and capital flight.

OBJECTIVES

The objectives are to focus on clearing the picture of cryptocurrency in India. As this sort of virtual currency system has become a new avenue of trading and investments and having its futuristic implications on which India yet not having any structured regulatory framework for regulating the use of this virtual currency.

HYPOTHESES

The speedy introduction of well defined regulations on virtual currency system, establishing a regulatory framework for assets and tokens in India will bring certainty and balance the risks and benefits of this evolving blockchain technology.

RESEARCH METHODOLOGY

This is a doctrinal research and all data collected is secondary data.

CRYPTOCURRENCY- DEFINITION AND SCOPE

cryptocurrency is an intangible form of non- legal tender which can be used in place for legal tender and existed in electronic/digital form used between online/Cryptocurrency members community. Virtual currencies are a subset of cryptocurrencies." Bitcoin" is a subset of virtual currencies where value of a particular unit is a validated through cryptography. Virtual currency generally requires consent of buyer and seller to a transaction. Unlike traditional assets, this crypto currency is backed by governmental legal tender status, not physical commodities then this currency become fiat currency and not a "commodity based currencies" or non legal tender currency which is simply a cryptocurrency. Therefore fiat Cryptocurrency status of cryptocurrency (Newyork state Administrative Procedure Act (SAPA) 2015.23 NYCRR Part 200 Virtual currencies). transaction would then fall back under the dominion of traditional money transfer regulation.

EMERGING TRENDS IN CRYPTO RELATED CRIMES IN INDIA

Due to unclear legal framework, crypto related crimes are on the rise in India. Some of the common types of crypto related crime includes: Money Laundering in which Criminals use crypto currencies to laundering illicit proceeds, taking advantage of their anonymity and cross border nature; Terror financing: Terrorist organizations are increasingly using crypto currencies

for clandestine fundraising and to avoid being traced; Investment fraud: Scammer are exploiting the hype surrounding crypto currencies unsuspecting investors into fraudulent scheme; Cyber attacks: Hackers are targeting crypto currency exchange and wallets to steal digital assets

DIFFICULTIES IN LAW ENFORCEMENT FACED BY INDIAN AUTHORITIES

India face several and significant hurdles in the investigation and prosecution of cryptocurrency offences such as * Lack of Expertise: Investigating crypto related crime requires specialized knowledge this technology based crime and transactions. Many law enforcement agencies lack the necessary expertise to effectively investigate these crimes.; *Anonymity: The Cryptocurrency's anonymity hinders the tracking of those responsible for related crimes.; * Cross border nature: Crypto currencies can be easily transferred across borders, making it challenging for law enforcement agencies to cooperate with their international counter parts.; * Evolving Technology: The rapid evolution of blockchain technology and cryptocurrency creates law enforcement agencies struggle to stay abreast of Criminal tactics in the rapidly evolving landscape.

BASICASPECTS OF CRYPTOCURRENCIES

Using cryptography and blockchain, cryptocurrency operates as a digital or virtual form of currency for secure and transparent transactions which is not controlled by any government or financial institution. It is based on decentralized technology called blockchain, which records transactions across a network of computers. Cryptocurrency can be used to purchase goods and services, and can also be exchanged for traditional currencies or cryptocurrency

LEGAL STATUS OF CRYPTOCURRENCIES IN INDIA

As for virtual currency, India lacks any specific enacted legislation. Despite of this lack of specific legislation, the increasing popularity, crypto has aligned with various countries government statutes, like in India the Companies Act, 2013, which now requires the reporting of virtual digital assets. The prevention of Money Laundering Act, 2002, now encompasses transaction involving these VDAs and different crypto exchanges, effectively broadening the scope. The financial impact of the evolving virtual currency market has been acknowledged by Indian's income tax laws, which have now aligned themselves with the taxation of VDAs. It is evident that India has progressively recognised crypto currencies legally. The existing income tax laws and anti money laundering laws have been adjusted to include these currencies. The legal status of cryptocurrency in India will be the subject of this paper. 2023 saw numerous significant events, including the G 20, that profoundly impacted global and Indian perceptions and adoption of Despite the absence of a central regulatory body for cryptocurrency in India, the finance minister's suggestion to tax digital assets has brought the issue of their legality into sharper focus. Now let's uncover details about cryptocurrency and its regulatory status in India

as cryptocurrency is (a) Not A Legal Tender RBI has already cleared that cryptocurrency don't have any official backing and it is also not regulated by any government in India.; (b) RBI CIRCULAR 2018- In 2018 RBI regulations banks from providing service to individuals or businesses dealing in cryptosphere in since it was made it difficult for the people to convert their crypto into fiat currencies.; (c) The 2020 Supreme Court ruling in India, which declared the RBI's 2018 circular disproportionate and unconstitutional, offered a significant reprieve for crypto currency trading and investments activities; (d) No specific regulations - India permits cryptocurrency, but the absence of dedicated VDA regulations leads to uncertainty and difficulties for businesses and investors.

THE CRYPTOCURRENCY AND REGULATION OF OFFICIAL DIGITAL CURRENCY BILL 2021-

The bill was a legislative proposal by the government of India aimed at regulating cryptocurrency within India. The key aspects of the bill are : It proposed a ban on all private cryptocurrency functioning in India. The intent is to establish a system for the release of the Official Digital Rupees Currency. This initiative envisions a Reserve Bank of India (RBI)-regulated Central Bank Digital Currency (CBCD) and the establishment of the Digital Currency Board of India as a regulatory body. The board will supervise the digital assets ecosystem and penalize activities involving private cryptocurrency, such as holding, mining, buying, or trading by any private cryptocurrency.

TAXATION LAW ON CRYPTOCURRENCY

In India Ministry of finance through department of revenue has begun to regulate cryptocurrency for taxation purposes. When we focus on " Income from capital gain and income from other sources" attracts the application of the income tax on trade in virtual currencies and gain out of it will be taxable. If you buy and sell cryptocurrency frequently, the gain from such trading must be considered as income from trading when you file income tax return. But if person have not trade in such currencies, the tax treatment may be different. Just as all other investments instruments, on more than three years investment taxed are charged as per flat rate of 20% with indexation benefits on long term capital gains. Moreover, investment less than three years should be considered as short term capital gains and taxed as per your income slab. Since the RBI is still to recognise these cryptocurrency as currencies, they are neither legal nor illegal. The movement RBI declares it to be currency ; any trading in it will be subject to FEMA Regulations under it. When Bitcoin is purchase for investment purpose it could be treated as capital asset as per section 2(14) of income tax act, means any kind of property and every possible interest that can be acquire, hold or enjoy. If you buy and sell cryptocurrencies frequently, the gains from such trading must be considered as business income from trading when you file your income tax return (FORM ITR 2ND).

CONSTITUTION OF INDIA, RBI ACT AND FEMA

The legislative authority over currency, coinage, legal tender, foreign exchange, and negotiable instruments (bill of exchange, cheques, promissory notes etc.) is allocated between the central and state governments in India through Article 246 of the Constitution and entries 36 and 46 of List of the 7th schedule. Test is whether bitcoin full fill any condition for mentioned instruments so Central Government can legislate. Definition of currency is defined by the law regarding foreign exchange and management of 1999 stating in section 2 (m) that " all currency notes, postal notes, postal orders, credit cards or such other similar instruments, as maybe notified by the Reserve Bank". Under the currency ordinance 1940, RS 1 and notes issued by RBI is defined as a legal tender and as far as Bitcoin is concerne since it is not legal tender does falls out of this category. This analysis is also supported by section 22 which enumerates the right of issuance of Bank notes only rest with RBI and Bank notes are legal tender in India as per section 26 of RBI act, As per this analysis Bitcoin are not currency but having several features of a currency or legal tender it qualify as such other similar instruments defined by section 2(h) of RBI ACT and to be notified by RBI.

RECOMMENDATIONS

To efficiently address the challenges posed by crypto related crime, the following recommendations are put forth:

*Develop a clear legal framework; * Enhance law enforcement capacity; * Promote international cooperation; * Law enforcement agencies should strengthen international cooperation to combat the cross border nature of crypto related crime; * Educate public about the risk associated with cryptocurrencies and how to protect themselves from crypto related crime.

By such steps India can take significant steps towards mitigation and risk posed by crypto related crime.

CONCLUSION

cryptocurrencies has been one of the popularly used digital currency in the recent times. Many study reflects that there is no set pattern in countries when it comes to taxation rate, legal structure or legislation. However governments around The World are beginning to regulate the cryptocurrency market, which could lead to greater stability and mainstream adoption. The legal landscape of virtual currency in India is complex and evolving. As the use of cryptocurrencies become more prevalent, it is essential to address there taxation and regulation to ensure compliance with existing tax laws and to prevent potential misuse. Clear guidelines and regulations are a necessary to provide clarity and ensure compliance among taxpayers and businesses operating in the cryptocurrency space in India.

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