

**AN INSIGHT INTO THE NEXUS AND EMERGENCE OF LEGAL
CONUNDRUMS OF CRYPTOCURRENCY AND CYBERCRIME**

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ABSTRACT

Among criminal law specialists, there are disagreements on the legality of cryptocurrencies and the necessity to safeguard their owners with present laws, particularly criminal law and cyber law. For law enforcement agencies and financial authorities all around the globe, bitcoin and other virtual currencies have become a unique payment system challenge in less than a decade of widespread use and adoption. Bitcoin’s blockchain, which serves as its crypto base, continues to outpace the capabilities of law and regulation to keep up with its fast introduction and distribution. Various governments have reported a rise in the number of bitcoin frauds and the amount of money lost due to scams. Despite a rise in cryptocurrency-related scams, there has been no comprehensive examination of the possibility of using cryptocurrencies for fraud.

Moreover, the restriction on virtual currency, cryptocurrency, and bitcoin trading was removed due to the 2020 Supreme Court’s ruling in *Internet and Mobile Association of India v. RBI*. Legislation restricting the use of cryptocurrency may change the court’s opinion in the future. As a result, the future of cryptocurrencies in India remains uncertain. It is becoming more common worldwide for people to use cryptocurrencies as an alternate form of online cash. As a result of their unregulated and pseudo-anonymous character, bitcoins are becoming an attractive currency for hackers. The easing of cybercrimes, including cyber financial fraud, cyber extortion, cyber malware, hacking, data breaches, and investment schemes, may be promoted or restricted by using cryptocurrencies. Cryptocurrency crime requires that criminologists have a fundamental knowledge of how the technology works and how it is decentralised and hence complicated. According to the results of this research study,

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cryptocurrency fraud research is growing fast in volume and diversity, but the current law is in the early stages of thinking about future issues and scenarios using cryptocurrencies.

In light of the issues raised, the instant research paper endeavours to demystify how cryptocurrency may be used to facilitate illegal activities. The history of cryptocurrencies is briefly discussed in this article’s opening paragraphs. Cryptocurrency’s underlying technology is then discussed to put the practice of cybercrime into perspective. An explanation of the crimes is given to show how cryptocurrency may be utilised as an instrument and objective for cybercrime. At the end of the paper, several suggestions and revisions to various rules and regulations exist. Support for the rule of law and law-abiding citizens is strongly promoted to safeguard India’s constitutional and social government. The authors used a variety of sources to help them organise their ideas for a research paper, including reports from international conferences, bills, committee reports, and precedent-setting judgments.

Keywords: *Cybercrime, Bitcoin, Deep Web, Cryptocurrency, Malware.*

INTRODUCTION TO CRYPTOCURRENCY VIS-À-VIS CYBERCRIMES

In today’s modern era, cryptocurrency is a digital and intangible currency designed to be used as a means of exchange.² Like real-world currency, but without a physical form and relying only on encryption, it is a virtual currency. In the cave dwellers’ era, exchanging goods and using currency took a few iterations. In the earlier times, it was realized that the barter system was an exchange system with flaws, the modern currency was minted, and the currency gained widespread popularity, which is now known as the modern currency. A cryptocurrency dealing in independent and decentralized money was initially suggested in the late 1980s to develop a currency that could be transmitted anonymously and without the need of centralized institutions known as banks, as a consequence of the growth of the progressive society in recent times. An American cryptographer invented Digi Cash in 1995, a kind of electronic cash that was completely anonymous. With several developments and advances, it was in the year 2008 when Satoshi Nakamoto introduced the concept of Bitcoin, describing the functioning of the

²Shivam Arora, *What Is Cryptocurrency: Types, Benefits, History and More*, SIMPLE LEARN (June. 10, 2022, 9:45 PM), <https://www.simplilearn.com/tutorials/blockchain-tutorial/what-is-cryptocurrency/>.

bitcoin through a blockchain network.³With the advent of the electronic cash system, the market began to flourish over the years and currently the three most popular cryptocurrencies after Bitcoin are Ether, Litecoin, and Ripple. Cryptocurrency wallets are anonymized and thus cannot be traced because of which cryptos have developed a reputation for being an anonymous form of payment.⁴Cryptocurrencies are decentralized and run independent in digital spaces, and they are not governed by financial institutions or regulators, making them more accessible to the masses.

Although cryptocurrency is of a high benefit to society, with this advancement, the users can conduct business without requiring the services of a central clearing authority. More accessibility to the masses could be the prime reason for the increased risk of cryptocurrencies being used in cybercrime. Cybercriminals can convert this investment into traditional currency without fear of being traced because of the anonymity or Pseudonymity built into this technology.⁵This digital asset is supported by a network that stretches to an extensive computer network. As a result of its decentralized structure, the government and regulators have no control over cryptocurrency transactions. With the speedy growth of technology and understanding of the blockchain technology used in cryptocurrency, it can be summed up that with an increased benefit, there could be scenarios where the authorities could mine data from this public ledger. Countries such as China, Egypt, and a few others have outlawed the purchase, trading, and exchange of cryptocurrencies. While cryptocurrency has not been granted legal status in India, with profits from trading taxed, it is neither regulated nor prohibited. The government of India intends to levy a 30% tax on income produced from

³Evan Jones, *A brief history on cryptocurrency*, CRYPTOVANTAGE (June. 9, 2022, 9:50 PM), <https://www.cryptovantage.com/guides/a-brief-history-of-cryptocurrency/#:~:text=The%20idea%20for%20cryptocurrency%20first,cryptographic%20electronic%20money%20called%20Digicash/>.

⁴Srinivasa Rao I Shravan Prabhu, *Is Cryptocurrency a new engine for cybercrime?*, THE HINDU BUSINESS LINE (June 9, 10:00 PM), <https://www.thehindubusinessline.com/business-laws/is-cryptocurrency-the-new-engine-for-cybercrime/article65410478.ece/>.

⁵FULTON MAY SOLUTIONS, <https://fultonmay.com/what-is-cryptocurrency-and-how-does-it-affect-cyber-security/#:~:text=Cybercriminals%20can%20hack%20into%20cryptocurrency,for%20ransom%20in%20digital%20currencies/>. (last visited June. 11, 2022)

cryptocurrency transactions and exchanges, as well as charge a 1% tax on all transactions (TDS).⁶

DEVELOPMENT OF CRYPTOCURRENCY AND CYBERCRIME REGULATIONS IN INDIA

Cryptocurrency has been adopted as a global phenomenon by most people. The technological literacy of cryptocurrency is quickly becoming prevalent, and thus more people are becoming interested in learning more about the crypto world. Thereby, investors investing in cryptocurrency are not just the only ones investing. There are vast masses worldwide eager to invest, which could include the cybercriminals to invest and adapt to the advancement, thereby being enthralled by the prospect of unregulated money.

In a developing country like India, to control cybercrimes like money laundering through the trade of cryptocurrency, the government of India has started levying a 30% flat tax on the transfer of virtual digit assets, therefore, bringing the trade under the provisions of income tax act directly. Further, to regulate the trade, 1% tax is to be deducted at source on every transfer of cryptocurrency or crypto assets.⁷The said transaction thus would be under the vigilance and control of the Income Tax Department. In case any money is laundered, it would be directly dealt with under the provisions of the prevention of money laundering act because prosecution under the income tax act is now part of the crimes in the schedule of the money laundering act, which can lead to prosecution under the said act. To date, there is no special law enacted by the government of India concerning the acts because the concerned ministry has stated that laws would be made in India only after a global consensus where all the countries would follow general regulations and thus, all the regulations would be approved globally. Currently, the business in US dollars is prevalent in the entire world. Though many countries have adopted trade through cryptocurrencies, a global consensus on the said trade is not there. The Indian government, on the prevalent matter, had regulated the sale and purchase of cryptocurrency by banning the same. However, the honourable Supreme Court of India held

⁶Pooja Sitaram Jaiswar, *Govt's tax rules in cryptos effective Apr 1; should you sell your crypto assets before Mar 31?*, MINT (June. 11, 2022, 3:39 AM), <https://www.livemint.com/market/cryptocurrency/crypto-tax-rules-should-you-sell-your-crypto-assets-before-mar-31-11648300134010.html/>.

⁷Amitoj Singh, *Making senses of India's New crypto rules*, COINDESK (June. 10, 2022, 11:04 AM), <https://www.coindesk.com/policy/2022/02/21/making-sense-of-indias-new-crypto-rules/>.

that the ban is ultra vires and cannot be imposed by the government. Faced with such a situation, the government of India instead legalised the trade of cryptocurrency by recognising cryptocurrencies and their trade partly and by incurring taxes upon the same from April 1, 2022.⁸

Though, to date, there is no regulation in India to give legal status to cryptocurrency. However, by imposing a tax, the profits and losses arising out of the trade of cryptocurrency have been virtually legalised and accepted as an income under Income tax laws.⁹In India, the transfer of cryptocurrency to date is not a legal tender but the trade and earnings out of the business of cryptocurrency are partially legalised. In a country like India, as and when an enactment or regulation of cryptocurrency trade is finalised, the trade of cryptocurrency can be considered a legal tender. Considering that the entire world is virtually adopting cryptocurrency trade, many countries have made cryptocurrency legal tender. Even India is contemplating introducing a digital rupee, and the same would be governed and controlled by the reserve bank of India. Once the regulation is made and RBI introduces the digital rupee, then that would lead to automatic acceptance of cryptocurrency as a legal tender.¹⁰

The Indian government is working to regulate the cryptocurrency and trying to bring it under the control of the government by regulating only those cryptocurrencies which would have the backing of a country and which would be recognised by a country as its official cryptocurrency. To prevent cybercrimes, the Government of India is contemplating not legalise cryptocurrencies which are not backed by the state so that in case of any fraud, money laundering or other cybercrime, the country backing the said cryptocurrency would be responsible for its consequences arising out the digital fraud or crimes related to web. Cyber laws in many countries are in their infancy. Cybercrimes are not being unearthed because of different regulations in all the countries and also because there is no uniform law in the entire world.¹¹

⁸ Pooja Sitaram Jaiswar, *Supra* Note 5.

⁹ Amitoj Singh, *Supra* Note 6.

¹⁰ Amitoj Singh, *Supra* Note 6.

¹¹ India will frame cryptocurrency law after global consensus: Report, MINT, <https://www.livemint.com/market/cryptocurrency/india-will-frame-cryptocurrency-law-after-global-consensus-report-11648789014273.html/>.

Comprehensive amendments to cyber laws, income tax laws, money laundering laws, and other related statutes are required to control the crimes associated with the dealings of cryptocurrency, which is an intangible currency. Most countries, including India, intend to legalize the cryptocurrency backed and recognized by their respective government so that the states are answerable to each other. At this point, the leading cryptocurrency has been created by private enterprises. If all cryptocurrencies are not recognized, it will be challenging to control cybercrime and money laundering because there will be no checks on the frauds committed by private enterprises, who may escape with the assets after laundering money. As cryptocurrency transactions are conducted virtually, the buyer or seller of cryptocurrency would be unaware of who created the currency. Even today, no one knows who invented bitcoin, even though it is the largest and most popular cryptocurrency. Even though bitcoin is traded by all of the world’s leading traders, including the United States, no government has endorsed it. Stating that if tomorrow bitcoin fails, the whole money of the world and its customers would be laundered with nobody to answer and pay to the investors. Various websites have been created online dealing with cryptocurrency, but there is no control, and they unabatedly deal in cryptocurrency after making colossal money vanish.

Referral to a person in India who had been dealing with a company in Singapore to purchase cryptocurrency, however, the company’s website was shut down one fine day, and it was later discovered that the company had no authority to deal with cryptocurrency trading. Customers then approached trading portals in the United States, where they were informed that the Singaporean aid company lacked legal authority to deal in cryptocurrency on their behalf. Because no regulation was made by the country where the company was incorporated, neither the money nor its whereabouts were refunded or traced.

Such crimes are being committed daily and can be controlled only in case there is a consensus worldwide, and all the countries make a mutually approved regulation. The fraud in cryptocurrency can only be regulated if there are specific regulations in all the countries to deal with cryptocurrency trade. All countries consider the dollar an international currency for trade, and gold is the base to regulate the dollar. Similarly, there is a need to have strong sanctions approved by respective countries that create a digital currency in their country to regulate the

trading of cryptocurrency and thus, the sanctions are required to be approved by the entire world so that the trade-in cryptocurrency can be regulated uniformly.

MOVING FORWARD WITH THE CRYPTOCURRENCY BILL

The government’s approach to digital assets has evolved. In 2019, a bill called the Banning of Crypto Currency Bill and Regulation of Official Crypto Currency Bill 2019 was passed, which stated that cryptocurrency would be prohibited.¹² Thereafter, the cryptocurrency and regulation of the official Currency Bill 2021 were approved. Initial laws were passed to completely ban all crypto-related activities, whereas the new laws made it clear that the use of cryptocurrencies is not prohibited. However, no legislation to establish cryptocurrency as legal tender has yet been enacted. The Reserve Bank of India had prohibited Indian banks from supporting cryptocurrency transactions. The order was challenged in the Supreme Court of India, and in March 2020, the Supreme Court of India struck down the regulation. The 2021 bill was passed, prohibiting the use of private cryptocurrencies.

In 2013, the RBI issued a circular warning the public against the trade of virtual currencies and informed the public that there are chances of financial frauds, operational problems, and security-related risks, and virtually, it was mentioned that there was no customer protection. The RBI issued another circular about virtual coins in February 2017; at the end of the year, RBI issued a warning to banks, and the Indian finance ministry told the public that virtual currencies are not legal tender. During that time, two PILs were filed before the supreme court of India. One of them sought a complete ban on buying and selling cryptocurrencies, and the other sought to regulate the trade of cryptocurrencies. At that stage, there was no ban on cryptocurrencies, and the Indian banks were allowing trade through cryptocurrencies. In March 2018, the Central Board of Digital Tax (CBDT) submitted a scheme seeking that the finance ministry should ban virtual currency. A month later, the RBI issued a circular whereby the banks and financial institutes were stopped from providing services to virtual currency exchanges. Therefore, RBI issued a circular on April 6, 2018. The Supreme Court of India lifted the ban on cryptocurrency imposed by RBI and held it has no power to

¹² Mehab Qureshi, *A look at cryptocurrency’s journey so far in India*, THE INDIAN EXPRESS (June. 10, 2022 11:10PM), <https://indianexpress.com/article/technology/crypto/cryptocurrency-in-india-a-look-at-the-regulatory-journey-of-cryptocurrencies-7648767/>.

impose such a ban. It should be noted that the Indian government had not passed any resolution banning cryptocurrency at the time, and no regulation had been finalised. Following that, the Indian government began studying the issues surrounding virtual currencies in January 2021 and proposed specific actions to be taken by tabling a report stating that all private cryptocurrencies, except those issued by any state, will be prohibited in India. This report was tabled in Rajya Sabha by the finance minister Sitharaman on February 9, 2021, and the minister of state Shri. Anurag Thakur informed the legislators that the existing laws on cryptocurrency are inadequate to deal with cryptocurrency-related issues.¹³

From time to time, consultations were made by the ministry of finance with various representatives of crypto exchanges, and ultimately it was proposed that cryptocurrency should not be banned but regulated in India. Even the PM of India held a meeting regarding the cryptocurrency, and finally, the cryptocurrency bill was tabled before the Lok Sabha by the finance minister, stating that the trade of cryptocurrency is risky and not within a regulated framework.¹⁴ Even the Supreme Court of India had asked the central government to take a clear stand on cryptocurrency and mention whether bitcoin is legal in India? Moreover, the 30% tax was levied by the government of India by introducing a section in income tax laws. The supreme court, in its judgement titled *Internet and mobile association of India v RBI*¹⁵ had overruled the 2018 RBI circular by holding that when there is no legislative ban on buying and selling of cryptocurrency, the RBI cannot impose disproportionate restrictions upon the banks and financial institution and on the trading of said currencies. Therefore, the RBI circular was quashed. In order to further regulate the cryptocurrency, the banks have been asked to complete KYC: Know your customer, Anti Money Laundering and Combating of Financing of Terrorism (CFT) so that the trade is regulated under the Prevention of Money Laundering Act 2002, under the provisions of foreign exchange management act and thus the cryptocurrency cannot be dealt by anyone without fulfilling the above-said authorities.¹⁶

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Internet and Mobile Association of India v RBI*, Writ Petition (Civil) No. 528 of 2018.

¹⁶ Ravi Shanker Kapoor, *View: RBI Lost case on Crypto In supreme Court, it must stop behaving like a sore loser*, NEWS 18 (June 10 10:50PM), <https://www.news18.com/news/opinion/rbi-lost-case-on-cryptocurrency-in-supreme-court-it-must-stop-behaving-like-sore-loser-4196594.html/>.

COMPARING THE PRAGMATIC APPROACHES OF VARIOUS JURISDICTIONS ACROSS THE WORLD

Trading cryptocurrency is susceptible to several hazards, such as scams and hacking attacks. That is why nations throughout the world are working so hard to find a way to control it. Initial Coin Offering (ICOs) and cryptocurrencies have been the subject of several investor alerts from governments worldwide. Extreme volatility is the most typical kind of risk. Another problem with initial coin offerings is that so many of them fail or turn out to be nothing more than rip-offs.¹⁷ Investors would be forced to expend enormous sums to do due diligence in such a situation. Even though the technology is fantastic, it can sabotage investors' due diligence. If the white papers do not provide all of the critical details to investors, in the beginning, they might end up hurting them in the long run.

AUSTRALIA

The Australian Securities and Investments Commission (ASIC) oversees financial markets, financial services, and consumer credit in Australia (ASIC).¹⁸ Australian Transaction Reports and Analysis Centre (AUSTRAC), a financial intelligence agency, enforces anti-money laundering and terrorism financing laws in addition to ASIC.¹⁹ It was then that the ATO came out with recommendations for the taxation of cryptocurrencies in Australia.²⁰ This kind of currency is neither money nor a foreign currency, according to the Australian Taxation Office (ATO).²¹ Legislators from the Senate Economic References Committee²² have released a study on how to implement an operable digital currency regulatory structure. A new law governing cryptocurrency trading and the platforms that make it possible was just passed in Australia.²³ Anti-money laundering and anti-terrorist funding are the primary goals of the Act. The agency in charge of putting this law into action is AUSTRAC. Platforms that deal in

¹⁷ The Australian Government the Treasury, Initial Coin Offerings, Issues Paper-January 2019.

¹⁸ AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION, <http://asic.gov.au/about-asic/what-we-do/our-role/#who/>, (last visited June. 10, 2022).

¹⁹ The Corporations Act, 2001, No. 50, Acts of Parliament, 2001 (Australia).

²⁰ TAX TREATMENT OF CRYPTO-CURRENCIES IN AUSTRALIA - SPECIFICALLY BITCOIN, Australian Taxation Office, <https://rb.gy/nz38gj/>, (last visited June. 10, 2022).

²¹ *Id.*

²² SENATE ECONOMIC REFERENCES COMMITTEE, Digital Currency - Game Change or Bit Player, <https://rb.gy/mhluzk> (last visited June. 10, 2022).

²³ AUSTRAC, Regulating Crypto currency Providers with New Australian laws, AUSTRAC, <https://rb.gy/m9gfe9>, (last visited June 10, 2022).

cryptocurrency must register with AUSTRAC and meet all of its requirements and duties in order to do business.²⁴As a smart move, the government will be able to get all the information they need regarding cryptocurrency via this method. Additional licencing (Australian Financial Services License) from the ASIC is required to operate such exchange platforms.²⁵

JAPAN

Japan's Financial Services Agency (FSA) is tasked with keeping the country's financial markets safe and orderly.²⁶Recent statements have been made on the regulatory framework for ICOs and Cryptocurrencies. If the nature and structure of ICO tokens necessitate it, Japanese ICOs may be governed under the Japanese Payment Services Act.²⁷Virtual currency tokens are subject to regulation under the Payment Services Act if they meet the definition of a "token." A currency qualifies as the same when it can be traded for products and services and even fiat cash and is reciprocally exchangeable with other virtual currencies.

CHINA

China's central bank, the People's Bank of China (PBC), oversees the country's financial markets and currency exchanges. For the proper administration of digital money challenges, the PBC has formed an Institution of Digital Money.²⁸China has introduced e-RMB, an entirely digitised form of the 'Renminbi,' which has the same value as the physical paper cash currently in use in China.²⁹

SWITZERLAND

A long-term ambition of the Swiss government has been to become a centre for cryptocurrencies and Fintech start-ups. In November of 2017, it started taking cryptocurrencies like bitcoin and ether as payment for admin expenses.³⁰The Swiss Financial Market

²⁴ AUSTRAC OVERVIEW, <http://www.austrac.gov.au/about-us/austrac>, (last visited June 10. 2022).

²⁵ ASIC, Information Sheet 225, Initial coin offerings and cryptocurrencies, SYDNEY: ASIC, <https://asic.gov.au/regulatory-resources/digital-transformation/crypto-assets/> (last visited June 10. 2022).

²⁶ Yuki Yoshida, *Japan's FSA Clarifies on ICOs, Warns of Risks*, JONES DAY (June 10. 2022), <https://rb.gy/gxowzl/>.

²⁷ Financial Instrument and Exchange Act, No. 25, Acts of Parliament, 1948 (Japan).

²⁸ Zhou Xiaochuan: *The products that are not careful about the dynamic supervision of virtual currency in the future will be stopped first*, XINHUANET (June 10. 2022), <https://rb.gy/gbtrfr/>.

²⁹ Helen Davidson, *China starts major trial of state-run digital currency*, THE GUARDIAN (June 10. 2022), <https://www.theguardian.com/world/2020/apr/28/china-starts-major-trial-of-state-run-digital-currency/>.

³⁰ Press Release, Kanton Zug [Canton Zug], *Commercial Register Office Zug Accepts Cryptocurrencies Bitcoin and Ether as Means of Payment* (June 10. 2022), <https://rb.gy/ojnsp7/>.

Supervisory Authority oversees keeping an eye on the Swiss financial market (FMSA).³¹For the regulation of initial coin offerings and cryptocurrency, the FMSA established rules in February of this year. Cryptocurrency trading platforms are subject to the Anti-Money Laundering Act, which governs the selling and acquisition of digital currency.³²As a result, FINMA registration is a requirement for these platforms.

USA

United States government agencies have been working together to create a practical cryptocurrency regulatory framework recently. Overseeing compliance with US federal securities rules falls to the Securities and Exchange Commission (SEC).³³In addition, the federal government has developed a financial technology and strategic innovation centre to support investors, Fintech developers, and entrepreneurs. ³⁴Using this site, the public may ask the SEC questions regarding Fintech directly and get answers on the agency's perspective on the subject. In order to avoid the strict regulations of the securities legislation, the seller or publisher of the cryptocurrency must prove that they do not fall within the purview of the legislation, failing which it becomes compulsory to meet the requirements of US securities legislation, bringing it under the SEC's umbrella. The SEC is also basically obliged to register the exchange platforms.³⁵

Furthermore, the Bank Secrecy Act applies to people who generate, trade, acquire, transfer, and receive virtual currency (BSA).³⁶Terrorist funding in the United States is targeted by the BSA, a very restrictive anti-money laundering law. Anti-money laundering and know-your-customer (KYC) regulations apply to cryptocurrency market participants.³⁷

EUROPEAN UNION

³¹FINMA, Guidelines for Enquiries Regarding the Regulatory Framework for Initial Coin Offerings (ICOs) (FINMA ICO Guidelines), <https://rb.gy/uvvlpr/>, (last visited June 10. 2022).

³² MME Legal, *Virtual currencies in Switzerland*, LEXOLOGY, (June 10. 2022), <https://rb.gy/60obup>.

³³ KANTONZUG, *Supra* Note 30.

³⁴ KANTONZUG, *Supra* Note 30.

³⁵SEC, *Statement on Potentially Unlawful Online Platforms for Trading Digital Assets*, SEC PUBLIC STATEMENTS (June 10. 2022), <https://www.sec.gov/news/public-statement/enforcement-tm-statement-potentiallyunlawful-online-platforms-trading/>.

³⁶FinCEN, *Application of FinCEN's Regulations to Persons Administering Exchanging, or Using Virtual Currencies*, FINCEN (June 10. 2022), <https://www.fincen.gov/sites/default/files/shared/FIN-2013-GOO1.pdf/>.

³⁷SEC Chairman Clayton, *Statement on Cryptocurrencies and Initial Coin Offerings*, SEC PUBLIC STATEMENTS (June 10. 2022), <https://www.sec.gov/news/public-statement/statement-clayton-2017-12-11/>.

The same financial restrictions that apply to ICOs may be applied to cryptocurrencies in the EU.³⁸ Trade in cryptocurrency is also subject to the anti-money laundering and anti-terrorist financing rules. As long as there is no prohibition on Cryptocurrencies in India, the country is open to new ideas and investments in the virtual world. Everyone was waiting for the government to come out with some strategic legislation on this subject. However, it has emerged that the government is considering a "proposed ban on the cryptocurrency."³⁹

The proposal to penalise the possession, issue, mining, trading, and transfer of crypto-assets is considered one of the most brutal measures against cryptocurrencies in the world.⁴⁰ If this is really the case, it is quite possible that India's bitcoin market would soon be doomed.

ANALYSING THE TAKEAWAYS FOR INDIAN LAWS

Bans on cryptocurrencies, according to the author, are equivalent to bans on Blockchain technology. India may have taken a different approach instead of enacting an Information Technology Act, 2000. Using blockchain technology, we may say that the internet of today is the internet of tomorrow. Banning it will harm the country's future growth and development. One kind of cryptocurrency will be banned by the government and replaced by another. That is why the whole Blockchain technology must be prohibited in order to ban cryptocurrencies. The number of crypto exchanges in India has increased. Cryptocurrency exchanges such as Coinbase and WazirX have grown in popularity over the years. Despite China's \$1.4 billion market capitalisation, India has Asia's second-highest number of crypto dealers. Motives are interpreted differently in various jurisdictions. In contrast to countries like Australia, China, the EU, and the United States, Japan places a greater emphasis on protecting the interests of consumers.⁴¹ As can be seen, rigorous regulations are in place in each of these countries to prevent financial crimes like money laundering and terrorist funding from being carried out using cryptocurrencies and ICOs.

³⁸ ESMA, *ESAs warn consumers of risks in buying virtual currencies* (June 10, 2022), <https://rb.gy/cnqpuu/>.

³⁹ Aftab Ahmed & Nupur Anand, *India to propose cryptocurrency ban, penalising miners, traders - source*, REUTERS (June 10, 2022), <https://www.reuters.com/article/uk-india-cryptocurrency-ban-idUSKBN2B60QP/>.

⁴⁰ *Id.*

⁴¹ Bart Custers & Bas Vergouw, *Promising policing technologies: Experiences, obstacles and police needs regarding law enforcement technologies*, 31 COMPUTER LAW & SECURITY REPORT 518, 521 (June 10, 2022), <https://rb.gy/nqhuky/>.

The author compared various tools for regulating ICOs and Currencies, such as KYC, Name-shaming (of fraudulent companies), Mandatory Registrations, licensing system, providing accurate information by the supervisory authorities or the government, maintaining records, creating proper prospectuses to provide complete information to the potential investors, and of course strict sanctions in case of non-compliance. In order to properly control future difficulties, it is recommended that the best features of these countries be integrated into the Indian framework.

RECOMMENDATIONS TO THE DEVELOPING INDIAN REGIME OF CRYPTOCURRENCY

The Inter-ministerial Committee (IMC) Committee⁴² is concerned about the proliferation of foreign-issued cryptocurrencies in India. All cryptocurrencies are private firms formed by non-sovereigns. Private cryptocurrencies have no fundamental value, lack monetary characteristics and have no set nominal value. Thus, they are neither a store of value nor a means of trade. Cryptocurrency values have fluctuated wildly since their debut. The Committee believes private cryptos should be banned. Private cryptocurrencies are incompatible with money's core functions; thus, they cannot replace fiat currencies. Global best practices suggest that private cryptocurrencies are not legal tender in any country. The Committee proposes banning all private cryptocurrencies in India, save state-issued ones. The Committee approves the RBI's move to remove its institutions' cryptocurrency interfaces. The Committee also advises banning cryptocurrency trading by exchanges, traders, and other financial system participants. The Committee suggested legislation prohibiting cryptocurrency in India and criminalising related actions.

Committee⁴³ believes that Distributed Ledger Technology (DLT) will usher in the digital era. DLT may help India in financial and non-financial domains. DLT can help with trade financing, reducing KYC costs, and boosting loan availability. The Committee recommends that the Department of Economic Affairs find uses for DLT and take steps to

⁴² Inter-ministerial Committee (IMC), Report on Virtual Currencies, Department of Economic Affairs, Ministry of Finance, New Delhi, India, <https://dea.gov.in/sites/default/files/Approved%20and%20Signed%20Report%20and%20Bill%20of%20IMC%20on%20VCs%2028%20Feb%202019.pdf/> (last visited June 10, 2022).

⁴³ *Id.*

facilitate its use in the financial sector. RBI, SEBI, IRDA, PFRDA, and IBBI should also concentrate on DLT to design relevant rules. DLT reduces KYC compliance expenses. MEITY may potentially study consent-based DLT customer data storage. MEITY and GSTN must play a vital technological supporting role in investigating and growing DLT applications for trade finance by allowing DLT trade invoicing growth. The Committee has suggested legislation to encourage and regulate DLT in financial industries.

A faster and more dependable payment system, especially for international transfers, is recommended by the Committee, which suggests that the RBI look into DLT-based solutions for this purpose. Using blockchain technology for a low-cost KYC solution that reduces individual KYC duplication is recommended by the Committee. The Committee thinks that banks and other financial institutions may use DLT-based systems to monitor loan issuance, collateral management, fraud detection and claims management in insurance, and securities market reconciliation.. The Committee advises that financial sector authorities explore how banks, insurers, and stock exchanges, may employ DLT in procedures. The Committee recommends that SEBI explore DLT for IPOs and FPOs as an alternative to the current system. The Committee also advises that SEBI consider moving depository systems to DLT. Using DLT to preserve land records may reduce mistakes and fraud in land markets. The Committee proposes that state governments explore DLT for land-records management. The Committee believes DLT can enhance the e-stamping system for stamp duty collection. The Committee believes that data localisation rules proposed in the draught Data Protection Bill may need to be implemented carefully to preserve vital personal data and ensure that Indian enterprises and consumers who may benefit from DLT-based services are not harmed.

CONCLUSION

Currently, as there is no legislation on the crimes mentioned above, the Court tries these cases under the IT Act 2005 and S. 403, 411, and 420 of the Indian Penal Code.⁴⁴The dangers of cryptocurrencies will only grow in scope the longer we ignore them in our policymaking and mental processes. We need to examine how regulatory monitoring and financial intermediation interact with the area of cryptocurrency, which is now primarily unregulated.

⁴⁴ Hitesh Bhatia v. Kumar Vivekanand, Case No. 3207 of 2020.

As far as fiscal and monetary activities are concerned, sovereignty is critical from a regulatory standpoint. Despite having a market value of just around USD 150 billion, cryptocurrencies have created an investment and trading frenzy that cannot be ignored. Consequently, establishing a "regulatory framework" is critical to avoid the potential avalanche of frontal attacks on economic and corporate governance that might come from this upheaval. Since it is an anonymous currency through an automated protocol, it can be used for money laundering and as a centre for illegal cross-border investments via tax evasions. Moreover, considering the danger of terrorism, the international character of such cryptocurrencies creates a severe risk for them to be utilised for funding terrorist operations.

Robust institutional oversight that integrates existing economic and national governance imperatives will be able to provide the framework for providing resilience to market integrity, consumer protection and integration into the mainstream economic activity in an eco-system that addresses the challenges of trust. A global trade order governing cryptocurrencies is thus required, given the currency's ability to move freely across borders and pose significant extraterritorial hazards, in addition to developing national legal norms to govern the operational framework of cryptocurrencies. It would be possible to consider it legitimate if it had that status.

In order to protect the market's integrity and the interests of consumers and investors, as well as to build the trust of the people, it is critical to have clarity on whether cryptocurrencies fall under the definition of relevant asset class, i.e., whether they are money or security under the relevant legislation by the British government, going forward. It also emphasises the need for regulators and other government organisations to spread the necessary knowledge to educate market players about the hazards of cryptocurrencies and the mitigation of such risks. Such an approach must eventually lead to an era in which cryptocurrencies need to be backed by sovereign backing; until then, regulatory risks will persist, and cryptocurrencies will attract regulatory attention for their potential for misuse in money laundering and terrorism financing because of their speculative nature.

Bitcoin is a technological tour de force

~ Bill Gates