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AN ANALYSIS OF CRYPTOCURRENCY AND THE LEGAL FRAMEWORK

ABSTRACT

The contemporary era, is a digital era where majority of the things are done virtually. In the wake of this dawn new form of digital currency has emerged known as cryptocurrency. Crypto a collection of binary data framed to work as a medium of exchange. Cryptocurrency has been accepted by many countries (EL Salvador has become the first country in the world to accept Bitcoin as legal tender).

Cryptocurrency shares characteristics of both currency & investment, it is used for purchasing but the purchasing power is limited. “That the lack of widespread adoption, plus crypto’s volatility, limits its use as currency”, says Roger Aliaga – Diaz, Principal and senior economist with Vanguard investment strategy group. Crypto as an investment is complicated as it doesn’t quite fit the mold of traditional stock or bond.

Many countries have completely closed their doors for cryptocurrency like China , Indonesia, Turkey , Bolivia, Egypt .While countries like India have no official data on cryptocurrency holders .The research analysis the intricate details regarding the legal framework dealing with cryptocurrency in various countries, investment aspects of cryptocurrency and also about the countries which have accepted and which have not accepted cryptocurrency, the demand of cryptocurrency in international market.

Keywords: Cryptocurrencies, Bitcoin, Crypto, Digital Era, Blockchain.

INTRODUCTION

Cryptocurrencies goods, such as gold or silver, do not underlie cryptocurrencies' value. Instead, their value totally depends upon the value that other owners and investors ascribe to them. Since they are not backed by any centralized regulatory body, investors may have few legal resources if any complications arise from their crypto transactions or ownership.

Certain Terms to Know.

1. **BLOCKCHAIN-** Blockchain is a type of database in which cryptocurrency digital transaction records are stored in groups, or blocks. A blockchain is a decentralized ledger of all transactions across a peer-to-peer network. Using this technology,
2. **BITCOIN-** The first cryptocurrency, one of the most popular cryptocurrencies.
3. **Altcoin** -any cryptocurrency that is not bitcoin. Ethereum, Dogecoin, Litecoin.
4. **Decentralized-** direct peer-peer cryptocurrency transaction to take place online security and without need of an intermediary. (Decentralized) database that is installed on systems that are geographically located in different locations but "not" linked through a data communication.
5. **DLT (Distributed ledger technology;** A decentralized digital record blockchain is a type of DLT. Blockchain is a type of DLT, but the technology can serve a number of purposes beyond cryptocurrency trade.
6. **Exchange;** A marketplace where you can buy and sell cryptocurrency.
7. **Wallet-** A place to store your cryptocurrency holdings many exchanges offer digital wallets.

CRYPTOCURRENCY IN GLOBAL MARKET

Cryptocurrency with the idea of decentralization gained its popularity in the global market, but their volatility remains high and these assets carry a greater risk of losses than many traditional assets. For instance, 2017 data, in 2017, Bitcoin prices rose from about \$1,000 to a high of more than \$19,000 before dropping to around \$3,000.

Then, bitcoin again rose through the end of 2020, reaching new high of around \$60,000 before dropping again to \$30,000 in the summer of 2021, cryptocurrencies offer an easy-to-

use, digital alternative to fiat currency.¹

Cryptocurrencies can be used to evade these capital controls (legal or not) which has led to increased demand on the part of consumers and businesses. Because of increased demand on part of consumers and businesses many countries have started cracking down on the illegal uses of cryptocurrencies for tax evasion or illegal purchases or sales abroad.

GOVERNMENT RESPONSE

The government response to cryptocurrencies has been slightly heated at best across central banks and financial institutions. While there are some organizations that have been supportive to, many central banks remain cautious given the market's extreme volatility. Issues with tax evasion and capital controls also have led to some widespread concerns.

INTERNATIONAL LEGAL ASPECT

After the rapid growth in demand of cryptocurrency because of which law is being a concern. This currency puts a huge impact on international trade laws in many ways as it affects the volume of transactions thereon. Basically, the international law provides the border regulation law for the transaction flow. For instance, the Financial Conduct Authority of the UK does not consider such currency as a valid mode of exchange so in such scenarios international law plays a role. It challenges the current provisions of international trade law.

Global and National Commerce Act of 2000, provides limited legal validity to smart contracts. Since smart contracts' legal validity is unclear, however, they are likely to result in lengthy litigation processes. For any national regulator, enforcing laws among blockchain users, transactions, or projects is a herculean task because of the technology's cross-border reach.

The country like EL Salvador (The first country to accept the crypto currency in the world) even after accepting cryptocurrency there is a continuous debate on whether cryptocurrency should be considered as an asset or currency or a security.

There are also certain countries having a framework which treats cryptocurrency as an asset and not a currency. The very first country **United States**, for an asset class the United State

¹ Justin Kuepper, How Cryptocurrencies Affect the Global Market, The Balance, <https://www.thebalance.com/how-cryptocurrencies-affect-the-global-market-4161278>

has the better investor protection i.e. tax from capital gains.

Moreover, Coinbase, a U.S.-Based exchange is listed in the NASDAQ reflecting the clear crypto law of the country. The United States cryptocurrency policies are taken care of by both the federal and state government. At the federal level the focus is done by administrative and agency level. Many federal agencies and policymakers have praised the technology as being an important part of the U.S.'s future infrastructure and have acknowledged the need for the U.S. to maintain a leading role in the development of the technology. Regarding to the sales regulation

1. Only regulated if the sales constitute a security under state or federal law
2. Considered as (“MSB”) money services business under federal law otherwise considered as money transmission under state law.
3. In addition, the CFTC has jurisdiction over attempts to engage in market manipulation with respect to those crypto assets that are considered commodities.²

The investment company act of 1940 (the “Company Act”), the investment Advisers Act of 1940 (the “Advises Act”), as well as state investment advisory laws, impose regulations on investment funds that invest in securities. Section 3(c)(7) allows a fund to have an unlimited number of investors (but practically it should be limited to 2,000 to avoid being deemed a publicly traded partnership under the securities exchange act but requires a significantly higher net worth suitability requirement for each investor.

Singapore

The Monetary Authority of Singapore (MAC) implemented legislation under its Payment Service Act for cryptocurrency. In Singapore whoever facilitates transmission, exchange or storage of cryptocurrencies needs to hold a license. Alike regulation in the country provides guidelines with respect to compliance as well as for AMI and CTF Initiative.

United Kingdom

In UK cryptocurrency is considered as capital asset made clear by the tax authority. The exchange needs to be registered with the financial conduct authority and proper guidelines & measures to be taken to protect consumers, apart from it they even comply with anti-money

² GLI (GLOBAL LEGAL INSIGHT) Blockchain & Cryptocurrencies Laws and Regulations, Global Legal Insight, <https://www.globallegalinsights.com/practice-areas/blockchain-laws-and-regulations/usa>

laundering a counter- terrorism financing (CTF) initiative.

LEGAL CONCERN FOR THE INVESTORS

Cryptocurrencies are not backed by any centralized issuing authority and intrinsic goods, such as gold or silver, do not lie under cryptocurrencies' value. Instead, their value totally depends upon the value that other owners and investors ascribe to them. Since they are not backed by any centralized regulatory body, investors may have few legal resources if any complications arise from their crypto transactions or ownership.

It remains unclear whether digital currency investors who have purchased their holdings on foreign exchanges must face additional reporting measures come tax time. Fraud and money laundering cryptocurrency provide criminal organizations with a new means of committing fraud, money laundering, and a host of other financial crimes. However, investors who find themselves in the unfortunate position of being a victim of financial crime do not likely have the same legal options as traditional victims of fraud. The IRS and the treasury department did not respond to CNBC's request for clarification.

Last week, the global crypto crackdown spread to the U.K., where regulators banned leading digital currency exchange binance from undertaking regulated activities. Another risk Volatility is the persistent, extreme swings in the price of bitcoin and other digital currencies. Meanwhile, the trend of traders who have highly-leveraged bets on bitcoin getting flushed out of the market has led to intense price fluctuations this year.

With the rise in demand of cryptocurrency across the world the risk on such investment is also increasing rapidly, a strong legal framework is required in order to escape such unauthorized activities.

CRYPTOCURRENCY REGULATIONS IN INDIA

There is no specific law for cryptocurrency and neither ban on cryptocurrency in India. Instead, India is one of the biggest cryptocurrency markets in the world. India has more than 10 crore crypto owners, while homegrown crypto exchange platforms have maintained that around 2 crore Indians have invested in cryptocurrencies. The bill for the cryptocurrency is likely to be introduced in the winter session of parliament this year (2021).

The crypto Bill was a part of the 26 bills that the government plans to introduce in the winter session. The government was planning to ban all cryptocurrencies in 2020 but the bill got

scrapped and a committee was formed to discuss the matter further with the stakeholders. Since then, it has given hints that cryptocurrencies can co-exist with the Indian rupee but might be regulated. Finance Minister Nirmala Sitharaman said, “This is a risky area and not in a complete regulatory framework. No decision was taken on banning its advertisement. Steps are taken to create awareness through the RBI and SEBI”. The government will soon introduce a bill. India’s Prime Minister Narendra Modi will take a final call on the regulatory framework of the bill as stakeholders have found themselves in conflict regarding the same. As the government is going to bring changes in the regulatory framework has delayed the tabling of the bills in the parliament.

On Friday, “PM Modi said on Friday, amid ongoing discussions regarding the regulation of cryptocurrency and regulation of the official digital currency bill 2021, days after a meeting of a cabinet and representative of the Reserve Bank of India.³

All together the proper draft of regulation for crypto currency is still a controversy for India. Everyone has a keen eye for the legal framework and official acceptance of cryptocurrency in India. Although Ministry of Electronics and Information Technology (MeitY) has identified Blockchain Technology as one of the important research areas having application potential in different domains such as Governance, Banking & Finance, Cyber Security and so on. MeitY has supported a multi-institutional project titled Distributed Center of Excellence in Blockchain Technology with C-DAC, IDRBT and VJTI as executing agencies. RBI (Reserve bank of India) in its question mentioned about the its worry on the impact of cryptocurrency on the broader economy considering it may be misused for terror funding and money laundering activities. Certain crypto’s during its processing period focused to provide more transaction anonymity for different purposes ultimately leading to achieve the goal.

Also, with continuous fluctuation in the legal aspects of cryptocurrency RBI questioned the approaches about the crypto laws in India apart from it in post 2020 the RBI has also mentioned about bringing its digital currency namely Lakshmi which is different from cryptocurrencies.⁴

³ Cryptocurrency Bill: PM Modi to take final call; what we know so far on India’s Stance, News18 (dec/18/2021), <https://www.news18.com/news/business/cryptocurrency/cryptocurrency-bill-pm-modi-to-take-final-call-what-we-know-so-far-on-indias-stance-4543079.html>

⁴ Keshar batheja & Param Goel, Cryptocurrency in India, Us corpus Law Journal

LAKSHMI COIN (DIGITAL CURRENCY)

Lakshmi is a digital currency by the Indian government, the same as bitcoin. It has the same value as that of rupee, it is exchangeable against cryptocurrencies and USD tokens. The proposal was discussed by the committee of government officials and it was said that the regulations will be governed on the basis of some act such as currency act with some amendments required. The coin "lakshmi" is still not out in the market and no update of when it will come in the market. Lakshmi is not yet a coin in the market, it's an idea on which the government is working. Basically, the information about the coin is speculation and announcement.

LEGAL ASPECTS AND PRIVACY A CHALLENGE

The data of blockchain is stored at every point therefore privacy is not an intrinsic feature of blockchain and this area required a proper strategy and regulations. Keeping data protection laws in mind the data of individuals should be stored in way that no infringement should occur as well as consent must be involved the conformity for Blockchain applications is still unknown it mainly relates to the privacy of the information shared through Blockchain which can be any document required on the particular individual.

These challenges are referenced from the National Blockchain Strategy report prepared by NIC. The Section 43A of the IT Act has no safeguard related to the privacy in blockchain application. The 'Right to be Forgotten', which is a prevailing feature of data protection contradicts with the blockchain data terms and conditions i.e. no data or the history of the data will be erased the challenge is since the public blockchain stores the data automatically at every node on a network the privacy comes in picture again as well as the technology may face problems.⁵

Digital Signatures are a crucial part of Blockchain networks and applications. Currently there exist no details in the Schedule I of the IT Act, 2000 about the transactions of immovable property, wills and negotiable instruments so here the use of technology is exempted.

CONCLUSION.

The global cryptocurrency market crashed in 2021 because of several reasons including

⁵ Ministry-PRS, Draft of National strategy on Blockchain, <https://www.meity.gov.in/content/draft-national-strategy-blockchain>

prohibition of financial institutions of china from offering any services. Even though the fall in the price was drastic the economist evaluation was like the decline as a short-term correction as the market is volatile and every then and now fluctuations are visible in the market.

In India there is now certainty with respect to cryptocurrency and about its official data and legal approach still the bill is yet to be discussed. The central authority is in partial mood with respect to bringing crypto as an asset, maybe because the whole process of crypto is decentralized. Since maximum no of investors are seen from the country India, it is high time to strengthen the regulation and cryptocurrency in the market with official record as we are in a time where changes will occur every then & now mostly in digital areas.

Even if we see the fluctuation with respect to the market value of crypto, the investors still have faith and active participation is visible. The exact determination of cryptocurrency is not possible but the value of cryptocurrencies is increasing by every passing day. There are certain countries officially accepted the cryptocurrencies and have framed the legal aspects for the regulations but still the challenges are mostly remaining to be solved, with legal challenges there are also technical challenges to be resolve.

Looking at the current interest of people in the investment in crypto digital market the strengthening of legal as well as the technical aspect should be done without the further ado. Blockchain is a beneficial technology as it can help in bringing a lot of value addition in e-governance. Blockchain provides transparency and accountability. Adoption of cryptocurrency and certain amendments can be a successful future for the digital market as today's world and digitalization are working or going hand in hand.