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Beyond Bitcoin: The New Wild West of Financial Regulations

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Abstract

This article talks about the stance of where cryptocurrencies lie in terms of legal and regulatory framework by focusing on the Indian perspective. The concept of cryptocurrencies has involved, intricate and subject to many schools of thought. This article by the end of discussion would give clarity as to whether there is a need of a legal framework for prevention of ambiguity with the enactment and acceptance of cryptocurrencies in the nation with consonance to the customer understanding and take on this very concept. This article will also explore the legal framework in relation to the IT Act. The article presented is in a manner where the readers can make an individualist and a diplomatic decision of their own. The article also assures to mention related case laws, citations, newsletters, articles etc. The author further assures to have done a thorough study through the help of many secondary resources. The sole purpose of this article is to present a systematic view of this act as a whole and the substances defining and revolving around it. It is further hoped that such an analysis would be useful to the readers about the entire premise.

Keywords: Cryptocurrency, CBDC, RBI, supreme court, prevention of money laundering act, 2002, digital currency

INTRODUCTION

The year 2008, saw the biggest change in terms of the digital world, a change which transformed the outlook of how currencies would be hence handled. The inception of cryptocurrency was introduced by way of publication by the name of "Satoshi Nakamoto". This publication later on proved as to how much weight it held and how much this concept is going to shift the perception of the digital world. The publication was held summarizing the approach of the concept of 'cryptocurrency' as a type of digital currency and further also started with the origin of Bitcoin, the first and the most successful cryptocurrency to be created in the year of 2009. This rose to fame due to its significant feature of no reliance of intermediaries like that of banks.

By way of blockchain technologies, the creation of Bitcoin paved an understanding as a way of safe and secure transactions with an additional benefit of being almost flawless and transparent. The inception and the advancements of Bitcoin encouraged establishments of other currencies such as Ethereum, Litecoin, and Ripple, all guaranteeing distinct characteristics from one another.

This safe and secure platform for transactions has been positioned as an unconventional method due to its distinct feature of absence of third parties; to name a few, banks or other financial institutions. This article will help approach an understanding the legal persona, if any, with respect to the Indian Legal System.

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The inception of this very form in the year of 2008 had changed minds despite the idea floating around beyond the years of 1980s and 1990s. By the very means of being an unconventional method, cryptocurrencies seem to gain popularity and finds itself stand in a strong proposition to transfigure and modernize the financial system of every nation. The main reason as to this standing is their vehement inclusion of the unbanked population in the targeted territory and the capacity to support a legitimate, safe and secure way of transactions.

However, the exponential growth of this mechanism causes a momentary turmoil as the country sees no methods in controlling and managing it, mainly due to the fact that the country runs no legal statutes to wrestle with how to arrange and direct this new resource class.

The year of 2018 had put a stop on the transactions involving cryptocurrencies by way of a circular, which was issued by the Reserve Bank of India. The circular held a constraint on financial institutions from dealing in cryptocurrencies or any services thereto. RBI pertained with such a decision not because it had a lack of foundation but because they were yet to the understanding of such virtual currencies actually are fool proof. The circular mainly raised such a restraint due to the considerations of hacking being done on currencies which can possibly have no asset backing or collateral of sorts. Moreover, RBI also was of the view that such a currency would also aid in processes that would tamper a country's name, few examples being aiding in money laundering activities and shielding for terrorist activities since this provided a perfect platform to do so. Such an embargo naturally saw a negative brunt in the cryptocurrency sector.

Nevertheless, on the onset of March 2020, the case of Internet and Mobile Association of India v. Reserve Bank of India [1] changed everything from the view on how cryptocurrencies were seen to what can be the next steps to manage and amplify in its best possible way. This case saw a non-conventional way; best for the advancements of both services and a take on modern developments. It was in this case, Internet and Mobile Association of India v. Reserve Bank of India, where the Supreme Court had quashed RBI's circular claiming it to be unconstitutional and violative of Article 19(1)(g) of the Constitution of India, 1949 [2]. It was through this judgement that understood the violation of the doctrine of proportionality and how it had to restore back by looking at it through new lenses; by utilizing every essential put across [3].

With a pivotal moment at hand, there were still hurdles faced since despite such advancements, India hardly had a regulatory framework for this sector at hand. The frame workers are yet to come up with an understanding as to how such a sector will prevail at the same time have a hold at prohibiting necessary preventions. Regulations of this currency are in huge need of the hour and we will now see the regulatory frameworks revolving in India.

COMMENCEMENT OF CENTRAL BANK DIGITAL CURRENCIES

A well growing sector, cryptocurrency is seen to bloom in every industry especially due economic growth of our country. With the onset of several countries like South Korea, United States, Canada, Singapore and much more, India wishes to undergo as the next country to be open to this concept. The regulatory framework of cryptocurrencies is still an ongoing and an overwhelming debate. The quashing of RBI's circular by the Supreme Court saw new anticipation and achievements at hand. With the issue of the Cryptocurrency Bill, 2021, all hopes are high for this new introduction.

Under the purview of RBI, as of November 2022, a new digital currency was formed by the name of Central Bank Digital Currency (CBDC) [4]. This places India as the 10th country that has successfully launched its own digital currency.

Governor of RBI Shaktikanta Das is of the opinion that CBDCs are the future of money while majorly intensifying on the fact that CBDCs are in rapid growth and had also further mentioned that RBI is ready to make the necessary changes for the same [5].

With the adaptation of CBDCs, the Central Government now paves a safe and secure way while also handling it with the respective existing legislations. This means that the existing regulations pertaining to currencies, Indian legal systems relating to Indian and international payment systems, anti-money laundering financing, and much more activities would have a direct and a specific effect on CBDCs and its regulations in the country with changes in existing legislations will be dealt further.

CURRENT LEGISLATIONS

With the understanding that there are no specific statues or legislations governing this currency in India, uses of cryptocurrencies were so hoped if it could be regulated by a combination of the Information Technology Act of 2000 (IT Act), Prevention of Money Laundering Act 2002 (PMLA) and much more for obvious reasons; the IT Act of 2000 since it regulates a governance of electronic groundwork and structure, and all transactions related to electronic interchange and the PMLA provides as a supervisor on activities related to extremist ventures and endeavors. Therefore, with such combinations, PMLA could allow monitoring of transactions and the very platform of cryptocurrencies, whereas the IT Act can determine whether such transactions have legality in them. There in an underlying relationship of existing laws, regulations, rules, and cases, which help determine whether these transactions have a legal standing in the country’s domain.

With latest changes, as of March 7, 2023, it is decided that the Central Government would go ahead and acquire all the digital currencies, fiat currencies, and digital assets in order to safeguard and provide them safe governance as under Indian legislations. Although it is clear that there are potential statutes on the way, since digital currencies are an already accepted method of currencies, they will be legal implications on the way.

By way of a notification, the Central Government has acquired all the digital assets thereby ensuring to keep it safe under the Prevention of Money Laundering Act, 2002. PMLA specifically mentions about the identification of the customers of various financial institutions and direct reporting of any suspicious transactions to the authorities. This would mean that any transaction pertaining to digital currencies from one platform to another will fall under the direct ambit of PMLA. By this method, all the transaction holders will mandatorily have to undergo KYC (Know Your Customer), in order to obtain details and maintain them. Moreover, such close review on details of the transactions will give an accurate and a precise watch on potentially corrupted or illegal transactions [6].

Understanding the ambit of PMLA, the Act does not only make sure that the ones directly at causes of crimes are penalized but also the entities be it individuals or organizations that might potentially aid such activities will also be included under penalization, this being the very fact as to why specific details of people involved are taken before transactions can take place under digital currency platforms.

Even though digital currencies would be controlled under PMLA, transactions will still be hard and incomprehensible to determine the tracking of such transactions and further ancillary activities, therefore enforceability of PMLA would be more than a task in the sector of digital currency [7].

Moreover, it also proves to be a challenge on agencies such as the Enforcement Directorate. The Enforcement Directorate is under the ambit of inspecting, investigating, and prosecuting crimes that occur in the financial sector. With such a rise in the digital currency sector, as statistical records, it is more than complicated to track and investigate cases, wherefore including cryptocurrencies under the scope of PMLA will definitely raise a huge number of complications [8].

CHANGES IN THE EXISTING LEGISLATIONS

With the introduction of CBDC, there is alterations made form the foundation; this would mean changes, amendments or repeals in the existing legislations, even turning over judgements or existing precedents and much more.

In order for a smooth functioning of CBDC, a major change in existing legislations would be seen. Some of the changes being;

Coinage Act, 2011

The term “coin” is defined under the Section 2(a) of the Act, Section 6 of the said Act mentions as to coins having the merit or the recognition of a legal tender as well. As under the definition of coin under the said Act, Section 2(a) defines as;

> *Means any coin which is made of any metal or any other material stamped by the Government or any other authority empowered by the Government in this behalf and which is a legal tender including commemorative coin and Government of India one rupee note.*
> *Explanation: For the removal of doubts, it is hereby clarified that a “coin” does not include the credit card, debit card, postal order and e-money issued by any bank, post office or financial institution;* [9]

With the understanding of the explanation above, the term coin clearly omits credit card, debit card, postal order and much more. As according to the Report issued by the Department of Economic Affairs and Ministry of Finance, New Delhi, by the name of “Report of the Committee to propose specific actions to be taken in relation to Virtual Currencies” as on 28th February, 2019, they say that the term “bank” has not been explicitly defined, therefore it isn’t clear whether exception also includes digital currency that is issues by the Central Bank to be excluded as well [10]. In simple words, it is unclear whether the term “coin” can include digital currency, whether or not an answer is formed it is certain that this Act is to make necessary changes.

RBI Act, 1934

We take recourse to Section 25 together read with Section 26(1) of the RBI Act provides. Section 25 of the RBI Act, is mentioned as,

> *The design, form and material of bank notes shall be such as may be approved by the 3[Central Government] after consideration of the recommendations made by Central Board* [11].

This would mean that a bank note can be of any form which the Central Government approves of. Furthermore, there is no mention of specificities as to what requirements need to be fulfilled for it to be a bank note, taking the simplest of example, the Section does not even specify that the bank note needs to be in physical form.

Whereas Section 26(1) of the same Act provides,

> *(1) Subject to the provisions of sub-section (2), every bank note shall be legal tender at any place in 4[India] in payment or on account for the amount expressed therein, and shall be guaranteed by the 5[Central Government]* [12].

This provision basically means that these notes would have the status of a legal tender in the country of India.

With the reading of both the Sections together, it can be deciphered that there can be procedures when it comes to the managing of CBDCs to include this digital currency a part of the bank note and as well as give it the status of a legal tender. This is also well approved the Report issued by the Department of Economic Affairs and Ministry of Finance, New Delhi, by the name of “Report of the Committee to propose specific actions to be taken in relation to Virtual Currencies” as on 28th February, 2019 [13].

CONCLUSION

With the issue of the Cryptocurrency Bill, 2021, the digital currency system will forever change and this sector would be bound to thrive. By regulating this sector, CBDC will take a huge step forward and the bill is to make itself as a favorable legislation in order to regulate the digital currency platform. The process of introduction of taxation on digital assets is already undergone as under the Union Budget of 2022 [14], but the process of the bill coming into enactment will take much more time and this will definitely prove to be a crucial moment for India, both in its financial and regulatory aspects.

While the country is still under the construction of building the perfect regulatory framework for digital currencies, guaranteeing consistencies and understanding to develop a state-of-the-art groundwork on the regulatory framework is very much essential.

As perspectives solidify and the sector improves, there will be stringent ways to manage and what better than a well-balanced and precise legal regulatory system. The country would in future see an amalgamation between a growing innovation and the administrative system of the very country and this will prove to be a first step of many admirations to come forth.

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