



Juridical status of cryptocurrency in India

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Abstract

The article provides an overview of the legal status of cryptocurrency in India. It begins with an introduction defining cryptocurrency and its key features such as decentralization and cryptography. The article then examines various Indian laws and regulations that could potentially apply to cryptocurrencies including the Payment and Settlement Act 2007, Negotiable Instrument Act 1881, Coinage Act 2011, Securities Contracts (Regulation) Act 1956, Reserve Bank of India Act 1934, and Foreign Exchange Management Act 1999. It finds that currently cryptocurrencies are not classified as legal tender or securities in India. The article discusses the impact of the 2022-2023 budget which imposed a 30% tax on crypto transactions. It also summarizes the G20 roadmap on regulating crypto assets which promotes international coordination. In conclusion, the article argues that rather than imposing a blanket ban, India should develop a legal framework to regulate cryptocurrencies to support innovation while protecting consumers and national interests. Suggestions include developing public cryptocurrencies and regulating private cryptocurrencies through licensing and registration of issuers. The article highlights the need for a nuanced approach that considers the unique aspects of cryptocurrencies.

Keywords: Cryptocurrency, legal status, regulation, taxation, decentralization, India

Introduction

To be able to work in the market, money is a generally accepted means of trade. Fiat currency gave rise to emerging types of currency that are easily exchanged virtually as a result of technological developments and the growth of e-commerce. The transition from traditional to digital trade gained advantages from several factors, including cost savings, market expansion, and trading activity that resulted in more participants. Due to the many benefits that come with using electronic money, traditional methods of trading appeared to have lost ground in the market. Additionally, the focus on digital currency has further grown as it has made trading much simpler, even when parties are not there in presence at the time when the transaction is carried out.

From first appearing as token money, which carried inherent worth, to its current state, the currency has undergone a gradual transformation. Then the notion of creating "notional money"-money with no inherent worth that is instead obtained from some other source—appears. On the other hand, a credit system evolved where the value was associated indirectly, making the individual responsible when a transaction is completed. These systems emerged quickly, which has been crucial to the efficient way in which that electronic payments operate.

At present, trading takes place digitally and is not restricted by time or location. This equitable way of doing business concentrates on the increasing number of people that are entering the online world. Following these developments in technology that create a parallel virtual world, financial services are also made accessible through these platforms and one such financial services include cryptocurrency which is widely used by an enormous amount of people all over the world.

To be more precise, cryptocurrency is a type of digital currency that works as a safe medium of exchange for the generation of new units and the completion of transactions.

The most noticeable feature of cryptocurrencies is that they function without the need for an intermediary, such as a bank or an agency of the government, at the point of transaction. The system as a whole generates new units at a predetermined price and releases them to the market. Government or banking regulators have no influence over this kind of cash issuance.

According to Merriam Webster dictionary "Cryptocurrency is any form of currency that only exists digitally, that usually has no central issuing or regulating authority but instead uses a decentralized system to record transactions and manage the issuance of new units, and that relies on cryptography to prevent counterfeiting and fraudulent transactions".

According to Cambridge Dictionary, "a digital currency produced by a public network, rather than any government, that uses cryptography to make sure payments are sent and received safely".

Legal status of Cryptocurrency in India

If we examine the roots of Indian currency, it goes back to the Sher Shah Suri era (1486–1545), when he was the impetus behind the introduction of the rupee to the country. In India, there has been an extended period of currency fluctuations. Regarding authority, the Central government of India is vested with the right to enact legislation concerning Indian currency and foreign exchange concerns, as stated in entries 36 and 46 of the 7th schedule of the Indian Constitution.

Cryptocurrency must be examined in accordance with numerous subject issues as stated by various Indian statutes in order to determine its legal status in India.

The Payment and Settlement Act, 2007

In accordance with the Payment and Settlement Systems Act, 2007, the Reserve Bank of India (RBI) is empowered

to certify various forms of pre-paid payment instruments. The RBI's definition of 'Pre-paid Payment Instrument' is as follows: "Payment instruments that facilitate the purchase of goods and services against the value stored on such instruments."

Concerning cryptocurrencies, it has been observed that they lack constancy and are subject to frequent fluctuations. Moreover, they may be deemed unsuitable for simplifying the process of purchasing products and services, as they do not conform to the criteria set for a "Prepaid Payment Instrument." Consequently, cryptocurrencies fall outside the purview of the Payment and Settlement Systems Act, 2007.

The Negotiable Instrument Act, 1881

According to this Act, A 'negotiable instrument' means "a promissory note, bill of exchange or cheque payable either to order or to bearer. Therefore, it is evident that a cryptocurrency does not meet the requirements to be included in a bill of exchange, promissory note, or cheque". Therefore, its requirements are insufficient for it to be under the umbrella of this Act.

The Coinage Act, 2011

According to section 2 (a) of The Coinage Act, 2011 "coin means any coin made of metal or any other material which is recognized as legal tender and stamped and issued by the Government or any authority empowered by the Government for this purpose which includes one-rupee note issued by Government and a commemorative coin." The term "coin" explicitly excludes postal orders, credit and debit cards, as well as e-money issued by any financial institution, post office, or bank. Therefore, Bitcoin does not fall within the definition of a "coin" and is consequently not encompassed by the provisions of this act.

The Securities Contracts (Regulation) Act, 1955

According to Section 2 (h) 'securities'; include— "(i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate [(ia) derivative (ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes [(ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;] [(id) units or any other such instrument issued to the investors under any mutual fund scheme;] (ii) Government securities; (iia) such other instruments as may be declared by the Central Government to be securities; and (iii) rights or interest in securities";

Cryptocurrencies are not regarded as legal tender by the Central Government. It does not, thus, fall within the aforementioned Act.

The Reserve Bank of India Act, 1934

According to RBI Act 'derivative' means "an instrument, to be settled at a future date, whose value is derived from change in interest rate, foreign exchange rate, credit rating or credit index, price of securities (also called "underlying"), or a combination of more than one of them and includes interest rate swaps, forward rate agreements, foreign currency swaps, foreign currency-rupee swaps, foreign currency options, foreign currency-rupee options or such other instruments as may be specified by the Bank from time to time".

Since a cryptocurrency is classified as an instrument and gets its value from changes in a number of interrelated circumstances, it satisfies the first part of the definition. However, the definition's listed elements are unrelated to a cryptocurrency's worth.

The Foreign Exchange Management Act, 1999 (FEMA)

This act defines 'currency' as – "currency includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, travelers' cheques, letters of credit, bills of exchange and promissory notes, credit cards or such other similar instruments, as may be notified by the Reserve Bank".

Cryptocurrencies presently do not fall within the scope of any defined financial instruments. However, this does not preclude the possibility that the Reserve Bank may categorize them as currency in the future. Until such a designation occurs, it is essential to consider the scenario in light of Japan's recognition of Bitcoin as legal tender within its jurisdiction. Consequently, any currency other than Indian money must be treated as foreign currency under the Foreign Exchange Management Act (FEMA) and comply with its regulatory framework.

Impact of Budget 2023 on Cryptocurrency

The fiscal landscape is ever-evolving, and the Union Budget of 2023 has brought forth notable implications for the realm of cryptocurrency. In this context, key highlights delineate crucial changes and policies shaping the taxation and regulation of virtual currencies and cryptocurrency assets:

Key Highlights

- In the Union Budget 2022-2023 Indian Government stated that 30% tax will be deducted for transfer of any virtual currency or cryptocurrency asset.
- No transaction related loss will be carried forward.
- If virtual currency and cryptocurrency are gifted then the recipient will be taxed.
- By 2023, RBI expects to introduce a blockchain based central bank digital currency (CBDC).
- A tax of 1% will be applied to source for payments made for transfer of digital assets.

Impact

The trading of cryptocurrencies as an authorized business and their official acceptance as legal assets by the Indian government are now possible. The Tax slab will remove ambiguity and help to increase business.

- Unfavorable for investors: Carry-forward losses will be a disadvantage for investors due to the volatility of cryptocurrencies. This will stop investors from investing in cryptocurrencies particularly small-scale financiers.

The G20 Roadmap on Cryptocurrency

In the past, the International Monetary Fund (IMF) and the Financial Stability Board (FSB) dealt with macro financial stability and regulation, respectively, and worked in distinct divisions. But while India presided over the G20, a historic endeavor was started to combine the knowledge of these two important organizations. The aim was transparent: to provide a comprehensive regulatory framework for cryptocurrency assets which successfully includes macro financial and regulatory factors. The Synthesis report

emphasized how crucial it is to protect monetary sovereignty.

The importance of license and registration for issuers of cryptocurrency assets is another crucial rule that is highlighted. This maintains a specific baseline standard in the unstable world of cryptocurrency assets in addition to guaranteeing the authenticity and reliability of these issuers. By ensuring that they are conducting business in a secure and regulated environment, it builds trust between users and investors.

The equal treatment of "similar activities and risks" is a fundamental new concept. This means that similar regulatory action needs to be taken for two activities that present the same risk. By taking this approach, one may guarantee equity and uniformity in the field of cryptocurrency and establish an accepted norm for future assets.

The synthesis paper makes it quite clear that crypto assets are not prohibited altogether. Since there would be difficulties in enforcing a complete ban on such a widely used asset, the focus of the discussions has moved to effective legislation and security.

During the G20 leaders' conference, Ajay Seth, the secretary of the department of economic affairs, presented a glimpse of India's perspective. He highlighted that the risk assessment approach put forward by the G20 would have an important effect on India's policy decisions. He promised to study the proposals in the Synthesis Report and make decisions specifically designed for India's unique socioeconomic context over the years.

Therefore, the governors of central banks and finance ministers from the G20 have approved a roadmap for putting in place an all-encompassing regulatory framework for digital assets. The G20 has demanded that the roadmap's components—including policy frameworks, international coordination, and filling up data gaps should be implemented quickly and in a coordinated manner.

Suggestions

There are many challenges regarding the regulation of crypto assets as it is governed by several statutes. There must be a legal framework to regulate the cryptocurrencies otherwise as a disadvantage Indian court will be filled with numerous lawsuits. There is a need of well-developed regulatory body which will be formed by keeping in mind the fluctuation issues and all other issues associated with it. India should come with a public cryptocurrency instead of private cryptocurrency. As public cryptocurrency with proper rules and regulations builds the trust of investors which in turn help in the growth and development of country. This framework will also help to keep check and control the criminal activities related to crypto assets.

Conclusion

From this study it is concluded that cryptocurrency importance is increasing day by day as a result of technological advancements. But there are certain risks associated with it still large number of people invested in it because of its less transaction cost, zero processing fee, profits and transparency. The Indian governments also face problems related with cryptocurrencies like unable to identify illegal transactions. The Government should not put a blanket ban but look forward to regulate it by enacting a proper legislation. As India ranks number 1 in population,

its citizens should know about the value and functioning of cryptocurrency to invest on it at a large scale. Laws must be made by considering legal, financial aspects to maintain a consumer friendly and secure system. Many countries have decided to regulate it, So India has to look forward into this which will help in the economic growth of county.

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