

BIT ON BITCOINS

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Abstract

The world economy has been, and will dependably be, in a ceaseless condition of development. This common movement also incorporates a meaningful boundary amongst products and monetary standards, and what we will permit to constitute money. Analyses in money is as old as business and human progress itself.¹ Today, innovation considers people to trade money speedier and all the more effectively with cryptocurrency. A cryptographic money “is an advanced resource intended to act as a medium of trade that utilizes cryptography to secure its exchanges, to control the making of extra units, and to check the exchange of advantages.”² The most striking element of such digital currency is that it gets rid of the requirement for a trusted outsider, for example, a legislative organization, a bank and so forth.³

A significant number of the virtual monetary forms can follow their roots to the developing surge of doubt of government and money related segments. The first “virtual currency”

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¹ Glyn Davies, *A History of Money: From Ancient Times to Present Day* (Julian Hodge Bank Limited ed. University of Wales Press Cardiff) (1994). Luis Angeles, *Four Phases in the History of Money*. Discussion Paper 2019-01, University of Glasgow-Adam Smith Business School (2019).

² Andy Greenburg, *Cryptocurrency*, *Forbes* (April 20th, 2011), <https://www.forbes.com/forbes/2011/0509/technology-psilocybin-Bitcoins-gavin-andresen-crypto-currency.html#757f8fa3353e>.

³ Jerry Brito, Shadab and Castillo, *Bitcoin Financial Regulation: Securities, Derivatives, Prediction Markets, and Gambling*, 16 COLUMBIA SCIENCE AND TECHNOLOGY LAW REVIEW 144 (2014-2015)

to truly manage any prevalence was WebMoney, which was propelled in light of the fall of the Russian saving money division in 1998.⁴ In spite of the fact that there have been numerous virtual monetary forms over the previous decade and a half,⁵ it was not until 2011 that a virtual cash in the form of Bitcoins has at long last possessed the capacity to accomplish worldwide reputation which is followed by other virtual currencies like Litecoin, Ethereum, Dash, Ripple etc.⁶

Introduction: Bitcoin and Its Mechanism

The way towards characterizing Bitcoin is entangled and dubious, and many individuals don't, in fact, comprehend the idea of Bitcoin. The assurance of Bitcoin will have unavoidable impacts with regards to the worldwide economy, and there are convincing contentions on the two sides of the verbal confrontation.

Bitcoin is a shared instalment framework that propelled on January 3, 2009.⁷ There is minimal thought about the creator(s) on the grounds that the majority of the first discourses about the money and conventions were distributed under a *nom de plume*, Satoshi Nakamoto.⁸ For the initial couple of years of its reality, Bitcoin remained as an original thought of how money related exchanges, later on, would be led. Be that as it may, by March 2013, the money had turned out to be an authentic and reasonable type of currency when it achieved a bewildering complete estimation of more than one billion dollars.⁹

The prominence of Bitcoin can, at any rate, be halfway ascribed to the straightforwardness with which it can be procured. Bitcoin is a decentralized

⁴ Mark Herpel, *Observations on the Digital Currency Industry* (2010), <http://cryptochainuni.com/wp-content/uploads/Digital-Gold-Currency-Magazine-2011-Observations-on-the-Digital-Currency-Industry.pdf>

⁵ *Id.*

⁶ Garrick Hileman and Micheal Rauch, *Global Cryptocurrency Benchmarking Study* (2017), <https://www.jbs.cam.ac.uk/.../2017-global-cryptocurrency-benchmarking-study.pdf>.

⁷ Satoshi Nakamoto, *Bitcoin: A Peer to Peer Electronic Cash System*, (2009), <http://Bitcoin.org/Bitcoin.pdf>.

⁸ Jerry Brito and Andrea Castillo, *Bitcoin: A Primer for Policymakers*, Mercatus Centre, George Mason University, https://www.mercatus.org/system/files/Brito_BitcoinPrimer.pdf.

⁹ Maxim Lott, Digital Bitcoin Currency Surpasses 20 National Currencies in Value, Fox News (March 29th, 2013) <http://www.foxnews.com/tech/2013/O3/29/digitalcurrency-Bitcoin-surpasses-20-national-currencies-in-value>.

virtual ‘currency.’¹⁰ Bitcoin is decentralized on the grounds that it isn’t checked, controlled, or managed by any legitimate or legislative element.¹¹ Albeit each Bitcoin has no inborn esteem, each is one of a kind and held by a solitary substance at any given moment.¹² Bitcoin works on an open record called the Blockchain, which monitors each Bitcoin made and who possesses it.¹³ Every client’s Bitcoins are put away in his or her “digital wallet,” which is available by entering a sixty-four character alphanumeric “private key.”¹⁴ This interface is practically like getting to bank subsidizes through a client’s keeping money entry way.

Bitcoin begins through a procedure called “mining.”¹⁵ When mining, clients give figuring energy to process Bitcoin exchanges. Mining comprises of running a consistent arrangement of calculations that add exchanges to the Blockchain. The supercomputers that process the huge measure of information important to deliver the Bitcoins are alluded to as “rigs,” and the people that administer the apparatuses are called “miners.”¹⁶

Any exchange including the exchange of Bitcoins is recorded in the Blockchain, an open record which contains all Bitcoin exchanges. These blocks are framed by a system of free clients known as Bitcoin mineworkers who have committed their PCs to record and affirm the exchanges. All things considered, another block is made and added to the Blockchain around each ten to twelve minutes; be that as it may, the correct planning of the arrangement of Blockchain is eccentric since part of the procedure requires the unravelling of complex calculations.¹⁷ As a reward for contributing their

¹⁰*Id.*

¹¹ Matthew Kien-Meng, *Coining Bitcoins’s Legal-Bits: Examining the Regulatory Framework for Bitcoin and Virtual Currencies*, 27 HARVARD JOURNAL OF LAW AND TECHNOLOGY 587 (2014).

¹² Casey Doherty, *Bitcoin and Bankruptcy*, 33 AMERICAN BANKRUPTCY INSTITUTE JOURNAL 38 (2014).

¹³ Daniel Miller, *Bitcoin Explained: The Digital Currency Making Millionaires*, ABC News (December 1st, 2013), <http://www.abc.net.au/news/2013-12-02/Bitcoins-the-digital-currency-explained/5119034>.

¹⁴ Nishith Desai Associates, *Bitcoins- A Global Perspective* (2015), www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Bitcoins.pdf.

¹⁵ D. Hobson, ‘What is Bitcoin? XRDS: Crossroads ’ (2013) 20 (1) THE ACM MAGAZINE FOR STUDENTS X.R.D.S. 40.

¹⁶ See, Linda Schilling, and Harald Uhlig, *Some Simple Bitcoin Economics*, 106 JOURNAL OF MONETARY ECONOMICS 16 (2019).

¹⁷ Kathleen Allen, *A Bitcoin Primer*, Arizona Daily Star, (February 23rd, 2014), <http://tucson.comfbusiness/local/a-Bitcoin-primer/article-aff0568e-bf71-5c88-b82138c1b9c4e277.html>.

computer control, the Bitcoin mine worker or pool of excavators in charge of unravelling the calculation gets a number of Bitcoins in reward. Thus, block creation is the main component that produces Bitcoins.¹⁸ Consequently, the calculations have been intended to end up plainly progressively troublesome after some time with a specific end goal to guarantee that Bitcoins and Blockchains are not made too quickly.¹⁹

Notwithstanding mining, the other primary classes of members in the Bitcoin business are Bitcoin trades and dealers who acknowledge Bitcoins as payments.²⁰ Bitcoins, once mined, can be traded for officially sanctioned monetary forms on online trades, used to buy merchandise and enterprises from dealers who acknowledge Bitcoins as payment, or exchanged starting with one client then onto the next. Bitcoins anonymity is one of its most prized highlights. In spite of the way that Bitcoin exchanges are followed on an open record that is available to anybody, Bitcoin possession and utilization is generously mysterious in light of the fact that the main distinguishing data related with an exchange is the client's private key.²¹

Its working can be effortlessly comprehended with a case, Supposedly, Mr Obama needs to pay Mr Kim a certain amount of money, say 100\$. Mr Obama and Mr Kim are both the users of Bitcoin ("Users are the people who utilize Bitcoins to purchase products and enterprises from Bitcoin dealers, store Bitcoins, or purchase or offer Bitcoins for conventional cash through Bitcoin trades. Every user has a digital wallet which generates a private key and a public key. The private key is created just once. It is a mystery and utilized as a secret word for the wallet. Public key in general key, thusly, is created any number of times on the request of the client. The public key is the client's Bitcoin address filling in as a sort of a financial balance for getting and sending Bitcoins. In this way, the client may utilize diverse Bitcoin addresses for various exchanges.") Mr Obama instead of paying Mr Kim in fiat currency, uses Bitcoin to pay the equivalent amount. When Mr Obama sends Bitcoins to Mr Kim, he digitally signs the message about the current transaction with his secret private key. Then, Mr. Obama sends the message about the current transaction not to Mr. Kim but to Bitcoin peer-to-peer

¹⁸ Alex Wawro, *7 Things You Need to Know about Bitcoin*, PCWorld, (April 11th, 2013) <<http://www.pcworld.com/article/2033715>.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

network, where it is shown under the cluster of digital signature known as 'block' ("The block constitutes a sort of a numerical bewilder, as each message is marked by payers' private keys and is, subsequently, in light of public-key cryptography.") After this message has been placed under the block, this has to be placed into the Bitcoin public ledger known as Blockchain. To be placed in the Blockchain, the block needs to be solved by miners (individually, say by a person called Mr Putin or by Bitcoin Exchange like Zebpay in India) which means finding the unique answer to mathematical puzzle constituting the block. When the block is placed in Blockchain, it means that all the transactions, the information of which has been placed in a block, are deemed confirmed by one block. Similarly, each block is confirmed by a further block which prevents the possibility of forgery and double-spending of Bitcoins. With every block solved, the miners get the reward for mining (at present 12.5 BTCs) as well as optional transactions fees.

Characteristics of Bitcoin

There are essential qualities that have moved Bitcoin's prominence. To start with, dissimilar to fiat cash, which can be persistently printed,²² Bitcoin is limited in nature.²³ The framework was particularly planned just to make twenty-one million units by 2140.²⁴ This implies like gold and silver, Bitcoin has an inside check against expansion that most current all-inclusive perceived monetary forms don't have. Second, the nature of the shared frameworks takes into account relatively momentary development of assets any place on the planet. Today, as a rule, notwithstanding when endeavouring to send a residential wire exchange, it might be postponed various days for assets to clear.²⁵ Third, money has low exchange costs. This is another result of the distributed framework, in light of the fact that instead of having a costly framework guaranteeing the legitimacy of every exchange, the diggers serve this capacity while seeking after the making of Bitcoins.²⁶ Fourth, prevalent qualities of Bitcoin is the secrecy it offers the client when directing exchanges.²⁷ In Bitcoin's initiation, it was seen just like the computerized equal to money,

²²Pascal-Emmanuel Gobry, *All Money Is Fiat Money*, Forbes (January 8th, 2013), <http://www.forbes.com/sites/pascalemmanuelgobry/2013/01/08/all-money-is-fiat-money>.

²³*Controlled Supply*, Bitcoin WIKI, https://en.Bitcoin.it/wiki/Controlled_supply.

²⁴ Anthony Volastro, *CNBC Explains: How to Mine Bitcoins on Your Own*, CNBC (January 23rd, 2014), <http://www.cnbc.com/id/101332124#>.

²⁵*Ibid.*

²⁶*Ibid.*

²⁷*Ibid.*

subsequently it was made not to require any individual data while making an individual wallet or buying Bitcoins. This secrecy has attracted added investigation to Bitcoin on the grounds that various crooks have embraced the Bitcoin as another option to directing business in conventional cash.²⁸ Fifth, that Bitcoin protocol exclusively determines the tenets under which Bitcoins operates, the same path likewise at whatever protocol working on the web determines tenets for a particular engineering. In this manner, the Bitcoin protocol is for all intents and purposes difficult to revise in a way that negates the interests of the larger part of clients of the Bitcoin network. Sixth, its high volatility. Coming about because of its decentralized nature and qualities inborn to the Bitcoin, Bitcoin as a virtual money isn't sponsored by any element, isn't redeemable for any ware and has no inherent esteem. Bitcoin is an exceptionally unstable virtual money, which can be seen from substantive variances of its trade esteem.²⁹ Seventh, Bitcoin has a few points of interest over customary payment frameworks: exchanges can be private; there are no or inconsequential exchange costs; there are no regional impediments; the preparing of exchanges is prompt or quick and exchanges are irreversible.³⁰

Vulnerability Associated with Bitcoins

With the achievement of Bitcoin, there is a developing worry that this enormous measure of money is able to do in a split second trading hands with no record of where it is, the place it originated from, or who is as of now holding it.³¹ A definitive dread is that Bitcoin's secrecy enables hoodlums to utilize it to direct their unlawful exercises outside of the vigilant eye of law implementation.³²

i) Trafficking in Illegal Goods

The essential contention for controlling or altogether forbidding Bitcoin

²⁸*Ibid.*

²⁹*Market Price (USD)*, Blockchain.INFO, <https://Blockchain.info/charts/marketprice>.

³⁰Sergii Shcherbak, *How Should Bitcoin Be Regulated*, 7 EUROPEAN JOURNAL OF LEGAL STUDIES 41 (2014). See also, Sun Yin *et. al.*, *Regulating Cryptocurrencies: A Supervised Machine Learning Approach to De-Anonymizing the Bitcoin Blockchain*, 36(1) JOURNAL OF MANAGEMENT INFORMATION SYSTEMS 37 (2019).

³¹Stephen Mihm, *Are Bitcoins the Criminal's Best Friend?* Bloomberg View (November 18th, 2013), <http://www.bloombergview.com/articles/2013-11-18/are-bitcoins-the-criminal-s-best-friend>.

³²Molly Oswaks, *Leaked FBI Report Details How Best to Get Away with Bitcoin Crime*, Gizmodo (May 10th, 2012) <http://gizmodo.com/5909115/leaked-fbi-report-details-how-best-to-get-away-with-bitcoin-crime>.

originates from the possibility that it fills in as an impetus for the offer of unlawful merchandise and enterprises on the web. This contention depends on the point of view that the entire namelessness that Bitcoin offers is an unjustifiable preferred standpoint for culprits over law implementation.

This part of Bitcoin, be that as it may, likewise pulls in the individuals who want obscurity for accursed purposes. Hoodlums have utilized Bitcoins to execute unlawful products and enterprises all around.³³ The most prominent case of this is Silk Road, an online underground market where more than \$2 million worth of Bitcoins added to the purchasing and offering of weapons, drugs, manufactured records, prostitution, and more finished the course of a solitary year.³⁴ Be that as it may, the national government closed down Silk Road in the fall of 2013 and grabbed its Bitcoins- 144,000 Bitcoins from the online bootleg market's "kingpin" and 30,000 Bitcoins from clients' Silk Road accounts.³⁵ Silk Road's seizure did not stop others wishing to execute unlawful products from taking action accordingly, and the successor, named Silk Road 2.0, developed soon after the government close down of the first.³⁶

ii) Hacking

Bitcoin is powerless to intense value vacillations on the grounds that no administrative element issues or guarantees it, and its esteem is subject to open trust and discernment. The flimsiness of Bitcoins' esteem is likewise affected by the action of hackers on the grounds that most Bitcoin trades are just sites that change over stored Bitcoins into numbers in a database. These sites are similarly as powerless against hackers as some other site.³⁷

For instance, in February 2014, Mt. Gox, a Japanese Bitcoin trade, was the object of a refined hacker assault that solidified clients' records and brought

³³*Ibid.*

³⁴*Ibid.*

³⁵Kashmir Hill, *Silk Road Bitcoin Auction Winner Tim Draper Won't Say How Many Millions He Paid*, *Forbes* (July 2nd, 2014) <http://www.forbes.com/sites/kashmirhill/2014/07/02/tim-draper-silk-road-bitcoin-auction/>.

³⁶Nermin Hajdarbegovic, *Silk Road 2.0 Hit by Sophisticated DDoS Attack*, *Coindesk* (September 15th, 2014) <http://www.coindesk.com/silk-road-2-0-shrugs-sophisticated-ddos-attack/>.

³⁷*Ibid.*

about the loss of almost \$400 million in Bitcoin reserves.³⁸ Dissimilar to when stores are travelled through a secured wire exchange, which goes through the Federal Reserve Bank, Bitcoins move from shared, which makes following any given exchange about inconceivable without the clients' private keys. In view of Bitcoin's secrecy and the difficulty to recover lost Bitcoins, neither Mt. Gox nor the Bitcoins' proprietors had any record after the Bitcoins vanished. The Mt. Gox assault added to the vanishing of six per cent of the world's Bitcoins.³⁹

iii) Money Laundering

The anonymity of Bitcoin additionally has law authorization worried that the money will be misused by clients with the essential objective of laundering stores. One of the major empowering factors for illegal tax avoidance is the absence of a uniform monetary ward over the globe. This is the motivation behind why certain zones are named as "assessment sanctuaries." It might be noticed that tax evasion contributes to a great extent to the breaking down condition of economies. In many issues, the assets that are being washed are income through debasement and pay off, which obviously are wild in immature and developing countries. There is a sharp complexity between the impacts of tax evasion on developed and developing countries. By using these assets for financial security, it bolsters the monetary advancement of created nations. Then again, creating countries due to being money starved, confront stagnated political and financial development.⁴⁰

iv) Tax Evasion

Right now, the most noticeable issue encompassing Bitcoin and tax collection is strikingly like the contention in regards to tax evasion: that the mysterious idea of the money advances manhandle by crooks. The main thrust behind this conviction is that Bitcoin, similar to the lion's share of virtual monetary standards, has two of the primary qualities of customary assessment

³⁸Casey Doherty, *Bitcoin and Bankruptcy*, 33 AMERICAN BANKRUPTCY INSTITUTE JOURNAL 38 (2014). See also, Célestin Coquidé, José Lages and Dima L. Shepelyansky, *Contagion in Bitcoin Networks*, Paper accepted in 2nd Workshop on Blockchain and Smart Contract Technologies (BSCT 2019), workshop satellite of 22nd International Conference on Business Information Systems (BIS 2019).

³⁹Jon Southurst, *Missing Mt Gox Bitcoins Likely an Inside Job, Say Japanese Police*, Coindesk (January 1st, 2015), <http://www.coindesk.com/missing-mt-gox-bitcoins-inside-job-japanese-police/>.

⁴⁰*Ibid.*

sanctuaries.⁴¹ In the first place, Bitcoin does not exist in any settled ward, making it greatly hard to force an expense upon. Second, the absence of individual distinguishing data appended to this unit of money introduces a valuation concern while surveying charge risk since governments can't decide the correct estimation of a person's advantages.⁴²

v) Terrorist Funding

Similar to the worries of Bitcoin in accordance with illegal tax avoidance and tax avoidance, pundits of Bitcoin trust the money will be utilized to go around counter-psychological oppression endeavours.⁴³ It is broadly realized that today inferable from the prominence of the cash; gifts by many gatherings, honest to goodness and illegal alike are being acknowledged as Bitcoin. For instance, the duty regarding softening up, in one of the Sony (SME) sites was guaranteed by a gathering called LulzSec, who additionally affirmed that they had gotten over \$18,000 worth of Bitcoin as gifts. Additionally, as of now specified, Wikileaks, Mint, Dell and so on likewise acknowledged gifts as Bitcoin. It is germane to take note of that, the volume of the sums gave to illegal gatherings is irrelevant, since to the general population trying to back psychological oppression secretly, Bitcoin may prove to be useful as relatively few conventions and record data is required to finish the exchange instead of the customary fiat monetary standards.

vi) Blackmailing

Glove Romney, the Republican presidential competitor in 2012 was extorted by a man who asserted to have accessed his duty record through PwC network. He undermined to uncover the data to the general population if an instalment of \$1 million worth of Bitcoins was not made to him. The motivating force for this situation is by all accounts the obscurity that Bitcoin exchange bears to the gatherings.⁴⁴

vii) Uncertainty in Government Policies

Mr A. P. Hota, CEO and Managing Director of India's NPCI, said after a

⁴¹Omiri Marian, *Are Cryptocurrencies Super Tax Havens?*, (2013) 112 MICHIGAN LAW REVIEW FIRST IMPRESSIONS 38.

⁴²See generally, Chad Albrecht, *et. al.*, *The Use of Cryptocurrencies in the Money Laundering Process*, JOURNAL OF MONEY LAUNDERING CONTROL (2019).

⁴³Terence Check, *Shadow Currency: How Bitcoin Can Finance Terrorism*, World Outline (May 5th, 2013)<http://theworldoutline.com/2013/05/shadow-currencyhow-Bitcoin-can-finance-terrorism>.

⁴⁴*Ibid.*

Blockchain occasion, “[w]hile it was clear that the technology is radical unless the entire ecosystem moves toward it, it is hardly of any significance.”⁴⁵ This can be effectively comprehended when we consider that the estimation of Bitcoins is existent in light of the fact that individuals are willing to exchange cash/products/administrations for them. A Bitcoin network of a few people would be of little result. Since most locales have not settled on a choice with respect to the status and treatment of Bitcoin in the economy, as of now talked about over, the vulnerability is a major issue for some new planned clients of Bitcoin. One of the real perils here is that any legislature may come around and proclaim it illicit, leaving the financial specialists without cure and powerless.⁴⁶

Approach related to and growth of cryptocurrency

Regardless of the way that the use of Bitcoins has been sanctioned in numerous nations, there are not many different reactions from a couple of countries. Some are promptly tolerating their administration while some are worrying over them. It is essential to take note that the only nation to present a national law on the use of Bitcoin was Canada. In Canada, the individuals who bargain in advanced monetary forms need to enlist themselves as ‘Money Service Businesses,’ (MSB) with Financial Transactions and Report Analysis Centre of Canada (FINTRAC) and every one of the organizations that are managing in computerized cash have now been liable to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act 2000 (PCMLTF). Likewise, we find that inability to conform to the commitments said in the above statutes brings about a criminal offence deserving of the Canadian domestic law. Along these lines in Canada, the utilization of Bitcoins is lawful and is subjected to various statutes.⁴⁷

In the USA, the bill titled ‘The Crypto-Currency Protocol Protection and Moratorium Act’, yet pondered upon, when passed would hold off any sort of statutory confinements or directions, which may exist by and by. Presently Internal Revenue Service (IRS) charges Bitcoin possessions as though they were a sort of property. The charge, however, proposes to treat Bitcoin as currency, as opposed to property and condemns the ‘*asset focussed tax*

⁴⁵Mayur Shetty, *Next Banking Disruption Lies In One, Open Online Ledger*, The Times of India (September 14th, 2016), <http://timesofindia.indiatimes.com/business/india-business/Next-Banking-Disruption-Lies-In-One-Open-Online-Ledger/articleshow/54318646.cms>.

⁴⁶*Ibid.*

⁴⁷ Matthew Burgoyne, *All You Need to Know About Federal Bitcoin Law in Canada*, Coindesk (October 23rd, 2013), <https://www.coindesk.com/federal-bitcoin-law-canada/>.

perspective’ of Bitcoin. The embodiment of the same could be found in the announcement made by Ron Paul, a previous contender for US Presidential race, when he shared his considerations on the Quora, where he said “*I don’t personally believe that Bitcoin is true money, however, it should be perfectly legal and there should be no restrictions on it and there should be no taxes on it.*” Likewise Gus Hunt who was previous Chief Technology officer of CIA said that ‘government is going to learn from Bitcoin and every government currency is going to be crypto-currency itself.’ In USA, individuals bolster virtual cash, as well as are utilizing them on a substantial scale also.⁴⁸

Understand that one of the principal issues which are looked by the experts that are advancing to control these mechanical monetary forms is that they once in a while think that it is hard to apply existing laws to innovative monetary forms. New York on June 3, 2015, turned into the primary ever state to build up a devoted system for the control of virtual money business when its branch of budgetary administrations issued directions for the supervision for computerized cash organizations working in New York.⁴⁹ Likewise, it issued its first virtual money permit to Bitcoin trade, it Bit Trust Company, LLC additionally got a permit to work as a trust under New York’s state managing an account law. In spite of non appearance of a statute unequivocally managing Bitcoin, numerous nations are pushing forward with the possibility of acknowledgement of Bitcoin as a lawful strategy for exchange. Brazil then again trusts that it ought not to direct Bitcoins as there isn’t sufficient ubiquity in its market to warrant this decision.⁵⁰

The much-anticipated law which appeared in Japan on April 1, 2017 (which imprints the start of another monetary year), regards Bitcoins as a legitimate method of instalment. As per this law, each Bitcoin trade would go under administrative investigation. Since it is presently required as a lawful delicate, it would imply that every one of the laws and directions that represent banks and other monetary organizations, would be connected to Bitcoins, as expressed by Japan’s Financial Services Agency. Also, in a report which was distributed by Yasutake Okano of Nomura Research Institute, he expressed

⁴⁸ Stephen Small, *Bitcoin: The Napster or Currency*, 37 HOUSTON JOURNAL OF INTERNATIONAL LAW 581 (2015). See also, ShaenCorbet, *et. al.*, *Cryptocurrencies as a Financial Asset: A Systematic Analysis*, 62 INTERNATIONAL REVIEW OF FINANCIAL ANALYSIS 182 (2019).

⁴⁹Evan Weinberger, *NY Bitcoin Rules Put Virtual Currency on Path to Legitimacy* (2014)<[http:// www.law360.com/articles/558472?utm_source=rss&utm_medium=rss&utm_campaign=articles_search](http://www.law360.com/articles/558472?utm_source=rss&utm_medium=rss&utm_campaign=articles_search)>.

⁵⁰*Ibid.*

that Japanese laws, for example, Banking Act and Financial Instruments and Exchange Act would require an adjustment with a specific end goal to meet change in innovation.⁵¹

The market cap of Bitcoin is on the rise. From its initiation in 2009, the cost of Bitcoin has risen from 0\$ to 0.39\$ on first January 2010. As on eighth January 2018, the Bitcoin is exchanging at 15,358.31\$ which is relied upon to achieve the market cap of 18000\$ by end of 2018.⁵²

Regulatory Status of Cryptocurrency in India

Arun Jaitley, the Finance Minister to the Government of India (GOI) had disapproved of the acceptance of Bitcoin as a legal currency in India.⁵³ He did add that 11 cryptocurrency exchanges have been identified in India and the government will not be taking knee-jerk decisions on cryptocurrencies. He added in the union budget, speaking for barely 30 seconds on cryptocurrency that: “The Government does not consider cryptocurrencies legal tender or coin and will take all measures to eliminate the use of these crypto-assets in financing illegitimate activities or as part of the payment system.”⁵⁴ With this statement, the government sent out a mixed message regarding cryptocurrencies. The GOI has already initiated certain regulations for the regulation of cryptocurrencies, followed by certain sanctions by the majority of banks and government regulatory bodies. They are:

- “The government declared cryptocurrencies are *not legal tender*, that they might be a large Ponzi scheme and cautioned investors against investing.
- On the other side, the income tax department collected the identities of everyone who used crypto exchanges and sent them a show-cause notice.

⁵¹Yuzo Kuno, *Japan: The New Heart of Bitcoin*, Coindesk (January 4th, 2018), <https://www.coindesk.com/japan-new-heart-bitcoin/>.

⁵²Omkar Godbole, *Bitcoin Eyes \$18,000 as Tide Turns in Bulls' Favor*, Coindesk (January 3rd, 2018), <https://www.coindesk.com/bitcoin-eyes-18000-as-tide-turns-in-bulls-favor/>.

⁵³Zeebiz Webteam, *Bitcoin Not a Legal Tender in India, says Finance Minister Arun Jaitley*, Zee Business (January 2nd, 2018), <http://www.zeebiz.com/india/news-bitcoin-not-a-legal-tender-in-india-says-finance-minister-arun-jaitley-34307>.

⁵⁴Anand Venkateshwaran, *Budget 2018: Bitcoin in India is Dead. Long Live Blockchain*, The Wire, (February 2nd, 2018), <https://thewire.in/220203/budget-2018-bitcoin-india-dead-long-live-blockchain/>.

- The government also hinted at launching its own cryptocurrency called Laxmi, named after the goddess of wealth.
- More recently, a puzzling and very specific instruction went out to traders, asking them to deposit 20% advance tax on crypto earnings. This is the standard taxation on long-term capital gains.
- Meanwhile, leading banks in the country have decided to suspend the accounts of leading crypto exchanges in India”⁵⁵

On the hind side, Reserve Bank of India (RBI) has cautioned about the risks of dealing with Bitcoins, from time to time.⁵⁶ There has been the constitution of an Inter-Disciplinary committee by the Department of Economic Affairs, to examine the existing global regulatory and legal framework governing Bitcoin, to take stock of the present status of Bitcoin in India and also globally, to suggest the framework for the regulation of Bitcoin. The committee did submit its report that is under consideration by the government.

Laws that can Regulate Bitcoins (Cryptocurrency)

- 1. The Constitution of India, 1950-** The Constitution of India enumerates the subjects with respect to which the Central Government possesses powers to legislate and regulate. Art. 246 read with 7th Schedule of the Constitution lists the subjects on which the State and Central governments can legislate. Entry 36 and 46 of List I of the Seventh Schedule of the Constitution of India prescribes that the Central government holds the powers to make laws in respect of currency, legal tenders, foreign exchange, coinage, promissory notes, cheques, etc.⁵⁷ If Bitcoins fall under the scope of these categories of instruments, the Central government shall have the capacity to legislate on it.
- 2. The Coinage Act, 1906-** Section 2(a) of this law defines “Coins to be 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”⁵⁸. Bitcoin does not justify the definition herein and therefore cannot be regarded as a ‘coin.’

⁵⁵*Ibid.*

⁵⁶*Ibid.*

⁵⁷ Schedule 7th, Entry 36 & 46 of the Constitution of India.

⁵⁸ Coinage Act, 2011.

- 3. Contract Act, 1872-** As per Section 23 of the Contract Act, “The consideration or object of an agreement is lawful, unless -It is forbidden by law; or is of such nature that, if permitted it would defeat the provision of any law or is fraudulent; or involves or implies, injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy. In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.”⁵⁹ Though ‘public policy’ has not seen any exclusive definition yet, but judgments have been pronounced by the Supreme Court in this direction. Public policy has been defined by Winfield as “a principle of judicial legislation or interpretation founded on the current needs of the community.”⁶⁰ Now, this would show that the interests of the whole public must be taken into account; but it leads in practice to the paradox that in many cases what seems to be in contemplation is the interest of one section only of the public, and a small section at that. The explanation of the paradox is that the courts must certainly weigh the interests of the whole community as well as the interests of a considerable section of it, such as tenants, for instance, as a class as in this case.⁶¹ There is no such status that could hold Bitcoins as opposed to public policy or make it seem unlawful. Any contract that relates to Bitcoins, *prima facie*, is not of the color that its execution would defeat the provisions of black letter law or shows to be exhibiting fraud.
- 4. The Foreign Exchange Management Act, 1999 (FEMA)-** Any transaction that takes place in India involving any kind of receipt or payment thereof, shall quest through the law and rules under FEMA. Any export effectuated outside India with an advance made in India via Bitcoins shall be treated as a payment as per Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016.⁶²

Regulation 3(2) of the 2016 Regulations state that:

“(a) In respect of export from India, a receipt shall be made in a currency appropriate to the place of final destination as mentioned in the declaration form, irrespective of the country of residence of the buyer.

⁵⁹Section 23, Contract Act, 1872.

⁶⁰Percy H. Winfield, *Public Policy in English Common Law*, 42 HARVARD LAW REVIEW 76 (1982).

⁶¹Murlidhar Agarwal v. State of Uttar Pradesh, (1975) 1 S.C.R. 575.

⁶²*Foreign Exchange Management (Manner of Receipt and Payment) Regulations*, RESERVE BANK OF INDIA, (May 2nd, 2017), https://rbi.org.in/scripts/BS_FemaNotifications.aspx?Id=10392.

(b) Any other mode of receipt of export proceeds for export from India in accordance with the directions issued by the Reserve Bank of India to authorized dealers from time to time.”⁶³

Bitcoins as such are not recognized as currency in India because they are not a legal tender. Additionally, the RBI has not issued any directions relating to Bitcoins making itself clear that acceptance and receipt of Bitcoins for export considerations are at a dubious state.

Any importation or remittance payment in Bitcoins have to first justify Regulation 6(1) of Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016 that states as follows:

“(1) Notwithstanding anything contained in Regulation 5, a person resident in India may make payment for import of goods in foreign exchange through an international card held by him in rupees from international credit card/ debit card through the credit/ debit card servicing bank in India against the charge slip signed by the importer/ as prescribed by Reserve Bank [of India] from time to time.”

Section 2(n) of FEMA defines foreign exchange as, “*foreign exchange means foreign currency and includes,—*

(i) deposits, credits and balances payable in any foreign currency,

(ii) drafts, travellers cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency, (iii) drafts, travellers cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency.”

Thereafter, analysing the definition of ‘foreign exchange,’ Bitcoin does not hold a status in conformity with the requisites.

5. The Reserve Bank of India Act, 1934- The RBI has never accepted Bitcoins as legal tender, therefore, it has been cautioning the citizens about the risks of dealing with Bitcoin. The risks that RBI has outlined are as follows:

- Virtual Currencies (VCs) are stored in electronic media as they are in digital form and therefore are called Electronic Wallets (e-wallets). These are exposed to huge losses due to hacking, compromise of access credentials, malware attack, loss of password, etc. If the e-wallet is lost, that would lead to permanent loss of the virtual currencies held in

⁶³*Ibid.*

those wallets as there is no central authority over these.

- Payments by VCs take place on a distributed premise in the absence of any central authorized agency which regulates such payments. There exists no such structure for consumer complaints and feedbacks.
- VCs has no such backing of any asset or capital and the value that they hold are based on speculations. High unpredictability has been reported in the speculation of VCs recently that has exposed the users to financial risks and unavoidable mishaps.
- As reports have shown, VCs are being exchanged on trade stages that are existent in various jurisdictions whose legal status appears to be questionable making the brokers in VCs vulnerable to legal and monetary dangers.
- The media has covered several events wherein VCs have been utilized for illicit activities in various countries. The data of counterparties may get erased in such distributive premises on anonymous frameworks and can expose the clients to accidental breaks of hostile, to tax evasion.

6. The Payment and Settlement Systems Act, 2007- Since the enactment of this act, all the payment systems that are associated with the issuance of prepaid payment instruments have settled under the administrative purview of the RBI. On the 27th April 2009, under Section 18 of this act, the RBI exercised its powers to issue guidelines that could govern establishments that issue prepaid payment instruments like Paypal, mobile wallets, etc. The guidelines have defined pre-paid payment instruments as *“payment instruments that facilitate the purchase of goods and services, including funds transfer, against the value stored on such instruments. The value stored on such instruments represents the value paid for by the holders by cash, by debit to a bank account, or by credit card. The pre-paid instruments can be issued as smart cards, magnetic stripe cards, internet accounts, internet wallets, mobile accounts, wallets, paper vouchers and any such instrument which can be used to access the pre-paid amount (collectively called Prepaid Payment Instruments hereafter).”*⁶⁴ Prepaid Payment Instruments have got a definite value stored on them that equals to the amount paid by the holders by debit or credit card or in cash. While the case with Bitcoins is that they possess an inherent value and not a static one which rules out the probability of Bitcoin being a Prepaid Payment Instrument.

⁶⁴Master Circular – Policy Guidelines on Issuance and Operation of Pre-paid Payment Instruments in India, Reserve Bank of India, (July 1st, 2015), <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=8993&>.

7. The Sale of Goods Act, 1930- Section 2(9) of the Sale of Goods Act, 1930 defines “Goods to mean every kind of movable property other than actionable claims and money; and includes stocks and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale”.⁶⁵ Bitcoin is movable but it is not an actionable claim. Now, it shall be a wrong inference if we call these as goods.

8. The Securities Contracts (Regulation) Act, 1956- This Act regulates the transactions involving securities in India. In various foreign jurisdictions, Bitcoin is treated to be ‘commodity.’ In order to hold any research on Bitcoins and their status as a ‘commodity derivative’ in India, reference needs to be made to Section 2(ac) of The Securities Contracts (Regulation) Act, 1956.

“Commodity derivative means a contract —

(i) for the delivery of such goods, as may be notified by the Central Government in the Official Gazette, and which is not a ready delivery contract; or

(ii) for differences, which derives its value from prices or indices of prices of such underlying goods or activities, services, rights, interests and events, as may be notified by the Central Government, in consultation with the Board, but does not include securities as referred to in sub-clauses (A) and (B) of clause (ac).”⁶⁶

Holding the status of a contract is an essentiality and either of the above mentioned two reasons for existing is the pre-essential for an agreement to be a commodity derivative. Basically, Bitcoin is not a ‘good’ as of now, moreover, it does not derive its value from any asset backing it. Indeed estimation of Bitcoins change on demand-supply mechanism as opposed to anything tenacious. Indisputably, Bitcoins cannot be dealt with as product; likewise, it cannot be dealt with as commodity derivative. Accordingly, SEBI could not be tagged as an authority over Bitcoins.

Characterization of Bitcoin

In order to analyze the legal aspect along with the tax incurring structure of a Bitcoin, it is to be significant to know what is Bitcoin? Is it a currency or coin

⁶⁵Sale of Goods Act, 1930.

⁶⁶The Securities Contracts (Regulation) Act, 1956.

or something beyond definition?

Currency- Currency, as defined in the business dictionary, maybe paralleled to tokens used as money in a particular country. It can be of several types like metal coins, paper banknotes, money orders, traveller's checks, electronic money or digital cash. In order to fit in this exhaustive definition, Bitcoin has to be physical, movable, and mutually interchangeable. Bitcoin indeed does not satisfy this criterion. To hold the status of a legal currency in India, any digital money needs to be backed by an authorized entity which is no privilege that Bitcoin has as for now. In accordance with Section 2(h) of Foreign Exchange Management Act, 1999,⁶⁷ 'Currency' has been defined which does not include Bitcoins but can notify the same to be included.

Coins- As read by Section 2(a):

*"Coin 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".*⁶⁸ The Explanation to this Section dictates that *"coin shall not include the credit card, debit card, postal order and e-money issued by any bank, post office or financial institution"*.⁶⁹ Therefore, 'Bitcoin' does not justify being a 'coin.'

Digital currency- This is one kind indifferent from traditional or real currency. It may be an electronic-based currency but it has similarities to a real currency. These may be of two types- VC's and Cryptocurrency. The Central Bank does not encourage VC's, therefore it is neither regulated nor centralized. As per the "Financial Crimes Enforcement Network's ruling on *Application of FinCEN's Regulations to Virtual Currency Mining Operations*," VC's holds the status of a medium of exchange that can act as a currency in some situations but does not totally behave like a real currency. It does not execute any legal tender status anywhere⁷⁰. European Central Bank has categorized Bitcoins as VC. These are neither centralized nor regulated and may constitute a few characteristics of areal currency. It shall be sound enough to say that Bitcoin is based on crypto-graphical system, where there

⁶⁷Foreign Exchange Management Act, 1999.

⁶⁸Coinage Act, 2011.

⁶⁹*Ibid.*

⁷⁰*Application of FinCEN's Regulations to Virtual Currency Mining Operations*, US Department of the Treasury <https://www.fincen.gov/resources/statutes-regulations/administrativerulings/application-fincens-regulations-virtual-0>.

is a private and a public key and the ledger records each transaction.⁷¹ It is therefore known to be Crypto-currency. It is a decentralized currency⁷² as it is neither governed by a central repository nor it is a designated entity meant to be trustworthy. Herein, transactions take place on a decentralized P2P system whereby all entities hold the same operation. In a situation where Bitcoins could be addressed as a freely convertible currency and assigned the status of a currency as per the foreign legislature, it shall make the payment made as such cover under the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016 thereby categorizing Bitcoins as foreign exchange.⁷³

Property- For U.S.A. Federal Tax purposes, the IRS has graded VC as 'property'.⁷⁴ The same can be paralleled in India after a thorough scrutiny of Section 29(c) of The Benami Transactions (Prohibitions) Act, 1988⁷⁵ which iterates 'Property' to be of any kind, be it tangible or intangible, movable or immovable and shall include any right or interest in such property. Bitcoin is intangible and movable so it is inside the realm of 'Property' by the definition but levying any kind of duty upon it in the capacity of property shall need good research and logic.

Goods- "*Goods means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale*".⁷⁶ Movable property is not characterized in Sale of Goods Act but finds mention in the General Clauses Act, 1897 as property of any depiction aside from immovable property. Thus, Bitcoin being ardent fits in the definition. Since Bitcoins do not force a claim on anyone, so it is unquestionably not an actionable claim. Unequivocally, for anything to be a 'Good,' it is essential that it has a natural

⁷¹Krishna V. Iyer and Dr V V Ravi Kumar, *Blockchain, Bitcoin and Cryptocurrency Explained*, EPW Engage, (January 10th, 2018), http://www.epw.in/engage/article/block-chain-evolution-money-through-cryptocurrency?0=ip_login_no_cache%3De55699085cbfbde7ded7dfacf2b.

⁷² Arthur Gervais, Ghassan O. Karamé, Srdjan Capkun and Vedran Capkun, *Is Bitcoin a Decentralized Currency?*, <https://eprint.iacr.org/2013/829.pdf>.

⁷³Vallari Dubey et. al., *Bitcoins India Report 2017*, Vnod Kothari Consultants, <http://vinodkothari.com/Bitcoin/>.

⁷⁴IRS *Virtual Currency Guidance : Virtual Currency Is Treated as Property for U.S. Federal Tax Purposes; General Rules for Property Transactions Apply*, Internal Revenue Service, (March 25th, 2014), <https://www.irs.gov/newsroom/irs-virtual-currency-guidance>.

⁷⁵ Benami Transactions (Prohibitions) Act, 1988.

⁷⁶ Sale of Goods Act, 1939.

existence in itself which is not the situation with Bitcoins. It does fall under the Sale of Goods Act, 1930 but it does not have a value in itself as it only helps in carrying on transactions.

Payments and Receipts in Bitcoins in India

In India, Bitcoins do not hold the aura of a legal currency making it tough for any progress in the direction of transactions related to the same. There are a few companies which carry out transactions in Bitcoins and provide goods and services because any payment made in legal tender is a valid discharge of an obligation or debt one has towards a payee.⁷⁷ The statute does exclusively outcaste any other kind of considerations in circulation so it is not prohibited altogether.⁷⁸

Any transaction internationally that involves payment or receipt shall involve the directives of FEMA and rules under it.⁷⁹ In order to channelize and efficient functioning of a legal tender, authority needs to oversee the business going on. There exists no such authority over Bitcoins.

Taxation on Bitcoin

Tax imposition is the root of the analysis to which Bitcoins have been subjected to, by the population having affect by the new kind of VC. Wherein, Bitcoins are to be imported, Customs duty and Value Added Tax (VAT) shall apply:

- The Central Excise and Customs Act of 1944 prescribes that if a software subject is imported in a physical form into India then customs duty shall be levied on such import.
- Any software subject that is imported online is not under the purview of 'customs duty' in India.
- For Bitcoin to be considered as 'software subject,' it shall be exposed to no such customs duty.

⁷⁷Vallari Dubey, *Legal Nature of Bitcoins: The Encrypted Digital Currency*, (April 29th, 2017), <http://vinodkothari.com/blog/legal-nature-of-Bitcoins-the-encrypted-digital-currency-by-vallari-dubey/>.

⁷⁸Reserve Bank of India Act, 1934.

⁷⁹*Foreign Exchange Management (Manner of Receipt and Payment) Regulations*, Reserve Bank of India, (May 2nd, 2017), https://rbi.org.in/scripts/BS_FemaNotifications.aspx?Id=10392.

- VAT has been engulfed by the Goods and Sales tax (GST) since 1st July 2017.
- Section 2(h) of The Foreign Exchange Management Act, 1999 defines “*Currency to include all currency notes, postal notes, postal orders, money orders, cheques, drafts, travellers 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.*”⁸⁰

Neither does Bitcoin fit in this definition nor has it been recognized by the RBI to constitute the status of a currency. Section 2(75) of the Central Goods and Sales Tax Act, 2017 goes on to define “*money to be Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, travellers cheque, money order, postal or electronic remittance or any other instrument recognized by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value*”. This definition is a replica of the definition of ‘money’ under Section 65B (33) of Schedule V of the Finance Act, 1994 covering service tax. Money has not been included under GST.

- Section 2(52) of CGST has defined “*Goods to mean every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply*”⁸¹; Wherein, Bitcoin has not been notified by the RBI to hold the status of ‘currency’ or ‘money’, it can be considered as a ‘good’ under GST making it taxable. There have been various jurisdictions whereby Bitcoin has been exempt from tax. For example the Australian federal government has held a proposal to exempt Bitcoins from tax in 2017.⁸² India has yet to decide on its stand for taxation on Bitcoins.
- The networking of Bitcoins is a set of codes and it is run by a software that brings Bitcoins under the purview of ‘computer programme’. “*Computer programme means a set of instructions expressed in words,*

⁸⁰Foreign Exchange Management Act, 1999.

⁸¹Central Goods and Service Tax, 2017.

⁸²Campbell Simpson, *From 2017 Bitcoin and Other Digital Currency Will No Longer Be Taxed Twice in Australia*, Gizmodo (May 9th, 2017, 7:55 PM), <https://www.gizmodo.com.au/2017/05/from-2017-bitcoin-and-other-digital-currency-will-no-longer-be-taxed-twice-in-australia/>.

codes, schemes or in any other form, including a machine-readable medium, capable of causing a computer to perform a particular task or achieve a particular result".⁸³ GST imposes a tax rate of 18% upon computer programmes or software. Supreme Court of India has addressed the issue of whether 'software' could be brought under the purview of 'Goods'. One contention that has been made simultaneously is the dissimilarity between the Copyright Act, 1957 and the Central Sales Tax Act, 1956. 'Goods' cannot be interpreted by both the statutes. Any software shall hold the status of 'goods' if it justifies on three scales- utility, capable of being bought and sold and capable of being transmitted, transferred, delivered, stored and possessed.⁸⁶ Bitcoins shall satisfy the other two attributes of holding the status of 'good' though it shall not constitute any utility in comparison to other goods. It does hold utility but it is constricted to itself and thus has no intrinsic value.

- As per Income Tax Act of 1961, a 'Capital asset' means property of any kind held by a person, whether or not connected with his business or profession⁸⁷. In the event of purchase of Bitcoins for the purpose of investment, any profit that arises on transfer of such Bitcoin shall become taxable as capital gains. Though, whereby such transactions become notable and incessant, it shall hold that the investor is trading in Bitcoins, thereafter making such income from sale of Bitcoins taxable as business income.
- Once capital gains occur, they shall be further classified into short-term and long-term gain on the basis of the time period of holding such Bitcoins. If a Bitcoin is held for more than 36 months from the date of purchase, it will be considered as a long-term capital asset, otherwise a short-term capital asset. Short term capital gains are taxable according to the slab rates applicable to any taxpayer. Any long-term capital gains shall be taxed at the flat rate of 20% with the additional benefit of indexation.

⁸³Section 2 (ff), Copyright Act, 1957.

⁸⁴Pradeep Kumar Biswas v. Indian Institute of Chemical Biology, (2002) 5 S.C.C. 111 (India), paras 5 and 6.

⁸⁵Jagatram Ahuja v. Commr.of Gift-tax, Hyderabad, A.I.R. 2000 S.C. 3195.

⁸⁶Tata Consultancy Services v. State Of Andhra Pradesh, Appeal (Civil) 2582 of 1998.

⁸⁷Income Tax Act, 2016.

- In the event of profits being generated from Bitcoins, the status of such profits shall be business income. If this statement holds true then any Bitcoins earned in the ‘mining’ process shall also be taxable. In case when Bitcoins are categorized as capital assets, the VC earned from such Bitcoin ‘mining’ shall not be taxable. Bitcoins that are earned during the ‘mining’ process are self-generated capital assets. In all probability, the cost of acquisition of such Bitcoins may not be available. If it is not available, the machinery provision for computation of capital gains will fail to make the transfer of such assets exempt from capital gain taxation.⁸⁸ Conclusively, Bitcoins earned in the ‘mining’ process may be exempt from tax.
- For the purposes of taxation, the situs of a Bitcoin should be known. Even though Bitcoins are intangible assets but on the basis of law of the land situs needs to be decided where the protection to the property is to be sought. Situs of intangible property is mostly settled to such tangible property to which these shall be most closely connected. Like trademark is associated with goods. Conclusively, Bitcoins can be linked to the country holding its operating server.
- Bitcoin being an intangible asset holds an aura whereby any income accruing or arising from its transfer outside India by a person who is a non-resident shall not hold taxability in India. So, the sale of Bitcoins by a non-resident through any Indian Bitcoin exchange shall not be taxable.
- Whereby Bitcoins are categorized as ‘currency’ it shall be considered as ‘money’ as per the CGST Act and then no such GST would be charged on its trading. Although, exchanging Bitcoins for Indian rupees might be viewed as service for the imposition of GST under the head of ‘Financial services’. Herein, if the supplier charges any commission for the exchange services then that would make it taxable at the rate of 18% on the amount of commission. In the case, whereby no such consideration is being charged for the services provided, then the supplier shall be liable to pay GST at the rate of 18% on the 1% of the total amount of Indian rupee paid by the recipient for such services of exchange. Lastly, as Bitcoin is not treated as currency so it shall hold the status of services thereby incurring liability in case that the GST at the rate of 18% on the total value charged by him from the buyer of Bitcoin.

⁸⁸Commissioner of Income Tax v. B.C. SrinivasaSetty, 1981 A.I.R. 972.

- In the process of Bitcoin ‘mining,’ the people procedure the exchanges and secure the system by utilizing particular equipment and in return, they are granted new Bitcoins. In other words, Bitcoin is a kind of consideration rewarded to the individuals for their services of securing the Bitcoin network. It makes the Bitcoin ‘miners’ liable to pay the GST on the fair market value of the Bitcoin at the rate of 18%.
- The current account transaction incorporates all exchanges which are not capital in nature, *inter alia*, settlement for import of products or services or remittance for individual purposes, and so on. The inquiry in the case of management of Bitcoin as a current account transaction entirely relies upon whether Bitcoin is a Good or an Asset. On the off chance that it is not a Good, foreign transactions in Bitcoin might be dealt as capital account transactions and any dealing in Bitcoin would require earlier endorsement from the RBI.

Bitcoin and Bankruptcy Laws in India

India has The Insolvency and Bankruptcy Code, 2016 and the primary focus of this enactment is at giving revival and determination in a period headed way for boost of estimation of account holder’s benefits. In order to pay off the creditors, the court releases the money by selling the assets of the insolvent or through any other legal means. Now, in a case where the insolvent goes bankrupt due to some mishap with his Bitcoin wallet or due to deficiency in his account, would that constitute bankruptcy as per the Insolvency and Bankruptcy Code, 2016 or in a case whether it shall be legal enough to be a ‘currency’⁸⁹ or ‘commodity’⁹⁰ to pay off the outstanding debts in Bitcoins?

All around the globe, Bitcoins have spread their aura and the economy seems to be pleased by its existence and it would not take long when the bankruptcy courts shall be pressed to define the financial status of Bitcoins. A functional answer for the arrangement of Bitcoin in the insolvency setting is to make a permit based characterization framework. Under such a framework, a permit would be required if Bitcoins are entwined with business forms. Then again, a permit would not be required if Bitcoins are only used to purchase and offer products or administrations. Accordingly, a qualification could be drawn between Bitcoins related with licensed utility having the status of ‘currency’

⁸⁹*Ibid.*

⁹⁰ A commodity is generally defined as a “basic good used in commerce that is interchangeable with other commodities of the same type[,] ... essentially uniform across producers ... [and] exchanged during commerce, which includes goods traded on a commodity exchange.”

and non-licensed utility Bitcoins would have the order of ‘commodity.’ For example, there is an enterprise that is engaged in the business of exchanging Bitcoins for Indian rupees, then this kind of use of the Bitcoins needs to be licensed. Such authorized use of the Bitcoins in business shall tag it as ‘currency.’ The Bitcoins could then enjoy all the privileges handed down to currencies. On the other hand, if an individual debtor only uses Bitcoins in order to buy online goods from retailers, then there is no need for such Bitcoins to be licensed. This kind of non-licensed use shall make the Bitcoins as a ‘commodity.’ The reason behind the differentiation between commodity and currency is such that the Bankruptcy code of every country shall provide different protections to assets that are categorized to be ‘currency’ and ‘commodity.’ Therefore, the categorization of Bitcoins shall decide its fate to be treated as a ‘currency’ or a ‘commodity.’ Although, the truth lies of the statement is that Bitcoins shall hold a better set of protections in the event of it being ‘currency.’

There have been quite a number of casualties around the globe relating to Bitcoin exchange stocks. In a recent event, Cryptocurrency dealer ‘Youbit’ had been hacked and it had cost them 17% of the assets. The lost assets had been enclosed in the hot wallet which is prone to hacking as it is connected to the internet. The Finance Minister of South Korea, KoKwanghee iterated that the government shall not take any “counter measures” or “noting regulators” warnings over such speculations.⁹¹ In 2014, Mt. Gox, that had been the largest Bitcoin trading exchange in the world, collapsed due to which around 24,000 customers lost access to their account summing up to a loss of hundreds of millions of dollars in Bitcoins and cash. The matter ended up in Bankruptcy court and according to Japanese Bankruptcy law, the value of the claim to be compensated was fixed on the market price of the Bitcoin in April 2014 that added up to a total of 45.6 Billion Japanese yen i.e. \$400 million. The trustee of Mt. Gox holds the capital to repay the creditors.

In *CLI Holdings*,⁹² the debtor who had been a Bitcoin digger had borrowed a sum of \$75,000 against a Bitcoin-financing entity in order to buy mining instruments. Consequently, the miner contracted to reimburse the credit

⁹¹ Todd White and Sarina Yoo, *Bitcoin latest: Cryptocurrency Exchange Files for Bankruptcy after Massive Data Hack*, Independent (December 20th, 2017), <http://www.independent.co.uk/news/business/news/bitcon-latest-update-cryptocurrency-exchange-bankrupt-data-hack-youbit-south-korea-a8119706.html>.

⁹² *In re CLI Holdings, Inc.*, (Bankr.W.D. Wash. 2013) (No. 13-19746KAO).

with the initial 7,984 Bitcoins created, secured by an interest in the mining instrument. This kind of course of action called an Overriding Royalty Interest (ORRI), which is normal among the oil and gas enterprises. The Bitcoin miner could not pay off the ORRI and declared bankruptcy under Part 11.⁹³ However, the court maintained the agreement and regarded Bitcoins as any commodity subject to an ORRI.⁹⁴ So, there exists quite a debate on the status of Bitcoin as a ‘currency’ or ‘commodity.’

Eventually, the Indian Bankruptcy courts shall need to determine the status of Vcs like Bitcoins but for the time being there exists no such case before the courts whereby Bitcoins are set for liquidation.

Conclusion

There are two perspectives to cryptocurrencies. The first is the “token - a tradable store of significant worth, something that can be utilized to buy great and administrations.” This is the aspect that the government rejects. Which conveys us to the second part of digital forms of money - the basic innovation, the Blockchain. The innovation, aside from empowering the cryptographic money to exist, settles some certifiable need and speaks to an advancement. The innovation appears to have gotten the consideration of the individuals who drafted the Budget. The Union Minister said of the Blockchain-

*“Distributed ledger system or the Blockchain technology allows the organisation of any chain of records or transactions without the need for intermediaries... The Government will explore the use of Blockchain technology proactively for ushering in the digital economy.”*⁹⁵ As the democratic system in India and a possibly immense catchment for new participants into the crypto market, the bearing we take will have extensive ramifications – through our association or deficiency in that department. Something worth mulling over – will India return to this strategy when it mushrooms independently in its lawn? For the time being, we have rejected the dynamic arrangements that nations like Japan, Canada, Australia, Estonia and Chile have embraced. Should we maintain a strategic distance from a deliberate way to control – the American way. We are no Bolivia or Venezuela to force reformatory measures against the exchanging or holding of Bitcoin. We have figured out how to stay situated wavering, while at the

⁹³*Ibid.*

⁹⁴Doherty, *supra* note 12, at 39 and 82. The parties in *CLI Holdings* ultimately settled their dispute outside the courtroom.

⁹⁵*Ibid.*

same time propelling it noticeably. A moderate, quite optimistic endeavour at removing the incentive without connecting with the instability. Certainly Indian.