

# Legality of Crypto Currency in India

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## Introduction

Over the last decade, there has been a gradual shift in the world economy towards a paperless currency. In today's economy, money is required not only to be easily transferable, widely acceptable, in adequate supply and circulation, but also to instil confidence in users.

At present, all over the globe, crypto-currencies are being purchased and sold through electronic platforms called crypto-currency exchanges. These crypto-currency exchanges provide an interface to their users to purchase or sell crypto-currency from willing sellers and buyers from across the globe.<sup>1</sup> Some of the crypto-currency exchanges also allow the interchanging of one crypto-currency for another.<sup>2</sup>

This paper deals with the issues relating to Bit coins of a new crypto-currency exchange by any entity in India. The first part of the paper deals with technology that is at the core of Bit coins, second part deals with the nature of a Bit coin in light of the existing legal system and the possible issues that may be faced by crypto-currency exchanges in India and in the final part the paper discusses the possible solutions to these issues.

## Bit coins

Bit coins are one of the different types of crypto-currencies in the crypto-currency market. They use block chain technology as its core technology. Bitcoins are based on a system of decentralized peer-to-peer online currency that maintains a value, without any backing from a governmental or regulatory authority, *sans* any intrinsic value or backing of any central issuer.<sup>3</sup> Bit coins do not

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<sup>1</sup> Available at: <https://blockchain.info/wallet/wallet-faq> (last accessed on 27 April 2019)

<sup>2</sup> One such crypto-currency exchange is coinswitch details available at: <https://coinswitch.co/> (last accessed on 27 April 2019)

<sup>3</sup> Vitalik Buterin, "A next generation smart contract and decentralised application platform".

have any physical existence. They are purchased and held in virtual wallets that are provided by crypto-currency exchanges exclusively for this purpose.<sup>4</sup>

### **Legal position of crypto currency in India.**

Crypto currencies such as Bit coins, Ripple etc. are yet to be legislated upon in India. It can be said that there is no law governing crypto currencies such as Bit coins. The Reserve Bank of India (RBI) has issued warning which clearly states that any dealings made in bit coins will be done at the person's own risk. Since there is no law governing bit coins, an investment in bit coins is risky as crypto-currencies are prone to fraudulent scams or Ponzi schemes.<sup>5</sup> These are the schemes which lure investors into investing in the company and pays profits to the earlier investors with the money gained from new investors. The people who invest remain unaware about the real source of money, they are made to believe that the company is earning profits and they are being paid from it whereas in reality the other investors are the source of all the funds. Because of all such risks involved in the transactions related to crypto currencies the government has issued necessary warnings to the public whereas other organs of the government such as the Income Tax Department, Registrar of companies and certain commercial banks have also put a ceiling on the use of the same. The Reserve Bank of India, as a regulatory authority, has warned against the use of crypto currencies on the ground that its use hasn't been authorized by any monetary authority. In the last two decades the gradual shift to paperless currency has been there for everyone to witness, in such times, development of jurisprudence on this is paramount as people from all over the world are engaging in transactions related to such crypto currencies.

### **Crypto currency as a currency or a valid legal tender.**

The Union government is the authority under which the issue and regulation of currency or a valid legal tender is done. It can be said to be the exclusive right of the government.<sup>6</sup> In order to be recognized as a currency the crypto currency has go be in accordance with the ordinance enacted by the parliament of India such as the RBI Act, 1934. Since, these crypto currencies have been disregarded by the government, their value is volatile i.e. indeterminate. There is no guarantee with

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<sup>4</sup> Available at: <https://blockchain.info/wallet/wallet-faq> (last accessed on 27 April 2019)

<sup>5</sup> Reserve Bank of India press release no.: 2013-2014/1261

<sup>6</sup> Entry 36, List I, Seventh Schedule read with Article 246 of the Constitution of India.

respect to their value which is the reason due to which crypto currency cannot be treated as a currency or a valid legal tender. The RBI has time and time again issued warnings to the public against the use of crypto currency as well as it has prohibited the entities under it for the use of the same. There are pending adjudications in the apex court for the petitions that have been filed for the ban of crypto currencies as well as to declare them as illegal including Bit coin, another petition for regulating the use of crypto currency in ongoing. Despite the absence of legal framework governing crypto currencies and them being declared as illegal tender it is important to note that none of the government instrumentalities have declared them to be illegal.<sup>7</sup>

### **Can crypto currency be seen as property or goods?**

As crypto currencies are not present in physical form they cannot be treated as immovable property but for the purpose of its regulation can it be treated as moveable property?

The definition of moveable property has not been explicitly provided in the legislation governing property related transactions but the definition of moveable property can be ascertained from the definition provided in Section 3 (36) of the General Clauses Act, 1930 which can be considered wide enough to include intangible properties as well. Now, the Sale of Goods Act, 1930 establishes every kind of moveable property as goods other than what Section 2 (7) specifically mentions, by the virtue of that, crypto currency (movable property) can be considered as ‘goods’ when the question regarding its legal reception arises.

Crypto currency being digital in nature, product of a mathematical computer code, based on the ‘Block chain’ concept, a peek into what future holds for the concept of currency devoid of any regulating authority needs significant developments with regard to its legal position as an intangible property. The rights in regard to such properties or commodities got the much needed radiance when the apex court ascertained that goods can be tangible or intangible in nature in the case concerning TCS v. State of Andhra Pradesh.<sup>8</sup>

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<sup>7</sup> Available at: <https://www.ccn.com/india-supreme-court-cryptocurrency/>.

<sup>8</sup> CIVIL APPEAL NOs. 2584, 2585 & 2586/98.

### **Question of commodity?**

When the intangible property rights status is granted to the crypto currencies, the question of commodity arises. The term 'commodity' itself hasn't been defined by the parliament in explicit terms instead it is an understood principle that every moveable, which can be bought or sold (except living creatures) is a commodity.<sup>9</sup> It is a moveable article which has a certain value attached to it in terms of money, useful in trade or commerce. In the above case concerning TCS v. State of Andhra Pradesh the apex court linked an article of commerce with commodity which also appears to be aligning with the concept of crypto currencies starting to be recognized as commodities in order for their regulation.

### **Question of asset?**

Another concrete argument for the regulation of crypto currencies and legalizing their usage is that the government has imposed taxes on the earnings made through crypto currencies despite it not being declared legal. There isn't any authority regulating it as it is yet to be legislated upon.

### **Recent Developments –**

The RBI on a circular dated 6<sup>th</sup> of April, 2018 restricted the use of crypto currency by any of its entities. Any kind of services, dealings etc. related to crypto currencies are not to be entertained by the RBI or any of its entities and if they were in a contract during that given time then they were given a stipulated time period to sever all such relations.<sup>10</sup>

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<sup>9</sup> Dr. H. K. Saharay & P. M. Bakshi, "Judicial Dictionary of Words and Phrases", Thomson Reuters, 2nd Edition Volume I (2016).

<sup>10</sup> Available at: <https://in.reuters.com/article/us-markets-bitcoin-india-taxes/india-sends-tax-notice-to-cryptocurrency-investors-as-trading-hits-3-5-billion-idINKBN1F8190>.

Another major problem concerned with the dealings in crypto currencies is that due to the lack of their registration with a government they cannot be tracked down nor the government is supposed to be reported to which makes it viable option in case for money laundering.<sup>11</sup>

Through crypto currencies large sums of money are instantly transferred from one end of the world to another due to which the crypto currency transactions are alleged to have been utilized in terror funding as well.<sup>12</sup>

### **Time ahead –**

These are changing times for the development of computerized codes which are being used as currencies by equating them with the fiat value of the currency as they themselves lack any intrinsic value. Moreover, large sums of money is being invested into this not only in our nation but on a global level. The fast paced progression is for everyone to see, it is important to note that science and tech. are going to grow at meteoric rate and it is upon us to keep up with the developments which are at the early build out stage. The court is yet to put a seal on the nature of these digital transactions which will be a head start and would be a crucial step in order to have a proper legal framework curbing all crypto currency related transactions in our country, it is to be noted here that the crypto currencies cannot be wholly said to be illegal as there is no law existing which it might've violated and a person cannot be held accountable for a law which is not in existence.

Entry of the government into these transactions ensures that there is an authority supervising it otherwise if anonymity is kept regarding these dealings then the issue of terror funding arises. If the government puts in necessary checks and balances then the cracks can be filled and new foundations can be laid. From barter system of currency to such modern times, there's a lot we have seen and there's a lot for us in the prospective times which lay ahead.

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<sup>11</sup> Available at: <https://www.forbes.com/sites/jasonbloomberg/2017/12/28/using-bitcoin-or-other-cryptocurrency-to-commit-crimes-law-enforcement-is-onto-you/#3e519b283bdc>.

<sup>12</sup> CRISIL report, "Bitcoin: Currency of the future or money laundering vehicle?", June 2017.