

Legal Status of Crypto Currency in India: A critical review

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Abstract:

Cryptocurrency is a new concept that claims to be a replacement of the fiat currency. Due to the interest of the people in the cryptocurrency around the world catch the attention of the regulatory bodies. In a different country, it is treated as different. As far as India is concerned the status of cryptocurrency is under evaluation period. This research paper tries to find the status of the cryptocurrency in the eye of law tries to define it and found that it is not a currency or legal tender as per the Indian legislation however it may be treated as goods.

Keywords:

1. Introduction:

Bitcoin is the first decentralized digital currency introduced by an unknown person named Satoshi Nakamoto (Nakamoto, 2008). That paper published by Satoshi Nakamoto was revolutionary and started the new era of completely decentralized cryptocurrency in 2009. The identity of the individual or societies behind the creation or starting the Bitcoin network is still unknown. After its inception, the responsibility of developing its code and network is being taken by a thriving group of volunteers. The network of Bitcoin is not controlled by any individual or authority including Satoshi Nakamoto (Antonopoulos, 2017).

Bitcoin is decentralized currency or internet money that can be used pseudonymously for a transaction. Therefore it is important to understand its exact function and effect by the regulatory bodies for the purpose of control and tax (Brito, Castillo, & Center, 2013).

2. Objective:

The objective of this paper is to find out the exact status of the cryptocurrency in the light of legislation and literature review.

This paper is trying to find whether cryptocurrency is Currency, Goods or Service.

What is Crypto Currency?

Cryptocurrency is the completely decentralized payment system using a well-defined network (not only internet). It is a pool of technical concepts that form the basis of digital payment ecosystem. This pool of technology mainly includes cryptography, public key, private key, the blockchain, mathematical function. The cryptocurrency (like Bitcoin, Ethereum, Ripple, EOS, Litecoin etc.) used to transfer value among its users primarily via the internet, however other transference networks can also be used. The whole ecosystem of cryptocurrency is developed in the open source environment. These open source programs can be run and maintained on a wide variety of computer and mobile devices (Antonopoulos, 2017).

Terms that are used in cryptocurrency ecosystem

Public Key and Private Key: Public key with a mathematic algorithm is used to encrypt the message and private key with a mathematic algorithm are used to decrypt the message.

Cryptography: In simple word, it is a method of sending a message securely through unsecure channel i.e. when the communicating channel is controlling by the third party. Using the elliptic curves and their properties and a mathematical trick the message is coded in such a way so that it could be decoded by the receiver using the private key. The sender is also recognized and cannot deny its responsibility.

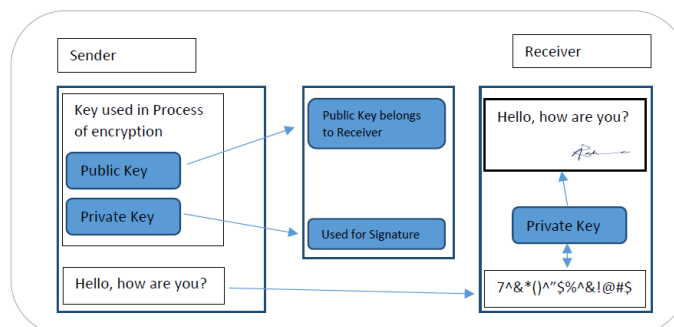


Figure 1: Process use in encryption and decryption

Cryptocurrency network: Cryptocurrency is using Peer to Peer (P2P) network architecture. That means anyone can participate in the network and those who participate in the network is peers to each other. In cryptocurrency P2P network all the system is equal and there is no server no hierarchy, all the nodes are connected using a mesh network with a flat topology. (Nakamoto, 2008). A full node contains (i) network routing (ii) wallet (iii) full blockchain and (iv) mining (Antonopoulos, 2017). Apart from cryptocurrency, another popular example of a P2P network is BitTorrent file-sharing network.

Blockchain: We can consider blockchain as decentralized and distributed open ledger where all the transactions are stored in a block. So in full blockchain database all the transaction from the beginning is available and open for all. Anyone can see the transaction but cannot change it. This blockchain model has inbuilt resistant to change and if anyone wants to hack the database then, in that case, she/he has to hack more than 50% of the node that is not possible. Because the same database is available in every full cryptocurrency node and all participate in the validation process (Armstrong, 2016).

Mining: Validating the transaction is called mining in the world of virtual currency or cryptocurrency. In this validation process, one or more than one computer jointly may take participation. The validation process uses a complex mathematical algorithm that become more complex as the new member join the network and validation process. In this process of mining, the participant gets the transaction fee as a reward. In another case in this mining process the participant release new unit of cryptocurrency as receive it as a reward.

Wallet: A cryptocurrency wallet is a software or web services use to store, receive and send the cryptocurrency. In order to use cryptocurrency, you need to use a cryptocurrency wallet.

The position of Crypto Currency in India

The history of the Indian currency is as old as the history of Sher Shah Suri (1486-1545) who first introduced rupee in India. Where one rupee was equal to the 40 copper-coin pieces (paise) (Haraniya..., 2018). The entry of 36 and 46 of 7th schedule of the Constitution of India empower the Central Government to legislate Indian currency including foreign exchange legal tender etc.

Therefore following laws need to be checked before deciding the status of cryptocurrency.

- i. The Foreign Exchange Management Act, 1999 ("FEMA")
- ii. The Reserve Bank of India Act, 1934 ("RBI Act")
- iii. The Coinage Act, 1906 ("Coinage Act")
- iv. Indian Contract Act, 1872
- v. The Payment and Settlement Systems Act, 2007 and
- vi. The Securities Contracts (Regulation) Act, 1956 ("SCRA")
- vii. The Sale of Goods Act, 1930

FEMA, RBI and Coinage Act

These three Acts jointly describe and govern the circulation of currency and their usage and dumping. However, the currency, bank note or legal tender is not defined under any of these laws. However, through the examination of the provisions of these act legal definition of the currency could be defined.

Currency: Currency is not defined under the RBI Act but adopted the definition of the FEMA Act and as per the FEMA Act Currency is legal tender only if it is notified by the Reserve Bank of India. (Foreign Exchange Management Act, 1999). Indian currency suggests "Currency which is expressed or reeled in

Indian rupees yet does not include special financial institution notes and special one rupee notes issued under section 28A of the RBI Act, 1934 (2 of 1934)". According to the definition of FEMA, any type of currency will be considered as foreign currency if it is not Indian currency. (The Foreign Exchange Management Act, 1999).

Legal Tender

A medium of payment valid by the state/county law is called legal tender. The term legal tender is not defined specifically anywhere in Indian Law, According to the RBI Act 1934, "Every bank note shall be lawful tender at any of area in India in settlement for the amount stated therein". If it is provided under the authority of Section 6 of the Coinage Act, any type of currency/coin can be a lawful tender. However, subsection (2) has an overriding effect and may notify any currency or note, not a legal tender. (The Coinage Act, 1906).

Currency Notes

The term currency notes mean cash whether it is a or bank notes (The Foreign Exchange Management Act, 1999).

Conclusion

Cryptocurrency is not specially mentioned as currency or bank note or legal tender in any Indian law as well as there is no special notification by RBI in this regards, therefore, cryptocurrency will not come under the definition of "other similar instrument" as well, under section 2(h) of FEMA Act, 1999. The maxim '*express um facit cessare tacitum*' states that if certain things are clearly mentioned then only it is acceptable and we cannot accept implied if it fulfils certain criteria. The saying is trusted by the Indian court including Supreme in '*Union of India & Anr. Vs Tulsiram Patel*' and '*Shankara Rao Badam & Ors. Vs State of Mysore & Anr*'.

From the above discussion, it appears that while Crypto Currency has numerous attributes of a currency or lawful tender it is not bank notes and also is consequently illegal tender in India.

Crypto Currency as a Good and a Commodity

Here the products are specified referring to the Sale of Goods Act 1930. Any type of property having (i) utility in it (b) qualified of being bought and marketed as well as (iii) qualified of sent, transferred, supplied, processed and also maintained and so on are products/Goods whether it is substantial or intangible (Tata Consultancy Services vs State Of Andhra Pradesh, 2004). As per the Sale of Goods Act, 1930 "goods" indicates every kind of movable property other than actionable claims as well as cash; and includes stock and shares, crops in the field, turf, and things affixed to or creating component of the land which are concurred to be cut before sale or under the contract of sale.

In a number of countries around the world cryptocurrencies are listed and traded on stock exchanges. Some examples are Bit Box in the United States, Mt. Gox in Japan, BTC in China, Bitcurex in Poland and Bitsamp in Slovenia. More than 100 cryptocurrencies are in the market out of which Bitcoin is on the top. In India, there is no formal exchange for any cryptocurrency. However, there is a number of website in India through which you can buy and sell cryptocurrency. In every 10 bitcoin buy and sell one is taken place in India (Anand, 2018).

In Tata Consultancy Services vs. State of Andhra Pradesh, The Supreme considered a software of a computer as a 'goods' liable to sale tax. So computer software transported in diskettes, CD ROMs, floppy, magnetic tapes etc. as a part of a computer or independently having the capability to be transferred or delivered, stored or processed etc. is goods (Tata Consultancy Services vs State Of Andhra Pradesh, 2004).

3. Conclusion

From the above discussion in the light of Indian legislation, it could be concluded that the cryptocurrency may be considered as 'goods'. Cryptocurrency can be transferred or purchased or sold anywhere in India and in the world easily, therefore, Foreign Exchange Management Act. will also come in to picture.

Cross Boundary transfer of Crypto Currency

FEMA control all incoming as well as outgoing forex associated transactions, basically regulating (or managing) the funds adheres to concerning and also moving from the country. Section 3 of FEMA Act. specifies that besides as stated (and especially proclaimed) in FEMA (or its intrinsic principle and also policies) or unless general or special consent of Reserve Bank of India has actually currently been gotten, no individual shall:

"handle or relocate any forex or foreign security to any kind of Individual not being an authorised individual;

Payment to any person or on behalf of any person outside India who is residence in India.;

Obtain in a different way via an accredited individual, any type of repayment by order or on behalf of some Specific resident outside India in any way; and

In the preceding, it might be suggested that buying of cryptocurrency with ways of a resident India from a private local outside India (where cash money for sale of cryptocurrency is sent out with valid financial terminals) will not be in violation of FEMA. On the other hand, the selling of cryptocurrency to some non-resident person (i.e. into some individual outside India) with means of a resident India will probably be in violation of the terms of FEMA. (FEMA, 1999).

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