

Digital currency- Bitcoin and its legal aspects in India and Globally

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Abstract

“With e-currency based on cryptographic proof, without the need to trust a third party middleman, money can be secure and transactions effortless.”

The above are the words of Satoshi Nakamoto, Bitcoin developer shows that this new technological development of digital currency will prove to be a revolutionary change and will make the life lot easier. Many countries across the world have adopted bitcoin and considered them as legal tender and some countries are still pondering over giving it a legal status. India should not miss on this vast and enormous opportunity. This paper will trace the growth and evolution of digital currency and its legal paradigm globally and especially in India. Bitcoin, a major cryptocurrency is defined as the form or medium of payment that uses cryptography for ensuring its security, transaction and management instead of relying on any central authority. The bitcoin uses Blockchain technology and is a decentralized system based on peer to peer basis. Besides bitcoin there are other cryptocurrency as well like Ripple, Ethereum, Litecoin, Monero to name a few. This paper will examine and deal with the legal aspects related to bitcoin in particular and cryptocurrency in general with special focus on Indian subcontinent. The statement of Arun Jaitley, Finance Minister of India declaring Bitcoin as not a legal tender raised a new topic of discussion. This paper has tried to throw light on status of Bitcoin in India with respect to various laws and regulations prevailing in India and what can it be classified as by analyzing various definitions given in all the germane Acts prevalent in India. The issues like taxation and money laundering related to bitcoin have also been touched upon in this paper. India before discarding bitcoin should analyze its potential and there is a need of appropriate regulatory method to exploit this new technological development. Bitcoin is a new and unique concept and is dynamic in nature, in future Bitcoin and other virtual currency may play an increasing role in payment worldwide.

Keywords: Bitcoin, Cryptocurrency, digital currency, India, legality, legal tender.

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Digitization of Currency: Bitcoin and other Currency- An Introduction

“Virtual currencies, perhaps most notably bitcoin, have captured the imagination of some, struck fear among others and confused the heck out of the rest of us,”²

Said by U.S. Senator Thomas R. Carper, chairman of the Senate Homeland Security and Governmental Affairs Committee.

Digital currency also called as digital money, electronic money or electronic currency, cryptocurrency can be defined as internet based money which is distinct from physical money like banknotes and coins in a way as it does not have physical manifestation. Although it exhibits some characteristics similar to physical currency, digital currency allows borderless transfer of ownership as well as instantaneous transactions as it can be transferred easily between the entities or users with the help of smart phones, computers and the internet.³ This electronic money can be utilized, like traditional currency, to buy the goods and services as well as can also be limited to certain online communities like social networking, online gaming. Virtual currencies and cryptocurrencies like bitcoin are the examples of digital money. Digital currency helps in simple and transparent flow of money. As in case of electronic currency there is direct payment between the payer and payee, no intermediary is required which reduces the transaction cost, unlike traditional currency which cannot by-pass banks or clearing houses. Digital currency has limited users at present and its tax treatment is still evolving. The banks do not accept digital currency as a result no interest can be earned by the individuals and organizations along with various security risks involved with the usage of digital money make its acceptance limited in payment industry.⁴

As we all know money is accepted medium of exchange and a currency is accepted form of money. Now, cryptocurrency is form of currency that uses cryptography to secure its transaction or it can be defined as a currency whose generation is regulated by encryption technique.⁵ One of the most popular digital currency is Bitcoin, it is so popular that sometimes

²What you need to know about digital currencies, CNBC, (Dec 26, 2013, 1:17 AM), <https://www.cnbc.com/2013/12/24/what-you-need-to-know-about-digital-currencies.html>.

³Digital Currency News, COIN TELEGRAPH, (Oct 12, 2017, 10:00 AM), <https://cointelegraph.com/tags/digital-currency>.

⁴Digital Currency, TECHOPEDIA, (13 October, 2017, 2:00PM), <https://www.techopedia.com/definition/6702/digital-currency>.

⁵Cryptocurrencies: A Brief Thematic Review Archived 2017-12-25 at the Wayback Machine. Economics of Networks Journal. Social Science Research Network (SSRN).

the term cryptocurrency, digital currency and bitcoin are considered synonymous. Besides Bitcoin there are other virtual currencies as well like Ripple, Litecoin, Dash, Monero etc.⁶

History and Evolution of Digital Currency

“I think that the Internet is going to be one of the major forces for reducing the role of government. The one thing that’s missing, but will soon be developed, is a reliable e-cash. A method whereby, on the Internet, you can transfer funds from A to B, without A Knowing B or B knowing A.”

- Milton Freedman, American Economist and Nobel Laureate, interview conducted by the National Taxpayers Union Foundation.⁷

The research paper by David Chaum in 1983 introduced the idea of Digital Cash. The first attempt was DigiCash, an electronic cash company founded by David Chaum in 1990, in Amsterdam to commercialize the ideas in his research. David Chaum’s system used the concept of “Blind Signature” to ensure the anonymity of the user. But when DigiCash tried to meet the National regulatory requirements it faced challenges as Regulatory did not allow the anonymity to prevent money laundering. Impediments like this resulted in bankruptcy of the company eventually in 1988.⁸ After this PayPal emerged which permitted the transfer of money from person to person. Then came e-gold in 1996, which was backed by the physical gold but soon it was infected by the hackers and criminals which lead to its downfall. Also there was another digital currency called Liberty Reserve founded in 2006, which allowed the users to make accounts without any verification and freely transfer money by converting their Dollars and Euros into Liberty Reserve Dollars and Euros. It is also the centralized system like e-gold and thus eventually shut down as it became the favorite place of cybercriminals.⁹ Now, recently the bitcoin is introduced in 2008, which has become widely popular, renewing the interest in digital currency.¹⁰

Law and Regulation

⁶PrableenBajpai, *The 6 Most Important Cryptocurrencies Other Than Bitcoin*, (December 7, 2017, 1:55 PM EST), <https://www.investopedia.com/tech/most-important-cryptocurrencies-other-than-bitcoin/>.

⁷Barski, C & Wilmer C, *Bitcoin for the Befuddled*, No Starch Press, San Francisco, 2015, <https://www.linkedin.com/pulse/history-digital-currency-nathan-van-den-bosch>.

⁸Griffith, Ken, "A Quick History of Cryptocurrencies BBTC — Before Bitcoin". Bitcoin Magazine.

⁹ Ken Griffith, *A Quick History of Cryptocurrencies BBTC — Before Bitcoin*, Last Updated 04.16.14 5:10 PM, <https://bitcoinmagazine.com/articles/quick-history-cryptocurrencies-bbtc-bitcoin-1397682630/>.

¹⁰Gautham, *A Brief History of Digital Currency*, Last updated (1:30 pm November 1, 2015) <http://www.newsbtc.com/2015/11/01/a-brief-history-of-digital-currency/>.

European Union has implemented E-Money Directives "on the taking up, pursuit and prudential supervision of the business of electronic money institutions" since 2001 which was last amended in 2009.¹¹ Article 4A of the Uniform Commercial Code governs the electronic money in U.S.A for wholesale transactions and for consumer transactions there is Electronic Fund Transfer Act.¹²

There has been various regulatory guidance imposed on virtual currency as it has posed challenges for central banks, financial regulators, departments or ministries of finance, as well as fiscal authorities and statistical authorities. U.S Treasury Guidance- the Financial Crimes Enforcement Network issued guidance on 20 March 2013 to clarify that persons creating, exchanging and transmitting virtual currencies will be governed by US Bank Secrecy Act.¹³ The U.S Security and Exchange Commission warned about the hazards of virtual currencies and bitcoin in May 2014.¹⁴ Then under New York state Regulation, New York State Department of Financial Services proposed in July 2014 Bit License which is the most comprehensive regulation of virtual currencies.¹⁵

Bitcoin-an Introduction

Bitcoin is the cryptocurrency and it is an electronic payment system, functioning through peer to peer technology. The person or entity or group by the name of 'Satoshi Nakamoto' launched bitcoin in the year 2009 and till date the real identity of Satoshi Nakamoto is unknown. In 2008, in the aftermath of the subprime mortgage crisis, the faith and confidence in the government issued currency and bank's ability to manage the economy, the supply of money had suffered a serious hit. Millions of dollars were used to bail out banks and insurance companies after the "quantitative easing" measures adopted by the Federal Reserve. This necessarily meant that money was being printed in order to stimulate the economy. The glut of currency backed with little or no economic productivity led to a global recession ultimately resulting in a sovereign debt crisis in several countries. The price of gold

¹¹ "Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC, Official Journal L 267, 10/10/2009 P. 0007 - 0017". (30 December 2013).

¹² "ELECTRONIC FUND TRANSFER ACT (REGULATION E)" (PDF). Federal Deposit Insurance Corporation.

¹³ "FIN-2013-G001: Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies". Financial Crimes Enforcement Network. 18 March 2013. p. 6.

¹⁴ Bobelian, Michael "SEC Warns Investors to Beware of Bitcoin". Forbes.

¹⁵ Bobelian, Michael "New York's Financial Regulator, Benjamin Lawsky, Maintains Lead On Bitcoin Regulation". Forbes. (3 October 2014).

was constantly inflating. At this point, for the very first time, the paper by Satoshi Nakamotowas published online describing the Bitcoin.¹⁶

Bitcoin uses complex and cryptographic codes in its design. One of the most fascinating feature of bitcoin is that no central authority or bank regulates, thus, making it not bound by any geographical boundaries.Satoshis are the smaller units in which each Bitcoin is subdivided down to eight decimal places, as a result of which 100,000,000 Satoshis are formed. These bitcoins are easily transferable through the computers and smart phones, thereby eliminating the need of any intermediary. It is created through the system called mining, a kind of system so designed that it allows maximum number of bitcoin to be ever created will not exceed 21 million.¹⁷ The servers called Bitcoin “miners’ secure and protect the processing of Bitcoin transaction and communicate over an internet – based network. These transactions get confirmed by adding them to a ledger which is updated and archived periodically by using peer-to-peer file sharing technology which is also known as the “blockchain”. Blockchain technology is used by bitcoin in its operation to tackle the crippling and one of the fundamental problems in designing the digital currency that is Double Spending. Blockchain technology is a shared public and incorruptible digital ledger which can be programmed to incorporate or record the details of financial and non-financial transactions or virtually anything. This ledger is completely transparent for each and every person in the network.¹⁸ The authenticity, integrity and chronological order of blockchain is maintained and ensured by cryptography.¹⁹

A transfer or transaction of Bitcoins is nothing but simply a transfer of value between Bitcoin addresses. Every person who is engaged in usage of Bitcoin gets a digital wallet and a Bitcoin address which is the address from and to which Bitcoins can be transferred once this address is given to another party for the transfer. Thus, the transfer of value between these addresses gets included in the block chain or the system log, which takes care that each transaction is valid or authenticated and that no person uses his or her Bitcoins more than once i.e. it helps

¹⁶Taken from a five-hundred word essay written by Satoshi Nakamoto, where Bitcoin were mentioned for the first time.<http://Bitcoin.org/Bitcoin.pdf>.

¹⁷Samantha Sharf , \$10: One Perspective On What Bitcoin Will Be Worth In 2014 , (JAN 15, 2014, 02:17 PM) , <https://www.forbes.com/sites/samanthasharf/2014/01/15/10-one-perspective-on-what-bitcoin-will-be-worth-in-2014/#3d124a944ba7>.

¹⁸ Karan Dhar, *Don't know what's Blockchain technology? Let us explain* ,BUSINESSTODAY (March 1, 2017 ,20:00 IST), <https://www.businesstoday.in/sectors/banks/what-is-blockchain-technology-let-us-explain-bitcoin-banks/story/238438.html>.

¹⁹Block Chain, ‘My Wallet Be Your Own Bank’ BLOCKCHAIN (21st May, 2018, 12:15 AM), <https://blockchain.info/wallet/>.

in avoiding and preventing the problem of double spending. A secret piece of data called a “private key” for each Bitcoin address is kept by Bitcoin wallet. These Private keys provide a mathematical proof that the bitcoins have come from the owner of the addresses and are further used to sign transaction. The “signature” refrain anybody from altering the transaction once it has been issued.²⁰

Legality of digital currency - Bitcoin

The question whether bitcoin is legal or not depends on the way of using the digital currency. Thus, who you are, where you live and what you are doing with the bitcoin determine the legality of your bitcoin activities. Regulators and authorities of various countries have been worried about the bitcoin semi-anonymity and nature of decentralization as it can be used for illicit purchase of goods which cannot be traced and also money laundering. The reputation of bitcoin has gone further down ever since now-defunct Silk Road gained notoriety, and also its prevalence as the payment service for Silk Road, a digital marketplace where illicit goods and services can be bought by the users. So, for example we can see that using bitcoin for purchase of well-natured goods and services is not considered illegal according to the U.S. Treasury Department’s Financial Crimes Enforcement Network as of 2013.²¹ However, trading of bitcoin for traditional currency or operate exchanges on which bitcoins are bought and sold by those who mine bitcoins are labeled as “money transmitters” and could be subject to special laws that govern that type of activity. Hence, we can say that legality of bitcoin is viewed differently in different countries. Many countries have not given any official sanction to the use of bitcoin by issuing statement to this effect. This status given to bitcoin put users under risk but would not have them violating the law.²²

Bitcoin and cryptocurrencies being the latest technological development have not been incorporated within the legal framework of many countries. There are variety of legal aspects and issues related to this digital currency. Thus it is important to discuss the legality of bitcoin and other cryptocurrencies in different countries and issues like money laundering, taxation and many other issues and legal status in different countries.²³

²⁰VipulKharbanda, Bitcoin: Legal Treatment under the Current Indian Legal and Regulatory Regime, CISINDIA (May 21, 2018, 2:00 AM), <https://cis-india.org/internet-governance/bitcoin-legal-regulation-india>.

²¹*Is Bitcoin Legal?*, COINDESK (August 19, 2014), <https://www.coindesk.com/information/is-bitcoin-legal/>.

²²*Is Bitcoin Legal?*, BITCOINMAGZINE (Oct 29, 2017, 2:30 PM), <https://bitcoinmagazine.com/guides/bitcoin-legal/>.

²³*Legality of Bitcoin & cryptocurrency*, BITCONNECT (November 7, 2017, 1:00 AM), <https://bitconnect.co/bitcoin-information/8/legality-of-bitcoin-cryptocurrency>.

Taxation:

This is one of the major issues related to bitcoin. If the person is cautious enough and taken required precautions then, bitcoin can easily be used for hiding assets, evading and reducing taxation owing to its pseudo anonymity. Bitcoin is often treated as the asset in most countries for the purpose of taxation. Tax issues may rise on bringing large chunk of foreign money in the country, however, storing and bringing in bitcoin private key online makes it easier to cross pass the border checkpoints. In this way one can effectively bypass the taxes of levied on such type of transaction by cashing it out when in the country. In most places, bitcoin income at the current exchange rate has been declared for the purpose of payment of taxation by legitimate taxpayer. On the other hand, taxation has not been considered at all at places where bitcoin is illegal and banned. Proper research of the tax laws must be conducted by the tax payers of bitcoin to ensure correct payment of tax on bitcoin income. Bitcoin and cryptocurrency are treated as asset and not currency in many countries so tax laws may differ accordingly which must be taken into consideration. It is illegal to avoid taxation even though some countries have loopholes in laws.²⁴

Money laundering:

This is another major issue associated with usage of bitcoin. Money laundering as a concept can be defined as introduction and integration of money and goods in legal economic system coming from illegal means and source although The ease of movement and transfer of money between countries at a blink of an eye makes money laundering key legal problem with bitcoin as it is the most used method to launder money online. Absence of the central server doing peer to peer transaction and the anonymity, these two attributes of bitcoin make money laundering easier. In all jurisdiction across the world money laundering is illegal.²⁵

Besides the above two major problems there are also other numerous legal issues related to bitcoin. The exchange Mt. Gox is the example of large thefts of bitcoin which generated pressure on regulators to regulate it. EU court in recent ruling answered the question whether bitcoin is VAT free in affirmation, permitting bitcoins to be transacted like gold VAT free. Another problem related to bitcoin is that if the person holding large quantity of bitcoin loses its private key then, it is very hard to prove this and that person will still be considered the

²⁴ *Supra note 15.*

²⁵ SARA RUIZ CABRERA, *How do you do money, laundering through bitcoin?*, REPOSITORI (November 4, 2017, 10:30PM), http://repositori.uji.es/xmlui/bitstream/handle/10234/161136/TFG_2015_ruizS.pdf?sequence=1.

owner of coins under tax jurisdiction as it is hard to prove otherwise. There was online market place of drugs called SilkRoad, it can run for long time due to the use of bitcoin until recently it was shut down after years of investigation and finally being able to track down the real IP address of the server, resulting in arrest of those running it. However, the bitcoin provides little protection from scams. Lack of legal protection is the biggest problem associated with cryptocurrencies and bitcoin; they can be easily used to hide the asset illegally or legally as in case of Divorce.

Legality of bitcoin in Different Countries:

Legality or legal status of bitcoin and cryptocurrency varies from country to country substantially and is undefined and keeps on changing in many. However, most countries do not make the usage of bitcoin illegal per say with the exception of Bangladesh, Bolivia, Ecuador, Thailand & Kyrgyzstan. Some countries have allowed the explicit usage of bitcoin and cryptocurrency while some countries have banned its usage or restricted it. Thus, some countries class virtual currency and bitcoin as asset and legal some consider it neither legal nor illegal while some other consider it as illegal. In China, it is legal to hold bitcoin by private individuals for trade, mine, buy and sell but illegal for commercial use. Like many other countries in United Kingdom, there is no legal framework in place and bitcoin is unregulated.

When we say bitcoin is unregulated it means that there is no specific legal framework yet in place or bitcoin is deregulated, it can be used in any way or capacity with minimal or no legal restrictions imposed. The countries where bitcoin is unregulated are: United Kingdom, Australia ,Belgium, Brazil, Columbia, Chile, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Greece , Hong Kong, India (however many Indian banks do not permit transactions pertaining to bitcoin, Indonesia, Ireland, Israel, Italy, Lithuania, Malaysia, Malta, New Zealand, The Netherlands, Nicaragua, Pakistan, Philippines, Poland, Portugal, Romania, Singapore, Slovakia, Slovenia, South Africa, Turkey, Vietnam, Nepal, North Korea, Papua New Guinea, Antigua, Barbados, Iran, Iraq, Somalia, Afghanistan, Egypt, Saudi Arabia, Oman, Qatar. There are countries where bitcoin is legal but regulated for some specific purposes like Finland, France, Germany, Japan, South Korea, Jordan, Lebanon, Luxembourg, Spain, Sweden, Switzerland, Canada and Mexico. In China bitcoin is restricted but can be used by private individuals not banks and corporations, in Iceland mining is legal but buying

and selling is not and in Taiwan, ATMs for bitcoin are illegal. Russia, Bangladesh, Thailand, Kyrgyzstan, Ecuador banned the usage of bitcoin out rightly and completely.²⁶

India's attempt to Cashless Society and Bitcoin

India was the country with highly cash-centric economy until the campaign initiated by demonetization which is more about turning India cashless rather than fighting corruption. Indian economy was so cash centric that cash accounted for 90% of all the transactions, 85% of the vendors do not have any means or ways to accept e-payment and nearly half of the population in India does not possess a bank account. Also India is the only country where even Uber accepts cash on delivery.²⁷ Demonetization of 500 and 100 rupees notes on November 8, 2016 by PM Narendra Modi's government is the most important move towards cashless society. Though this was said to be the attempt to curb black money but it contained the hidden motive of cashless India. Lives of millions have been affected due to demonetization. The people of the country have resorted to other ways of making payment than the cash due to small volume of money and have also started supporting digitization of currency and going cashless. The short term effect of demonetization has been the rapid increase in use of e-wallet, debit and credit cards as the means of payment.²⁸ Bitcoin and Cryptocurrency are slowly and steadily gaining prominence in Indian construct. India is seen as one of the nations with the ban and withdrawal of 500 and 1000 rupees notes from the Indian economy, the volume of bitcoins trading have almost become double in India. One of the leading bitcoin companies of India, 'Unocoin' reported a rise in daily average number of visitors to the site from 4000 to 14000 after demonetization. Unocoin is the bitcoin startup in India and launched the full featured mobile bitcoin app enabling instantaneous transaction and provides 24/7 access to bitcoin market place.²⁹ The Finance Minister, Arun Jaitley in their written reply to the Lok Sabha told that there are evidences of cryptocurrency/bitcoin being used in the country and there has been a notable growth in the use of bitcoin in past few years. Various concerns have been raised from time to time regarding the use of virtual

²⁶Prablen Bajpai, *Countries Where Bitcoin Is Legal & Illegal*, INVETOPEDIA (April 15, 2015, 1:51 PM), <http://www.investopedia.com/articles/forex/041515/countries-where-bitcoin-legal-illegal.asp>.

²⁷Wade Shepard *A Cashless Future Is The Real Goal Of India's Demonetization Move*, FORBES (DEC 14, 2016 01:37 PM), <https://www.forbes.com/sites/wadeshepard/2016/12/14/inside-indias-cashless-revolution/#52bce3594d12>.

²⁸INSIGHTS, *Demonetization and digitization of the Indian economy*, ASIAMARSH (Feb 03, 2017), <http://asia.marsh.com/NewsInsights/ID/47198/Demonetization-and-digitization-of-the-Indian-economy.aspx>.

²⁹PRAVEEN SHEKHAR, *Will bitcoins help Modi government realise its less-cash dream?*, (Dec 19, 2016), <http://www.dailyo.in/politics/bitcoin-demonetisation-digital-currency-digitised-economy-rbi-unocoin-digital-india/story/1/14634.html>.

currency and the regulatory challenges faced. The users, traders, dealers and holders of virtual currency like bitcoin has been warned and cautioned from time to time by RBI regarding the potential risks involved related to financial, legal, operational and customer protection. The committee has been formed by the Department of Economic Affairs taking cognizance of these risks and challenges. The representatives of Department of Economic Affairs, Department of Financial Services, Revenue Department, Ministry of Home Affairs, Ministry of Electronics and Information Technology, Reserve Bank of India, NITI Aayog and State Bank of India constitute the panel. The committee will study and analyze the present status of virtual currency in India and at global level. The committee will examine the legal framework and structure across the world governing virtual currency and suggest the regulatory framework for India catering to the issues related to customer protection, money laundering and taxation. Though the proper regulation and jurisdiction related to bitcoin is obscure, the Income tax department is making all of the cryptocurrency transaction as taxable and any gain accruing from such transaction irrespective of the fact that there is no such mention in the Act.³⁰

Bitcoin in India and its legal position

“Recommendations are being worked at. The government’s position is clear; we don’t recognize this as legal currency as of now,”

Said Arun Jaitley, The Finance Minister on being asked what are the government plans to regulate bitcoin. Earlier in August Jaitley informed parliament about the absence of any regulation governing bitcoin in India and Reserve Bank of India has also not issued any license to any institution/entity to deal with cryptocurrency.³¹

In budget speech by Arun Jaitley for 2018-19, the Government announced that it would take all measures to eliminate use of these crypto-assets in financing illegitimate activities or as part of the payment system.³² This announcement that cryptocurrency is not recognized as legal tender in India raised a curiosity among the people of the nation about the fate of the Bitcoins in India. Paper has already thrown light on legal status of bitcoin in different

³⁰ K.R. SRIVATS, *Notable growth in bitcoin market in India: Jaitley*, (August 4, 2017), <http://www.thehindubusinessline.com/news/notable-growth-in-bitcoin-market-in-india-jaitley/article9802341.ece>.

³¹ *Government doesn’t recognise bitcoin as legal: FM Arun Jaitley*, (Dec 01, 2017, 08.40 AM), <https://economictimes.indiatimes.com/markets/stocks/news/government-doesnt-recognise-bitcoin-as-legal-fm-arun-jaitley/articleshow/61873558.cms>.

³² Budget 2018-2019 Speech of Arun Jaitley Minister of Finance February 1, 2018, Para 112.

countries which is not uniform as some countries have accepted it as legal tender while others have restricted or banned its use and trade. Now let us discuss the legal position of bitcoin of Bitcoin in present India by looking into the applicability of various Acts prevailing in India which are germane to bitcoin and stance of Supreme Court and RBI.

Applicability of the Coinage Act, 2011:

The Coinage Act, 2011 governs coins in India. To understand whether bitcoin can be called coin under this Act, let us look into the section 2(a) which states that coin is anything made of metal or any other material, stamped by the government of India or any other authority on its behalf empowered or authorized for this purpose and which is a legal tender which includes commemorative coins and the one rupee note of government of India.³³ This definition of coin makes it clear that Bitcoins are not legal tender as they lack sanction of appropriate governmental authority in India and they do not come under the ambit of coins as defined in The Coinage Act, 2011.

Application of FEMA(Foreign Exchange Management Act), 1999:

Provisions of this Act are also germane to find out whether bitcoin is a currency or not. The section 2(m) which deals with foreign currency, section 2(h) which deals with currency and section 2(q) which deals with Indian currency,³⁴ must be studied to know the status of bitcoin or cryptocurrency. The definitions given in these sections of FEMA, 1999 do not cover virtual or cryptocurrency. So, when it comes to regulation of bitcoins, FEMA is not applicable which further implies that RBI at present is unable to regulate or control the operations of bitcoin.³⁵

Sale of Goods Act, 1930 and Its Applicability:

Taking into consideration that bitcoin can be treated as “Goods” under Sale of Goods Act, 1930 as per section 2(7) which defines goods.³⁶ However in the situations where bitcoin is used as a money consideration, the Sale of Goods Act cannot be applied as per section 2(10) of this Act, consideration can only be in form of price and it cannot be in form of kind.³⁷ If

³³ Section 2(a) of The Coinage Act, 2011, No. 11, Acts of Parliament, 2011.

³⁴ Section 2(m), (h), (q) of Foreign Exchange Management Act, 1999, No. 42, Acts of Parliament, 1999.

³⁵ Nishith Desai Associates, Bitcoins – A Global Perspective, Pg 12, <https://www.zebpay.com/wp-content/uploads/2016/04/Bitcoins.pdf>.

³⁶ Section 2(7) of Sale of Goods Act, 1930, No. 3, Acts of Parliament, 1930.

³⁷ Section 2(10) of Sale of Goods Act, 1930, No. 3, Acts of Parliament, 1930.

transaction takes place in lieu of lawful consideration then, Indian Contract Act, 1872 and its applicability can also be considered.³⁸

KYC (know your customer) and its Applicability:

The meaning of KYC is 'Know Your Customer' which can be defined as the process by which the identity and address of the customers are obtained by Banks. This is undertaken by the banks at the time when customers open their bank accounts. The Reserve Bank of India formulates norms and rules for KYC as all the banks whether public or commercial need to monitor the transactions done by their customers, keep a record of their identities and need to take required steps if any customer deviates from his or her usual pattern of behavior.

Zebpay, one of the most prominent and popular Bitcoin wallet/app in India adheres to self-regulation structure³⁹ currently while following KYC and Anti-Money Laundering (AML) norms. In order to ensure that individuals or organisations do not use these as platforms for their illicit and malafied motives, the provisions of Money Laundering Act, 2002, should be applied.⁴⁰

Stance of Supreme Court of India and RBI:

The Public Interest Litigation (civil writ petition no. 1076 of 2017)⁴¹ which was filed by Advocate Dwaipayan Bhowmick under Article 32 of Constitution of India against the Union of India seeking the government of India to establish a regulatory framework or structure for virtual currency most importantly bitcoins and demanded that virtual currency including bitcoins should be made accountable by the exchequer. After hearing this PIL, the honorable Supreme Court of India has recently issued notice to Ministry of Law and Justice, Ministry of Finance, Ministry of Information Technology and also to the market regulators including RBI and Security Exchange Board of India (SEBI).⁴²

³⁸S.S Rana and Co., Bitcoin in India and its legality, (May 29, 2018, 3:30PM)
<https://www.lexology.com/library/detail.aspx?g=7705641e-e5b1-4400-8fd2-b559254907ce>.

³⁹*ZeBitcoin is not illegal*, (May 22, 2018), <https://www.zebpay.com/legal>.

⁴⁰*Supra Note 31* at page no. 17.

⁴¹*Dwaipayan Bhowmick v. Union of India & Others*, civil writ petition of 2017, https://barandbench.com/wp-content/uploads/2017/11/PIL_bitcoin-watermark.pdf.

⁴²http://supremecourtindia.nic.in/supremecourt/2017/35252/35252_2017_Order_13-Nov-2017.pdf.

The RBI in its press release 2016-17/2054⁴³ held on 1st February, 2017 made it very clear that it has not given any sanction or authorization/license to any company/entity/institution or individual to operate and trade in virtual currencies including bitcoin and further in the another press release by RBI 2017-2018/1530⁴⁴ dated 5th December, 2017 where RBI again reiterated its concerns regarding the flow and usage of cryptocurrency gave reference and brought attention of the public to its earlier press release of February where it also stated that anybody i.e. any trader, individual or any holder or investor etc. who are dealing with Bitcoins or virtual currency will be involved in its trading or business at their own risk.

The burning question- What can bitcoin be classified as in India?

This is one of the controversial questions that under Indian Laws, what is the place of Bitcoin, in which category does it fall? This question can be addressed by analyzing various definitions. Beginning with the Securities Contracts (Regulation) Act, 1955, the definition of ‘securities’ given in section 2(h),merely the reading of the bare provision makes it clear that bitcoin cannot be treated as a securities.⁴⁵ The only way through which the bitcoin can be called securities is when central government declares so and then the entire gamut of regulations governing securities, in this situation, including rules laid down by SEBI will be applicable.

The bitcoin can be a derivative is another argument. However on reading the definition of derivatives under SCRA the bitcoin does not satisfy the first part of definition as it is not a security and further, bitcoin is also not a contract which is mentioned in second part of the definition as it is only a voluntary currency between two parties deciding that there is some value of code itself.⁴⁶ The word derivatives is also defined in Reserve Bank of India Act, 1934, the fact that bitcoin is used as currency because bitcoin users think that it has inherent value and not that it has derived its value from any other object or thing, thus, bitcoin cannot come under the definition of derivatives as given in RBI Act, 1934⁴⁷.The bitcoin cannot be classified as negotiable instrument either under Negotiable Instruments Act, 1881 which

⁴³Jose J. Kattoor, Chief General Manager,Press Release: 2016-17/2054, dated February 1, 2017, RBI cautions users of Virtual Currencies (May 22, 2018, 4:00PM), <https://rbidocs.rbi.org.in/rdocs/PressRelease/PDFs/PR205413F23C955D8C45C4A1F56349D1B8C457.PDF>.

⁴⁴ Jose J. Kattoor, Chief General Manager, Press Release: 2017-2018/1530 dated December 5,2017, Reserve Bank cautions regarding risk of virtual currencies including Bitcoins, (Last Visited: May 23. 2018, 5:00PM) ,<https://rbidocs.rbi.org.in/rdocs/PressRelease/PDFs/PR15304814BE14A3414FD490B47B0B1BF79DDC.PDF>.

⁴⁵ Section 2(h), Securities Contracts (Regulation) Act, 1955

⁴⁶ Section 2(ac), Securities Contracts (Regulation) Act, 1955.

⁴⁷ Section 17(6A) of Reserve Bank of India Act, 1934.

defines negotiable instrument as “promissory note, bill of exchange or cheque payable either to order or to bearer”⁴⁸ These terms are easily understood in trading parlance, it is suffice to say that the bitcoin does not form part of definitions of any of these terms as given in Negotiable Instruments Act, 1881.⁴⁹

Conclusion

Bitcoin is difficult to be classified under any definitions as already discussed, however it can be said to be a computer programme and currently it can be classified only as movable but this position has not been testified under any court of law. Bitcoin has not given a legal sanction in India but there are countries where it enjoys a status as legal tender, thus, bitcoin is upcoming new form of medium of exchange which still needs some improvement as per the economic, social, political conditions of India for its acceptance in India. The legality and evolution of bitcoin is quite interesting as discussed above. Bitcoin is unique and dynamic in nature and therefore government should try to develop self-regulatory framework for management of bitcoin instead of counter-productive measures. Bitcoin can prove to be a good opportunity for India to fulfil aspirations reflected in Constitution of India. Every technology that comes has some issues and problems but it must be understood and analysed at appropriate time to get its benefit. In the words of Eric Schmidt, CEO of Google- “Bitcoin is a remarkable cryptographic achievement and creating something that is not duplicable in digital world has enormous value.”

⁴⁸Section 13 of Negotiable Instruments Act, 1881.

⁴⁹VipulKharbanda, *Can Bitcoin Be Banned by the Indian Government?*, (May 26,2018 , 6:00PM), <https://cis-india.org/internet-governance/bitcoin-legal-regulation-india>.