

## “Virtual Currency: A Farfetched Reality in Digital India”

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### ABSTRACT

In the today’s world, with the advancement in science and technology, the world is moving at rapid speed. This advancement can also be seen in the areas of currency management also.

It has been seen that fiat money, which is the traditional source of transactions, has been continuously developing and paving new ways for the other modes to perform the similar function. One such advancement can be of the introduction of Virtual Currency. The Virtual Currency (or digital currency, as later explained in the research) has brought a revolution in transaction methods as compared to ordinary banking arrangements. Through specific digital wallets and dedicated exchanges, the currency has brought a technological transformation in the way we make everyday transactions. The impact of this new monetary settlement tool is felt worldwide. In India, however, the stand on crypto-currency is in a state of conundrum.

With the Central Bank’s over-protective attitude resulting in the ban on trading in Virtual Currency by its regulated entities and on the other hand, the Supreme Court’s lifting of this ban, has shown that the country needs a concrete legislation to put this issue to rest for once in for all. Along with that, different countries across the globe have dealt with the crypto-currency in their own ways. However, the Virtual Currency has also brought points of concern with itself and risks associated thereof. Whether, it is with respect to its demand-supply mechanism or being unaffected by the Regulatory Bodies rules or capable of doing terror financing has raised concerns globally. The authors intend to decode the current unclarified status of virtual currencies in India along with global scenario and its future prospects in the country.

**Keywords:** Virtual Currency, Express Legislations, Reserve Bank of India, The Supreme Court’s stand, Global Stand, Terror Financing.

### I.INTRODUCTION

*“A law is valuable not because it is law, but because there is right in it”*

The management of currency is usually done by the Central Bank of a country whether it is related to its creation or its flow in the economy. Vide this process, the currency which is also the legal tender, is first minted and then circulated. However, such is not possible with the digital money.

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Digital money is a blanket term which has been used to include both the virtual as well as crypto-currency within its ambit. The same can be both-regulated or unregulated. Yet there again comes a point of distinction which pops while dealing with digital money and virtual money. It is pointed out that '*all Virtual Currency is digital but all digital currency is not virtual*'. This is because the digital currency also exists outside a virtual environment. Consequently, the term crypto-currency is also considered to be a part of digital money due to its online existence. The prefix 'crypto' means that certain amounts of encryption algorithms and cryptographic techniques are used to ensure security across the network.

Crypto-currency is therefore a currency which is created by series of commands and traded virtually via block chain based decentralized network, without requiring any need of any third party to regulate it, such as a central bank, or credit card company. The users shall be able to use their Virtual Currency through their digital wallet and perform their trading activities. In this way, person to person transfers are facilitated by *public and private keys*. What the term public key means is that it represents an actual crypto-graphical address of the currency. This address acts as user's account identifier to which funds can be paid into. On the other hand, the private key gives its user the means an access and control over its funds to the corresponding crypto-currency address. It can be inferred that the public key acts as being an individual's private bank account and private key to be the confidential pin to that account. Therefore, both these keys form a significant part in the transactions involving crypto-currency.

Hence, the process is pretty simple and poses no significant or imminent threats to the economy or banking system of a country. Yet the countries around the globe still have not fully accepted this form of digital money. Due to their virtual nature, this form of currency is not governed by any third party as mentioned above and prone to economic offences or terror financing. The same is very much prone to cyber vulnerabilities such as cyber-attacks or system hacking on which private and public keys to the same are stored. Along with that, the currency is also prone to internal dangers too. Since currency is digital in nature, it can be wiped out by a computer crash caused by some internal fault or if the user because of his own act loses the private key without creating any back-up of it. Also, the origin of the oldest crypto-currency which is 'Bitcoin' has its origin unknown with no real identity of its creator known till this day. All these are the red-flags which stand in the way of crypto-currency being getting a global recognition.

In India, the recognition of crypto-currency can be seen as a tussle between the Central Bank of the country and the Apex's Court verdict on the Bank's stance. Where the Central Bank had virtually imposed a ban on trading of the crypto-currency<sup>3</sup>, the Apex Court on the other lifted that ban, leaving the Regulatory Agency high and dry. This lifting of ban has made the country stand on the crossroads of uncertainty with respect to its stance on the crypto-currency when the Regulatory agency considering to go for review of the judgment. With no specific and direct legislations, the crypto-currency has practically no rules and regulations to

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<sup>3</sup> RBI Notification RBI/2017-18/154 DBR.No.BP.BC.104 /08.13.102/2017-18 dated April 6, 2018

be governed by except for the Reserve Bank of India's guidelines. Further, this also poses a question on India's stance on the currency when compared to other nations as if it is on the same terms with the global standard or not.

The Authors of this Research paper believe that there is a high time that India takes some concrete steps to make its position clear on crypto-currency clear by enacting legislations which shall directly deal with this issue rather relying on the existing legislations which do not provide for any expressly mention crypto-currency in their text and depend upon judiciary's interpretations.

The Authors of this paper by means of this research work will make an attempt to delve into the depth of crypto-currency, highlighting its associated advantages and dis-advantages and its comparison with the traditional *fiat money* and an analysis of Apex Court's judgment of lifting the ban from the trading of currency. The researchers would further go on to analyze the Global stand on the same with special emphasis on the reasons which the Global community put forward to justify its point of view. In the end, the Authors will conclude their research by putting some recommendations as to how more awareness can be created in the area of crypto-currency.

## **II. LEGAL REGIME OF VIRTUAL CURRENCY IN INDIA ACCORDING TO EXISTING LAWS**

The main problem regarding determination of legal status of bitcoin in India is that what it shall be considered- currency, security, commodity or something completely different. In Union Budget 2018, the Finance Minister reiterated that cryptocurrencies are not recognised as legal tender. In the budget speech, he said that the government does not consider the cryptocurrencies legal tender or coins and will take required measures to eliminate the use of crypto-assets in any type of financing activities which are illegitimate. The RBI in 2019 also issued a circular banning transaction related to crypto-currency by its affiliated banks, institutions etc. Later, this stance was reversed by the Apex Court of country yet again leaving the Virtual Currency's future in oblivion. However, it was said that government will explore about the blockchain technology which drives bitcoins.

In India, bitcoin trade is carried by 11 unregulated exchanges according to the Tax Department estimates. The prices of bitcoins have had a huge increase as in beginning of 2017 it was \$1000 to \$15000 in the end of 2017. This has attracted the attention of the government.

### **1. *Applicability of Coin Age Act,2011***

The coins in India are governed by Coin Age Act, under section 2(a) coin is defined as "coin" means any coin which is made up of metal or any other material stamped by the government or any other authority so empowered by the government in his behalf and which is a legal tender including commemorative coin or Government of India one rupee note.

Thus, from the above definition it is clear that bitcoins do not fall under this act being a kind of Virtual Currency.

## **2. *Applicability of Foreign Exchange Management Act,1999***

The provisions of FEMA need to be checked whether bitcoins fall under the ambit of currency or not. Section 2(m) of the act defines ‘foreign currency’ which means currency other than Indian currency, section 2(q) defines ‘Indian currency’ and section 2(h) prescribes what all can be considered ‘currency’, it includes 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<sup>4</sup>.

Therefore, FEMA is not applicable to bitcoins according to this act and RBI has no authority of regulation over bitcoins.

## **3. *Applicability of KYC***

KYC is ‘Know Your Customer’, it is process undertaken by banks in which they obtain all the information regarding identity and residential address. In India, KYC has been made mandatory by the RBI for the banks to monitor their customer’s transactions, keep and updated record of their identity and take appropriate steps whenever the activities of a customer deviate from normal behaviour.

At present, one of the most prominent Bitcoin applications, Zebpay follows KYC and Anti-Money Laundering norms which are self-structured regulations.

Hence, this attracts the provisions of Prevention of Money Laundering Act,2002 to prevent any illegal or unlawful uses of bitcoins by its traders including any individual or organisations.

## **4. *Applicability of Sales of Goods Act,1930***

The term ‘goods’ is defined under section 2(7) of the act as “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<sup>5</sup>. Whereas, bitcoins when used as consideration, this act will not apply as it can be paid as price as per section 2(10) of the act as “price” means the money consideration for a sale of goods<sup>6</sup>.

Hence, the applicability of the act is not full-fledged but can take place post requisite amendments.

## **5. *Taxability of Bitcoins in India***

Under the Income Tax Act,1961, bitcoins can be treated as capital assets under section 2(14) of the act where "capital asset" means—

(a) Property of any kind held by an assessee, whether or not connected with his business or profession;

(b) any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board

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<sup>4</sup> Foreign Exchange Management Act, 1999, s 2(h)

<sup>5</sup> Sales of Good Act, 1930, s 2(7)

<sup>6</sup> Sales of Goods Act,1930, s 2(10)

of India Act, 1992 (15 of 1992)<sup>7</sup>. Further any profit or gain that is arising out of the asset i.e. bitcoin on transfer or sale is can be taxable.

The analysis can be concluded by saying that *there is no express legal stand which concretely determines the position of Virtual Currency in India*. However, this fog of discombobulating legal stand could have been cleared if the *Crypto-token Regulation Bill, 2018* would have been passed. The Bill proposed that the sale and purchase of crypto-currency shall be allowed only at the recognized Virtual Currency Exchanges and not elsewhere and along with that the registry of all holdings and transactions on the recognised exchanges shall be maintained at recognised depositories. However, the position again dwindled when the *Banning of Crypto-currency and Regulation of Official Digital Currency Act, 2019* was proposed. The bill proposed to create a blanket ban on the Virtual Currency and to ban the mining, generation, holding, selling, dealing in, issuing, transferring, disposing of or using crypto currency in the territory of India. Further, the bill also proposed to create a digital rupee as a legal tender, by the central government in consultation with RBI, so they would have a monopoly over its circulation and creation. Yet again the bill never came into enforcement. Also, before any of these bills were considered, the RBI brought in the circular to impose a ban on the trading of crypto-currency.

### **III. ANALYSIS OF BAN ON CRYPTO-CURRENCY BY THE RESERVE BANK OF INDIA**

The Reserve Bank of India complicated the status of virtual currencies by issuing a *Statement on Developmental and Regulatory Policies* dated on April 5, 2018, the paragraph 13 of which directed:

*“the entities regulated by RBI to not to either (a) deal with or provide services and (b) exit the relationship, if they are in any, with any individual business or entities dealing or settling with virtual currencies.”*

One avocation which was clear from the circular was that RBI did not impose a blanket ban on the Virtual Currency, instead went for prohibiting the entities being regulated by it to not to deal in Virtual currencies. Following that, on April 6, 2018, RBI issued a *Statutory Circular* as per the powers conferred upon by Banking Regulation Act, 1949, Reserve Bank of India Act, 1934 and Payment and Settlement Systems Act, 2007, on the similar grounds on which it issued the abovementioned Statement. In order to clear the fog of ambiguity, various petitions were filed in the Supreme Court in this regard. Before giving its verdict, the SC preferred to analyze whole situation before restoring the status quo.

### **IV. SUPREME COURT’S INSIGHT**

The court while giving its decision in *Internet and Mobile Association vs. Reserve Bank of India*<sup>8</sup> came face to face with several questions whether it was of assigning of specific

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<sup>7</sup> Income Tax Act, 1961, s 2(14)

<sup>8</sup> (2020) SCC OnLine 275 (SC)

meaning to the impugned currency or determining the extent of Central Bank's powers. One such question was whether the Virtual Currency *formed a part of the 'money'*, so as to be *regulated* by the RBI or not. It was observed by the court that RBI always had the power to notify VIRTUAL CURRENCY as a part of the 'other similar instrument'<sup>9</sup> under FEMA which defines the term 'currency' to mean '*all currency notes, postal notes, postal orders, money orders, cheques, drafts, travelers' cheque, letters of credit, bills of exchange and promissory notes, credit cards or such other similar instruments as may be notified by the Reserve Bank,*' Also, promissory notes, cheques, bills of exchange etc. are not exactly currencies yet they operate as valid discharge (or the creation) of a debt only between 2 persons or peer-to-peer. Therefore, the contentions raised in one of the petitions that Virtual Currencies are just goods/commodities and never are regarded as real money cannot be accepted.

Further, it was observed that if an intangible property was capable of being regarded as money under certain circumstances then RBI can definitely take note of it and deal with it. Hence it is not possible to accept the contention that traders are carrying on an activity over which RBI has no power statutorily. It was also contended that the Preamble of the RBI Act provides for the role of RBI in operating the currency and credit system of the country to its advantage and that since virtual currencies may not form part of the credit system of the country as they are not recognized as currency, the invocation of the provisions of RBI Act was out of context. However, RBI is the sole repository of currency management in the country<sup>10</sup> and vested being the sole authority to issue currency notes<sup>11</sup> and along with that discharges a very important function of forming of monetary policy. Therefore, anything that may pose a threat to or have an impact on the financial system of the country, can be regulated or prohibited by RBI, even though the impugned activity does not form part of the credit system or payment system.

The system of Virtual Currency was very well introduced to liberate the monetary system from being a slave to the central authority and from being operated in a manner prejudicial to private interests. However, the ultra vires argument with respect to the power of regulate or prohibit certain activity cannot be accepted when the provision of access to banking services without any interference from the central authority over a long period of time is perceived as a threat to the very existence of the central authority. So, it was sorted that RBI has power to regulate activities which are either directly or indirectly associated with monetary system.

Next in the line was the super-imposed question whether the RBI also had the power to prohibit such activities associated with Virtual Currency or not. The Banking Regulation Act, 1949 very clearly empowers RBI to caution or prohibit banking companies against entering into certain types of transactions or class of transactions. The prohibition is not per se against the trading in Virtual Currencies. The Circular is only against banking companies, with respect to a class of transactions. The fact that the functioning of Virtual Currencies

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<sup>9</sup> Foreign Exchange Management Act, 1999, S 2(h)

<sup>10</sup> Reserve Bank of India Act, 1934, S 3

<sup>11</sup> Reserve Bank of India Act, 1934, S 22

automatically gets paralyzed or crippled because of the impugned circular is no ground to hold that it tantamount to total prohibition. The authors however are of a view that this stance of central bank is mere illusionary. This is so because the banking transactions some way or other find a way to be connected to business activity of trader and without them, the business always takes a deep hit.

## V. FINAL DECISION

While in the end, dealing with the violation of Article 19(1) (g)<sup>12</sup> and on the ground of proportionality, the impugned Circular was set aside. This happened because the Persons who have suffered a deadly blow from the impugned Circular are only those running virtual currency exchanges and not even those who are trading in virtual currencies. Persons trading in virtual currencies, even now have different options, but the virtual currency exchanges do not appear to have found any other means of survival (at least as of now) if they are disconnected from the banking channels.

And RBI's move was prone to get aside by the test of proportionality under the Constitution of India, 1950, as the Circular has almost wiped the virtual currency exchanges out of the industrial map of the country, thereby infringing their Fundamental Right under Article 19(1)(g). Since, the Statement issued was not of statutory nature, there is no question of need to be set aside.

The Supreme Court was of the view that RBI was given various chances to show if the virtual currency have impacted the entities regulated by it in any adverse way or not. In case the said enactment (2019)<sup>13</sup> had come through, there would have been an official digital currency, for the creation and circulation of which, RBI/central government would have had a monopoly. But that situation had not arisen. The position as on date is that virtual currencies are not banned, but the trading in virtual currencies and the functioning of virtual currency exchanges are sent to comatose by the impugned Circular by disconnecting their lifeline namely, the interface with the regular banking sector which is arbitrary. Hence, the availability of power is different from the manner and extent to which it can be exercised.

From the above legal analysis, it is inferred that at present there is no Statute in India which directly deals the regulation or trading of Crypto-currency. Another reason can be that, it is not possible to regulate something when it has not been properly defined. Similar is the case with Crypto-currency. There is nowhere provided in any statutory instrument which has directly or expressly defined the term.

## VI. GLOBAL STAND

The crypto-currency is not something which is of only few types. Since, crypto-currency being a Virtual Currency, is created by series of software put together, there are significant number of them present. Before taking the analysis further, the authors have put together an analysis of few types of crypto-currencies which are known around the globe.

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<sup>12</sup> The Constitution of India, 1950

<sup>13</sup> The Banning of Crypto-currency and Regulation of Official Digital Currency Regulation Bill, 2019

**1) Bitcoin:**

Bitcoin is a kind of crypto-currency and worldwide payment system. It is the very first kind of crypto-currency which is decentralized digital currency, as the system works without a central bank or single administrator. Bitcoins were invented by Satoshi Namakoto in 2009 and he released an open-source software of it, hence, cloning and creating of similar currencies is easy. Bitcoins can be said to be a reward of a process known as mining. It is relied upon cryptographic algorithms for security of the transactions. It does not have any intrinsic value nor any physical form instead only a virtual existence. Bitcoins provide a solution to the double spending problem without involving any trusted third-party intermediary. It does this by distributing the transaction information among all the users on the network. Every transaction in a bitcoin economy is contained in a block which also contains the information about the previous block, forming a block chain<sup>14</sup>. Bitcoins have become a popular investment as it can be an easy way to evade tax or snare unsuspecting small investors in various schemes. The investors who used to invest their money in other financial assets, gold and other commodities has shifted their interest in growing Virtual Currency market specially bitcoins. In India, bitcoins can be purchased from Zebpay exchange which has an app for android and iPhone users. It is linked with the bank account of the users for easy and quick transactions. It is abbreviated as BTC and work under peer-to-peer network under public domain both for issuing and valuation. Bitcoins do not have any official exchange rate, the prices are determined based on the average prices of bitcoins over all the exchanges.

**2) Ethereum:**

This crypto-currency is also known as ether and is generated on Ethereum platform. It is based on open source and blockchain computing and is a public platform. Ethereum is based on modified version of Nakamoto's crypto-currency and has a smart scripting facility with transaction-based payment system. It was introduced by Vitalik Buterin in 2013, he was a researcher and computer programmer. The development of Ethereum software was funded by online crowd in 2014 and the system went live on 30<sup>th</sup> July 2015. This crypto-currency was 'premined' 11.9 million coins for crowd sale which was around 13% of the total circulating currency.

**3) Litecoin:**

The main purpose of designing of the Litecoin is to facilitate smaller value transactions faster and it has become a rival for the bitcoins presently. It was introduced by Charles Lee in 2011. Litecoin are considered subordinate to bitcoins in a likewise manner silver is considered to gold. The major aspect which is different between a bitcoin and a Litecoin is that bitcoin is mined by heavy processing and fast computing whereas Litecoin can be mined through normal desktop computer and comparatively less heavy processing is required. About 84 million Litecoin are in circulation and a transaction time is about 2.5 minutes which is very less than a bitcoin's time.

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<sup>14</sup> Dr. Mohan Kumar, Bitcoins in India: Study of Economic and legal aspect, IOSR JBM,75,75 (February 2018)

**4)Ripple:**

This crypto-currency was introduced by Chris Larsin, a technology entrepreneur, in a company known as Opencoin. Alike bitcoins, ripple is also a currency as well as payment system. The mechanism of ripple is very advanced and fast as the transfer of funds takes place within seconds in any currency to the other user on ripple network.

**5)Mintchip:**

The Mintchip currency unlike other cryptocurrencies is a creation of a government institution. Mintchip are basically smartcards which carries value and it can be transferred from one chip to another securely. Unlike bitcoin, Mintchip does not require personal identifications and Mintchip is also backed by Canadian dollar whereas bitcoin is not supported by any currency.

**A. STATUS IN DIFFERENT COUNTRIES OF THE WORLD**

There are world economies which are far more advanced than the Indian Economy and there are also others who even though not developed, consider the crypto-currency as legal tender. The Authors have made an effort to compare the stand of those countries who have been specifically mentioned in the Apex Court's judgment while decoding the the Central Bank's stand on the Virtual Currency.

**1)United States of America:**

The government of US has classified the crypto-currencies as Money Service Business (MSB). US has been open and positive about the virtual currencies compared to other countries as there has been instructions by the government that bitcoin transactions will only take place in legal terms. The US Department of Treasury's Financial Crimes Enforcement Network has been working on the crypto-currency technology and the bitcoins has its presence in the US Derivative market also. The different states in U.S.A have provided separate definition of 'Virtual Currency' under their respective state acts.

**2)Canada:**

Canada also has also been open and positive regarding bitcoins as form of payment in future. The various government departments are researching about this revolutionary technology which can impact the economic system. In Canada, bitcoins are classified as a commodity which legally means that all transactions of bitcoins are termed as barter trade and the income generated through it is considered as business income. The government in Canada has focussed on strict money laundering laws when it comes to virtual currencies as Section 1(2) of Proceeds of Crime (Money Laundering) and Terrorist Financing Regulation,2000 define 'Virtual Currency' as (a) a digital representation of value that can be used for payment or investment purposes that is not fiat currency and that can be readily exchanged for funds or for another Virtual Currency that can be readily exchanged for funds; or (b) a private key of a cryptographic system that enables a person or entity to have access to a digital representative of value referred to in point (a).

**3)Singapore:**

Singapore is one of the most popular South-East Asian nations when it comes to Bitcoin users. The country has shown a very open approach towards the cryptocurrencies. In Singapore, all crypto-currency exchanges need to get their users verified and collect personal information from them. Monetary Authority of Singapore (MAS) is currently handling crypto-currency exchanges by applying existing laws but is working upon more robust regulation for crypto-currencies. In 2018, MAS declared that crypto-currency is subject to AML and CFT measures in same way as fiat currency, although it is not considered a legal tender in Singapore. However, Singapore is known for being quite progressive as there are many places in Singapore which accept crypto-currency payments. Moreover, there are many Bitcoin ATMs all over the country! The Monetary Authority of Singapore is working towards tax laws to bring crypto-currencies under the tax scanner<sup>15</sup>.

**4)Japan:**

The country has provided recognition to the bitcoin exchanges while there are some regulations but they are not very strict. The government has shown keen interest in the cryptocurrencies and therefore Bitcoins and other digital currencies have been recognised as legal property under Article 2(5) of Payment Services Act. Under the aforementioned Act, only the business operators having pre-registration with a competent local Finance Bureau are allowed to operate crypto-currency exchange businesses<sup>16</sup>. Japan is world's biggest market for dealing of Bitcoins and the gains/profits from such currencies are treated as 'miscellaneous income' for tax payments in the country.

**5)China:**

The country holds the stand of not considering virtual currencies replacing the legal tender especially the bitcoin. Similar is the view when it comes to the Virtual Currency Exchanges as they are illegal in the country. The country also banned Initial Coin Offerings in 2017 as a way to prohibit start-ups to raise funds by selling off new digital currencies and shut down domestic crypto-currency exchanges. Zhou Xiaochuan, the then governor of the People's Bank of China, had confirmed that Chinese regulators are not recognizing virtual currencies such as bitcoin as a tool for retail payments like paper bills, coins, or credit cards. However, with the announcement of the project Libra, the Chinese took a different stand and to introduce Libra as a new age internet money. This State issued currency would give the Chinese Government to know much about its citizens activities as to how they spend their money thus raising a lot of privacy concerns. In the current time, AliPay and WeChat, have become pillars of the Chinese Economy and process most of their online payments. However, the new e-currency is different from the existing ones the country has. This currency gives a lot of autonomy to the Government and will offer "controllable anonymity".

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<sup>15</sup> Vivek Sancheti, List of Countries where Bitcoin is Legal (Cryptoground, 24 February 2018) <<https://www.cryptoground.com/a/list-of-countries-where-bitcoin-is-legal>> accessed 15<sup>th</sup> April,2020

<sup>16</sup> Payment Services Act,2017, Art 63-2 & 63-2

**6)European Union (EU):**

In July 2016, a legislative proposal was put forward to amend Fourth Anti-Money Laundering Directive (AMLD) by The European Commission. The bill proposed to bring Custodian wallet providers and Virtual Exchange currency platforms within the scope of AMLD, resulting that they would now be obliged to exercise due diligence requirements and have policies and procedures to keep in check any sort of terrorism financing. The European Parliament accepted the presented text agreed at the inter-institutional negotiations and it came into force in 2018. Further, the European Commission showcased an ‘Action Plan’ to take the advantages associated with technology-enabled innovation in financial services such as blockchain, artificial intelligence, and cloud services. The ‘Fin-Tech Action’ Plan includes the EU Blockchain Observatory and Forum, which will report on the challenges and opportunities of crypto assets. Also, the European Court of Justice in the *Hedqvist case*<sup>17</sup> held that transactions which involve an exchange of Virtual Currency for the traditional currency and vice versa, constitute the supply of services for consideration, but fall under the exemption from value-added-tax (VAT). Therefore, buying or selling in bitcoins is exempted from VAT in all the member states. Again in 2018, the European Supervisory Authorities for securities (ESMA), banking (EBA), and insurance and pensions (EIOPA) did jointly issue a warning to consumers with respect to the virtual currencies, highlighting that these are “highly risky and unregulated products and are unsuitable as investment, savings or retirement planning products” and also welcomed the decision of European Commission to bring providers of custodian wallet and Virtual Currency exchange platforms within the scope of the Fourth AMLD. Also, in 2020, the report on Project ‘Stella’ which was jointly launched by Japan and European Union, as per its phase 4, has continue to look at the possible use of distributed ledger technology for financial market infrastructures.

The authors by this comparison with different countries have tried to compare their stand on the Virtual Currency as to how much they have let them occupy the position of their legal tender or not. When compared to India, one thing which can be analysed is that all the countries in the research have specific stand which is not observed in India. There have been issues with respect to the meaning which can be assigned to the Virtual Currency or under what category Virtual Currency be placed under.

**B. MAJOR THREAT OF TERROR FINANCING**

Another major issue which should draw the attention of world leaders is that of the funding towards terrorism. The *Ibn Taymiyya Media Center (ITMC)* is a media wing of Jihadist group based in Jerusalem and designated as a Foreign Terrorist Organization by the United States Intelligence services. It has been known for its funding to various terrorist groups. In the year of 2016, ITMC became the pioneer terrorist organisation to launch a public crowd-funding donation campaign using crypto-currency. It named this campaign as ‘Equip Us’ and expressly assured its donors that the alleged money would be used for buying weapons of

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<sup>17</sup> Case C-264/14 Skatteverket v. David Hedqvist [2015] ECL I- 718.

mass destruction. To further their cause, they even incited the religious sentiments of Muslim Community by citing different verses of Koran and equalled the donation to their moral obligation. The campaign ran for two years and was circulated on various social networking sites. However, only single Bitcoin address was disclosed for donations yet there were many associated addresses too. On the same lines, in 2019, the *Izz ad-Din al-Qassam Brigades (AQB)*, the military wing of *Hamas*, another designated terrorist organization also began soliciting donations in the form of crypto-currency (Bitcoin). It was the biggest ever terror financing mission started via the crypto-currency. The Organization used various forms of wallet infrastructures to receive donations before settling on a system that generated new address for every donor to send funds to. The way the donations were raised was very well dedicated. Their campaign can be divided into three sub parts. First, they asked the donors to go to their website, on which there was a dedicated link which would re-direct them to a single Bitcoin address. In the second sub-campaign, they replaced this exchange address with a private, non-custodial wallet, thus increasing anonymity. In their final move, a Bitcoin wallet was pre linked to their website that generated every-time, a unique Bitcoin address on which the donors can send their donations to.<sup>18</sup> This shows how the crypto-currency was used in phases to disturb the world peace.

## VII. CONCLUSION

There has been an emerging trend of virtual currencies all over the world. Bitcoin, particularly, has been in the lime light amongst the most famous crypto-currencies which work on a block-chain technology. There has been a paradigm shift since ancient time till now in the type of currency that is being used. It began from the barter system and now has come to virtual currencies. Yet an unregulated currency, free from shackles, might be the future but now is not the right juncture. In consonance to above legal research, there are countries which have accepted the virtual currencies whole heartedly and others who have rejected it out rightly.

The status of crypto-currency is not stable in India yet. It lies in a legal grey area and is unregulated. In authors' view, crypto-currencies have a potential of development in a country like India where investments in such currency is so popular. Legalising crypto-currency shall not be a problem once a framework for its regulation is drafted or a fiat version of crypto-currency is introduced by the government. This will help lead to a cashless society and contribute towards digitalising India. As highlighted above, various countries around the world have also provided recognition to the existence of Virtual Currency and its potential for usage in the economy.

The benefits of crypto-currency are something which being not that minuscule to be lied low. The virtual currencies give an easy accessibility and provide for speedy transactions. For crypto-currencies, only a device with an internet access is sufficient to create, manage and use the virtual wallet at any geographical location and the transfers are very speedy, for instance, Bitcoin takes 10 minutes for transfer and Ethereum takes 10 seconds. Also, international

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<sup>18</sup> The Chainalysis Crypto-currency Report, 2020

transfers can be facilitated by them. Inter country transactions are very handy with cryptocurrencies as due to absence of any central control. Also, the crypto-currencies are created via following series of cryptic software and programmes, these cannot be faked, copied or spent twice which guarantee integrity of the system. Transfer of crypto currency imposes a very minimal amount of fees or commission as compared to other online forums and bank gateways. The incidence of payment lies on the buyer only. One of the most unique qualities of crypto-currencies is that there is no scope of Inflation in them. Crypto currencies are minted and are limited to use, therefore, political forces and other economic factors are unable to affect them; hence these can never get hit by gigantic problem of inflation. So should the crypto-currencies be accepted in India with open arms?

- The authors are of a view that before doing so, the Indian Legislature first needs to give a conclusive definition of money within which the virtual currencies can be fitted.
- Further, the authors suggest that some regulations should be their governing the crypto-currency and shall not be left loose by Central Bank.
- Also, there shall also be a dedicated team of cyber professionals who shall be able to trace any sort of illegal usage of such currency. With constant aggression from cyber hackers, it is the need of the hour to have a dedicated task force for this.

Virtual currency is one of the many realities of today's digital world. However, not labelled with the tag of legal tender, one day the issue needs to be taken care of. It is time for the country to embrace the change of virtual currency and move past the fiat money, though not completely.