

## Digital Currency: Whose Money is it Anyway!

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*“Capital as such is not evil; it is its wrong use that is evil.  
Capital in some form or other will always be needed.”*

*-M. K. Gandhi*

### Abstract

*“Currency is known for its value. It is a legal tender and an insignia of sovereign state. Currency works as a consideration in market and provides wheels to economy via sale and purchase. Currencies are territorial and regulated by Central Authorities in modern legal system. Computer and internet converted the world in a global village. Virtual currency knows no boundaries and rejects the interventions & regulations by third party. Satoshi Nakamoto a pseudonymous creator created virtual currency in 2009 and it became very popular in western world due to being based upon cryptanalysis technology and removal of manipulations by trusted third parties like banks and regulators. Initial coins offerings played a major role in popularizing the digital currency. Technologies like blockchain, Internet of Things, 4.0, Artificial Intelligence and Machine learning have made the virtual currency robust with passage of time. Many jurisdictions raised concerns over its possible abuse in illegal activities. Financial Action Task Force cautioned the countries about its possible abuse. In India Reserve Bank of India banned virtual currency in 2018 by a circular but on 4<sup>th</sup> March 2020 Supreme Court of India declared ban by Reserve Bank of India as illegal on the basis of proportionality. In this paper the author aims to discuss, debate and deliberate upon the aftermath of the Supreme Court’s Judgement and role of Reserve Bank of India relating to Digital Currency.”*

**Keywords:** *Digital Currency, Regulation of Digital Currency, Role of Judiciary*

### I. Digital Currency: The Dawn

Evolution of mankind in the words of Henry Sumner Maine has been from Status to Contract. Anthropology may better explain at what point of time the money was invented for commercial transactions? Primitive and post primitive

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societies ran on barter system. The main problem before the mankind was how to secure transfer value? Man, invented money for facilitation of trade and secured transfer value in evolutionary process of trade and commerce.<sup>2</sup> In sale process currency notes were duly recognized as proper consideration. Fiat currency, legal tender, gold, gold backed currencies issued and minted by Governments and central banking authorities soon were recognized as a legal tender for transfer of goods and services. Payment modes with the advent of modern banking systems by valuable securities through various payout systems like cheque and other negotiable instruments became very popular but at the same time manipulation, human errors and control by third parties like bankers, regulators and Government increased manifold.<sup>3</sup>

Modern commercial world reposes faith in international financial system which maintains faith and trust on third parties. Parties to a commercial transaction have to place trust on Governments and banks that they will issue, and manage legal tender and shall not be manipulative to achieve political and economic interests. They have also to maintain their faith that the third-party authorities and payment processors will faithfully execute their orders and payments and in the process will not restrict transfers and leak financial data. In the payment process in physical mode bankers, clearing corporations, mint, government, regulators are involved. It has been witnessed recently that these processors have brought bad name to commercial transaction.

International financial system is controlled and managed by international financial institutions like IBRD, IMF and Bank of America which pressurize third party authorities for their private ends. Any mechanism which affects third party authorities will also affect the international financial institutions.

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<sup>2</sup> WILLEM MIDDELKOOP, "THE HISTORY OF MONEY", "The Big Reset: War on Gold and the Financial Endgame" 13 (Amsterdam University Press, 2016), Nick Szabo, "Shelling Out: The Origins of Money" Online, 2002 available at <<https://fermatslibrary.com/s/shelling-out-the-origins-of-money>> (last visited on March 31, 2020 at 12:12 PM).

<sup>3</sup> LUIGI MANZETTI, "POLITICAL MANIPULATIONS AND MARKET REFORMS FAILURES" 55 *World Politics*, 316 (Apr., 2003), Vera C. Smith, *The Rationale of Central Banking* (P.S. King & Son Ltd, Westminster, England, 1936), available at <[http://files.libertyfund.org/files/1413/0100\\_Bk.pdf](http://files.libertyfund.org/files/1413/0100_Bk.pdf)> (last visited on March 31, 2020, at 12:16 PM).

## II. Digital Currency: Sunrise

With the advent of computer and internet modern banking system steered in the direction of digital currency. Cryptanalysis & cryptography were introduced to bring authenticity in electronic commerce. Electronic data interchange promoted digital payments. However, this promoted the requirement of encryption due to the problem of hacking and data leakage. This also resulted in increase of third parties who were handling and managing digital platforms processors like VeriSign, Bill desk and Tech Process gained momentum.

Digital currency or cryptocurrency was invented in 2009 by Satoshi Nakamoto a pseudonymous creator in the form of Bitcoin to find an alternative of financial system which was facing crisis in 2008. Bitcoin is a peer to peer digital currency based on cryptography and payer directly transfer the value to payee without involving third party authorities. This terminates the requirement of trusted third-party authorities, banks and Governments in management & supply of physical currency. For decade bitcoin was a subject of forensic investigation.

Digital currency works on blockchain technology and cryptography. Blockchain technology is disruptive distributed ledger technology (DLT) which does not trust the operators. But some argue that blockchain is not a disruptive technology rather it is a foundational technology as it creates new foundations for social and economic purposes.<sup>4</sup> Bitcoin is an amalgamation of distributed ledgers, cryptography and open source development to maintain a blockchain on secured network. Blockchain is an immutable technology. Blockchain technology rules out any manipulation as hard coded protocol will weed out manipulations automatically. Bitcoin is not manipulative to demand. Bitcoin users do not need to depend upon the third-party authorities, financial institutions and Governments. Bitcoin even transcends the boundaries of a particular jurisdiction. Bitcoin owners can transfer the value without the interventions of third-party authorities and over the decades it removed the problem of trust deficit. The problem of double spending in virtual currency persists as in sale the currency is surrendered by a party to the other while in bitcoin due to duplication the double spending problem may arise. But in bitcoin

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<sup>4</sup> Marco Iansiti & Karim Lakhani, "The Truth About Blockchain" *Harvard Business Review*, January-February 2017, available at < <https://hbr.org/2017/01/the-truth-about-blockchain>> last visited on April 2, 2020 at 07:36 AM).

any transfer of bitcoin is broadcasted on entire bitcoin platform and after broadcast it cannot be modified. Bitcoin can be earned either by mining, by exchange with fiat currency, or in exchange of sale of goods and services. Bitcoin mining is a complex process wherein through bitcoin software, high end systems and networks bitcoins are earned. Normal people acquire bitcoins via exchanges only. Bitcoin is a deflationary currency unlike fiat currency (Currency issued by Government) which is inflationary currency. Bitcoin is not supplied as per demand. It is limited in supply as system halves the nodes in four years and only six blocks are generated per hour. Reward is halved every four years, so if it was 50 BTC in 2009 and in 2013 it became 25 BTC and in 2017 it comes down to 12.5 BTC and this way by the year 2140 it will reach 21 million BTC. It shows that it is a deflationary currency so it has a predetermined fixed money supply.<sup>5</sup> 2140 is a predicted date for production of a last satoshi 0.0000001 BTC.

Bitcoins are stored in e-wallet which may be stored on computer's hard drive or external hard drive. It can be lost or destroyed. If a computer or its hard drive crashes, the bitcoin shall be irretrievable. The use of cryptography in bitcoins brings the security in it. Public key and private key cryptography ensure the security of dealing in digital currency. Bitcoin process requires gigantic computing powers and its power is more than the combined power of 500 supercomputers of the world.<sup>6</sup> Bitcoin mining requires low rate energy for such kind of supercomputing and it will flourish in those jurisdictions which has abundant hydroelectric and geothermal power like Iceland or Washington.<sup>7</sup>

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<sup>5</sup> J. Murali, "A New Coinage: Can Bitcoin, the global online digital currency, be the precursor of a new monetary system?" Vol. 48, No. 38 *Economic and Political Weekly*, 78 (September 21, 2013), Jonathan B. Turpin, "Bitcoin: The Economic Case for a Global, Virtual Currency Operating in an Unexplored Legal Framework", 21 *Indiana Journal of Global Legal Studies*, 340 (Winter 2014).

<sup>6</sup> Jonathan B. Turpin, "Bitcoin: The Economic Case for a Global, Virtual Currency Operating in an Unexplored Legal Framework", 21 *Indiana Journal of Global Legal Studies*, 347 (Winter 2014), Lawrence Trautman, "Virtual Currencies; Bitcoin & What Now After Liberty Reserve, Silk Road, and Mt. Gox?", 20 *Richmond Journal of Law & Technology*, 50 (2014).

<sup>7</sup> Nathaniel Popper, "Into the Bitcoin Mines", *The New York Times* (December 21, 2013), available at <<https://dealbook.nytimes.com/2013/12/21/into-the-bitcoin-mines/>> (last visited on March 31, 2020 at 11:44 AM).

The digital currency has established digital proprietary interests and digital ownership depends on robust record keeping but records of physical properties are highly inaccurate not update and its retrieval is next to impossible. Any legal system has to go for a robust record keeping of digital assets for its acquisition, management and disposal. But bitcoins operate anonymously and beyond borders so its management like a real property is tough for now unless there is wider acceptability of it by the public.

Bitcoin system is a trustless system wherein the pseudonymous users do away with the requirements of third-party authorities and thus it removes the problems of unilateral manipulation of ledgers and minting unauthorized currency. We still do not know about Satoshi Nakamoto and his purpose of creating the bitcoin. His initial email chain shows that he is a flag-runner of libertarian movements which believes that decentralized network in international financial system have been impervious to Government control.<sup>8</sup> In 2009 due to ongoing International Distress of 2008 Satoshi wanted to replace corrupt and unstable financial system. We should be mindful that Bitcoin was launched in 2009 after the Financial Crisis of 2008. This bitcoin technology led to 'Bitcoin Philosophy' which was led by crypto-anarchists or cypherpunks. This philosophy is essentially anti-corporation, anti-government, and pro-individual. Tim May, Eric Hughes, Justin Sun, Joh McAfee, Vitalik Buterin, Charlie Lee are some of such cypherpunks.<sup>9</sup> Bitcoin challenged the Governments and questioned the requirement of third-party authorities.

### **III. Bitcoin and Legal Tender**

Money or physical currency is a medium of exchange, a unit of account and has a store of value as it is backed by Governments and banks. Likewise, all these features are available in bitcoin as well except the validation by third-party authorities. Metal based currencies or gold backed currencies achieved salability

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<sup>8</sup> Satoshi Nakamoto, "Bitcoin: A Peer-to-Peer Electronic Cash System", available at <https://nakamotoinstitute.org/bitcoin/last> visited on March 31, 2020 at 11:44 AM).

<sup>9</sup> Tim May, "The Crypto Anarchist Manifesto", available at <<https://www.activism.net/cypherpunk/crypto-anarchy.html>> (last visited on March 31, 2020 at 12:22 PM); Eric Hughes, "A Cypherpunk's Manifesto", available at <<https://www.activism.net/cypherpunk/manifesto.html>> (last visited on March 31, 2020 at 12:23 PM), See also, available at <<https://news.bitcoin.com/35-most-influential-bitcoin-crypto-twitter/>>(last visited on April 1, 2020 at 7:44 AM).

due to being durable, portable and having intrinsic value<sup>10</sup>. Dealers found the money attractive being backed by third party authorities. Government has been manipulative with the physical currency and it has often increased supply due to political and economic ends which resulted in loss of value for savers/investors due to high inflation. Investments lose their matured value due to inflation. The monetary debasement has been the result of manipulative financial system. Gold backed currencies again promoted the manipulations as the individuals were kept away from the metallic source of value. With the advent of digital payment system, the manipulation became easier.

Bitcoin became very popular with the passage of time but price volatility is still working as a barrier. In 2018 bitcoin which has 2/3<sup>rd</sup> cryptocurrency share crashed from \$20,000 to \$15,000 and its value in 2020 is \$ 6,317<sup>11</sup>. However, its value has appreciated with the passage of time. In 2015 Amitabh Bachchan invested \$ 2,50,000 in cryptocurrency which in 2017 swelled to \$ 17.5 million.<sup>12</sup> Its store value has good prospects. We know that US dollar is international currency and enjoys the hot seat in international trade. Every country wants to maintain a good foreign exchange reserve in dollar and this results in profits to US treasury and a dominant position to USA in international order & affairs. But we have seen the fragility of dollar in recession even in USA and Bitcoin in long run may replace US Dollar. The mismanagement of physical currency will compel the dealers towards the digital currency as having a good store value. If this happens then supply of money shall be limited to market dynamics of limited stock of bitcoins. This will result initially in banning the bitcoin but people will repose much faith in it due to high volatility of physical currencies and its manipulations by third party authorities.

One of the major problems in Bitcoin or digital currency is that hackers may steal bitcoins from unsecured exchanges. Mt. Gox an exchange which was founded in 2009. In 2011 hackers stole bitcoins of the value of \$8.75 million. Again in 2014 hackers stole 850000 bitcoins and only 200000 could be

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<sup>10</sup> These features of money were explained by Aristotle.

<sup>11</sup> Morning Star Price.

<sup>12</sup> Available at <<https://www.indiatoday.in/technology/news/story/amitabh-bachchan-rides-the-bitcoin-high-sees-usd-250000-investment-surge-to-usd-17-5-million-1114138-2017-12-20>>(last visited on March 31, 2020 at 11:47 AM).

recovered.<sup>13</sup> Bitcoins can also be used for tax evasions as we know that it operates beyond boundaries and pseudonymously. So large amount of money exchanged with cryptocurrency may be parked in tax havens. It is not subject to tax due to lack of incidence i.e. a jurisdiction, tax deduction at source, lack of identity due to being pseudonymous.<sup>14</sup>

#### **IV. Bitcoin: The Financial System**

Unlike international financial system, bitcoin operates on distributed ledger technique (DLT) which is trustless and removes the requirement of a central authority or intermediaries. In physical currency banks, central bank, Governments, mint, clearing houses, clearing corporation, payment corporations, settlement houses are required and if digital platform is involved then more intermediaries like cryptographers, internet service providers, software developers, network operators, security agencies also come in scene which gives more room to manipulations. These financial transactions are regulated, monitored by Government to enforce international trade policy and to stop the abuses like terrorism, money laundering, organized crime, flesh trade, drug peddling etc. In USA, Silk Road and Agora an online platform which was used for online market of drugs, firearms and contrabands used bitcoins heavily and FBI banned Silk Road and seized 30000 bitcoins.<sup>15</sup> In bitcoin the Government will be unable to put surveillance of financial payments by individuals and indirect social regulation shall not be possible. In bitcoin it will be impossible for Government to stop the cross-border transfer of value. In physical currency the management of foreign exchange is possible and in India

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<sup>13</sup> Jonathan B. Turpin, "Bitcoin: The Economic Case for a Global, Virtual Currency Operating in an Unexplored Legal Framework", 21 *Indiana Journal of Global Legal Studies*, 365 (Winter 2014), Takashi Mochizuki & Eleanor Warnock, "Mt. Gox Head Believes No More Bitcoins Will Be Found," Wall Street Journal (June 29, 2014), available at < <https://www.wsj.com/articles/mt-gox-head-believes-no-more-bitcoin-will-be-found-1403850830>> (last visited on March 31, 2020 at 5:56 PM).

<sup>14</sup> Jonathan B. Turpin, "Bitcoin: The Economic Case for a Global, Virtual Currency Operating in an Unexplored Legal Framework", 21 *Indiana Journal of Global Legal Studies*, 356 (Winter 2014); Omri Y. Marian, "Are Cryptocurrencies Super Tax Havens?", 112 *Michigan Law Review*. First Impressions 38, 39 (2013).

<sup>15</sup> Rachel Abrams & Sydney Ember, "U.S Prepares for Sale of Bitcoins Seized in Its Raid on Silk Road", The New York Times (January 18, 2014), available at <<https://dealbook.nytimes.com/2014/06/26/u-s-prepares-for-sale-of-bitcoins-seized-in-silk-road-raid/>>(last visited on March 31, 2020 at 11:49 PM).

Reserve Bank of India (RBI) with the help of Enforcement Directorate manages the foreign exchange but any possible control of forex to maintain the reserve would fail in case of bitcoin and this happened in Cyprus in 2013.<sup>16</sup> It happened in Greece, Argentina and Venezuela as well. Bitcoin is being seen as a potential threat to power of Government, third party authority, social activists but this threat is very premature and enterprises and individuals have not shown much faith till now in bitcoin.

#### **V. Third Party Authorities and Bitcoin**

Digital currency challenges the very foundation of third-party authorities as it aims to uproot the manipulations and undermines the power of Government and Central Banking Authority like RBI in India. Bitcoin can also be seen as autonomy of individual, property rights, freedom of association found in the great slogan of mankind of 'Liberty, Equality and Fraternity' and it dispenses the requirements of State and Government. One may argue about individualism for the sake of bitcoin and third-party authorities & State will argue for socialism and abuse of technology & digital currency for commercial and sexual exploitation of women & children, money laundering, transnational organized crimes, terrorism etc. and therefore the third party authorities will argue for the ban of bitcoin but one may be foolish to say so because as long internet will be there so long bitcoin will remain. In 1995 what was word wide web to us in 2009 onwards it is blockchain to us. Bitcoin should not be seen as a threat to third party authorities rather it promotes the value of transfer, removal of manipulations, promotes free market dynamics.

#### **VI. Indian Prospects: The Eclipse**

Bitcoin due to above stated reasons became very popular and India was not skeptic to it. Indians started investing in bitcoins. Being skeptic to bitcoin like western world Reserve Bank of India (RBI) in 2013 and 2017 cautioned Indian public about possible risks in bitcoins. In 2013-14 Unocoin, Zebpay, Coisecure like bitcoin exchanges started in India. In spite of such warning people invested in virtual currency. In 2013, Financial Action Task Force (FATF) issued New Payment Products and Services Guidance known as NPPS Guidance 2013 to familiarize people about digital currency and its possible abuse in money

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<sup>16</sup> Cyprus imposed freeze on assets leaving country but Cypriots evaded the freeze through bitcoins.

laundering, terrorism and transnational organized crimes. Enforcement Directorate raided two Indian firms in Ahmedabad which were dealing in bitcoins. FATF issued new guidance in 2015. RBI's Financial Stability Report in 2015 even examined the idea of having its own digital currency. Sweden, Japan and China also want to do the same. These countries are proposing to have their own digital currency. In 2017, 1.5million customers traded in cryptocurrencies.<sup>17</sup> In 2017 Interdisciplinary Committee submitted a report and warned people about use of bitcoins and cryptocurrency and recommended for penalizing the users and operators of digital currency. In 2017 cryptocurrency exchanges rose to a dozen from just three. G20 raised its concern about digital currency and maintained that it may be abused against the consumers unfairly, damage market integrity and promote money laundering and terrorist financing but it acknowledged the digital currency for its inclusiveness and efficiency. RBI in such a backdrop issued a circular on 6<sup>nd</sup> April 2018 about prohibition on dealing in Virtual Currencies. Prohibition was on maintaining accounts, registering, trading, settling, securitizing, opening accounts on exchanges deal with them and transfer and receipts of virtual currencies. A draft bill as Crypto Token and Crypto Asset (Banning, Control and Regulation) Bill, 2018 was also in place to penalize dealing in virtual currency with up to ten years imprisonment. In October 2018 Unocoin Exchange co-founders Harsh BV and Sathvik Vishwanathan were arrested by Bengaluru Police for installing a cryptocurrency ATM without permission. Meanwhile many companies and platform flourished in India. In 2019 Binance which is a Malta based Cryptocurrency Exchange acquired Indian exchange WazirX. Two writ petitions challenging the circular of ban by Internet and Mobile Association of India (IAMAI) and Companies dealing in Cryptocurrency like WazirX, CoinDCX etc. were filed in Supreme Court of India before the bench of Rohinton Fali Nariman, Aniruddha Bose and V. Ramasubramanian, JJ.<sup>18</sup> Supreme Court applying the doctrine of proportionality held that circular or measure of RBI of banning virtual currency is not proportionate and so it held the ban as illegal. Supreme Court said that RBI has always maintained that it is just a measure and not a ban and legislature has not passed the Crypto Token Regulation Bill, 2018

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<sup>17</sup> Shelly Singh, "Coin Toss", *The Economic Times*, March 29, 2020, p. 16.

<sup>18</sup> *Internet and Mobile Association of India v. Reserve Bank of India*, 2020 S.C.C. OnLine SC 275

and Banning of Cryptocurrency and Regulation of Official Digital Currency Act, 2019. If it would have passed RBI would have got a monopoly to regulate the virtual currency. Supreme Court discussed that the doctrine of proportionality has four parameters (i) the measure is designated for a specific purpose, (ii) the measure is rationally connected to the fulfilment of the purpose, (iii) there is no less invasive alternative, (iv) there is a proper relation between the importance of achieving the aim and the importance of limiting the right. The Supreme Court discarded the regulation by RBI of virtual currency and held that (i) RBI in last five years could not establish any illegal activities of virtual currencies, (ii) the consistent stand of RBI has been that it did not completely prohibited virtual currencies, (iii) inter-ministerial committee which recommended for Crypto Token Regulation Bill, 2018 believed that a ban of virtual currency is an extreme step and the same can be achieved by regulatory measures but suddenly RBI recommended for ban alongwith a draft law entitled as 'Banning of Cryptocurrency and Regulation of Official Digital Currency Act, 2019' which appears to be not based on empirical findings. On the basis of these grounds though the court found Virtual Currency equal to money and conceded that RBI can take even preventive measures within its powers but in the instant case the impugned measure of RBI is not proportionate.

### **VII. The Diamond Ring Effect**

This judgment of Supreme Court has imbibed a ray of hope in India netizens. Binance has launched a \$50 million blockchain for India. CoinDCX pledges \$3.1 million to promote digital currency. But still volatility and its stability are an issue and due to Covid-19 digital currency lose \$50 billion in value. The fluctuation is a real repelling factor for investment in cryptocurrency. On 31<sup>st</sup> March, 2020 the value of Bitcoin is Rs. 4,82,917, Bitcoin Cash is Rs16,362 and Bitcoin SV is Rs. 12,394, Ethereum is Rs. 9,885 and Binance coin is Rs. 927.<sup>19</sup> On 17<sup>th</sup> March the value of Bitcoin was 392,439 which on 20<sup>th</sup> March on the judgment day rose to Rs. 4,16195. After this judgment we can expect a surge in cryptocurrencies. Digital currencies are traded on its own exchanges and operators make money by commission as Wazir X charges 0.2% commission on buying and 0.1% for selling. The beauty is that a bitcoin can be bought up to

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<sup>19</sup> Available at <<https://www.coinbase.com/>>(last visited on March 31, 2020 at 12:32 PM).

eight decimal and can be sold like one can buy 0.000000001 bitcoin.<sup>20</sup> In days to come exchanges may waive commission which may range from 0.1% to 8% now to augment the cryptocurrency. However, due to lack of regulations and high speculative in nature and volatility and possible abuse in terrorism, money laundering and organized crime Sovereign nations may not back it but it will evolve as unregulated financial system and will keep on challenging the third-party authorities and Governments. Government in 2018 before the ban collected Rs. 100 crores on cryptocurrency so Indian Government should now concentrate on taxing regulations of cryptocurrencies. Cryptocurrencies shall be used for investment. It will stand for liberty of people and it will democratize the money. Fiat currency now after pandemic like Covid-19 and further slump of economy will challenge the fiat currency.

The Think Tank of Indian Government 'NITI Aayog' in its first part of draft discussion paper released in January 2020 supports the use of blockchain technology for some pilot projects and for some proof of concept (PoC) projects like, land records, subsidy of fertilizers, drug supply chain and verification of certificates and in PoCs like immunization, enhancing the efficiency of chit funds, insurance, electrical vehicle battery swapping, organic farming, energy trading. The second part which is yet to be released proposes that India must be a hub for blockchain and it must create a blockchain ecosystem and it also analyses the feasibility of cryptocurrency in India.<sup>21</sup> This shows that now Indian government is not skeptic about using blockchain technology and entrusting trust to this trustless technology which will reap better fruits for India.

### **VIII. Regulation Needed**

We can learn from USA in regulating the digital currency. In USA one possibility is to use the Stamps Payment Act of 1862 for regulation of digital currency which penalizes private companies which issues or circulates currency less than \$ 1 to be circulated as a replica of US currency but it has its own

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<sup>20</sup> J. Murali, "A New Coinage: Can Bitcoin, the global online digital currency, be the precursor of a new monetary system?" Vol. 48, No. 38 *Economic and Political Weekly*, 78 (September 21, 2013).

<sup>21</sup> "Blockchain: The India Strategy –Towards Enabling Ease of Business, Ease of Living and Ease of Governance" available at <[https://niti.gov.in/sites/default/files/2020-01/Blockchain\\_The\\_India\\_Strategy\\_Part\\_I.pdf](https://niti.gov.in/sites/default/files/2020-01/Blockchain_The_India_Strategy_Part_I.pdf)> (last visited on April 2, 2020 at 07:36 AM).

issues. One may also use Securities Act of 1933 and bitcoin investment may be covered in investment in securities. The Electronic Funds Transfer Act 1978 may also be a potential law for regulating bitcoins. On 7<sup>th</sup> March, 2018 Security Exchange Commission maintained that one which wants to deal like exchange must be registered with it. It was regarding cryptocurrency exchange. Federal Judiciary has aptly responded to the issues of cryptocurrencies. The famous cases may be seen in USA like SEC v. Shavers<sup>22</sup> where Shavers made a Bitcoin Saving and Trusts which was declared as a Ponzi Scheme by SEC. Shavers diverted bitcoins of trust's investors for personal use and accordingly the bitcoins were held as investment and he was held liable in Securities Act, 1933. Likewise, in *United States v. Faiella*<sup>23</sup> which was a case connected with Silk Road held that bitcoin is money and so subject to Financial Crimes Enforcement Networks (FinCEN) regulations. The court held that bitcoin qualifies to be money as it can be easily purchased in exchange for ordinary currency, acts as a denominator of value, and is used to conduct financial transactions.

In *United States v. Ulbricht*<sup>24</sup> which is the famous case of Silkroad and the sole argument was that federal laws are inapplicable in the case of bitcoin as it does not amount to be a fiat currency which can be equated with investment and funds an essential ingredient for constituting the offence. But court held that bitcoin is investment and fund and can be equated with money. In *Florida v. Espinoza* a case relating to money laundering of bitcoin was filed. In *NYAG v. Ifinex Inc*<sup>25</sup> a case of misappropriation of \$850 Million via bitcoin is filed. In *SEC v. Kik* a case is filed by SEC against Kik which through ICO for developing an ecosystem flouted the Commission's norms to the tune of \$98million.

These cases and laws show that regulation of cryptocurrency is possible. In India likewise in Foreign Exchange Management Act, 1999, Information Technology Act, 2000, Prevention of Money Laundering Act, 2002, Foreign Contribution Regulation Act, 2010, Securities Contract Regulation Act, 1956 and Securities Exchange Board of India Act, 1992 and under its various regulations regulation of cryptocurrency can be done if the need be. It can be

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<sup>22</sup> 2013 US Dist LEXIS 130781.

<sup>23</sup> 39 F. Supp 3d 544.

<sup>24</sup> 31 F. Supp 3d 540.

<sup>25</sup> *James v. Ifinex Inc*, 2019 NY Slip op. 32454.

concluded that legal regulation of abuse of cryptocurrency shall be brought to justice at any cost but not at the freedom and liberty of honest users and dealers of cryptocurrency. Apex court in India has never turned its back to dispense justice in any situation where rogues and unscrupulous people have abused liberty and freedom of individuals. Probable and possible abuse of technology based upon unsubstantiated facts cannot be a ground for unnecessary cessation of cryptocurrency.