



BITCOIN IS NOT ILLEGAL BUT UNLAWFUL

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Abstract: *The flow of bitcoin in the international level is a big change in the financial transactions and poses a challenge to the State machinery to work for stability of economy in the aspects of payments of money, investments in the decentralized digital currency and levy of tax. The peculiarity of bitcoin is that it is not a visible currency and no regulating authority on the payments of person to person and also no geographical limit in marketing. There are discussions in different nations on cryptocurrency working and more particularly to recognise the bitcoin payments, to authorise bitcoin exchanges to sell and purchase of bitcoins and to regulate the bitcoin transactions in the country. The Government of India is searching the avenue for finding a solution under the legal frame work to face the challenges with the spread of bitcoin flow in the society. The Reserve Bank of India is creating awareness to the public on the risks involved in the bitcoin transactions.*

Keywords: Cryptocurrency, Bitcoin, Mining, Blockchain, Use of bitcoin, Risks of bitcoin, RBI.

Introduction:

Bitcoin has become a buzzing word in the business circles and in ordinary marketing field, the reason may be perhaps, the value of the bitcoin is increasing enormously. Since 2009, the bitcoin has been gaining edge in the place of paper currency through electronic payment. The use of bitcoins are improving in purchasing goods and services, trading, person to person transfers and micro and macro payments. There is no regulation on bitcoin business but it contains clearly each and every transaction record. Investors of bitcoin seem to be wealthy persons in the financial circles. There is also a clueless, how this bitcoin is enticing, where ends to realize the money, which mechanism to take care in case of problem.

Source for the bitcoin arrival:

There is no accuracy to state the starting point of bitcoin. However it was to have a foundation in the last decade of twentieth century with the digital currency. It became lime light from 2009 on self-style declaration of *Satoshi Nakamoto* whose identity is not clear to be a stake holder. Bitcoin is a kind of crypto-currency or a virtual currency which is purchased and transferred through the network process and more strangely a private mechanism.

Bitcoin falls under the scope of crypto-currency comes under cryptography for regulation and generation of units of currency and commonly called a decentralised digital currency. The transactions of bitcoin are done through the block-chain.

Monitoring of bitcoin through Block-chain:



All bitcoin transactions are recorded and publicly displayed with a ledger called block-chain. A block is an unending record of recent transactions. The recorded entries in the form of blocks are called block-chain. The transferor and the transferee can have verification in the bitcoin spending. There is no place for double spending on the same transfer. A block-chain can be completely open to the public and allows anyone to join, or it can be totally private with only certain folks allowed access to the data, or allowed to send and receive payments. Bitcoin is an example of an open-source public block-chain that allows anyone to join. The advantage of block-chain technology is that being a public ledger, block-chain makes secure and reliable and there is no need of any third party for the transactions that is a peer to peer transaction with a decentralization of the technology.

Ways to obtain Bitcoins:

There are four ways to get bitcoins. Originally it comes from 'mining' process but mining is said to be a difficult one. To produce or mine a bitcoin, the miners use a special software tool to solve some typical mathematical problems in exchange of certain number of bitcoins are issued. The main idea is to create a new block which gets added to the existing block-chain. Each block contains a list of all the recent transactions happened within the bitcoin network; secondly there is a transaction mode to receive as payment for goods and services; thirdly on the operation of exchange like the digital currency sale or purchase on the existing market rates, the known bitcoin exchanges are Zebpay, Unocoin, CoinSecure and BtexIndia; the another straight way is to have at Bitcoin ATM on the verification of the wallet

transfers. Bitcoins are safely stored through a digital wallet which may be in the form of hot wallets or Cold wallets. Hot wallets are linked to the internet more so immediate online transfer through blockchain. Whereas the Cold wallets are off line and consumes much time. The person intends to receive bitcoins has to provide the address with sequence number to the sender.

Favoured features in bitcoin transaction:

Quick payments: The payments with bitcoin are very fast in any corner of the world. No addle in inter country transactions of bitcoin. There is no holiday hours in transferring the money and the transacting parties have exclusive control over their transactions without limits and limitations by any public authority on the payments.

Nominal fee in conversion of bitcoins: generally, there is no fee for making payment in the case of speed mode only fee is charged for priority purpose. The fee is very low in converting bitcoins into physical currency compared to the bank credit charges.

Safe and control in transaction: The users of bitcoin are safe and have control over their network transactions. The personal information cannot be revealed in finalizing the payment. There is a protection against identity theft and ensure of money. There will not be any excess fee charge by merchants without notice.

Transparence in information: Bitcoin transactions are traceable. Though the block chain makes open every transaction, the personal information is not visible and everyone can verify the transaction of bitcoin.



None can manipulate the transaction of secured crypto-currency.

No threat of inflation: In case of traditional currency, there would be afraid of inflation because of rising of prices of commodities in the market. The crises in banking in European countries caused a threat to the fiat currency.

Probable risks in bitcoin transaction:

No guarantee in valuation and No physical form: There is no physical form for bitcoins, it subjects to difficulties in conversation into fiat currency. As there is no any central authority to monitor, it is not guaranteed for a minimum valuation. It is a decentralized one hence a group of business men may dump the bitcoins to hurt the honest users.

Scope for Fluctuations in market: the value of bitcoin is with frequent fluctuations. The fluctuations which take place in the market will create confusion in the return of goods purchased on the bitcoin acceptance.

No larger segment acceptance: A few members in the society who have knowledge of online transactions accept the bitcoin transactions. There is a doubt that it is not a currency at all. One can expect that the government may track the record in case of non recognition of bitcoin in society. It is commented that bitcoin is like a bubble in the water and based on speculation.

No retrieval option in the theft of bitcoin: Either crash to the hard drive or virus affecting the data will be a loss to the bitcoin transactor. A sound investor may face bankruptcy within no time in case of lost of bitcoin. There is no process to secure back the stolen bitcoins.

Mining of bitcoins amounting more costly: Mining of bitcoin requires high powered hardware for working out a code from the block-chains. Sometimes the electricity spent for hardware using is involved high cost than the value of bitcoin.

Unknown Technical Flaws: The bitcoin is none the less, an online transaction then it could contain flaws which help tremendous wealth to the exploiter at the expense of destroying the bitcoin fair deal.

Deflation in the device of bitcoin: There is a cap in the total number of bitcoins that 21 million bitcoins only mined may lead to deflation in the business of bitcoin.

No social controlling authority on bitcoin working: Bitcoin is not visible and no proper control on its transactions. It is said to be a speculation and no assurance in the destination of the transactions. There is possibility to misuse the medium of bitcoin transaction for funding anti social activities. In the absence of control by Government or Central Bank will pose a way to the money laundering, procuring funds to terrorism and no measure to detect the black money and the tax evasion.

Uncertain issues in bitcoin legitimacy in different countries:

The countries in the world have no common approach in the bitcoin transactions or bitcoin investment because bitcoin is in the nature of crypto-currency and beyond the boundaries of a nation in transactions. Some of the countries namely Australia, Canada, Japan, The United States have a positive attitude in considering the bitcoin transactions. Among these nations, there



are differences in approach regarding bitcoin as a commodity and profit gained on it is taxable; and some others bitcoin is not subjected to taxable transaction. Whereas some other countries namely Bolivia, China, Iceland, Kyrgyzstan, Russia, Vietnam have not considered bitcoin as currency, more over it is an illegal and punishable. The European Union has not issued any statement in this regard. The Central Banks of different nations are seriously working on the issue of bitcoin transactions.

Position of bitcoin transactions in India:

In India, the Reserve Bank of India (RBI) along with Government of India is the sole note issuing authority. RBI is responsible for the design, production and overall management of the currency with the goal of ensuring an adequate supply of clean and genuine notes. On 24.12.2013, the RBI has cautioned the public by issuing a press release regarding virtual currency including bitcoin that the user, holders and traders of bitcoins about the risks which they face while transacting with bitcoins.

RBI has mentioned that it has been looking at the developments relating to certain electronic records claimed to be Decentralised Digital Currency or Virtual Currency such as, bitcoins, litecoins, bbqcoins, dogecoins etc., their usage or trading in the country and the various media reports in this regard.

The creation, trading or usage of bitcoins, as a medium for payment are not authorised by any central bank or monetary authority. No regulatory approvals, registration or authorisation is stated to have been obtained by the entities concerned for carrying on such activities. RBI revealed the risks

involved in the bitcoin transactions. The following are notable features:

- i. Bitcoins being in digital form are stored in digital/electronic media that are called electronic wallets. Therefore, they are prone to losses arising out of hacking, loss of password, compromise of access credentials, malware attack etc. Since they are not created by or traded through any authorised central registry or agency, the loss of the e-wallet could result in the permanent loss of the virtual currency held in them.
- ii. Payments by bitcoins take place on a peer-to-peer basis without an authorised central agency which regulates such payments. As such, there is no established framework for recourse to customer problems / disputes / charge backs etc.
- iii. There is no underlying or backing of any asset for their value, it seems to be a matter of speculation. Huge instability in the value has been noticed in the recent past. Thus, the users are exposed to potential losses on account of such instability in value.
- iv. It is reported that bitcoins are being traded on exchange platforms set up in various jurisdictions whose legal status is also unclear. Hence, the traders of on such platforms are exposed to legal as well as financial risks.
- v. There have been several media reports of the usage of bitcoins for illicit and illegal activities in



several jurisdictions. The absence of information of counterparties in such peer-to-peer anonymous/pseudonymous systems could subject the users to unintentional breaches of anti-money laundering and combating the financing of terrorism laws.

The Reserve Bank has also stated that it is presently examining the issues associated with the usage, holding and trading of virtual currency under the existing legal and regulatory framework of the country, including Foreign Exchange and Payment Systems laws and regulations.

The government in April, 2017 set up an inter-disciplinary committee chaired by special secretary, Department of Economic Affairs to examine the global regulatory structures relating to virtual currencies and to suggest measures. In August, 2017 the committee submitted the report but the report has not been made public.

Dwaipayan Bhowmick, an advocate filed public interest litigation before the Hon'ble Supreme Court of India in November, 2017 by seeking a direction to Government of India and other concern to regulate the flow of bitcoin and to ensure that the same be made accountable to exchequer. The case is pending before the court.

The Ministry of Finance, Union of India has made it clear that the country does not recognise crypto-currencies as legal tender. The RBI and Government of India are now and then cautioned the public about the risks involved in bitcoin flow in the society.

The Income Tax authorities have started the measures to trace the persons who have not made proper tax payment after receiving profit from bitcoin investment and some of the traders have been issued notices in this connection by the income tax officials.

Conclusion:

Bitcoin has become a discussion point in the present investment market in all over the world. There is a tremendous hike in the value of bitcoin and it is also surprising the investors on continuous spreading in the market with beyond the expectations of business circles. There is also debate on the aspect to treat bitcoin as a commodity and the investment in bitcoin is to be looked by the Securities and Exchange Board of India (SEBI) in regulation purpose. The Ministry of Corporate Affairs has sought an opinion from Institute of Chartered Accountants of India (ICAI) on accounting standards and disclosures of cryptocurrency in financial statements of companies. ICAI has started studying of the auditing on cryptocurrency with a view to submit a report to the Government. It is crystal clear that the cryptocurrency or bitcoin cannot replace the traditional currency and the common man has no time to spear to weigh the benefits of virtual currency. The role of RBI is appreciable in creating awareness to the public on the risks of bitcoin transactions. The Indian law has neither prohibited nor allowed the bitcoin transactions but cautioned that bitcoin is not a valid tender. In this prevailing situation, it is to be reasoned to state that bitcoin is not illegal but unlawful.



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