Review Article

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Critical and Comparative Analysis of Taxation Laws With Respect To Crypto-Currency in India

Kanhaiya Singhal*

B. A., LL.B (Hons), Faculty of Law, PES University

*Corresponding Author
Kanhaiya Singhal, B. A., LL.B (Hons), Faculty of Law, PES University.

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Abstract

A government's primary duty is to provide its people with public services, for which it needs funding to cover its costs. Taxation, among other things, serves as a significant source of funding for public spending. The government has been able to uncover new avenues for revenue collection because to technological advancements. The peculiar issue of cryptocurrency taxation in India is one of them. Cryptocurrencies, in contrast to fiat money, are decentralized and run on a peer-to-peer infrastructure that is free from outside interference, such as that of the Reserve Bank of India.

This Article's goal is to investigate cryptocurrencies and the current regulatory framework around them. It explores the various forms that cryptocurrencies can take and analyses

(1) the domestic legal framework that currently exists and how it relates to cryptocurrencies,

(2) domestic laws that affect how cryptocurrencies are taxed, and

(3) The reactions of the world's major economies to cryptocurrencies.

Keywords: Crypto-currency, Taxation, India, Income, GST.

1. Introduction

Information and communication technologies (ICTs) are advancing quickly, bringing new ideas to the subject of public administration. Theoretically, cryptocurrency itself is aimed towards ideals like transparency, public accountability, effectiveness, and productivity, which have evolved into crucial instruments for the public sector. The idea of incorporating “blockchain technology through into tax system will not only result in a positive growth but also improve the system of taxes as a whole. According to research , the following characteristics can have an impact on the tax system:

A. Transparency

Blockchain technology enables the origin of transactions to be tracked.

B. Controllability

Access to the network is restricted to known users.

C. Security

Once data is input digitally, it cannot be changed or tampered with, making it easier to track down and stop fraud.

D. Real-time information

Everyone connected to the network can view and evaluate the” most recent data simultaneously.

Hundreds of cryptocurrencies are operational as of 2023, however "Bitcoin" is the most tradeable cryptocurrency along with Ethereum, tether, etc. The first digital, private cryptocurrency in existence that runs on a peer-to-peer network is called bitcoin. Bitcoins are bought and sold on a central bitcoin exchange, just like any other stocks or options of a publicly traded corporation. issued by a public network, instead of a government, that utilizes encryption to ensure payments are delivered and received safely.”

The value of fiat currency, which is issued by central banks and used to transact business throughout the world, is set by government edict. As previously established, there is only one central bank that issues and oversees fiat money. An inherent flaw in the trust-based approach, where citizens rely on financial institutions to handle payment processing, jeopardizes such a system. Bitcoin offers an alternative method to challenge this trust-based approach. Bitcoin operates fully on the fundamental demand-supply mechanism with a decentralized model with little or no intermediaries, lacking intrinsic values and reserves. This not only provides a nearly ideal mechanism for transactions, but also simultaneously delivers anonymity and transparency.

In this article, author attempt to explore the perplexing nature of cryptocurrencies as well as the evolution of the Indian cryptocurrency market following a ruling by the Indian Supreme Court. Author have further examined the various positions big economies all over the globe have taken on cryptocurrencies.

1.1. Objectives of Study

Following are the main objectives behind writing this paper
A. To understand the current tax slab imposed by India on crypto-currency.
b. To understand the perspective of other countries regarding taxation of crypto-currency.
c. To do a comparative analysis of Indian perspective with that of other countries in the light of taxation on crypto-currency.
d. To understand the challenges and difficulties which may arise in this regard.

2. Research Problem

In this paper, researcher intends to critically analyze the taxation regime which Indian government intent to impose and in currently progressing in the same way. Since crypto-currency is a global phenomenon, various countries have perceived the problem different and unique ways. Hence, a comparative approach is adopted by researcher to critically analyze the approach of Indian government in this regard and the researcher will deal with the issues and challenges which regulating of crypto-currency might put forth for the government. Thus, the same will also be address during the analysis.

2.1. Research Question

In this paper, researcher is searching answers of the following mentioned questions
• What is the current tax regime with respect to crypto-currency in India and in that way is the same heading towards?
• What is the Indian approach with respect to taxation on crypto currency and how the same is different with that of other countries which have different approaches?
• What are the challenges of regulating crypto-currency market for any country and how India is tackling the same?

2.3. Research Methodology

"The research method used in writing this paper is doctrinal method of study with descriptive analysis of secondary data sources available. All the sources used are authentic and creditable in nature. The secondary data is drawn from various relevant books, articles, research paper and master thesis written by various scholars published in online sources, online published journals, the provisions of Constitution of India, statistical and non-statistical data of government bodies and the news articles published by various national and international news agencies and various judicial case laws and case studies from articles, journals and reporters like SCC and Manupatra. Data available on various creditable websites has also been taken by the researcher for this research paper.

Many research scholars had directly or indirectly written or presented their opinion on this regard, this research paper consist of those works of various scholars and a systematic research analysis of those scholarly works.

In this paper, researcher has used and analyzes multiple cases filed in court of law, the analysis of the same is done by researcher according to the requirement and materialness."

3. Analysis

3.1. Indian Stance on Crypto-Currency

The Indian market has been home to bitcoin and other cryptocurrencies for a very long "time. Small-scale bitcoin transactions were first documented in India in 2012, at that time. In 2013, Bitcoins" began to acquire popularity among the general public, and a small number of businesses started to accept bitcoin payments alongside Indian rupee. The entry of btexindia, unocoin, and coin secure saw the emergence of cryptocurrency exchanges across the nation. Eventually, a few additional exchanges were added to the list, including zebpay, koinex, and bitcoin-India. "The reserve bank of India and the government were interested in the rise in cryptocurrency demand in India.

The Reserve Bank of India has the" authority to *"either regulate or ban anything that may pose a danger to or have significant impact on the country's financial system".* In the exercise of its regulatory authority, the RBI issued a number of circulars and directives to slow the expansion of cryptocurrencies in India.

A. In December 2013, the RBI issued a warning regarding the *"Possible financial, administrative, legal, consumer protection and relevant security risks that they are expose themselves to"* to users, holders, and investors of cryptocurrencies for the first time.

B. The RBI stated in February 2017 that it had not granted *"any entity/company a license or authorization to conduct such schemes or trade with Bitcoin or any virtual currency."*

C. RBI once more "issued a warning to the public about cryptocurrencies in December 2017 after observing the" huge and quick development of cryptocurrency values and ICO Activities.

D. In "April 2018, the RBI issued a regulation prohibiting any RBI Regulated" bodies (such as banks) from engaging in any dealings with entities that deal in cryptocurrency. Also, people who already conduct business with these organizations were urged to sever links within three months. Since its inception in India, blockchain enter

Since its inception in India, blockchain enterprises have had to contend with a difficult regulatory and political environment. The Enforcement Directorate raided a Bitcoin exchange on suspicion of violating the "Foreign Exchange Management Act (FEMA), and conducted surveys of nine cryptocurrency" exchanges to see whether they were engaging in tax evasion, all of which have affected the Indian cryptocurrency sector.

has experienced a strict stance from the government. In fact, the Indian Finance Minister at the time stated in his annual budget speech in January 2018 that "The Government does not consider crypto-currencies legal tender or coin and it will take all initiatives to eliminate the use of these crypto-assets in supporting illegitimate exercises or as part of the payment system."

"The Indian government has not yet introduced any legislation to control bitcoin and other cryptocurrencies in the Indian market. A proposed bill to outlaw cryptocurrencies has been in the works," though.

A person who keeps, sells, transfers, disposes of, issues, or deals in cryptocurrencies may face up to 10 years in prison, according to the proposed ***"Banning of Cryptocurrency and Regulation of Official Digital Currency Bill, 2019".*** Moreover, holding any cryptocurrency is now a non-bailable offence under this bill.

3.2. Legal Approach of Recognizing Crypto as a "Currency"

The "Seventh Schedule of the Constitution of India, 1950 lists the topics on which the Central or State Governments may pass laws. The Central Government may enact laws pertaining to money, legal tender, and foreign exchange under Article 246 r/w Entry 36 of List-I of Schedule VII. However, the question of whether "*Cryptocurrency*" may be equated with "Currency" for Speaking of benefits, one study asserted that the rise of bitcoins would significantly improve banking accessibility for the underserved community by removing the need for outside intervention. However, a number of nations, like "the Philippines, Japan, and even Russia, realized the role that cryptocurrencies played in the banking system and" implemented legislation to control them.

Speaking of definitions, our domestic laws do not have a definition of cryptocurrency. Cryptocurrency, on the other hand, is described by the Cambridge Dictionary as "a digital currency *Regarding, "the nature of "Cryptocurrency," that is, whether it is* a currency, a commodity, or a security," there has always been ambiguity. To make things clearer, let's divide the population into three groups

A. one group thinks that since cryptocurrencies behave like other forms of money, they should be classified as "*currency*" ;
B. another group thinks that since they can be purchased and sold using fiat currency, they should be classified as "*commodities*" ; and
C. the third group thinks that because of their nature, cryptocurrencies are more like "*securities*" that can be traded on cryptocurrency exchanges
Throughout the ensuing debate the author "will enumerate upon each of the aforesaid natures and whether our present laws support these statements. the purposes of Indian Laws or the Government and so make the draught law an act of Colorable Legislation" emerges.

When it comes to cryptocurrency, key qualities of a currency like a means of exchange, a unit of account, and a store of value are met. Because it" could be used to make purchases in return for cash, American courts even regarded it as money. Bitcoin is not recognized as a "currency" by Indian law, though. "Currency" is defined as *"all currency notes, postal notes, postal orders, money orders, cheques, draughts, traveler's 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"* in Section 2(h) of the Foreign Exchange Management.

"The RBI has not yet given a definition of digital and virtual currency or said whether they currently consider it to be legal tender. Foreign Currency is further defined by FEMA as *"any currency other than Indian Currency."* Although "Indian Currency" refers to *"Currency that can be represented or drawn in Indian Rupees. The RBI Act"* likewise uses FEMA's definition of "Foreign Money" as its own. Nevertheless, the word "foreign currency" only adds to the Misunderstanding already present, rather than clearing it out. He was asked to stop the connection within three months, as we will see in more detail in the mentioned section.

Since its inception in India, blockchain enterprises have had to contend with a difficult regulatory and political environment. With the Enforcement Directorate conducting a raid on a Bitcoin exchange for allegedly violating the Foreign Exchange Management Act (FEMA) and surveys being done on nine cryptocurrency exchanges for allegedly engaging in tax evasion, the Indian cryptocurrency market was the focus of this study.

The "*phrase "foreign currency*" refers to money that is accepted as legal tender in another nation. If we accept that conclusion, then nations like Japan have already begun to recognize cryptocurrency as a legitimate form of payment. Bitcoin can therefore be seen as a type of foreign currency and used in the same ways as any other fiat currency, but it is not a domestic currency."

3.3. Judicial Trend

It is abundantly evident from the explanation regarding the nature of cryptocurrency above that it cannot be classified as a money, a commodity, or a security because it does not meet the criteria necessary to qualify as such under current domestic laws. The Supreme Court, however, found a solution to this problem in the case of ***Internet and Mobile Association of India v. RBI*** . In this case, the petitioners contested the RBI's 2018 Circular, which forbade its regulated firms (such as banks) from doing business with entities engaged in cryptocurrency transactions. The Court was confronted with the following two legal issues:
A. Does virtual currency qualify as a good or commodity, a kind of money or legal tender, or both?
B. Does the RBI Circular from April 2018 violate the dealers' and facilitators' fundamental freedom to engage in their line of work?

The Court came to the conclusion that cryptocurrency is a type of currency in response to the first query. Invoking Satoshi Nakamoto's *"A Peer-to-Peer Electronic Currency System"* and Nathaniel Popper's *"Digital Gold: The True Story of Bitcoin," Court stated that Bitcoin is a "new electronic cash system that's totally peer-to-peer, without any trusted third party." A "cleverly built decentralized network without any central authority"* is how the court described cryptocurrency. The three attributes of money as mentioned by the court—
a) "a store of value,
b) a unit of account, and

c) a medium of exchange"

Because virtual currency (like cryptocurrency) satisfies these three essential characteristics of money, I was persuaded to utilize it. Regarding "RBI's authority to issue such a circular, the Court ruled that "the ability to regulate certainly includes the power to prohibit" and that the Reserve Bank of India has the authority" to regulate anything that threatens or has an impact on the nation's financial system.

In order to answer the "second question, the court used the principle of proportionality, which was outlined in ***Dental College case*,** to" determine if the reasonable restriction imposed by RBI Circulars outweighs the citizen's basic right.

Whether the RBI thought of a less intrusive approach rather than forbidding someone from trading, the court asked when examining the case's adherence to the doctrine. "The Court determined that it didn't explore any alternatives before issuing the circular after taking into account the various facts and reports provided by local and international organizations. Additionally, the court determined that none of the businesses under RBI's regulatory authority, including banks, NBFCs, etc., had incurred any loss or harm as a result of trading with virtual money. The court's ruling stated that the RBI lacks the authority to legislate on the matter and that the RBI's 2018 Circular was more of a statutory directive than anything else. Given the aforementioned information, the court invalidated RBI's 2018 announcement.."

After this Supreme Court ruling, it is obvious that cryptocurrencies are a type of currency due to their nature and usage, even though the law at the time doesn't recognize them as such. There are currently no laws, regulations, circulars, etc. issued by the State, any public entity, or any regulator to support the trade of cryptocurrencies.

3.4.Taxation of Crypto-Currency

In India, "there are two types of taxes: indirect taxes and direct taxes. For a clearer understanding, consider the well-known example of paying your restaurant bill. A portion of the cost comprises taxes to the government, which you indirectly pay through the restaurant. Indirect tax will be that. On the other hand," the government deducts a specific amount from your salary when you receive a paycheck or other form of income. A direct tax would be that. After the recent Supreme Court ruling , it is certainly true that cryptocurrency is a kind of money.

Regardless of the ruling, it is possible that taxes will be levied on cryptocurrency because Indian income tax regulations have traditionally tried to tax revenue earned.

3.5. Case 1- Cryptocurrency Mining

In contrast, the Supreme Court ruled in ***B.C. Srinivasa Shetty*** that *"Capital gain can't be taxed for just about any acquisition expenses, on sale of Assets which is gained by reason of adverse possession."* As a result, under Section 55 of the IT Act, there is no taxation of capital profits from mining cryptocurrency.

"The Central Board of Indirect Taxes and Customs was reportedly considering a proposal here to GST Council to include cryptocurrency "*mining*" under the purview of the Goods and Services Tax because it creates fees and rewards, and" taxes can be collected from such fees and rewards. That might have been the Indian government's first move at taxing cryptocurrency-related activities.

When one hears the phrase "*cryptocurrency mining*" they might picture someone digging up coins from the ground. In contrast to mine for gold or ore, "cryptocurrency mining is done to uncover bitcoins. Cryptocurrencies are theorized to exist in the protocol's design (similar to the presence of gold underground), but they haven't yet been" introduced to the market. The Miners' function here is crucial. These unrooted bitcoins are revealed by cryptocurrency miners as self-generated capital assets that, when sold, produce capital gains.

The cost of acquisition of assets produced by oneself is described in Section 55 of the Income Tax Act of 1961.

3.6.Investment in Crypto-Exchange Market

An investor's capital gains may increase if "the value of cryptocurrency kept as an investment increases after being transferred in exchange for fiat currency. According to the Income Tax Act, a business is defined" as *"trade, commerce, manufacture, or other endeavor or concern of such type*

Anybody who engages in ongoing cryptocurrency trading and generates capital gains as a result of such trading is subject to taxation. Gains do not always have to be measured in monetary terms; even if they are measured in cryptocurrency, they must still be taxed.

Furthermore, under the guidelines outlined in the Income Tax Act, every purchase of a capital asset is eligible for a tax deduction. As can be seen from the aforementioned examples, it would be incorrect to claim that cryptocurrency-related activities are not subject to taxes even though there is a regulatory vacuum in this area.

3.7.Comparison with other Countries

The use of cryptocurrency is not just in India. One of the goals of cryptocurrency is to unite the world's markets by creating a virtual money that anybody may access at any time. Yet, this goal can only be accomplished if governments all across the world support it. Governments throughout the world hold divergent views on whether to define cryptocurrency as a "commodity," "money," "illegal," or "nothing," among other classifications (like India). In light of this, let's examine some of the world's largest economies and their strategies:

A. United States of America

Since 2013, "the US Treasury has been releasing recommendations on cryptocurrencies, but they have not been classified as or declared to be money. The government has designated cryptocurrencies as money services enterprises. It is now considered to be property for taxation's sake.

Trading profits from cryptocurrency are counted as capital gains. Depending on the holding period, the tax must be paid as either short-term equity investments or long-term carried interest. ”

B. Canada

“As long as the retailer accepts them, Canadians can use cryptocurrencies to purchase products and services from online and offline establishments. But, it has not yet been deemed legal tender by the government. The Financial Transactions and Reports Analysis Centre of Canada requires the cryptocurrency” exchanges to register as Money Services Businesses and register with them (FINTRAC) Because Bitcoins are viewed as a commodity by the Canadian Revenue Agency, cryptocurrency transactions are considered barter transactions. The buyer purchasing in bitcoins must provide a tax invoice after the transaction is classified as a barter transaction, and Canadian VAT is then applicable.

C. Russia

Cryptocurrencies are not accepted as payment methods in Russia since they are viewed as equivalent to physical assets. This implies that cryptocurrencies can be exchanged and that profits from trading are taxable. Cryptocurrency investors must report their holdings in their income tax returns or face a 10% penalty. Starting in April 2022, reporting cryptocurrency ownership will be required.

D. United Kingdom

“In 2020, the United Kingdom will classify cryptocurrency as property. Exchanges for cryptocurrencies must register with the Financial Conduct Authority. Cryptocurrency owners who live in the UK will be taxed on capital gains made from the purchase and sale of cryptocurrency. The normal exemption on capital gains is available up to £12,300, so if the profit is less than that amount, it is exempt, and if it is more than that, it is taxable. To this day, it is not regarded as legal tender.”

E. Australia

The Australian Tax Office considers bitcoins to be digital assets. Both income tax and capital gains tax are applicable to bitcoin transactions. If a business gets payments in cryptocurrencies, the amount received in cryptocurrencies and in Australian dollars must be documented in the records.

F. Switzerland

There can be some confusion in Switzerland because each canton has a separate tax system. Cryptocurrencies are regarded as virtual currencies and are accepted as digital payment methods in Zurich. It implies that it can be invested in or used for regular payments. Wealth tax is applied to virtual currency. Cryptocurrencies are classified as "miscellaneous assets" and handled as private property for individuals in Bern. They are also taxed on wealth. That implies that capital gains are also relevant.

4. Conclusion

The Indian government offers little assistance for the virtual currency industry in light of the quick advancements in mobile and telecommunications technology and the ongoing advancements in the field of financial technology. It's undeniable that the government's encouraged support for electronic payments has greatly increased innovation and growth in the FinTech sector, but this is not the case with cryptocurrencies. Even after the Supreme Court invalidated the RBI 2018 circular paving the way for cryptocurrency exchanges,” reports claim that the fundamental motivation behind the circular was to safeguard investors' interests in the absence of a law. And given the ongoing rise in cryptocurrency-related crime, such worry is understandable. But, regulating rather than outright banning cryptocurrency is the way to reduce crime.

In addition to stating this, researcher would draw attention to data that shows that roughly 25% of Indians do not have bank accounts. Giving this group of people access to basic credit facilities through the use of virtual currency would be a game-changing answer. Different national responses to cryptocurrencies, however, may undermine one of the goals of a global unified currency.

As we've seen, major economies around the globe have already begun to accept cryptocurrency in one way or another, but India's harsh response to this global trend has a steep price. The Indian Government should take into consideration hiring a regulator to oversee the cryptocurrency industry because we have observed various regulators' success in their respective fields. The government must take a balanced approach by enabling investors and traders’ access to a safe and secure platform while also combating unlawful operations, since the number of bitcoin traders rises daily.

India’s approach towards taxation of crypto-currency can be seen in the financial budget of 2022 where single slab of 30% on any income earned from crypto-exchange was introduced by finance minister Nirmala Sitaraman. However, in the recent budget for financial year 2023-2024, no change/alteration was made in the 30% tax slab. It is also to be noted that, during the budget speech of FY 2023-24, the term crypto, bitcoin or any related term was not used even for a single time.

Therefore, it is obvious that, notwithstanding the regulatory vacuum surrounding cryptocurrency, it would be incorrect to claim that any linked activities are not subject to any taxation. However, there is a need to further clarify the tax slab to made certain exceptions to the system.

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