



International Journal of Cryptocurrency Research

Publisher's Home Page: <https://www.svedbergopen.com/>



Research Paper

Open Access

The Regulatory Regime for Cryptocurrency in the Present Global Order

Avinash Singh^{1*}

¹SOA National Institute of Law, Siksha 'O' Anusandhan (Deemed to be University), Bhubaneswar, Odisha, India. E-mail: acd.avns@gmail.com

Article Info

Volume 2, Issue 1, June 2022

Received : 31 December 2021

Accepted : 16 February 2022

Published : 05 June 2022

doi: [10.51483/IJCCR.2.1.2022.7-11](https://doi.org/10.51483/IJCCR.2.1.2022.7-11)

Abstract

Cryptocurrency has been one of the tools that originated from the blockchain technology used in the financial world and have been a topic of debate among several diasporas concerned with the financial and money markets. It is known that cryptocurrencies such as Bitcoin, Ethereum etc., are in demand and used for transactions securing the financial purposes that illustrate the need and utility of such cryptocurrencies. Cryptocurrencies are a product of insecurity and instability in the financial markets; however, the measurement of the pricing of cryptocurrency itself is based on the perception of people, which makes it highly volatile and disadvantageous in many ways. It's also evidence that there are many threats and challenges that these cryptocurrencies present that come from using them for crime, terrorism, and money laundering, among others. This calls for a significant change in the cryptoasset market, which has the potential to claim a greater stake in the financial market in the coming years. Relevance and utility of the cryptocurrency cannot be neglected because of its misappropriation; instead, regulations must be made to minimize such negative actions with the positive utility of such cryptocurrency. The present paper focuses on the lack of regulation for the cryptocurrency and their allied sectors, a major concern among the international community. Many nations such as Singapore and China have already started to venture out the prospects in the research fields related to regulating the cryptocurrency, and hence more such steps are needed by nations across the world. Cryptocurrency is a property or currency which could be decided as per the following policy of the respective state; however, when it comes to regularizing the cryptocurrency as a medium of transactions, there needs to be a global consensus among the states for holistic development of such filed of exploration.

Keywords: *Cryptocurrency, Financial Market, International approach, Regulation, Technology*

© 2022 Avinash Singh. This is an open access article under the CCBY license (<https://creativecommons.org/licenses/by/4.0/>), which permits unrestricted use, distribution, and reproduction in any medium, provided you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license, and indicate if changes were made.

1. Introduction

In the case of cryptocurrency, its value is based on the mathematical codes that are inherited in it, just like any precious metal like gold or silver has their value in their physical properties. Use of cryptocurrency has started with mistrust upon the existing financial systems that has evolved in modern times along with enhancing the security at all levels of the transactions in financial markets (Georgiana-Loredana, 2019).

* Corresponding author: Avinash Singh, SOA National Institute of Law, Siksha 'O' Anusandhan (Deemed to be University), Bhubaneswar, Odisha, India. E-mail: acd.avns@gmail.com

Cryptocurrency regulation at global level has been an issue of multidimensional approach that need the encounter the challenges based on the rhetoric questions with respect to banking and security markets along with many other sectoral issues, and hence, complicate the existence of cryptocurrency as medium of transaction in present times. Financial study of the cryptocurrency has been a recently diversified as an arena that is exposed to researchers across the globe. It is important to take into account, while preparing to study the regulatory regime of cryptocurrency, the non-recognition of the cryptocurrency in most of the legal jurisdictions and hence it is being seen from an asset or property angle in contemporary global order (Oleksandr *et al.*, 2021). Blockchains are decentralized and permission-less mode of exchange in form of cryptocurrency as their value is divisible in the computing power, access to internet and cost towards electricity, which makes participants free to join the mining activity without any centralized control (Eric, 2020). Regulation of cryptocurrency has been understood in the light of its impact on the financial system of country and there are social, financial and administrative control pursued by states to follow a regulatory approach over such cryptocurrency (Avery, 2020). The very nature of the pricing fluctuation of the cryptocurrency is based upon the perceptual and opinionated outcomes (Krzysztof, 2020), unlike any policy driven regulated currency, which makes a significant reason to institutionally regulate the cryptocurrency based on stable and distinctive measurements rather than pricing them based unregulated and unquantified valuations.

2. Technical Regulatory Framework

Regulation of cryptocurrency is one issue, while some calling it in its 'Wild West' juncture (Hauptman, 2018), and the marketplace for such cryptocurrency, i.e., cryptocurrency exchange are another issue pending the introspection by the regulators. Marketplace of cryptocurrency has been a place where several people invest and sell different cryptocurrency and approximating the exchanges for securities and commodity market, these crypto-based exchange also have their shortcoming like risk of forgery, bankruptcy, broker-dealer failure among others to count that need as stringent regulation as desirable for cryptocurrency itself (Dennis, 2018). Facebook when announced the cryptocurrency "Libra" for billions of those who do not have access to the regular banking channels, was faced with criticisms and one of the reasoning was relating to the protection of the financial data of individuals when the protection of personal data have not been provided with due consideration by Facebook in earlier instances (Peter, 2020). The difference between the theoretical reasoning and reality check in the role of players in cryptocurrency mining market that enables the regulatory framework to act upon the underlying issues and resort to the possible solution that maintains the balance between regulatory versus innovation sphere (Antoon, 2019).

The multiplicity of the regulatory frameworks presents issues relating different treatment of the cryptocurrency, and in few cases under similar jurisdictions, that must be removed, as technical differentiation of cryptocurrency as security or a property must be clarified for purpose of regulatory structural development at domestic level (Michelle, 2018).

3. Financial Framework for Regulation

Cryptocurrency do not fit within the category of the standard security or commodity definition because neither cryptocurrency has gained any inherent value in the object itself like commodities, nor it achieve any value by the efforts of enterprise (Neil, 2018). This needs to improvise the prospective regulation of the cryptocurrency to reach new definition and realms in the financial markets to develop mechanism for covering cryptocurrency as in form of an investment contract or subject matter of inherent value. Financial institutions and security exchanges are dealing with the challenges relating to the cryptoasset, like in case of the US where companies have proposed future contract based on cryptocurrency valuation, wherein regulatory authorities like one relating to Security Market and Justice Department are sceptical about the mode and use of such cryptocurrency. Future contracts in cryptocurrency has been under vigil by the financial regulatory authorities as the underlying reference product lacks transparency and is unregulated that may lead to manipulation, operation risk and fraud (Margaret, 2019).

Disclosure issues with the security market regulator is vital for any security to trade in the market and such disclosure relating to cryptocurrency or any Initial Coin Offering are complex, hence evaded in many cases. In addition, the justice department ubiquitously face challenges for detecting the source of such cryptoasset, as and when used in undertakings relating to terrorism, money laundering and other criminal activities (Rani, 2020), that are virtually untraceable and prosecutions in such cases are near to impossible for the technologically secretive nature of such cryptoassets (Henning, 2020). Even the increasing role of the cryptocurrency in the security market has presented a new challenge in the form of cryptocurrency based hedge funds where regulators are posed with rulemaking decisions that must be differentiated with the traditional hedge funds regulatory structure and must act in favor of innovating the cryptocurrency markets whilst alongside ensuring safety of the investors (Edmund and Alexander, 2018).

4. Suggestive Framework

Initial Coin Offerings (ICOs) as one the form of cryptocurrency based transactions have been in limelight for difficulty of its application and rule making by the security exchange regulator. A thorough research while security market related rulemaking for cryptocurrency is required that must gather output from industry experts and stakeholders, and subsequently request public opinion on the same (Usha, 2019). Therefore, the legal status of the cryptocurrency is a debatable topic and hence require backing of legislative regulatory framework for practicing the dealing of cryptocurrency (Pantielieieva *et al.*, 2019). A reasoning has been provided by taking the example of European Union payment platforms that insist on singularity of regulation relating to credit and debit transactions within the European Union region, and due to lack of recognition of cryptocurrency as debit transaction or credit transfer, the said cryptocurrency is out of purview of the said regulation known as Single Euro Area Payment (SEPA Regulation). Since transactions are made in currency, i.e., Euro for purchasing any cryptocurrency, it becomes imminent to for coverage of cryptocurrency under payment related regulations in the region (Asress, 2018). However, EU efforts in the area of making regulations for market in cryptoasset and also passing regulatory frameworks through proposed legislative instruments like Digital Operations Resilience Act ushers the European market aspirations towards safe, secure and consumer-centric crypto-regulation especially in post-covid era that subsequently unchain the economic potential growth through potentiality of crypto-market (Georgios, 2021). Countries like Singapore has reflected status of the cryptocurrency as property when it comes to taxation, however, no tax is levied on such cryptocurrency for long-term holding making it subject matter of treatment like regular subject matter. It is also important to view the regulation of only cryptocurrency in Singapore, i.e., Bitcoin, and on said line, that could follow validation of other cryptocurrencies in city-state that is growing hub for regulated cryptocurrency market (Julia, 2019). Chinese government has made efforts towards setting up of Digital Currency Research Institute (DCRI) working under aegis of Peoples' Bank of China that undertakes research and development in the areas of digital currency and blockchain based technologies (Novrasta, 2019). Chinese government long-term strategy to attract investment through technology-based companies and infusion of doubling investment in blockchain-based projects have ushered new hope for cryptocurrency market at global level. As the use of blockchain technology shall increase for end-products like cryptocurrency and smart contracts, the greater risk and issues shall appear before the industry, and the fundamental way of resolving such issues shall be identifying the participants at each level of cryptocurrency transactions for making a holistic policy for regulating the cryptoasset market (Mordecai, 2019). Regulation of cryptocurrency is inevitably vital for structuring future of the blockchain-based transactions, but also important is to structure the enforcement mechanism which is unlikely to be similar in case of any policy-making for general financial tool. Enforcement is aggressively pursued in case of cryptocurrency transactions where country specific regulation allow such transactions (Mordecai, 2019), and therefore it is imminent to understand the enforcement complexities in regulation making scenarios for cryptoasset like cryptocurrency. Therefore, it is also suggested that alongside making regulatory framework for cryptocurrency based transactions, it is also vital to revisit regulatory framework for intermediaries like wallet and exchanges, however blockchain usage in case of smart contract for derivative markets shall oppositely reduce or limit the role of intermediaries (Ryan, 2017), start a fresh regulatory framework rather than molding it in older regulatory mechanism for traditional monetary and financial instruments (Sarah, 2015).

5. Conclusion

Financial history is the guide to regulate the cryptocurrency and hence there must be efforts to question and understand the risks associated with the cryptoasset while consequently managing such risk in a strategic manner avoiding circumvention of rule based regulatory framework (Elizabeth, 2019). International presence of cryptocurrency must be considered while assessing suitability of regulatory framework and therefore difference in legal regulation of countries shall present pressing issues, while large number of gaps shall share common attribute for all such countries (Kucheryavenko *et al.*, 2019). Cryptocurrency regulation could variably be open-ended and stringent as per subject matter relating to cryptocurrency being targeted, while moving towards stringent to open-ended regulatory framework is suggested, hence making cryptocurrencies bereft from any criminal elements and enhancing the desirable technologically driven features (Hao *et al.*, 2019). It is implicit that the open-ended regulation shall device a self-regulatory framework for the cryptocurrency market that shall lead to innovation and growth of the cryptocurrency. While other part of the regulatory framework shall be based upon the stringent regulation that shall root-out the criminality and illegality in the field of cryptocurrency based transactions that shall consequently induce trust in the blockchain based cryptocurrency. It is perceived that the governmental intervention do not affect significantly to the cryptocurrency holding intention of public, and therefore, it is suggested that the factors like demography, technical knowledge about cryptocurrency, age, income of user among other must be criteria based upon which such regulation aiming cryptocurrency be structured (Weilun, 2019). The notional value to the cryptocurrency is determined by the risk vs. safety factors that are perceived

by the end user holder of such cryptocurrency, hence regulating such cryptocurrency for future financial system shall be dependent upon the majoritarian acceptance.

References

- Antoon, Spithoven. (2019). Theory and Reality of Cryptocurrency Governance. *Journal of Economic Issues*, 53, 385-393, 387, Taylor & Francis Ltd, <http://10.0.4.56/00213624.2019.1594518>
- Asress, Adimi, Gikay. (2018). Regulating Decentralized Cryptocurrencies Under Payment Services Law: Lessons From European Union Law. *Journal of Law, Technology & the Internet*, 9, 1-35, <https://search.ebscohost.com/login.aspx?direct=true&db=asn&AN=129379085&site=eds-live>
- Avery, Minor. (2020). Cryptocurrency Regulations Wanted: Iterative, Flexible, and Pro-competitive Preferred. *Boston College Law Review*, 61, 1149-1181, <https://search.ebscohost.com/login.aspx?direct=true&db=asn&AN=142589567&site=eds-live>
- Dennis, Chu. (2018). Broker-dealers For Virtual Currency: Regulating Cryptocurrency Wallets and Exchanges. *Columbia Law Review*, 118, 2323-2359, <https://search.ebscohost.com/login.aspx?direct=true&db=asn&AN=133553682&site=eds-live>
- Edmund, Mokhtarian. and Alexander, Lindgren. (2018). Rise of the Crypto Hedge Fund: Operational Issues and Best Practices for an Emergent Investment Industry. *Stanford Journal of Law, Business & Finance*, 23, 112-158, <https://search.ebscohost.com/login.aspx?direct=true&db=bsx&AN=129263204&site=eds-live>
- Elizabeth, Davidson. (2019). A Middle-Ground for Cryptocurrency Regulation: Using Delaware's Incentive-Driven Private-Ordering Model. *Journal of Corporation Law*, 44, 789-826, <https://search.ebscohost.com/login.aspx?direct=true&db=bsx&AN=141225580&site=eds-live>
- Eric, Alston. (2020). Constitutions and Blockchains: Competitive Governance of Fundamental Rule Sets. *Journal of Law, Technology & the Internet*, 11, 131-171, <https://search.ebscohost.com/login.aspx?direct=true&db=asn&AN=148269864&site=eds-live>
- Georgios, Pavlidis. (2021). Europe in the Digital Age: Regulating Digital Finance Without Suffocating Innovation. *Law, Innovation & Technology*, 1-14, <http://10.0.4.56/17579961.2021.1977222>
- Georgiana-Loredana, Schipor (Frecea). (2019). Investing Trust in Blockchain Technology: Bitcoin Case Study. *Series Economic Sciences*, 19, 884-888, *Ovidius University Annals*, <https://search.ebscohost.com/login.aspx?direct=true&db=bsx&AN=142315465&site=eds-live>
- Hao, Hua, Sun, Yin. *et al.* (2019). Regulating Cryptocurrencies: A Supervised Machine Learning Approach to De-Anonymizing the Bitcoin Blockchain. *Journal of Management Information Systems*, 36, 37-73, <http://10.0.4.56/07421222.2018.1550550>
- Henning, Peter J. (2020). A Taxonomy of Cryptocurrency Enforcement Actions. *Brooklyn Journal of Corporate, Financial & Commercial Law*, 14(2), 227-257.
- Jeceaca, An. (2020). Framing Regulation Around the Potential Liabilities of Parties in the Blockchain & Smart Contract Industry. *Fordham Journal of Corporate & Financial Law*, 25, 529-569, <https://search.ebscohost.com/login.aspx?direct=true&db=bsx&AN=145380252&site=eds-live>
- Julia, Shabatuk. (2019). Prospects for the Development of Cryptocurrency Regulation in Singapore. *Review of Business and Economics Studies*, 7(2), 48-52. DOI:10.26794/2308-944X-2019-7-2-48-52, 48-52.
- Krzysztof, Wolk. (2020). Advanced Social Media Sentiment Analysis For Shortterm Cryptocurrency Price Prediction. *Expert Systems*, 37, 1-16, <http://10.0.4.87/exsy.12493>
- Kucheryavenko, M.P., Dmytryk, O. O. and Golovashevych, O. O. (2019). Cryptocurrencies: Development, Features and Classification. *Financial and Credit Activity Problems of Theory and Practice*, 3(30),371-374. DOI:10.18371/fcaptop.v3i30.179737
- Margaret, Ryznar (2019). The Future Of Bitcoin Futures. *Houston Law Review*,56, 539-563, <https://search.ebscohost.com/login.aspx?direct=true&db=asn&AN=135306183&site=eds-live>
- Michelle, Alvarez. (2018). A Comparative Analysis of Cryptocurrency Regulation in The United States, Nigeria, and China: The Potential Influence of Illicit Activities on Regulatory Evolution. *ILSA Journal of International & Comparative Law*, 25, 33-56, <https://search.ebscohost.com/login.aspx?direct=true&db=asn&AN=136196606&site=eds-live>

- Mordecai, Lerer. (2019). The Taxation of Cryptocurrency. *CPA Journal*, 89, 40-43, <https://search.ebscohost.com/login.aspx?direct=true&db=bsx&AN=134179705&site=eds-live>
- Neil, Tiwari. (2018). The Commodification of Cryptocurrency. *Michigan Law Review*, 117, 611-634, <http://10.0.143.36/mlr.117.3.commodification>
- Novrasta, Asadova. (2019). Perspective Cryptocurrency Projects Supported by China. *Review of Business and Economics Studies*, 7(2), 37-44. DOI:10.26794/2308-944x-2019-7-2-37-44.
- Oleksandr, Omelchuk *et al.* (2021). Features of Inheritance of Cryptocurrency Assets. *Características De La Herencia De Activos En Criptomonedas*, 10, 103-122, <http://10.0.121.231//ih.v10i1.233>
- Pantielieieva, N.M. *et al.* (2019). Current Aspects of Transformation of Economic Relations: Cryptocurrencies and Their Legal Regulation. *Financial and Credit Activity Problems of Theory and Practice*, 4(31), 410-418. DOI:10.18371/fcaptp.v4i31.190962, 4, 410-418, <http://10.0.71.195/fcaptp.v4i31.190962>
- Peter, J. Henning. (2020). A Taxonomy of Cryptocurrency Enforcement Actions. *Brooklyn Journal of Corporate, Financial & Commercial Law*, 14, 227-257, <https://search.ebscohost.com/login.aspx?direct=true&db=bsx&AN=145181399&site=eds-live>
- Rani, Shulman. (2020). Are Centralized Cryptocurrency Regulations the Answer? Three Countries; Three Different Directions. *Brooklyn Journal of International Law*, 45, 835-878, <https://search.ebscohost.com/login.aspx?direct=true&db=asn&AN=145250665&site=eds-live>
- Ryan, Surujnath. (2017). Off The Chain! A Guide To Blockchain Derivatives Markets and the Implications on Systemic Risk. *Fordham Journal of Corporate & Financial Law*, 22, 257-304, <https://search.ebscohost.com/login.aspx?direct=true&db=bsx&AN=123894444&site=eds-live>
- Sarah, Jane Hughes., and Stephen, T. Middlebrook. (2015). Advancing a Framework for Regulating Cryptocurrency Payments Intermediaries. *Yale Journal on Regulation*, 32, 494-559, <https://search.ebscohost.com/login.aspx?direct=true&db=bsx&AN=136459375&site=eds-live>
- Usha, R. Rodrigues. (2019). Financial Contracting With the Crowd. *Emory Law Journal*, 69, 397-458, <https://search.ebscohost.com/login.aspx?direct=true&db=asn&AN=141555899&site=eds-live>
- Weilun, Huang. (2019). The Impact on People's Holding Intention of Bitcoin by their Perceived Risk and Value. *Economic Research-Ekonomika Istrazivanja*, 32, 3570-3585, <http://10.0.4.56/1331677X.2019.1667257>