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**TOPIC: LEGALITY OF BITCOIN IN INDIA AND OTHER COUNTRIES.****AUTHORED BY: DIKSHA MISRA, 3<sup>RD</sup> YEAR STUDENT OF B.A.LL.B. AT ILS LAW COLLEGE, PUNE.****AND****CO-AUTHORED BY: JANHAVI KUKREJA, 3<sup>RD</sup> YEAR STUDENT OF B.A.LL.B. AT ILS LAW COLLEGE, PUNE.****I. ABSTRACT:**

There has been an upsurge in the use of digital money in recent times. The internet had helped in creating a new currency which has eradicated the problem of double spending. Bitcoin, the market's leading cryptocurrency, is the world's first completely decentralized digital currency. It is an open peer to peer electronic cash system which is based on a cryptographic protocol. However, different jurisdictions have different views about Bitcoin. Central Banks and Governments of various countries have passed various rules and regulations concerning the same. In this paper, the authors attempt to analyse the legal aspects of Bitcoin. This paper is divided into five parts. Part I is an introduction to cryptocurrency and bitcoin. Part II delves deeper into what exactly is bitcoin and its working. Part III gives an overview of the legal position of Bitcoin in various countries. Part IV talks about the current position of Bitcoin in India and the rules and regulations applicable. Finally, Part V sheds light on the reasons for legalization of bitcoin and how it will be helpful.

**Keywords:** Bitcoin, Cryptocurrency, Legal, Blockchain, Taxation.

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## **II. INTRODUCTION:**

It is of no surprise that there has finally come a time that the internet has helped in creating a new currency. The idea of digital money which is convenient, untraceable and free from the control of governments and banks has been around since the birth of the internet. There have been numerous efforts to create virtual cash such as bit gold, E-cash, b-money etc. but it all failed. The reason behind this was the problem of double spending which was solved by an anonymous person/s under the alias Satoshi Nakamoto.<sup>1</sup> He published a paper in 2008 during the financial crisis which emphasized on a decentralised electronic payment system based on cryptographic proof instead of trust. His unique algorithm permitted parties to transact with each other without the need for an intermediary.<sup>2</sup> With this the market's current leading cryptocurrency came into play- Bitcoin, the very name which incites a flurry of emotions. It's highly volatile nature has elicited mixed reactions globally with some countries accepting it, some outright banning its use and some like India which are yet to take a clear stance.

In the words of Eric Schmidt, the CEO of Google, "Bitcoin is a remarkable cryptographic achievement and the ability to create something that is not duplicable in the digital world has enormous value."

## **III. WHAT IS BITCOIN?**

Bitcoin Is the world's first completely decentralised digital currency.<sup>3</sup> It was first introduced in 2008 by a single or group of pseudonymous developer(s) by the name of Satoshi Nakamoto. The system is described as open source peer to peer electronic cash system which is based on a cryptographic protocol.<sup>4</sup> The peer to peer system enables the users to directly exchange bitcoins

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<sup>1</sup>[https://www.wired.com/2011/11/mf\\_bitcoin/](https://www.wired.com/2011/11/mf_bitcoin/) (Last accessed: 10<sup>th</sup> March,2018)

<sup>2</sup><https://bitcoin.org/bitcoin.pdf/> (Last accessed: 10<sup>th</sup> March,2018)

<sup>3</sup>[https://www.mercatus.org/system/files/Brito\\_BitcoinPrimer.pdf/](https://www.mercatus.org/system/files/Brito_BitcoinPrimer.pdf/) (Last accessed: 10<sup>th</sup> March,2018)

<sup>4</sup><https://cis-india.org/internet-governance/bitcoin-legal-regulation-india/> (Last accessed: 15<sup>th</sup> March,2018)

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with each other thus eliminating the need for a third party such as a bank or payment gateway. The integrity of these transactions is maintained by a distributed and open network owned by no one. In comparison to fiat currencies which have an unlimited supply, bitcoins are tightly controlled by an underlying algorithm. The bitcoins trickle out every hour at a diminishing rate until a maximum of 21 million has been reached. Each bitcoin can be sub divided into 100,000,000 smaller units called satoshis. Although in theory bitcoins operate with semi anonymity, in practice each user is identified by his or her digital wallet and a Bitcoin address through which bitcoins are transferred between parties.<sup>5</sup> The most pressing problem faced by virtual currencies is double spending.<sup>6</sup> This problem is mitigated by the usage of block chain technology. A block chain is a public ledger which has no single governing authority but is governed and updated by a network of communicating nodes. These nodes have the capacity to validate transactions and send an updated version of blockchain to the other nodes. Every ten minutes these transactions are secured or hashed into a new block which is then added to the blockchain. Hashing is done by miners in search of a reward.

#### **IV. POSITION AROUND THE WORLD:**

Currently, there are various cryptocurrencies in play such Ripple, Ethereum, litecoin, dash etc. However, the most predominant one is Bitcoin which is currently priced at Rs.5,52,735.<sup>7</sup> It emerged as a clear leader in terms of market capitalisation and usage despite the rising interest in other cryptocurrencies.<sup>8</sup> It's steadily growing popularity has garnered much attention from various jurisdictions all over the world. The current number of unique active users of cryptocurrency wallets is estimated to be between 2.9 million and 5.8 million.<sup>9</sup> With this surge in the number of Bitcoin users, there is an ongoing debate globally whether to legalise Bitcoins or not. Central

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<sup>5</sup><https://www.coindesk.com/information/what-is-bitcoin/> (Last accessed: 10<sup>th</sup> March,2018)

<sup>6</sup><http://nakamotoinstitute.org/bitcoin/> (Last accessed: 10<sup>th</sup> March,2018)

<sup>7</sup><https://www.coindesk.com/price/> (Last accessed: 10<sup>th</sup> March,2018)

<sup>8</sup>[https://www.jbs.cam.ac.uk/fileadmin/user\\_upload/research/centres/alternative-finance/downloads/2017-global-cryptocurrency-benchmarking-study.pdf/](https://www.jbs.cam.ac.uk/fileadmin/user_upload/research/centres/alternative-finance/downloads/2017-global-cryptocurrency-benchmarking-study.pdf/) (Last accessed: 10<sup>th</sup> March,2018)

<sup>9</sup>[https://www.jbs.cam.ac.uk/fileadmin/user\\_upload/research/centres/alternative-finance/downloads/2017-global-cryptocurrency-benchmarking-study.pdf/](https://www.jbs.cam.ac.uk/fileadmin/user_upload/research/centres/alternative-finance/downloads/2017-global-cryptocurrency-benchmarking-study.pdf/) (Last accessed: 10<sup>th</sup> March,2018)

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Banks and Governments of different countries have passed official statements, rules and regulations concerned with fraud, taxation, negative impact on the national economy etc.<sup>10</sup> Following is a brief overview of rules and regulations framed by different countries in addressing the issue of bitcoins.

**1) Japan:**

While other countries have had knee jerk responses to bitcoin and blockchain technology, Japan- the world's leader in technology, has adopted it whole heartedly. Bitcoin was given the status of a legal tender putting it on the same footing as the fiat currency on 1<sup>st</sup> April, 2013. However, being accorded this status Bitcoins will now come under the scrutiny of regulations which govern banks and financial institutions. Bitcoin exchanges have to comply with the strict anti - money laundering (AML) and Know Your Customer (KYC) requirements, along with annual audits.<sup>11</sup> These laws were passed after the collapse of Mt. Gox, which was the country's largest bitcoin exchange, loss of 8,50,000 bitcoins and revelations of insolvency and alleged fraud.<sup>12</sup> In spite of such a major setback the Japanese, government did not curb the use of cryptocurrency. Instead, they tried to solve the problem by enacting regulations which mandated exchanges to maintain capital reserves, keep customer funds separate, and implement KYC procedures.<sup>13</sup>

**2) China:**

In 2017, China's Bitcoin exchanges- OkCoin, BTCC, Huobi accounted for 90% of Bitcoin's global trading volume. However now they account only for 7% of market volume.<sup>14</sup> This is because of

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<sup>10</sup> <https://www.zebpay.com/wp-content/uploads/2016/04/Bitcoins.pdf/> (Last accessed: 10<sup>th</sup> March,2018)

<sup>11</sup> <https://www.newsbtc.com/2017/04/02/japan-officially-recognises-bitcoin-currency-starting-april-2017//> (Last accessed: 10<sup>th</sup> March,2018)

<sup>12</sup> <https://www.coindesk.com/japan-bitcoin-law-effect-tomorrow//> (Last accessed: 10<sup>th</sup> March,2018)

<sup>13</sup> <https://news.bitcoin.com/japan-teaches-western-governments-lesson-cryptocurrency-regulation//> (Last accessed: 10<sup>th</sup> March,2018)

<sup>14</sup> <https://www.forbes.com/sites/leonhardweese/2017/11/29/bitcoin-regulation-in-china-still-unclear-but-chinese-exchanges-thrive-overseas/#46769a436487/> (Last accessed: 10<sup>th</sup> March,2018)

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the current crackdown on Bitcoin transactions by the Chinese government. China is now formally banning investments in initial coin offerings deeming that block use is a form of illegal financing. Banks and financial institutions in China have been prohibited from dealing in bitcoin.<sup>15</sup> Since people turned to overseas platforms to continue trading in virtual currencies, the government has now turned towards banning offshore crypto trading as well.

### **3) Canada:**

The first country to implement a national law on bitcoin use is Canada. It was declared by the Canadian government in November 2013 that bitcoin payments should be treated as barter transactions<sup>16</sup>. Although it is not considered to be the legal tender, it is classified as a digital currency. Bitcoins can be used to buy goods and services on the internet and in stores that accept digital currencies.<sup>17</sup> Due to recent legislative enactments, businesses dealing with virtual currencies which includes Bitcoins, have now been subject to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act of 2000 (“PCMLTF”).<sup>18</sup>

### **4) Australia:**

In Australia the AML(anti money laundering)/CTF(counter terrorism financing) Bill is being revised to include BTC exchanges for the first time under the scope of Australian legislation.<sup>19</sup> The provisions of this Bill provide that crypto -currency exchange offenders could face imprisonment from 2-7 years depending on severity of violation and with a penalty of 100,000-400,000\$.<sup>20</sup> In a move to boost the adoption of digital currencies, Australian Tax Office has abolished the double taxation of cryptocurrencies like Bitcoin in July 2018.<sup>21</sup>

### **5) South Korea:**

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<sup>15</sup> <https://www.zebpay.com/wp-content/uploads/2016/04/Bitcoins.pdf/> (Last accessed: 10<sup>th</sup> March,2018)

<sup>16</sup> <https://blogs.thomsonreuters.com/answeron/world-cryptocurrencies-country//> (Last accessed: 10<sup>th</sup> March,2018)

<sup>17</sup> <https://www.canada.ca/en/financial-consumer-agency/services/payment/digital-currency.html/> (Last accessed: 10<sup>th</sup> March,2018)

<sup>18</sup> <https://www.zebpay.com/wp-content/uploads/2016/04/Bitcoins.pdf/> (Last accessed: 10<sup>th</sup> March,2018)

<sup>19</sup> <https://www.ccn.com/australias-bitcoin-regulation-bill-gets-green-light//> (Last accessed: 10<sup>th</sup> March,2018)

<sup>20</sup> <https://www.coindesk.com/australia-weighs-jail-time-cryptocurrency-exchange-offenders//> (Last accessed: 10<sup>th</sup> March,2018)

<sup>21</sup> <https://www.ccn.com/australia-passes-law-officially-kill-double-bitcoin-tax//> (Last accessed: 10<sup>th</sup> March,2018)

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The chances of the Korean government's crackdown on cryptocurrency dealing has captured the attention of traders Korea has an outsized role in the crypto world. In the latter part of the 2017, the Korean currency, "won" has been responsible for more than 10% of bitcoin trade.<sup>22</sup> However, this declined by 60% as the nation's regulators took stringent measures to restrict trading and considered banning all cryptocurrency exchanges. On 30<sup>th</sup> January, it is made illegal to make deposits at anonymous virtual accounts at banks. Those who deposit or withdraw more than 10 million wons are to be reported. Minors, foreigners and financial institutions have been banned from domestic exchanges.<sup>23</sup>

**6) USA:**

The Federal Reserve and Internal Revenue System on a national level have held Bitcoins and other cryptocurrencies to be taxable as commodities. Bitcoins earned will be taxed as income and bitcoins paid in exchange for services provided by an independent contractor will have to be reported on IRS Form 1099. The U.S. Department of Treasury's Financial Crimes Enforcement Network framed guidelines instructing money transmitters to enforce Anti-Money Laundering (AML) and Know Your Client (KYC) measures.<sup>24</sup>

**7) Bangladesh:**

Bangladesh has banned bitcoins. In September 2014, the Bank of Bangladesh cautioned against dealing in bitcoin and stated that it's use is against the law. Anybody engaged in such cryptocurrency transactions could be sentenced to about 12 years of jail under the current anti money laundering laws.<sup>25</sup>

**V. CURRENT POSITION OF BITCOIN IN INDIA:**

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<sup>22</sup><https://www.bloomberg.com/news/articles/2018-02-04/why-the-cryptocurrency-world-is-watching-south-korea-quicktake/> (Last accessed: 10<sup>th</sup> March,2018)

<sup>23</sup><https://www.bloomberg.com/news/articles/2018-02-04/why-the-cryptocurrency-world-is-watching-south-korea-quicktake/> (Last accessed: 10<sup>th</sup> March,2018)

<sup>24</sup> <https://www.bitcoinmarketjournal.com/bitcoin-state-regulations/> (Last accessed: 10<sup>th</sup> March,2018) <sup>25</sup><http://bitcoinist.com/bitcoin-still-illegal-six-countries/> (Last accessed: 10<sup>th</sup> March,2018)

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At present there are no laws governing virtual currencies like Bitcoins in India. However, the authorities have passed a few comments in the light of the present cryptocurrency craze.

The Ministry of Finance has issued a statement on Virtual Currencies including Bitcoins labelling them to be a possible Ponzi scheme and stating that they are not recognised by the Government as legal tender and as such have no regulatory permission or protection in India. Not being backed by any assets or Government fiat, they have no intrinsic value. The users, traders, investors, holders of BTC have been cautioned against these currencies and thus must get involved with them entirely at their own risk.<sup>26</sup>

Arun Jaitley's comment on bitcoins not being recognised as a legal tender sparked a lot of confusion and led the public to believe that it was banned. However, while the authorities advise against these cryptocurrencies, it is to be noted they are neither legal nor illegal in India. The present stance of the government is that those investing in these assets should do so at their own peril and not seek redressal from the government in any case.

After repeated cautionary circulars being issued by the Reserve Bank of India, in April 2017, the Government of India set up an inter disciplinary committee to deal with the various issues governing cryptocurrencies. Sebi, has stated on 20<sup>th</sup> December 2017 that if bitcoin is considered as a commodity derivative then it may regulate it.<sup>27</sup>

**Scope in India:**

As noted above, bitcoins are not yet authorized but there is scope for them to be legalised as: -

**1. Currency:**

Since none of the present Indian statutes make provisions for digital or virtual currencies, a look at the traditional definition of currency as enshrined in s.2(h) of Foreign Exchange Management

<sup>26</sup> <http://www.pib.nic.in/PressReleaseDetail.aspx?PRID=1514568/> (Last accessed: 15<sup>th</sup> March,2018)

<sup>27</sup> <http://www.livemint.com/Money/uQIHZ7521LBgHClnuP66YM/Bitcoin-regulations-in-India.html/> (Last accessed: 15<sup>th</sup> March,2018)

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Act, 1999 provides: “currency” includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, travellers’ cheques, letters of credit, bills of exchange and promissory notes, credit cards or such other similar instruments, as may be notified by the Reserve Bank.

Although Bitcoin is not similar to any of the instruments as mentioned above, the expression as “notified by RBI” gives it the authority to include Bitcoins and make rules and regulations relating to the same in future. Considering that Japan has declared Bitcoins to be a legal currency, until a notification is issued by the RBI Bitcoins are to be considered as foreign currency under the FEMA and will have to follow the guidelines set under it.<sup>28</sup>

## **2. Goods:**

Under Indian law, the term “goods” has been defined under section 2(7) of Sale of Goods Act. It means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.<sup>29</sup> The Forward Contracts (Regulation) Act, 1952 also defines goods to mean “every kind of movable property other than actionable claims, money and securities.”<sup>30</sup> To determine whether Bitcoins fall into the category of goods the following has to be taken into consideration:-

### **a) Whether it is a movable property?**

The General Clauses Act, 1897 defines goods to mean property of every description except immovable property.<sup>31</sup> Bitcoin is not an immovable property. It is transferable from one party to another and hence can be called movable.

### **b) Whether it falls under actionable claim or money?**

<sup>28</sup> <https://cis-india.org/internet-governance/bitcoin-legal-regulation-india/> (Last accessed: 15<sup>th</sup> March,2018)

<sup>29</sup> <https://indiankanoon.org/doc/651105//> (Last accessed: 15<sup>th</sup> March,2018)

<sup>30</sup> <https://cis-india.org/internet-governance/bitcoin-legal-regulation-india/> (Last accessed: 15<sup>th</sup> March,2018)

<sup>31</sup> <http://comtax.up.nic.in/Miscellaneous%20Act/the-general-clauses-act-1897.pdf/> (Last accessed: 15<sup>th</sup> March,2018)

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As clearly stated by Arun Jaitley, Bitcoin is not recognised as a legal tender in India and hence does not constitute money. It does not fit into the definition of actionable claims either as enshrined in section 3 of Transfer of Property Act as it does not impose a claim on anybody.<sup>32</sup>

c) Another crucial factor for bitcoin to be considered as goods is that it should have an intrinsic value.<sup>33</sup> Bitcoin has been made legal currency in countries like Japan which is leading technological innovator. As such, it would come under foreign currency in Indian laws. In light of these facts, it can be said that Bitcoins have a fundamental value.

As it satisfies all of the above criteria, Bitcoins could be treated as “goods” in India.

**d) Securities Contracts (Regulation) Act, 1955**

The term “securities” is defined under Section 2(h) of the Securities Contracts (Regulation) Act as follows- “securities” include:

shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;

derivative;

units or any other instrument issued by any collective investment scheme to the investors in such schemes;

security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

units or any other such instrument issued to the investors under any mutual fund scheme; Government securities;

such other instruments as may be declared by the Central Government to be securities; and rights or interest in securities;”

<sup>32</sup> <http://vinodkothari.com/wp-content/uploads/2017/08/Bitcoins-India-Report.pdf> (Last accessed: 15<sup>th</sup> March,2018)

<sup>33</sup> <http://vinodkothari.com/wp-content/uploads/2017/08/Bitcoins-India-Report.pdf> (Last accessed: 15<sup>th</sup> March,2018)

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After a thorough perusal of the definition of securities, it is clear that bitcoin does not fit into any of the sub-clauses. The only way in which Bitcoin can be brought under the purview of this Act is if the Central Government notifies regarding the same as the Central Government has been given the power to declare any instrument as a ‘security’.<sup>34</sup> In such a case, Bitcoins will be governed by all the rules and regulations governing securities including the numerous rules prescribed by the Securities and Exchange Board of India (SEBI). Also, all of the above listed instruments have an underlying capital asset, but there is no underlying asset in relation to Bitcoin. Bitcoin is also not “issued” by any authority and is created as a result of mining.

Bitcoin also does not fit into the definition of “derivative”. As per the SCRA,

“derivative” includes –

a security derived from a debt instrument, share, loan, whether secured or unsecured, risk instrument or contract for differences or any other form of security;

a contract which derives its value from the prices, or index of prices, of underlying securities.<sup>35</sup>

As already stated above, Bitcoin is not a security and hence does not come under the first part of the definition. Further, as Bitcoin is only a voluntary currency based on two parties deciding that the code itself has some value, therefore Bitcoin can also not be described as a contract which derives its value from the prices or index of prices of underlying securities.<sup>36</sup>

### **e) Intellectual Property**

#### *i) Copyright Act, 1957-*

Bitcoin is a software based system which was introduced as an open source software in 2009.<sup>37</sup> The Indian Copyright Act, 1957 defines a “Computer Programme” as “a set of instructions

<sup>34</sup>Section 2(h)(iia) of Securities Contracts (Regulation) Act, 1955.

<sup>35</sup>Section 2(ac) of Securities Contracts (Regulation) Act, 1955.

<sup>36</sup> <https://cis-india.org/internet-governance/bitcoin-legal-regulation-india/> (Last accessed: 15<sup>th</sup> March, 2018)

<sup>37</sup>Satoshi Nakamoto, Bitcoin: “A Peer-to-Peer Electronic Cash System”, Bitcoin.org, available at:

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expressed in words, codes, schemes or in any other form, including a machine-readable medium, capable of causing a computer to perform a particular task or achieve a particular result”.<sup>38</sup> A computer programme is protected as a literary work under this Act. The program that is used in the underlying platform for the generation and trading of bitcoins constitutes a computer programme. However, the bitcoin protocol and software are published in the open and any developer around the world can review it or make his own versions of the code and modify the software.<sup>39</sup> Since this can be done by developers, every new modification gives rise to a new copyright and it will be very difficult to ascertain who actually holds the copyright in the codes.

*ii) Patent-*

According to Black’s Law Dictionary, a patent is a legal document which provides protection to the ideas of any individual. In India, patents are registered for inventions that are novel, have an inventive step or are non-obvious, are capable of industrial application and have utility. The process of mining bitcoins will probably not be patentable in India especially if those processes are widely available in the public domain. Also, as per Section 3(k) of Patents Act, 1970, a mathematical or business method or a computer programme per se or algorithms are not inventions, and therefore, they cannot be patented in India. Establishing novelty for bitcoin related algorithms and computer programmes may also prove to be difficult for the purpose of equating them to inventions.

*iii) Trademark-*

The term ‘Bitcoin’ was first introduced by Satoshi Nakamoto in a paper he wrote discussing the details of the said currency.<sup>40</sup> The trademark for Bitcoin is currently held by the once very eminent bitcoin exchange Mt. Gox, in Japan.

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<http://Bitcoin.org/Bitcoin.pdf> (Last accessed: 10<sup>th</sup> March,2018)

<sup>38</sup>Section 2(ffc) of Copyright Act, 1957

<sup>39</sup> <https://bitcoin.org/en/faq/> (Last accessed: 10<sup>th</sup> March,2018)

<sup>40</sup>Satoshi Nakamoto, Bitcoin: “A Peer-to-Peer Electronic Cash System”, Bitcoin.org, available at: <http://Bitcoin.org/Bitcoin.pdf> (Last accessed: 10<sup>th</sup> March,2018)

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In India, as per the Trade Marks Act, 1999, a mark can include a “device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof.”<sup>41</sup> A mark should be capable of being represented graphically and also be capable of differentiating the goods and services of one person from those of others. Therefore, the word ‘Bitcoin’ and any logos related to Bitcoin could be given trademark protection in India. However, it may be very difficult to accord a trademark to the word ‘Bitcoin’ since it is a very widely used term worldwide and in a very generic manner, at that. Although, in India, many applications for registration of trade marks that include the term Bitcoin are pending before the Trade Marks Registry. Getting a Trademark registration for marks that include the word ‘Bitcoin’ is highly important for the financial institutions that deal in bitcoin transactions and online payment systems.

#### **f) Taxation**

In India, taxes can be levied either by the central government or the state government. The provision to levy such taxes is embodied in Article 246 of the Indian Constitution and these subject matters are enumerated in Schedule VII in 3 separate lists.<sup>42</sup>

To tax bitcoins, the following three scenarios should be considered:

mining of bitcoin

transfer of bitcoin

transfer of bitcoin as consideration

i. *Taxation of Bitcoins earned through mining*

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<sup>41</sup>Section 2(m) of The Trade Marks Act, 1999.

<sup>42</sup>Section 2(7) of the Income Tax Act, 1961

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If profits earned from bitcoins are to be taxed as business income, then the bitcoins earned in the ‘mining’ process will also be taxed as business profits. But, if bitcoins get classified as capital assets, the virtual currency earned from bitcoin may not be taxed.<sup>43</sup>

Bitcoins that are generated during the mining process are referred to as self-generated capital assets and therefore, their cost of acquisition is not known and cannot be determined. It also does not fall under the provisions of Section 55 of the Income Tax Act, 1961, which specifically defines the cost of acquisition of certain self-generated capital assets. Hence, the capital gains computation mechanism is unsuccessful as per the Supreme Court decision in the case of B.C. Srinivasa Shetty. Therefore, no capital gains tax would arise on mining of bitcoins.

*ii. Transfer of Bitcoin*

If bitcoins, which are primarily capital assets, and gains arising from them are treated as capital gains, it will give rise to either a long-term capital gain or a short-term capital gain. If a bitcoin is held for more than thirty-six months, it is to be treated as a long-term capital asset. Whereas, if it is held for a lesser amount of time, it is a short-term capital asset.

The long-term capital gains may be taxed at a flat rate of 20% whereas, the short-term gains may be taxed at the individual slab rate. The long-term gains are determined after giving a benefit of indexation.

*iii. Transfer of Bitcoin as Consideration on sale of Goods and Services*

If bitcoins are classified as currency, they will be treated on par with receipt of money. This would constitute as income in the hands of the receiver. Further, since this income is received out of a business or profession, normally, the receiver would be taxed under the head profits or gains from business or profession.<sup>44</sup>

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<sup>43</sup><https://www.thehindubusinessline.com/opinion/taxing-cryptocurrencies-in-india/article10012267.ece/> (Last accessed: 18<sup>th</sup> March,2018)

<sup>44</sup> <https://cleartax.in/s/bitcoins-taxes-india/> (Last accessed: 18<sup>th</sup> March,2018)

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However, there is a lack of clarity about the disclosure requirement of bitcoins in the income tax return forms.

## **VI. WHY SHOULD BITCOIN BE LEGALIZED?**

There has been a sudden surge of interest in Bitcoin in the recent past. Bitcoin is considered to be a revolution in the present currency market. It has gained huge popularity worldwide and a lot of people have started adopting it. It has numerous advantages.

Bitcoin provides us with payment freedom. It is possible to send and receive the bitcoins anywhere in the world, at any given point

of time. It eliminates the need of a middleman. One is in control of their own money and there also exists no payment limit.

The users are in control of their transactions which helps in keeping Bitcoin safe for the network. There cannot be any extra fees charged by merchants on anything without getting noticed. It also protects merchants from losses caused by frauds since these transactions are secure, irreversible, and a customer's personal information is not linked to it. The hiding of personal information also protects the users from identity theft.

Bitcoin payments have very low and sometimes no transaction fees attached to them at all. But users can pay some fees in order to process their transactions faster. Users who pay higher fees get priority. However, this fees is still lower than what would be paid to any financial intermediary or digital wallets.

As compared to banking channels, bitcoin transactions are extremely fast. They have the ability to be processed within 10 minutes. Zero confirmation transactions can be instantly processed.<sup>45</sup>

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<sup>45</sup> <https://www.ccn.com/zero-confirmation-transactions-safe/> (Last accessed: 18<sup>th</sup> March,2018)

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The information in the block chain is completely transparent and everyone can access all finalized transactions, although, a user's personal information is always kept hidden. Only the public address of a user is visible. The transactions in the bitcoin block chain can be verified by anyone at any point of time. The bitcoin protocol cannot be manipulated by anyone since bitcoin is cryptographically secure.

Keeping all these advantages in mind, Japan has legalized Bitcoin and other countries should follow suit. However, there should be a regulatory authority in place to regulate the working of this cryptocurrency and tax reforms should be introduced in line with the same in order to avoid tax evasion by any particular individual.

## **VII. CONCLUSION:**

Legalization of Bitcoin will change the way in which people have perceived and used money till date. However, since it is still a relatively new concept, it does have certain disadvantages as well. It is not a perfect concept and people need to understand it more in depth in order to be able to use it. This is primarily because it is a relatively new currency. People should not let their preconceived notions distort the concept of digital currencies. Hopefully, in the near future more countries will start legalizing bitcoin.