

DATE OF PUBLICATION

14.08.2022



THE LEGAL VIDYA

ISSN (O) : 2583 - 1550

VOLUME 3, ISSUE 1

THELEGALVIDYA.COM



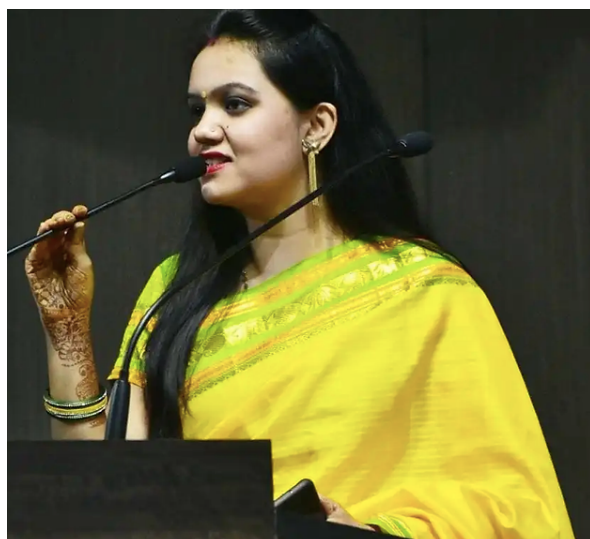


Disclaimer

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Founder-cum-Publishing Editor of The Legal Vidya. The views expressed in this publication are purely personal opinion of authors and do not reflect the views of the Editorial Team of The Legal Vidya

Though each and every effort is made by the Editorial Team of The Legal Vidya to ensure that the information published in Volume 3 Issue 1 is accurate and appropriately cited/referenced, neither the Editorial Board nor The Legal Vidya shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

EDITORIAL BOARD



Ms. Shivangi Sinha
Editor-in-Chief

Assistant Professor, New Law College, BVDU, Pune

“Ma’am is an Assistant Professor in Bharati Vidyapeeth New Law College, Pune. She has been a former Advocate at the Jharkhand High Court and has her specialisation in Corporate Laws. Ma’am has numerous publications and is an ardent researcher. With an inclination towards researching and writing upon Grey areas of Law, ma’am believes students shall look into matters which would help the existing and upcoming lawyers in a practical manner. In her opinion, students should be focused on prioritizing things in life. They should do things with full zeal and vigour.

Her message for the students is something which she herself preaches, ‘Live Your Today.’”

Mr. Ankit Awasthi

Assistant Professor, Hidayatullah National Law University, Raipur

“Sir is an Assistant Professor in Hidayatullah National Law University, Raipur. Through his teachings, he wishes to instil in students the skill to extract relevant material from the numerous resources available these days. Sir feels it is important for students to research in the field of law which have contemporary relevance.

Sir wishes the students to put in efforts to provide an InfoBase which would be a guiding force to all the researchers.”



Mr. Avnish Bhatt

Assistant Professor, Xavier Law School

“Sir firmly believes that key factors for a student to excel in any profession is honesty, transparency and hard work. Law being a dynamic field, various areas of research are open to students. Students shall be creative and think out of the box while deciding their research topic. With the right amount of creativity and intellect, one can master the art of writing.”



Ms. Richa Dwivedi*Assistant Professor, Symbiosis Law School, Pune*

“During her tenure as an academician she comes across students with brilliant ideas but what lacks is the research. She emphasises on the importance of substantiating views as a student of law and not just opiating.

In Ma’am words research itself suggests searching the already searched. Therefore, the research of the students shall reflect their interest in the topic. She strongly believes that a topic to be researched upon shall have contemporary relevance.”

**Ms. Nupur Khanna***Assistant Professor, Christ Academy Institute of Law*

“Ma’am is an Assistant Professor in Christ Academy Institute of Law. She believes that for someone to excel in a professional course like Law one is expected to focus not only on the textbook knowledge but should also focus on shaping their overall personality by participating in extracurricular activities. As per ma’am most of the students are of the view that they can take benefit only from Moot Courts, competitions, however, any activity in which you participate will help you in your professional development. Just like learning calligraphy helped Steve jobs in creating apple’s typography.

Ma’am urges the young researchers to focus on the topics which are innovative and most importantly any field which interests their legal acumen.

Ma’am says that that research is at a very nascent stage in India, especially in the field of law and wishes to students that they should start focusing on improving their research skills and publishing quality papers.”

ABOUT US

The Legal Vidya is a student(s) initiative run online journal (Two Issues Per Year) started in 2020 with the aim of reaching youths of the nation, budding lawyers, students and academicians to bring forth the legal knowledge at your fingertips.

We are here to provide you with a lucid way of learning law with the help of daily blogs pertaining to the latest/other legal issues going on in the country.

We also provide legal advice and needed legal awareness to the masses with a pioneering objective of reaching the underprivileged and serving the idea of Free Legal Aid to them. (Article 39A of the Constitution of India).

We would be appraised to welcome blogs from the readers too. Readers can submit their blogs at contact@thelegalvidya.com.

Frequency Of Publication: Two Issues Per Year

Language: English

Start Year: 2020

Format Of Publication: Online

THE LEGAL VIDYA
ISSN (O) : 2583 – 1550

Open Access Law Journal

This is an Open Access article distributed under the terms of the Creative Commons Attribution- Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

The Legal Vidya
Volume 3 Issue 1, August, 2022, Page Nos. 1 to 9

**A BRIEF OVERVIEW OF CRYPTOCURRENCY & RESPONSE TO THE
CRYPTO REGIME**

MR. PRADHUMNA MALPANI
Student, Symbiosis Law School, Pune

Abstract: *An online payment method that may be used to purchase and sell goods and services is known as a cryptographic currency. Customers are frequently asked to pay for tokens, which are the customary name for the unique kind of money that many businesses use. Public blockchain research has grown more crucial as interest in cryptocurrencies like bitcoin, Ethereum, Litecoin, and others has increased. The data on a blockchain may be viewed and examined by anybody with the necessary expertise if it is made public. It has been difficult for different cryptocurrencies, crypto exchanges, and organizations to comprehend and access the flow of cryptocurrency. Despite the market's volatility, the production of new currencies is increasing. This has led to the emergence of a new transaction type known as a "ICO" (initial coin offering), which is being used as a tool for fundraising by businesses in a manner similar to an IPO but instead issues existing or soon-to-be-launched cryptocurrencies as "digital coupons" to help fund the enterprise. This Paper attempts to analyze and give a brief overview of crypto regime in light of various initiatives taken by Governments Globally to give a structure to the emerging Crypto regime.*

INTRODUCTION

What is cryptocurrency? This is a crucial subject to answer since a digital technology is quietly but dramatically changing our financial landscape. Many individuals, especially those who believe themselves to be digitally knowledgeable, have just a shaky understanding of the issue and are more inclined to identify it with its more nefarious uses, such as its use in darknet markets.

In a nutshell, "cryptocurrency" refers to any decentralized digital asset that use encryption to secure transactions that are not reliant on central banking institutions.¹ A cryptographic currency can be defined as a method of payment that is used to buy and sell goods and services through internet. Many companies have their own type of money that customers are requested to pay for, which is commonly referred to as tokens. They can be expressly traded for products and services offered by the institution. Blockchain is the technology on which Cryptocurrencies are based on Blockchain which is a decentralized system that oversees and records transactions over a network of electronic devices.²

Blockchain of a specific cryptocurrency is primarily a public ledger that keeps record of all previous transactions or activities and verifies the ownership of all cryptocurrency units at any one time. A blockchain is a finite-length record of all transactions made with a cryptocurrency to date, with a finite number that increases over time. Exact versions of the blockchain, which is used to continuously record and authenticate cryptocurrency transactions, are saved in every node of the cryptocurrency's software network (the network of decentralized server farms managed by computer-savvy groups or individuals known as miners).

A crypto trade is completed as soon as it is uploaded to the blockchain. Further, the transaction becomes irrevocable after it is completed. The time between the transaction's inception and completion the units aren't accessible for use by either party. Instead, they're kept in a kind of escrow in simple term in, limbo. The Blockchain prevents Double-spending meaning the hacking of cryptocurrency code to allow the same currency units to multiply and shared with numerous recipients.³

HISTORY OF CRYPTOCURRENCY

An American cryptographer called David Chaum devised the first electronic money, often known as e-cash, in 1983. Digicash and the National Security Agency followed in 1995 and 1996, respectively.⁴ Later, a hybrid method to digital currency transactions was developed by PayPal and its rivals. These companies still have a significant impact on both global and internet trade. A few more examples of other cryptocurrencies or technology that powers them are Bit Gold, B-Money, Hashcash.

¹ Jordan Pritchett, Cryptocurrency: An Overview, 134 BANKING L.J. 547 (2017).

² Keshav Batheja & Param Goel, Cryptocurrency in India, 1 Jus Corpus L.J. 98 (2021)

³ Martucci, B., 2021. What Is Cryptocurrency - How It Works, History & Bitcoin Alternatives. [online] Moneycrashers.com. Available at: <<https://www.moneycrashers.com/cryptocurrency-history-bitcoin-alternatives/>> [Accessed 10 February 2022].

⁴ Keshav Batheja & Param Goel, Cryptocurrency in India, 1 Jus Corpus L.J. 98 (2021)

In 1998 cryptocurrencies was first explained by a Chinese author Wei Dai. The idea was fully achieved with the release of a white paper outlining the principles of bitcoin and blockchain in 2009. "Satoshi Nakamoto," the author of the white paper, is reportedly a pseudonym for a group of people or person. Blockchain is fantastic for privacy advocates, although it can be difficult for anti-terrorism and anti-money-laundering officials who want to track virtual currency trades all over the world. Post Bitcoin, Namecoin appeared in April 2011 while Litecoin appeared in October 2011. In March 2021, the total value of all bitcoins, known as the "market valuation," topped \$1 trillion. The currency is very volatile, with large changes in price occurring often over short periods of time.⁵

THE BLOCKCHAIN AUDIT

Public blockchain research has grown in significance as a result of the resurgence of interest in cryptocurrencies like bitcoin, Ethereum, Litecoin, and others. If the data on a blockchain is made public, anyone with the necessary understanding can view and examine it. Different cryptocurrencies, crypto exchanges, and institutions have struggled to comprehend and access the flow of cryptocurrency. The reason for this is because cryptocurrencies using blockchain technology have been suspected of aiding illicit black-market drug, weapons, and money laundering transactions. Furthermore, numerous organizations have challenged the high energy usage associated with blockchain. Concerns about excessive energy usage have prompted several bitcoin firms to contemplate switching from the proof of work blockchain paradigm to the less energy-intensive proof of stake approach.⁶ Many individuals assume bitcoin is anonymous and untraceable, therefore they utilize it for illegal activities. This is changing as specialized technology companies now provide blockchain monitoring services to assist banks, law enforcement, and crypto exchanges in better understanding what is happening with crypto money and fiat-to-crypto transfers. As was already said, some believe that this pattern has led criminals to prioritize the use of new cryptocurrencies like Monero. Both the accessibility of blockchain data to the general public and its security for individual users are issues. In the area of cryptocurrencies and, eventually, blockchain, it's a hot issue.⁷

USAGE OF CRYPTOCURRENCY

Bitcoin and other cryptocurrencies can be used to make purchases, but they are not yet a commonly accepted form of payment. Bitcoin is accepted by a very small number of online retailers, including Overstock.com, but it is not the norm. By exchanging bitcoin for gift cards until cryptocurrencies are more widely accepted, you can get around the restrictions that are currently in place.

⁵ Rosenberg, E., 2021. History of Cryptocurrency. [online] The Balance. Available at: <<https://www.thebalance.com/history-of-cryptocurrency-5119511>> [Accessed 10 February 2022].

⁶ Wim, R., 2015. Cryptocurrency Bitcoin: Disruption, Challenges and Opportunities. Journal of Payments Strategy & Systems, 9(1), pp.30-46.

⁷ Tyler G Newby and Ana Razmazma, 'An Untraceable Currency? Bitcoin Privacy Concerns' (Fin tech Weekly, 7 April 2021) <<https://magazine.fintechweekly.com/articles/an-untraceable-currency-bitcoin-privacv-concerns>> accessed 10 Feb 2022

For example, at eGifter platforms, one may use Bitcoin to buy gift cards for Dunkin' Donuts, Target, Apple, and other shops and restaurants. One could be able to load bitcoin onto a debit card in order to make purchases. The BitPay card, a debit card that converts cryptocurrency into dollars for purchases, is offered in the US, however there are fees involved with purchasing the card and using it for certain functions, such as ATM withdrawals.

As an investment, cryptocurrency has the potential to replace stocks and bonds. The most well-known cryptocurrency, Bitcoin, is a secure, decentralised medium of exchange that has developed into a store of value akin to gold; some even call it "digital gold."⁸

INITIAL COIN OFFERINGS

Despite the volatile nature of the market, the creation of new currencies is on the rise, giving rise to a new transaction type known as a "ICO" (initial coin offering), which is being used as a fundraising tool for businesses in a manner similar to an initial public offering, but instead issues existing or soon-to-be-launched cryptocurrencies as "digital coupons" to help fund the enterprise. From a consumer standpoint, the fundamental advantage of ICOs is that the investment is very liquid and can be exchanged at any time, but there is a catch: they do not grant any ownership rights in the firm. There are presently no regulations in place because this is such a novel concept. However, the Securities and Exchange Commission of the United States recently issued an investigation report with significant consequences for issuers and sponsors of initial coin offerings (ICOs) that generate funding for cryptocurrency enterprises.

The majority of ICOs are advertised as "software presale tokens," with terminology that further shields them from any legal obligations. This lack of monitoring has been viewed as both a benefit and a liability. While the lack of regulation has aided innovation, it has also increased the risk of fraudulent behavior. Despite this, there is still a lot of interest in the ICO space. While the ever-changing value of cryptocurrencies makes a precise figure for the total amount raised by ICOs this year difficult to calculate, it is expected to be more than \$700 million. If this is right, ICOs would be well ahead of traditional venture capital investment in the blockchain arena, bolstering the case for blockchain's role in democratizing the global financial system.⁹

⁸ Ashford, K. and Schmidt, J., 2022. What Is Cryptocurrency. [online] Forbes Advisor. Available at: <<https://www.forbes.com/advisor/investing/what-is-cryptocurrency/>> [Accessed 10 February 2022].

⁹ Jordan Pritchett, Cryptocurrency: An Overview, 134 BANKING L.J. 547 (2017)

GOVERNMENTAL RESPONSE

1. United States of America

The United States leads the world in bitcoin trading volumes, with the most people participating in cryptocurrency exchanges. Cryptocurrencies are not recognised legal cash at the federal level, resulting in inconsistencies between states and between states and the federal government. This happens as a result of state governments implementing different regulatory regimes. The usage of cryptocurrencies or initial coin offerings is not yet restricted in the United States, but it is working on laws to regulate and manage the sector within its borders.

" In the United States, traditional payment system regulation has followed a path that reflects the common law base of negotiable instruments law as the substantive law basis for payments" according to the report. Consequently, determining how to categorise cryptocurrencies within an existing financial regulatory structure is one of the most difficult components of regulating cryptocurrencies. The Securities and Exchange Commission (SEC), Internal Revenue Service (IRS), Commodity Futures Trading Commission (CFTC), and the Department of Treasury's Financial Crimes Enforcement Network are the primary federal entities addressing the issue ("FinCEN"). Each of these groups believes that cryptocurrencies should be understood in accordance with present regulations in a different way. Moreover, United States, federal administrative agencies have overlapping regulatory jurisdiction over certain issues, and they frequently work together to enforce their regulations.

The ability of one agency to regulate cryptocurrencies in one context does not preclude the ability of other institutions to regulate cryptocurrencies in another context. The Securities commission, for example, believes that under "relevant laws governing the offer and sale of securities," initial coin offerings and crypto should be carefully examined.; the Internal Revenue Service has stated in Notice 2014-21 those cryptocurrencies are not legal tender and instead be considered property specific topic to taxation. The Commodity Futures Trading Commission considers cryptocurrencies to be commodities subject to its oversight, and FinCEN, the federal agency in charge of anti-money laundering measures, has concluded that the Bank Secrecy Act ("BSA") applies to them. The Commodity Futures Trading Commission has claimed since 2015 that cryptocurrencies are commodities and hence subject to its regulation. No court has addressed the question until March 2018, when The Commodity Futures Trading Commission received the endorsement of Judge Jack Weinstein of the United States District Court for the Eastern District of New York, who classified them as commodities under the Commodity Exchange Act (CEA). The ruling highlights that, "CFTC may utilize its enforcement jurisdiction over fraud linked to virtual currencies sold in interstate commerce," allowing the agency to regulate even if no federal laws have been implemented. Because there is no unified federal legislation governing cryptocurrencies and their ramifications, state governments have enacted their own regulatory and taxing regimes. As of 2017, over fifteen states have taken a clear stance or passed legislation to regulate cryptocurrencies and blockchain technology. In 2017,

House Representatives presented the Cryptocurrency Tax Fairness Act, which would apply to all cryptocurrencies and exclude purchases under \$600 from reporting obligations by the Internal Revenue Service. In March 2018, Congress issued its Joint Economic Committee Report, which contains a chapter dedicated completely to blockchain technology and cryptocurrencies (Building a Secure Future, One Blockchain at a Time). In the result, Congress expresses support for blockchain technology, citing it as a "...safe, and efficient means to store nearly any type of data across numerous platforms" and suggesting that it be used for other reasons.

2. **China**

In 2013, a Notice was released by the People's Bank of China (PBOC) and four other central government departments and organizations forbidding financial institutions from taking part in bitcoin transactions, while Chinese consumers may still participate in exchanges independently. The "Cryptocurrency Rules" outlawed the use of ICOs, classifying all cryptocurrencies as "a kind of unauthorized illegal public financing," with local governments and courts promising to "strictly enforce the law in accordance with the current functional blocks, and firmly govern the market turmoil."

Despite China's restriction on privately created cryptocurrencies, the People's Bank of China has been investigating the burgeoning money exchange since 2014 and may launch its own digital currency. This new suggested currency would be a virtual replica of a sovereign currency that the central bank already recognizes. This invention, according to the government, would minimize the incidence of illegal activities like money laundering and tax evasion, as well as bring China "one step closer to tackling the technological hurdles connected with digital currencies."¹⁰

3. **European Union**

The European Union (EU) aims to regulate the digital asset market, and many EU-wide proposals are already in the works. The most thorough is a 168-page document called "Markets in Crypto-Assets" (MiCA), which proposes a European Union-wide licensing system for crypto issuers and service providers. However, crypto laws are just one component of a bigger Web 3.0 governance agenda for the 27-nation political and economic union. MiCA will allow businesses to operate across the European Union while simultaneously establishing more stringent consumer protection regulations. It also establishes standards for the issuing of digital assets and public offers, as well as certain special criteria for stable coins. It also specifies extra standards for large, systemically significant stable coins. MiCA is now through its initial readings [in parliament], so it still has a long way to go. There have been no talks between the European Parliament and the Council of the EU so far.

On June 20, 2021, the European Commission released a proposal to control the transfer of fiat currency and some cryptoassets. This proposal amends Regulation EU 2015/847 and creates a new, more uniform

¹⁰ Michelle Alvarez, A Comparative Analysis of Cryptocurrency Regulation in the United States, Nigeria, and China: The Potential Influence of Illicit Activities on Regulatory Evolution, 25 ILSA J. INT'L & COMP. L. 33 (2018).

AML/CFT institutional and regulatory framework for the cryptocurrency industry. In the European Union, cryptocurrencies are permitted, but each member state has its own set of regulations. Cryptocurrency taxes varies by nation, with some charging as little as 0% to as much as 50% on derived revenues. In 2015, the Court of Justice of the European Union came to the conclusion that transactions between fiat money and cryptocurrencies or virtual currencies may be tax-free since cryptocurrencies are services rather than goods.¹¹

4. **India**

a. **The Reserve Bank**

RBI has expressed concern about the influence of cryptocurrencies on the larger economy in several pronouncements throughout the last decade, fearing that it may be used for terrorist financing and money laundering. Although various cryptocurrencies in development have sought to give greater transaction anonymity choices for a number of objectives, the level to which they succeed, and hence the degree to which they aid money laundering attempts, is contested. Moreover as Bitcoin is completely decentralised and does not rely on a central body that follows the Indian KYC model. Criminals have paid out a big sum of Bitcoin in connection with ransomware attacks, drug trafficking, cyber fraud, and other crimes.

The Reserve Bank of India (RBI) has also raised concerns about the legality of using cryptocurrencies as money, stating that currency is a sovereign property that cannot be given to a single individual or entity. Bitcoin is uncontrolled by the Reserve Bank because to all of the aforementioned causes, and the RBI has tried multiple times to outlaw cryptocurrency, but all of its efforts have been in vain. It issued a circular in 2018 requesting that all financial institutions regulated by the RBI refrain from engaging themselves with cryptocurrencies or "offer facilities for aiding any individual or organization in dealing with or settling VCs (Virtual Currencies)." This circular was invalidated by the Supreme Court in March 2019 on the grounds that it was not proportional.

The RBI has also mentioned launching its digital currency, Lakshmi, which is separate from cryptocurrencies, after 2020. The administration, on the other hand, is anticipated to make a decision on the matter in the near future. As of now, the RBI's stance on cryptocurrencies is consistent with the Central government's announcement that a new bill on cryptocurrencies was supposed to be introduced in though the same is not on the floor yet.¹²

b. **Government**

The Indian crypto community is divided over the government's intentions to tax the risky virtual currency in the same manner that it levies earnings from another speculative venture—horse racing—announced a

¹¹ Notabene.id. 2022. Travel Rule Crypto in European Union by EBA EU [2021] - Notabene. [online] Available at: <<https://notabene.id/world/eu>> [Accessed 10 February 2022].

¹² Keshav Batheja & Param Goel, Cryptocurrency in India, 1 Jus Corpus L.J. 98 (2021). Pg. 105-106

while ago. Finance Minister Nirmala Sitharaman stated that revenue from transfers of digital assets will be taxed at a rate of 30% beginning February 1 when presenting the Union Budget. She was clear that there would be no exceptions or discounts, other than the amount of the transaction. She also stated that cryptocurrency presents will be taxed at the same rate as cash gifts. Private virtual currencies like Bitcoin, Ethereum, and others are not appropriate for usage in India, according to earlier statements from the RBI. It declared that it is creating its own digital currency for the central bank, which it intends to use after conducting its due diligence. The finance minister said in her Budget address that the RBI digital money will be used this year. Some individuals are worried about the high tax rate, though. They assert that the goal of this policy is to discourage investors and lessen the allure of cryptocurrencies. The new tax system will go into force on April 1 when the union budget has been approved by Parliament. According to the finance minister, cryptocurrency transactions will also be subject to a 1 percent TDS. Any loss incurred as a result of the transfer of digital assets is irrecoverable and cannot be made up for by income from other sources.

This does not imply, however, that cryptocurrencies are now accepted as legal tender in India. It only means that the government will start closely monitoring bitcoin transactions and officially recognizing cryptocurrencies as an asset class.¹³

CONCLUSION

Even with the Finance Minister's recent remarks, it is clear that there remains a lack of clarity in India about cryptocurrency restrictions. A digital currency regulatory guideline necessitates a methodical, well-organized, and nuanced approach, with proper regard for the law's engagement with its subjects. It is critical to recognise that digital money has become a global power. Bitcoin's value skyrocketed in 2020, prompting a slew of new financial backers to flock to the cryptocurrency. According to investigators, the new cryptographic money bill may have an impact on certain current investors who have already invested in digital private monetary forms such as bitcoin in the nation. The reason for this is because if the Center adopts the law based on the Inter-Ministerial Committee's (IMC) recommendation, private cryptographic forms of money would be forbidden in the nation, which would be a catastrophe given the country's existing crypto-financial situation.

Moreover because of the cross-jurisdictional nature of cryptocurrencies, international collaboration is required to solve the issue of protecting the integrity of financial institutions in the face of potential threats from criminal activity. A lack of coordination will only allow crooks to take advantage of the system. Policymakers should be vigilant in ensuring that encryption-based technology is kept up to date, since falling behind on these platforms would leave greater potential for criminal misuse and less room to intervene in the future. As previously said,

¹³ NDTV.com. 2022. How Will The New Cryptocurrency Tax Be Calculated? A Deep Dive. [online] Available at: <<https://www.ndtv.com/business/explained-cryptocurrency-tax-and-how-will-it-be-calculated-2747202>> [Accessed 10 February 2022].

cryptocurrencies are analogous to the usage of negotiable instruments in the sense that both have been used as a kind of private money outside of established legal systems. The potential benefits of the evolving money exchange system might be similar to those observed in the past with negotiable instruments. As a result, for the regulatory growth of cryptocurrencies and blockchain technology, striking a balance between rules aimed toward technical innovation and regulations focused on criminal activity is critical.

