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# TOKENIZATION OF DIGITAL COLLECTIBLES: ANALYSING REGULATORY FRAMEWORK AND LEGAL CHALLENGES RELATED TO NON-FUNGIBLE TOKENS

**Purva Kaushik***

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## ABSTRACT

*Blockchain technology is contributing to radical structural changes in digital industries and marketplaces today. It is responsible for the rapid increase in the pace at which the world is witnessing new technologies and their incorporation in our everyday lives. One such raging technological innovation is the tokenization of digital collectibles, more commonly known as non-fungible tokens. Such online exchanges operate through cryptocurrencies on a given trading platform and the purchasers tend to be lured by the uniqueness of the digital assets offered for sale, such as video clips, images, music, prints, and the like. However, the transactions involving NFTs as the subject matter are not sans major technical and legal challenges. Most recently, the first landmark ruling related to NFT exchanges, Zhe 0192 Min Chu 1008 (2022), has surfaced. The case has been heard and decided by a court of first instance in China, holding the marketplace, Bigverse, accountable for art theft and consequent copyright infringement of the NFT originally owned by Qice. Several stakeholders are reaching courts around the world with their legal grievances as the NFT technology gains popularity by the day. The present paper intends to examine the operation of smart contracts dealing with NFTs, ownership and licence rights, the copyright challenges surfacing from intellectual property perspective, the right of first sale doctrine, loopholes encouraging money laundering and several other legal issues related to such tokenization.*

**Keywords:** *Non-Fungible Tokens, NFT, Blockchain, Smart Contracts, Copyright Infringement.*

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# I. INTRODUCTION

Will you purchase a digital form of the selfie of a complete stranger? How much would you be willing to pay for it? Let us start our discussion with the viral case of Sultan Gustaf Al Ghozali.[1] Ghozali who became a millionaire by selling nearly 1000 of his selfie images as Non-Fungible Tokens (hereinafter referred to as "NFT") is a 22-year-old boy. He first began by converting and uploading his selfies as an NFT in 2017 on his account named "Ghozali Everyday" on the OpenSea marketplace.

The question that arises is - why would consumers purchase selfie images as an NFT. The answer lies in the exclusivity and uniqueness of these digital assets provided through the blockchain technology. The purchasers show interest in NFTs largely with either the intention of profiting in the reselling business or with the hope of finding utility of the particular NFT in Metaverse in the near future. The world is visibly moving towards digital universality and witnessing vanishing physicality simultaneously. NFTs set a classic example of the same. Considering the fact that NFT transactions are still in their nascent stage and not everyone is well aware of how these transactions take place in the digital world, it becomes pertinent to elucidate the meaning of NFTs as well as the technology behind their creation and transactions.

## 1.1 Technology Behind The Nfts

In their famous book titled "Blockchain Revolution", Don and Alex Tapscott explained that digital revolution may be conveniently divided into first and second generations. The first generation of this digital revolution has witnessed the Internet of Information taking over the digitized world. Now the second generation, which is highly dominated by the Blockchain Technology, is bringing the Internet of Value into the market and thereby reshaping the business world.[2] Non-fungible tokens are products of the rapidly growing blockchain technology. They are a category of digital properties that are developed and made transferable through means of the blockchain technology. An NFT represents uniqueness of an asset. It provides ownership and verifiable authenticity along with creating digital scarcity. It is a

1 Tech Desk, *Here's How a 22-year-old made $1 Million by Selling NFT Selfies*, THE INDIAN EXPRESS, (Jan. 17, 2022), https://indianexpress.com/article/technology/crypto/heres-how-a-22-year-old-made-1-million-by-selling-nft-selfies-7728112/.

2 DON TAPSCOTT & ALEX TAPSCOTT, BLOCKCHAIN REVOLUTION: HOW THE TECHNOLOGY BEHIND BITCOIN AND OTHER CRYPTOCURRENCIES IS CHANGING THE WORLD 4-7 (Penguin Publishing Group 2018).

form of virtual asset, each having a different and unique value.[3]

Multiple digital marketplaces such as Bored Ape Yacht Club, OpenSea, SuperRare, Rarible, Korbit, Mintable and Nifty Gateway operate in the cyberspace and act as a platform for sale and purchase of NFTs. In order to gain a better understanding of NFTs, it is pertinent to contrast them with fungible assets, such as cryptocurrencies. Though both work on the Blockchain Technology, NFTs are distinct from cryptocurrencies to the extent that cryptocurrencies as well as other physical/ digital assets are fungible in nature, i.e., they are exchangeable and replaceable.[4] Contrastingly, NFTs are unique and exclusive in nature. They cannot be exchanged 1:1 with the other NFTs.

### 1.2 Stages Of An Nft Model

Through an entire series of data unique to each NFT and stored in the blockchain, each of these NFTs provide authenticity to the uniqueness of the digital assets. Herein, this unique series of data attributed to each NFT on the blockchain may be inclusive of metadata, algorithm, thumbnails and content.[5] Here, tokens are the items which get associated with a particular smart contract in order to facilitate the sale of a certain digital asset. Coding of an NFT is typically done on the blockchain through a smart contract. An NFT can be minted on any blockchain that supports smart contracts. Most commonly, it is done on the Ethereum blockchain. Further discussion on the smart contracts can be found in the third section of this paper wherein the causes of concern are highlighted. The various stages of an NFT Model are as follows –

**Stage 1: NFT Digitization –** The owner of an NFT verifies the correctness of all the files, titles and descriptions. Thereafter, the raw data is digitized into an appropriate form.

**Stage 2: NFT Storing –** The raw data is then stored in a database which is outside the blockchain.

**Stage 3: NFT Signing –** The transaction along with the hash of NFT data is signed by the NFT owner and sent to the smart contract.

3 *Ibid.*

4 Oriol Caudevilla, *NFTs (Non-Fungible Tokens), An Area Full of Opportunities*, MNA MACAU OPINION, 1-2 (2021).

5 Cheong Ghil Kim, *A Study on Technology to Counter Copyright Infringement according to NFT Transaction Types*, 20 JOURNAL OF THE SEMICONDUCTOR & DISPLAY TECH., 187-191 (2021).

**Stage 4: NFT Minting and Trading –** When a transaction including NFT data is received by a smart contract, the process of NFT minting and trading initiates.

**Stage 5: NFT Confirming –** Once the confirmation of the transaction is received, the process of minting (issuing) is completed. At this point, it is recorded by the NFT in a unique address on the blockchain as an authentic and permanent proof.[6]

Here, minting is the process through which NFTs are issued. The stage wherein a digital asset is converted into an NFT and uploaded on a digital platform, is called minting. In the next section, an attempt to gather background information about digital artworks and NFTs shall be made.

### 1.3 Background Of The Nft Ecosystem

An NFT can be understood as an entry that is associated with a given digital asset on the blockchain. It was way back in October 2015, three months after the launch of the Ethereum blockchain that the first NFT project, Etheria was launched in London, UK. The year 2017 proved to mark a milestone in the world of NFTs. In this year, John Watkinson and Matt Hall realized that they could launch their own NFT project by creating unique characters that would be specific to Ethereum Blockchain. They decided that they would give different attributes to each character and no two characters would be same. By this method, they ensured providing different levels of scarcity, appeal and rarity to the characters. The project became famous as 'CryptoPunks'.[7]

After CryptoPunks gained popularity, multiple similar projects entered the business. However, it wasn't until the creation of ERC-721 token standard on Ethereum blockchain that the term 'NFT' was introduced. Today, the most widely used tokens on Ethereum blockchain are ERC-721 and ERC-1155. The first ever project on the ERC-721 was that of 'CryptoKitties'.[8] CryptoKitties is a virtual game based on the blockchain. It allows its players to adopt, breed, raise as well as engage in virtual trade of these cartoon versions of cats, each having different attributes and distinct in itself.[9] The NFT market grew tremendously since then. Today, one of the highest paying NFTs is 'Everydays: The First 5000 Days' created by an artist called Beeple

6 *Ibid.*

7 Lawrence J. Trautman, *Virtual art and non-fungible tokens*, 50(2) HOFSTRA LAW REVIEW, 361-426 (2022).

8 Tonya M. Evans, *CryptoKitties, cryptography, and copyright*, 47(2) AIPLA QUARTERLY JOURNAL, 219-266 (2019).

9 *Ibid.*

(professional name of Mike Winkelmann) and sold for $69.3 million in 2021 at the famous Christie's. It is a collection of 5000 digital images of 5000 consecutive days of Beeple's life, presented in the form of a collage. Logan Paul has also released his NFT trading card.

One of the most trending Bored Ape Yacht Club collections of NFTs are minted on the OpenSea marketplace for auction at whopping prices worth 70 ETH and above.[10] Sales are for a limited duration and the NFTs placed for sale are limited in quantity. If the description of the NFT mentions "1/1 limited-edition NFT" or "1/5 limited-edition NFT", etc., then it creates more scarcity. It indicates that this particular NFT has only 1 or 5 digital copies respectively. SuperRare is one such platform wherein NFTs can be a rarity and the platform can give a guarantee, based on limited edition. Otherwise, the purchaser has no such guarantee or protection against the printing or minting of more digital tokens of that same item, even millions of copies. But even these limited-edition agreements between the artists and the purchaser are usually informal and breach of such agreements might not cause any severe consequences as such.

## II. Causes of Concern Surrounding NFT

As one may expect, legal regulation is yet to catch up with the rapid technological advancements. Questions with respect to NFTs are abound, especially those concerning ownership/license rights, intellectual property rights, threat of insider trading, money laundering and other issues and applicable laws. In this section, some such legal concerns surrounding NFTs will be discussed in detail.

### 2.1 Smart Contracts And Copyright Concerns

A smart contract is essentially a program. Smart Contracts are made on the blockchain in association with NFTs in order to facilitate an automatic transfer of ownership of a digital asset at the time when a person makes the payment for ownership of that particular asset. Ethereum blockchain is the most representative and common platform used for NFT transactions using smart contracts. As earlier mentioned, the NFT related Ethereum token standards for smart contracts are ERC-721 and ERC-1155 token standards.

The matter of concern here is that these smart contracts do not actually provide

10 Daniel Van Boom, *Bored ape yacht club NFTs explained*, CNET (Mar. 27, 2024), https://www.cnet.com/culture/internet/bored-ape-yacht-club-nfts-explained/.

intellectual property rights. They also do not indicate the scope of rights of the purchaser around the purchase of the given digital asset. Some of the platforms for the purchase of NFTs do provide certain general terms & conditions that would apply to the sale of the digital assets minted on them. But majority of the platforms do not have any information to offer from the intellectual property perspective for the digital items you seek to purchase.[11] When we purchase a physical painting, unlike often mistaken, we do not get all the intellectual property rights in that particular painting. We do not have the scanning right or the right to take photographs of it or the right to reproduce it, without seeking authorization of the copyright owner. In other words, every time an idea gets converted into creation, a copyright is thereby created. Copyright is bound to exist the moment a work gets fixed in any tangible medium. For this purpose, neither publication nor registration of the given work with a copyright office is a requirement to get the copyright protection. It is considered to be inherent in that work.

Copyright is a right to prevent/exclude others from doing the following five things with the work without seeking the copyright owner's permission – (i) to display; (ii) to reproduce; (iii) to prepare the work's derivatives, such as the photograph of a statue or the music that is used in a video; (iv) to perform; and (v) to distribute.[12] For instance, if a TikTok video is made by a person and a song by another artist has been added to it, then upon uploading the video on TikTok, the creator of the video could exercise copyright over the video created and fixed into a tangible medium. But beyond that, the video creator may not enjoy the right of distribution of that video on any other platform such as by displaying and selling it as an NFT. This is so since the video creator does not have all the rights over all the components of that work.

Every person dealing in NFTs must always make sure that they have all the underlying rights which come into play upon creation of the work. Certain platforms have the availability of licenses for its users, such as TikTok which has certain licenses for the music artists. But very often, if the owner tries to distribute that same work on some other platforms, then he won't get the benefit of those licenses provided on TikTok. Another concern related to smart contracts is that often times, a smart contract may

11 Megan E. Noh, Sarah C. Odenkirk & Yayoi Shionoiri, *Gm! Time to Wake Up and Address Copyright and Other Legal Issues Impacting Visual Art NFTs*, 45 Columbia Journal Of Law & The Arts, 315-340 (2022).

12 Sean Sullivan, *"NFTs: Future or Fad?" Excerpts from a Practical Discussion of NFT Use Cases and Copyright Concerns Raised by NFT Offerings*, 45 Columbia Journal Of Law & The Arts, 365-370 (2022).

mention that a percentage of sale proceeds would go to the original NFT creator.[13] For instance, if the purchaser of an NFT buys it for a $100 USD from the original NFT creator and the NFT had a smart contract attached to it which mentions that 30% of the total sale proceeds would be automatically transferred to the person who originally minted the NFT in the marketplace, then, reselling of this NFT by the purchaser for $10,000 USD would lead to an automatic transfer of $3000 USD to the original NFT creator. This means that every new resale would add that particular percentage of sale proceeds to the wallet of the person who originally minted the NFT, as per the terms of the smart contract, if any, attached to it.

### 2.2 Right of Publicity Issue

The right of publicity issue is not the same as the copyright law. If an individual has a right of publicity issue, the situation will be such that this individual will have to receive rights from other people in order to be able to use the work. Every time the name or an image of a person is taken and used in a person's work, such person will have to ponder upon the following questions –

(i) Whether this work is receiving some sort of monetary benefit which that person would have otherwise received from their likeness? or

(ii) Whether this work is otherwise infringing any of the privacy rights of that person?[14]

So, we may arrive at the finding that right to publicity issue is a protection afforded against the misappropriation of an individual's name or likeness. The resultant effect of using a person's names, pictures or likeness in your NFT is that the user could face intellectual property issues while distributing their work as a piece of digital work or as an NFT. One must make sure that they have all of the rights such as the rights related to their own work and all the rights of works of others which have been incorporated into it.[15] For instance, if music of another artist is added to the work or the pieces of artwork created by other people have been incorporated into the work, then due permission must be obtained from the owner of rights over that work. Even if a statue is a part of the photo taken by a person, every attempt must be made to ensure that the rights to display such statue has been given by the owner of those rights. Additionally, in order to ensure that there are no violations of

13 *Supra* note 11.

14 Jiarui Liu, *Blockchain Copyright Exchange: A Prototype*, 69 BUFFALO LAW REVIEW, 1021-1094 (2021).

15 *Supra* note 12.

right to publicity, the requisite authorizations from the concerned persons that have been depicted in the work.

### 2.3 Ownership Rights under Copyright Law – The NFT Edition

When a physical asset such as a painting has been bought, we often tend to believe that we are receiving all of the rights related to it, which is usually not the case. In case of a painting, the rights received are limited to having physical possession of that piece of painting, holding that painting or putting it up on a wall. But we do not actually receive the five basic rights that are part of the bundle rights under the copyright law, such as –

(i) The right to reproduce;

(ii) The right to modify;

(iii) The right to distribute;

(iv) The right to perform; and

(v) The right to display[16]

Here, the right to display is in terms of receiving monetary benefits, such as the display of the purchased product in a paid exhibition, etc. The same situation of rights is applicable when an NFT is bought by a person. Upon purchasing an NFT, receipt of these five rights abovementioned is largely dependent on whether that particular marketplace has the license to provide those rights to a purchaser of NFT. The purchaser only gets the right of ownership over that particular copy that has been purchased, unless the smart contract attached to the NFT mentions other rights being given away by the owner along with the digital copy of the asset. Otherwise, it is devoid of any rights related to making copyright use of the item. Hence, scanning of the purchased digital copy, uploading it and selling it as an NFT will be prohibited under the copyright law.

It is only if there is a declaration in the smart contract attached to an NFT that the NFT purchased is "copyright free", will the purchaser have any of the five rights under copyright law as abovementioned, such as the right to reproduce and the right to distribute the NFT.[17] One may also find copyright licenses being used on these

16 Tonya M. Evans, *De-Gentrified Black Genius: Blockchain, Copyright, and the Disintermediation of Creativity*, 49 Pepperdine Law Review, 649-680 (2022).

17 Camille Brown, *Coded Copyright?: How Copyright Enforcement, Remuneration, and Verification Terms*

digital platforms. These copyright licenses are related to handing over of exclusive or non-exclusive rights to the purchaser by the copyright owner of the NFT. When non-exclusive rights are given by the NFT owner, it indicates the transfer of the right to reproduce, display and modify the given work.[18] But there are no formal promises attached. Non-exclusive right indicates that the purchaser would enjoy the freedom from any kind of law suits for copyright infringement under the contract terms, but the purchaser still won't enjoy the right to sue copyright owner for copyright infringements. On the other hand, exclusive rights would mean when the licensee does get the right to sue for copyright infringement.

### 2.4 The Defense of First Sale Doctrine

Under the copyright law, the first sale doctrine is often used as a legal defence by unauthorised sellers of works operating in marketplaces. According to the first sale doctrine, once a licensed product is sold in the market and a consumer has purchased it, the owner of that license gives up the license to that item as he has already earned through the product from its first sale.[19] Consequently, the original creator/license holder would no longer be controlling how or where the same product is resold by the first purchaser and subsequent purchasers. For instance, if an individual has a private collection of paintings, he can rightfully resell any painting from that collection without the requirement of any permissions from the creator of that painting, provided that he hasn't materially altered the item. Additionally, it can't be resold as a licensed product. Interestingly, the very nature of NFTs and the digital marketplaces is such that it renders a 'first sale' in the digital space impossible since it is a digital copy of the work which is added on the blockchain ledger.[20] The copyright law universally maintains that the nature of the work must be physical or tangible as a prerequisite to fall under the first sale doctrine. As a result, unauthorised sellers on the NFT marketplaces have to look for legal defence in other forms.

### 2.5 Concerns Related To Money Laundering

The NFT ecosystem, the high value NFTs in particular, can provide an attractive and conducive environment for facilitating money laundering and financing

*in Blockchain-Enhanced Contract Models for Online Art Sales Compare to their Traditional Counterparts*, 31 Southern California Interdisciplinary Law Journal, 617 (2022).

18 *Ibid.*

19 Katya Fisher, *Once Upon a Time in NFT: Blockchain, Copyright, and the Right of First Sale Doctrine*, 37 Cardozo Arts And Entertainment Law Journal, 629-634 (2019).

20 *Ibid.*

terrorism by criminals. The blockchain technology associated with NFTs provides for pseudo-anonymity during transactions. The parties here cannot identify each other. Furthermore, there is no means of verification of the source of funds utilised in the transactions. It, therefore, acts a feasible method for the legalisation of illegal incomes. Recently, in February 2022, the US Department of Treasury released a study titled "Study of the Facilitation of Money Laundering and Terror Finance Through the Trade in Works of Art".

The report identifies and analyses the manner in which money laundering and terrorist financing is being facilitated through art trade, including high-value digital art and NFT transactions.[21] As per the study report published, a variety of inherent qualities of the high-value NFT market were identified which makes it potentially vulnerable for a wide range of financial crimes and criminals. The traditional art markets now have certain regulations that surround appraisals and ensure the verification of source of funds used in transactions. Hence, the NFT art market, which is comparatively new, speculative and having various aspects that are alien to the participants, giving room to considerable grey area, appears to be prima facie suitable for financial crimes to flourish.

9.1 Formulas for Laundering Money through NFT Platforms

Certain identified ways in which money launders can use high-value NFT marketplaces to convert their illicit proceeds into legal income are as follows –

i. They may create a digital artwork. These are often artworks consisting of low effort and at times, even blank. These are generated algorithmically. Availability of code and metadata has simplified the process for fraudsters as they can just replicate the required algorithm to create works which are similar. Such NFTs have been sold for millions of dollars in the recent past.

ii. They may create artists too. Anonymous artist personas are quite common in the digital world. For instance, a digital creator named 'Pak' still remains unidentified. It is unknown whether Pak is a team/ group of creators or a single individual.[22] Behind the guise of anonymity, artists are free to mint and upload innumerable NFTs.

21 U.S. Department of the Treasury, *Study of the Facilitation of Money Laundering and Terror Finance Through the Trade in Works of Art* (April 3, 2024), https://home.treasury.gov/system/files/136/Treasury_Study_WoA.pdf.

22 Hans-Ulrich Obrist, *Hack the planet: Hans Ulrich Obrist talks with Pak*, ARTFORUM (Dec. 18, 2023), https://www.artforum.com/print/202207/hans-ulrich-obrist-talks-with-pak-88907.

iii. They may create a web presence. For this purpose, the servers in those jurisdictions are used which do not tend to cooperate with the international efforts at policing.

iv. They may trade their NFTs by acting as the buyer and seller, both. This is made practicable by the registration of two separate accounts (one for the purpose of selling and the other for the purpose of buying) and purchasing their own NFTs minted by them through the other account. This practice is commonly known as "wash-trading".[23] Another way is by forming a group of NFT creators wherein each of them would buy the other artist's NFT for a price much higher than the market rates, thereby inflating the value of the NFT in the eyes of subsequent purchasers.

There have also been instances wherein the NFT owners form communities within the NFT ecosystem. They, then, purchase each other's NFTs as anonymous entities, thereby increasing the resale price of those particular NFTs. However, there may come a dead end for these NFT owners to gain profits if no resale occurs at all i.e., no genuine buyer comes forward to buy the NFT at the whopping prices caused by that community's members scratching each other's back. The next section is dedicated to examining the legal status of NFTs in India.

### 2.6 Regulatory Challenges To Nft In India

In India, NFT transactions and users of the digital marketplaces have been around for over a decade now. Still, in the absence of any national regulatory framework, the sale and purchase of NFTs remains unbridled and chaotic. Some of the present laws that apply to NFTs in India are the securities law, copyright law and the tax law, among others.

### 2.7 Securities Law In India Vis-À-Vis Nft Trading

In the present scenario, NFTs are yet to gain categorisation as a security in the framework of SEBI. The question that arises is whether NFTs are mere contracts or whether they are derivatives because of their nature and properties as per provisions of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "SCRA"). It is noteworthy here that if the latter argument is true, NFT trading would be considered illegal in India. Under SCRA, the definition of the term 'derivative' is

23 EU Blockchain Observatory and Forum, *Demystifying Non-Fungible Tokens (NFTs)*, (June 11, 2024), https://blockchain-observatory.ec.europa.eu/document/download/3494c6fc-c61d-4193-b24a-28da803fc5fe_en?filename=DemystifyingNFTs_November%202021_2.pdf.

provided as "derivative" includes— (A) 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; (B) Derivative includes a contract which derives its value from the prices, or index of prices, of underlying securities.[24]

Additionally, *Section 18A* of the SCRA provides that derivative contracts are only valid if they are traded and settled on a recognized stock exchange in accordance with the laws of that exchange and the platforms proving for NFT trading are not recognized as yet. The non-fungible nature of NFTs and their inability to be replaced results in setting them apart from the other securities. Since NFTs are digital copies of existing assets and provide certification of their authenticity, giving them the designation of securities would be highly inappropriate. As a result, until there is legal recognition and categorization of NFTs as 'securities', the digital platforms for NFT trading would largely remain unregulated.

### 2.8 Tax Liability On NFT In India

As per the Finance Bill of 2024, NFTs are included within the category of 'virtual digital assets' by the Government of India.[25] The resultant effect is that they are subject to tax imposition at the rate of 30%. Since all cryptocurrencies are subject to tax liability as 'virtual digital assets' under the Income Tax Act, 1962, therefore NFTs are also considered as 'virtual digital assets' under the Finance Bill, 2022. This is based on similarity in the trading process of NFTs and cryptocurrencies as well as the storage of data on the Blockchain in both cases. Therefore, NFTs can be rightly called as a subset of cryptocurrencies.

## III. Uncertainty in Legality of Cryptocurrencies in India

A major hurdle in the path of NFT trading is the uncertainty attached to the legality of cryptocurrencies in India as they play a vital role in NFT transactions. On 6th April, 2018, the Reserve Bank of India (hereinafter referred to as "RBI") issued a circular whereby it cautioned the users and declared prohibition on dealing in cryptocurrencies. Aggrieved by this decision of RBI, entities that operated online assets exchange filed several petitions. Soon thereafter, the RBI circular was set aside by the Supreme Court of India on 24th March, 2020 in the case of *Internet and Mobile*

24 Securities Contracts (Regulation) Act, 1956, § 2(ac), No. 42, Acts of Parliament, 1956 (India).

25 The Finance (No. 2) Bill, 2024, No. 55 of 2024 (India), https://www.indiabudget.gov.in/doc/Finance_Bill.pdf

*Association of India v. Reserve Bank of India*[26], and further held that in the absence of any formal legislative ban on the use/ circulation of cryptocurrencies in the Indian trade market, the RBI circular of 2018 could not sustain on the ground that it was violative of the fundamental right under Article 19(1)(g) of the Indian Constitution.[27]

As an aftermath of this decision of the Supreme Court of India, the RBI issued a new circular whereby the banks and other relevant entities were instructed to exercise due diligence during transactions involving cryptocurrencies, bearing in mind the standards of Know-Your-Customer (KYC) guidelines and the Anti-Money-Laundering (AML) regulations. This is to ensure compliance with key provisions of the International Convention for the Suppression of the Financing of Terrorism, 1999 and the Foreign Exchange Management Act, 1999. In 2019, the Government of India came up with a draft bill titled the '*Banning of Cryptocurrency & Regulation of Official Digital Currency Bill, 2019*.' As per this Bill, the RBI would soon launch the official digital currency of India. Simultaneously, use of all private cryptocurrencies would see a blanket ban, with few exceptions. As a result, any type of direct or indirect trade in private cryptocurrencies would attract criminal liability for the participants, including imprisonment up to 10 years. However, the Bill could not be materialised into a law and has been withheld by the Government of India for further discussions thereon. In June 2024 Lok Sabha session, the Ministry of Finance was again questioned regarding the Bill, but its current status still remains in flux.

## IV. Solutions and Recommendations

Based on the findings of an analysis of the worldwide concerns related to NFT trading, in order to ensure the sustainability of NFTs and their value, the following recommendations may be taken into consideration -

i. If there could be standardized rules for easy interpretation of smart contracts, it would be easier for purchasers of NFTs to determine the extent of rights they have obtained along with the digital copy of the NFT.[28] As a result, any inadvertent copyright infringements on the part of the purchasers would be considerable reduced. Presently, most of them believe that they are getting more rights than they are actually getting.

26 Internet and Mobile Association of India v. Reserve Bank of India, 2020 SCC online SC 275.

27 INDIA CONST. art. 19, § 1, cl. g.

28 *Supra* note 19.

ii. There must be a formal establishment of standard terms & conditions to provide a clear presentation of the terms of use of every NFT. Especially under the Copyright Law of India, it would be beneficial for both the parties to have a clear pre-determination of the conditions for use of the NFTs, either in the form of a license agreement or in the form of an assignment agreement, in writing and duly signed by both parties.[29] This would further reduce the cases of copyright infringement in NFT trading as the buyer would have his rights well-defined and he would also be aware of the extent to which he can exploit the purchased NFT.

iii. As NFTs gain more and more popularity, there will be a flood of law suits. Therefore, there is an urgent need for legal reforms to accommodate NFTs and to provide legal recognition to them. Additionally, drafting specific regulatory frameworks would be extremely beneficial in the near future and in the long run, if NFTs are here to stay.

iv. The uncertainty around legality of cryptocurrencies in India must be removed at the earliest to get a better glimpse of the future of NFTs in India and worldwide. If the RBI is to launch an official digital currency of India, it would have to gain expertise in regulation of cryptocurrencies and NFTs, which won't be an easy task considering the various technical and legal nuances surrounding these digital assets and transactions.

## V. Conclusion

NFTs are trending worldwide today. The digital market is growing both in size and acceptance. Nonetheless, there is no denying that NFT trading and the digital marketplaces associated with them are surrounded by speculations and uncertainties. In the future, we can visualize NFTs moving beyond the limitations of sale and purchase of merely digital artworks. Rather, they may act as certificate of ownership of physical artworks and other physical assets as well. Though that would require an additional step involving the actual physical transfer of those items, but NFTs would be acting as quick and smart contracts to prove physical transfer of various items. It would further be extendable to land purchases and other forms of non-fungible items in our physical world. Most current platforms are designed for

29 Rebecca Carroll, *NFTs: The Latest Technology Challenging Copyright Law's Relevance Within a Decentralized System*, 32 Fordham Intellectual Property, Media & Entertainment Law Journal, 979-1009 (2022).

transactions in digital artwork and they are not too well adapted for non-fungible items in physical form. But they can definitely be modified to be more compatible with those physical items.

At present, the entire NFT model is operating on the *Laissez Faire* doctrine, without any form of government interventions. With few exceptions, majority of the NFT owners are not taking any action against others who might be displaying NFTs purchased by them. But, with the NFT market growing at a rapid pace, there is a need to put boundaries in order to retain the value of NFTs. Multiple questions still remain unanswered while more are arising. Questions such as the fate of NFT if the original work is destroyed, still need to be pondered upon.

On the one hand, NFTs could come in handy to detect and prevent cases involving counterfeits, but on the other hand, it has numerous risks and intellectual property issues involved, such as copyright infringements and claims of false ownerships, etc. There is a need for more clarity as to what are the exact rights a purchaser is owning when they are purchasing an NFT. Legal standardization at a global level is, therefore, the need of the hour.



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