Initial Coin Offering (ICO) - A new paradigm

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ABSTRACT: *An Initial Coin Offering (ICO) is the crypto-currency space's rough equivalent to an IPO in the mainstream investment world. ICOs act as fundraisers of sorts; a company looking to create a new coin, app, or service launches an ICO. Initial Coin Offerings (ICOs) provide rapid access to capital for new ventures, but suffer from drawbacks relating to non-regulation, considerable risk, and non-accountability, which has created controversy and raised questions about the mechanisms for regulation in an era of emergent crypto-currencies. This paper provides an understanding and review of the regulatory and other risks that ICOs pose for participants, which thereby situates ICOs in the underexplored domain of accountability.*

Key Words: : *Initial Coin Offering, ICO, Cryptocurrency, Regulation, Blockchain*

INTRODUCTION:

An initial coin offering (ICO) or initial currency offering is a type of funding using crypto-currencies. For the most part the procedure is finished by group financing, yet private ICO's are ending up increasingly normal. In an ICO, an amount of digital currency is sold as "tokens" ("coins") to theorists or speculators, in return for lawful delicate or other cryptographic forms of money, for example, Bitcoin or Ethereum. The tokens sold are advanced as future utilitarian units of money if or when the ICO's subsidizing objective is met and the venture launches.[1] At times like Ethereum the tokens are required to utilize the framework for its motivations.

An ICO can be a source of capital for startup companies.[2]ICOs can allow startups to avoid regulatory compliance and intermediaries such as venture capitalists, banks and stock exchanges. ICOs may fall outside existing regulations,[3]depending on the nature of the project, or be banned altogether in some jurisdictions, such as China and South Korea.

ICOs have been prone to scams and securities law violations.[4]While almost half of ICOs sold in 2017 failed by February 2018.Despite their record of failure and the falling prices of crypto-currencies, a record $7 billion was raised via ICO from January–June 2018[5]

MEANING OF ICO:

An Initial Coin Offering (ICO), also termed **token sale or crowdsale**, is a mechanism for raising capital through the emission of bitcoins to investors as a percentage of total newly issued currency in exchange for capital that may be legal tender or another cryptocurrency. ICOs sell cryptocurrencies or may sell a right of ownership or royalties to a project, in contrast to an Initial Public Offering (IPO) which sells a share in the ownership of the company itself. As such, it offers significant promise for new startups in the cryptocurrency space as means of quicker and easier capital raise. However, there are various regulatory and other risks that emerge from the ICOmodel, and they need to be situated within the accountability domain, as they are at the cutting edge of technological progress but raise concerns that match those highlighted in earlier periods, and therefore represent something of a re-visitation of regulatory & accountability issues, albeit in a new context.[6]

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[1]Company Halts ICO After SEC Raises Registration Concerns". SEC.2017

[2]Higgs, Stan (September 20, 2017). "Japanese Billionaire: ICOs 'Democratize Venture Financing'". CoinDesk

[3]"Carey Olsen and JTC advise ARC Fiduciary Ltd on Jersey's first ICO". Carey Olsen

[4]Chohan, Usman. "Initial Coin Offerings (ICOs): Risks, Regulation, and Accountability". Regulation of Financial Institutions Journal. Discussion Paper Series: Notes on the 21st Century. doi:10.2139/ssrn.3080098. Retrieved 8 February 2018

[5]Kharif, Olga (9 July 2018). "Half of ICOs Die Within Four Months After Token Sales Finalized". Bloomberg. Retrieved 13 July 2018

[6]https://cointelegraph.com/ico-101/what-is-an-ico-token-and-how-does-it-work, website on what is an ico token and how it works

PROCESS OF ICO:

ICO intrigued speculators purchase in to the offering, either with fiat cash or with prior advanced tokens like ether, bitcoin and so forth. In return for their help, financial specialists get another digital money token explicit to the ICO. Speculators trust that the token will perform extraordinarily well into the future, giving them an excellent degree of profitability. The company holding the ICO uses the investor funds as a means of furthering its goals, launching its product, or starting its digital currency. ICOs are used by startups to bypass the rigorous and regulated capital-raising process required by venture capitalists or banks.[7]

However, while IPOs deal with investors, ICOs deal with supporters that are keen to invest in a new project much like a crowd funding event. But ICOs differ from crowd funding in that the backers of the former are motivated by a prospective return in their investments, while the funds raised in the latter campaign are basically donations. For these reasons, ICOs are referred to as crowd sales. ICOs can be structured in a variety of ways. Now and again, an organization defines a particular objective or point of confinement for its financing, which implies that every token sold in the ICO has a pre-set cost and that the all-out token supply is static.[8] In different cases, there is a static supply of ICO tokens however a dynamic subsidizing objective, which implies that the conveyance of tokens to speculators will be needy upon the assets gotten (and that the more complete finances got in the ICO, the higher the general token cost). Still different ICOs have a dynamic token supply which is resolved by the measure of subsidizing got. In these cases, the cost of a token is static, yet there is no restriction to the quantity of absolute tokens, put something aside for parameters like ICO length.[9]

STATEMENT OF PROBLEM

[1] Whether ICO are securities?

[2] What are the crimes and investor risks that relates to ICO?

EXPLAINATION

The legal status of ICOs is unsettled at this point. If crypto-tokens are a form of currency, then the issuing startup may need to comply with know your customer (KYC) and anti-money laundering (AML) rules.[10] On the other hand, if they are a form of stock or security, startups must comply with certain Securities and Exchange Commission (SEC) regulations.[11]Conforming to either set of requirements is complex and expensive, but failure to do so can have serious repercussions. In addition, imposing the necessary controls often runs contrary to the philosophy of freedom, anonymity, and privacy that drives many of the people involved in block chain companies, whether crypto-tokens are currencies, securities, or something new entirely new also affects how they should be viewed from an economic standpoint. [12]

At the point when a cryptographic money startup firm needs to fund-raise through an Initial Coin Offering (ICO), it ordinarily makes an arrangement on a whitepaper which states what the task is about, what need(s) the undertaking will satisfy upon fruition, how a lot of cash is expected to attempt the endeavor, the amount of the virtual tokens the pioneers of the venture will keep for themselves, what sort of cash is acknowledged, and to what extent the ICO battle will keep running for. Amid the ICO battle, fans and supporters of the association's drive get a portion of the appropriated crypto coins with fiat or virtual cash. These coins are alluded to as tokens and are like offers of an organization sold to speculators in an IPO-type exchange. On the off chance that the cash raised does not meet the base supports required by the firm, the cash is comes back to the sponsor and the ICO is esteemed to be ineffective. On the off chance that the assets necessities are met inside the predefined time span, the cash raised is used to either initiate the new scheme or to complete it. As we say above, crypto-tokens are not exactly currency, and not exactly securities. They

[7] "Bankers Ditch Fat Salaries to Chase Digital Currency Riches". Bloomberg.com. 2017-07-25.

[8]Initial Coin Offerings (ICOs):Risks, Regulation, and Accountability 30 th November, 2017 Usman W. Chohan, MBA School of Business and Economics

[9]https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3088726, Initial Coin Offerings and Platform Building

[10] http://kyc-chain.com/ for an example of a startup focused on these issues, and Marcel T. Rosner & Andrew Kang, Understanding and Regulating Twenty-First Century Payment Systems: The Ripple Case Study, 114 Mich. L. Rev.

[11]Interested reader may wish to see the following paper for more discussion: "A Securities Law Framework for Blockchain Tokens", available at:https://www.coinbase.com/legal/securities-law-framework.pdf

[12]"ICOarray". icoarray.com.

can incorporate aspects of both, and also have characteristics that are entirely new. In addition, the crypto-tokens we see in the wild are extremely diverse, combining uses and traits in many variations.[13]

The most recent figures have demonstrated the quickly expanding rate of wrongdoing and extortion on the digital currency advertise, with cybercriminals perceiving the open door displayed by the sensational ascent of the cryptographic money showcase lately. One of every three ICOs contemplated had defects that made it workable for programmers to assault the ICO coordinators. Assaults could appear as capturing the email record of the ICO coordinator, or picking up instant message data from darknet shippers, or social designing systems to sidestep two-factor confirmation. When the record has been seized, assailants can reset the secret word for the ICO space or web have, and supplant the wallet address. Half of the ICO projects studied contained vulnerabilities in ICO web applications, the report found. Some of these involved the security of the blockchain and its backend implementations, while others involved more general issues with code injection, web server disclosure of sensitive information, insecure data transfer, and arbitrary file reading.[14]

Some ICO groups make versatile applications to make the activities progressively helpful for speculators to get to. In any case, 100% of ICO portable applications considered contained vulnerabilities. These applications additionally contained 2.5 occasions a bigger number of vulnerabilities than web applications, the report found. The most common flaws found included insecure data transfer, storage of user data in backups, and session ID disclosure.[15]

BRIEF HISTORY OF ICO:

According to CB Insights[16], "2017 was a record year for equity deals and dollars to blockchain startups, but it was nothing compared to ICO market activity. ICOs raised over $5B across nearly 800 deals in 2017, while equity investors deployed $1B in 215 deals to the sector." As the ICO space gets bigger and bigger, so too have the largest ICOs in history. When evaluating ICOs by size, one can consider both the amount of money raised in the ICO as well as the return oninvestment. Sometimes ICOs with a remarkable return on investment are not among the highest-earning projects, and vice versa. Ethereum's ICO in 2014 was an early pioneer, raising $18 million over a period of 42 days.[17]Ethereum has proven to be crucial for the ICO space in general, thanks to its innovations with regard to decentralized. In 2015, a two-phase ICO began for the company Antshares, which later rebranded to become NEO. The first phase of the ICO ended in October of 2015, and the second continued all the way until September of 2016. During this time, NEO earned about $4.5 million. While it is not one of the largest ICOs in terms of money raised, it has provided exceptional ROI for many early investors. The price of NEO at the time of the ICO was about 3 cents, and at its peak it traded at roughly $50, marking an increase in price of about 150,000%. More recently, ICOs have generated significantly larger amounts in terms of total funds raised. The largest ICO by this metric is filecoin, a decentralized cloud storage project. During a one-month ICO ending in September of 2017, filecoin managed to raise about $257 million. [18]

TYPES OF ICO:

Two sorts of ICOs are dynamic in the market. One sort fund-raises to finance another virtual cash or blockchain venture that expects to reflect the runaway achievement of the Bitcoin or Ether. These ICOs hold out the bait that the tokens can be traded for the new virtual cash, when it takes off. The other arrangement of ICOs essentially fund-raise to subsidize tech new businesses. Here, token deals supplant conventional capital sources, for example, holy messenger financing, swarm subsidizing, investment financing or even IPOs. The desire is that the tokens will acknowledge in an incentive with the hidden business.[19]

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[13]CoinDesk ICO Tracker". CoinDesk. September 1, 2017

[14]"The ICO bubble is about to burst...but that's a good thing". Wired. 12 December 2017

[15]Clements, Lana (2017-09-17). "Bitcoin scam alert: ICO fraud warning for investors from watchdog". Express.co.uk. Retrieved 2017-10-10

[16]See http://www.cbinsights.com/research/blockchain-vc-ico-funding. Other sources provide estimates of similar orders of magnitudes. For example, Coinschedule reports $3.7 billion of ICO proceeds in 2017

[17]Rooney, Kate (2018-05-01). "Ethereum falls on report that the second-biggest cryptocurrency is under regulatory scrutiny". CNBC. Retrieved 2018-09-11

[18]"The Ultimate List of ICO Resources: 18 Websites That Track initial Cryptocurrency Offerings". www.startupmanagement.org. Retrieved 2017-05-31

[19]http://www.accessecon.com/Pubs/VUECON/VUECON-17-00008.pdf, article on Blockchain and the economics of crypto-tokens and initial coin offerings.

The word 'informal' is key to understanding ICOs. While your rights in the case of shares bought in an IPO are legally protected by the elaborate securities market regulations of your country, the legal status of ICO 'tokens' is up in air because many countries, including India, haven't yet framed any regulations for them.[20]
Organizations that fund-raise through IPOs are required to record and get endorsement for an itemized plan from controllers and give progressing revelations to speculators. ICOs, nonetheless, skirt every one of these guidelines and essentially issue a white paper outlining out field-tested strategies.The individual token classifications are not mutually exclusive. Resource and utility tokens can likewise be delegated installment tokens (alluded to as half breed tokens). In these cases, the necessities are total; as such, the tokens are esteemed to be the two securities and methods for installment. In some ICOs, tokens are as of now put into course at the purpose of raising money. This happens on a previous blockchain. In different sorts of ICO, speculators are offered just the prospect that they will get tokens sooner or later and the tokens or the fundamental blockchain stay to be created. This is alluded to as pre-financing. Pre-deal speaks to another conceivable change. For this situation, financial specialists get tokens which qualifies them for obtain other distinctive tokens sometime in the future.
Should the tokens anytime fall under Asset tokens or SEBI's administrative system on the issuance of a "security", at that point SEBI should have a state. Alternate guidelines, for example, Prevention of Money Laundering, Collective Investment Schemes and Deposits under Companies Act ought to likewise be considered as a solitary direction note to the issuance of an ICO.A guideline / guidance, for example, this would foreshadow well for Indian business visionaries to have an ICO in India and with lucidity. It additionally gives a decent base to the expense specialists to assess the monetary advantages in like manner.[21]

BENEFITS OF ICO:

In an IPO, an investor receives shares of stock in a company in exchange for her investment. In the case of an ICO, there are no shares to speak of. Instead, companies raising funds via ICO provide a blockchain equivalent to a share: a cryptocurrency token. In most cases, investors pay in a popular existing token like bitcoin or ether and receive a commensurate number of new tokens in exchange.[22]
It's worth noting just how easy it is for a company launching an ICO to make tokens. There are online services such as Token Factory that allow for the generation of cryptocurrency tokens in a matter of seconds. Investors should keep this in mind when remembering the differences between a share of stock and a token; a token does not have any inherent value. ICO managers generate tokens according to the terms of the ICO, receive them, and then distribute them per their plan by transferring them to individual investors.
Early investors in an ICO operation are usually motivated to buy cryptocoins in the hope that the plan becomes successful after it launches. If this comes to pass, the value of the tokens they bought amid the ICO will move over the value set amid the ICO itself, and they will accomplish generally speaking additions. This is the essential advantage of an ICO: the potential for astonishing returns.
In reality, ICOs have made numerous financial specialists into moguls. Investigate the figures for 2017: That year, there were 435 effective ICOs, each raising a normal of $12.7 million...the aggregate sum raised for 2017 was $5.6 billion, with the 10 biggest tasks raising 25% of this aggregate. Further, tokens acquired in ICOs restored a normal of 12.8x the underlying interest in dollar terms. [23]
The ICO space keeps on swelling at an enormous rate. In the principal quarter of 2018, ICOs got $6.3 billion in assets, as of now outpacing the whole 2017 aggregate in only 59% the same number of unmistakable ICO ventures.[24]

RISKS AND CRITICISMS OF ICO:

Despite the fact that there are effective ICO exchanges on record and ICOs are ready to be troublesome inventive devices in the advanced period, financial specialists are forewarned to be watchful as some ICO or

[20]https://www.nber.org/papers/w24418, article on Initial coin offerings and the value of crypto tokens
[21]https://www.nber.org/papers/w24774, Initial coin offerings: Financing growth with cryptocurrency token sales
[22]https://www.investopedia.com/terms/i/initial-coin-offering-ico.asp, Initial Coin Offering (ICO) - Investopedia
[23]https://icowatchlist.com/education/advantages-of-investing-in-icos, Advantages of investing in ICOs
[24]https://www.chaineum.com/blog/benefits-of-an-ico-over-traditional-investment, Benefits of an ICO Over Traditional Investment?

crowdsale crusades are really deceitful. Since these raising money agents are not directed by budgetary experts, for example, the SEC, reserves that are lost because of fake activities may never be recuperated. [25]
The quick ICO flood in 2017 acquired guidelines from a progression of legislative and nongovernmental, toward the beginning of September, 2017, the People's Bank of China formally restricted ICOs, referring to it as troublesome to monetary and money related soundness. The national bank said tokens can't be utilized as money available and banks can't offer administrations identifying with ICOs. Thus, both Bitcoin and Ethereum tumbled, and it was seen as a sign that guidelines of digital forms of money are coming. The boycott additionally punishes contributions effectively finished. In mid-2018, Facebook, Twitter, and Google all restricted ICO notices.[26]

To make sure you don't get scammed when you invest in an ICO, follow these steps:[27]

- Make sure that project developers can clearly define what their goals are. Successful ICOs typically have straightforward, understandable whitepapers with clear, concise goals
- Know your developers. Investors should expect 100% transparency from a company launching an ICO. This means that you should know who is involved in the project, what their business plans are, where they are located, what the timeline for the project is, and so on.
- Look for legal terms and conditions set for the ICO. Because outside regulators generally do not oversee this space, it is up to you as an investor to ensure that any ICO you buy into is legitimate.
- Make sure that ICO funds are being stored in an escrow wallet. This is a wallet which requires multiple keys in order to be accessed. This is a useful protection against scams, particularly when a neutral third party is a holder of one of the keys.

There is no real way to ensure that you won't be on the losing end of a trick when you put resources into an ICO (For additional, see: How to Identify Cryptocurrency and ICO Scams). That is a hazard that you should be eager to take. Then again, ICOs can offer huge rewards also. [28]The key for financial specialists is to play it safe to abstain from settling on silly or uneducated choices, and to learn however much as could reasonably be expected about the ICO world so as to best benefit from its phenomenal potential.
The investors on the other hand should be aware of the general security guidelines:

- Password strength is of utmost importance. All passwords should be setup as complex as possible and never reused on other services. Likewise, the security guidelines impose that they should be frequently changed.[29]
- Two-factor authentication should be used whenever it is available. One of the best approaches would be to use the Google Authenticator service in combination with SMS messages.
- All potential hyperlink interactions should be examined before actioned upon. Official sources like blogs and websites should be the only sources of trusted information.
- Wallet transactions should be monitored at all times.
- Sending money to smart contract without inspecting the outgoing profile is not recommended.
- Standalone wallets should be used for money transactions instead of exchange or web-hosted ones

In all cases, users should utilize a quality anti-spyware solution in order to guard themselves against computer threats that can hijack the acquired cryptocurrency.[30]

LEGAL IMPLICATIONS:

The capital market regulator Securities and Exchange Board of India (SEBI) is planning to bring Initial Coin Offerings (ICO) under its existing legal[31].

[25]https://techcrunch.com/2017/09/19/the-technology-benefits-risks-and-regulatory-measures-that-you-need-to-know-about-icos-now/, the technology benefits and risks of ico technology
[26]https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3064397, paper on legal challenges of ICO
[27]https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3080098, paper on initial coin offerings (ICOs): Risks, regulation, and accountability
[28]https://www.inc.com/sonya-mann/invest-in-ico-pros-cons.html, pros and cons of investing in ICO
[29]https://www.reuters.com/article/bc-finreg-bitcoin-ico/initial-coin-offerings-present-dangers-to-investors-new-challenge-for-u-s-regulators-idUSKBN1942HF, challenges involved in ICO
[30] https://www.coindesk.com/legal-risk-icos-private-lawsuits-securities-laws, The Legal Risk to ICOs That No One's Talking About - CoinDesk
[31]currentaffairs.gktoday.in/tags/initial-coin-offerings © GKToday

The RBI circular has been recently challenged in the Supreme Court. On the other hand, the Government had also constituted an Inter-Disciplinary Committee in 2017 with various stakeholders, including the RBI and the Securities Exchange Board of India (SEBI), to evaluate the existing legal regime on cryptocurrencies and to propose measures for dealing with them. This post discusses the application of the existing securities law to initial coin offerings (ICO) in India. Further, it compares the treatment of securities in India and United States. Finally, the post proposes certain measures SEBI can adopt to regulate ICOs that offer coins analogous to securities. SEBI regulations may apply to ICOs if the coins offered satisfy the definition of "securities" under section 2(h) of Securities Contract (Regulation) Act, 1956 (SCRA). The SCRA provides an inclusive definition of security.[32]

The term securities includes:[33]

i. 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;

a. Derivative;

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

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

d. Units or any other such instrument issued to the investors under any mutual fund scheme;

ii. Government securities;

iii. Such other instruments as may be declared by the Central Government to be securities;

iv. Rights or interest in securities.

The instruments mentioned in the definition above have an underlying capital asset. Although not all coin offerings are accompanied by an underlying asset, there are certain 'asset coins' that provide a debt or equity claim against the issuing entity. These asset coins are analogous to the instruments mentioned above. Even if the coins or tokens do not strictly fall under the terms "shares" or "debentures", they may fall under the expression "other marketable securities of a like nature in or of any incorporated company or other body corporate".[34]

The Supreme Court has held in Bhagwati Developers Pvt. Ltd. v. Peerless General Finance [35]held that "marketable securities of a like nature" means that the securities should be freely transferrable. The same was upheld in the case of Sahara India Real Estate Corporation[36]

Limited v. Securities and Exchange Board of India[37] wherein the Court held that a marketable security will clearly fall under the ambit of section 2(h) of SCRA and that marketable means "capable of being sold". Hence, there should be no restriction on the transfer of these asset coins offered through the ICOs for SEBI to have jurisdiction over the same.[38]

Further, these coins should be issued by an incorporated company or a body corporate to come within the ambit of securities under section 2(h) of SCRA. A body corporate has been defined inclusively under section 2(11) of the Companies Act, 2013 and includes company incorporated outside India. However, there are instances where coins are issued by unincorporated entities, and coins issued by such entities may fall outside the purview of securities under SCRA.[39]

The definition of securities is quite restrictive in India. As a result, most ICOs will fall outside the ambit of the SEBI regulation. It will be interesting to compare the treatment of securities in India with that of United States. In the United States, security is defined as "investment in a common venture premised on a

[32]https://cryptovest.com/news/in-the-world-of-icos-the-legal-implications-of-ico-tokens/, In the World of ICO's: The Legal Implications of ICO Tokens - Cryptovest

[33] https://cryptovest.com/news/in-the-world-of-icos-the-legal-implications-of-ico-tokens/, In the World of ICO's: The Legal Implications of ICO Tokens - Cryptovest

[34]https://www.coindesk.com/legal-risk-icos-private-lawsuits-securities-laws, The Legal Risk to ICOs That No One's Talking About - CoinDesk

[35]Bhagwati Developers (P) Ltd. v. Peerless General Finance Investment Co. Ltd., (2013) 5 SCC 455

[36]https://icobench.com/thebench-post/71-how-to-analyze-anico, How to analyze an ICO?

[37]Sahara India Real Estate ... vs Securities & Exch.Board Of India & on 31 August, 2012

[38]https://cryptopotato.com/10-keys-evaluating-initial-coin-offering-ico-investments/, 10 keys for evaluating Initial Coin Offering

[39]Securities Contract Regulation Act 1956

reasonable expectation of profits to be derived from entrepreneurial or managerial efforts of others"[40]. Further, the "issuer" under section 2 of the Securities Act, 1933has been defined as "any person who issues or proposes to issue any security….". The definition of "person" under section 2 of the Securities Act, 1933 includes unincorporated organization.

Hence, securities can be issued by even unincorporated entities in United States.The United States Securities Exchange Commission in its Report 21(a) concluded that coins or tokens offered by a certain organisation DAO[41] are securities. DAO refers to Decentralized Autonomous Organization, which is a virtual organization borne out of a computer code and executed on a blockchain protocol. Hence, such organisations are not incorporated in any jurisdiction. DAO was a creation of Slock.it and its co-founders. DAO would hold a corpus of assets through the sale of tokens to investors. These assets would then be used to fund certain "projects". These investors would also get dividends from the anticipated earnings from the projects. The investors also had limited voting rights.[42]

They could vote on whether funds should be spent on a specific project. Slock.it and its co-founders, and the DAO Curators monitored the operations of the organisation and decided which proposed projects should be put up for a vote. DAO tokens are an interesting example because the token holders could re-sell the tokens on online platforms, hence allowing secondary trading of the tokens. DAO tokens satisfied the definition of securities under the United States law.

However, it is likely that the DAO tokens will not be treated as a security within the Indian laws and regulations. Though the DAO tokens are marketable and have an underlying asset, section 2(h) of SCRA requires the issuer to be an incorporated company.[43]

ANALYSIS OF ICO:

While certain countries have introduced detailed guidelines regulating ICOs, India presently does not have any regulatory framework governing ICOs. An absence of a clear regulatory regime, has however, left the ICOs, in an uncertain space riddled with regulatory pitfalls. While the Government has not declared ICO's and cryptocurrencies as 'illegal' per se, the Reserve Bank of India ("RBI") has, over the past few years issued advisories cautioning users, holders and traders of virtual currencies ("VCs") including Bitcoins regarding the potential economic, financial, operational, legal, customer protection and security related risks associated in dealing with such VCs, and stating that creation, trading or usage of VCs, as a medium of payment is not authorized by it. [44]

Indian Government concurs with the view that technological innovations, including thoseunderlying in VCs, such as the blockchain technology, have the potential of improving the efficiency and inclusiveness of the financial system, the recent developments prohibiting banks and other payment system providers from dealing with and/or providing services related to VCs (which as a consequence also affects ICOs) have triggered further uncertainty in an already cloudy regulatory framework governing VCs and ICOs in India.

The RBI's strict stand possibly emerges from its long-drawn concerns inter alia of consumer protection, market integrity and money laundering vis-à-vis VCs, however, the fact still remains, that many countries have moved ahead from their initial hesitancy and gone forward with recognizing VCs and ICOs albeit under a proper regulatory regime. Already, the climate of regulatory uncertainty towards VCs and consequently ICOs, has resulted in many issuing companies floating their ICOs in foreign markets and shifting their operations base to jurisdictions which are more receptive to ICOs.[45]

Given this disruptive potential of this new method, we are advocating to pay close attention and run sandbox experiments to allow some high-quality ICOs, because India can be a major beneficiary of the capital that can come in to support Indian start-ups.[46]

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[40]SEC v. W.J. Howey Co., 328 U.S. 293, 301 (1946

[41]Data Access Object

[42]https://www.forbes.com/sites/mariyayao/2017/10/09/demystifying-icos-the-good-the-bad-and-the-ugly/, the good and bad of ICO

[43]https://hacked.com/ico/, Initial Coin Offering (ICO) News & Analysis - Hacked

[44]REFER PG NO. 10 .UNDER LEGAL IMPLICATION

[45]Forbes, https://www.forbes.com/sites/kenrapoza/2017/09/25/after-crackdown-nearly-every-chinese-ico-returns-cash-to-investors/#14b30f3b19ff

[46]https://www.ccn.com/the-future-of-icos, The Future of ICOs and the Potential of Securities Token Offerings - CCN

FUTURE OF ICO:

"Blockchaining India's Digital Future - Blockchain and ICO", concluded on a highly successful note in Mumbai. The day-long event aimed to increase awareness and knowhow on blockchain technology and its implementation across various sectors of the Indian economy.[47] Pravash Dey, CEO Indian Blockchain Council said "IBC and Startup India must join hands together in order to build the most stable blockchain ecosystem across the world. IBC being the official chapter for Blockchain Technology across country plans to join hands with all the state government in order to build the solutions over it. We are also now focusing over the Smart Cities and how blockchain will be an effective technology that can be helpful to build better solution for the Smart Cities."[48]

CONCLUSION:

ICO is the future of fundraising. Regulation is necessary in ICOs field, not only in order to protect investors (which should be the main objective) but also to avoid legal uncertainty which, if not addressed, could render some burden to companies which has a serious investing potential. It is the responsibility of the investor to do his or her due diligence before investing in any ICO. While regulations can help to reduce the investment risk, the best risk reduction practice is extensive research and preparation.

REFRENCES:

- https://cointelegraph.com/ico-101/what-is-an-ico-token-and-how-does-it-work, website on what is an ico token and how it works.
- https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3088726, Initial Coin Offerings and Platform Building
- http://www.accessecon.com/Pubs/VUECON/VUECON-17-00008.pdf, article on Blockchain and the economics of crypto-tokens and initial coin offerings.
- https://www.nber.org/papers/w24418, article on Initial coin offerings and the value of crypto tokens
- https://www.nber.org/papers/w24774, Initial coin offerings: Financing growth with cryptocurrency token sales.
- https://www.investopedia.com/terms/i/initial-coin-offering-ico.asp, Initial Coin Offering (ICO) - Investopedia
- https://icowatchlist.com/education/advantages-of-investing-in-icos, Advantages of investing in ICOs
- https://www.chaineum.com/blog/benefits-of-an-ico-over-traditional-investment, Benefits of an ICO Over Traditional Investment?
- https://techcrunch.com/2017/09/19/the-technology-benefits-risks-and-regulatory-measures-that-you-need-to-know-about-icos-now/, the technology benefits and risks of ico technology
- https://www.coinist.io/what-is-an-ico-pre-sale-are-they-worth-the-risk/, website on risks involved in ICO
- https://www.reuters.com/article/bc-finreg-bitcoin-ico/initial-coin-offerings-present-dangers-to-investors-new-challenge-for-u-s-regulators-idUSKBN1942HF, challenges involved in ICO
- https://www.forbes.com/sites/mariyayao/2017/10/09/demystifying-icos-the-good-the-bad-and-the-ugly/, the good and bad of ICO.
- https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3080098, paper on initial coin offerings (ICOs): Risks, regulation, and accountability
- https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3064397, paper on legal challenges of ICO
- https://www.inc.com/sonya-mann/invest-in-ico-pros-cons.html, pros and cons of investing in ICO
- https://medium.com/blockchain-review/law-and-legislation-for-icos-6dddc12bbbb2, website for Law and legislation for ICOs – The Blockchain Review – Medium
- https://cryptovest.com/news/in-the-world-of-icos-the-legal-implications-of-ico-tokens/, In the World of ICO's: The Legal Implications of ICO Tokens - Cryptovest
- https://www.coindesk.com/legal-risk-icos-private-lawsuits-securities-laws, The Legal Risk to ICOs That No One's Talking About - CoinDesk
- https://cryptopotato.com/10-keys-evaluating-initial-coin-offering-ico-investments/, 10 keys for evaluating Initial Coin Offering
- https://icobench.com/thebench-post/71-how-to-analyze-anico, How to analyze an ICO?
- https://hacked.com/ico/, Initial Coin Offering (ICO) News & Analysis - Hacked
- https://www.ccn.com/the-future-of-icos, The Future of ICOs and the Potential of Securities Token Offerings - CCN

[47] https://www.coindesk.com/the-future-of-icos-in-the-hands-of-regulators-or-innovators, The Future of ICOs: In the Hands of Regulators or Innovators

[48] Vishal Nigam, Co-Founder/CEO Blockstein and Chairman Indian Blockchain Council said, "2017