

THE LEGAL STATUS OF BITCOIN IN THE SHARIAH PERSPECTIVE

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Abstract:

Money is the basic need and primary tool for human to fulfill their needs. It has been used as a medium of exchange in all over the world. Money has a very rich evolutionary history. Its journey starts from barter system and has reached to the digital shape known as Crypto currencies. Crypto currency is not only considered a big revolution in the history of currency but it also affected the Fintech as well. Bitcoin is the first crypto currency which was generated in 2009. Its legal monetary position is controversial as some countries accept it as a currency while other refused it as legal currency. Technical opinions have been given by the experts and the pros and cons have been explored from all around the globe. The established research regarding Shariah legitimacy of Bitcoin is much little. Therefore, the fundamental purpose of this research is an attempt to fill this gap by exploring the Shariah legitimacy of Bitcoin under the interpretation of indigenous Shariah scholars. The overall approach of the study is qualitative in nature while Phenomenology is adopted as a research strategy. The scope of the study is limited to the experiential views of Pakistani Shariah scholars, located in Peshawar the capital of Khyber Pakhtunkhwa province Pakistan. The research concluded that Bitcoin is not impermissible due to some legal issues attached to it. However, Shariah has not recommended any features nor has defined any characteristics for money. Also, it is not compulsory for currency to be physical. It could be physical as well as digital. The decentralization and non-regulatory system of Bitcoin violates the rule “preservation of wealth” which is one of the prime objectives of Shariah. It could be declared dislike or non-desirable at most. It is recommended that the status of Bitcoin should be placed in front of international Islamic Fiqh Academy for its universal legitimize status.

Keywords: Bitcoin, Characteristics of Money, Crypto Currency, Fatawa, Shariah Scholars,

1. Introduction

Crypto currency is a big evolution in financial world in this decade. Bitcoin is the first digital currency which was generated in 2009. This currency generated through an operational system called block chain. It is decentralized in nature, so not any government, institute or other authority control it. When it was introduced, it attracted the experts and financiers to look out its pros and cons. A lot of research has been done in this regard and technical opinions have been given in the West. However,

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its legitimacy is not clear at all but it is used as a currency in many countries around the globe. Some of nations behave it like an asset. Many transactions are made through this currency.

When Bitcoin succeeded to make place in conventional market then the Islamic financial institutions began to work on its Islamization and work to explore its Islamicity. Different opinion came regarding *Shariah* perspective around the globe. Some of the scholars declared it an asset, some are of opinion that it is nothing but digits and the rest of the scholars are waiting and see option. Different discussions were made regarding to different aspects of Bitcoin. Different *fatawa* has also been issued from the world famous Islamic Institutions. Some *fatawa* have been issued from Pakistan as well. Therefore, this research will analyze these *fatawa* juristically and will explore these local and indigenous *Shariah* interpretations of Bitcoin. The purpose of this research is to investigate the interpretation of local *Shariah* Scholars regarding Bitcoin status in the light of available *fatawa*. To achieve the purpose, this study made the certain objectives which are: to explore the local and indigenous *Shariah* interpretation of Bitcoin, to explore the characteristics of Bitcoin through *Shariah* perspective, and to explore of indigenous *fatawa* issued in Pakistan.

Fintech an abbreviation of financial technology has been changing the financial industry in the last two decades. It is rapidly growing with the innovation of technologies in financial world. Crypto currency is a type of Fintech which has been used in many countries of the world as currency. It is considered as a revolution in financial technology as well because it totally different in nature from paper money. Our research will be focused on Bitcoin which could help the Islamic institution and business concerns to clear the status of Bitcoin in *Shariah* perspective. The rationale behind this research is that the work on the status of Bitcoin in *Shariah* perspective is. Moreover, there is no literature which explores the local interpretation which clears the phenomena of Bitcoin. Faraz (2018) conducted a good research about digital currency, its characteristics in *Shariah* perspective but it could not explore local interpretation. In addition to it, Paracha (2018) conducted a study in which he discussed virtual currencies and their *Shariah* status under the general rules of *Shariah* but he also fail to provide its local interpretation. In addition to it, the study is related to virtual currencies in general and not focuses on Bitcoin particularly. This research will explore the status of Bitcoin under the local interpretation of *Shariah*. It hasn't been done yet and it will clarify the confusion in local community to understand the status of Bitcoin in the light of *Shariah*.

2. Literature Review

2.1 Introduction of Bitcoin

Bitcoin is considered a big evolution in financial world in this decade. This is the first digital currency which was generated by an unknown person or by a group named “Satoshi Nakamoto” in 2009. It is decentralized in nature, any government, any institute or any other authority could not control it. It can be exchanged on block chain. “It uses peer-to-peer technology to operate with no central authority: transaction management and money issuance are carried out collectively by the network” (Muftic, 2016). It was quite new and strange experience for the financier as well as for the finance institutions because of its feature and the nature of transaction. When it launched, it attracted the experts and financiers to look out its characteristics and pros and cons of it. A lot of research has been done from technical aspect and different opinions and suggestions have been given in this regard. Its legitimacy is not clear at all but it is used in many countries around the world. “It is a decentralized digital currency that enables instant payments to anyone, anywhere in the world which remove the need of trusted third party”(Koepl, 2017).

When Bitcoin succeeded to make access in conventional market then the Islamic financial institutions thought to find out its credibility and permissibility with in the *Shariah* context. Different opinion and *fatawa* has been given some opinions favor its permissibility while others don’t consider it *Shariah* comp liance due to its nature. Different discussions came from different aspects. Many *fatawa* has been issued from the world famous Islamic Institution. Some *fatawa* have been issued from Pakistan also. This study will analyze these *fatawa* juristically and will explore these local interpretations of Bitcoin.

2.2 Operation of Bitcoin

Block chain is the revolutionary technology behind Bitcoin and other crypto currencies. Block chain contains all the details of every Bitcoin transaction, done in the past and present and then record them as they take place in every moment. In a short we can say that block chain is a technology by which a Bitcoin could move from one individual to another. For example: if “A” wants to send Bitcoin to his friend “B”. He will ultimately go to hit the “Send button”. When he pushes it the transaction will added to a block. Each of the new blocks is already linked to the previous to ensure a chain of accepted transaction history. In this way it protects the network, users, and vendors in the same way. Financial benefits involve the nodes for this verification. They charge some amount for verification of the blocks. We can say that the block chain system is the ledger which solves the trust issue for the Bitcoin to verify the transaction. According to the (Thomas, 2017, p. 3)

2.3 Characteristics of Block chain

There are four characteristics of Bitcoin which are as below.

2.3.1 Consensus

All the participants must agree to follow the rules for any transaction on the block chain to be accepted record. This is the way of consensus. If anyone violates the rules of network which are unanimous for all participants the transaction will be considered invalid. The consensus allows each participant to trust the network.

2.3.2 Provenance

Provenance means that each asset's must be traceable whatever of nature it has. Participants must know all the process of, where the assets brought from and how its ownership has changed after that

2.3.3 Immutability

Immutability implies on the meaning that nobody can make change in a transaction after it has been recorded on the ledger. Once a transaction is done, you do not have the power to undo or remove the record.

2.3.4 Finality

There is only one truth exists in the block chain and only one ledger for the entire network .there is only one source of truth. There is only one ledger for the whole network to know about particular transaction.

2.3.5 Mining

It is not the act of physical digging rather it is a process in which the current Bitcoin transaction records (Known as block) are added to the past transaction record which known as Block chain (Rouse, 2018).traditional currencies are handled by banks and financial institutions while Bitcoin is operated on the basis of public ledger system.to confirm any transaction and to avoid from being spent twice of the same Bitcoin, a number of Bitcoin nodes operated by miner who gives their seal for approval. They are also rewarded the transaction verification fee.

2.4 Fatawas which issued on Bitcoin

Fatawa issued by different Institutions of Pakistan regarding Bitcoin and crypto currency *Shariah* status. The institutions are as follow.

- *JamiaDarululoom Karachi,*
- *JamiaBinori Town Karachi,*
- *JamiatuuRasheed Karachi.*

These three big institutions have issued Fatwa on Bitcoin and have raised concern from different aspect; main concerns are transparency, preservation of wealth, risk involved, qualification and centralization of money. The purpose of transparency in *Shariah* is to avoid harm and disputes in any contract. The entire network of Bitcoin is cryptic means “Hidden” and every merchant and contract is anonymous. Non regulation

of this framework can cause more disputes. The preservation of wealth means to protect the wealth of the society to be destroyed and ruined by anyway. This ensures that wealth should be the part of a safe, secure system. The nature of Bitcoin is cryptic, and due to unregulated and complex technology, it becomes easy to hackers and fraudsters to hack it for their purpose. Furthermore there is a possibility that a large economy bans Bitcoin, and it would crash.

Bitcoin also fails to fulfill the Maqasid al *Shariah* in regard of preservation of wealth. Bitcoin fails in the aspect of marketability and circulation because the volatility has only increased speculation because Bitcoin investors try to hold on Bitcoin instead of spending it, to make it illiquid and further inflating the bubble. Furthermore the cryptic nature and unanimity is against the object of transparency. This can lead towards money laundering, fraud, hacking and cybercrimes. Argument on Bitcoin regarding its status as currency in Islamic law due to the following reasons:

- Bitcoin is not fulfilling the process of *Thamaniyyah*.
- The associated risks with Bitcoin undermine the main reasons and objectives that money was created to serve.
- Bitcoin fails to maintain the Maqasid al *Shariah* in respect to wealth.
- The inclination of investment in Bitcoin is opposing the medium of exchange which shows that there is no encompassing '*Urf*' to consider Bitcoin as money.

3. Research Methodology

The aim of this study is to explore the status of Bitcoin under local interpretation of *Shariah* which cannot be obtained in statistical way, rather it could be achieved by description like interviews. Also, the most accurate research strategy for this research study is phenomenology. Phenomenology is also known as the study of phenomenon. Omery (1983, p.51) has described "*spiegelberg,s*" six types of phenomenology: *descriptive phenomenology, phenomenology of essence, constitutive phenomenology, reductive phenomenology, phenomenology of appearance and hermeneutical phenomenology*". Therefore, in this research, phenomenology strategy will be used. The rationale behind is explicit, because the study will explore that status of Bitcoin according to *Shariah* perspective, whether it is money or assent or nothing? For this purpose the *Shariah* scholars who are also aware of market will be interviewed to present their views in this regard. Then their opinion and information will be collected as data and will be analyzed and interpreted in the framework, at a result the finding will come and the phenomena will be clear for the readers that what Bitcoins fulfill and what not?. This strategy

is more interested for the *Shariah* scholars for interview because they usually deal with logic, phenomena and cause to derive any *Hukum* for the text. In addition to it, interview will be conducted for data collection and among the three types of interview (structured, Semi structured and Unstructured) the unstructured or in –depth interview will be adopted because this interview is more helpful for interviewee to explore particular aspects of the phenomena. Furthermore, the participant of this research study will be *Shariah* scholars who have market experience or who have the market knowledge at least. These calibers of experienced participants could add rich contribution to study and could be in a position to explore the phenomena “Status of Bitcoin under the local interpretation of *Shariah*”. Looking towards conventional sampling practice in phenomenological researcher, it is better to follow it because the point of saturation doesn’t work here due to the context of research and the time frame. The previous practice is to select five participants in phenomenological research so the sample size of current research is five participants. The context of this research is the *Shariah* scholars who work in different institution in Peshawar in the time frame of 2018-2019.

4. Analysis

Data collection is considered an important and step and plays a role of heart in the research. After collection of the data using the relevant tools and technique, the next step is to analyze and interpret the data to reach the finding of the research problem. In short data analysis is the process of segregating and evaluating the collected data for further analyzing, describing and interpreting in a systematic manner. It is the process of bringing order and meaning to the limp of collected data (Catherine Marshall, 1999).

This following are the interpretations of local *Shariah* scholars regarding Bitcoin:

4.1 *The preservation of wealth and Bitcoin*

The preservation of wealth is one of the objectives of *Shariah*. The wealth has to be prevent and protect from lose. The Bitcoin in its nature is unprotect able and having a lot of risk in it. It is easy for the hackers to hack the account of any individual. With the expiry of the device where the Bitcoins exist will be lost ultimately. Similarly if the password of the wallet will be forgot by the account holder it could not be recovered again, and the amount in the account will be gone. Due to the existence of these issues it will come under *MakruTahrیمی*. One of the *Shariah* Scholar has point out:

Certain risks are involved in it just like hacking; forgetting of password, expire of the device where it exists. It is also possible that it will be banned from international monetary organization. (P3)

In addition there are the issues of *gharar* and gambling involve in it. Its status is not clear yet. it is an asset or currency? In many countries it is used an asset while in some other countries it is used as currency. If it is currency and people treat it as asset, it will come under *Bai Sarf*. Finally the profit derived from that transaction will be considered as interest which is impermissible in *Shariah*.

There are certain Shariah issues in digital currencies. For instance, there is the issue of gharar because we do not know yet for certain what actually the nature of these currencies is. For instance, is it currency, asset, or commodity etc.? Due to this and similar other issues, even the legal and regulatory nature of this new types is quite confusing and this is why there is no universal legal and regulatory stand taken on this issue so far and different countries treat it in certain different ways. (P1)

Another scholar has argued the same:

The buying of Bitcoin at the view of profit as commodity is not permissible due to the logic of gharar especially in those countries where it is banned already. (P4)

4.2 The activities are being performed through Bitcoin in the world

Bitcoin is used in some of countries in the world as legal tender. it is used as medium of exchange and functions like paper money does, but there are some issues and constrains to give a better status to this currency in the eyes of *Shariah*. The decentralization makes it easy for the elements to use it for illegal activities and to spread their network globally by facilitating the terrorists. It is also used to make the black money into white. Therefore it should be declared dislike to stop these activities according to *Shariah*. A well-known *Shariah* scholar has presented his opinion as below:

Where has values in it, there are absolutely devalues which rises many questions. For example it is not backed by government, and when it will be bankrupt so no be there for support. People involved in unlawful activities are using it and are trying to make their black money into white. Its price is not sustainable. There is uncertainty and gambling as well. (P2)

Currency is a medium of exchange so it presents the society needs and facilitates them any time. It shouldn't be dependent rather it should be independent. If we analyze the Bitcoin it needs many thing to show its existence otherwise it doesn't exist. For example it needs a high power computer, electricity and the password. A scholar argued on it like that:

I think that there are many issues involved in. Currency should be available every time and portable according to its usage. Irrespective of age everyone in the society could use it at any time but fails to fulfil these requirements. It requires electricity, powerful computer and internet facility for transaction. In addition if the device is lost where the data exist all amounts in it will ultimately lose and could not be recovered anyway. The value of is not stable it often gets high value and same time it fall down rapidly. There is no principle and regulation regarding its value. (P2)

4.3 Qualification of Money in Shariah and Bicoïn

Shariah has not defined money in specific and not any particular rules have been given in this regard rather it has been left for the people to decide it according to their customs and social economic context. As the economic world is developing rapidly, so the financial technologies are developing as well. Crypto currencies and special in a kind of innovation in the world of fin tech and it is becoming more acceptable for the financing institutions. If it is used as currency rather an asset it could be considered as “Mubah”. It means that it should be recommended nor prohibited. A prominent Shariah scholar has argued:

Shariah has not given the status of money to a particular type/object. Instead, this matter is left open and people can chose to use anything as money. However, Shariah has provided some basic guidelines about the function of money. Accordingly, money should be used for the purpose of exchange only and it should not be used as a tool/asset for investment. (P1)

4.4 The extra characteristics of Bitcoin

Although Bitcoin is facing some Shariah issues but it also has some good features in it which make it unique from paper money from different angle. Its confidential transaction nature is sign of preservative and a preventive feature which is a high constrain to criminals to search out any account holder for ransom especially in under developing countries this feature will play a good role. Secondly the transection cost is very less as compare to paper money. The transaction of paper money has high transaction charges. The third unique feature of Bitcoin is the less transaction time. The transaction complete in very less time as compare to others which is also considered as extra qualification. If the government allows it as legal tender it will be good (*Mustahsan*) to use it as currency because many legal issues will be solved by making it centralized and the good features will give better outcome to society. One of the *Muftis* has given his opinion like this:

If it is centralized that it could be considered “better” (Mustahsan) because it has some extra qualifications in it. For example confidentiality and fast transaction process. (P4)

5. Findings and implications

Bitcoin is an emerging technology in the area of fin tech. it has deeply affected the world monetary system in large. The world nations have different opinions and are not on one page in this regard. Some of the countries have strictly banned, some have permitted the exchange while some have accepted it as legal tender. State Bank of Pakistan has issued a notification and have warren the citizen not to involve in any transaction of virtual currencies and it has been declared a suspicious transaction in this notification. As far as its *Shariah* status it has also different interpretation from different *Shariah* scholars. According to the post empirical frame work there were only two concepts found from *Shariah* perspective. The first concept was that the Bitcoin is totally impermissible and it fails to fulfill the qualifications of currency even it doesn't fit in the frame of wealth (Mal). The second opinion was that it is currency because it has the monetary features and characteristics and has been accepted by some countries around the globe.

6. Conclusion

The basic mean of this research was to explore the status of Bitcoin under the local *Shariah* scholar's interpretation. The outcome of this research is that Bitcoin is not totally impermissible and permissible at all. It has the pros and cons in it. It could be dislike, Mubah and desirable according to the nature use in the context of Maqasid e *Shariah*. The study was about *Shariah* scholar's perspective having the local context. It could be explored to the expert perspective so it could be clearer for the scholars as well as for the users. The researchers have the opportunity to explore the status of Bitcoin to the academician's perspective and could be studied out of the region, out of the border and out of adopted fiqh context.

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