

Cryptocurrencies in the eyes of Shariah law and contemporary scholars: An Analysis

Muhammad Nazibur Rahman¹

Blockchain Network based cryptocurrencies have become the concern of each and every corner of the world in recent years. The economic world is to some extent in a state of dilemma regarding these cryptographies based digital assets. However, some states are accepting it for their easy going, smooth and less cumbersome transaction facilities while others are rejecting it for its potential misuse. Similarly, Islamic financial world is not outside the purview of facing the reality of this revolutionary technological achievement. No decisive verdict on the legal status of cryptocurrency from any authoritative Sharia body has been provided as it is very new in the financial world. From Shari'ah perspective, though it qualifies as property (mal) after fulfilling some essential characteristics, difference of opinion regarding treating it as money prevails. Moreover, the issues of uncertainty (gharar) and ignorance (jahala) are required to be solved by proper state regulation, otherwise, there may be a chance of misuse including drug trafficking, money laundering and prejudice to weaker parties. Furthermore, the contemporary scholars express different views for Shari'ah compliant cryptocurrencies. This article will analyze all these factors and the way forward for the financial world.

1. Introduction

Cryptocurrencies have rapidly proliferated in recent years. It has attracted a significant amount of attention from a large number of people, though some remain skeptical and others oppose it. Proponents consider it to be a revolutionary technology that offers specific benefits to the financial world, such as speed, convenience and intermediary and regulation-free transactions. Opponents, on the other hand, are unconvinced and are concerned that it may lead to another *Tulipmania*² – a financial bubble that will burst anytime. Concerns have also been raised

¹ The author completed his LL.B (Hons.) from Northumbria University, UK. He also completed his M.A. in Islamic Studies from Loughborough University, UK and Diploma in Arabic and Islamic Studies from Al-Imam Muhammad bin Saud University, Riyadh, Saudi Arabia. Mr. Rahman was called to the Bar of England and Wales from the Hon. Society of Middle Temple and is also an advocate of the Supreme Court of Bangladesh. The author can be reached at momenajib@yahoo.com

² Tulipmania is the first major financial bubble that occurred in the 17th century. For details, see A. Maurits van der Veen, "The Dutch Tulip Mania: The Social Foundations of a Financial Bubble," *Department of Government*,

regarding its potential misuse, which include facilitation of criminal activities such as money laundering.

New financial instruments in the Islamic financial world are always gauged against their compliance with *Shari'ah* law,³ even though, only approximately 20% of financial activities in the Muslim world are regulated by *Shari'ah* principles. Many Muslims use conventional banking services due to convenience.⁴ Nonetheless, the issue of *Shari'ah* compliance remains an instrumental factor since several influential Islamic funds and institutions are formally committed to following *Shari'ah* principles.⁵ Moreover, the Islamic financial market is also rapidly growing, and some countries, such as the KSA and the UAE, have officially implemented *Shari'ah* law.

Since cryptocurrencies are relatively new, no authoritative *Shari'ah* body has yet produced any decisive verdict on their legal status. Although some individual scholars and independent bodies have expressed their opinions on the matter, scholars have yet to rule conclusively on whether cryptocurrencies are in fact currencies or a particular asset class. This is important for Islamic tax payments called zakat, and for inheritance.⁶ Moreover, most of the opinions are also on a particular cryptocurrency, namely Bitcoin.⁷ A guideline/protocol is also required that would suggest how cryptocurrencies possibly comply with the fundamental norms of Islamic law.

College of William and Mary, (2012), accessed July 13, 2019, <<http://www.maurits.net/Research/TulipMania.pdf>>

³ *Shari'ah* is the Islamic legal system. It derives from divine sources, i.e. Qur'an and *Sunnah*. Generally speaking, the divine sources provide a broad legal framework while its exact application is subject to human interpretation. Historically speaking, Islamic scholars who gained authority through popular acceptance derived Islamic laws from the Holy Scriptures by issuing rulings known as *fatwas* on particular issues. It creates a legal arbitrage when there is no consensus between the scholars. Resultantly, different Islamic countries have different interpretations of the Islamic law; GCE countries predominantly follow the interpretation of the *Hanbalite* school of thought, with the exceptions of Pakistan that follows the *Hanafi* school of thought and Malaysia that follows the *Shafi* school of thought. Therefore, as held in the case of Beximco Pharmaceuticals Ltd and others v Shamil Bank of Bahrain EC EWCA (2004) Civ 19, *Shari'ah* law cannot be understood as a conventional legal system since a unified version of it is not available. Having said that, several attempts have been made in modern times to produce unified fatwas, especially to deal with international Islamic financial affairs. AAOIFI is one of these initiatives; it is a body of prominent contemporary Islamic scholars that seeks to standardise *Shari'ah* rulings on financial affairs. Although it does not possess direct control over any governmental or financial institute, as mentioned, most of the prominent Islamic scholars of the current world are involved in the issuance of its standards; thus, it holds a certain degree of authority. There are some other bodies such as the Islamic *fiqh* academy, a project of the OIC and IDB, and the Islamic *fiqh* council, a fatwa issuing body of the World Muslim League that regularly publishes *fatwas* on contemporary issues. The Ottoman Empire also attempted to codify Islamic commercial law according to the Hanafi school of thought, which came to be known as *Majallah*.

⁴ "Islam and Cryptocurrency, Halal or Not Halal?," *Al Jazeera*, Doha, April 8, 2018, accessed July 13, 2019, <<https://www.aljazeera.com/news/2018/04/islam-cryptocurrency-halal-halal-180408145004684.html>>

⁵ *ibid.*

⁶ *Ibid.*

⁷ *ibid.*

This article will examine the legal validity of cryptocurrencies under Islamic law and provide an insight into how cryptocurrencies can possibly comply with its fundamental norms. This will be done by determining whether cryptocurrencies qualify as money or other asset class from an Islamic property law perspective. This article will further analyse the regulatory issues and the concerns of contemporary scholars associated with this new phenomenon.

Islamic property law: a brief overview

The concept of Mal

Mal is an Arabic word that refers to everything capable of being owned.⁸ It can be defined as a thing that humans naturally desire and can be stored as a reserve for times of necessity.⁹ It includes movables (*manqul*) such as *naqd* (money) and *árd* (commodity) and immovables (*ghayr manqul*) such as houses and land.¹⁰ To classical jurists, all legal properties share five essential characteristics: (1) it is naturally desired by humans; (2) it can be owned and possessed; (3) it can be stored; (4) it is beneficial in the eyes of Islamic law and (5) the ownership of it is assignable and transferable.¹¹

Unlike a majority of scholars, however, early Hanafi scholars stipulated that the property must be a physical one. Therefore, they do not generally consider usufruct (*manfa'ah*) as property.¹² Usmani, however, argues that the early Hanafi position was influenced by the perceptions of the people ('urf) of the time. According to him, it is one of the factors that determine what qualifies as property. He further argues that some modern Hanafi jurists consider electricity and gas as property despite these being intangible in nature. Therefore, to him, intangibles can be considered as property if they are desirable and retrievable.¹³ The Islamic Fiqh Academy¹⁴ in its 43rd resolution in 1988, recognised intangibles such as business and corporate names, trademarks, literary productions, inventions or discoveries as assets and rights that are protected under *Shari'ah*. AAOIFI has also recognised intangibles as property under standards 17, 35 and 42.¹⁵

⁸ Majd al-Din Al-Firozabadi, "*Al-Qamus al-Muhit*" (Dar al-Hadith, 2008), 1565.

⁹ Ali Haidar, *Durarul Hukkam fi Sharhe Mijallatil Ahkam*, (Dar al-Ilm al-kutub, 2003), 115.

¹⁰ *ibid.*

¹¹ Muhammad Wohidul Islam, "Al-Mal: The Concept of Property in Islamic Legal Thought," *Arab Law Quarterly* 14, no. 4 (1999): 365.

¹² *ibid.*

¹³ Muhammad Taqi Usmani, *Fiqh al-Buyu'* (Maktabat Ma'arif al-Quran, vol 1, 2015), 25; and Muhammad Taqi Usmani, *Buhuth fil Qaday al-Fiqh al-Muasarah*, Dar al-Qalam, vol. 1, (2013), 94.

¹⁴ The Islamic Fiqh Academy is a project of the Organization of Islamic Cooperation (OIC). It comprises of the world's leading Islamic scholars and regularly publishes fatwas on important issues. Accessed July 13, 2019, <<http://www.iifa-aifi.org/>>

¹⁵ Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), *Accounting, Auditing and Governance Standards*, Dar al-Maiman, (2015), 463, 865, 1040.

Naqd

Naqd refers to chattel.¹⁶ The term has been used to refer to gold and silver coins in classical Islamic legal books such as the *Majallah*,¹⁷ the civil law code of the Ottomans. Al Ghazali stated that God created gold and silver coins as equitable and just media of exchange¹⁸. They are desired and valuable not because they are beneficial as such but because they are a stable store of value and secure medium of exchange.¹⁹ Similar to Al-Ghazali, many classical jurists²⁰ only considered gold and silver as money because the Holy Scriptures, among others,²¹ only consider gold and silver as *naqd*.²² However, Abd al-Barr argues that this was because the Muslims of the prophetic era only used Roman Dinars and Persian Dirhams as money.²³ Following this line of

¹⁶ Firozabadi, “*Al-Qamus al-Muhit*,” 1640.

¹⁷ Haidar, *Durarul Hukkam*, 117.

¹⁸ *ibid*

¹⁹ Abu Hamid Al-Ghazali, *Ihya Ulum al-Din*, Beirut: Dar Ibn al-Hazm, (2005), 1433.

²⁰ For example, among ‘Hanafi scholars, Abu Hanifah and Abu Yusuf; past Maliki scholars such as Ibn Nafi’, al-Adawi and Shaykh ‘Alish, Mufti of the Maliki madhhab (school) in Egypt., Shafi’i scholars such as al- Ghazali, al-Nawawi, al-Suyuti and al-Maqrizi; One of the two Hanbali schools; the views of some tabi’in (Followers) such as Mujahid and Nakha’i.’ Muhammad Aslam Haneef and Emad Rafiq Barakat, “Must Money be Limited to Only Gold and Silver: A Survey of Fiqhi Opinions and some Implications,” *JKAU: IE* 19, no.1 (2006): 21–34, 26.

²¹ Haneef and Barakat summarise the reasons in eleven points:

‘1. Sunnah Taqririyyah, ie the Prophet approved the use of gold and silver in Makkah and Madinah. This according to their view makes gold and silver as money “hukm shar’i” and hence, only gold and silver can be used as money.

2. Mu‘amalah and ‘ibadah maliyyah is based on gold and silver. For example, calculation of zakah on money is based on gold and silver. Also diyah or blood money, hadd al-sariqah (theft punishment) and exchange transactions are based on gold and silver calculations.

3. Verses in al-Qur’an indicate that gold and silver are to be used as money. For example, al-Tawbah: 34 prohibits the hoarding of gold and silver which indicates that gold and silver function as money; Al-Imran: 75, 91 showing the function of gold as a store/measure of value; Yusuf: 20 indicating silver as a measure of value and medium of exchange; al-Kahf: 20 where silver is used as a medium of exchange.

4. Ijma’ al-Sahabah (consensus of the companions of the Prophet) for example the guided caliphs (al-khulafa’ al-rashidin) also accepted gold and silver as money.

5. Gold and silver are money by nature.

6. There is a hadith reported in Ibn Majah which prohibits the destruction of the monetary system of Muslims (interpreted as gold and silver).

7. Shafi’i and Maliki scholars limit the ‘illah of thamaniyyah only to gold and silver, so other things cannot be money.

8. The fact that gold and silver are prohibited for certain other uses like ornaments for men indicate that its function is to be primarily as money.

9. In order to achieve justice (an objective of al-shari’ah) in the monetary system, you need a stable measure of value and since gold and silver are relatively stable, they must be used as money.

10. Zakah is imposed on gold and silver in whatever form and use (except some limited amounts for jewellery). In addition, hoarding of gold and silver (iktinaz) is also prohibited. The idea here is to keep gold and silver in circulation, hence, gold and silver perform the function of money.

11. Although fulus may have been used in a very limited amount during the time of the Prophet, peace be upon him, there is no hadith on riba applied to fulus. Also one cannot find a hadith which imposes zakah on fulus.’ *ibid*.

²² ‘In addition to the above, we can find some contemporary scholars who limited money to only gold and silver such as Shaykh Ahmad al-Khatib, Shaykh ‘Abd al- Rahman al-Sa’di (d1376A.H), Ibn Badran, Ahmad al-Husayni (d.1332/1914), Shaykh al-Muti’I, Shaykh Muhammad Amin al-Shanqiti (d.1393A.H), Taqi al-Din al-Nabhani, Muhammad Baqir al- Sadr, Muhammad Makhluf, Hassan Ayyub and Nasir Farid Wasil.’ *ibid* 26.

²³ Adam Faraz, “Bitcoin: Shariah Compliant?,” Amanah Finance Consultancy, accessed July 13, 2019 <<http://darulfiqh.com/wp-content/uploads/2017/08/Research-Paper-on-Bitcoin-Mufti-Faraz-Adam.pdf>>.

argument, some jurists²⁴ argued that any material can be considered as money if it possesses the same characteristics of gold and silver coins. Al-Shafi further argued that the essential characteristics of money are public acceptance as a medium of exchange and possessing intrinsic value (*thamaniyyah*). However, for Ibn Taymiyyah, public acceptance is the only essential element of money. He argues that Umar, the second caliph of Islam, wanted to introduce camel skin as a medium of exchange.²⁵ To the Hanafi jurists, the essential elements of money are *Ta'amul* (common usage) and *Istilah* (common agreement).²⁶ Imam Ahmad bin Hanbal is also of the view that monetary value can also be attributed based on public acceptance.²⁷

Naqd v árd

In Islamic law, trading in currencies is governed by special rules²⁸ that are not applicable for trading in commodities (*úrud*).²⁹ Therefore, it is necessary to distinguish *naqd* from *árd*. Usmani argues in his famous judgment³⁰ that money is different from commodity in the following three aspects: a) money has no intrinsic utility, whereas 'commodity can be utilised directly'; b) the price of a commodity may vary because of its condition but that is not applicable to currencies; for instance, an old dirty \$100 bill has the same value as a brand new one, whereas an over ripened apple is not necessarily as valuable as a freshly picked one; c) a commodity is uniquely identifiable, whereas that is not possible or necessary for a currency; if a \$100 bill is stolen, for example, the thief is not obliged to return the same bill. A substitute of the same amount would be legally acceptable, whereas a buyer can refuse to accept a car of the same description if the seller cannot give him the one he reserved.

Usmani further argues that because of these distinctions, currencies are treated differently from commodities in two ways: a) currencies itself, unlike commodities, should not be the subject matter of trading; b) even if currencies are exchanged in exceptional circumstances, 'the

²⁴ Among Tabiyin Laith ibn Sa'ad and Al-Zuhri; among the classical jurists al-Shaybani, al-Hattab, al-Wansharisi, Ibn Taymiyyah, Ibn Qayyim, Ibn Hazm; and the majority of contemporary scholars including Yusuf al-Qaradawi, Muhammad Taqi Usmani, Abd Allah Sulayman al-Mani as well as the views of contemporary *Fiqh* councils in the Muslim world. Haneef and Barakat, "money," 28.

²⁵ However, he could not do so for the fear that it would cause a shortage of camels, Abdullah b. Sulayman b. Mani, "Al-Waraq al-Naqdi: Tarikhuhu, Haqiqatuhu, Qimatuhu, Hukmuhu," (1971), accessed July 13, 2019. <<http://al-manee.com/old/upload/wa.pdf>>

²⁶ Shams al-Din Al-Sharakhsi, *Al-Mabsut* (Dar al-Ma'arif, vol. 12, 1989), 183.

²⁷ Mani, "Al-Waraq al-Naqdi," 6.

²⁸ Such as counter values must be exchanged on the spot; see the details of the rule of currency trading in *Shari'ah* standard no.1 of AAOIFI; AAOIFI, "Accounting," 47.

²⁹ *Úrud* is the plural form of *árd*, which means commodity.

³⁰ The judgment on interest delivered by the Supreme Court of Pakistan.

payment on both sides must be equal, so that it is not used for the purpose it is not meant'.³¹ He concurs with Ludwig Von Mises and Kien's theory that 'money is neither a consumption good nor a production good; it is a medium of exchanges'.³²

The Concept of Cryptocurrency

A generally accepted definition for the term 'cryptocurrency' is not available, but most policymakers consider it to be 'a subset or a form of virtual or digital currencies'.³³ Based on the definitions suggested by the World Bank and FATF, Houben defines cryptocurrency as

*'[A] digital representation of value that (i) is intended to constitute a peer-to-peer ('P2P') alternative to government-issued legal tender, (ii) is used as a general-purpose medium of exchange (independent of any central bank), (iii) is secured by a mechanism known as cryptography and (iv) can be converted into legal tender and vice versa'.*³⁴

The term 'cryptocurrencies' should be distinguished from both cryptographic tokens and crypto-securities. 'Cryptographic tokens offer functionality other than and beyond that of a general-purpose medium of exchange'.³⁵ On the other hand, crypto-securities refer to shared transactions secured by block-chain-based cryptography. Contrariwise, the sole purpose of a cryptocurrency is to exchange value and it has no functionality beyond that.³⁶ The only connection between these newly developed concepts of crypto-securities, crypto-tokens and cryptocurrencies is that they all utilize block-chain technology.

³¹ See for details, para 136 to 146 of the judgment on Interest; See also, Muhammad Taqi Usmani, *The Historic Judgment on Interest: Delivered in the Supreme Court of Pakistan*, (Karachi: Idaratul-Ma'Arif, 2005).

³² *ibid*, para 144, 78.

³³ Robby Houben, "Cryptocurrencies and Blockchain," (Brussels: European Parliament, 2018) 23; accessed July 13, 2019, <<http://www.europarl.europa.eu/cmsdata/150761/TAX3%20Study%20on%20cryptocurrencies%20and%20blockchain.pdf>>

³⁴ *ibid*.

³⁵ *ibid*.

³⁶ Max Hillebrand, "An Introduction to Initial Coin Offerings in Project Finance" (Baden: Wuertemberg Cooperative State University, 2017), accessed July 13, 2019, https://www.aparecium.de/app/download/5810645565/An+Introduction+to+Initial+Coin+Offerings+in+Project+Finance_V1.0.pdf>

One of the prominent questions related to cryptocurrencies is regarding their allocation to the traditional categories of property and personal rights. Another regulatory issue is whether it can be considered as a cash equivalent. Under English law, properties can be either real or personal. Personal properties can be further divided into choose in action and choose in possession. Both pure and documentary intangibles are categorised under chose in action.³⁷ Arguably, cryptocurrencies are pure intangibles. Therefore, English law tends to consider them as choose in action (*Your Response v Datateam*³⁸).

However, it can be argued that unlike other pure intangibles, cryptocurrencies do not emerge out of a personal right. Furthermore, they are capable of being stored and are transferable from person to person. Therefore, they do not fit comfortably within the current property law framework. Suggestions have been made for their categorisation as other intangible properties, as indicated in the *Armstrong DLW GMBH v Winnington Networks Ltd*³⁹ case. At a global level, different countries have adopted different approaches. In Japan, although they are valid legal tender now, the court refused to consider them as property.⁴⁰ In the USA, the position is divided; they are considered as money in some states but regarded as commodities in others.⁴¹ In Russia, the Court of Appeal has recently overturned the decision of a subordinate court and the civil law has been accordingly revised and recognises cryptocurrencies as assets.⁴² Should they be considered as cash equivalents? There is no global consensus on this query either. In the UK, it is not considered as a legal tender or cash equivalent⁴³; however, in Australia for instance, the position is different.⁴⁴ What would be the position of Islamic law given such ambiguity in nation-based legal systems? Will cryptocurrencies be considered as valid properties? Do they qualify as money? These issues will be discussed in due course.

³⁷ Joanna Perkins and Jennifer Enwezor, "The Legal Aspect of Virtual Currencies," *JIBFL* 31 (2016) 570.

³⁸ *Your Response v Datateam*, EWCA Civ 281, 13, 27 (2014).

³⁹ *Armstrong DLW GMBH v Winnington Networks Ltd*, EWHC 10 (Ch) 61 (2012).

⁴⁰ Dillon Collett, "Cryptocurrency Assets under Insolvency and Personal Property Security Law" Aird Berlis, February 15, 2018, <<https://www.airdberlis.com/PDFGeneration/PrintablePublications/cryptocurrency-assets-under-insolvency-and-personal-property-security-law.pdf>>.

⁴¹ Scott D. Hughes, "Cryptocurrency Regulations and Enforcement in the U.S.," *W.St.U.L.Rev.* 45 (2017), Fall, accessed 13 July, 2019, <<http://www.scotthugheslaw.com/documents/CRYPTOCURRENCY-REGULATIONS-AND-ENFORCEMENT-IN-THE-US-2.pdf>>.

⁴² Alexander Anichkin, "Russian Court Issued the First Ever Decree Recognising Cryptocurrency as Property," CliffordChance, (2018), accessed 13 July 2019 <<https://www.cliffordchance.com/content/dam/cliffordchance/PDFDocuments/russian-court-issued-the-first-ever-decree-recognising-cryptocurrency-as-property.pdf>>.

⁴³ HM Revenue & Customs, "Bitcoin and Other Cryptocurrencies" (HM Revenue & Customs Brief, 3 March 2014), accessed July 13, 2019, <<https://www.gov.uk/government/publications/revenue-and-customs-brief-9-2014-bitcoin-and-other-cryptocurrencies/revenue-and-customs-brief-9-2014-bitcoin-and-other-cryptocurrencies>>.

⁴⁴ The global directors of the law library of Congress, "Regulation of Cryptocurrency Around the World," The Law Library of Congress, June 2018, accessed July 3, 2019, <<https://www.loc.gov/law/help/cryptocurrency/world-survey.php#australia>>.

Stablecoin

A stablecoin is a cryptocurrency that holds a stable value. The coin is attached to another stable asset such as gold or the U.S. dollar.⁴⁵ Each stablecoin has a unique set of mechanisms; however, they generally hold assets as collateral and incentivize the market to trade the coin at the exact value of the designated asset. Some cryptocurrencies, e.g. Tether or TrueUSD, hold actual assets and dollars in reserves that are redeemable in exchange for the token. However, some others, such as Dai have crypto assets in reserve and have a lending system.⁴⁶ The rationale behind the stable coin is that due to regulations and restrictions, it is not always easy to circulate dollars or other tangible assets. A substitute that is backed by a dollar or other assets in the form of cryptocurrencies, however, would be easy to circulate without compromising the stable nature of the asset it is substituting. Thus, stablecoins have all the benefits of a cryptocurrency but do not suffer from the volatile nature of typical cryptocurrencies.

Cryptocurrencies from the *Shari'ah* perspective

Does it qualify as money? As discussed above, money (*naqd*) is a type of *mal* under Islamic law. Therefore, it needs to be examined whether cryptocurrencies can qualify as *mal* first. Subsequently, their qualification as money under Islamic law shall be assessed.

Qualification as *mal*

As discussed, to most jurists, property has five essential characteristics; namely, humans naturally desire it; it can be owned and possessed; it can be stored; it is beneficial in the eyes of Islamic law; the ownership of it is assignable and transferable. Usmani argues that the '*urf*' determines what would qualify as property. Cryptocurrencies are in demand, which indicates that it is desirable; they can be owned and virtually possessed and are stored in the block-chain. Moreover, since they are valuable, they are beneficial to people similar to paper money; furthermore, their ownership is assignable and transferable. Therefore, it can be argued that cryptocurrencies can be recognised as properties, provided that they are customarily recognised as property. As discussed initially, the law can dictate the customs ('*urf*'). Therefore, if a cryptocurrency is recognised in a jurisdiction, that should qualify as property under Islamic law.

⁴⁵ Dennis Sahlstrom, "What is a Stable Coin?," *Toshi Times*, 2019, accessed July18, 2019 <<https://toshitimes.com/what-is-a-stablecoin/>>.

⁴⁶ *ibid*.

Accordingly, for example, it qualifies as property since it is considered as property in Russia despite not being so in Iran, Algeria or Egypt.⁴⁷

Qualify as money

As discussed earlier, to a majority of classical jurists, the only types of money were gold and silver. Even in modern times, some jurists argue that fiat money should only be considered as valid money if it is backed by gold or silver. However, to Hanafi scholars, anything can be regarded as money as long as it fulfils the conditions of *Ta'amul* (common usage) and *Istilah* (common agreement). To Ibn Taymiyyah, the condition is public acceptance. Some others further stipulate that it must hold some intrinsic/extrinsic value (*thamaniyyah*).

To modern jurists such as Usmani, these conditions can be settled by the authorities by enacting laws. Therefore, it can be argued that cryptocurrencies can be regarded as money in two ways – if it naturally gains public acceptance or if the concerned authorities recognise it as money. If cryptocurrency faces public demand, naturally, it will gain value and thus fulfil the conditions of *Thamaniyyah*. Otherwise, as discussed above, the relevant authority can impose extrinsic value to it.

Commodity v Currency

Cryptocurrencies, in the financial world, are commonly considered as a commodity rather than currency because it lacks price stability and is not typically used for day-to-day transactions. Its consideration as a commodity under Islamic law is a matter of argument. As discussed earlier and as argued by Usmani, there are three predominant differences between currencies and commodities. Considering these arguments and conditions, cryptocurrencies resemble currencies more than commodities. Therefore, cryptocurrency transactions should be subject to special rules of currency exchanges.⁴⁸ On the other hand, Kahf doubts whether it should be considered as an asset-class at all, let alone as commodity. He argues that though cryptocurrencies are capable of being a legal tender⁴⁹ subject to approval from a government, it

⁴⁷ The global directors of the law library of Congress, "Regulation of Cryptocurrency Around the World," *The Law Library of Congress*, June 2018, accessed July 3, 2019, <<https://www.loc.gov/law/help/cryptocurrency/world-survey.php#australia>>

⁴⁸ AAOIFI, "Accounting," 47.

⁴⁹ The Bank of England states, 'Legal tender has a very narrow and technical meaning, which relates to settling debts. It means that if you are in debt to someone then you can't be sued for non-payment if you offer full payment of your debts in legal tender. What is classed as legal tender varies throughout the UK. In England and Wales, legal tender is Royal Mint coins and Bank of England notes. In Scotland and Northern Ireland only Royal Mint coins are legal tender...[Throughout the UK,] there are some restrictions when using the lower value coins as legal tender. For example, 1p and 2p coins only count as legal tender for any amount up to 20p.' Bank of England,

cannot possibly be a valid other asset class since it is a fabricated asset. He draws an analogy between cryptocurrencies and indexes and options.

The Islamic Fiqh Academy declares that both indexes and options are not *Shari'ah*-compliant. They argue that although both are financial rights, they are fabricated assets and are not supported by any tangible asset that may generate real value/asset. To Kahf, 'cryptocurrencies are much lesser of assets than options and indexes as they are purely virtual and represent ownership of nothing.'⁵⁰ Moreover, cryptocurrencies have been created for transactions. It has no other use except transactions and one of the reasons for its high demand is its capacity to control free global transaction. Therefore, considering it as a commodity would undermine its relevance.

Issue of Gharar

Cryptocurrencies are complex intangibles and its exact nature is not easy to understand. Therefore, there is an issue of *jahalah*⁵¹ here. Furthermore, as cryptocurrencies are exclusively digital and not backed by tangible assets, any technological failure would have disastrous consequences. A combination of these may arguably cause excessive *gharar*⁵². However, it can also be argued that these issues are not fatal since they can be adequately and effectively addressed. Furthermore, *jahalah* should not be an issue among experts but with the layperson. Therefore, *jahalah* does not make cryptocurrencies illegal assets as such; however, trading it with a layperson may be voidable. This is a regulatory issue, which will be discussed later.

Furthermore, *jahalah* is problematic because it potentially leads to the exploitation of vulnerable parties and causes market instability. As discussed earlier, widespread practice (*urf*) or appropriate law/regulations of cryptocurrency may eradicate these issues and thereby solve the problem of *jahalah*.

"What is Legal Tender," accessed July 18, 2019, <<http://edu.bankofengland.co.uk/knowledgebank/what-is-legal-tender/>>

⁵⁰ For details, see Monzer Kahf, "Fatawa Money, Currencies, Gold, Sarf," (2000–2017), accessed July 18, 2019, <http://monzer.kahf.com/fatawa/FATAWA_CURRENCIES_GOLD_COMMODITIES.pdf>

⁵¹ *Jahalah* means ignorance. Excessive ignorance in the essence of the contract renders it void. What would amount to excessive ignorance is determined by the practices (*urf*) of that particular business of the community or jurisdiction; AAOIFI, "Accounting," 775.

⁵² *Gharar* refers to uncertainty and fraud. It refers to the uncertainty and ignorance of one or both parties regarding the substance, attributes or the object of sale. It also refers to doubt regarding the existence of the object at the time of sale. 'The difference between *gharar* and *jahalah* is that *jahalah* refers to [the] lack of knowledge about the details of something, in spite of knowledge about its occurrence. In this sense, *gharar* is more comprehensive than *jahalah*. Therefore, all things that are unknown involve *gharar*, whereas not all things that involve *gharar* are unknown.' AAOIFI, "Accounting," 786.

The Approach of Contemporary *Shari'ah* Scholars

Islamic scholars hold conflicting views regarding cryptocurrencies. Although several independent global bodies legitimize transactions in cryptocurrencies on certain conditions, no authoritative body has legitimized it as of now. On the other hand, some very influential figures such as the grand Mufti of Egypt has issued fatwas that the transactions in cryptocurrencies are not *Shari'ah*-compliant.⁵³ Many Muslim countries take an ambivalent stance and are worried about the potential for instability but are simultaneously unwilling to lose the opportunity of benefitting from the new technology. Saudi Arabia recently banned trading in cryptocurrencies.⁵⁴ The UAE has not banned it yet, but its central bank warned citizens about the risks associated with Bitcoin.⁵⁵ Kahf, a California-based academic, is among the first scholars to argue that Bitcoin could be considered as a legitimate medium of exchange despite it being exposed to manipulation.⁵⁶

Some South Africa-based Islamic scholars have since argued in favour of cryptocurrencies because, in their view, it has gained social acceptance (*Islilah*) and is commonly used (*Taámul*).⁵⁷ In October 2017, however, the Durban-based organisation Darul Ihsan Centre refused to endorse cryptocurrencies due to suspicions of it being linked to pyramid schemes.⁵⁸ Some scholars in Saudi Arabia, Turkey, India and Britain also argue that trading in it should not be permissible.⁵⁹

To summarise, contemporary scholars have approached the issue from three different perspectives – through the lens of strict property laws, through regulatory perspectives, and through the objectives of the *Shari'ah*. These approaches will be briefly analysed below.

⁵³ Al Jazeera, “Islam and Cryptocurrency,”

⁵⁴ “Virtual Currencies Not Approved in Saudi Arabia, Government Committee Warns,” *Arab News*, August 12 2018), accessed July 13, 2019, <<http://www.arabnews.com/node/1355246/saudi-arabia>>

⁵⁵ Al Jazeera, “Islam and Cryptocurrency,”

⁵⁶ He later modified his opinion and argued that unless it is a legal tender, it is not a permissible medium of exchange. He also argues that it is not a valid asset class. accessed July18, 2019, <http://monzer.kahf.com/fatawa/FATAWA_CURRENCIES_GOLD_COMMODITIES.pdf>

⁵⁷ Mahomed Ziyaad and Mohamad Shamsher, “*Crypto Mania: The Shariah Verdicts*,” Centre for Islamic Asset and Wealth Management 3 (2017): 35, accessed July13, 2019, <https://www.inceif.org/archive/wp-content/uploads/2018/04/CIAWM-Vol-3_view-only.pdf>

⁵⁸ Al Jazeera, “Islam and Cryptocurrency.”

⁵⁹ *ibid.*

The strict property law perspective

Those who argue that cryptocurrencies are a valid medium of exchange generally discuss the issue from a strict property law point of view. The Shariyah Review Bureau (SRB),⁶⁰ for example, argues that since cryptocurrencies are meant to serve as a p2p payment system and have been regarded by people as a payment system, they can be considered as currencies. Based on the Hanafi opinion, they argue that anything can be considered as currency as long as it possesses *ta'āmul* and *istilah*. To them, 'the *Ta'amul* and *Istilah* among users of these coins is that of a currency and medium of exchange'.⁶¹

They further argue that cryptocurrencies that have wider acceptance should be regarded as currencies by virtue of *Urf al-āam* (widespread custom), and those that are only accepted in their own networks are currencies by virtue of '*Urf al-Khas* (exclusive custom).⁶² As discussed initially, according to Abu Hanifa and Abu Yousuf, exclusive custom is sufficient to establish *Ta'amul* and *Istilah*.

The regulatory perspective

As has already been discussed in detail, cryptocurrencies are a very sophisticated class of assets and few people can actually understand its complex mechanism. Therefore, there is an element of *gharar* and *jahala* in it. Some concerns are also raised about their misuses such as using those for money-laundering and drug trafficking.⁶³ Scholars such as Al-Hakim argue that such

⁶⁰ Shariyah Review Bureau ("SRB") is based out of Bahrain and licensed by the Central Bank of Bahrain. It is one of the leading *Shari'ah* Advisory service providers with presence in more than 12 countries, including US, Europe, Africa, GCC and Asia. It has been serving the Islamic financial market for over 13 years. Accessed July 19, 2019, <<https://shariyah.com>>

⁶¹ Shariyah Review Bureau, "The Shariah Factor in Cryptocurrencies and Tokens," Shariyah Review Bureau, 2018), accessed July 18, 2019, <<https://shariyah.com/wp-content/uploads/2019/05/The-Shariah-factors-in-Cryptocurrencies-and-Tokens.pdf>>

⁶² '*Al-'Urf al-Khas* (exclusive custom) refers to a practice or understanding exclusive to specific people. This specificity can be a result of location, profession, membership or agreement among a group of people'. *ibid*.

⁶³ 'According to a study...approximately one-quarter of Bitcoin users and one-half of Bitcoin transactions are associated with illicit activity. ... Moreover, a 2018 study...found a fivefold increase in the number of large-scale illegal operations working on the Bitcoin blockchain between 2013 and 2016. By analyzing the history of more than 500,000 Bitcoins, the organizations identified 102 criminal entities, which included dark-web marketplaces, ponzi schemes and ransomware/malware attackers', Rachel Wolfson, "Tracing Illegal Activity Through The Bitcoin Blockchain To Combat Cryptocurrency-Related Crimes" *Forbes*, November 26, 2018, accessed July 18, 2019, <<https://www.forbes.com/sites/rachelwolfson/2018/11/26/tracing-illegal-activity-through-the-bitcoin-blockchain-to-combat-cryptocurrency-related-crimes/#7761104233a9>>. See also Sean Foley, Jonathan R. Karlsen and Tālis J. Putniņš, "Sex, Drugs, and Bitcoin: How Much Illegal Activity is Financed through Cryptocurrencies?," *Review of Financial Studies*, (2018), accessed July 19, 2019, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3102645>

concerns render cryptocurrency illegal.⁶⁴ As mentioned above, the Grand Mufti of Egypt argues that cryptocurrency is illegal because it is not regulated by the authorities and hence is more likely to be used for illegal purposes. The Turkish religious authority (*Diyanet*) has expressed similar views.⁶⁵

The *Shari'ah* perspective

As has been already discussed, the majority of the scholars of the classical era only considered gold and silver as money. Similarly, UK-based Saudi scholar Al-Haddad argues that only God has the right to create money; therefore, creating a new type of money out of nothing is not permissible.⁶⁶ He further argues that it also causes unfairness, as powerful institutions can manipulate and exploit the system and weaker parties would be unfairly prejudiced. He elaborates on the historical development of monetary systems and argues that fiat money was originally accepted because it represented gold. However, it was later forcefully changed by the Nixon shock.⁶⁷

Currently, the fiat monetary system is at the mercy of powerful nations; the US government, for instance, can produce as much US Dollars as it wants without causing inflation while the weaker countries do not enjoy such freedom. He stated that even some secular scholars are critical of the current monetary system. To him, cryptocurrencies that are not backed by tangible assets are the next level of such unfairness. Therefore, it should not be permitted. However, he accepted that fiat money is permitted when it is a legal tender due to necessity. Similarly, if cryptocurrencies become legal tender, then it should be allowed for use. However, to him, the entire idea does not fit within the broader Islamic objectives of justice and fairness.⁶⁸

⁶⁴ "Saudi Cleric Says Digital Currency Bitcoin is Haram in Islam," *Morocco World News*, Rabat, December 7, 2017, accessed August 18, 2019, < <https://www.moroccoworldnews.com/2017/12/235779/assim-al-hakeem-digital-currency-bitcoin-haram-islam-cryptocurrencies/> >

⁶⁵ Duncan Hooper, "Bitcoin 'not compatible with Islam', Turkey's religious authorities say" *EuroNews*, Turkey, November 28 2017), accessed August 18, 2019, < <http://www.euronews.com/2017/11/28/bitcoin-is-not-compatible-with-islam-turkeys-religious-authorities-say> >

⁶⁶ Haytham Al-Haddad, "Ruling on the Trading in Cryptocurrencies" *Al-Durar al-Sunnah*, January 24 2018, accessed June 16 2019 <<https://dorar.net/article/1982/وأخواتها-البتكوين-المشفرة-الإلكترونية-بالعملية-التعامل-حكم>>

⁶⁷ In 1971, Nixon, the then president of the United States, unilaterally abolished the Bretton Woods System, where the US dollar had a fixed exchange rate against gold (\$35 per ounce) and other currencies had a fixed exchange rate against the US dollar. See, for details, United States Department of State, "Nixon and the End of the Bretton Woods System, 1971–1973," *Office of the Historian*, accessed 19 July, 2019, <<https://history.state.gov/milestones/1969-1976/nixon-shock>>

⁶⁸ Haddad, "Cryptocurrencies."

It is evident that those who recognise cryptocurrencies as a valid class of assets consider it from a strict property law point of view, whereas those who are not in favour of this argue from regulatory and moral points of view that are consistent with the objectives of *Shari'ah*. Proponents responded to the opponents by arguing that the *Shari'ah* position regarding worldly affairs is that everything is permissible except if it is proven to be *haram*.⁶⁹ Intangibles such as electricity, for example, are a new type of asset that was not known to the early jurists. Other intangible assets, such as trademarks and intellectual properties as previously discussed have been recognised as legal assets by modern jurists.

Abu-Bakar further argued that using something for an unlawful purpose does not make it unlawful as such; making alcohol from grapes is *haram* but production of grape is not *haram*.⁷⁰ He further argues that US dollars are the most widely used currency for illegal purposes but it is not forbidden to trade in US dollars. Furthermore, as Usmani pointed out, the critical factor in identifying an asset is custom (*úrf*). If something is considered as a valuable asset in society, it should be a valid asset in Islam. It can be argued that a similar principle should apply to cryptocurrencies.

The opposing view to this is that the potential abuse of a valid *mal* can render invalid its legality. Drugs are a prime example of this; they are tangible assets that are desired and valuable but are not permissible *mal* since they are harmful to the society under the *Shari'ah*. Similarly, as cryptocurrencies suffer from serious regulatory issues and do not align with the overall notion of justice in Islam, it can be argued that they are not a valid class of assets.

Moreover, a contemporary cryptocurrency is not comparable with a US dollar because the latter is a legal tender that is allowed for use due to necessity and the former has not attained that status yet.

Furthermore, as already discussed, cryptocurrencies are not capable of being traded as commodities since they are created as media of exchange and serve no other purpose. Therefore, trading them as commodities will resemble gambling since people will buy a useless token in the hope that its price will increase.

Moreover it can be argued that as financial technology, cryptocurrencies provide certain benefits, such as entirely digital, prompt and intermediary-free p2p transactions, distributed

⁶⁹ Mufti Muhammad Abu-Bakar, "Shariah Analysis of Bitcoin, Cryptocurrency, and Blockchain," Blossom Finance, (2017), accessed July 19, 2019, <<https://www.thescanner.info/wp-content/uploads/2018/05/Shariah-Analysis-of-Bitcoin-cryptoeconomy.pdf>>

⁷⁰ *ibid.*

ledger system and data protection. Arguably, it has valuable prospects with immense potential and can eventually be used by governments in the future. However, it is uncertain as to how long contemporary unregulated and non-governmental cryptocurrencies will survive in the financial market.

From an Islamic law perspective, cryptocurrencies may qualify as property (*mal*) if they possess specific essential characteristics - i.e. if they are naturally desired by human beings; if they can be owned, possessed and stored; if they are beneficial in the eyes of Islamic law; and if their ownership is assignable and transferable.

Some jurists argue that it is '*urf*' that determines what would qualify as *mal*. Arguably cryptocurrencies possess all these characteristics, and furthermore, they are recognised as property in several jurisdictions. English law, for instance, considers them as property as it is a chose in action (being either pure intangibles or other intangibles). Some scholars are, however, of the view that cryptocurrencies are not intangibles like a trademark or a patent but a fabricated asset. That will not prevent them from being considered as money (*naqd*) – a particular type of *mal* – if they become a legal tender. However, they argue that cryptocurrencies cannot be considered as any other type of *mal*, e.g. a commodity.

Further it can be argued that cryptocurrencies may achieve the status of *naqd* either by gaining public acceptance or by being recognised as a legal tender or money by a concerned government. If public acceptance is achieved, cryptocurrencies will gain value naturally, thus fulfilling the essential condition of *Thamaniyyah*. Otherwise an extrinsic value may need to be imposed by a relevant state authority.

Conclusion

Cryptocurrencies, in the financial world, are commonly considered and traded as a commodity. However, under Islamic law, money and currencies differ from commodities; a special set of rules governs former's trading, eg currencies must be exchanged on the spot and no deferred exchange is allowed. As cryptocurrencies have characteristics similar to ordinary currencies, it can be argued that they cannot be traded like commodities; the rules of currency trading must be observed in cryptocurrency trading.

Cryptocurrencies are complex and not easily understandable. Therefore, there is an issue of *jahalah* here. Furthermore, cryptocurrencies are digital and not backed by tangible assets; these factors may arguably cause excessive *gharar*. However, it can also be argued that these issues are not fatal since they can be adequately and effectively addressed through regulations.

Asset-backed stablecoins can be considered as the digital certificate or bond of assets. If the underlying assets are *Shari'ah*-compliant, therefore, trading of those would be *Shari'ah*-compliant as well. Since most asset-backed stablecoins deal with gold and other fiat currencies, their protocols, ICOs and block-chains should meet the Islamic guidelines of currency exchange as prescribed by AAOIFI. Therefore, it can be argued that asset-backed stablecoins can be a way forward for the private sector until the standard cryptocurrencies become legal tenders through legislative measures.