

account how cryptocurrencies are positioned both at the state and Shari'ah levels. Because cryptocurrencies are banned in Pakistan, the objective of this paper is to justify the arguments made by the SBP against cryptocurrencies in the light of Shari'ah.

2. Literature Review

Bitcoin, a decentralized peer-to-peer virtual currency, was created in 2008. Virtual currency is a form of unregulated digital money that is created and usually controlled by its developers, and accepted and used among the members of the virtual community, as defined by the European Central Bank². The Financial Crimes Enforcement Network³ says that although virtual currency functions as a medium of exchange and behaves in some environments like a currency, it lacks several of the features of real currency. Cryptocurrencies were categorized as a subtype of virtual currency by the European Central Bank⁴ and the International Monetary Fund⁵.

According to the Bank for International Settlements⁶, disruption of present business models and institutions and formation of new economic, financial, and social interactions and linkages are just a few of the potential effects that distributed ledger and digital currency might have. Bitcoin has the capability to be relatively easily transferred to other individuals, even in international transactions, which makes it a good payment method and permits it to function as money. Bitcoin, however, is made less appealing for use in everyday transactions by its volatility and security problems⁷. Cryptocurrency at its present stage unsatisfactorily meets the functions of money such as medium of exchange, unit of account, and store of value⁸. Cryptocurrency has become a tool for speculative investment because to its extremely volatile value. Rather than being utilized for transaction purposes, cryptocurrency is frequently invested in for speculative purposes⁹, Cryptocurrencies are very vulnerable to hacking attacks since they are unregulated.

It is fairly popular to use cryptocurrencies for illegal activities. Although the entire scale of the misuse of virtual currency is unknown, Houben and Snyers¹⁰ revealed that cryptocurrency is increasingly utilized in criminal activities such tax evasion, money laundering, and terrorist funding. The study emphasized that the main problem with cryptocurrencies is their anonymity, which has to be addressed. Because cryptocurrency transactions are anonymous, it is impossible to properly monitor them, which allows shady transactions to happen outside of the regulatory framework and gives criminal organizations the ability to use cryptocurrencies to get quick and easy access to "clean cash." Another significant problem brought on by anonymity is tax evasion, which the tax authority is unable to detect since it does not know who is involved in the taxable transaction. In a similar manner, Forgang¹¹ believed that the advent of cryptocurrencies has introduced excess opportunities for money laundering. These activities can be harder to detect because of the anonymous nature of cryptocurrencies.

Irwin and Milad¹² acknowledged that bitcoin and other cryptocurrencies have been linked to a number of terrorist attacks in Europe and Indonesia. However, it was challenging to identify concrete evidence of widespread use of these currencies by terrorist groups or their supporters. Some terrorist groups have begun to accept bitcoin donations through their websites. Additionally, countries where a number of foreign fighters have joined the ISIS (Daesh) militant group can be noted to have a number of bitcoin exchanges and ATMs. Bitcoin and other cryptocurrencies represent a significant risk due to the anonymous and frictionless transfer of funds to and from terrorist organizations and their backers.

Islamic scholars disagree on the extent to which cryptocurrencies adhere to Sharī'ah. Meera¹³ examined bitcoin from a Shari'ah perspective and its implications on Islamic finance. As per its nature and traits, it was found that cryptocurrencies were not Sharī'ah-compatible because they were not backed by any real assets. Despite the fact that bitcoin is neither fiat money nor real money, many Shari'ah scholars are approving it as money on the basis of *Maslaha*. Bitcoin is misused because it has no intrinsic value and is not issued or controlled by any central authority. Additionally, it was concluded that bitcoin contributed to socioeconomic inequality since it had elements of *Gharar* and *Maysir*, endangering the *Maqāṣid al-Sharī'ah*. Many academics deemed cryptocurrency to be *Gharar*. Among these, Amalin¹⁴ said that *Gharar* in cryptocurrency was caused by the anonymity of cryptocurrency users and the absence of regulation of cryptocurrency transaction. According to Abubakar et al¹⁵, bitcoin is linked to *Gharar*, and as bitcoin users are anonymous, it might be challenging to identify the account holder in the event of any questionable behavior.

3. Methodology

To accomplish the study's objective, secondary data has been utilized. The secondary data were collected from several cryptocurrency exchange markets, specialized journals, research papers, and reports.

4. Analysis and Discussion

In this section the current position of cryptocurrency in Pakistan was accessed. The fatāwa of different madrassas in Pakistan were obtained in order to find out the opinion of Islamic scholars regarding cryptocurrency. Different factors were identified against cryptocurrency, which were then analyzed under Sharī'ah

4.1 Current Position of Cryptocurrency in Pakistan

Bitcoin trade is expanding in Pakistan, rising by 400% in volume during December 2016¹⁶. There are presently no laws that regulate the trade of bitcoin. The SBP released a press statement on 6 April 2018 to alert the public to the dangers of virtual currency. According to the statement, virtual currencies are not accepted as legal tender in Pakistan, and neither businesses nor individuals are authorized by the SBP to deal in virtual currency. It was urged to all financial institutions not to let their customers to

transact with virtual currency. The statement outlined the potential risks related to virtual currencies, such as unregulated trading platforms, speculative character of these currencies due to significant price fluctuation, hacker vulnerability, ambiguous nature, and prevalence of usage in illegal activities due to anonymity. Lastly, the general public was urged to exercise caution and forgo any virtual currency-related activity¹⁷.

The Federal Board of Revenue is presently investigating cryptocurrency dealers for money laundering and tax fraud due to the ban on cryptocurrencies¹⁸. Moreover, the Federal Investigation Agency (FIA) started conducting operations against those who deal in cryptocurrencies¹⁹. The FIA detained one person from Peshawar for trading in bitcoin and will be looking into other people, as the SBP provided information on fourteen persons engaged in bitcoin business in Khyber Pakhtunkhwa²⁰. Two persons were detained in Shangla District in January 2020 and their bitcoin mining equipment were seized. In the province of Punjab, several businesses were investigated on the grounds that they might have engaged in illicit cryptocurrency trade.

The situation is gradually improving for cryptocurrency trade and mining. Senior Khyber Pakhtunkhwa government officials stated that the Khyber Pakhtunkhwa Assembly had passed a resolution calling for the federal government to take action to legalize cryptocurrencies and their mining²¹. The Sindh High Court declared that the SBP did not deem cryptocurrencies illegal on 17 December 2020²². Moreover, in March 2021, the Khyber Pakhtunkhwa government revealed plans to establish hydroelectric-powered cryptocurrency mining farms in the province in order to take advantage of a bullish global cryptocurrency market²³.

In keeping with current global trends, Pakistan has embarked on studies to pave the way for introducing its own digital currency in an effort to expand banking services to the financially excluded. In January 2019, the local chapter of Telenor, the Norwegian telecom giant, announced that it would be using blockchain for remittances from abroad. Additionally, the digital currency will help the leadership fight corruption, one of the main goals of the country's government. In a recent interview with the international media outlet CNN, Reza Baqir, Governor of the SBP, stated: "We are studying it [introduction of a digital currency by the central bank] very carefully." In compliance with the action plan of the Financial Action Task Force (FATF), the Paris-based global financial transactions watchdog, the adoption of digital currency would also aid the Pakistan government in its fight against money laundering and the funding of terrorism.

Business Recorder reviewed the scope for regulating cryptocurrency in Pakistan²⁴. In April 2018, the SBP issued a circular restricting all types of financial institutions operating in the country from processing or dealing in cryptocurrencies, thus putting an end to this unregulated gold rush in the form of cryptocurrencies. The variety of cryptocurrency exchanges and mining activities were thus pushed to the more dubious sector of the economy, despite the fact that there had been no meaningful engagement with the formal banking services before the circular went into force. In order to

promote cashless payments, the SBP subsequently introduced a network for licensing non-bank businesses as "Electronic Money Institutions." Contrary to what several news stories at the time said, this "e-money" was simply a digital representation of fiat currency deposited in a bank; it was not cryptocurrency. From the standpoint of the central bank, it made sense to prevent cryptocurrency given the efforts being made to remove Pakistan from the FATF's grey list.

In a position paper, the Securities and Exchange Commission of Pakistan (SECP) explored the potential for regulating digital and virtual tokens. Despite Pakistan's fintech industry being in its infancy, the SECP study raised the debate around tokens to a more sophisticated level, i.e., their categorization as securities rather than currencies - concerns that are still being debated in more developed jurisdictions. Albeit an oversimplification, the dilemma is whether the token serves as a means of payment (currency) or an investment (security). The former is not possible due to the SBP's restriction, and the SECP made it clear that it supported the central bank in this regard.

Television host Waqar Zaka, a proponent of cryptocurrency's legalization in Pakistan, filed a lawsuit against the FIA for detaining people for holding bitcoin. He termed cryptocurrency trading as a fundamental right²⁵. According to Zaka, any ban on cryptocurrencies would "deprive Pakistanis of earning the biggest profits." He added that the top FATF member nations engaged in cryptocurrencies because they were aware that bitcoin could not function without the Internet, which leaves a digital footprint. The Sindh High Court has ordered authorities to refrain from harassing bitcoin and other digital currency miners and has forbidden them from taking action against or investigating into digital currency traders²⁶.

4.2 Ruling about Cryptocurrency by National Scholars and Madrasas

The renowned scholar Mufti Muhammad Taqi Usmani ruled in May 2021 that bitcoin was impermissible under Shari'ah due to its speculative nature. He, however, noted that its usage might increase in the future, after which the current decision might be reconsidered.

Naz and Nazir²⁷ mentioned the following fatāwa in their study. According to a fatwa issued by Jāmi'a Binoria in Karachi, Pakistan, on 25 August 2019, bitcoin and other such currencies were not recognized as legal tender under state law because they do not exist physically. Jāmi'a Farooqia in Karachi, Pakistan, also stated in an email to the principal author on 11 September 2019 that bitcoin was forbidden under Shari'ah. The fatwa claims that bitcoin is fictitious money with no characteristics of real money, with the Pakistani government prohibiting its usage, and that it involves fraud.

Jām'ia Uloom-e-Islamia Allama Muhammad Yousaf Banuri Town in Karachi declared on 22 August 2019 that a currency must have the attribute of being generally accepted by the people and that the government must have recognized it as currency or money.

Cryptocurrency is thus not currency because it has a limited acceptance and has not been recognized as such by the state.

A fatwa given by Jām'ia Tur Rasheed in Karachi states that using cryptocurrency is impermissible if it is not allowed to be used in the country in question, such as Pakistan.

4.3 Common Parameters of Illegitimacy of Cryptocurrency between Government and Shari'ah

In examining the SBP circular and the fatawa collected from various Pakistani madrasas, the following factors were discovered:

- Uncertain and highly risky
- Volatility and speculation
- Vulnerable to hacking attacks
- Widely used in illicit activities
- Not declared as money by the state

These points will be explained within the context of Shari'ah law.

4.3.1 Uncertain and highly risky

The Pakistani government, like the governments of the majority of other countries, has cautioned its citizens about the potential dangers associated with cryptocurrency. The SBP views cryptocurrency as being uncertain. However, it is important to discuss the level of uncertainty (*Gharar*) that exists within cryptocurrencies. Any activities that involve excessive *Gharar* are forbidden in Islam. According to Ibn Taymiyyah, "*Gharar* is the unknown consequences." *Gharar* in *fiqh mu'amalah* refers to actions with hidden consequences, such as acting recklessly without enough knowledge, enter the arena of risk without thinking the consequences, or selling an item without sufficient knowledge²⁸. Imam ibn Taymiyyah claimed that *Gharar*, which is similar to *Qimār*, happens when someone is unaware of what is kept for them at the end of the trading activities. Muslim jurists concur that only the major *Gharar* is prohibited since it compromises the legality of contracts. Major *Gharar* is forbidden since it resembles gambling, which Ibn Taymiyah and Ibn Al-Qayyim first recognized because they saw exorbitant *Gharar* as a form of gambling²⁹. By taking cryptocurrencies into account, the majority of individuals hold cryptocurrency in order to attain monetary gain. Due to the extreme price volatility and unregulated nature of cryptocurrency, the user is exposed to enormous risk and uncertainty as a result of holding it. These arguments confirm the presence of excessive *gharar* in cryptocurrency.

4.3.2 Volatility and speculation

Cryptocurrency was created in 2008 in order to serve as an alternate form of payment that does not rely on a trusted third party. However, rather than being utilized for transaction

purposes, it is mostly used for speculation purposes³⁰. The reason cryptocurrencies are appealing to speculators is because of the extraordinary volatility in its value. As per Shari'ah, any activity involving pure speculation is considered to be *Maysir*³¹, and thus prohibited. The term "*Maysir*" describes the easy acquisition of money by chance, whether or not it violates another person's right. As was already indicated, the majority of individuals buy cryptocurrencies for speculation nowadays, with the intention of making monetary profit that is mostly dependent on luck. According to some scholar, an asset cannot be classified as speculative or involving *Maysir* based just on its volatility. However, by taking into account the definition of speculating, which is the act of purchasing and selling of assets in the market while being aware of its volatility and the associated risk in order to generate a capital gain³², it is clear that a user of a cryptocurrency would take the risk of holding a cryptocurrency while being aware of its volatility.

4.3.3 Vulnerability to hacking attacks

Bitcoin and other similar cryptocurrencies are theorized to be extremely safe because they use blockchain technology and a proof-of-work algorithm. This has, however, been practically disproven, as about 1.87 million bitcoins (equal to about 70 billion USD, at the time of this writing) have been hacked from cryptocurrency exchanges worldwide from June 2011 to July 2019. Due to anonymous transactions and the ability for a single user to have numerous wallets, as highlighted by Wagstaff³³, such theft cannot be traced. Furthermore, because no monetary authority guarantees cryptocurrencies, the people cannot recover such losses.

4.3.4. Widely used in illicit activities

Due to their anonymity and lack of standardized global regulation, cryptocurrencies have created new potential for illegal acts including money laundering, tax evasion, and financing terrorism. One such illustration was Silk Road, an online dark web marketplace that was operational between 2011 and 2013, where users could purchase and sell illegal goods and services.

According to Foley et al³⁴, more than 50% of bitcoin transactions and about 25% of bitcoin users are associated to illegal activity, demonstrating that cryptocurrencies are one of the major unregulated marketplaces in the world. More than 100,000 users reportedly sold and bought more than \$200 million worth of illicit products, including fake IDs, narcotics, and pornography; all of these transactions had to be done in bitcoin³⁵. The United States Department of Justice had seized between \$3.5 million and \$4 million in bitcoin³⁶.

The frequency of these incidents rose along with the value of bitcoin. In 2018, the amount of bitcoin traded on darknet markets increased, reaching an average of \$2 million

each day³⁷. Irwin and Milad³⁸ noted that a number of terrorist activities have been connected to cryptocurrencies.

4.3.5 Not declared as money by the state

Cryptocurrency is not declared as legal tender in Pakistan and is not permissible to use due to the concerns described above. As a result, it is illegitimate to utilize cryptocurrencies in Pakistan since, under Shari'ah, one must abide by the government's edict prohibiting or restricting the use of cryptocurrencies. The state's decision to not declare cryptocurrency to be legal tender can be also related to *Maqāṣid al-sharī'ah*.

Maqāṣid al-sharī'ah and *Maslaha* may be at danger from cryptocurrencies. The aim of *Maqāṣid al-sharī'ah* is to safeguard the interests of all people. Al-Ghazali stated that the objective of Shari'ah is to advance human welfare by protecting people's lives, faith, intellect, posterity, and wealth; the word "*Maslaha*" is Arabic for "benefits." The implementation of the *Maqāṣid* should lead to the attainment of some advantages (*Maslaha*) and prevention of damage (*Mafsadah*) in the society³⁹. All of the aforementioned aspects of cryptocurrencies, such as their high risk and degree of uncertainty, their volatility and speculation, their vulnerability to hacking attacks, and their use in illicit activities, are to blame for the neglect of the *Maqāṣid al-sharī'ah* and, ultimately, the *Maslaha*. In the case of cryptocurrencies, the preservation of wealth, which is a crucial component of *Maqāṣid al-sharī'ah*, may obviously vanish. Given that cryptocurrencies are characterized by price volatility and speculation, unpredictability, vulnerability to hacking attacks, and the promotion of illegal activities, the question of how the wealth of cryptocurrency users can be protected and *Maslaha* in society can be attained will always be there.

5. Conclusion

The SBP's decision to restrict cryptocurrencies is consistent with Shari'ah law. The aforementioned threats or circumstances pose a threat to the principles of *Maqāṣid al-sharī'ah* and *Maslaha*. The cryptocurrency built on the blockchain, however, has the power to completely revolutionize the financial industry. In light of the growing use of cryptocurrencies, the ruling may need to be revisited in future, as noted by eminent Pakistani scholar mufti Muhmmad Taqi Usmani.

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