



NewMUN: Chapter VI BACKGROUND GUIDE Lok Sabha

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LETTER FROM THE CHAIRS

GREETING DELEGATES!

It gives us immense pleasure to welcome you to this simulation of All India Political Parties' Meet at NEW INDIAN MODEL UNITED NATIONS. We look forward to an enriching and rewarding experience.

The Issues for the session being:

1. Promoting Transparency and Independence of ED and CBI in the Indian Political Landscape.
2. Explore the implications of cryptocurrencies and blockchain in India, discussing potential regulatory frameworks that balance innovation with financial security and consumer protection.

This study guide is by no means the end of research, we would very much appreciate it if the leaders are able to find new realms in the agenda and bring it forth in the committee. Such research combined with good argumentation and a solid representation of facts is what makes an excellent performance.

In the session, the executive board will encourage you to speak as much as possible, as fluency, diction or oratory skills have very little importance as opposed to the content you deliver. So just research and speak and you are bound to make a lot of sense. We are certain that we will be learning from you immensely and we also hope that you all will have an equally enriching experience. In case of any queries feel free to contact us. We will try our best to answer the questions to the best of our abilities.

We look forward to an exciting and interesting committee, which should certainly be helped by the all-pervasive nature of the issue. Hopefully we, as members of the Executive Board, do also have a chance to gain from being a part of this committee. Please do not hesitate to contact us regarding any doubts that you may have.

All the Best!

Co-Chair Chair

FADHIL ROSHINI

AGENDA 1:

Promoting Transparency and Independence of ED and CBI in the Indian Political Landscape.

INTRODUCTION

The Lok Sabha or House of the People is the lower house of the Parliament of India. The Lok Sabha meets in the Lok Sabha Chambers, Sansad Bhavan, Sansad Marg, New Delhi. Lok Sabha is composed of representatives of the people chosen by direct election on the basis of adult suffrage. The maximum strength of the House envisaged by the Constitution of India is 552. The total elective membership is distributed among the States in such a way that the ratio between the number of seats allotted to each State and the population of the State is, so far as practicable, the same for all States. Lok Sabha, unless sooner dissolved, continues for five years from the date appointed for its first meeting and the expiration of the period of five years operates as dissolution of the House. However, while a proclamation of emergency is in operation, this period may be extended. The Lok Sabha performs a number of useful functions. Some of these functions are described below:

1. **Legislative:** Law-making is the main function of the Parliament and in this field the Lok Sabha plays an important role. All types of bills can originate in the Lok Sabha and if a bill is moved in and passed by the Rajya Sabha, it must come to the Lok Sabha for its approval.
2. **Financial:** Control over purse makes one powerful. In financial matters, the Lok Sabha has a distinct superiority over the Rajya Sabha. The Money Bill can be introduced only in the Lok Sabha. It is up to the Lok Sabha to accept or reject the suggestions for change in the Money Bill made by the Rajya Sabha.
3. **Control over Executive:** The Council of Ministers is collectively responsible to the Lower House of the Parliament. Thus, the government is accountable to the Lok Sabha for its acts of omission and commission. It is only the Lok Sabha which can force the Council of Ministers to resign by passing a vote of non-

confidence against it. There are also other methods by which the Lok Sabha can exercise control over the central executive. These methods are putting questions, moving adjournment motions and call-attention motions, budget discussions, cut motions and debates etc. By employing any of these methods the Lok Sabha can expose the misdeeds and inefficiency of the government and warn it against repeating such mistakes.

4. Constitutional: The Lok Sabha shares with the Rajya Sabha the power to amend the constitution.

5. Electoral: (a) The Lok Sabha takes part in the election of the President and the Vice-President. (b) It elects the Speaker and the Deputy Speaker. (c) Its members are elected to different committees of the Parliament.

6. Judicial: (a) The Lok Sabha has power to punish a person on the ground of breach of privilege (b) It takes part in the impeachment proceedings against the President of India (c) It shares power with the Rajya Sabha to remove the Judges of the Supreme Court and the Judges of High Courts.

INTRODUCTION TO ED AND CBI

Directorate of Enforcement (ED)

The Enforcement Directorate is a law enforcement and economic Intelligence agency responsible for fighting economic crime in India and enforcing economic laws. It works under the Department of Revenue of the Ministry of Finance. For administrative purposes, the Directorate reports to the Department of Revenue; however, the Department of Economic Affairs is responsible for the policy aspects of the FEMA, its legislation, and any revisions thereto. The Department of Revenue, however, oversees all policy matters relating to the PML Act. The Directorate enforced rules under the Foreign Exchange Regulation Act of 1973 before FEMA took effect on June 1st, 2000. It comprises officers from Indian Administrative Service, Indian Police Service, and Indian Revenue Service.

Function of Enforcement Directorate (ED)

1. COFEPOSA: Under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA), this Directorate is empowered to sponsor cases of preventive detention regarding contraventions of FEMA.

2. Foreign Exchange Management Act, 1999 (FEMA): It is a civil law enacted to consolidate and amend the laws relating to facilitate external trade and payments and to promote the orderly development and maintenance of foreign exchange market in India. • ED has been given the responsibility to conduct investigation into suspected contraventions of foreign exchange laws and regulations, to adjudicate and impose penalties on those adjudged to have contravened the law.

3. Prevention of Money Laundering Act, 2002 (PMLA): Following the recommendations of the FATF India enacted PMLA. • The ED has been entrusted with the responsibility of executing the provisions of PMLA by conducting investigation to trace the assets derived from proceeds of crime, to provisionally attach the property and to ensure prosecution of the offenders and confiscation of the property by the Special court.

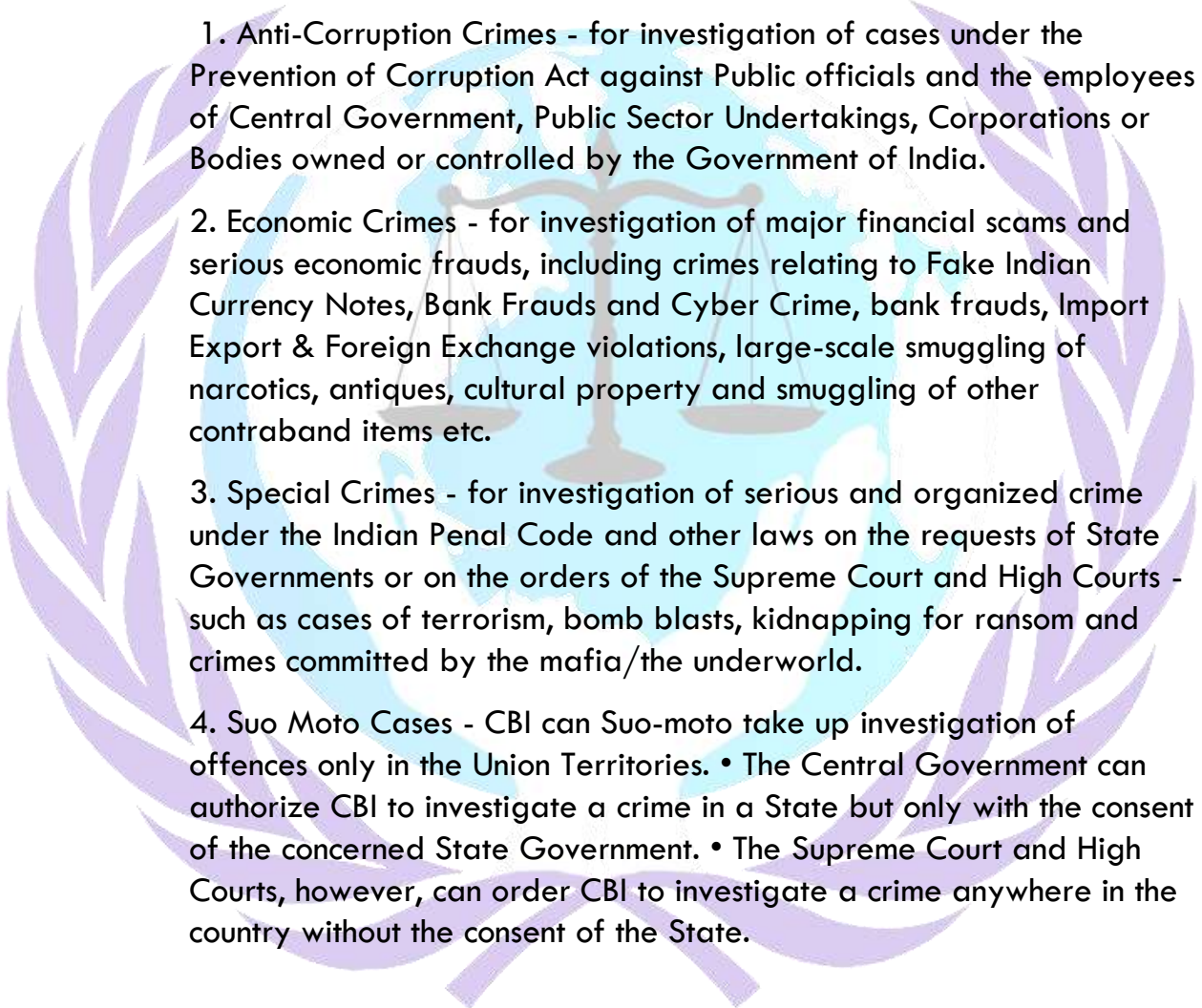
4. Fugitive Economic Offenders Act, 2018 (FEOA): Lately, with the increase in the number of cases relating to economic offenders taking shelter in foreign countries, the Government of India introduced the Fugitive Economic Offenders Act, 2018 (FEOA) and ED is entrusted with its enforcement. • This law was enacted to deter economic offenders from evading the process of Indian law by remaining outside the jurisdiction of Indian courts. • Under this law, the ED is mandated to attach the properties of the fugitive economic offenders who have escaped from India warranting arrest and provide for the confiscation of their properties to the Central Government.

Central Bureau of Investigation (CBI)

The Central Bureau of Investigation (CBI) stands as India's foremost law enforcement agency, primarily tasked with investigations of paramount importance. Operating under the umbrella of the Department of Personnel, Ministry of Personnel, Pension & Public Grievances, under the direct purview of the Prime Minister's Office, the CBI assumes a pivotal role. Facilitating the Central Vigilance Commission and the Lokpal, the CBI shoulders the responsibility of providing essential assistance in ensuring probity and accountability in governance. Intriguingly, while its operational authority rests with the Department of Personnel, the jurisdiction over corruption-related offenses, in alignment with the Prevention of Corruption Act, is held by the Central Vigilance Commission. Beyond its domestic role, the CBI commands a central position in the global arena, orchestrating investigation coordination

on behalf of Interpol's member nations. The agency's efficacy is notably underscored by a striking conviction rate, ranging between 65% to 70%, which positions it on par with the finest investigative entities globally. In essence, the CBI epitomizes the essence of diligent and capable investigation, contributing significantly to the pursuit of justice and the maintenance of rule of law within India and beyond.

Function of Central Bureau of Investigation (CBI)

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1. Anti-Corruption Crimes - for investigation of cases under the Prevention of Corruption Act against Public officials and the employees of Central Government, Public Sector Undertakings, Corporations or Bodies owned or controlled by the Government of India.
 2. Economic Crimes - for investigation of major financial scams and serious economic frauds, including crimes relating to Fake Indian Currency Notes, Bank Frauds and Cyber Crime, bank frauds, Import Export & Foreign Exchange violations, large-scale smuggling of narcotics, antiques, cultural property and smuggling of other contraband items etc.
 3. Special Crimes - for investigation of serious and organized crime under the Indian Penal Code and other laws on the requests of State Governments or on the orders of the Supreme Court and High Courts - such as cases of terrorism, bomb blasts, kidnapping for ransom and crimes committed by the mafia/the underworld.
 4. Suo Moto Cases - CBI can Suo-moto take up investigation of offences only in the Union Territories. • The Central Government can authorize CBI to investigate a crime in a State but only with the consent of the concerned State Government. • The Supreme Court and High Courts, however, can order CBI to investigate a crime anywhere in the country without the consent of the State.

TIMELINE OF KEY EVENTS

HISTORICAL CONTEXT

Directorate of Enforcement (ED)

1. The Directorate of Enforcement or the ED is a multi-disciplinary organization mandated with investigation of economic crimes and violations of foreign exchange laws. The origin of this Directorate goes back to 1st May, 1956, when an 'Enforcement Unit' was formed in the Department of Economic Affairs for handling Exchange Control Laws violations under Foreign Exchange Regulation Act, 1947 (FERA '47). This Unit with Delhi as Headquarters was headed by a Legal Service Officer, as Director of Enforcement, assisted by an Officer drawn on deputation from Reserve Bank of India (RBI) and 03 Inspectors of Special Police Establishment. There were 02 branches – at Bombay and Calcutta.

2. In the year 1957, this Unit was renamed as 'Enforcement Directorate', and another branch was opened at Madras. In 1960, the administrative control of the Directorate was transferred from the Department of Economic Affairs to the Department of Revenue. With the passage of time, FERA' 47 was repealed and replaced by FERA, 1973. For a short period of 04 years (1973 – 1977), the Directorate remained under the administrative jurisdiction of the Department of Personnel & Administrative Reforms. Presently, the Directorate is under the administrative control of Department of Revenue, Ministry of Finance, Government of India.

3. With the onset of the process of economic liberalization, FERA, 1973, which was a regulatory law, was repealed and in its place, a new law viz. the Foreign Exchange Management Act, 1999 (FEMA) came into operation w.e.f. 1st June 2000. Further, in tune with the International Anti Money Laundering regime, the Prevention of Money Laundering Act, 2002 (PMLA) was enacted and ED was entrusted with its enforcement w.e.f. 1st July 2005. Recently, with the increase in number of cases relating to economic offenders taking shelter in foreign countries, the Government has passed the Fugitive Economic Offenders Act,

2018 (FEOA) and ED is entrusted with its enforcement with effect from 21st April, 2018.

Central Bureau of Investigation (CBI)

During the period of World War II, a Special Police Establishment (SPE) was constituted in 1941 in the Department of War of the British India to enquire into allegations of bribery and corruption in the war related procurements. Later on, it was formalized as an agency of the Government of India to investigate into allegations of corruption in various wings of the Government of India by enacting the Delhi Special Police Establishment (DSPE) Act, 1946.

The CBI is not a statutory body but derives its power to investigate from the Delhi Special Police Establishment Act, 1946.

The establishment of the CBI was recommended by the Santhanam Committee on Prevention of Corruption (1962–1964).

In 1963, the CBI was established by the Government of India with a view to investigate serious crimes related to defense of India, corruption in high places, serious fraud, cheating and embezzlement and social crime, particularly of hoarding, black-marketing and profiteering in essential commodities, having all-India and inter-state ramifications.

With the passage of time, CBI started investigations in conventional crimes like assassinations, kidnappings, hijackings, crimes committed by extremists, etc.

PREVIOUS ATTEMPTS TO RESOLVE THE ISSUE

CHALLENGES

Directorate of Enforcement (ED)

Why is the ED being Criticized Lately?

1. Misuse of Power: • The ED has a lot of power and discretion in investigating economic crimes like money laundering, and they don't need permission from the government to prosecute politicians or government officials. • However, this power has been misused, as even minor crimes have been brought under the purview PMLA, which was originally meant to combat money laundering related to Drug Trafficking.
2. Lack of Transparency: • There is also a lack of transparency in how the ED selects cases to investigate, and they have been known to target opposition parties. • Convictions in cases by the ED are rare, but media trials have already ruined the accused's reputation. ❖ Between 2005 and 2013-14, there were zero convictions, and between 2014-15 and 2021-22, only 23 cases were under conviction out of 888 cases registered.
3. Political Bias: • There have been allegations that political figures who have switched to the ruling party have been given favorable treatment by the ED. In some cases, these individuals have reportedly been given "clean chits" or seen the ED slow down in their investigations into economic offenses such as money laundering. • These allegations have raised concerns about potential political bias and lack of independence in the ED's actions.

What are the Recent Controversies Regarding PMLA and the Powers and Efficiency of ED?

1. The PMLA formulated in 2002 has undergone various critical changes from time to time in order to give itself more strength to deal with the offence of money laundering. • However, on account of these amendments, several petitions have been filed across the country that question the almost blanket powers assigned to the ED under PMLA for searching, seizing, investigating, and attaching assets considered to be proceeds of crimes.

2. Moreover, in a recent hearing, the SC upheld the constitutional validity of the PMLA and ED's power to hold inquiries, arrest people and attach property (under Section 5 of the Act). • The Court stated that Section 5 provides for a balancing arrangement to secure the interests of the person and also ensures that the proceeds of crime remain available to be dealt with in the manner provided by the 2002 Act. • It rejected the argument that ED authorities are police officers and, hence, a statement recorded by them (Section 50 of the Act) would be hit by Article 20(3) of the Indian Constitution which says no person accused of an offence shall be compelled to be a witness against himself (self-incrimination).

3. Additionally, the conviction rate of the ED under PMLA is very low, despite thousands of cases registered and people arrested. • According to the data quoted by the government in Parliament of India, there were zero convictions between 2005 and 2013-14. • By 2014-15 to 2021-22, out of 888 cases under ED, only 23 cases were under conviction.

Central Bureau of Investigation (CBI)

What Challenges are Faced by the CBI?

1. Political Interference: The Supreme Court of India has criticized the CBI by calling it a "caged parrot speaking in its master's voice", due to excessive political interference in its functioning.
2. It has often been used by the government of the day to cover up wrongdoing, keep coalition allies in line and political opponents at bay.
3. Delayed Investigations: It has been accused of enormous delays in concluding investigations - For example, the inertia in its probe against the high dignitaries in Jain hawala diaries case [of the 1990s].
4. Loss of Credibility: Improving the image of the agency is one of the biggest challenges till now as the agency has been criticized for its mismanagement of several cases involving prominent politicians and mishandling of several sensitive cases like Bofors scandal, Hawala scandal, Sant Singh Chatwal case, Bhopal gas tragedy, 2008 Noida double murder case (Aarushi Talwar).

5. Lack of Accountability: CBI is exempted from the provisions of the Right to Information Act, thus, lacking public accountability.

6. Acute shortage of personnel: A major cause of the shortfall is the government's sheer mismanagement of CBI's workforce, through a system of inefficient, and inexplicably biased, recruitment policies - used to bring in favored officers, possibly to the detriment of the organization.

7. Limited Powers: The powers and jurisdiction of members of the CBI for investigation are subject to the consent of the State Govt., thus limiting the extent of investigation by CBI.

8. Restricted Access: Prior approval of Central Government to conduct inquiry or investigation on the employees of the Central Government, of the level of Joint Secretary and above is a big obstacle in combating corruption at higher levels of bureaucracy.

Controversies

Two things are very essential for such a specialized agency to work- investigating skills and impartiality. CBI is said to be not very efficient and is called partial when it comes to dealing with crimes committed by higher ranked officers or politicians. Here is a look at some controversial things that hit CBI within the years:

Supreme Court calling CBI a “Caged Parrot”

In the year 2013 Supreme Court called CBI a “caged parrot” as there was clear evidence for the coal blocks allocation case which hints that the government was using the agency for their own benefits. Thus, the Supreme Court criticized the agency making the remark and stated that the CBI must know how to cope up with the government pressure and must know how to take a stand for itself.

Allegations against Special Director and Director of CBI

P. Singh, former CBI director, was accused of corruption and bribery by the central investigating agency and was in the headlines because of his links with controversial meat exporter Moin Qureshi. The former Special Director Rakesh Asthana was also accused of corruption in 2017.

Bansal family suicide case

Former Director General of foreign affairs B. K. Bansal and his family committed suicide in 2016 and it was found in their suicide notes that they accused some Central Bureau Investigation officials of threatening them.

Ranjit Sinha's Case

The then CBI chief Ranjit Sinha was accused of being involved in a corruption case. The Supreme Court asked CBI special director ML Sharma to look into the case but the investigation against Sinha is yet to be completed.

Sohrab Uddin Case

CBI was also accused of favoring former ruling party Congress against its opposition BJP. The CBI during the investigation of Sohrabuddin case in Gujarat pressurized Geeta Johri who was also investigating the same case to falsely implicate former Gujarat Minister Amit Shah.

PROPOSED REFORMS

Directorate of Enforcement (ED)

1. It is true that law has given stringent powers to the ED in dealing with the accused that can increase the possibility of political misuse. • But there must be a consensus between the adjudicating authority and the officers of ED to abide by the constitutionality of provision under PMLA, making the investigation more lucid.
2. The process itself should not become a punishment. ED's expanded powers should be welcomed with a greater commitment to expeditiously resolve the cases, so both the judiciary and enforcement agencies can move forward with speedy trials and convictions.
3. There must be a constant scrutiny over the operations of the Enforcement Directorate and current disposition whether this clarification will improve the conviction rate (which is right now less than half a percent). • And if there will be any lacunas in the operative part, change is the law of nature, these gaps can be filled either through suitable legislation, executive action or revised order of the apex court.

Central Bureau of Investigation (CBI)

1. Delink the CBI from the administrative control of the government - As long as the government of the day has the power to transfer and post

officials of its choice in the CBI, the investigating agency will not enjoy autonomy and will be unable to investigate cases freely.

2. Providing statutory status through legislation equivalent to that provided to the Comptroller & Auditor General and the Election Commission will help maintain the independence of the institution.

3. twenty fourth report of Department related parliamentary standing committee on personnel, public grievances, law and justice on working of CBI recommended the following:

4. Strengthening human resources by increasing strength of CBI, • Better investments in infrastructural facilities, • Increased financial resource and administrative empowerment with accountability, • Give more Powers (related to Union, State and Concurrent list of the 7th schedule of Indian constitution), to the CBI, • Separate enactment under – "Central Bureau of Intelligence and Investigation Act" and replace DSPE Act.

5. In 1978, the L P Singh committee recommended enactment of a "comprehensive central legislation to remove the deficiency of not having a central investigative agency with a self-sufficient statutory charter of duties and functions".

6. The Second Administrative Reforms Commission (2007) also suggested that "a new law should be enacted to govern the working of the CBI".

CONCLUSION

Directorate of Enforcement (ED)

1. The ED has extensive powers under PMLA, but these should not be used to abuse political opponents. Investigations should not become punishments, and cases should be resolved quickly to ensure speedy trials and convictions.

2. Fighting corruption requires reforming investigations and ensuring transparency and fairness in the adjudication process. The ED is trying to balance speed with integrity. Rather than extreme measures, the solution is likely to be systemic fixes.

3. Changing the way government agencies operate is necessary to substantially reduce corruption.

Central Bureau of Investigation (CBI)

The Central Bureau of Investigation basically deals with cases related to matters of national security and does not interfere in trivial cases. Though being an elite force of the nation still it needs to undergo structural reforms to work efficiently. The most important reason behind this is its way of tackling politically sensitive issues with ending up to be a part of controversies. After being called a “Caged Parrot” by the Supreme Court, it continues to disappoint people when dealing with any case against the superior. In order to obtain the public’s confidence back and restore the integrity of CBI, it needs to have financial autonomy and most importantly it must have a statutory status through legislation as provided to Comptroller and Auditor General and Election Commission of India.

POSSIBLE SOLUTIONS

QUESTIONS TO PONDER UPON

- What steps can be taken to build public trust in the ED and CBI as independent and transparent institutions?
- How can the ED and CBI balance operational efficiency with the need for transparency and independence?
- Are the ED and CBI adequately resourced to function independently and transparently? What improvements are needed?
- Are the current legal frameworks governing the ED and CBI adequate to ensure their independence and transparency? What changes are needed?
- What structural reforms are necessary to ensure the independence of the ED and CBI from political pressures?
- What accountability mechanisms can be implemented to prevent misuse of power and ensure the independent functioning of these agencies?
- What international best practices can India adopt to enhance the transparency and independence of its investigative agencies?

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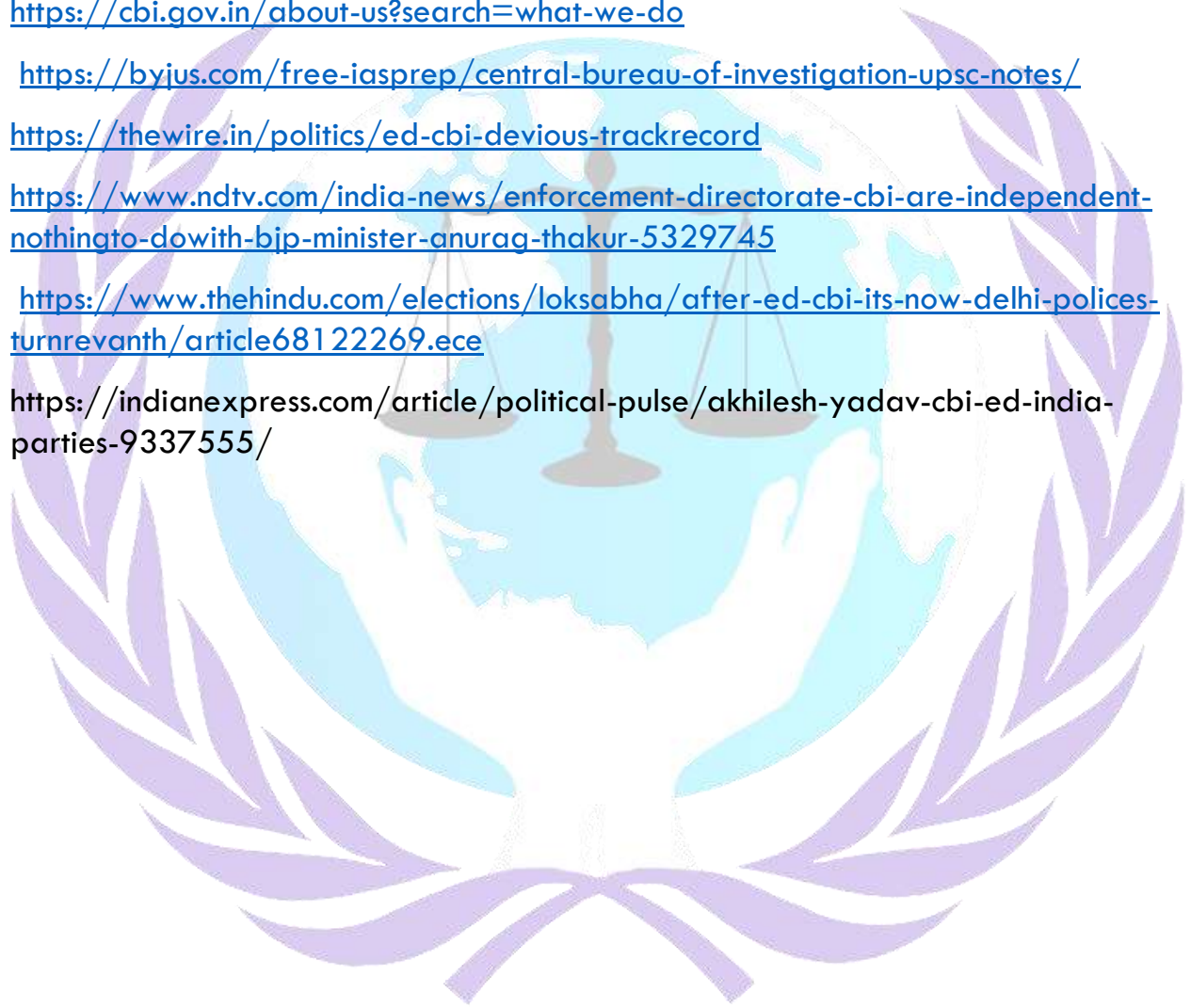
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AGENDA 2:

Explore the implications of cryptocurrencies and blockchain in India, discussing potential regulatory frameworks that balance innovation with financial security and consumer protection.

INTRODUCTION

Cryptocurrencies and Blockchain technology have garnered significant attention globally, including in India, where their implications are multifaceted.

Cryptocurrencies:

A cryptocurrency is a form of virtual or digital asset distributed across a huge number of computers based on a network. It is typically a decentralized digital fund designed to be over the net. It is not governed or regulated by any central authority or government. As one of the emerging markets for virtual digital assets (VDA) in the world, India's role in driving the adoption of cryptocurrencies has been influential. In 2023, a prominent global survey revealed that India was at the top of crypto adoption in the world, leaving the USA, UK, China, Brazil, Russia and Japan behind. Cryptocurrencies have not been recognized as currencies by the RBI, and no specific laws or laws related to cryptocurrencies have been introduced in India till date. Due to the lack of a clear legal definition of cryptocurrencies, cryptocurrencies are currently regulated by various requirements of applicable law.

Block chain Technology:

Blockchains can broadly be defined as a new type of network infrastructure (a way to organize how information and value moves around on the internet) that create 'trust' in networks by introducing distributed verifiability, auditability, and consensus. Blockchain technology has the potential to revolutionize interactions between governments, businesses and citizens in a manner that was unfathomable just a decade ago. Though very often grouped with technologies such as artificial intelligence (AI) or IoT (Internet of Things), the technology is unique in its foundational nature. Unlike other technologies, which have the potential to deliver completely new services to citizens and other stakeholders alike, blockchain has the potential to revamp currently existing processes to unlock new sources of efficiency and value. Blockchain, the underlying technology of cryptocurrencies, offers secure, transparent, and immutable record-keeping. Its applications extend beyond finance to sectors like supply chain management, healthcare, and governance. In India, blockchain holds promise for enhancing transparency, efficiency, and reducing fraud.

Functions of Cryptocurrencies:

1. **Remittances:** Cryptocurrencies provide a cost-effective and efficient alternative for remittances. They enable individuals to send money across borders quickly and at lower fees compared to traditional remittance services.
2. **Investment:** Cryptocurrencies like Bitcoin and Ethereum serve as investment assets in India. Many Indians view cryptocurrencies as a speculative investment opportunity due to their potential for high returns.
3. **Financial Inclusion:** Cryptocurrencies have the potential to include unbanked and underbanked populations in the financial system. People who lack access to traditional banking services can use cryptocurrencies for financial transactions and savings.
4. **Blockchain Applications:** Beyond cryptocurrencies, blockchain technology is being explored in various sectors in India, such as supply chain management, healthcare, education, and governance. Blockchain offers transparency, security, and efficiency improvements in these areas.

5. Fundraising (ICOs/STOs): Initial Coin Offerings (ICOs) and Security Token Offerings (STOs) provide avenues for startups and businesses in India to raise funds. These token sales leverage blockchain technology to offer digital tokens representing ownership or utility in a project.

6. Hedging against Inflation: Inflation concerns in India sometimes drive individuals to seek alternative assets like cryptocurrencies, which are viewed by some as a hedge against traditional currency depreciation.

Functions of Blockchain in India:

1. Supply Chain Management: Blockchain can improve transparency, traceability, and efficiency in supply chains. This is particularly beneficial in India's agriculture sector, ensuring the authenticity and quality of products from farm to table.

2. Financial Services: Blockchain enables faster and more secure transactions, potentially reducing costs associated with remittances and cross-border payments. It also facilitates peer-to-peer lending platforms and enhances the efficiency of financial services.

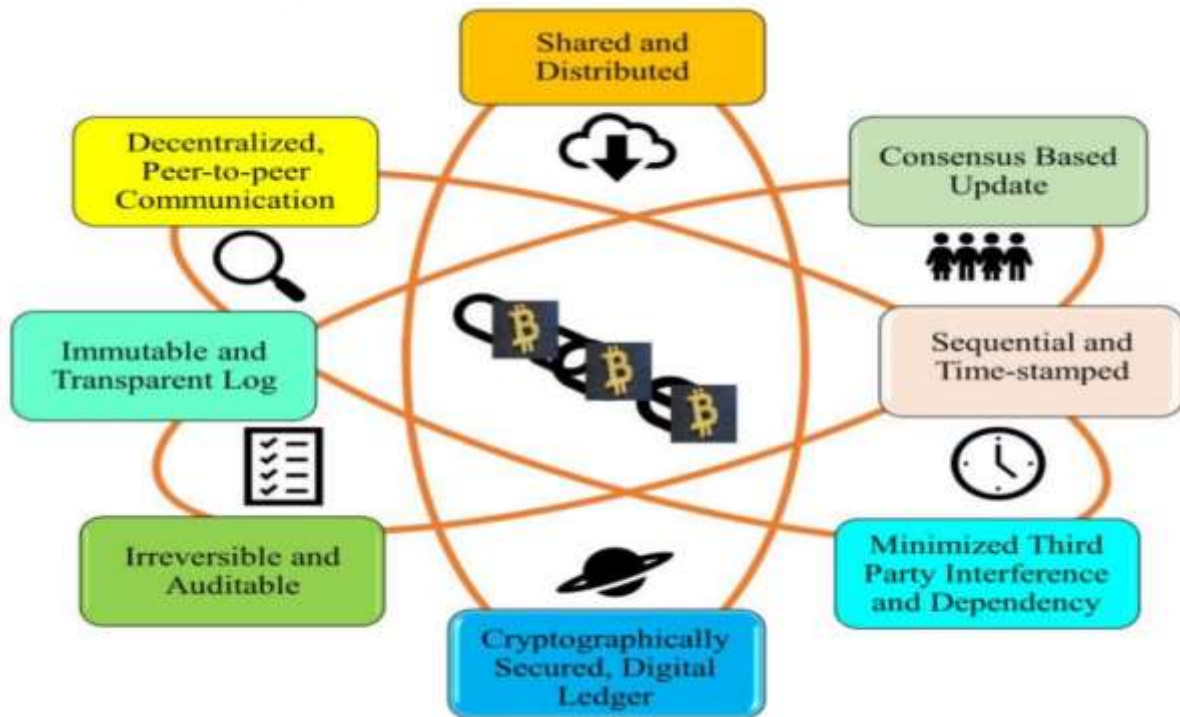
3. Identity Verification: Blockchain-based solutions can provide secure and decentralized identity verification, addressing issues of identity theft and fraud. This is crucial in India, where establishing and verifying identities is a challenge for many individuals.

4. Healthcare: Blockchain technology can improve the management of medical records, ensuring data integrity, patient privacy, and interoperability between healthcare providers. It can also facilitate drug traceability and supply chain management in the pharmaceutical sector.

5. Education and Credentials: Blockchain can provide secure and tamper-proof records of academic credentials, certifications, and achievements. This enhances trust and eliminates the need for centralized verification authorities.

6. Government Services: Blockchain can streamline processes in governance, such as voting systems, public procurement, and benefit distribution. It enhances transparency, reduces corruption, and improves efficiency in public administration.

7. Intellectual Property: Blockchain can create verifiable records of intellectual property rights, including patents, copyrights, and trademarks. This helps protect creators and innovators from piracy and unauthorized use.



TIMELINE OF KEY EVENTS

Historical Context:

Cryptocurrencies: In early 2018 India's central bank, the Reserve Bank of India (RBI) announced a ban on the sale or purchase of cryptocurrency for entities regulated by RBI.

In 2019, a petition has been filed by Internet and Mobile Association of India with the Supreme Court of India challenging the legality of cryptocurrencies and seeking a direction or order restraining their transaction. In March 2020, the Supreme Court of India passed the verdict, revoking the RBI ban on cryptocurrency trade.

In 2021, the government is exploring the creation of a state-backed digital currency issued by the Reserve Bank of India, while banning private ones like bitcoin.

At present, India neither prohibits nor allows investment in the cryptocurrency market. In 2020, the Supreme Court of India had specifically lifted the ban on cryptocurrency, which was imposed by the Reserve Bank of India. Since then the investment in cryptocurrency is considered legitimate though there is still ambiguity about the issues regarding the extent and payment of tax on the income accrued thereupon and also its regulatory regime. But it is being contemplated that the Indian Parliament will soon pass a specific law to either ban or regulate the cryptocurrency market in India.

Expressing his public policy opinion on the Indian cryptocurrency market to a well-known online publication, a leading public policy lawyer and Vice President of SAARCLAW (South Asian Association for Regional Co-operation in Law) Hemant Batra has said that the "cryptocurrency market has now become very big with involvement of billions of dollars in the market hence, it is now unattainable and irreconcilable for the government to completely ban all sorts of cryptocurrency and its trading and investment". He mooted regulating the cryptocurrency market rather than completely banning it. He favored following IMF and FATF guidelines in this regard.

Blockchain: Technology is the future and with the passage of time society will witness an unprecedented rise in the use of various kinds of technologies in our daily lives. In fact, in today's day and age, the use of various technologies such as Artificial Intelligence (AI), Machine Learning (ML), Robotics etc. are becoming increasingly popular. Talking about technology, if there is one particular technology that has become quite a sensation of late then it has to be the blockchain technology. Originally invented in 2009 by Satoshi Nakamoto to serve as the public ledger for the Bitcoin network, the blockchain technology has now found multiple use cases all over the world, across all sectors.

India for one has adopted and is planning to adopt the blockchain technology across various sectors. Let us see a few areas where blockchain technology is already being planned to be adopted by the Indian government. While blockchain technology was almost exclusively being used for implementing cryptocurrency at the onset, the situation took a sharp turn in 2014 with the launch of a decentralized platform known as "Ethereum," which promulgated its applications to other domains. It introduced the idea of "smart contracts," which are self-executing digital contracts that are automatically completed upon the completion of the requisite terms, thereby eliminating the need for third parties to verify them.

The growing use of cryptocurrencies has given rise to the idea of Decentralized Finance (DeFi), which refers to a set of blockchain-based applications that are designed to supersede the current financial structure. The use of smart contracts eliminates the need for third-party institutions like banks, while the decentralized nature of the platform gives users direct control over their finances. Another significant development has been the rise of Nonfungible Tokens (NFTs). These are unique digital assets like paintings or videos, which cannot be exchanged on a one to one basis. Since NFTs are based on blockchains, their unique identities and ownership can be immediately traced on the digital ledger. This has also led to their application in processing the ownership of real-life assets like deeds to real estate or vehicles.

India is actively developing proof-of-concept blockchains: India's interest in blockchain is not new. Back in 2023, Hindustan Petroleum, one of India's largest oil and gas companies, collaborated with the blockchain software firm Zupple Labs to integrate blockchain-based digital credentialing technology into its purchase order system.

India's objective behind adopting blockchain is to address the issue of document forgery. By leveraging blockchain, the Indian government issues digitally verifiable and immutable certificates, preventing alteration or misuse by malicious actors.

Although India remains hesitant to fully endorse cryptocurrencies, it has generally embraced blockchain technology, with numerous state and local governments actively contributing to the nation's blockchain adoption efforts.

The Indian government is looking forward to establishing a national blockchain framework that will help in transforming the future of as many as forty-four sectors including education, pharma, farming, energy, e-governance, and the likes. The possibility of incorporating and adopting the blockchain technology in India is vast and the government is all set to ease the way for faster and smoother adoption of this new technology. In the coming days, blockchain technology is sure to become a gamechanger for India. It will help in revamping and removing all the major problems in most of the essential services provided by the government.

PREVIOUS ATTEMPTS TO RESOLVE THE ISSUE

CHALLENGES AND PROPOSED REFORMS

Challenges faced due to cryptocurrencies:

The cryptocurrency transactions are based on trust on peers, promoters and the system. Bitcoin transactions are risky due to the absence of basic consumer protection, such as the provision of refunds arising from disputes between merchants and customers. In case of any breach, the victim may not be able to produce acceptable legal evidences for recovery of the damages. Most of the headlines related to cryptocurrencies focus on the shortcomings of the system. The cryptocurrency uses principles of information technology (IT) and hence most of the possible disputes involve IT related offences such as hacking, digital licenses etc. Apart from this, other legislations that may be relevant are consumer protection law, contract law, laws related to money laundering, intellectual property law and banking laws.

Various estimates show cryptocurrency crime is on the rise, keeping pace with the market's rapid growth. That forces investigators to focus on high-profile cases, security professionals and officials say, effectively leaving small investors to their own devices. People are encouraged to report cryptocurrency theft to local police like any other crime, saying failing to do so only emboldens criminals. Yet because many victims simply do not see the point, cryptocurrency theft is far more common than any published estimates suggest, according to the security professionals. According to financial research firm Autonomous NEXT and Crypto Aware, which works with investors affected by crypto scams, about 15 percent of cryptocurrencies have been stolen between 2012 and the first half of 2018, representing a cumulative \$1.7 billion in value at the time of the theft and with a rising tendency. In the first half of this year alone, more than \$800 million has already been stolen, according to the data. Yet Lex Sokolin, a partner and global director of fintech strategy at the firm, estimates that as much as 85% of crimes go unreported and says the published statistics only represent publicly reported heists.

Currently, cryptocurrencies are operating in a sort of regulatory vacuum. Many newspapers articles have attempted to highlight the various consumer risks pertaining to cryptocurrencies. Japan witnessed such risks with loss of \$6 billion worth of Bitcoin due to the hack of Mt. Gox¹⁶. Also, in case of any

cryptocurrency fraud, the victim is clueless as there are no remedies available. Due to anonymity, it is difficult to figure out the perpetrator. Thus, suspect as well as the jurisdiction is unknown because of the absence of any dedicated legislation or regulation. If consumers need for protection stems from the informational inequity, it seems more than relevant to provide them with guidance on the strengths and weaknesses that accompany cryptocurrencies, and to warn them of the risks associated with it.

Challenges faced due to Blockchain:

Any transformative technology, in its initial stages of development, as it moves out of research / development phase to first few applications to large scale deployment, faces several challenges. Part of the problem is that such technologies are initially intended to solve a specific set of problems. Bitcoin, which has led to the popularity of decentralized trust systems and has powered the blockchain revolution, was intended to develop a peer-to-peer electronic cash system which could solve for double spending problem without being dependent on trusted intermediaries viz. banks. As Bitcoin started gaining prominence, the potential of underlying blockchain technology started getting traction.

However, some of the early design features that made Bitcoin popular, primarily limited supply and pseudonymity, have become potential challenges in wide scale implementation of blockchain. The evolution years of blockchain technology can be compared to that of the World Wide Web. Although detailed by Tim Berners-Lee of CERN in his paper “Information Management: A Proposal” as early as 1989, the Web struggled to gain prominence till we had intuitive interface in the form of Mosaic browser in 1993 and advent of Java Virtual Machine in 1995 which made it easier to deploy large scale Web applications. Off the blocks came the likes of Yahoo, Amazon and Google, and the internet has approximately 150 million users by end of 1998 (contrast that to 26 publicly accessible sites in 1992 and 16 million users in 1995). Blockchain in 2019 is what World Wide Web was in 1995, although rapid technology advancement has ensured that several underlying technological humps have been scaled. The success of the initial use cases will set the tone of adoption of blockchain beyond the current experimentation phase. Selecting the right use cases for blockchain implementation, as highlighted earlier, thus becomes the biggest challenge for ensuring that, in times to come, the disruptive potential of this technology would indeed get an opportunity to play out.

POSSIBLE SOLUTIONS

Proposed Reforms:

Regulatory developments:

1. **Supreme Court Ruling (2020):** The Supreme Court of India lifted the Reserve Bank of India's (RBI) ban on cryptocurrency transactions. The RBI had initially imposed restrictions that prevented banks and financial institutions from providing services related to cryptocurrencies. The Supreme Court's decision was seen as a significant victory for the Indian crypto industry.
2. **Taxation:** In the 2022 budget, the Indian government announced a 30% tax on income from cryptocurrency transactions, along with a 1% tax deducted at source (TDS) on such transactions. This move was interpreted as a step towards recognizing and regulating the crypto market, even though cryptocurrencies have not been given legal tender status.
3. **Regulatory Proposals:** The Indian government has been considering the introduction of a specific legislative framework for cryptocurrencies. There have been discussions about a bill that aims to regulate digital currencies, which might include provisions for the creation of an official digital currency issued by the RBI, and for the regulation or banning of certain private cryptocurrencies. However, as of my last update, this bill had not yet been passed into law.
4. **RBI's Stance:** The Reserve Bank of India has maintained a cautious stance towards cryptocurrencies, citing concerns over financial stability, investor protection, and the potential for misuse for illicit activities. The RBI has also been exploring the possibility of launching an official digital currency (Central Bank Digital Currency - CBDC).

Current Environment:

The legal environment for cryptocurrencies in India is one of cautious regulatory scrutiny and evolving policies. While trading and holding cryptocurrencies are currently allowed, the governments and RBI's

concerns suggest that future regulations could significantly impact how cryptocurrencies operate in the country. Investors and participants in the cryptocurrency space should stay informed about regulatory developments in India, as the legal and tax implications may evolve. It's also advisable to consult with legal and financial experts to navigate the complexities of cryptocurrency regulations in India.

Conclusion:

In addressing the implications of cryptocurrencies and blockchain technology in India, a well-balanced regulatory framework is essential to harness their benefits while mitigating risks. Establishing a central regulatory authority will provide unified oversight and clear guidelines, fostering a stable environment for innovation. Defining the legal status of cryptocurrencies will remove ambiguities, integrating them into the financial system more effectively. Consumer protection must be prioritized through robust security standards for exchanges and clear dispute resolution mechanisms to build trust and safeguard users. Financial security can be enhanced by enforcing anti-money laundering regulations and providing clear taxation guidelines to prevent misuse and ensure compliance. Supporting innovation is equally important; thus, offering grants for blockchain research and creating regulatory sandboxes for startups will encourage technological advancements while maintaining regulatory oversight. Additionally, aligning with international standards and participating in global discussions will facilitate cross-border transactions and integration. By implementing these reforms, India can strike a balance between fostering technological growth and ensuring a secure, regulated environment, ultimately supporting both innovation and consumer protection.

QUESTIONS TO PONDER UPON

What Legal Protections Are Necessary for Consumers?

How Can India Support Blockchain Innovation?

What Are the Key Security Challenges in Blockchain Technology?

What Are the Best Practices for Blockchain Adoption in Public Sector Applications?

How will classification of cryptocurrency impact regulatory requirements and market behavior?

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