UNREGULATED EQUITY CROWDFUNDING IN INDIA: A NEED TO FILL THE VACUUM IN THE EXISTING REGULATORY FRAMEWORK

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ABSTRACT

Equity crowdfunding is a conducive fin-tech business funding model for emerging start-ups to raise finance in smaller sums from multiple investors through web-based platforms. While the crowdfunding industry has prospected to hike exponentially in the near future, India still lacks a legal framework for regulating equity crowdfunding. Having felt the need for such regulation, SEBI proposed a regulatory framework to regulate crowdfunding through a consultation paper in 2014. Nevertheless, no regulatory measures have been initiated yet by SEBI rather, issued a caution notice to crowdfunding platforms in 2016 and claimed crowdfunding to be unregulated and illegal.

Further, the appropriateness of the SEBI's proposed regulatory framework has been inquired in the light of regulatory theories and the idea of 'crowdfunding'. In specific, the scope of the paper is restricted to critically analyzing SEBI's proposed threshold on investment and investors in crowdfunding, from the perspective of investors and issuer companies.

While the SEBI's proposed regulatory framework adopts a "duck-type (same risk, same rule)" approach for regulating equity crowdfunding on par with the private placement, especially with respect to investment and investor threshold. Therefore, the paper argues that the proposed framework ignores the new functionality of crowdfunding; falls foul under the proportionality principle; and remains impractical and against the core tenets of crowdfunding i.e., to enable investors to participate in investment who otherwise wouldn't have engaged in the conventional capital market. Therefore, it is suggested that SEBI may adopt a "Code (new function, new rule)" approach to regulate crowdfunding with no investor threshold but with an investment threshold in proportion to the investor's risk-bearing capacity, towards balancing investor protection and promotion of entrepreneurship.

Keywords: equity crowdfunding, fin-tech, digital platforms, SEBI

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I. INTRODUCTION

SEBI defines crowdfunding as the "*Solicitation of funds (small amount) from multiple investors through a web-based platform or social networking site for a specific project, business venture or social cause.*"[2] Aftermath of 2008 global financial crisis, the idea of crowdfunding emerged as an alternative to raise capital for entrepreneurial and innovative ventures.[3] Globally, the crowdfunding industry is approximately a $34 billion industry.[4] It is estimated that crowdfunding would turn a $ 300 billion industry in 2025.[5] There are various types of crowdfunding such as Donation-based, reward-based, peer-to-peer lending and equity crowdfunding. Amongst various types of crowdfunding, literature[6] suggests that, the profit-sharing model of crowdfunding (for instance, by issuing equity shares) would be advantageous for early-stage ventures to fill the resource gap. Equity crowdfunding is a Fintech business funding model which aspires to acquire capital in smaller sums from a varied number of investors through online platforms.[7]

Crowdfunding develops swiftly and so do the associated risks which warrants the regulator's attention. On one hand, equity crowdfunding would help the entrepreneur to sell the idea to millions of potential investors; need not have intermediary merchant banks; spread risk and boost the economy. On the other hand, the investment in equity crowdfunding is risky as 50% of the start-ups fail during the initial years,[8] contributors cannot recoup their investments as there is no secondary market,[9] false disclosure,[10] lack of transparency, the experience of

[2] *Consultation Paper on Crowdfunding in India*, SECURITIES EXCHANGE BOARD OF INDIA (2014).
[3] Paul Belleflamme & *et al., Crowdfunding: Tapping the Right Crowd* 29 (5) JOURNAL OF BUSINESS VENTURE 610 (2011). *See also*, Aryan Dhingra, *Equity Crowdfunding Conundrum – Rise and Fall of Equity Crowdfunding in India*, THE COMPETITION AND COMMERCIAL LAW REVIEW (January 6, 2020), https://www.tcclr.com/post/equity-crowdfunding-conundrum-rise-and-fall-of-equity-crowdfunding-in-india.
[4] Chet Jainn, *Crowdfunding industry eyes clarity on regulation and legal accountability in Budget 2022*, THE ECONOMIC TIMES (January 29, 2022), https://economictimes.indiatimes.com/small-biz/sme-sector/crowdfunding-industry-eyes-clarity-on-regulation-and-legal-accountability-in-budget-2022/articleshow/89194162.cms.
[5] *Id.*
[6] Paul, *supra* note 2.
[7] Nidhi Agarwal, *Taking the 'Crowd' Out of Crowdfunding: SEBI Regulations on Equity Crowdfunding*, THE CENTRE FOR BUSINESS AND FINANCIAL LAWS (October 19, 2022), https://www.cbflnludelhi.in/post/taking-the-crowd-out-of-crowdfunding-sebi-regulations-on-equity-crowdfunding. *See also*, Michelle Black & Jordan Tarver, *Equity Crowdfunding: What Is It & How Does It Work?* FORBES ADVISOR (March 31, 2022), https://www.forbes.com/advisor/business-loans/equity-crowdfunding/.
[8] K. Erkki Laitinen, *Prediction of failure of a newly founded firm* 7 (4) JOURNAL OF BUSINESS VENTURING 323 (1992).
[9] Eleanor Kirby & Shane Worner, *Crowd-funding: An Infant Industry Growing Fast, Staff Working Paper No. [SWP3/2014*], IOSCO RESEARCH DEPARTMENT (2014).
[10] C. Steven Bradford, *Shooting the Messenger: The liability of crowdfunding intermediaries for the fraud of others*, UNIVERSITY OF CINCINNATI LAW REVIEW (2014).

many investors and information asymmetry.[11] To address this by bringing equity crowdfunding into the regulatory ambit, SEBI initiated a discussion paper in 2014.[12] Such need for regulation is real and pressing as shares are *primarily a liability*,[13] where investor protection by ensuring informed consent is a regulator's paramount duty.

Though SEBI has emphasised the significance of equity crowdfunding and the need for regulating it, in 2016, SEBI eventually decided against the idea by issuing a press release which emphasised that equity and other securities could be listed and traded only through recognised stock exchanges.[14] Consequently, the SEBI has shut down several fintech platforms engaged with EC[15] and directed disclaimers for crowdfunding.[16]

In this context, the paper attempts to analyse three aspects viz., Current position of unregulated equity crowdfunding in India, possibility of regulating equity crowdfunding within the existing regulatory framework (if any) and appropriateness of the proposals made by SEBI concerning investment and investor threshold.

II. SEBI'S INTENTION TO REGULATE THE EQUITY CROWDFUNDING WITH THE EXISTING REGULATORY FRAMEWORK

As inferred from the introductory chapter, SEBI has taken a firm stand on equity crowdfunding to be declared unauthorised and illegal.[17] SEBI claimed crowdfunding activities as unauthorized and the online platforms contravenes the provisions of private placement.[18] Further, the SEBI notice sent to these platforms for violating the private

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11 John Wasik, Crowdfunding, the JOBS Act, and Scams in Your Inbox, Forbes (March 23, 2012), https://www.forbes.com/sites/johnwasik/2012/03/23/potential-and-obvious-scams/?sh=3ae5d2114d2f.

12 *SEBI Consultation Paper on Crowdfunding*, SECURITY EXCHANGE BOARD OF INDIA (2014).

13 Borland's Trustee v. Steel Brothers & Co Ltd [1901] 1 Ch 279, 288.

14 *Cautions Investors*, SEBI PRESS RELEASE, https://www.sebi.gov.in/medi a/pressreleases/ aug-2016/sebi-cautions-investors_33094.html. *See also*, *SEBI Cautions Investors*, SECURITIES AND EXCHANGE BOARD OF INDIA, https://www.sebi.gov.in/media/press-releases/aug-2016/sebi-cautions-investors_33094.html.

15 *Crowd control: Sebi warning turns off crowdfunding tap for start-ups*, TIMES OF INDIA, https://timesofindia.indiatimes.com/business/startups/companies/crowd-control-sebiwarning-turns-off-crowdfunding-tap-for-startups/articleshow/54218934.cms .

16 Anirudh Laskar, *SEBI Wants Disclaimer for Crowdfunding*, LIVEMINT (September 8, 2017), https://www.livemint.com/Money/ic0BUI5NSsO1yeJSNAAP1I/Sebi-wants-crowdfunding-bodies-to-warn-investors.html.

17 *SEBI Cautions Investors*, SECURITIES AND EXCHANGE BOARD OF INDIA, PR No. 137/2016, https://www.sebi.gov.in/media/press-releases/aug-2016/sebi-cautions-investors_33094.html.

18 Pavan Burugula, *Crowd Funding Platforms Rush to SEBI for Alternative Investment Fund Tag*, THE ECONOMIC TIMES (March 1, 2019), https://economictimes.indiatimes.com/markets/stocks/news/crowd-funding- platforms-rush-to-sebi-for-alternative-investment-fund-tag/articleshow/68213207.cms. *See also*, Ayush Wadhi & Swati Shekar, *Equity Crowdfunding in India: Present Perspectives and Prospects* in EMERGING TRENDS IN

placement mandates. Upon receiving the notice, the said platforms rushed to get registration with SEBI as Alternation Investment Fund ("**AIF**").[19] It assumes significance to infer two aspects to understand the SEBI's implicit intention to regulate crowdfunding within the existing regulatory framework. *Firstly*, SEBI expects the crowdfunding platforms to adhere with private placement mandates. *Secondly*, instead of subjecting the violating platforms to the public issue mandates and punish them, SEBI expected the crowdfunding platforms to getregistered under AIF. These inferences uncover the SEBI's implicit intention to regulate crowdfunding through the existing regulatory framework.

Arguably, SEBI's rationale behind not regulating crowdfunding as public issue would be SEBI's acknowledgement that public issue involves increased cost of capital in public offer,[20] onerous requirements[21] and eligibility criteria that a start-up venture could not afford. Having understood SEBI's plausible rationale behind not adopting public issue, the next chapter attempts to analyse the appropriateness of bringing crowdfunding under the regulatory scope of AIF regulations and other regulations.

III. APPROPRIATENESS OF BRINGING CROWDFUNDING IN THE REGULATORY REALM OF OTHER INVESTMENTS

From investors' perspective, arguably, AIF regulations cannot be cannot be applied to equity crowdfunding as most of the contributors to crowdfunding wouldn't qualify the minimum investment requirements i.e., Rs. 1 Crore.[22] Because existing literature uncovers that crowdfunding ventures would typically receive only small investments from various investors.[23] While it is argued that crowdfunding cannot be regulated under AIF regulations, the same cannot be regulated under Venture Capital Fund ("**VCF**") and Innovators Growth Platform ("**IGP**") as well.

CORPORATE AND COMMERCIAL LAWS IN INDIA 112 (2019). The existing regulations in light of Sahara decision, prohibits the companies from offering shares more than 200 investors in a financial year, without undertaking public offer. *See*, Section 42, Companies Act 2013 r/w Rule 14 and Form PAS-4 of the Companies (Prospectus and Allotment of Securities) Rules 2014; Regulation 2 (ZC), SEBI ICDR Regulation 2009; Rule 14 (2), Companies (Prospectus and Allotment of Securities) Rules 2014. *See also*, Sahara India Real Estate Corporation Ltd & Ors v. Securities Exchange Board of India & Anr (2013) 1 SCC 1.

[19] Regulation 2 (1) b, SEBI (AIF) Regulation 2012.

[20] *See*, Jay R. Ritter, *The Costs of Going Public* 19 (2) JOURNAL OF FINANCIAL ECONOMICS 261 (1987).

[21] *See generally*, SEBI (ICDR) Regulation, 2009.

[22] *See*, Regulation 10 (c), SEBI (Alternative Investment Funds) Regulation 2012.

[23] *See for instance*, Gordon Burtch & et al., *An Empirical Examination of the Antecedents and Consequences of Contribution Patterns in Crowd-Funded Markets* 24 (3) INFORMATION SYSTEMS RESEARCH 499 (2013).

Similar to AIF, the participation in VCF requires minimum of Rs. 5,00,000/- as an investment requirement.[24] Moreover, the venture capital investors are mostly inapproachable for small entrepreneurs and business[25] and venture capital investors invest on less risky companies that would have proven track record.[26] While angel funds have relatively liberal regulation, the angel investors would only fill a part of resource gap of a venture. Arguably, mostly such investments would be insufficient for a start-up ventures.[27]

Besides, arguably, crowdfunding cannot be regulated through the regulatory framework of Innovators Growth Platform ("**IGP**"). IGP is modified version of Institutional Trading Platform ("**ITP**") introduced through SEBI ICDR (Second Amendment) Regulation 2019. The objective of IGP is to enable listing the shares of business with "*substantial value addition*",[28] without public issue[29] and mandate of having minimum public shareholding.[30] IGP cannot regulated crowdfunding owing to, arguably, a weak investor protection mechanism. Because while it is a *sine qua non* to hold 25% of the pre-issue share capital of the issuer by prescribed sophisticated investors,[31] IGP regulation is silent about the remaining75% of the investors, without any investment limits and thereby have weak investor protection.

Therefore, it is inferred that the crowdfunding cannot be regulated within the existing regulatory framework. Therefore, it assumes significance to create a conducive framework for regulating crowdfunding balancing both promotion of entrepreneurship and investor protection. In that line, the upcoming chapters attempt to analyse the effectiveness of the regulatory framework proposed by the SEBI in 2014 through its consultation paper.

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[24] *See*, Regulation 11 (2), SEBI (Venture Capital Funds) Regulations 1996. *See also*, C. Streven Bradford, *Crowdfunding and the Federal Securities Laws* 12 (1) COLUMBIA BUSINESS LAW REVIEW 1, 5 (2012).
[25] *Id.*
[26] *Response to SEBI Consultation Paper on Crowdfunding*, VIDHI CENTRE FOR LEGAL POLICY (2014), at 2.
[27] C. Streven Bradford, *supra* note 30.
[28] Regulation 283 (1), SEBI ICDR 2018
[29] Chapter X, Part II, SEBI ICDR 2018
[30] Regulation 284 (7), SEBI ICDR 2018
[31] QIB (Regulation 2 (ss), SEBI ICDR 2018; Innovators Growth Platform Investors (Regulation 283 (1) (Explanation), SEBI ICDR 2018).

IV. SEBI'S PROPOSED FRAMEWORK ON CROWDFUNDING

On one hand, it is inferred that SEBI attempts to regulate crowdfunding within the existing regulatory framework of other investment platforms. On the other hand, in order to initiate discussions on the regulatory framework for crowdfunding, SEBI has issued a consultation paper in 2014.[32] Seemingly, SEBI's this move aligns with the principles of International Organization of Securities Commission ("**IOSCO**") which emphasises the regulators duty to identify, monitor & mitigate systemic risk and contribute to regular review of the perimeter of regulation.[33]

SEBI's proposed framework restricts the crowdfunding participation to "*Accredited Investors*" who must have at least Rs. 10 Lakhs annual gross income.[34] Besides, the investors are obligated to invest at least Rs. 20,000/-[35] and at most Rs. 60,000/- in a crowdfunding issueand such investment must not exceed 10% of the crowdfunding's net worth. The number of investors who can invest in a crowdfunding issue was also capped to the maximum of 200 investors. In order to ensure the adequate disclosure for informed consent, the private placement offer letter must be circulated online by the issuer to the selected accredited investors registered with crowdfunding platforms.[36] This proposed framework of the SEBI suffer inherent theoretical and logical flaws that the upcoming chapter attempts to critically discuss.

[32] *Consultation Paper on Crowdfunding in India*, SECURITIES EXCHANGE BOARD OF INDIA (2014).
[33] Principle 6 & 7, IOSCO Principles. *See also*, *Objective and Principles of Securities Regulation*, IOSCO (2017). https://www.iosco.org/library/pubdocs/pdf/IOSCOPD561.pdf.
[34] *SEBI Consultation Paper on Crowdfunding,* SECURITY EXCHANGE BOARD OF INDIA (2014), at ¶ 9.1.4.1.
[35] The mandate of minimum investment of Rs. 20,000/- emanates from the *Companies (Prospectus and Allotment of Securities) Rule, 2014.* Because SEBI subjected crowdfunding businesses to the said rule. *See*, Rule14 (2)(c), Companies (Prospectus and Allotment of Securities) Rule (2014). *See also*, Shubhan Kumar Singh, *Innovators Growth Platform: NASDAQ of India,* THE CBCL BLOG (May 30, 2021), https://cbcl.nliu.ac.in/capital-markets-and-securities-law/innovators-growth-platform-nasdaq-of-india/.
[36] *SEBI Consultation Paper on Crowdfunding,* SECURITY EXCHANGE BOARD OF INDIA (2014), at ¶ 9.3.3

V. APPROPRIATENESS OF SEBI'S PROPOSAL TO REGULATE CROWDFUNDING

To critically appraise the SEBI's proposed regulatory framework, the regulatory theories emphasised by Meriene Amstad were employed for analysis. Mariene Amstad highlights three crucial financial regulatory theory viz., "*Ignore* (not regulate), *duck type* (same risk, same rules) *or code* (new functions, new rule)".[37]

The first theory of finance regulation i.e., "*Ignore*" supports non-regulation of the crowdfunding. However, SEBI seemingly intends to regulate the crowdfunding which could be inferred from the publication of Consultation Paper on Crowdfunding in 2014. Further, the second theory i.e., "*Duck Type*" reflects the regulatory strategy of regulating similar financial functions alike i.e., "*If it looks like a duck, swims like a duck, and quacks like a duck, then it probably is a duck*".[38] The similar function-based regulatory approach could be witnessed from the famous *Howey Test,*[39]where the definition of "*securities*" was based on investment's substance (function) rather than is form.[40] Under the third theory i.e., "*Code*" the regulator would create new regulations if there arise new functionality from the fintech.

In the instant case of regulating crowdfunding, arguably, SEBI adopts duck-type approach. Because, the SEBI's proposed framework required the start-ups to comply with the process of standard private placement with minor changes.[41] Having adopted the duck-type approach of regulation, arguably, there exists two conundrums viz., Ignoring the '*New functionality'* and thereby violating the principle of proportionality, that the next chapter attempts to discuss.

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[37] Mariene Amstad, *Regulating fintech: Ignore, duck type, or code*, VOX EU (March 21, 2019) https://cepr.org/voxeu/columns/regulating-fintech-ignore-duck-type-or code#:~:text=Duck%2Dtyping%20regulates%20the%20function,that%20specifically%20address%20fintech%20issues. *See also*, Mariena Amstad, *Regulating Fintech: Objectives, Principles and Practices,* ADBI WORKING PAPER SERIES (2019), https://www.adb.org/sites/default/files/publication/533791/adbi-wp1016.pdf.

[38] Mariena Amstad, *Regulating Fintech: Objectives, Principles and Practices,* ADBI WORKING PAPER SERIES (2019), https://www.adb.org/sites/default/files/publication/533791/adbi-wp1016.pdf.

[39] SEC v. W.J. Howey Co., 328 U.S. 293 (1946), at 293 & 301.

[40] Mariena Amstad, *supra* note 43, at n 17.

[41] *See*, Nidhi Agarwal, *supra* note 9.

VI. TWIN CONUNDRUMS IN ADOPTING DUCK-TYPE APPROACH

The proposed regulatory framework by the SEBI to regulate crowdfunding essentially failed to address the new functionality and object of '*Crowdfunding.*"

Because the idea of crowdfunding is based on the principle of "*Wisdom of the Crowd*" i.e., crowd has wisdom and ability to make good investment.[42] Though not every person would be well-informed about proper investments, theoretically, a crowd can still collectively arrive at a wise decision.[43] The behavioural psychology discourse also suggests that the crowd would make choices depending on the previous (or earlier) decision maker.[44] Literature on crowdfunding claims that the knowledge gap between professionals and the general public has struck due to readily available internet sources.[45] The IOSCO also emphasis this "*wisdom of the crowds*" in website design with quoted example of EBay and Wikipedia.[46]

In this light, IOSCO principles also highlights three type of regulatory regime viz., (1) regulation banning equity crowdfunding; (2) regulation creating high entry barrier; (3) enabling equity crowdfunding to only sophisticated investors. Inferably, SEBI have adopted the last approach, which is arguably against the principle of proportionality. Principle of Proportionality aims at limiting high regulatory duties to curb excessive cost of compliance and regulatory burden for smaller start-ups.[47] In this regard, the Jumpstart Our Business Start-up Act (JOBS Act) of United States of America, that provides specific crowdfunding exemption could be taken for policy comparison.[48] The Act imposes conditional small issue exemption[49] to the issuer and investment threshold to the investors. If the Securities Exchange Commission (SEC) recognize one as accredited investor,[50] no maximum threshold

[42] Ayush Wadhi & Swati Shekar, *Equity Crowdfunding in India: Present Perspectives and Prospects* in EMERGING TRENDS IN CORPORATE AND COMMERCIAL LAWS IN INDIA 112 (2019).
[43] C. Streven Bradford, *supra* note 12.
[44] Heminway, Joan MacLeod, *Investor and Market Protection in the Crowdfunding Era: Disclosing to and for the "Crowd"* 38 VTLR 827 (2014).
[45] JEFF HOWE, CROWDSOURCING: WHY THE POWER OF THE CROWD IS DRIVING THE FUTURE OF BUSINESS 39-40 (2008).
[46] Eleanor Kirby & Shane Worner, *Crowd-funding: An Infant Industry Growing Fast*, IOSCO 12 (2014).
[47] Basel Committee on Banking Supervision (BCBS) 2019.
[48] This legislation was introduced in USA in the year of 2012. *See*, DLA Piper, *JOBS Act Passes Congress*, HEADS TO WHITE HOUSE FOR SIGNATURE (Mar. 28, 2012), http://www.dlapiper.com/jobs-act-passes-congress- heads-to-white-house-for-signature/.
[49] Regulation A, § 230.251 (a), Jumpstart Our Business Start-up Act 2012.
[50] *See*, Rule 506 of Regulation D.

on the investment is vested. Rather, non-accredited investors were capped with maximum threshold of investment based on their annual income.[51]

However, in SEBI's proposed regulatory framework, there is high threshold of accreditation and eligibility for retail investor is, arguably, against the core tenets of crowdfunding *i.e.*, to enable investors participate in investment who otherwise wouldn't have engaged in conventional capital market. Also, arguably, the threshold on maximum investment (i.e., INR 60, 000/-) is baseless as it is not based on objective-cum-equitable factors such as '*Individual investors*' income. Further, practically, it is unlikely that QIBs will invest in a start-up with no track record.[52] The maximum cap of 200 shareholders again runs contrary to the idea of crowdfunding.[53] Therefore, these regulations suggested by SEBI are, arguably, seemingly impractical, unproportional, and against the spirit of crowdfunding.

VII. CONCLUDING REMARKS

Having understood the need for regulating the equity crowdfunding in India, SEBI has published the Consultation paper in 2014. However, no concrete regulatory move has been witnessed, apart from SEBI's measures to make the public issue requirement flexible for start-ups such as Innovators Growth Platform. However, analysis reveals that regulating crowdfunding under the existing regulatory framework would be inefficient. However, SEBI has proposed a "*Duck-type*" approach to regulate crowdfunding under the framework of private placement (with some exemptions). Having proposed that such an approach ignores the new functionality of crowdfunding and fall foul of the proportionality principle. Therefore, it is suggested that SEBI may adopt a "*Code (new function, new rule)*" approachto regulating crowdfunding with no investor threshold but with an investment threshold in proportion to the investor's risk-bearing capacity. Thereby, the accredited investors may not be imposed with any investment threshold. Further, the non-accredited investors may be enabled to invest in crowdfunding, and to ensure investor protection, the same shall be subject to the maximum investment threshold dependent on the annual income of the retail investor (which would determine the risk-bearing capacity of the investors). Besides, the

[51] § 302, The JOBS Act 2002. *See also, Updated Investor Bulletin: Regulation Crowdfunding for Investor*, SEC (October 14, 2022), https://www.sec.gov/oiea/investor-alerts-bulletins/ib-crowdfunding.
[52] C. Streven Bradford, *supra* note 12.
[53] Whereas, in JOBS Act, exclusion of crowdfunding investors from the share-holder cap has been explicitly given. *See*, § 303, JOBS Act 2012.

threshold of a number of shareholders shall be scrapped, as the blanket investment limit and restricting the entry to non-accredited investors serves to be an anti-thesis to the idea of crowdfunding to engage the public at large to raise finance for start-up companies. Towards this, the JOBs Act of the US could be taken for policy consideration.

However, since share is primarily a liability, mitigating the risk is cardinal and while doing so, there ought to be a balance between investor protection and the promotion of entrepreneurship. Disproportionate regulation to ensure investor protection would cost the benefit of crowdfunding. Thereby, the risk that the start-ups would take is relatively fringe which has to be balanced with appropriate disclosure.[54] In this context, the IOSCO suggests that "*Disclosure to retail investors…is important along with consideration of suitability*." From the perspective of law and economics, the behavioural economics reveals the biases that affects effective investment-decision making such as overconfidence,[55] illusion of control, halo effect and anchoring etc. However, these cognitive biases may be mitigated through nudges based on visibility of incentives of the risk of loss.[56] In this line, SEBI has proposed to mandate the disclosure requirement in the standard of a private placement offer letter.[57] This seemingly gives the investors the caution about the prospective risk that they would undertake by subscribing to the equity through crowdfunding. This aligns with the principle 16 of IOSCO i.e., "*There should be a full and timely disclosure of financial results, risk and other information material to investor's decision making*."[58] Having said that, the detailed analysis on the effectiveness of disclosure requirement for risk mitigation in crowdfunding serves to be the future scope of the study.

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[54] Eleanor Kirby & Shane Worner, *Crowd-funding: An Infant Industry Growing Fast, Staff Working Paper No. [SWP3/2014*], IOSCO RESEARCH DEPARTMENT 50 (2014).

[55] *See also, Behavioural Economics for Investor Protection- Practical Recommendations for Investors, Entities and Regulators*, COMISION NACIONAL DEL MERCADO DE VALORES (May 22, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3606264.

[56] *See, Behavioural Economics for Investor Protection- Practical Recommendations for Investors, Entities and Regulators*, COMISION NACIONAL DEL MERCADO DE VALORES (May 22, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3606264.

[57] *SEBI Consultation Paper on Crowdfunding,* SECURITY EXCHANGE BOARD OF INDIA (2014), at ¶ 9.3.3.

[58] *Objective and Principles of Securities Regulation,* IOSCO (2017).
https://www.iosco.org/library/pubdocs/pdf/IOSCOPD561.pdf.

VIII. CONCLUSION

It is reasonable to conclude that CBDCs have much potential based on analysing different cases and characteristics. They could ultimately overtake other financial transactions as the preferred method for individuals and companies. Additionally, the CBDCs would continuously alter the established financial sector precedents. CBDC use cases may significantly alter how individuals and organisations see digital currency.

While there is still much debate over whether CBDCs are necessary or even desirable, several countries are actively exploring the possibility of issuing them. India is one such country, and its recent announcement that it is working on a CBDC has attracted a great deal of attention.

A significant number of resources will need to be invested in creating and operating a retail CBDC. In-depth user behaviour analysis is essential in addition to conducting pilots so that it can guide how a CBDC is created and promoted for broad adoption. However, the development of CBDC presents some challenges which need to be addressed before the final launching of CBDC in India. If the issues are not avoided, they might prove to be fatal in the Indian economic space and would also lead to uncontrollable inflation.

New legislation, which is made considering technological advancements, is the need of the hour. Only when new technologies are utilised to implement rules and prevent different attacks on digital currency can the launch of CBDC succeed.