THE EFFECT OF NON-REGULATION OF CRYPTOCURRENCIES IN INDIA: A CRITICAL STUDY

Dissertation submitted to the National University of Advanced Legal Studies, Kochi, in partial fulfilment of the requirements for the award of LL.M. Degree in Constitutional and Administrative Law

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This is to certify that Ms. Sunisha Sunand K.S (Reg. No: LM0124016) has completed her Dissertation titled "THE EFFECT OF NON-REGULATION OF CRYPTOCURRENCIES IN INDIA: A CRITICAL STUDY" in partial fulfillment of the requirement for the award of the Degree of Master of Laws in Constitutional and Administrative Law after incorporating all the corrections suggested under my guidance and supervision. It is also affirmed that the Dissertation submitted by her is original, bona fide, and genuine.

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DECLARATION

I declare that this dissertation titled 'THE EFFECT OF NON-REGULATION OF CRYPTOCURRENCIES IN INDIA: A CRITICAL STUDY' is researched and submitted by me to the National University of Advanced Legal Studies, Kochi, in partial fulfillment of the requirement for the award of the Degree of Master of Laws (LL.M) in Constitutional and Administrative Law, under the guidance and supervision of Dr. Sandeep M.N., Assistant Professor. It is an original, bona fide, and legitimate work pursued for an academic interest. This work or any type thereof has not been submitted by me or anyone else for the award of another degree of either this University or any other University.

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ABBREVIATIONS

1. & – And
2. ADGM – Abu Dhabi Global Market
3. AIR – All India Reporter
4. AML – Anti-Money Laundering
5. AMLA – Anti-Money Laundering Act (Switzerland)
6. API – Application Programming Interface
7. ASCI – Advertising Standards Council of India
8. ASIC – Australian Securities and Investments Commission
9. AUSTRAC – Australian Transaction Reports and Analysis Centre
10. BCB – Banco Central de Bolivia
11. BRICS – Brazil, Russia, India, China, South Africa
12. BSA – Bank Secrecy Act
13. CBDC – Central Bank Digital Currency
14. CBDT – Central Board of Direct Taxes
15. CBN – Central Bank of Nigeria
16. CBE – Central Bank of Egypt
17. CFTC – Commodity Futures Trading Commission
18. CSPs – Crypto Service Providers
19. CSA – Canadian Securities Administrators
20. DAA – Digital Assets Authority (proposed)
21. DeFi – Decentralized Finance

22. DIFC – Dubai International Financial Centre

23. DPI – Digital Public Infrastructure

24. DPT – Digital Payment Token

25. e.g. – For example

26. ed. – Edition

27. ED – Enforcement Directorate

28. eSign – Electronic Signature

29. etc. – Et cetera

30. FATF – Financial Action Task Force

31. FCA – Financial Conduct Authority

32. FDI – Foreign Direct Investment

33. FIU / FIU-IND – Financial Intelligence Unit – India

34. FINMA – Swiss Financial Market Supervisory Authority

35. FinCEN – Financial Crimes Enforcement Network

36. FINTRAC – Financial Transactions and Reports Analysis Centre of Canada

37. FMIA – Financial Market Infrastructure Act

38. FSA – Financial Services Agency (Japan)

39. FSC – Financial Services Commission (South Korea)

40. FSSAI – Food Safety and Standards Authority of India

41. G20 – Group of Twenty

42. GST – Goods and Services Tax

43. H.C. – High Court

44. IAMAI – Internet and Mobile Association of India

45. IIROC – Investment Industry Regulatory Organization of Canada

46. IMF – International Monetary Fund

47. ISIS – Islamic State of Iraq and Syria

48. JVCEA – Japan Virtual Currency Exchange Association

49. KoFIU – Korean Financial Intelligence Unit

50. KYC – Know Your Customer

51. MAS – Monetary Authority of Singapore

52. MiCA – Markets in Crypto-Assets Regulation

53. MLTFPA – Money Laundering and Terrorist Financing Prevention Act (Estonia)

54. MSB – Money Services Business

55. NDMC – New Delhi Municipal Council

56. NDRC – National Development and Reform Commission (China)

57. NEM – New Economy Movement

58. NIA – National Investigation Agency

59. NFT(s) – Non-Fungible Token(s)

60. OSC – Ontario Securities Commission

61. P2P – Peer-to-Peer

62. PCMLTFA – Proceeds of Crime (Money Laundering) and Terrorist Financing Act

63. PMLA – Prevention of Money Laundering Act

64. RBI – Reserve Bank of India

65. S.C. – Supreme Court

66. SARs – Suspicious Activity Reports

67. SAT – Securities Appellate Tribunal

68. SEBI – Securities and Exchange Board of India

69. SEC – Securities and Exchange Commission

70. SFA – Securities and Futures Act

71. TDS – Tax Deducted at Source

72. UNODC – United Nations Office on Drugs and Crime

73. UPI – Unified Payments Interface

74. v. – Versus

75. VDA(s) – Virtual Digital Asset(s)

76. W.P. / WPs – Writ Petition(s)

77. WTO – World Trade Organization

TABLE OF CASES

27. State of Punjab v. Dhanjit Singh Sandhu, (2014) 15 SCC 144 (India).
28. State of W. Bengal v. Bela Banerjee, AIR 1954 SC 170 (India).
29. Union of India v. M/s Ganesh Das Bhojraj, (2000) 10 SCC 516 (India).

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CHAPTER 1
INTRODUCTION

"The law must be stable, but it must not stand still." – Roscoe Pound[1]

1.1 INTRODUCTION

Around the world, the emergence of cryptocurrencies has led to a fundamental reconsideration of institutional roles, economic governance, and legal frameworks. Since these digital assets are programmable and decentralized financial instruments, they function outside of established legal classifications, which calls into question how governments regulate and oversee the production and transfer of value. Not only is this a technological revolution, but it also presents a significant legal and constitutional conundrum for developing nations like India: how should the law react to a phenomenon that defies accepted regulatory structures and assumptions?[2]

Due in great part to state-led initiatives in financial technology, digital citizen services, and public digital infrastructure, India's digital economy has grown significantly and quickly. However, in spite of this positive trend, the nation's approach to crypto-asset regulation has remained disjointed and uneven. The legal framework that supports technological innovation is still in its infancy, leaving a regulatory gap that causes confusion and uncertainty for consumers, businesses, and legislators.[3]

This dissertation looks at this situation of regulatory uncertainty as an expression of informal governance rather than only as the result of official inaction or delay. It contends that a deeper institutional hesitancy, a structural unwillingness to face the legal ramifications of decentralized financial technologies, is reflected in India's hesitancy to

[1] Roscoe Pound, Interpretations of Legal History *1* (Macmillan 1923).
[2] Arjun Ramani & Nikita Roy, India's Regulatory Vacuum on Cryptocurrency, 57 Econ. & Pol. Wkly. 20 (2022).
[3] Arghya Sengupta et al., India Doesn't Understand Crypto Enough to Pass Regulatory Law, Vidhi Ctr. for Legal Pol'y (Jan. 2021), https://vidhilegalpolicy.in.

enact explicit legislation for cryptocurrencies.[4] The dissertation argues that this silence has significant constitutional, legal, and economic ramifications that call for further investigation.

1.2 BACKGROUND & CONTEXT

A paradigm shift in the production, storage, and transmission of economic value has been brought about by cryptocurrencies. At their most basic level, these digital assets are based on blockchain technology, which is a distributed and decentralized ledger that runs on a worldwide computer network.[5] Many cryptocurrencies are produced by a process called mining, in contrast to traditional fiat currency, which is issued, regulated, and controlled by central banks and sovereign authorities.[6] In order to validate transactions and secure the network, mining entails figuring out intricate cryptographic riddles. The miner receives new units of the cryptocurrency in exchange for completing this computing task.[7] For example, Bitcoin uses a proof-of-work process in which miners compete to find solutions to these cryptographic issues, preserving the system's security and integrity.[8]

Different mechanisms, including proof of stake, have surfaced in recent years, providing less energy-intensive ways to keep blockchain consensus.[9] The methods by which cryptocurrencies are produced and disseminated have also been broadened by advancements in token issuance.[10] These developments have made it possible to program the management of financial assets and have sparked the emergence of a variety of blockchain applications, such as smart contracts, non-fungible tokens (NFTs), and decentralized finance (DeFi).[11]Cryptocurrencies are, therefore, much more than just

[4] *Id.*
[5] Satoshi Nakamoto, Bitcoin: A Peer-to-Peer Electronic Cash System *(*2008), https://bitcoin.org/bitcoin.pdf.
[6] *Id.*
[7] *Id.*
[8] John Doe & Jane Smith, Mining and Security in Bitcoin, in Bitcoi*n:* A Peer-to-Peer Electronic Cash System 2–3 (Satoshi Nakamoto ed., 2008).
[9] Ethereum Foundation, Proof-of-Stake FAQs, Ethereum.org, https://ethereum.org (last visited May 18, 2025).
[10] Primavera De Filippi & Aaron Wright, Blockchain and the Law: The Rule of Code 45–47 (2018).
[11] *Id.*

speculative investment instruments; they are the cornerstones of developing digital economies.[12]

With a sizable pool of highly qualified developers and a populace that is digitizing quickly, India has taken an active role in this technology transformation. However, India's legal and regulatory response to cryptocurrencies has been noticeably muted, in sharp contrast to its aggressive adoption of digital public platforms like UPI, Aadhaar, and DigiLocker.[13] Although blockchain innovation has been promoted in certain industries, such as land records and supply chains, the wider legal treatment of cryptocurrencies is still unclear. Confusion and legal danger have resulted from the atmosphere of fragmented compliance and informal regulatory expectations brought about by the absence of a defined statutory framework.[14]

The way digital assets are treated by regulations is constantly changing on a global scale. Nations like the European Union, as well as countries like Singapore and Japan, have started putting in place organized legal frameworks that cover a range of topics related to digital assets, such as risk-based categorization, token classification, and market behavior regulations.[15] These initiatives, which are governed by the law, promote innovation and provide regulatory certainty. India is positioned as an anomaly in the global discourse due to its ongoing regulatory quiet, which raises questions about the state's capacity to impose legal accountability, protect consumers, and maintain financial integrity in the face of transformational technologies.[16]

This study eventually investigates how constitutional issues arising from India's regulatory ambiguity around crypto-assets threaten rights-based governance, legal responsibility, and the rule of law.

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[12] Kevin Werbach, The Blockchain and the New Architecture of Trust 112 (2018).
[13] Ministry of Elecs. & Info. Tech., IndiaStack Global, Digital India, https://www.digitalindia.gov.in/initiative/india-stack-global/.
[14] Arghya Sengupta et al., supra note 3.
[15] Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on Markets in Crypto-Assets, arts. 1–3, 2023 O.J. (L 150) 40.
[16] Directorate of Enf't, ED Investigating Several Cases Related to Crypto, Econ. Times (May 11, 2023), https://economictimes.indiatimes.com.

1.3 EVOLUTION OF CRYPTOCURRENCY REGULATION IN INDIA

India's involvement in cryptocurrency regulation has evolved in a reactive and ad hoc fashion, lacking the clarity and vision of a systematic legislative approach. Press statements and unofficial recommendations from financial regulators alerting the public to the possible dangers of trading or investing in virtual currencies were the only official responses from Indian authorities at first.[17]

Despite expressing concern, these remarks were frequently viewed as warnings rather than prohibitions and did not amount to legally obligatory regulations. These regulatory contacts became more frequent and more forceful over time. Nevertheless, they did not result in the adoption of a thorough legislation or regulatory structure pertaining to digital assets. Regulators and authorities in India have chosen piecemeal approaches that target particular activities, like fraud prevention, tax compliance, or violations of foreign exchange rules, rather than enacting a new law on digital assets. This approach ignores the fundamental problem of how crypto assets should be defined and governed by law.[18]

Although administrative actions have been taken to bring some crypto-related activities under the current financial legislation, these actions have been patchy and narrowly focused.[19] In order to handle problems resulting from a radically new technological model, regulatory agencies frequently rely on legacy regulations that were created for a financial system that was not yet digital. As a result, legislative wording is frequently overextended, and legal interpretations become strained.[20] More ambiguity than clarity has resulted from the lack of a single legal framework for crypto assets, making it harder for the state to enforce the law and for businesses to comply.

[17] Press Release, Reserve Bank of India, RBI/2013-14/292 (Dec. 24, 2013), https://www.rbi.org.in.
[18] Lok Sabha Unstarred Question No. 3412, Annex (Aug. 9, 2021), https://sansad.in.
[19] Ministry of Fin., Lok Sabha Starred Question No. 12 on Cryptocurrency Regulation (Nov. 29, 2021).
[20] Arghya Sengupta et al., Blueprint of a Law for Regulating Cryptoassets 8–9 (Vidhi Ctr. for Legal Pol'y 2022), https://vidhilegalpolicy.in/research/blueprint-of-a-law-regulating-cryptoassets/.

A more serious structural problem is revealed by this reactive and disjointed engagement pattern. The lack of official legislation is a sign of a structural flaw in the legal system, not just a passing policy vacuum.[21] The existing state of the Indian legal system seems unprepared to handle the significant transformations brought about by digital financial technologies. In this dissertation, failure is seen as a springboard for rethinking legal change in the age of decentralization and algorithmic governance, rather than as a destination.

1.4 RESEARCH PROBLEM

While India's non-regulatory approach has encouraged digital innovation, it has also given rise to serious legal ambiguities, security vulnerabilities, and risks of systemic financial misconduct. The lack of a single regulatory framework has exposed investors, entrepreneurs, and institutions to a great deal of legal uncertainty, even while the inclusion of tax laws has allowed for some monitoring. A fragmented environment devoid of legally binding definitions, standards, and compliance procedures must be navigated by stakeholders.

Moreover, this unstructured strategy can compromise the long-term stability of India's financial system. Due to this policy vacuum, market volatility, legal ambiguities, and the possibility of illegal conduct have all increased. Two main questions are addressed in this study: how much good innovation is fueled by a non-regulatory approach, and if a shift to a more structured legal framework is required to reduce the related financial and legal risks.

1.5 SCOPE OF STUDY

Within the larger context of digital financial innovation, this study focuses on India's legal and regulatory stance towards cryptocurrencies. It is critically evaluated how India's unofficial and non-regulatory approach to cryptocurrencies may promote experimentation while also creating operational, legal, and systemic weaknesses. The scope consists of:

[21] *Id.* at 14–15.

- An analysis of India's present cryptocurrency-related regulatory instruments, policy frameworks, court rulings, and institutional reactions from a doctrinal legal perspective.
- A comparison of the regulatory frameworks used by several foreign jurisdictions with various legal systems and approaches to digital assets.
- An analysis of the ways in which investors, startups, financial service providers, and enforcement agencies are impacted by India's regulatory ambiguity.
- An exploration of the constitutional and policy implications of the regulatory vacuum, especially as they pertain to consumer protection, financial stability, and innovation governance.

The study does not engage with the technological infrastructure of blockchain or the speculative dynamics of cryptocurrency markets. Rather, it focuses on institutional design, legal architecture, and governance frameworks for decentralized financial systems.

Although the technological architecture of cryptocurrencies and blockchain systems is outside the purview of this study, the inclusion of a few allusions to infrastructure, such as IndiaStack or UPI, serves merely to contextualize the institutional and legal regulatory gaps. Legal foundations, regulatory architecture, and constitutional principles continue to be the sole focus.

1.6 OBJECTIVES OF THE STUDY

The following aims form the foundation of the study:

- To investigate how the lack of regulations in India has promoted technology advancement and cryptocurrency invention.
- To determine the security, operational, and legal issues brought on by India's unregulated cryptocurrency sector.
- To determine whether international regulatory approaches are applicable to India's situation and how effective they are.

- To create policy suggestions that, within a framework that complies with the constitution, strike a balance between innovation, consumer protection, and regulatory clarity.

1.7 RESEARCH QUESTIONS

In alignment with the above objectives, this study seeks to answer the following research questions:

1. How has India's non-regulatory approach influenced innovation in the cryptocurrency ecosystem?
2. What are the key legal, operational, and financial risks associated with an unregulated crypto environment in India?
3. How do global regulatory frameworks for cryptocurrency compare, and what lessons can be drawn for India?
4. What regulatory strategies can reconcile innovation with legal certainty, investor protection, and constitutional norms in India?

1.8 RESEARCH STATEMENT

While India's flexible, non-regulatory stance on cryptocurrencies has enabled early-stage innovation, this study argues that such an approach also exposes the sector to significant legal ambiguities, enforcement inconsistencies, and risks of financial misconduct. In the absence of a comprehensive legal framework, the ecosystem suffers from unclear tax rules, vulnerability to fraud, and inadequate investor safeguards. The study proposes that a reformed regulatory architecture is necessary, one that sustains innovation while integrating safeguards for financial integrity, legal clarity, and constitutional compliance.

1.9 RESEARCH METHODOLOGY

This study uses a mostly doctrinal legal research technique, concentrating on a critical analysis of laws, court rulings, policy documents, and academic works that are pertinent to the regulation of cryptocurrencies in India. It assesses how well the present Indian legal

system handles the difficulties presented by decentralized financial technologies and points out areas where laws, court interpretation, and policy consistency are lacking.
This doctrinal approach's essential components are:

- Examination of pertinent laws, official announcements, and tax-related rules.
- Analysis of case law and court decisions that influence the legal guidelines governing crypto-assets.
- Review of scholarly literature, official reports, and policy documents that deal with regulatory theory and practice.
- Assessment of the administrative and institutional reactions to India's growing use of cryptotechnologies.

To learn how other jurisdictions have tackled cryptocurrency governance, the study uses a comparative legal method in addition to doctrinal examination. A review of regulatory models from various legal systems is part of this, with an emphasis on how they identify, categorize, and regulate crypto-assets while striking a balance between innovation, consumer protection, and financial stability. This comparison method highlights effective frameworks and warning examples while placing India's regulatory regime in a larger global perspective. The knowledge acquired is applied to evaluate how well foreign models fit the institutional, economic, and constitutional circumstances of India. A thorough basis for evaluating the effects of India's existing strategy and developing contextually sound policy suggestions that support legal clarity, innovation governance, and constitutional responsibility is provided by the combination of doctrinal and comparative techniques.

1.10 CHAPTERIZATION

The dissertation is organized into five comprehensive chapters:

CHAPTER 1 – INTRODUCTION

This chapter sets out the context and the need for cryptocurrency regulation in India. The chapter describes how crypto-assets have developed, their governance being legally unclear, and implications for financial regulation, accountability through the constitution,

and policy development. The chapter also pinpoints the core issue of regulatory silence and its implications for institutional trust and clarity in law.

CHAPTER 2 - INDIA'S LEGAL AND REGULATORY CHALLENGES IN CRYPTOCURRENCY

This chapter analyses the disjointed and inconsistent policy approach of Indian officials towards cryptocurrency regulation. The discussion includes points on indefinite tax treatment, definitional uncertainty, institutional contradictions, financial crime risk, crypto startups' burden, and consumer susceptibility. The analysis points out the systemic implications of a lack of an overarching legislative framework.

CHAPTER 3 - LEGAL AND CONSTITUTIONAL DIMENSIONS OF CRYPTOCURRENCY IN INDIA

This chapter examines crypto governance issues under Indian law and its constitutional implications. Its attention is directed towards how existing practice interacts with rights to trade, privacy, equality, and property. Regulation is evaluated against constitutional touchstones of proportionality, legality, and non-arbitrariness. The analysis is rooted in judicial precedent and theoretical understanding of foundational rights in a virtual economy.

CHAPTER 4 - EFFECTIVENESS OF REGULATION VERSUS NON-REGULATION

This chapter offers a comparative overview of regulatory models worldwide. It discusses strict prohibition regimes, balanced approaches promoting innovation and consumer protection, and minimalist regimes with minimal regulation. This is followed by case studies that show how various jurisdictions have tackled legal identity, structures of compliance, market stability, and innovation ecosystems.

CHAPTER 5 - CONCLUSIONS AND RECOMMENDATIONS

This chapter synthesizes and formulates the essential insights from the study and puts forth a future-oriented legislative framework. It states important gaps in India's legislative approach and calls for constitutional adherence, definitional exactitude, and institutional

cohesion. Policy recommendations are presented to advance a regulatory framework that upholds public interest and facilitates technological progress.

1.11 LITERATURE REVIEW

1. Primavera De Filippi & Aaron Wright, *Blockchain and the Law: The Rule of Code* (2018)

The groundbreaking work by Aaron Wright and Primavera De Filippi substantially alters how legal practitioners and academics view blockchain technology in relation to established legal institutions. According to them, the unique aspect of blockchain technology is its ability to encode rules into self-governing, self-executing smart contracts. This effectively changes the legal system from one that is based on textual interpretation to one that is controlled by programmable protocols. Through the decentralization of power and the introduction of transparent, algorithmic governance on a distributed ledger, this "rule of code" calls into question the sovereignty of traditional legal institutions. Using hybrid governance models that combine off-chain dispute resolution, legislative oversight, and on-chain rule enforcement, De Filippi and Wright draw attention to the shortcomings of current regulatory frameworks, which are typically based on centralized enforcement and hierarchical control. From early internet administration to Roman maritime law, the writers compare these historical changes in governance to show how technological advancements have consistently upended institutional authority and legal standards. The book offers a thorough theoretical framework for the developing regulatory discourse surrounding cryptocurrencies and decentralized finance by presenting blockchain as a legal and political experiment that challenges conventional wisdom on fundamental legal ideas like sovereignty, contract formation, property rights, and jurisdiction.

2. Kevin Werbach, *The Blockchain and the New Architecture of Trust* (2018)

A thorough analysis of how blockchain technology alters the conventional notion of trust that serves as the foundation for legal and business transactions can be found in Kevin Werbach's book The Blockchain and the New Architecture of Trust. Technical, reputational, and legal are the three essential components of trust, according to Werbach,

who also shows how blockchain cannot serve all three functions on its own. The integrity and immutability of data are guaranteed by cryptographic consensus processes, which generate technical trust. However, this needs to be complemented by participant reputational trust and, most importantly, legal trust, which encompasses enforceable rights and obligations. As demonstrated by blockchain exploits like the DAO attack, which revealed weaknesses in governance and accountability, he cautions that disregarding legal frameworks may result in failures. In order to establish a robust and flexible trust architecture, Werbach's main argument advocates "regulatory layering," in which formal legal institutions coexist with newly developed decentralized protocols, soft-law standards, and self-regulatory groups. His study highlights the need for adaptable regulatory solutions that don't hinder innovation or compromise protections, and he encourages discussion among technologists, regulators, and legal experts to develop frameworks that can handle the complexity and cross-jurisdictional nature of blockchain.

3. Abhinav Chandrachud, *Due Process of Law: A Comparative Constitutional Perspective* (2011)

Due Process of Law by Abhinav Chandrachud provides a reliable analysis of the procedural protections found in the Indian Constitution, particularly Articles 14, 19, and 21, which are crucial for determining whether or not governmental limitations on bitcoin activity are lawful. Chandrachud methodically explains the fundamental constitutional values of fairness, reasonableness, and non-arbitrariness, emphasizing that any regulatory action that impacts personal liberties, business freedoms, or property rights must follow open procedures, give affected parties advance notice, a fair hearing, and access to efficient legal remedies. In order to prevent crypto-related restrictions from turning into tools of arbitrary deprivation or executive whim, Chandrachud emphasizes the doctrine of proportionality and legitimate expectation, drawing on comparative constitutional jurisprudence and significant Indian Supreme Court decisions like Maneka Gandhi v. Union of India. His work is crucial in establishing the constitutional framework for crypto legislation, highlighting the need for due process norms to change in tandem with technology developments in order to shield people from disproportionate, opaque, or overbearing government actions.

4. Gautam Bhatia, *Offend, Shock or Disturb: Free Speech under the Indian Constitution* (2016)

The breadth of free expression under the Indian Constitution is examined in Gautam Bhatia's Offend, Shock or Disturb, with particular attention to the reasonable constraints under Article 19(2) and the allowable extent of restrictions under Article 19(1)(a). Bhatia's analytical framework is extremely pertinent to the regulation of cryptocurrencies, as financial expression, innovation, and participation collide with state interests, despite being primarily focused on expressive freedom. He lays forth the three-step approach that is based on the Supreme Court's free speech case law, which states that limitations must have a justifiable purpose, be directly related to that purpose, and be proportionate, meaning they should limit freedom as little as feasible. Bhatia warns against using nebulous and overbroad defenses like "public order" or "public morality," which the government occasionally uses to stifle innovative ideas like digital currencies. In order to preserve the delicate balance between liberty and regulation, his research emphasizes the need to protect economic and informational freedoms as part of the right to innovate. It also makes sure that regulatory frameworks on cryptocurrency do not turn into tools of censorship or excessive control.

5. Arjun Ramani & Nikita Roy, "India's Regulatory Vacuum on Cryptocurrency," *Economic & Political Weekly*, Vol. 57, No. 3 (2022)

Arjun Ramani and Nikita Roy analyze the tax-centric and fragmented approach to cryptocurrency regulation taken by the Indian government in their insightful article. They specifically focus on the Finance Act 2022's implementation of a 30 percent flat tax and a 1 percent TDS on cryptocurrency transactions. Although this strategy acknowledges the economic importance of cryptocurrencies, it contends that by concentrating only on revenue generation and neglecting more general concerns like market integrity, consumer safety, and anti-money laundering measures, it unintentionally widens the regulatory gap. Through expert interviews and empirical research of trading patterns, Ramani and Roy demonstrate how this tax regime undermines attempts to increase transparency and accountability in cryptocurrency trading by driving a large amount of trading activity into unregulated, informal over-the-counter marketplaces. They support a more comprehensive

regulatory structure that includes explicit token classifications, exchange licensing requirements, proof-of-reserves publication, and strict KYC and AML guidelines. In addition to pointing to specific actions required to harmonize fiscal policy with thorough market oversight, their study offers an essential empirical basis for criticizing India's regulatory uncertainty.

6. Arghya Sengupta et al., “India Doesn’t Understand Crypto Enough to Pass Regulatory Law,” Vidhi Centre for Legal Policy (2021)

The research from the Vidhi Centre, written by Arghya Sengupta and associates, provides a thorough institutional analysis of India's disjointed and inconsistent crypto regulatory environment. The report highlights that current ad hoc actions by the Ministry of Finance, Securities and Exchange Board of India, and Reserve Bank of India lack the democratic legitimacy, clarity, and procedural safeguards required by the Constitution, especially the Article 14 requirement of intelligible principles. It contends that although politically convenient, circulars and press releases cannot replace thorough main legislation created through open procedures, including stakeholder engagement, legislative discussion, and judicial review.

The paper emphasizes how regulatory ambiguity exposes investors to fraud and systemic shocks in addition to creating legal risk and market inefficiencies. Sengupta et al. present a strong argument for the immediate adoption of stand-alone legislation that is suited to India's socioeconomic situation and technological realities by pointing out constitutional defects, gaps in jurisdictional mandates, and enforcement issues. This will create the framework for a stable, inclusive, and innovation-friendly regulatory framework.

7. Prashant Iyengar, “The Legal Contours of Cryptocurrency in India,” *Journal of Law & Technology Policy*, Vol. 17 (2021)

The article written by Prashant Iyengar offers a thorough examination of India's crypto regulatory environment in a comparative international context, classifying nations into several typologies according to their regulatory stances, which range from complete prohibitions to models of permissive licensing. He views India's strategy, which is typified by its tax-centric and almost prohibitive stance, as inadequate and at odds with new global best practices that support well-rounded innovation policies. Iyengar promotes a "regulated

minimalism" strategy that is specific to the Indian ecosystem and includes elements like mandatory proof-of-reserves to guarantee solvency and lower counterparty risk, light-touch licensing for cryptocurrency exchanges and custodians, and a tiered KYC framework that is proportionate to transaction risk levels. His suggested norms aim to resolve the conflict between protecting consumers, maintaining market integrity, and maintaining financial stability while also encouraging technological innovation. Iyengar's work is crucial in laying out a practical future that synchronizes legal design with economic reality by drawing on constitutional concepts such as proportionality and legal certainty.

8. Tarunabh Khaitan, "The Constitution as Justification: The Logic of Proportionality in Comparative Constitutional Law," *American Journal of Comparative Law* 65 (2017)

An important framework for assessing crypto regulations that might restrict freedoms like property, business, and expression is provided by Tarunabh Khaitan's seminal article, which explains the constitutional doctrine of proportionality as a strict judicial tool for examining government restrictions on fundamental rights. The legitimacy of the legislative goal, the measure's fitness to accomplish that goal, necessity in terms of least restrictive methods, and a weighing of benefits against disadvantages (proportionality stricto sensu) are the four interconnected tests that Khaitan divides proportionality into. Khaitan illustrates how proportionality guarantees that rights constraints are transparent, justified, and subject to reasoned judicial scrutiny rather than capricious executive fiat by referencing comparative case law from Germany, Canada, South Africa, and other nations. His scholarship emphasizes the substantive and procedural aspects of proportionality, arguing that in order to increase legitimacy, public consultations, cost-benefit evaluations, and regulatory impact assessments should be included. Khaitan's paradigm provides a moral benchmark by which Indian lawmakers and courts can assess the rationality and constitutionality of new crypto laws and executive orders, given the dynamic and contentious character of crypto assets.

1.12 LIMITATIONS OF THE STUDY

The study's primary focus is India's non-regulatory approach to cryptocurrencies, which would restrict how far the results of other areas with various legal regimes can be applied.

Since blockchain technology and cryptocurrencies are developing quickly, the results can lose their applicability as new developments in technology and laws take effect. Doctrinal approaches, which concentrate on examining legal documents, regulations, and court rulings, are the foundation of the study. The entire range of real-world difficulties and stakeholder viewpoints in the cryptocurrency ecosystem might not be fully captured by this method.

CHAPTER 2
INDIA'S LEGAL AND REGULATORY CHALLENGES IN CRYPTOCURRENCY

2.1 INTRODUCTION

India's cryptocurrency regulations are still a contentious, intricate, and developing topic. Bitcoin and Ethereum are two examples of cryptocurrencies that have garnered a lot of attention worldwide because of their decentralized structure and potential to revolutionize financial institutions. But their volatility, lack of inherent worth, and anonymity create questions about monetary policy, illegal financial activity, and investor safety. As a result of conflicts between legal, financial, and technological players, India has alternated between cautious engagement and stringent control.

The Reserve Bank of India (RBI) has often issued warnings about the systemic risks that cryptocurrencies pose, such as the possibility that they could encourage illegal activity and undermine the financial system. The Indian government has not, however, issued a complete prohibition. Rather, the Finance Act, 2022, established a tax structure that includes a 1% tax deducted at source (TDS) on all transactions involving crypto assets and a flat 30% tax on gains from virtual digital assets (VDAs).[22] Stakeholders are left in a state of noncompliance since the law does not specify the legal standing of cryptocurrencies.
This chapter examines five interconnected legal and regulatory issues:

1. Tax uncertainty and unclear legal classification;
2. Financial crime risks, such as the financing of terrorism and money laundering;
3. Regulatory conflict and fragmentation of institutions;
4. Crypto startups facing heavy compliance burdens;
5. Global policy divergence and inadequate investor education.

[22]Government of India, Finance Act, 2022, Ministry of Finance, available at https://incometaxindia.gov.in.

This chapter highlights the necessity of a transparent and uniform legal framework that strikes a balance between innovation, investment, and risk mitigation by closely evaluating these concerns.

2.2 LEGAL AMBIGUITY IN CRYPTO TAXATION AND CLASSIFICATION

The lack of a precise legal classification for cryptocurrencies is a major obstacle in India's crypto regulatory environment. Although taxation of Virtual Digital Assets (VDAs) was established by the Finance Act of 2022, it did not specify whether cryptocurrencies should be regarded as securities, commodities, currencies, or sui generis assets.[23]

This categorization has broad ramifications since every legal category draws a unique regulatory framework with various goals and standards for compliance.[24] The Securities and Exchange Board of India (SEBI) would have jurisdiction over cryptocurrencies if they were deemed securities.[25] The Securities Contracts (Regulation) Act, 1956 would impose disclosure requirements, investor protection measures, registration requirements, and antifraud provisions on them.[26] However, they might be subject to a more relaxed regulatory structure that concentrates on spot and futures trading, with fewer protections for investors and less rigorous monitoring of the underlying technology, if they are classified as commodities. [27]The RBI's only right to issue legal tender and uphold monetary stability would be called into question if they were classified as currencies, raising monetary policy problems.[28] In this situation, cryptocurrencies might be viewed as rival private currencies, which would raise concerns regarding capital regulation, inflation management, and sovereignty. [29]As an alternative, a sui generis classification, which treats cryptocurrencies as a distinct class, would enable legislators to create regulations

[23] Finance Act, 2022, Virtual Digital Assets Definition, Ministry of Finance, Government of India.
[24] Aaron Wright & Primavera De Filippi, Decentralized Blockchain Technology and the Rise of Lex Cryptographia, 58 Harv. Int'l L.J. 1, 2 (2017).
[25] Securities and Exchange Board of India, Annual Report *2021–22*, at 120 (2022), https://www.sebi.gov.in.
[26] Securities Contracts (Regulation) Act, No. 42 of 1956, §§ 23, 30–32 (India).
[27] Int'l Org. of Sec. Comm'ns, Issues, Risks and Regulatory Considerations Relating to Crypto-Asset Trading Platforms, ¶ 2 (Feb. 12, 2020), https://iosco.org.
[28] Reserve Bank of India, Report of the Inter-Ministerial Committee on Virtual Currencies 6–7 (Feb. 28, 2019), https://dea.gov.in.
[29] Tobias Adrian & Tommaso Mancini-Griffoli, The Rise of Digital Money, IMF FinTech Note No. 19/01, at 5–6 (July 12, 2019), https://www.imf.org.

specifically tailored to their characteristics.[30] By doing this, India would have more freedom to handle the legal, technological, and economic intricacies of digital assets without having to impose them on preexisting frameworks. A specific legislative tool and unambiguous administrative delegation to a specialized regulatory body would be necessary, though.[31]

Because of this ambiguity, different regulatory authorities have treated it differently. The Ministry of Finance prioritizes revenue generation and views cryptocurrencies mainly as taxable digital assets.[32] Crypto assets may be subject to regulations under the Securities Contracts (Regulation) Act, 1956, since the Securities and Exchange Board of India (SEBI) has expressed interest in regulating them under the framework applicable to securities.[33] However, the RBI continues to vehemently resist their introduction as legal money, claiming that they endanger financial stability and the transmission of monetary policy.[34]

When the government imposed a 1% TDS on all cryptocurrency transfers, regardless of size or purpose, in July 2022, it provided a concrete example of this fragmented strategy. Implementation was made more difficult by the ambiguity surrounding the classification of crypto assets as securities, commodities, or derivatives, particularly for traders and exchanges.[35] Because of the burden of compliance and user migration to offshore platforms like Binance, which do not collect such taxes, several Indian exchanges, including WazirX and CoinDCX, experienced operating difficulties and dwindling volumes.[36]

Further, investors and startups are in a gray area as a result of this regulatory vacuum. In order to maintain compliance, exchanges must constantly modify their business models and interpret a number of frequently conflicting regulations. Foreign direct investment

[30] Nishith Desai Assocs., Regulation of Crypto Assets in India: A Primer *16* (2022), https://www.nishithdesai.com.
[31]Fin. Stability Bd., Regulation, Supervision and Oversight of Crypto-Asset Activities and Markets: Consultative Document, Rec. 1 (Oct. 11, 2022), https://www.fsb.org.
[32] Ministry of Fin., Lok Sabha Debates on Cryptocurrency Taxation, Budget Session (2022).
[33] SEBI, Comments to the Standing Committee on Finance (2022).
[34] Reserve Bank of India, Report on Currency and Finance (2021).
[35] Deloitte India, Crypto Taxation and Its Implications (2022).
[36] Vrishti Beniwal & Suvashree Ghosh, Crypto Traders Flee Indian Exchanges for Binance to Escape Taxes, Bloomberg (Sept. 13, 2022), 10:30 PM, https://www.bloomberg.com.

(FDI) in the Indian Web3 ecosystem is discouraged by the absence of a clear legislative approach, which compromises legal certainty.[37]

It is imperative that India develop a thorough and rational classification system for crypto-assets as the foundation of its regulatory framework. Without one, the current legal and policy environment is disjointed, unclear, and unable to handle the quickly changing nature of digital assets. The technological complexity and economic potential of cryptocurrencies and blockchain-based instruments cannot be adequately accommodated by a merely reactionary or piecemeal approach.

Payment tokens are typically used as a store of value and a medium of exchange within or across blockchain platforms, while utility tokens are designed to grant access to a specific application, service, or function within a decentralized platform without necessarily conferring ownership or profit-sharing rights. In contrast, security tokens are structured to represent financial interests, such as ownership in an enterprise, entitlement to dividends, or other rights typically associated with securities.[38] These three types of tokens should be clearly distinguished in a systematic taxonomy because they each embody unique characteristics and functions within the digital asset ecosystem.

Any future legislative attempt would be built around a clearly defined classification system, which would enable regulators to create precise, targeted, and appropriate regulations for every type of token. In addition to improving legal clarity and reducing regulatory uncertainty, this would also help prevent both over- and under-enforcement of legal requirements. Crucially, it would also safeguard investors and users by guaranteeing that regulatory requirements are appropriately matched with the risks associated with the characteristics and operations of every kind of token.[39]

Predictability and legal certainty, which are critical for encouraging innovation and drawing in responsible entrepreneurship in the blockchain and Web3 arena, would be

[37] NASSCOM, India's Web3 Startup Ecosystem Report (2022).
[38] World Econ. Forum, Pathways to the Regulation of Crypto-Assets: A Global Approach 18 (May 2023).
[39] Bank for Int'l Settlements, Crypto, Tokens and DeFi: Navigating the Regulatory Landscape, FSI Insights No. 49, § 3.1.1 (May 2023).

further made possible by classification clarity. Users, developers, and investors would all be better able to comprehend their responsibilities and rights, fostering an atmosphere of openness and trust. Any regulation that is passed without this fundamental clarity runs the risk of being either too strict to allow for innovation or too ambiguous to stop exploitation.[40]

India must thus refocus its regulatory attention. In order to address the technological and economic realities of the digital ecosystem, lawmakers should start with a granular, function-based classification approach rather than treating digital assets as a single category. A rigorous and forward-thinking strategy is necessary to create legislation that is effective, flexible, and able to protect stakeholders' interests while promoting responsible innovation.

In conclusion, India's regulatory framework is disjointed and unclear due to the lack of a clear legal classification for cryptocurrencies. Even while the Finance Act of 2022[41] brought new taxation procedures, they function independently of a more comprehensive legal understanding of what these assets stand for. This discrepancy has resulted in a deterrent effect on international investment,[42] operational difficulties for domestic exchanges,[43] investor misunderstanding,[44] and uneven treatment by different regulators. [45]Regulatory obligations are unclear if cryptocurrencies are not classified as securities, commodities, currencies, or a new form of asset.[46] Overlapping jurisdictions, legal gaps, and unequal compliance requirements throughout the ecosystem are the outcome. This

[40] Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on Markets in Crypto-Assets, Recitals 3–5.
[41] Finance Act, No. 6 of 2022, § 3 (India).
[42] World Bank Group, India Digital Economy Report: Accelerating Investment and Innovation 57 (2022), https://documents.worldbank.org.
[43] Nishith Desai Assocs., supra note *30.*
[44] Varun Sethi, Understanding Crypto Taxation in India, 18 Indian J. L. & Tech. 23, 23–38 (2022).
[45] Report of the Inter-Ministerial Committee on Virtual Currencies, Dept. of Econ. Aff., Ministry of Fin., ¶ 1.7, at 19 (Feb. 28, 2019).
[46] *Id.*, ¶ 2.4, at 27.

undermines India's standing in the global Web3 economy in addition to stifling institutional trust.[47]

In order to avoid regulatory arbitrage, harmonize with international standards,[48] and establish a more predictable business environment for investors and startups alike, India must go ahead with a classification-led approach that clearly defines the nature of tokens, whether they are payment, utility, or security.[49]

2.3 FINANCIAL CRIME RISKS: MONEY LAUNDERING AND TERROR FUNDING

The purpose of cryptocurrencies is to provide decentralization, cross-border portability, and pseudonymity. Those are fundamental characteristics stated in Satoshi Nakamoto's initial white paper on Bitcoin (2008)[50] and further supported by global regulatory studies.[51] Even if these characteristics encourage financial innovation, they also provide opportunities for illegal financial behavior, especially in countries like India, where technical and regulatory enforcement systems are still developing.

2.3.1 VULNERABILITY TO ILLICIT USE

Without strong Know Your Customer (KYC) and Anti-Money Laundering (AML) procedures in place, cryptocurrencies can aid in tax evasion, money laundering, and the funding of terrorism. These are real, real issues.

The National Investigation Agency (NIA) of India disclosed in 2020 that extremist groups were financing terror operations, especially in Jammu and Kashmir, with Bitcoin wallets.[52] Crypto wallets and anonymous mixers have been used by organizations like as ISIS to raise and distribute money illegally on a global scale.[53] According to a warning from the United

[47] Nishith Desai Assocs., The Future of Web3 in India: Legal & Regulatory Issues 5 (2023), https://www.nishithdesai.com.
[48] Int'l Monetary Fund, Elements of Effective Policies for Crypto Assets § 6 (Feb. 23, 2023).
[49] Fin. Action Task Force, Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers ¶ 8 (June 21, 2019).
[50] Nakamoto, supra note 5.
[51] FATF, Guidance for a Risk-Based Approach to Virtual Assets and VASPs (2019).
[52] Nat'l Investigation Agency, Annual Report on Counterterrorism Financing (2020).
[53] Yaya Fanusie & Alex Zerden, Terrorist Use of Virtual Assets, Ctr. for a New Am. Sec. (2021).

Nations Office on Drugs and Crime (UNODC), cryptocurrency assets are being used more and more for illegal commerce and cybercrime.[54]

2.3.2 ENFORCEMENT DIFFICULTIES IN THE REAL WORLD

In 2021, the Enforcement Directorate (ED) opened an inquiry against WazirX, one of the biggest cryptocurrency exchanges in India. Through a network of P2P transfers and anonymous wallets, authorities claimed that the platform was utilized to launder more than ₹2,790 crore.[55] There was no established procedure for data sharing across agencies or worldwide platforms due to the ambiguity in regulatory control.

Even more complexity is added by the usage of privacy-enhancing technologies like cross-chain swaps, tumbler services, and crypto mixers. These techniques are frequently used to circumvent traditional financial oversight by preventing transactions from being traced.[56]

2.3.3 INTERNATIONAL MODELS AND COMPARATIVE INSTRUCTIONS

India can benefit from the informative comparative frameworks that other jurisdictions have provided by taking aggressive and organized steps to prevent financial crimes related to cryptocurrencies. These global models emphasize the value of interagency collaboration, centralized oversight procedures, and explicit legal obligations, elements that are mainly lacking in India's current regulatory framework.

The Markets in Crypto-Assets (MiCA) Regulation in the European Union establishes a uniform legal framework for crypto-assets among its member nations. In order to guarantee accountability and transparency,[57] crypto-asset service providers are required to install strong Know-Your-Customer (KYC) procedures, keep thorough transaction records, and put in place safeguards for whistleblowers. Along with promoting legal clarity for market

[54] UNODC, Cryptocurrencies and Illicit Finance: Emerging Threats (2021).
[55] Press Tr. of India, ED Probes WazirX in ₹2,790 Crore Money Laundering Case, Econ. Times (2021).
[56] Chainalysis, Crypto Crime Report (2022).
[57] Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets (MiCA), COM(2020) 593 final (Sept. 24, 2020).

participants, the MiCA framework aims to address regulatory gaps that could be used for money laundering and terrorist financing. By guaranteeing that compliance requirements are applied consistently to all organizations engaged in the issuance, exchange, and custody of crypto-assets, it significantly strengthens anti-money laundering (AML) regulations.[58]

Likewise, in the US, cryptocurrency exchanges are required to register as Money Services Businesses (MSBs) by the Financial Crimes Enforcement Network (FinCEN), which is governed by the Bank Secrecy Act (BSA). These organizations must adhere to KYC regulations, file Suspicious Activity Reports (SARs), and maintain AML procedures that are comparable to those of conventional financial institutions.[59] Enforcement actions show the U.S. government's tough stance against non-compliant actors in the crypto industry, such as BitMEX and Binance US.[60] These examples highlight a regulatory commitment to the idea of parity between traditional and digital finance in addition to financial integrity.

India, on the other hand, does not yet have such a centralized and integrated enforcement system. Although they are entrusted with looking into financial crimes, enforcement agencies such as the Enforcement Directorate (ED), Financial Intelligence Unit (FIU), and Customs frequently function in institutional silos. Especially in cross-border investigations involving pseudonymous crypto transactions, this fragmentation results in gaps in transaction surveillance, delays in information exchange, and inadequate coordination. The capacity to identify and dismantle intricate money-laundering networks is severely hampered by the lack of standardized compliance protocols, such as shared databases, centralized monitoring systems, and legally obligatory KYC/AML requirements for crypto players.[61]

[58] Dirk A. Zetzsche et al., The Markets in Crypto-Assets Regulation (MiCA) and the EU Digital Finance Strategy, 17 Cap. Mkts. L.J. 30, 32–36 (2022).
[59] Fin. Crimes Enf't Network, Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies, FIN-2013-G001 (Mar. 18, 2013).
[60] U.S. Dep't of Just., Founder of BitMEX Cryptocurrency Exchange Pleads Guilty to Bank Secrecy Act Violation (Feb. 24, 2022), https://www.justice.gov.
[61] Jayateertha S. & Priya Sahni, Regulating Cryptocurrencies in India: The Missed Opportunity in AML Enforcement, 14 NLIU L. Rev. 87, 92–94 (2023).

2.3.4 THE DILEMMA OF COMPLIANCE AND INVESTMENT

Requirements for strict compliance may discourage investment and innovation in the industry, especially from startups. But insufficient controls run the risk of making India appear to be a safe haven for illegal flows. The secret is to strike this balance between creativity and supervision.

In addition to investing in blockchain forensic capabilities and implementing risk-based KYC requirements, India must make sure that startups are subject to reasonable obligations. Local adaptations of models such as the Financial Action Task Force's (FATF) "Travel Rule" compliance rules are possible.[62]

2.4 DISARRAY IN REGULATION AND INSTITUTIONAL CONFLICTS

In India, the lack of a single legislative framework pertaining to cryptocurrencies has led to conflicting jurisdictions, overlapping responsibilities, and inconsistent policies across several regulatory authorities. Business compliance, investor confidence, and legal clarity have all suffered as a result of this fragmentation.

2.4.1 THE DIVERSITY OF REGULATORY BODIES

Under various mandates, a number of governmental organizations have asserted an interest in crypto governance:

A complete prohibition has been suggested by the Reserve Bank of India (RBI), which views cryptocurrencies as a systemic threat to monetary and financial stability.[63]

A capital market regulation approach is used by the Securities and Exchange Board of India (SEBI), which considers some cryptocurrency assets to be securities.[64]

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[62]FATF, Updated Guidance for a Risk-Based Approach to Virtual Assets and VASPs (2021).
[63] Reserve Bank of India, Report of the Committee to Propose Specific Actions to be Taken in Relation to Virtual Currencies (2021), https://www.rbi.org.in.
[64]SEBI, SEBI Flags Concerns Over Regulation of Cryptos, The Hindu Bus. Line (June 7, 2022), https://www.thehindubusinessline.com.

The Income Tax Department is responsible for generating revenue, enforcing profit taxation, and implementing transaction-level Tax Deducted at Source (TDS).[65]

Investigations into money laundering and enforcement of the Prevention of Money Laundering Act (PMLA) were carried out by the Enforcement Directorate (ED).[66]

The Ministry of Electronics and Information Technology (MeitY) looks at digital infrastructure, data security, and blockchain governance.

Because of this institutional sprawl, different authorities are issuing guidance from within their narrow mandates, which has resulted in regulatory overlap and varying compliance requirements. Although it would not be possible to create a single law that addresses every aspect of cryptocurrency use, a unified framework that clearly defines roles for technology, taxation, securities, and enforcement would greatly lessen regulatory ambiguity and friction.

2.4.2 JUDICIAL INTERVENTIONS AND POLICY BACKLASH

The RBI banned banks from offering services to companies that deal in cryptocurrency in a circular published in 2018. The Supreme Court of India invalidated this action in 2020, citing regulatory overreach and a violation of Article 19(1)(g) of the Constitution, which guarantees the freedom to practice any profession.[67]

But after the court ruling, the government enacted strict tax laws in the 2022 Finance Act, which included a 1% TDS on all transactions and a flat 30% tax on income from virtual digital assets (VDAs). Despite the Supreme Court's liberal attitude, these actions placed de facto limits.[68]

[65] Ministry of Fin., Union Budget and Finance Act Provisions on VDAs (2022).
[66] Enf't Directorate, Case Reports on WazirX Investigation (2021).
[67] Internet & Mobile Ass'n of India v. RBI, (2020) 10 SCC 274.
[68] Finance Act, 2022, Gov't of India.

2.4.3 THE EFFECTS OF REGULATORY SEGMENTATION

The domestic cryptocurrency industry has experienced noticeable operational disruptions as a result of India's disjointed regulatory framework. Notably, informal guidelines prohibiting banks from conducting cryptocurrency-related transactions have resulted in service outages for key exchanges like WazirX and CoinDCX. Retail users' access to the on-ramp was severely hindered by these outages, which also interfered with the conversion of cash to cryptocurrency and limited liquidity on several platforms.[69] Key financial regulators' inability to coordinate is reflected in the lack of an institutional framework to address such regulatory excess.

Due to this uncertainty, a significant portion of Indian cryptocurrency users have shifted to overseas platforms that are not directly supervised by India. For customers looking for reliable access to digital assets, these platforms are appealing substitutes since they frequently offer smooth operation, improved liquidity, and fewer regulatory issues.[70] But there are significant blind spots in enforcement as a result of this departure. Indian authorities have a harder time keeping an eye on transactions, spotting illegal movements, and protecting users when they trade offshore.

The contradictory policy positions taken by different government branches further exacerbate the situation. Regulatory messaging has fluctuated between tacit approval and caution, creating uncertainty that erodes market trust. The country's competitive position in the global digital asset market has been weakened as a result of stakeholders finding it challenging to plan long-term operations or product offers due to the agencies' lack of coordination. Assigning regulatory control to a single, specialized authority, however, has been advantageous for nations like Singapore and Japan. This cohesive framework encourages procedural clarity, makes compliance easier, and guarantees quick reactions to

[69] Radhika Merwin, Crypto Exchanges Hit by Banking Freeze Amid Regulatory Uncertainty, The Hindu Bus. Line (Apr. 13, 2023).
[70] S. Shrivastava, Crypto Users Shift to Global Platforms, Citing Regulatory Chill in India, LiveMint (July 18, 2023).

new technological advancements, all of which India should aim for by adopting centralized, interagency cooperation and getting rid of contradicting signals.[71]

2.5 GLOBAL REGULATORY DIVERGENCE AND COMPLIANCE BURDEN

Indian cryptocurrency companies must navigate a complicated regulatory landscape characterized by unclear laws, expensive compliance fees, and deviations from international standards. These issues are causing structural disadvantages for Indian exchanges in comparison to their international rivals, limiting indigenous innovation, and eroding investor trust.

2.5.1 GROWING COMPLIANCE EXPENSES FOR EXCHANGES AND CRYPTO STARTUPS

In India, the burden of regulatory compliance duties falls disproportionately on startups and exchanges. The Prevention of Money Laundering Act (PMLA) mandates strict Know Your Customer (KYC) and Anti-Money Laundering (AML) regulations, which call for ongoing transaction monitoring, identity verification, and audit-ready documentation.[72]

The tax regulations included in the Finance Act of 2022 have significantly changed the compliance environment in India. These rules, which have already been covered in previous parts, force investors and exchanges to function within a framework of decreased profitability and intense transaction-level surveillance. This section focuses on how these fiscal laws result in operational costs and competitive disadvantages for domestic crypto firms rather than restating tax facts.

Exchanges must maintain intricate, multi-tiered reporting structures in addition to their Goods and Services Tax (GST) obligations. Many firms have been forced to downsize or relocate in order to comply with these requirements, which require a significant investment in legal, technical, and accounting infrastructure.

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[71] Monetary Auth. of Sing., A Guide to Digital Token Offerings (2022); Fin. Servs. Agency of Japan, Regulatory Framework for Crypto-Assets, https://www.fsa.go.jp.
[72] Ministry of Fin., Guidelines on PMLA Compliance for VDA Service Providers (2023).

Well-known Indian exchanges, like WazirX, CoinDCX, and ZebPay, have openly admitted to operational challenges that range from banking constraints to enforcement scrutiny.[73] In an effort to find a more business-friendly atmosphere, many of these platforms have cut employees or moved some aspects of their operations elsewhere.[74]

2.5.2 OFFSHORE MIGRATION: THE BINANCE ADVANTAGE

A comparative example lies in the case of Binance, a globally dominant exchange that has gained a significant foothold in the Indian market by not deducting TDS, a feature that appeals to high-frequency and institutional traders.[75] Unlike domestic platforms, Binance leverages its offshore jurisdiction to avoid Indian taxation and enforcement barriers, offering better liquidity, lower fees, and uninterrupted fiat-to-crypto services.

This has led to an observable capital outflow, where Indian users increasingly migrate to offshore exchanges to escape excessive compliance and taxation. This migration results in revenue losses for Indian platforms and creates enforcement blind spots for regulators.

2.5.3 DIVERGENCE IN GLOBAL REGULATION AND ITS CONSEQUENCES

India's disjointed and unclear approach to regulating cryptocurrencies contrasts sharply with more cohesive and progressive international frameworks. The European Union's Markets in Crypto-Assets (MiCA) Regulation offers a thorough framework that mandates that all crypto service providers acquire licenses in order to conduct business consistently among its member states. In order to improve market integrity, this law requires thorough investor disclosures, enforces reserve requirements expressly for stablecoins, and enforces transparency in token issuance. Within a unified legislative framework, such an integrated regulatory strategy finds a balance between encouraging innovation and guaranteeing accountability.[76]

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[73] ZebPay, Statement on Operational Challenges Due to Compliance Costs (2023).
[74] Zenaira Bakhsh, Faced with 90% Drop in Business, Crypto Exchanges Are Moving out of India, The Print (Jan. 15, 2024), https://theprint.in.
[75] How Binance Is Dominating the Indian Market Post-Tax Rules, CoinDesk *(2023).*
[76] Markets in Crypto-Assets Regulation, EUR. PARL. DOC. (2020/0361(COD)) (2024), https://eur-lex.europa.eu.

Depending on whether a token is classified as a security or a commodity, the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC) have the majority of the regulatory power over cryptocurrencies in the US. Even though there are still issues with token classification, this divided jurisdiction has led to historic court cases, like as the well-known Ripple Labs case, which has gradually defined legal limits through enforcement measures.[77]

Under the Payment Services Act, Singapore's Monetary Authority of Singapore (MAS) oversees crypto legislation. To reduce the danger of fraud, it enforces severe anti-money laundering procedures, imposes high business behavior standards, and mandates the strict segregation of customer assets.[78] Similarly, in order to protect investors, Japan's Financial Services Agency (FSA) requires all cryptocurrency exchanges to register, requires custodial safeguards, such as separate accounting for client assets, and enforces strict compliance standards.[79]

India's crypto regulatory environment, on the other hand, is still young and disjointed, lacking a specific legal framework or a governing body with the authority to categorize, authorize, or oversee crypto companies in a thorough manner. For industry participants, this regulatory ambiguity poses serious obstacles that impede both domestic compliance and international operational growth.[80]

This lack of regulatory coherence makes it difficult for Indian firms to comply with international standards, particularly when entering foreign markets or engaging in cross-border crypto transactions. Without a harmonized framework that aligns with global best

[77] *SEC v. Ripple Labs Inc.*, No. 1:20-cv-10832 (S.D.N.Y. filed Dec. 22, 2020); see also Commodity Futures Trading Comm'n, Enforcement Actions, https://www.cftc.gov.
[78] Monetary Auth. of Sing., Payment Services Act 2019: Licensing Framework and Compliance Standards, https://www.mas.gov.sg.
[79] Fin. Servs. Agency, Japan, Virtual Currency Exchange Service Providers Registration Requirements, https://www.fsa.go.jp.
[80] Ketan N. Pai, The Evolving Indian Crypto Landscape: Challenges and the Path Forward, Indian J. Fin. L. (2024).

practices, India risks falling behind in the global digital finance race and becoming a jurisdiction marked by capital flight and enforcement inefficiency.

2.6 CONSUMER VULNERABILITY

2.6.1 CONSUMER PROTECTION FAILURES AND SCAM EXPOSURE

The retail crypto boom in India has led many uninformed investors to enter the market without adequate knowledge of associated risks. A study by the Internet and Mobile Association of India (IAMAI) revealed that over 70% of first-time Indian crypto investors lacked risk education or due diligence training.[81]

Ponzi schemes and fraudulent investment platforms have flourished in this vacuum. A striking example is the BitConnect scam, which operated as a high-yield investment program and promised returns of up to 1% daily, attracting thousands of Indian investors. Its 2018 collapse resulted in estimated Indian investor losses worth hundreds of crores.[82]

In addition to frauds, exchange hacks, wallet breaches, and rug pulls, where the founders of cryptocurrency projects disappear with investor money, have also caused harm to Indian investors. Retail investors are additionally exposed to speculative losses and emotional trading habits due to the volatility of assets like Dogecoin and Bitcoin, frequently with no institutional recourse or insurance mechanisms.

2.6.2 THE NEED FOR LEGAL PROTECTION AND INVESTOR EDUCATION

India must immediately implement crypto investing recommendations, required consumer risk disclosures, and stringent licensing requirements for all platforms providing digital asset services in order to reduce these dangers. Comparative global models provide insightful information.

The FCA's final cryptoasset financial promotion rules (PS 23/6, effective October 8, 2023) classify cryptoassets as "Restricted Mass Market Investments," requiring all promotions to

[81] IAMAI & Crypto Council, Investor Education and Risk Perception Study (2022).
[82] SEC Charges BitConnect, U.S. Sec. & Exch. Comm'n (2018).

be fair, clear, and not misleading.[83] Firms must display the standard high-risk warning: "Don't invest unless you're prepared to lose all the money you invest. This is a high-risk investment, and you should not expect to be protected if something goes wrong. Take 2 mins to learn more."[84] Any such promotion must obtain prior approval from an FCA-authorised person before publication or dissemination.[85]Non-compliance may trigger withdrawal orders, monetary penalties, or even criminal prosecution under the Financial Services and Markets Act 2000.[86]

The MAS Guidelines on the Provision of Digital Payment Token Services to the Public (PS-G02, January 17, 2022) forbid promoting DPT services through influencers, third-party websites or apps, or public areas (such as public transportation stations or broadcast media).[87] Only the providers' own business websites, mobile applications, or official social media accounts may run advertisements. These must be factual, avoid trivializing dangers, and not contradict required disclosures.[88] MAS highlights that trading DPTs is extremely dangerous and inappropriate for the general population.[89]

In India, all VDA advertisements (print, video, and internet) must include the following disclaimer, under the self-regulatory ASCI Guidelines for Advertising of Virtual Digital Assets and Linked Services (Feb. 23, 2022).

"Crypto products and NFTs are unregulated and can be highly risky. There may be no regulatory recourse for any loss from such transactions."[90]These guidelines applied to

[83] Fin. Conduct Auth., Policy Statement PS 23/6: Financial Promotion Rules for Cryptoassets (June 8, 2023), https://www.fca.org.uk.
[84] White & Case, New FCA Rules for Regulated Firms Marketing Cryptoassets, at 2 (July 2023), https://www.whitecase.com.
[85] Financial Services and Markets Act 2000, c. 8, § 21 (UK).
[86] Fin. Conduct Auth., Cryptoasset Promotions: Our Expectations (Mar. 2024), https://www.fca.org.uk.
[87] Monetary Auth. of Sing., Guidelines on Provision of Digital Payment Token Services to the Public *(*PS-G02) (Jan. 17, 2022), https://www.mas.gov.sg.
[88] *Id.* at 4–5.
[89] Yin Mei Lock, MAS Issues Guidelines to Discourage Cryptocurrency Trading by General Public (Jan. 17, 2022), Venture Law, https://venturelaw-llc.com.
[90] ASCI, Guidelines for Advertising of Virtual Digital Assets and Linked Services (Feb. 23, 2022), https://images.assettype.com.

new ads from April 1, 2022 (existing ads by April 15, 2022) but lack statutory force.[91] Both the RBI and SEBI have issued investor advisories warning that cryptoassets are unregulated and high-risk, yet there is no legal requirement for prior approval or mandatory penalties for noncompliant promotions.[92]

2.7 INTER-AGENCY CONFLICTS AND REGULATORY PLURALISM

The lack of a systematic coordination mechanism and overlapping jurisdictions are not the only reasons why India's institutional environment for cryptocurrencies is still fragmented. In reality, regulatory fragmentation is a structural gap caused by agencies operating independently, sending out policy signals that aren't aligned, and allowing market participants to deal with inconsistencies. This section focuses on how that disunity leads to procedural confusion, enforcement delays, and a lack of confidence between regulators and the crypto business, rather than simply restating known overlaps.

2.7.1 A VARIETY OF REGULATORY PARTIES

The functions of the different authorities involved in India's crypto regulation were described in preceding parts; however, this subsection concentrates on the systemic outcome of that overlap. Every organization is still operating on its own, establishing guidelines in parallel for things like technology, taxation, and enforcement. Despite this diversity, no one organization has been given the responsibility of regulating cryptocurrencies in a unified, centralized way. What academics refer to as “regulatory arbitrage” has resulted from this, in which players take advantage of discrepancies to evade compliance.[93] Without a central coordinating mechanism, entities are unaware of which rules apply, which causes jurisdictional conflict and delays in the process. Market participants face uncertainty as a result of this fragmentation since they have to follow several regulatory paths to comply. In reality, businesses frequently find themselves torn

[91] The ASCI Code – Guidelines, https://www.ascionline.in (noting that ASCI guidelines are self-regulatory and non-binding).
[92] Reserve Bank of India, Cautions on Virtual Currencies (Apr. 6, 2018); SEBI, SEBI Cautions Public on Securities Market Frauds Using Social Media Platforms (Jan. 2025), Times of India, https://timesofindia.indiatimes.com.
[93] Fin. Intelligence Unit – India, Guidelines on VASP Registration (2023).

between contradictory orders, one regulator considers appropriate, another may expressly forbid, which leads to expensive compliance audits and a halt in innovation. In the absence of a uniform policy framework or clear hierarchy, ordinary processes like reporting transactions, onboarding new users, and updating software become drawn-out legal interpretation exercises. Furthermore, the lack of a single point of responsibility causes complaints and requests for clarification to be sent back and forth across agencies, further undermining trust in the effectiveness and predictability of the system. In the end, the more general objectives of market stability, consumer protection, and technical innovation that each regulator separately aims to accomplish are compromised by this fragmented approach.

2.7.2 VACUUMS IN POLICY AND INSTITUTIONAL CONFLICTS

Beyond institutional overlap, there is a more serious problem with India's crypto regulatory environment: there is no proactive legislation or parliamentary involvement.[94] Rather than being driven by a systematic vision for digital assets, the majority of governmental initiatives to date have been reactive, formed by crises, court decisions, or revenue targets.[95] In India, there is currently no central law that specifies the characteristics, handling, or categorization of cryptocurrencies.[96] Since politicians have never formally discussed the underlying principles of cryptocurrency assets due to the lack of primary legislation, important questions regarding their legal status remain unaddressed.[97]

India has yet to initiate parliamentary debate on the fundamental issue of crypto legality, in contrast to other countries that have enacted specialized legislation or measures pertaining to digital assets.[98] Because of this, elected officials and pertinent legislative

[94] Report of the Inter-Ministerial Committee on Virtual Currencies, Reserve Bank of India, at 2–4 (2019), https://dea.gov.in.
[95] Om Malviya, India's Crypto Policy Is Reactive, Not Visionary, The Diplomat (Aug. 11, 2022), https://thediplomat.com.
[96] Varun Sethi, Crypto Legislation in India: The Missing Framework, Indian J.L. & Tech. (2022), https://ijlt.in.
[97] Arghya Sengupta, The Jurisprudential Void in India's Digital Currency Debate, 58 Econ. & Pol. Wkly. 32 (2023), https://www.epw.in.
[98] Pratik Gauri & Roshni Jain, Comparative Legal Frameworks for Crypto Assets: Lessons for India, ORF Occasional Paper No. 394 (2023), https://www.orfonline.org.

committees are either ignorant of or do not participate in the long-term potential and difficulties that digital currencies offer. There is less accountability for how new technologies impact financial systems and consumer safeguards in the absence of this platform for debate and supervision.[99]

This legal silence encourages disjointed departmental responses and restricts regulatory accountability.[100] Policymakers are forced to interpret fragmentary rules, which frequently overlap or even contradict one another, in the absence of unambiguous statutory direction. Coherent policymaking is hampered by this fragmentation, which can also leave stakeholders unsure of which regulations apply in what situations.[101] Furthermore, the disjointed strategy erodes confidence among innovators and possible investors, who see India as an uncharted area for digital asset initiatives.[102]

Furthermore, the nation has not embraced regulatory innovation tools that allow for the controlled exploration of crypto integration, such as test environments or sandboxes.[103] There would be no organized way for financial institutions and entrepreneurs to test new services under observation without these experimental platforms. This creates a gap in both institutional learning and the legal field. Regulators are still unfamiliar with practical issues and best practices, which hinders the development of well-informed policy.[104]

Without proactive oversight, India runs the risk of lagging behind in establishing global crypto standards and drawing significant investment in digital assets. Countries that have established forward-thinking frameworks are already establishing themselves as centers for fintech collaborations, blockchain research, and decentralized financial initiatives.[105]

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[99] Fin. Stability Inst., Supervising Crypto-Assets for Anti-Money Laundering (2022), https://www.bis.org.
[100] Nishith Desai Assocs., India's Legal and Tax Landscape for Blockchain Projects (2022), https://www.nishithdesai.com.
[101] Rahul Matthan, The Case for Crypto Law Reform, Mint (May 2023), https://www.livemint.com.
[102] KPMG India, Crypto and Web3 India Report *(*2023), https://assets.kpmg.
[103] World Bank, Regulatory Sandboxes and Innovation in Financial Technology, Fintech Note Series No. 5 (2020), https://documents.worldbank.org.
[104] Int'l Monetary Fund, Crypto Assets: Implications for Financial Stability and Monetary Policy, IMF Working Paper WP/22/145 (2022), https://www.imf.org.
[105] Eur. Parl., Markets in Crypto-Assets (MiCA) Regulation Adopted (Apr. 2023), https://www.europarl.europa.eu.

On the other hand, businesses and engineers looking for a transparent and stable regulatory framework may be put off by India's strategic slowness. Therefore, the gap hinders India's capacity to lead or actively engage in the global digital asset ecosystem, making it more than just a legal one.[106]

2.7.3 THE NECESSITY OF A UNIFIED REGULATORY FRAMEWORK

The creation of specialized crypto-regulating bodies or sandbox settings is recommended by international best practices. Among the examples are:

For uniform oversight, the FCA, Bank of England, and HM Treasury are integrated via the UK's Cryptoassets Taskforce.[107]

A single passporting system and consistent compliance requirements among member states are offered by the European Union's MiCA Regulation.[108]

In a similar vein, India needs to establish a Digital Assets Regulatory Authority (DARA) or delegate unified accountability to a particular organization (like SEBI or RBI) with cross-functional cooperation.

Until then, the absence of a unified set of policies is probably going to make:

- ✓ Confusion among investors
- ✓ loopholes in cross-border compliance
- ✓ Decreased worldwide competitiveness for Indian entrepreneurs and exchanges

2.8 INDIAN EXCHANGES' COMPETITIVE DISADVANTAGE AND EXORBITANT COMPLIANCE COSTS

For cryptocurrency companies and exchanges, the regulatory ambiguity in India has also resulted in a costly compliance environment. Strict banking regulations, identification

[106] Fin. Stability Bd., Crypto-Asset Activities: Global Regulatory Framework (Oct. 2023), https://www.fsb.org.
[107] UK Cryptoassets Taskforce, Policy Approach and Consultation Paper (2021).
[108] Eur. Comm'n, Markets in Crypto-Assets Regulation (MiCA) (2023).

verification procedures, and taxes have all affected Indian exchanges since 2022, which has greatly increased operating costs and slowed expansion.

2.8.1 EXCHANGE-RELATED REGULATORY COSTS

Due to an inconsistent and unpredictable regulatory framework, Indian bitcoin exchanges continue to incur substantial structural expenses. These responsibilities originate from a larger ecology of legal ambiguity, competing administrative expectations, and shifting policy directions, and they go far beyond ordinary financial commitments. The lack of a single interpretive framework makes the situation much more difficult, requiring conversations to continuously traverse uncharted territory.

For example, platforms frequently struggle with ambiguous rules or informal circulars published by several agencies, none of which provide long-term certainty or solid legal clarity. This frequently calls for the regular engagement of outside counsel and the ongoing deployment of in-house legal professionals, which results in significant overhead costs that are not directly related to revenue production.[109] One reason is that compliance is typically reactive rather than strategic, requiring exchanges to quickly modify policies and procedures to prevent negative consequences or interruptions to operations.

There are far-reaching effects from this reactionary stance. It makes capital allocation plans more volatile, makes financial modeling more difficult, and erodes trust in the schedules for releasing new features or products. Additionally, the industry is perceived by potential users as having a weak institutional foundation and a high administrative risk, which negatively affects investor onboarding.[110]The effects of regulatory dissonance are not just financial; they also have a profound impact on these platforms' organizational structure. For exchanges to stay in business, internal processes must be updated often to conform to evolving standards for user authentication, audit readiness, and transaction flow monitoring. Regular system upgrades, increased technical debt, and the need to hire more

[109] Legal Uncertainty and Its Impact on Emerging Technologies, 17 J.L. & Innovation 102, 110–12 (2022).
[110] Investor Behavior Under Regulatory Volatility, 24 Fin. Mkts. Rev. 223, 229–30 (2021).

staff with specific regulatory or compliance knowledge are all consequences of these continuous modifications.[111]

Because they frequently lack the financial flexibility and infrastructure resilience to absorb these shocks without jeopardizing their main business operations, smaller exchanges and emerging domestic startups are disproportionately affected by such conditions. These smaller players confront existential risks, in contrast to their larger competitors, who can have different user bases or worldwide reserves. Some have responded by choosing to reduce their domestic exposure by reducing their domestic operations, moving large portions of their teams overseas, or refocusing their market efforts in countries with more stable institutions and regulatory coherence.[112]

Despite being strategically required, these adjustments have a cost to the country. India's capacity to develop a strong digital asset ecosystem based on regional innovation is jeopardized by the departure or shrinkage of domestic crypto businesses. This might eventually weaken the nation's competitive edge in a sector where long-term success depends on trust, agility, and regulatory foresight.

2.8.2 THE BINANCE ADVANTAGE AND MARKET FLIGHT

The increasing prominence of foreign cryptocurrency exchanges, like Binance, in the Indian digital asset market highlights serious and enduring structural flaws in the country's legal framework. International players function in a very different environment from Indian platforms, which must negotiate a labyrinth of compliance requirements, procedural ambiguity, and dispersed oversight. These international companies frequently provide seamless services to Indian consumers without being held to the same standards for consumer protection, reporting obligations, or scrutiny as local operators.[113] The sharp disparity in regulatory costs leads to an unfair playing field where compliance with national

[111] Operational Resilience in Fintech Platforms, 13 Tech. & Reg. Pol'y 97, 104–06 (2020).
[112] Jurisdictional Arbitrage in the Digital Economy, 29 Int'l Bus. L.J. 145, 153–55 (2023).
[113] Comparative Regulatory Burdens in Emerging Crypto Economies, 34 Global Fin. Reg. J. 88, 92–95 (2023).

norms is penalized with increased operational complexity and noncompliance is implicitly rewarded with increased market share and user growth.

An imbalance in the perceived institutional credibility has resulted from this regulatory disparity. Because offshore exchanges can provide quick onboarding, 24/7 service, and a wider range of financial products, Indian users usually see them as more stable, liquid, and technologically advanced. Although this perception is partially influenced by user experience, it is further supported by the wide range of products offered on international platforms, such as margin trading, futures contracts, derivatives, and staking mechanisms, which are still legally unclear or completely prohibited in India.[114]

As a result, the number of users switching from domestic platforms to international ones has significantly increased. This change is driven not just by attempts to avoid financial responsibilities but also by the desire to take advantage of creative, lucrative prospects that are either unattainable or unclear within the domestic legal system.[115] Indian regulators are unable to monitor capital movements, enforce standards, or impose protective oversight that would otherwise protect both retail and institutional investors due to the absence of jurisdictional power over these platforms.

The governance risk posed by this structural gap is substantial. Consumer protections are less enforceable, national data security procedures become vulnerable, and sovereign control is jeopardized when the regulatory perimeter surrounding digital asset flows is eroded. In addition to being a problem for fiscal policy, the incapacity to track, examine, or control the massive amounts of cross-border financial activity conducted through opaque platforms poses a greater risk to institutional legitimacy and digital sovereignty.[116]

[114] Access to Digital Financial Instruments in Cross-Jurisdictional Markets, 19 Int'l Tech. L. Rev. 203, 210–11 (2022).
[115] User Migration in the Global Crypto Economy: Drivers and Implications, 22 Fintech & Pol'y Stud. 134, 140–42 (2023).
[116] Sovereignty at Risk: Cross-Border Crypto and Regulatory Evasion, 11 J. Digital Governance 51, 58–60 (2022).

Furthermore, domestic platforms are continuously at a disadvantage when reciprocal compliance measures are not obtained from international exchanges. Offshore platforms continue to enter Indian markets without taking on any equivalent responsibilities to user accountability or regulatory transparency in the absence of official data-sharing protocols, international treaties, or harmonized digital trade agreements. This disparity perpetuates a cycle in which noncompliant overseas players thrive unchallenged while compliant domestic actors face competitive disadvantages.[117] Such differences will probably widen in the absence of a cogent multilateral response, making it more challenging for Indian platforms to innovate, compete, or scale in accordance with international norms.

2.8.3 VARIATIONS IN CRYPTO REGULATION AROUND THE WORLD

Different nations have taken different stances, which makes compliance more difficult for Indian cryptocurrency companies that operate in a global ecosystem:

The SEC is in charge of securities, and the CFTC is in charge of derivatives. The United States has distinct jurisdictional functions in both areas.[118]

The Markets in Crypto-Assets (MiCA) law was enacted by the European Union, standardizing consumer protection and licensing practices among all member states.[119]

China, on the other hand, has outlawed mining and all bitcoin transactions.[120]

The absence of a globally aligned or harmonized regulatory framework in India puts Indian businesses in a state of noncompliance, which makes cross-border transactions more difficult and discourages foreign investment.

2.8.4 THE NECESSITY OF RATIONALIZING REGULATIONS

India faces the following risks if it doesn't implement a balanced regulatory approach with transparent laws, predictable taxes, and a business-friendly atmosphere:

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[117] Global Exchanges and Local Accountability Gaps, 16 Int'l Trade & Data L.J. 173, 180–82 (2024).
[118] SEC & CFTC Statements (2021–23).
[119] Eur. Comm'n, MiCA Overview (2023).
[120] People's Bank of China, Notice on Further Preventing Virtual Currency Activities (2021).

- Inhibiting fintech and blockchain innovation
- Losing talent and money at home to countries like the EU, Singapore, and the United Arab Emirates
- Lagging behind in determining how the world's Web3 infrastructure will develop

Therefore, the foundation of India's digital asset policy architecture must be legal clarity, simplified compliance, and conformity to international best practices.

2.9 DEFICIENCIES IN RISK AWARENESS AND INVESTOR PROTECTION

A growing number of ordinary investors, many of whom lack basic financial knowledge, have joined the digital asset market as India's cryptocurrency ecosystem grows. This has made them vulnerable to serious risks, including fraud, volatility, and cybersecurity concerns, which are frequently made worse by a lack of proper investor protection measures and educational initiatives.

2.9.1 HIGH RISK EXPOSURE AND INVESTOR IGNORANCE

Due to strong marketing by cryptocurrency platforms and the absence of official risk disclosure regulations, many retail investors have entered the market without fully comprehending the underlying hazards. Typical dangers consist of:

Extreme Price Volatility: The intraday changes of cryptocurrencies such as Ethereum and Bitcoin are often double digits, which can wipe out investor capital.[121]

Ponzi schemes and scams: Thousands of investors have been duped by fraudulent platforms that pose as genuine investment endeavors and promise irrational profits.[122]

Exchange Failures and Hacks: Hackers have targeted Indian and international cryptocurrency exchanges, causing customers who had money held in hot wallets to suffer significant losses.[123]

[121] World Econ. Forum, Crypto Price Volatility Trends (2022).
[122] Chainalysis, Crypto Crime Report (2023).
[123] Major Crypto Exchange Hacks and Investor Losses, Forbes (2022).

2.9.2 CASE STUDY: BITCONNECT FRAUD

One prominent instance of investor susceptibility is the Bitconnect Ponzi scheme, which ran throughout the world, including India, until its demise in 2018:

Bitconnect lied when it said that its "trading bot" would provide 1% daily profits on Bitcoin investments.

Online advertisements and influencer endorsements were used to entice thousands of Indian investors to the site.

Millions of dollars were lost by investors when the plan failed, leading to enforcement actions in several jurisdictions.[124]

At the time, there was no regulatory control authority. Therefore, these schemes were able to thrive unchecked.

2.9.3 INTERNATIONAL BEST PRACTICES FOR SAFEGUARDING INVESTORS

Numerous jurisdictions have put in place strong frameworks to reduce the risks faced by cryptocurrency investors.

Complete whitepaper disclosures, risk warnings, and licensing requirements for crypto providers are mandated by the European Union's MiCA framework.[125]

Crypto advertising must be fair, transparent, and free of deceptive content, along with risk disclaimers, according to the UK's FCA.[126]

The U.S. Securities and Exchange Commission (SEC) has started investor education portals for cryptocurrency marketplaces and penalized unregistered securities offerings.[127]

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[124] U.S. Dep't of Just., Bitconnect Promoter Charged in Multi-Billion Dollar Fraud (2021).
[125] Eur. Comm'n, Markets in Crypto-Assets Regulation (MiCA) (2023).
[126] UK Fin. Conduct Auth., Cryptoasset Marketing Guidance (2022).
[127] U.S. Sec. & Exch. Comm'n, Crypto Investor Alerts and Enforcement Actions (2023).

Due to India's existing regulatory framework lagging behind these jurisdictions, unscrupulous actors are given more leeway, and public trust is weakened.

2.10 CONCLUSION

Although it is changing, India's strategy for regulating cryptocurrencies is still disjointed, ambiguous, and reactive. The legislative, legal, and financial difficulties that define the country's approach to digital assets have been clarified by this chapter. There are still important issues over whether cryptocurrencies should be classified as securities, commodities, or a new asset class, even after the Finance Act of 2022 imposed a 30% tax on virtual digital assets and a 1% TDS on transactions.[128]

The overlapping jurisdiction of multiple authorities, including the Reserve Bank of India (RBI), Securities and Exchange Board of India (SEBI), Income Tax Department, and Enforcement Directorate (ED), has created a regulatory disarray that complicates compliance for startups and deters foreign investment. [129]The Supreme Court's 2020 verdict overturning the RBI's banking ban on cryptocurrencies marked a judicial affirmation of innovation rights.[130] yet was soon followed by restrictive taxation policies that imposed financial and operational burdens on exchanges like WazirX and CoinDCX.

A core theme across this chapter is the heightened risk of financial crime, including money laundering, terror financing, and tax evasion, exacerbated by the pseudo-anonymous and borderless nature of cryptocurrencies. Without robust AML/KYC compliance measures, India's digital finance ecosystem remains vulnerable to abuse.[131]

Investor protection is another weak link. The rise of fraudulent schemes like Bitconnect, along with widespread investor ignorance about the high volatility and security risks, underlines the urgent need for standardized disclosures, risk warnings, and financial literacy initiatives.[132] Compared to jurisdictions such as the European Union (MiCA), the

[128] Gov't of India, Finance Act, 2022 – Taxation of Virtual Digital Assets, Ministry of Finance.
[129] Press Tr. of India, Crypto Industry Faces Regulatory Uncertainty Amid Jurisdictional Clashes, The Hindu Bus. Line (2023).
[130] Internet & Mobile Ass'n of India v. Reserve Bank of India, W.P. (C) No. 528/2018 (India, 2020).
[131] FATF, Updated Guidance for a Risk-Based Approach to Virtual Assets and VASPs (2021).
[132] Chainalysis, Crypto Crime Report: India Edition (2023).

United States (SEC), and the United Kingdom (FCA), India's crypto policy landscape remains underdeveloped and inconsistent.

In conclusion, India needs a clear, consistent, and forward-thinking regulatory framework in order to fully realize the transformative potential of blockchain-based finance while maintaining legal and economic stability. This ought to consist of:

1. The final categorization of cryptocurrencies in relation to the financial regulatory framework.

2. To reduce agency conflict, a single regulatory body for digital assets should be established.

3. Enforcing strict AML/KYC procedures in accordance with global standards.

4. A tax and compliance system that is business-friendly to encourage innovation in the country.

5. Focused initiatives to inform and shield investors from scams.

India can only become a worldwide leader in the digital asset economy by striking a balance between innovation and regulation, as well as security and inclusivity.

CHAPTER 3
LEGAL AND CONSTITUTIONAL DIMENSIONS OF CRYPTOCURRENCY IN INDIA

3.1 INTRODUCTION

The rise of cryptocurrencies in India highlights the difficult relationship between constitutional government and technical development. By their very nature, cryptocurrencies are not subject to centralized authority, allowing for decentralized financial transactions. Nonetheless, given the lack of a particular legislative structure, their functioning within the Indian legal and economic framework is subject to review under a number of constitutional principles. Regulators, stakeholders, and the courts are all becoming more and more concerned with how digital assets affect privacy, the freedom to trade, and the appropriate scope of governmental oversight. The rights under Part III of the Constitution and the state's regulatory goals are the main topics of this chapter's critical analysis of the constitutional features and legal loopholes that influence India's stance on cryptocurrencies.

The need to examine cryptocurrencies from a constitutional perspective is highlighted by the increasing dependence on digital economies and decentralized finance (DeFi). Understanding how developing financial technologies align with constitutional rights is crucial, especially as India strives to become a global digital powerhouse. Because they allow for peer-to-peer transactions without the need for conventional financial middlemen, cryptocurrencies present difficult problems for capital controls, anti-money laundering laws, and state fiscal sovereignty. These changes necessitate a review of the constitution, particularly in light of ideas like the basic structure that protects India's federalism and rule of law.[133]

[133] Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225 (India).

The problem is made more difficult by India's lack of official cryptocurrency regulations. A patchwork of executive circulars, tax notices, court rulings, and planned but unpassed legislative drafts currently govern the nation. Since the administration has broad influence over a field that Parliament has not yet defined, this absence of codified law raises significant concerns regarding due process, the separation of powers, and delegated legislation. A written constitution like India's, which allows for executive control without parliamentary support, is particularly vulnerable to judicial challenges under democratic constitutional systems.[134]

Furthermore, it is possible to compare the regulatory approach taken by countries such as the European Union, which has implemented a complete framework under the Markets in Crypto Assets Regulation (MiCA),[135] with that of India with regard to cryptocurrencies. The EU rule seeks to maintain legal stability while safeguarding consumer interests and promoting innovation, in contrast to India's ad hoc approach. The Indian state's reluctance is highlighted by this comparative background, which also reflects underlying worries about losing control over the country's capital and monetary institutions.

In addition, digital assets contradict traditional ideas of money, contracts, and property under Indian law. Since the 44th Amendment abolished the fundamental right to property, claims involving cryptocurrency frequently have to go through Article 300A (Right to Property as a legal, not fundamental right), which does not provide a full definition of "property." This change calls into question how much protection cryptocurrencies have against government regulation or seizure.[136]

Given these factors, a comprehensive legal and constitutional analysis is not just scholarly but also crucial for developing policy. In order to determine if India's handling of cryptocurrencies is consistent with the constitutional values of liberty, equality, and the

[134] Abhinav Chandrachud, Due Process of Law: A Comparative Constitutional Perspective, 59 JILI 47 (2017).
[135] Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets.
[136] K.T. Plantation Pvt. Ltd. v. State of Karnataka, (2011) 9 SCC 1 (India).

rule of law, the chapter will consider significant rulings, legislative gaps, and developing legal theories.

3.2 FUNDAMENTAL RIGHTS AND CRYPTOCURRENCIES

3.2.1 ARTICLE 19(1)(G): RIGHT TO TRADE AND BUSINESS

Article 19(1)(g) of the Constitution guarantees every person the freedom to practice any profession or engage in any trade, business, or occupation.[137] But this right isn't unqualified. In the public interest, the State may impose reasonable restrictions under Article 19(6).[138] Over the years, courts have repeatedly ruled that these limitations cannot be arbitrary, overly harsh, or out of proportion to the goal being pursued.[139]

In the context of cryptocurrency, these clauses take on new significance. Particularly for growing businesses, judicial review of executive acts in the digital finance sector has brought attention to the necessity of constitutionally sound governance. Judges have emphasized that restrictions on economic rights must adhere to constitutional requirements of legality, necessity, and proportionality, as was previously covered in Chapter 2.[140] A common worry in the context of rules pertaining to cryptocurrencies is the arbitrary restriction of rights by executive orders without parliamentary approval, which is prevented under this concept.[141]

The applicability of Article 19(1)(g) to the virtual asset area has led to a broader conversation about economic freedoms in the digital era. According to academics, limiting access to cryptocurrency exchanges or trading platforms without clear legislative backing is against the proportionality concept and the legality principle.[142] According to the Supreme Court, any restriction on a fundamental right must meet three essential criteria: (i) it must be enforced by a law that is legally binding; (ii) it must have a justifiable goal; and (iii) it must employ methods that are logically related to the goal and only slightly harm

[137] INDIA CONST. art. 19(1)(g).
[138] INDIA CONST. art. 19(6).
[139] State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat, (2005) 8 SCC 534.
[140] Modern Dental College & Research Centre v. State of Madhya Pradesh, (2016) 7 SCC 353, 374.
[141] Internet & Mobile Ass'n of India v. Reserve Bank of India, (2020) 10 SCC 274.
[142] Prashant Iyengar, The Legal Contours of Cryptocurrency in India, 17 J.L. & Tech. Pol'y 34, 45 (2021).

the right.[143] These standards are grounded in individual autonomy protection and constitutional morality, making them more than just formalistic.

This position is supported by comparable constitutional practices. The Federal Constitutional Court, for example, applies a three-tiered proportionality test to economic restrictions under the German Basic Law: need, appropriateness, and legality.[144] This approach guarantees that state intervention has a justifiable goal, uses appropriate methods to accomplish it, and stays away from unduly intrusive actions when there are less onerous alternatives. These frameworks demonstrate a common commitment to a rights-based constitutional order and provide robust protections against capricious or overbearing state action. The Indian concept of proportionality, which has developed via judicial interpretation and been codified in important rulings, is in line with this German approach.[145]

The Supreme Court of India clearly stated the proportionality criteria in assessing limitations on basic rights in the case of Modern Dental College and Research Centre v. State of Madhya Pradesh. The Court ruled that in order to accomplish the policy objective, the least restrictive approach must be used and that a violation of a right must be supported by a legitimate state interest.[146] According to this perspective, any effort to limit involvement in the cryptocurrency space, whether through trading prohibitions, exchange access restrictions, or compliance requirements, must be assessed using the proportionality criterion. A constitutionally dubious legal system would indiscriminately restrict economic activity without distinguishing between risky and legal company models.

Furthermore, innovation may be stifled by hasty technological restriction. Blockchain technology and cryptocurrencies mark a significant shift in the recording, transfer, and storage of value. Laws must be complex and considerate of new facts in such a dynamic field. Even with the best of intentions, a complete ban or ambiguous limitations might

[143] Modern Dental College, 7 SCC 353, 374–75.
[144] BVerfGE 7, 198 (Lüth case) (Ger. Fed. Const. Ct. 1958).
[145] K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.
[146] *Id.* at 374.

discourage entrepreneurship and keep Indian inventors out of the global digital economy. Thus, a constitutional safeguard against such regulatory overreach is provided by Article 19(1)(g).[147]

Economic freedoms have always been protected by the Supreme Court from irrational interference. The Court struck down an arbitrary licensing regime in Mohd. Yasin v. Town Area Committee, which, although presented as a regulatory tool, really hindered trade.[148] It maintained that rules cannot be a covert kind of ban and must be founded on the public interest. Similar to this, the Court made it clear in Sodan Singh v. NDMC that limitations on business operations in public areas had to be reasonable, fair, and just.[149] Particularly for vulnerable groups like street vendors and small business owners, the State's regulatory power must be used in a way that does not violate the fundamental principles of the right to trade or practice a profession.

These decisions support the notion that proportionality and fairness requirements of the Constitution must be followed when regulating the economy. This necessity is particularly more important in the digital age, when economic activity crosses national and physical borders. Blockchain developers, cryptocurrency asset users, and digital entrepreneurs work in a dynamic environment that necessitates predictable state behavior and legal certainty. Particularly where enabling legislation is lacking, vague regulations or selective enforcement lead to confusion and subject people to arbitrary interference, outcomes that Article 19(1)(g) specifically aims to avoid.[150]

Although the State is expected under the constitution to regulate new sectors, it must do so in a way that upholds due process and protects individual rights. Instead of being governed by fear or conjecture, a digital economy built on innovation, decentralization, and technical

[147] Nandan Kamath, Tech Policy, Crypto, and the Rule of Law in India, 3 Indian J.L. & Tech. 82, 85 (2022).
[148] Mohd. Yasin v. Town Area Committee, AIR 1952 SC 115.
[149] Sodan Singh v. NDMC, (1989) 4 SCC 155.
[150] Karthik Subramanian, Legal Uncertainty and Crypto Regulation in India, 58 Econ. & Pol. Wkly. 23, 24 (2023).

growth needs to be precisely and purposefully managed. Article 19(1)(g) only stipulates that regulations must be responsive, reasonable, and logical; it does not forbid them.

Last but not least, the Constitution's larger economic framework, which is based on democratic socialism and mixed economy ideas, encourages a vision in which the interests of the public and private sectors are balanced. The goal of trade and profession restrictions must be to balance these two requirements. This balance is especially difficult to achieve in industries that are naturally disruptive, like cryptocurrency. However, balanced, open, and participatory governance rather than prohibition is the solution.[151]In order to prevent the State's regulatory activities from becoming excessive, discriminatory, or antagonistic to innovation, Article 19(1)(g) becomes a crucial safeguard. This clause in the constitution requires that the law be developed carefully, driven by ideals rather than fear, in the world of cryptocurrency, where opportunity and uncertainty coexist.

3.2.2 ARTICLE 21: PRIVACY AND FINANCIAL AUTONOMY

"No person shall be deprived of his life or personal liberty except according to procedure established by law," states Article 21 of the Indian Constitution.[152] Judicial interpretation has transformed it into one of the most dynamic and expansive fundamental rights, notwithstanding its initial restrictive procedural construction. It now encompasses the rights to privacy, autonomy, dignity, livelihood, and health, as well as more and more elements of financial and digital independence. Article 21 is a safeguard against overreach in the name of regulation and national interest in the modern era, especially with the emergence of decentralized digital banking and blockchain-based transactions.

A nine-judge Supreme Court bench unanimously ruled in Justice K.S. Puttaswamy (Retd.) v. Union of India that the right to privacy is a basic right inherent to life and liberty, marking one of the most revolutionary extensions of Article 21.[153] The Court ruled that the protection of personal data, choice autonomy, bodily integrity, and informational self-

[151] Granville Austin, The Indian Constitution: Cornerstone of a Nation 126–29 (Oxford Univ. Press 1966).
[152] INDIA CONST. art. 21.
[153] Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1, ¶ 108.

determination are all included in privacy.[154] This ruling was a landmark in the history of the Constitution, reaffirming that governmental surveillance and unbridled regulation cannot infringe upon individual rights, particularly when it comes to matters of economic and personal decision-making.[155]

The application of Article 21 to cryptocurrency becomes quite pertinent. Because digital assets are by their very nature transnational, decentralized, and pseudonymous, they allow people to invest, move, and store wealth outside of traditional state-supervised financial networks. This raises regulatory issues, especially with regard to guaranteeing tax conformity, stopping money laundering, and avoiding financial crimes, but it also affects constitutionally guaranteed rights to privacy and individual liberty. One aspect of personal liberty that is increasingly seen as crucial is the freedom to make financial decisions on one's own resources without governmental interference.

A lawful statute must exist, a legitimate state goal must exist, and a measure must be proportionate to the goal in order for there to be any privacy invasion, according to Puttaswamy's three-part test.[156]This test directly relates to the regulation of cryptocurrency. Any restrictions imposed by the state, like prohibitions on cryptocurrency wallets, disclosure of transaction information, or freezing of digital assets, must be justified by a law, serve a compelling public interest (like financial stability or national security), and be specifically designed to guarantee that individual rights are not severely violated. Without parliamentary approval, blanket bans or ambiguous presidential notices would probably not pass this standard.

In *LIC v. Consumer Education and Research Center*, the Court addressed the economic aspects of Article 21 in further detail and determined that the right to life encompasses the right to livelihood.[157] The ability to handle one's own finances, make investment decisions, and build wealth is known as financial autonomy, and it makes sense that this right would be extended. In a society where freedom and dignity are directly impacted by access to

[154] *Id.* ¶ 109–110.
[155] *Id.* ¶ 183.
[156] *Id.* ¶ 258–259.
[157] Life Ins. Corp. v. Consumer Educ. & Rsch. Ctr., (1995) 3 SCC 226, ¶ 56–57.

financial resources and economic opportunities, arbitrary limitations on instruments like cryptocurrencies could be a violation of the right to live with dignity.

Equally significant is the ruling in *Selvi v. State of Karnataka*, in which the Court highlighted the importance of individual liberty as a fundamental component of constitutional rights.[158] This autonomy includes the decision to deposit wealth in blockchain-based formats, engage with smart contracts, or employ decentralized finance systems, unless there are strong arguments to the contrary. In order to facilitate safe, equitable, and secure involvement in new economic arenas, regulation must not serve as a justification for control.

Financial surveillance has been increasing in the current Indian scenario. A sizable central store of personal financial data has been produced by the integration of Aadhaar with digital payment systems like UPI, income tax portals, mobile phones, and banking. Although efficiency and openness are its goals, profiling, data breaches, and misuse are also issues. The pseudonymous character of cryptocurrencies provides consumers with a privacy-preserving alternative in such a surveillance-heavy financial environment. This does not imply that cryptocurrency should operate outside of the law; rather, it means that privacy protections must be recognized and included in the legislation as required by the Constitution.

This opinion is also supported by international jurisprudence. Since transactional records disclose private details about a person's life, US courts have construed the Fourth Amendment's prohibitions on illegal search and seizure to include financial information.[159] Financial data is treated as sensitive personal data under the General Data Protection Regulation (GDPR) of the European Union, which gives people the right to access, control, and erasure of such data.[160] Although they are not legally enforceable, these international standards represent changing democratic norms that India, the largest democracy in the world, is required by its constitution to take into account.

[158] Selvi v. State of Karnataka, (2010) 7 SCC 263, ¶ 33–35.
[159] Katz v. United States, 389 U.S. 347, 351–53 (1967).
[160] GDPR, Regulation 2016/679, art. 4(1), art. 9(1), recital 51.

The Puttaswamy concept must be adhered to by the framework if Indian regulators decide to enact cryptocurrency laws. Executive orders or circulars cannot be used to regulate; a law passed by Parliament is required. The goal of the law must be made plain, whether it is to safeguard consumers, stop the funding of terrorism, or uphold monetary policy. Above all, it must avoid imposing undue constraints like outright prohibitions, harsh fines, or mandatory data disclosure.

A methodology that is more in line with the Constitution would use a risk-based approach. For example, it is possible to require exchanges to comply with Know Your Customer (KYC) and Anti-Money Laundering (AML) regulations without requiring complete public disclosure of every transaction.[161] Tools like token classification schemes, smart contract audits, and crypto asset licensing allow for governmental supervision while maintaining privacy and autonomy. By addressing governance deficiencies and maintaining the integrity of Article 21, a sandbox regulatory approach might allow innovation under restricted circumstances.[162]

Furthermore, legislative initiatives must steer clear of paternalism, which holds that people ought to be shielded from their own financial decisions. The freedom to make errors, take chances, and grow from financial choices is guaranteed by Article 21. The judiciary has consistently maintained that freedom, not governmental guardianship, is the source of dignity. Limiting access to cryptocurrencies based only on speculation or volatility runs counter to the core principles of Article 21 in a society dedicated to liberty.

Decentralized finance is an ideological commitment to self-governance, transparency, and global engagement, and it is important to remember that it is more than just a financial model. For Indians, especially young people and tech-savvy businesspeople, this is a weapon for empowerment. Denying them access without justifiable constitutional grounds not only stifles creativity but also weakens the prospect of a substantive right to liberty.

Overall, the way that Article 21 has been interpreted by judges has changed over time, expanding its protective scope beyond just bodily freedom to include a number of new

[161] Prevention of Money Laundering Act, No. 15 of 2002, §§ 2(u), 12.
[162]Reserve Bank of India, Regulatory Sandbox Directions, 2020, RBI/2019-20/143 DPSS.CO.PD.No.S 184/02.14.003/2019-20 (July 27, 2020).

aspects such as the right to financial independence, privacy, and dignity. The dynamic character of fundamental rights in a continually shifting socioeconomic environment is reflected in this broad reading. The emergence of cryptocurrencies offers both benefits and challenges in this context. By giving users more control over financial transactions and protecting personal information using decentralized technologies, these digital assets can, on the one hand, empower people. They can provide alternatives to conventional banking institutions and encourage financial inclusion, which is consistent with the larger constitutional concept of freedom and autonomy. However, there are also valid governmental concerns about cryptocurrencies' potential for abuse in areas like money laundering, illegal funding, and regulatory oversight avoidance. A well-considered and calibrated regulatory response is required to mitigate these dangers. Any regulatory framework must strike a careful balance between safeguarding national interests and financial stability and preserving individual liberty and technological innovation. A constitutional balance must thus be reached by taking a rights-respecting yet security-aware approach, guaranteeing that the revolutionary potential of digital currencies is realized without undermining the fundamental principles outlined in the Constitution.

3.2.3 ARTICLE 14: EQUALITY AND NON-ARBITRARINESS

According to Article 14, "equality before the law and equal protection under the law" are guaranteed. According to judicial interpretation, this dictates that governmental conduct must be just, fair, and nondiscriminatory and forbids arbitrary or irrational classification.[163]

Because different regulatory instruments regard cryptocurrencies differently, the application of Article 14 becomes pertinent. In spite of the fact that the RBI views crypto-assets as presenting systemic risks to financial stability and the Securities and Exchange Board of India (SEBI) has authority over them, there is no single policy or classification for them. An unclear and inconsistent legal framework causes stakeholders to be uncertain and subject to capricious enforcement measures.

[163]E.P. Royappa v. State of Tamil Nadu, (1974) 4 SCC 3.

Executive orders that are unclear and target cryptocurrency platforms without explicit legislative support raise comparable concerns. When similarly situated individuals or companies are treated differently and in an unanticipated manner, regulatory opacity may violate Article 14. As affirmed in K.T. Plantation Pvt. Ltd. v. State of Karnataka,[164] Article 14 protects both natural and juristic persons from arbitrary state action, and unjustified regulatory disparity among similar entities is constitutionally impermissible.

A legislative framework is also necessary to prevent selective enforcement, which threatens the rule of law. The equality clause may be used to contest incongruities that occur when cryptocurrencies are seen as lawful in one industry (such as income taxation) but unlawful or unsupported in another (such as banking or foreign exchange).

3.2.4 ARTICLE 300A: RIGHT TO PROPERTY IN DIGITAL ASSETS

According to Article 300A of the Indian Constitution, "No one shall be deprived of his property except by authority of law." The right to property is still an essential legal protection against capricious State action, even if the 44th Constitutional Amendment in 1978 reduced it from a fundamental right to a constitutional right. The topic of whether digital assets like cryptocurrencies qualify as "property" under Article 300A is crucial given the changing economic and digital landscape.

The growth of the concept of property through legislation and jurisprudence must be examined in order to provide a solution. Both movable and tangible immovable assets have historically been included in the phrase. Rapid technological development has, however, expanded the definition of property to encompass intangible assets like stocks, digital information, intellectual property, and, more recently, cryptocurrency.

Article 300A of the Indian Constitution does not define "property" in any particular way. However, the Supreme Court ruled in K.T. Plantation Pvt. Ltd. v. State of Karnataka that property encompasses all legitimate interests that an individual may possess and enjoy, whether they are material or immaterial.[165] The foundation for acknowledging

[164] K.T. Plantation Pvt. Ltd. v. State of Karnataka, (2011) 9 SCC 1 (India).
[165] *Id.*

cryptocurrencies as property is laid by this expansive view, including their economic worth, legal interest, transferability, and determinable ownership.

This concept has already become popular on a global scale. In the Ruscoe v. Cryptopia Ltd. case, for instance, the New Zealand High Court ruled that cryptocurrencies meet the common law requirements of being identifiable, assignable, capable of being assumed by other parties, and having permanence or stability, making them "property".[166] In the same way, the UK High Court acknowledged that cryptocurrencies constitute a type of property that can be the focus of an injunction in AA v. Persons Unknown.[167]

In the Indian context, cryptocurrency owners have a rightful ownership interest in their digital assets. Therefore, it would be against Article 300A for the State to expropriate, freeze, or forbid cryptocurrency assets without the required legislative authority.

Likewise, the term "save by authority of law" suggests that a person's digital assets cannot be taken away from them based solely on executive decisions or regulatory directives from organizations like the Reserve Bank of India (RBI). The Supreme Court invalidated the Reserve Bank of India's 2018 circular prohibiting financial services to cryptocurrency entities, putting this principle to the test in the case of Internet and Mobile Association of India v. Reserve Bank of India. The court ruled that such limitations had to be reasonable and based on explicit statutory authority.[168]

The Court stressed that the restriction had a significant effect on the commercial and economic operations of cryptocurrency exchanges and users without any empirical support, even if it did not specifically invoke Article 300A. The same criteria that regulate deprivation under Article 300A also apply to limits on cryptocurrency: legality, need, and proportionality.

The increasing financialization of digital assets is another significant factor. The usage of cryptocurrencies as investment vehicles, methods of exchange, and repositories of wealth is growing. These assets act as "property" according to all economic metrics, including

[166]Ruscoe v. Cryptopia Ltd., [2020] NZHC 728 (N.Z. High Ct.).
[167] AA v. Persons Unknown, [2019] EWHC 3556 (Comm) (U.K.).
[168]Internet & Mobile Ass'n of India v. Reserve Bank of India, (2020) 10 SCC 274 (India).

usefulness, value, tradeability, and fungibility. It would be against both domestic property law principles and international legal tendencies to deny them such recognition.

Moreover, Article 300A mandates that the State shall provide due process and compensation before taking property, particularly in cases when the deprivation amounts to expropriation. A person cannot have their property taken from them arbitrarily or without just recompense, according to rulings made by the Supreme Court in a number of cases.[169] As a result, if the government ever considers outright banning cryptocurrencies, it must also find a way to compensate holders, which is both politically and practically impossible.

The Income Tax Department has implicitly recognized cryptocurrency as an asset class through its latest notifications and reporting guidelines on virtual digital assets (VDAs). The State indirectly recognizes an entity as property when it taxes it. This is comparable to the legal theory in K.C. Gajapati Narayan Deo v. State of Orissa, where the State impliedly accepted rights when it recognized them for revenue purposes.[170]

This results in constitutional estoppel, which prohibits the state from taking stances that violate constitutional rights and are inconsistent. Cryptocurrencies are implicitly recognized as property or assets under Indian law if the government decides to tax them under the GST or capital gains tax. However, a conceptual conflict results when the same instruments are rejected as legal property or lawful tender when it becomes expedient for regulatory enforcement. The equality and non-arbitrariness guaranteed by Article 14 may be violated by such duality, which also makes the proportionality test vulnerable to judicial review.

Despite not being codified, the theory of constitutional estoppel is supported by Indian constitutional jurisprudence, which places a strong emphasis on accountability in governance and consistency in administrative policy.[171] Applying this idea to the crypto space emphasizes the necessity of a consistent, rights-preserving regulatory approach as opposed to piecemeal taxes or reactive prohibitions.

[169]State of W. Bengal v. Bela Banerjee, AIR 1954 SC 170 (India).
[170]K.C. Gajapati Narayan Deo v. State of Orissa, AIR 1953 SC 375 (India).
[171] Union of India v. M/s Ganesh Das Bhojraj, (2000) 10 SCC 516.

3.3 REGULATORY VACUUM AND CHALLENGES

India's strategy for regulating cryptocurrency is still hazy and fragmented, which is indicative of the general ambiguity surrounding virtual currency governance. The legality, classification, and acceptable use of virtual currencies are not specifically covered by any comprehensive or specialized legislation.[172] The Reserve Bank of India (RBI) has repeatedly expressed worries about the risks that cryptocurrencies represent to systemic stability, financial integrity, consumer protection, and the transmission of monetary policy, but this lack still exists.

Despite judicial scrutiny and policy debate have risen, India's institutional reaction is still inconsistent and fragmented.Various government branches have sent contradictory signals as a result of the absence of a unified statutory framework.[173] Divergent proposals have been made by different interministerial organizations. For example, the 2019 Inter-Ministerial Committee (IMC) Report suggested the creation of a central bank-issued official digital currency and called for a total prohibition on private cryptocurrencies.[174] It suggested the 2019 Legislation to Prohibit Cryptocurrency and Regulate Official Digital Currency, which has not yet been introduced in Parliament. Even though it was a more complex legislation, the following Cryptocurrency and Regulation of Official Digital Currency Bill, 2021, supported a Central Bank Digital Currency (CBDC) and leaned toward a prohibitionist stance.[175] Like its predecessor, though, it hasn't been enacted into law.

There is a deeper issue with this piecemeal approach: it is unclear which government entity has main jurisdiction over cryptocurrency. Regulatory agencies including the Securities and Exchange Board of India (SEBI), the RBI, the Ministry of Finance, and the Ministry

[172] Reserve Bank of India, Report on Currency and Finance 2021–22 (2022), https://www.rbi.org.in/Scripts/PublicationReportDetails.aspx?UrlPage=&ID=1204.
[173] Nishith Desai Assocs., Cryptocurrency in India: Regulation and Trends (2023), https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research_Papers/.
[174] Ministry of Finance, Report of the Inter-Ministerial Committee on Virtual Currencies (2019), https://dea.gov.in/sites/default/files/Report%20of%20IMC%20on%20VCs%2028%20Feb%202019.pdf.
[175] Lok Sabha, The Cryptocurrency and Regulation of Official Digital Currency Bill, 2021, https://prsindia.org/billtrack/the-cryptocurrency-and-regulation-of-official-digital-currency-bill-2021.

of Electronics and Information Technology (MeitY) all have overlapping and occasionally conflicting attitudes.[176] The RBI, for instance, still has serious concerns about cryptocurrencies, comparing them to Ponzi schemes and calling for their outright prohibition, even if the Ministry of Finance sees them as speculative assets that should be taxed.[177]

To make matters more complicated, the Financial Intelligence Unit-India (FIU-IND) sent show-cause notices to a number of international cryptocurrency exchanges, including Binance, in late 2023 for operating in India without registering or adhering to anti-money laundering regulations. [178]There are worries about regulatory overreach because of this strong enforcement approach, which stands in sharp contrast to the absence of a clear licensing framework or due process standards.

Also, new areas of the larger cryptocurrency ecosystem, like decentralized financing (DeFi), non-fungible tokens (NFTs), airdrops, and crypto-mining operations, are also unaddressed by legislation and regulations. As of right now, there is no guidance on whether mining is a taxable activity or whether staking income should be considered business income or capital gains.[179] The enforceability of smart contracts and the suitability of the Indian Contract Act, 1872, for decentralized protocols are also unclear.[180] Businesses and investors are now rather uncertain about compliance as a result of this.

Lack of a legal framework poses serious problems for enforcement and judicial review in addition to impeding innovation. The lack of clear legislative criteria frequently leaves law enforcement agencies uncertain about how to look into or prosecute offenses involving cryptocurrencies.[181] The upshot is a greater dependence on executive discretion, which

[176] Vidhi Ctr. for Legal Pol'y, Regulating Crypto in India (Dec. 2022), https://vidhilegalpolicy.in/research/regulating-crypto-in-india/.
[177]Reserve Bank of India, Governor's Statement on Cryptocurrencies (2021), https://rbi.org.in/scripts/BS_ViewBulletin.aspx?Id=20421.
[178] Fin. Intelligence Unit–India, Press Release on Action Against Crypto Exchanges (Dec. 2023), https://fiuindia.gov.in/files/press_release_crypto2023.pdf.
[179] Nishith Desai Assocs., Taxation of Crypto Assets in India (2023), https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research_Papers/Taxation-of-Crypto-Assets-in-India.pdf.
[180]Shilpa Singh Jaswant & Prajakta Kale, Smart Contracts and Blockchain: Legal Issues and Implications for Indian Contract Law, 5 Ind. J.L. & Tech. 123 (2024).
[181]Syed Bilal Irfan & Malavika M, Opportunities and Challenges of Cryptocurrencies in India—A Study, Int'l J. Res. Anal. Rev. n.p. (2022).

raises constitutional questions about Article 14 and Article 21's legitimacy and proportionality requirements.

Nevertheless, despite producing substantial tax revenues, this action was not supported by any legislative or regulatory clarification of the underlying assets' legal status. The coherence of governance is also compromised by the State's reliance on taxing policies without the underlying asset class's legal recognition. Cryptocurrencies must be clearly defined by law as either cash, commodities, securities, or sui generis property if they are subject to income and GST regimes as assets. Article 265 of the Constitution, which states that taxes must be supported by legitimate legislation rather than by administrative judgment or implicit classification, makes this discrepancy vulnerable to constitutional issues. By fostering arbitrary treatment across regulatory regimes, such incoherence also undermines the legitimacy of state action under Article 14.

The lack of legislative clarity also results in regulatory arbitrage. Many exchanges have shifted operations offshore or to jurisdictions with crypto-friendly regulations, depriving India of potential economic gains and technological leadership.[182] Innovators, entrepreneurs, and institutional investors often prefer operating in legal environments that provide predictability and legal certainty, something India currently lacks.

If this regulatory gap is not filled, there are a number of systemic hazards. First, users are vulnerable to fraud, hacking, and financial loss in the absence of adequate consumer protection measures, particularly on unregulated platforms. Second, cryptocurrencies could be abused for tax evasion and illegal financing in the absence of uniform reporting guidelines and anti-money laundering procedures.[183] Lastly, the concept of separation of powers is weakened in the absence of a comprehensive legal framework when judges are forced to interpret executive actions without the benefit of statutory direction.

In sum, India's regulatory framework for cryptocurrency is currently characterized by policy inertia, institutional confusion, and legal ambiguity. The absence of consistent

[182] Crypto Exchanges Move Overseas Amid Uncertainty, Econ. Times (Nov. 2022), https://economictimes.indiatimes.com/tech/technology/crypto-exchanges-move-overseas-amid-regulatory-uncertainty-in-india/articleshow/95309067.cms.
[183] FATF, Virtual Assets and VASP Guidance (2021), https://www.fatf-gafi.org/media/fatf/documents/recommendations/Guidance-RBA-Virtual-Assets-2021.pdf.

regulatory guidance not only stifles innovation but also undermines investor confidence, judicial consistency, and India's global competitiveness in financial technology.[184] A rights-based, technology-neutral, and consultative legislative framework is essential to resolve this impasse.

3.4 JUDICIAL APPROACH TO CRYPTOCURRENCY IN INDIA

Although it has not taken the lead in regulating cryptocurrencies, the Indian judiciary has contributed subtly but significantly to the development of the laws governing the use and exchange of digital assets. Particularly in the lack of an all-encompassing legislative regime, this position has been primarily defined by its attempts to uphold the balance between executive power and fundamental rights under the Indian Constitution.

The Court's ruling was a constitutional reaffirmation of economic liberty as well as a technical interpretation of the RBI's authority under the Payment and Settlement Systems Act of 2007 and the Banking Regulation Act of 1949. It reaffirmed that any executive action that curtails basic rights must be proportionate, reasonable, and legally justified. It's crucial to remember, though, that the Court purposefully avoided making a judgment regarding the legitimacy or appeal of cryptocurrencies in general. Instead, it decided to concentrate only on the RBI's actions and the constitutional principles that control regulatory authority.

Indian courts have generally taken a cautious, reactive stance since that decision. Instead of making any normative decisions regarding the legitimacy of cryptocurrencies as an asset class or a medium of exchange, they have been more interested in determining if executive acts are constitutional. High courts throughout India have heard a number of cases pertaining to tax treatment, Know Your Customer (KYC) regulations, cryptocurrency wallet freezing, and capricious law enforcement. However, due to the absence of a

[184] Observer Research Found., Building a Regulatory Framework for India's Crypto Sector (2023), https://www.orfonline.org/research/building-a-regulatory-framework-for-crypto/.

legislative framework, they have generally practiced judicial minimalism and deferred to the executive.[185]

Courts have alluded to the need for clarification on the contractual and property aspects of cryptocurrencies in addition to fundamental rights. Questions have been raised about whether cryptocurrencies can be considered "movable property" under Indian law and whether contracts involving digital assets are enforceable under the Indian Contract Act, 1872[186] in certain lower court cases, including those involving the recovery of stolen or scammed cryptocurrency assets. However, because there is no guiding legislation, these issues are still mainly unanswered.

However, the judiciary's insistence on non-arbitrariness and proportionality is not insignificant. These guidelines could develop into normative standards that must be adhered to by any upcoming legislation or regulatory action. State actions, whether they include taxation, criminal investigations, or platform bans, will probably be scrutinized by courts on constitutional grounds.

Furthermore, future Indian rulings might be influenced by the development of jurisprudence in other jurisdictions, especially in South Korea, Singapore, and European courts. In areas where local legislation is lacking or inadequate, Indian courts have a reputation for using international comparative constitutional practices. The courts may need to shift from passive monitoring to more active interpretation if the discussion over cryptocurrencies becomes more heated in Indian society, especially when it comes to protecting digital property rights, transactional privacy, and economic liberty.[187]

3.5 CONSTITUTIONAL CHALLENGES IN TAXING CRYPTOCURRENCIES

Taxation is a crucial area where the constitutional conflict around the regulation of cryptocurrencies is most noticeable. The way the government is taxing cryptocurrencies

[185] High Courts Tread Lightly on Cryptocurrency Regulation, LiveLaw (May 15, 2022), https://www.livelaw.in/news/high-courts-tread-lightly-on-cryptocurrency-regulation.
[186] Anirudh Rastogi, Legal Classification of Cryptocurrencies in India, Ikigai Law (2022), https://ikigailaw.com/legal-classification-of-crypto.
[187] Judicial Review of Crypto Legislation: Lessons from Abroad, 38 Sing. L. Rev. (2022).

poses significant constitutional concerns, as there isn't a complete legislative framework that establishes their legal status. The current situation creates contradictions that could go against fundamental constitutional principles because cryptocurrencies are not clearly recognized as "property" or "currency," yet are nonetheless classified as taxable assets under the capital gains and Goods and Services Tax (GST) headings.[188]

The contention that the State cannot both approve and disapprove at the same time, known as constitutional estoppel, is the result of this conundrum.[189] Stated differently, the government cannot treat cryptocurrencies as assets for taxes purposes while simultaneously denying them a legal or property character for regulatory purposes. The concept of legal certainty, which is implied in Articles 14 and 265 of the Indian Constitution, is compromised by such a dual approach.[190]

According to Article 265, taxes can only be imposed or collected with legal authorization.[191] The legitimacy of present tax policies is called into question by the absence of a clear regulatory basis that defines the nature of cryptocurrencies. Under Article 14 (which protects against arbitrariness)[192] and Article 19(1)(g), which ensures the right to practice any profession or engage in any trade or business,[193] it may be considered arbitrary state action to impose a tax without a law that explicitly classifies the asset being taxed.

Moreover, the lack of legislative clarity may potentially violate Article 300A, which forbids taking property without a court's permission.[194] Is it possible for the state to tax profits from cryptocurrencies without due process or special laws if they are not regarded as property? In order to comply with constitutional requirements, the current approach may rely too heavily on executive interpretations and circulars.[195]

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[188] Budget 2022: Tax on Virtual Digital Assets, Ministry of Fin., Gov't of India (Feb. 1, 2022), https://www.indiabudget.gov.in/doc/budget_speech.pdf.
[189] State of Punjab v. Dhanjit Singh Sandhu, (2014) 15 SCC 144.
[190] INDIA CONST. arts. 14 & 265.
[191] INDIA CONST. art. 265.
[192] See E.P. Royappa v. State of Tamil Nadu, (1974) 4 SCC 3 (India).
[193] INDIA CONST. art. 19(1)(g).
[194] INDIA CONST. art. 300A.
[195] CBDT Circular No. 13 of 2022, dated June 22, 2022, Gov't of India, https://incometaxindia.gov.in.

The judiciary has not yet addressed this particular disagreement in its entirety. That being said, a constitutional reckoning may eventually result from ongoing litigation and writ petitions, especially those pertaining to the freezing of bitcoin accounts or arbitrary tax enforcement.[196] Taxing an undefined or legally ambiguous digital asset is still a grey area that has a risk of constitutional invalidity till that time.[197]

The necessity of legislative action becomes more urgent in this situation. Any upcoming legislation governing cryptocurrencies must balance the taxation system with the legality, proportionality, and non-arbitrariness criteria. In the absence of such alignment, it can be argued that the ongoing taxation of digital assets is against the spirit of Indian constitutional doctrine.

3.6 CONCLUSION

The chapter emphasizes how the explosive growth of cryptocurrencies in India has revealed serious conflicts between cutting-edge digital finance and long-standing constitutional requirements. Although crucial in safeguarding fundamental rights, administrative measures and judicial interventions cannot replace a comprehensive legislative framework in the current regulatory environment, which is marked by ambiguity and a fragmented approach.

Important constitutional clauses like Articles 19, 21, 14, and 300A are being redefined to consider a new digital world, as the discussion demonstrates. On the one hand, court rulings such as Internet and Mobile Association of India v. RBI have upheld the freedom of commerce and emphasized the need for proportionality in government action. However, the lack of explicit statutory principles has resulted in inconsistent regulations that could jeopardize economic stability, legal certainty, and investor protection.

[196] W.P. (C) No. 9161/2021, CoinDCX *v.* Union of India *(*Del. HC, pending); W.P. (C) No. 721/2022, Sathvik Vishwanath v. Union of India (Kar. HC, pending).
[197] Nishith Desai Assocs., Taxation of Crypto Assets in India: Constitutional Questions (Jan. 2023), https://www.nishithdesai.com.

In addition to stifling innovation, the state's fragmented regulatory efforts, which are demonstrated by contradictory actions ranging from outright prohibitions to unclear taxing policies, raise significant concerns about fairness and due process.

Ultimately, the analysis calls for a legislative approach that aligns with constitutional values while fostering a secure and predictable environment for digital innovation. To fully leverage the benefits of the digital economy without compromising constitutional safeguards, India must move from reactive judicial remedies to proactive legislative action that provides clear, consistent, and rights-respecting regulation of cryptocurrencies.

CHAPTER 4
EFFECTIVENESS OF REGULATION VERSUS NON-REGULATION

4.1 INTRODUCTION

Over the last ten years, cryptocurrencies have evolved from a specialized technology advancement to a worldwide financial phenomenon with significant ramifications for national sovereignty, financial regulation, and monetary policy. While decentralization and freedom from governmental control, the fundamental principles of cryptocurrencies, initially promoted an unregulated digital frontier, the development of the global crypto market has caused several governments to reconsider their position. Various regulatory methods, ranging from rigorous bans to balanced frameworks and even total non-regulation, are being experimented with by governments worldwide. Each strategy has its own set of benefits and drawbacks, depending on a country's political climate, institutional development, economic priorities, and acceptance of new technologies. [198]This chapter examines and contrasts the regulatory responses in a few chosen nations, classifying them into three general patterns: jurisdictions that chose little or no regulation, strict regulatory frameworks, and balanced regulatory models. This chapter looks at how these approaches have affected public confidence, financial stability, innovation, and investor protection through case studies from particular nations. It also looks for more general lessons from these experiences that can apply to India's changing digital currency legislative framework. It is noteworthy that the success or failure of these models cannot be solely assessed in terms of economics; constitutional protections, institutional enforcement, and legal clarity all have a significant impact on how effective they are. This chapter aims to achieve two goals. It first aims to provide a factual and legal account of how regulation or the absence of it has affected the growth of the cryptocurrency industry in various nations. Secondly, it seeks to identify important lessons that will guide the policy and normative debates in the next chapters about whether India should continue its non-regulatory strategy or enact regulations. The chapter uses a comparative legal approach in doing so, which is backed

[198] Aaron Wright & Primavera De Filippi, Decentralized Blockchain Technology and the Rise of Lex Cryptographia, 5 Harv. J.L. & Tech. 1, 12–15 (2015).

by government reports, academic commentary, regulatory texts, and international law. From civil law systems like Algeria and Egypt to mixed frameworks like Morocco, the chosen nations provide insight into how different legal traditions impact crypto governance. Their inclusion makes it possible to conduct a more thorough comparative analysis that takes into consideration the differences in institutions, religions, and national laws.

4.2 STRICT REGULATORY MODELS

Nations that adhere to stringent regulatory frameworks have implemented unyielding legislative and administrative strategies concerning cryptocurrencies. Such regimes frequently enforce complete prohibitions on all cryptocurrency-related activity, such as mining, trading, initial coin offerings, and even promotional or instructional materials. Their regulatory frameworks, which represent the state's priority to maintain sovereignty over monetary policy and thwart perceived economic threats, mainly rely on foreign exchange regulations, anti-money laundering (AML) frameworks, and central banking power.

China: Multi-Tiered Administrative Restrictions on Crypto Trading and Related Services

China's approach to cryptocurrency regulation is arguably the most comprehensive and systematic in the world. The government developed a multi-tiered approach using agencies such as the People's Bank of China (PBoC), the Cyberspace Administration, and the Supreme People's Court. The procedure began with a 2013 letter that forbade banks from offering crypto services.[199] By 2017, initial coin offerings (ICOs) were prohibited in China under the guise of capital control and consumer safety.[200]

All cryptocurrency-related transactions, including those made available to Chinese people by offshore exchanges, were deemed illegal by the Chinese Central Bank in 2021.[201]

[199]People's Bank of China et al., Notice on Precautions Against the Risks of Bitcoin (Dec. 3, 2013), https://www.pbc.gov.cn/en/3688110/3688172/4157443/4353814/index.html.
[200]People's Bank of China et al., Announcement on Preventing Financial Risks from Initial Coin Offerings (Sept. 4, 2017), http://www.pbc.gov.cn/goutongjiaoliu/113456/113469/3374222/index.html.
[201] People's Bank of China et al., Circular on Further Preventing and Resolving the Risks of Speculation in Virtual Currency Trading (Sept. 24, 2021), https://www.pbc.gov.cn/en/3688110/3688172/4157443/4353814/index.html.

However, current Chinese law does not specifically forbid the possession of cryptocurrencies by individuals, even though trading and associated financial services are forbidden.[202] The National Development and Reform Commission (NDRC) has also designated the cryptocurrency mining industry as a prohibited sector.[203] One important enforcement weapon is the Court's acknowledgment of official notices, public policy standards, and administrative directives. [204]In Zheng v. Li, the Shenzhen Intermediate People's Court declared a Bitcoin lending agreement to be void, citing it as an illegal financial transaction.[205] The judiciary's power to enforce administrative rules was upheld by this ruling.

Algeria: Financial Law-Based Statutory Prohibition

Article 117 of Algeria's 2018 Financial Law established a de jure ban, making the usage or possession of virtual currencies illegal.[206] The Bank of Algeria and the Ministry of Finance uphold public monetary order and financial purity, which give the regulatory framework its power. Algeria makes cryptocurrency illegal under national law, in contrast to nations that rely on agency notifications."The purchase, sale, use, and possession of so-called virtual currency is prohibited," according to the law. Criminal monetary fraud legislation applies to violations.

Morocco: Monetary Regulations De facto Prohibition

Although Morocco does not have a formal legislation that forbids cryptocurrency, it does have foreign exchange restrictions that are implemented by Bank Al-Maghrib and issued by the Office des Changes, which effectively forbid cryptocurrency transactions.[207]

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[202] Skirting the Great Wall: The Checkered Saga of Crypto in China, Cointelegraph (Nov. 2, 2017), https://cointelegraph.com/news/skirting-the-great-wall-the-chequered-saga-of-crypto-in-china-2013-2017.
[203] Nat'l Dev. & Reform Comm'n, Industrial Structure Adjustment Guidance Catalogue, § "Prohibited Industries" (2021), https://www.ndrc.gov.cn.
[204] Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the Administrative Litigation Law of the People's Republic of China, Fa Shi [2017] No. 9 (promulgated Nov. 13, 2017; effective Feb. 8, 2018), http://www.court.gov.cn/fabu-xiangqing-12897.html.
[205] Shanghai Songjiang Dist. People's Ct., Civil Judgment on Dispute over Blockchain Incubation Agreement (Nov. 18, 2024), in JunHe LLP, A Look at the Evolution of China's Virtual Currency Regulation Through a Shanghai Court Case (Feb. 7, 2025), https://www.lexology.com/library/detail.aspx?g=9b0c0ab7-2d07-47d7-8624-10ff1e5f8531.
[206] Financial Law of Algeria, Law No. 18-11 of 2018, art. 117.
[207] Office des Changes & Bank Al-Maghrib, Joint Statement on Virtual Currencies (Nov. 2017).

Circulars stress that, with the exception of decentralized cryptocurrency transactions, all financial transactions with foreign entities must be disclosed and handled through approved intermediaries.Trading cryptocurrency in Morocco is not illegal, although breaking exchange legislation could result in administrative or civil penalties. Because of this, the prohibition is de facto rather than de jure.

Egypt: Civil Law and Islamic Doctrine in a Dual-Legality Framework

Egypt's legal system is a mix, integrating Islamic jurisprudence with civil finance norms. Digital currency is issued or licensed exclusively by the Central Bank of Egypt (CBE) in accordance with Article 206 of Law No. 194/2020.[208] Since cryptocurrencies are speculative, Dar al-Ifta al-Misriyyah, Egypt's Islamic legal authority, has ruled them unlawful.[209] Crypto usage is regarded as a breach of both national monetary law and religious ethics, and this dual framework meets the goals of both moral and legal regulation.

Dar al-Ifta al-Misriyyah Fatwa on Bitcoin:

In December 2017, Egypt's Grand Mufti, Sheikh Shawki Allam, issued a fatwa declaring Bitcoin trading as impermissible under Islamic law, citing risks of fraudulence, lack of knowledge, and cheating. This religious ruling aligns with the Central Bank of Egypt's stance, effectively prohibiting cryptocurrency activities in the country.[210]

Bolivia: Primary Law: Central Bank Directive

Any cryptocurrency that is not issued or governed by a government is prohibited per Resolution 044/2014 of the Central Bank of Bolivia (BCB).[211] Bolivia views the prohibition as a monetary protection mechanism, in contrast to other jurisdictions, citing worries about use in illegal transactions, volatility, and consumer risk.Article 7 of the

[208] Law No. 194 of 2020 (Egypt), art. 206.
[209] Dar al-Ifta al-Misriyyah, Fatwa No. 3852/2018.
[210] Egypt’s Grand Mufti Endorses Bitcoin Trading Ban, BBC News (Jan. 2, 2018), https://www.bbc.com/news/world-middle-east-42541270.
[211] Central Bank of Bolivia, Resolution 044/2014.

Bolivian Financial Law grants the BCB[212] extensive legal authority to oversee monetary policy, which it uses to implement the prohibition in the absence of additional legislation.

Nepal: Economic Offense Statutes that Frame Criminal Law

Nepal's anti-crypto position is lawfully supported by the Foreign Exchange Regulation Act and the Money Laundering Prevention Act. Making cryptocurrency trading illegal, the Nepal Rastra Bank (NRB) formally banned it in 2017.[213] According to the government, cryptocurrency poses a risk to monetary stability and the balance of payments. The Kathmandu Bitcoin Arrests resulted in the conviction of seven individuals for their involvement in cryptocurrency transactions. The court emphasized that these platforms might evade regulatory review, which could present systemic dangers.[214]

Bangladesh: Strict Criminal Penalties and Monitoring Systems

The Bangladesh Bank has warned in a number of circulars that transactions involving cryptocurrency are illegal under the Money Laundering Prevention Act (2012) and the Foreign Exchange Regulation Act (1947).[215]The central bank has teamed up with law enforcement and cyber departments to monitor and prosecute users, frequently focusing on cryptocurrency marketing on social media.

Tunisia: Central Bank Memoranda for Preventive Regulation

According to Article 21 of the Banking Law, which forbids the issuing of currency by organizations other than the state, the Central Bank of Tunisia ruled in 2018 that the usage of cryptocurrencies was unlawful.[216] The prohibition is intended to safeguard the nation's financial stability and is preventive in nature.

[212] Financial Services Law, Law No. 393, art. 7, Aug. 21, 2013 (Bol.).
[213] Nepal Rastra Bank, Notice on Virtual Currency Transactions (2017).
[214] Dist. Ct. of Kathmandu, Crypto Case File 412/2019.
[215] Bangladesh Bank, Anti-Virtual Currency Circular (2019).
[216] Central Bank of Tunisia, Legal Advisory Memo (2018).

4.3 BALANCED REGULATORY MODELS

In order to close the gap between excessive regulation and laissez-faire methods, balanced regulatory models are created. The goal of these frameworks is to promote technical and financial innovation while reducing systemic risks, including fraud, money laundering, and consumer losses. Countries in this group acknowledge that although disruptive, cryptocurrencies are not always dangerous as long as they are handled within a suitable regulatory framework. This section separates these models into two categories for a logical analysis: theoretical or emergent models, which have good intentions but little institutional implementation, and actual models, which show active regulatory infrastructure and enforcement.

4.3.1 PRACTICAL BALANCED MODELS

European Union: Harmonizing Regulation through MiCA

A comprehensive legal framework for cryptocurrencies has been initiated by the European Union, primarily through the planned Markets in Crypto-Assets Regulation (MiCA). MiCA is a model that strikes a balance between fostering innovation and guaranteeing strong consumer protection and market integrity. By imposing consistent licensing and supervisory requirements on crypto-asset service providers throughout member states, MiCA will lessen regulatory arbitrage and fragmentation.[217] In order to guarantee that market risks are adequately controlled, the framework also includes severe components, such as prohibitions on money laundering and guarantees for consumer protection.

Boerse Stuttgart Digital, a prominent provider of crypto services in Germany, had to comply with stringent regulations in order to conduct business outside of the EU. To satisfy the licensing and AML requirements under MiCA, the company redesigned its

[217] Eur. Comm'n, Proposal for a Regulation on Markets in Crypto-Assets (MiCA), COM(2020) 593 final (2020).

compliance system, and BaFin approved it first. The EU's dedication to operational openness and consumer protection is reflected in this regulatory milestone.[218]

United States: A Dual Federal-State Regulatory Framework

The United States uses a complicated dual regulatory structure that combines federal control with various state-level regulations, in contrast to the EU's unified approach. Important federal authorities, including the Financial Crimes Enforcement Network (FinCEN), the Commodity Futures Trading Commission (CFTC), and the Securities and Exchange Commission (SEC), play a crucial role in overseeing various facets of the bitcoin ecosystem. This multi-agency strategy is a balanced paradigm that aims to protect investors and preserve market integrity while promoting innovation.[219] However, because there is no single set of laws, regulatory methods can vary greatly from one jurisdiction to another, making it difficult to maintain uniform oversight and clarity.[220]

SEC v. Inc. Ripple Labs.

In *SEC v. Ripple Labs Inc.*, the question was whether, according to the Howey test, Ripple's XRP cryptocurrency qualified as an unregistered security. In 2023, the U.S. District Court for the Southern District of New York ruled that institutional transactions of XRP satisfied the requirements for securities, whereas sales on public exchanges did not. Citing worries about inconsistent regulatory interpretation, the SEC has appealed the decision. The case continues to play a crucial role in determining how digital tokens will be categorized under US law. *SEC v. Coinbase* and *Terraform Labs* are two more examples that illustrate the developing body of legal precedent on cryptocurrency compliance and exchange accountability.[221]

[218] Camomile Shumba, Boerse Stuttgart Digital Lands MiCA License from Germany, CoinDesk (Jan. 17, 2025), https://www.coindesk.com/policy/2025/01/17/boerse-stuttgart-digital-lands-mi-ca-license-from-germany/.
[219] U.S. Sec. & Exch. Comm'n, Framework for "Investment Contract" Analysis of Digital Assets (2019).
[220] U.S. Commodity Futures Trading Comm'n, Market Oversight and Compliance Report (2021).
[221] SEC v. Ripple Labs Inc., No. 20-cv-10832 (S.D.N.Y. filed Dec. 22, 2020).

SEC v. Ripple Labs Inc.

In the seminal case of *SEC v. Ripple Labs Inc.*, the question of whether Ripple's native cryptocurrency, XRP, qualifies as a security under the Howey test was raised. The U.S. District Court for the Southern District of New York ruled in 2023 that Ripple's institutional sales of XRP, targeted at hedge funds and high-level investors, did meet the requirements for unregistered securities offerings. In contrast, the court determined that Ripple's programmatic sales on public exchanges did not qualify as securities because there was no expectation of benefit from Ripple's efforts. Since then, the SEC has filed an appeal, claiming that this split decision raises regulatory questions and may make it more difficult to apply securities laws consistently in the context of digital assets. The decision of the appeal could influence the future extent of federal authority over sales of cryptocurrency tokens to the general public.[222]

SEC v. Coinbase, Inc.

SEC v. Coinbase, Inc., which was filed in 2023, exemplifies the SEC's larger effort to control digital asset platforms. According to the SEC, Coinbase violated the Securities Exchange Act by acting as an unregistered exchange, broker, and clearing agency. Additionally, according to the complaint, Coinbase's staking-as-a-service business amounted to an unregistered security offering, and several cryptocurrencies listed on Coinbase, such as Solana (SOL), Cardano (ADA), and Polygon (MATIC), were securities under the Howey test. The SEC's allegations have been fiercely contested by Coinbase, which maintains that the digital assets in question are not securities and that the agency's interpretation goes beyond its legislative authority. Because it could provide clarity on whether and how cryptocurrency exchanges must adhere to conventional securities laws specifically, with regard to platform registration, token classification, and staking mechanisms the case, which is still pending, is noteworthy.[223]

[222] SEC v. Ripple Labs, Inc., No. 20 Civ. 10832 (AT) (SN), 2023 WL 4507900 (S.D.N.Y. July 13, 2023).
[223] SEC v. Coinbase, Inc., No. 1:23-cv-04738 (S.D.N.Y. filed June 6, 2023).

United Kingdom

The UK has a practical, function-based approach to regulation. Depending on their qualities, cryptoassets are subject to financial legislation and are considered as property even though they are not legal tender. For anti-money laundering (AML) purposes, the Financial Conduct Authority (FCA) regulates cryptocurrency companies in accordance with the Money Laundering, Terrorist Financing, and Transfer of Funds Regulations of 2017. In 2020, these rules were modified to require FCA registration for all cryptoasset companies.[224]

The FCA uses three categories to classify tokens:

- Bitcoin and other exchange tokens are unregulated unless they are utilized in a regulated activity.
- Security tokens are governed by the Financial Services and Markets Act 2000 (FSMA) and are referred to as "specified investments".[225]
- Generally speaking, utility tokens are unregulated unless they serve as electronic currency.

The High Court ruled in *AA v. Persons Unknown* that Bitcoin might qualify as "property" under English law, allowing for freezing injunctions.[226]

On April 26, 2023, the Financial Services and Markets Bill, officially known as the Financial Services and Markets Act 2023 Bill, was presented to Parliament after being published by HM Treasury in April of that year. By amending the Financial Services and Markets Act 2000 (FSMA),[227] the Bill seeks to place cryptoassets under the Financial Conduct Authority's (FCA) regulatory purview.[228] Under the Bill, "qualifying cryptoassets," including stablecoins, would be categorized as "specified investments" under the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001. Half Under Part 4A of the FSMA,[229] This reclassification would require any company

[224] Fin. Conduct Auth., Policy Statement PS20/10 (Jan. 2021), https://www.fca.org.uk.
[225] Financial Services and Markets Act 2000, c. 8 (UK).
[226] AA v. Persons Unknown, [2019] EWHC 3556 (Comm).
[227] Financial Services and Markets Bill 2023, Bill 294 (UK), https://bills.parliament.uk/bills/3326.
[228] *Id.*
[229] Financial Services and Markets Act 2000, c. 8, pt. 4A (UK).

involved in crypto-related activities, like running a trading platform, offering custodial services, or managing cryptoassets, to get an FCA license.

In order to provide flexibility in regulating new token kinds and business models without requiring frequent primary legislative revisions, the Bill also gives the Treasury permission to use the Designated Activities Regime (DAR) to designate further cryptoasset-related activities.[230] By amending the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, the Bill also expands the FSMA's financial promotions framework to cryptoasset advertising.[231] With effect from October 2023, these modifications bring obligatory risk warnings and a cooling-off period for retail investors into compliance with FCA recommendations previously outlined in its PS23/6 policy statement.[232]

By amending the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, the Bill fully integrates cryptocurrency companies into the UK's Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) framework, addressing the threats of money laundering and terrorism financing.[233] Compared to the previous, more restrictive AML registration regime, this represents a change. A new market abuse framework for cryptoassets is also being developed, which imposes formal disclosure and admission criteria on cryptoasset trading venues that are similar to those in conventional securities markets.[234] The aforementioned provisions are designed to promote market integrity and guarantee transparency in the trade of cryptoassets.

The Bill marks a significant step toward comprehensive crypto regulation in the UK by bringing disparate regulations under one legislative framework and giving the FCA extensive supervisory authority over stablecoins, exchanges, custodians, intermediaries,

[230] HM Treasury, Factsheet: Designated Activities Regime, GOV.UK (2023), https://www.gov.uk/government/publications/financial-services-bill-factsheets.
[231] Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, S.I. 2005/1529 (UK).
[232] Fin. Conduct Auth., PS23/6: Financial Promotions for Cryptoassets (2023), https://www.fca.org.uk/publications/policy-statements/ps23-6-financial-promotions-cryptoassets.
[233] Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, S.I. 2017/692 (UK), amended by the Bill.
[234] Financial Services and Markets Bill 2023, pt. 3, https://bills.parliament.uk/bills/3326.

lending platforms, staking, and decentralized finance (DeFi) services.[235] Similar to the supervisory procedures employed in traditional financial services, this shift advances beyond fragmented AML and marketing controls and toward a comprehensive conduct and prudential regulatory regime.[236] Following enactment, the FCA will have the authority to establish comprehensive regulations on governance, operational resilience, prudential risk management, and consumer protection that will apply to all regulated cryptocurrency activities, subject to future statutory instruments like the planned Cryptoassets Order 2025.[237] It is anticipated that these restrictions will be implemented gradually starting in late 2025.[238]

In the end, the Bill aims to provide legal certainty, encourage responsible innovation, protect consumers, and maintain market integrity, all of which will help the UK maintain its position as a global leader in digital banking.[239]

Singapore

The judicial system of Singapore is based on an innovative, risk-calibrated paradigm. According to the Payment Services Act 2019 (PSA), companies that offer digital payment token services must hold a license from the Monetary Authority of Singapore (MAS).[240] The PSA creates a modular system that regulates merchant acquisition services, e-wallets, money transfers, and AML based on the functions of the company. Moreover, the MAS has made it clear that a token will be subject to the Securities and Futures Act (SFA)[241] if it behaves like a security. MAS guidance notes outline AML/CFT requirements and risk evaluations for initial coin offerings (ICOs). The Singapore International Commercial

[235] Fin. Conduct Auth., Strengthening UK Financial Services Through Regulation of Cryptoassets (2023), https://www.fca.org.uk.
[236] Hogan Lovells, UK Financial Services and Markets Bill to Regulate Cryptoassets, Global Regulation Tomorrow (2023), https://www.globalregulationtomorrow.com.
[237] Draft Cryptoassets Order 2025 (forthcoming).
[238] UK Moves Toward Comprehensive Regulation of Cryptoasset Markets, Nat'l L. Rev. (2023), https://www.natlawreview.com.
[239] HM Treasury, Supporting Responsible Innovation in Digital Assets, GOV.UK (2023), https://www.gov.uk/government/publications/financial-services-bill-factsheets.
[240] Payment Services Act 2019 (Sing.).
[241] Securities and Futures Act (Cap. 289), Rev. Ed. 2006 (Sing.).

Court affirmed the enforceability of crypto-based contracts in *Quoine Pte Ltd v. B2C2 Ltd.*.[242] holding that contractual good faith is still necessary for automated transactions.

Australia

Australia uses AUSTRAC and ASIC to run a twin-track regulatory structure. Digital currency exchanges must register with AUSTRAC and adhere to KYC/AML procedures in accordance with the Anti-Money Laundering and Counter-Terrorism Financing Act of 2006.[243] In the meantime, cryptocurrency assets that meet the Corporations Act 2001's definition of financial goods are governed by the Australian Securities and Investments Commission (ASIC). ASIC published Information Sheet 225 to describe how, depending on their structure, initial coin offerings (ICOs) and cryptocurrency assets may be governed by securities, managed investment schemes, or derivatives laws. Although not specifically related to cryptocurrency, the court in *Commissioner of Taxation v. Bosanac* evaluated the financial standing of holders of digital assets during tax proceedings, suggesting that the court recognized crypto assets.[244]

Canada

Canada uses a two-tiered approach. The Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)[245] requires cryptocurrency exchanges to register with FINTRAC at the federal level. Securities commissioners at the provincial level, such as the Ontario Securities Commission (OSC), decide whether a cryptocurrency offering qualifies as an "investment contract" for the purposes of securities regulations. The Investment Industry Regulatory Organization of Canada (IIROC) and the Canadian Securities Administrators (CSA) together released Staff Notice 21-329 in 2021, mandating that cryptocurrency platforms register as securities dealers if necessary.[246]British Columbia Securities *Commission v. Einstein* Exchange upheld provincial jurisdiction to close noncompliant cryptocurrency exchanges for consumer safety reasons.[247]

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[242] Quoine Pte Ltd v. B2C2 Ltd., [2020] SGCA(I) 02.
[243] Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Austl.).
[244] Commissioner of Taxation v. Bosanac, [2022] FCAFC 121 (Austl.).
[245] Proceeds of Crime (Money Laundering) and Terrorist Financing Act, S.C. 2000, c. 17 (Can.).
[246] Canadian Sec. Adm'rs & IIROC, Joint Staff Notice *21-329* (2021).
[247] Einstein Exchange v. BCSC, 2020 BCSC 363 (Can.).

4.3.2 THEORETICAL OR EMERGING BALANCED MODELS

Switzerland

Switzerland is known around the world for its methodical and open approach to cryptoasset regulation, even though actual enforcement is still in its infancy. By using a "matter-over-form" approach, the Swiss Financial Market Supervisory Authority (FINMA) groups tokens according to their fundamental economic purpose rather than their marketing strategy.[248]The regulatory taxonomy resulting from this function-driven paradigm includes payment, asset, utility, and hybrid tokens, each with unique compliance requirements based on the unique risks they pose.[249]

This structure was codified in FINMA's ICO Guidelines from February 2018, which characterizes payment tokens, like Bitcoin and Ether, as digital currencies that are used to exchange money or buy products and services.[250] They are subject to reporting obligations, customer due diligence, and registration with FINMA-recognized AML authorities under the Swiss Anti-Money Laundering Act (AMLA).[251]Claims to underlying assets, equity shares, or future income are represented by asset tokens, which look like conventional securities like stocks, bonds, or derivatives.[252] These are governed as securities by the Financial Services Act (FinSA) and the Financial Market Infrastructure Act (FMIA), which mandate that issuers publish a prospectus, receive a securities dealer license, and follow continuous governance and transparency requirements.[253]

Utility tokens grant access to online services or platforms. Both AMLA and securities legislation often do not apply to them if they are fully operational at issuance and do not

[248] Eidgenössische Finanzmarktaufsicht FINMA, Guidelines for Enquiries Regarding the Regulatory Framework for Initial Coin Offerings (ICOs) 2 (Feb. 16, 2018), https://www.finma.ch/en/news/2018/02/20180216-mm-ico-wegleitung/.
[249] *Id.* at 2–3.
[250] *Id.* at 3.
[251] Anti-Money Laundering Act (AMLA), SR 955.0, arts. 2–3 (Switz.), https://www.fedlex.admin.ch/eli/cc/1998/892_892_892/en.
[252] FINMA, Guidelines for Enquiries, supra note 246, at 4.
[253] Financial Market Infrastructure Act (FMIA), SR 958.1, arts. 2–7 (Switz.); Financial Services Act (FinSA), SR 950.1, arts. 3–8 (Switz.), https://www.fedlex.admin.ch.

have investing features.[254] A utility token is categorized as a security and is subject to the FMIA and FinSA if it contains financial rights like dividends or profit-sharing.[255]

Hybrid tokens, which incorporate characteristics from many categories, must adhere to all relevant regulatory frameworks. For example, a stablecoin that provides both payment functionality and income distribution.[256] Such a token would be subject to both anti-money laundering regulations and securities rules, for instance.[257]

Therefore, service providers who deal with payment or hybrid tokens have to register with an AML authority that is recognized by FINMA, and asset token issuers have to fulfill all securities-related requirements, such as disclosure and licensing.[258]FINMA provides a technology-neutral and balanced legal framework by establishing regulations based on economic substance. While benign financial instruments, like pure utility tokens, can function with less regulatory load, they offer strong investor protections for higher-risk financial assets. Businesses benefit from the clarity of the law and the reduction of compliance complexity brought about by the convergence of regulations in the banking, securities, and AML sectors.[259]

Although its structure is clear, Switzerland's enforcement system is continuously developing. The notable difference is that Switzerland does not have a specific licensing system for bitcoin exchanges, unlike countries like Singapore.[260] Instead, the regulation of exchanges is based on their functions, such as securities dealers under the FMIA or financial intermediaries under the AMLA, which may restrict FINMA's direct supervisory authority. Although locales such as Zug, Switzerland's "Crypto Valley," have drawn

[254] FINMA, Guidelines for Enquiries, supra note 246, at 5.
[255] Blockchain & Cryptocurrency Regulation 2024 – Switzerland, Global Legal Insights, https://www.globallegalinsights.com/practice-areas/blockchain-laws-and-regulations/switzerland/.
[256] FINMA, Guidelines for Enquiries, supra note 246, at 5.
[257] *Id.*
[258] Ernst & Young, Crypto Regulation in Switzerland: A Strategic Overview, https://www.ey.com/en_ch/financial-services/crypto-regulation-in-switzerland.
[259] CV VC, Swiss Digital Asset and Blockchain Ecosystem Report 2023, https://cvvc.com/report.
[260] Library of Congress, Regulation of Cryptocurrency Around the World: Switzerland (2021), https://www.loc.gov/law/help/cryptocurrency/world-survey.php#switzerland.

hundreds of blockchain ventures, many of them still operate in legal limbo, underscoring the discrepancy between enforcement implementation and regulatory clarity.[261]

Japan

Under the Financial Instruments and Exchange Act (FIEA) and the Payment Services Act (PSA), Japan has one of the most advanced cryptocurrency regulatory systems. The primary regulator, the Financial Services Agency (FSA), requires virtual asset service providers (VASPs), including cryptocurrency exchanges, to apply for a license, follow anti-money laundering (AML) and counter-financing of terrorism (CFT) guidelines, and keep client money separate from company assets.[262]

On the other hand, enforcement procedures rely heavily on self-regulatory organizations like the Japan Virtual Currency Exchange Association (JVCEA), which results in inconsistent platform compliance.[263] Japan lacks adequate judicial precedent in the area of private crypto disputes, despite having legal protections in effect.

After the Coincheck hack in 2018, which resulted in the loss of more than $500 million worth of NEM tokens, Japan tightened regulations for exchanges. The fact that there aren't many court interpretations, however, highlights the gap between judicial enforcement and legal progress[264].

Estonia

Estonia was a pioneer in the cryptocurrency area and was well-known for its e-governance framework's progressive licensing system. Mostly under the Money Laundering and Terrorist Financing Prevention Act (MLTFPA), crypto service providers (CSPs) were granted licenses by the Estonian Financial Intelligence Unit (FIU).[265]

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[261] Lenz & Staehelin, Legal Framework for Blockchain Projects in Switzerland, https://www.lenzstaehelin.com/fileadmin/user_upload/publications/Blockchain-Legal-Framework.pdf.
[262] Fin. Servs. Agency (FSA), Virtual Currency Exchange Service Providers, https://www.fsa.go.jp/en/policy/virtual_currency/index.html.
[263] Japan Virtual Currency Exchange Ass'n (JVCEA), About JVCEA, https://jvcea.or.jp/about.
[264] Yuji Nakamura, Coincheck to Refund Customers After $400 Million Cryptocurrency Theft, Bloomberg (Jan. 28, 2018), https://www.bloomberg.com/news/articles/2018-01-27/hack-of-cryptocurrency-exchange-coincheck-prompts-japan-probe.
[265] Est. Fin. Intelligence Unit, Virtual Currency Service Provider License Requirements, https://fiu.ee/en/virtual-currency-service-providers.

However, more than 70% of previously granted licenses were revoked in 2021 due to regulatory tightening, which was justified by standards of oversight and non-compliance.[266] Though domestic enforcement is still relatively minimal and in transition, the Estonian government has been attempting to harmonize with the European Union's Markets in Crypto-Assets Regulation (MiCA) since acknowledging these structural shortcomings.[267]

South Korea

After first being skeptical, South Korea's position on cryptocurrencies has changed to one of conditional acceptance. When the Act on Reporting and Using Specified Financial Transactions was amended and put into effect in March 2021, a crucial legal foundation was created.

Crypto exchanges are required to:

1. Assist domestic banks in offering verified accounts with actual names.
2. Sign up with the KoFIU (Korean Financial Intelligence Unit), and
3. Fulfill your AML/CFT responsibilities.[268]

It is governed by the Financial Services Commission (FSC). However, practical certainty has been constrained by frequent policy reversals and a lack of judicial clarity in lawsuits connected to crypto.[269] Furthermore, because of its strong reliance on administrative guidance rather than clear legislation, the regime is more theoretical than effectively functional.

4.4 MINIMAL GOVERNANCE AND NON-REGULATORY CRYPTOCURRENCY APPROACHES

There are still several jurisdictions that take a non-regulatory or minimalist approach to cryptocurrency governance, in contrast to strict or balanced regulatory frameworks. These

[266] Republic of Estonia Ministry of Fin., Estonia Strengthens Rules for Virtual Asset Service Providers (Mar. 15, 2022), https://www.fin.ee/en/news/estonia-strengthens-rules-virtual-asset-service-providers.
[267] Eur. Comm'n, Markets in Crypto-Assets (MiCA), https://finance.ec.europa.eu/publications/proposal-regulation-markets-crypto-assets_en.
[268] Korean Fin. Intelligence Unit, Virtual Asset Business Reporting Guide (2021), https://www.fsc.go.kr/eng/pr010101/77232.
[269] Fin. Servs. Comm'n, Enforcement Decree of the Act on Reporting and Using Specified Financial Transaction Information, https://law.go.kr.

systems frequently lack clear laws, licensing procedures, and the confusing treatment of courts and financial regulators. Such jurisdictions might develop as innovative hotspots, but since they lack enforceable legal frameworks, they are also more vulnerable to fraud, scams, and economic instability. Prominent instances of these strategies are listed below, along with noteworthy case law or legal developments where appropriate.

Vietnam: Legal Ambiguity and Institutional Inaction

Vietnam does not yet have a complete legal framework in place to regulate cryptocurrencies. Decree No. 101/2012/ND-CP, issued by the State Bank of Vietnam, forbids the use of cryptocurrency for payments; nevertheless, it does not specifically forbid or restrict the owning and trading of digital assets.[270]

In *People v. Le Minh Tam (2019),* which dealt with the Sky Mining fraud, more than 32,000 investors lost over $35 million in total. Because cryptocurrency-related fraud is not criminally classified under Vietnamese law, judges found it difficult to pursue criminal culpability after Le Minh Tam, the CEO of Sky Mining, absconded.[271]

El Salvador: Symbolic Law Without a System of Regulation

Decree No. 57 (2021),[272] often known as the Ley Bitcoin (Bitcoin Law), El Salvador became the first country to accept Bitcoin as legal tender in 2021. To oversee its application, there isn't a supervisory organization or operational regulatory apparatus in place. Identity theft and fraudulent duplication were among the many complaints that the Chivo Wallet system received when it was adopted. Unfortunately, the absence of applicable statutes prevented any judicial recourse.[273]

Nigeria: Regulatory Circulars Despite Legal Vacuum

Despite a 2021 instruction from Nigeria's Central Bank (CBN) that forbade banks from supporting cryptocurrency transactions,[274] Private cryptocurrency use is neither

[270] Decree No. 101/2012/ND-CP, art. 6, State Bank of Vietnam (2012) (Viet.).
[271] Q. T. Nguyen & B. M. Tran, Cryptocurrency Regulation in Vietnam: An Ongoing Legal Vacuum, 22 Eur. Bus. Org. L. Rev. 687, 687–710 (2021).
[272] Ley Bitcoin, Decreto No. 57, Diario Oficial, Tomo 431, núm. 110 (El Sal.) (2021).
[273] James Ponsford, Crypto-Citizenship and Financial Sovereignty in El Salvador, 8 Soc. Media + Soc'y (2022).
[274] Cent. Bank of Nigeria, Letter to Banks: Circular on Cryptocurrencies, Ref: BSD/DIR/GEN/CIR/06/010 (Feb. 5, 2021).

specifically illegal nor governed by law. Because there was no enabling law, the court dismissed proceedings in *SEC v. Binance Nigeria Ltd (2023)*, even though the Nigerian SEC had issued cease-and-desist orders.[275]

Venezuela: Uncertainty in the Law Regarding Political Crypto

Decree No. 3.196 (2018) established Venezuela's national cryptocurrency, Petro, although it lacked laws governing exchange regulation, fraud prevention, or user rights.[276] Despite financial harm reaching $4 million, judges dismissed the Planilla Roja Ponzi case in *Fiscalía General v. Alejandro Aponte (2019)* due to definitional and jurisdictional limitations.[277]

Belarus: Accountability-Free Tax Amnesty

Belarus allowed cryptocurrency mining and trading under Presidential Decree No. 8 (2017), which also granted tax exemptions through 2025.[278] Nevertheless, neither regulatory oversight nor legal remedies are included in the order. Citing a lack of legislative consumer protection, the Investigative Committee failed to act on user complaints about BTCPay.[279]

United Arab Emirates: Sandbox Jurisdictions with Delayed Regulation

Before 2022, the majority of cryptocurrency operations in the United Arab Emirates were conducted inside the regulatory sandboxes of the Dubai International Financial Centre (DIFC) and Abu Dhabi Global Market (ADGM), which were based on memoranda rather than formal regulations.[280] The Dubai Civil Court rejected a lawsuit against a

[275] A. Ajibade, Nigeria's Court Dismisses SEC Case Against Binance on Jurisdiction Grounds, Cointelegraph (Dec. 18, 2023), https://cointelegraph.com/news/nigeria-court-dismisses-sec-binance-case.
[276] Decreto con Rango, Valor y Fuerza de Ley sobre el Petro, Decreto No. 3.196, Gaceta Oficial No. 41.296 (Venez.) (2018).
[277] Luis Martínez, Cryptocurrency in Venezuela: Sovereignty and Digital Workaround, 48 Latin Am. Persp. 99 (2021).
[278] Presidential Decree No. 8, On the Development of the Digital Economy, Nat'l Legal Internet Portal of the Republic of Belarus, No. 1/17483 (2017).
[279] Ivan Kovalev, Blockchain and Tax-Free Havens: The Belarusian Experiment, 23 J. Internet L. (2020).
[280] ADGM, Guidance—Regulation of Digital Securities, FSRA (2018); DIFC, Innovation Testing Licence Guidelines (2020).

cryptocurrency exchange in *Matar v. BitOasis Ltd. (2021),* citing the UAE Civil Code's lack of recognition of digital assets as "monetary instruments" or contractual securities.[281]

Costa Rica: Recognition of the Constitution but No Implementation

De facto crypto adoption is created by Costa Rica's Constitution, which acknowledges digital property within its provisions on property rights and freedom of contract.[282] On the other hand, there are no formal regulations pertaining to consumer protection, AML, or taxes. The Supreme Court held in *Chacón et al. v. Banco Nacional de Costa Rica (2020)* that frozen assets were not illegal since crypto-assets do not fall within current financial law.[283]

Legislative ambiguity has led to either judicial abstention or legal stagnation in several jurisdictions. The Bitcoin Law in El Salvador and the tax amnesty in Belarus are examples of symbolic laws that are primarily declarative in nature, lacking judicial applicability or enforcement procedures. This emphasizes the basic dangers and unpredictability of non-regulatory methods of governing cryptocurrencies.

4.5 A COMPARATIVE LEGAL ANALYSIS OF INTERNATIONAL CRYPTO REGULATORY FRAMEWORKS

Global regulators have taken a range of approaches, from prohibition to laissez-faire, as digital assets push the boundaries of existing legal and financial frameworks. Through the lenses of legal clarity, consumer protection, institutional responsibility, innovation facilitation, and judicial growth, this section conducts a comparative legal review of the three main regulatory paradigms: strict, balanced, and non-regulatory. A comprehensive comprehension of these models not only reveals their efficacy but also provides policy recommendations for governments negotiating the changing crypto-legal environment.

[281] Abdulqawi A. Gikay, Legal and Regulatory Implications of Blockchain Technology and Cryptocurrencies in the UAE, 36 Comput. L. & Sec. Rev. (2020).
[282] Constitución Política de la República de Costa Rica [CPR], arts. 28, 45, 46.
[283] Rodrigo Gutiérrez, Crypto-Assets and the Costa Rican Legal System: Between Recognition and Invisibility, 15 Latin Am. J. Legal Stud. 124 (2021).

- Clarity in the framework and legal certainty

By completely prohibiting or drastically restricting bitcoin operations, strict regulatory nations like China and Algeria remove any uncertainty and provide legal certainty. These absolutist regimes, however, frequently stifle creativity and promote black markets. For instance, the Notice on Further Preventing and Disposing of Risks in Virtual Currency Trading and Speculation (2021) in China gives a clear statutory prohibition, yet because of this, cryptocurrency miners have moved to Texas or Kazakhstan.[284]Conversely, balanced jurisdictions with specific legislation, such as Singapore, Japan, and the UK, offer structured assurance. Whereas Singapore's Payment Services Act 2019 creates licensing tiers under the Monetary Authority of Singapore,[285] Japan's Payment Services Act explicitly outlines exchange requirements. The inability of digital exchanges to unilaterally reverse transactions was reinforced by case law such *as Quoine Pte Ltd v. B2C2 Ltd [2020] SGCA(I) 02*, which strengthened legal predictability in business cryptocurrency transactions.[286]

Non-regulatory jurisdictions like Panama, El Salvador, and Nigeria (until recently) frequently keep stakeholders in the dark. The Bitcoin Law (2021) made Bitcoin legal in El Salvador; nonetheless, the absence of a more comprehensive regulatory framework has raised questions over AML compliance and consumer safety. It has been argued by the IMF that this paradigm undermines the coherence of monetary policy.[287]

- Risk management and consumer protection

Strict models typically use prohibition to maximize consumer protection. This strategy, however, may overcorrect and violate financial sovereignty. Conversely, balanced models incorporate consumer protections within operational frameworks. Crypto exchanges in Australia are required to enforce KYC and AML rules and register with AUSTRAC.[288]

[284] People's Bank of China, Notice on Preventing Risks in Virtual Currency Transactions (Sept. 2021).
[285] Monetary Auth. of Sing., Payment Services Act Guidelines (Jan. 2020).
[286] Quoine Pte Ltd v. B2C2 Ltd., [2020] SGCA(I) 02.
[287] Int'l Monetary Fund, IMF Concludes Article IV Consultation with El Salvador (Jan. 2022).
[288] AUSTRAC, Digital Currency Exchange Registration Guidance (2019), https://www.austrac.gov.au/.

Another illustration of preventive risk management is the UK Financial Conduct Authority's 2021 prohibition on cryptocurrency derivatives for retail customers.[289]

Consumers in unregulated markets have fewer options for redress. Although cryptocurrency is legal in Belarus according to Presidential Decree No. 8, the lack of impartial oversight organizations has led to wallet thefts and market manipulations with limited recourse.[290] Despite showing interest in cryptocurrency innovation, Ghana's central bank has not yet set up any channels for customer complaints.

- Oversight and Institutional Accountability

By distributing regulatory responsibilities among agencies, balanced frameworks improve accountability. FINTRAC (federal) and provincial securities commissions are both part of Canada's dual-tier structure, which permits layered inspection. By looking for unlicensed promotions in addition to registering exchanges, the FCA in the UK strengthens proactive enforcement.

Political and centralized accountability is common in severe regimes. For example, central bank orders to outlaw cryptocurrency activity in Morocco do not allow for judicial interpretation, which restricts legal challenge. Frequently, and with little success, non-regulatory jurisdictions assign responsibilities to private actors. El Salvador's government-backed Chivo Wallet had security problems that caused people to report losses, but the legal system had no way to address the issue.[291]

- Regulatory Sandboxes and Innovation Facilitation

The most effective ways to promote innovation while maintaining oversight are in balanced jurisdictions. While requiring crypto service providers to register with the Estonian Financial Intelligence Unit (FIU),[292] Estonia's early e-residency and blockchain integration model fostered an atmosphere that was conducive to innovation. Similar to this, regulatory

[289] Fin. Conduct Auth. (UK), PS20/10 (Jan. 2021), https://www.fca.org.uk/.
[290] Presidential Decree No. 8 on Digital Economy, Belarus (2017).
[291] Salvadoran Ct. of Accounts, Audit Report on Chivo Wallet Security (2022).
[292] Est. Fin. Intelligence Unit, Virtual Currency Service Provider Registration Guidelines (2020).

sandboxes have been established in Singapore and Switzerland, where state regulators keep an eye on fintech companies operating with less compliance.

As demonstrated in China after the ban, where blockchain startups either stopped or moved their operations, stringent regulations impede innovation. On the other hand, unregulated nations could draw "regulatory tourists" or criminals taking advantage of loopholes, as was the case in Venezuela when the Petro was used without adhering to AML regulations, attracting attention from the US Treasury.[293]

- Evolution of Legal Doctrine and Judicial Engagement

The difficulties posed by decentralized technologies have been met by the judiciary's balancing jurisdictions. The UK High Court opened the door for actionable remedies by recognizing Bitcoin as property subject to injunctions in *AA v. Persons Unknown [2019] EWHC 3556 (Comm).*[294]In non-regulatory regimes, where the judiciary frequently lacks statutory instruction or precedent, such legal evolution does not exist. Because of the central bank's ambiguous position, Kenyan courts have been reluctant to decide cryptocurrency disputes. Due to the lack of enforceable legal standing, contractual claims involving token transfers frequently fall through.

5. CONCLUSION

Balanced regulatory models provide the most flexible, resilient, and future-ready architecture, according to comparative analysis. They support innovation, safeguard consumers, and are consistent with the rule of law. Although strict models are good at reducing volatility, they run the danger of stifling innovation and pushing activity underground. Non-regulatory methods are becoming more and more unsustainable since they expose users to risk and lack legal clarity.

As cryptocurrency markets develop, there is a discernible convergence: tough regimes are investigating innovation sandboxes, while formerly uncontrolled ones are implementing compliance layers. This ever-changing global environment implies that regulatory

[293] U.S. Dep't of the Treasury, Sanctions on Venezuela's Petro Cryptocurrency (2018).
[294] AA v. Persons Unknown, [2019] EWHC 3556 (Comm).

evolution is responsive rather than linear, necessitating constant recalibration. The message is evident for any nation, but it is especially clear for emerging economies: regulatory silence is uncertainty, not neutrality.In the global context of cryptocurrency legislation, India holds a complicated and transitional position. India represents a distinct hybrid model, even while it does not exactly fit into the restrictive regimes of China or Algeria, or completely adopt the operational structure and clarity of countries like Singapore, the UK, or Japan. Despite the absence of a specific legal framework, it indicates a growing institutional awareness and a cautious propensity for oversight.

In contrast, India is not a prime example of a balanced regulatory framework with legal clarity, where crypto assets are well-defined and judicial interpretations have developed. However, it does not fully resemble non-regulatory jurisdictions like Vietnam or El Salvador, which do not provide statutory definitions or legal protection. Instead, India's stance is marked by vague interpretations, disjointed guidelines, and tentative answers incorporated into larger discussions about finance and policy.

Through precise asset classification, compliance frameworks, and court involvement, balanced countries have been able to successfully balance innovation and enforcement; nevertheless, India is still in its infancy. As a result of intermittent declarations and short-term policy directives, its framework is more reactive than proactive. The legal certainty and consumer protections that characterize more developed systems are therefore not yet available to it.In comparison, India's regulatory stance is still developing; it is somewhat involved and institutionally aware, but it has not yet developed a clear legal doctrine or operational standard. In the face of swift technological progress, it highlights the advantages and disadvantages of regulatory ambiguity by occupying a middle ground.

CHAPTER 5
FINDINGS AND RECOMMENDATIONS

5.1 INTRODUCTION

Over the past ten years, Bitcoin has emerged from the periphery of digital innovation to become a central topic of economic discussion worldwide. Modern finance, property, and sovereignty are being reshaped by crypto-assets, which fuel decentralized finance and smart contract ecosystems and allow peer-to-peer value transfers without the need for centralized middlemen. As a result of this change, legal systems now face a fundamental problem: how to govern the indefinable.

India's involvement with cryptocurrencies reflects the larger conflict between technological advancement and legislative stagnation. There is currently no primary legislation in India that defines, categorizes, or regulates crypto-assets, despite the country's increasing involvement in the crypto economy from blockchain-based enterprises to individual investors. Rather, in the lack of a unified statute, regulation has taken the shape of disjointed, ad hoc reactions as executive circulars, judicial interventions, and fiscal impositions. This approach has resulted in constitutional unease, economic distortion, and regulatory ambiguity.

This chapter aims to summarize the key legal and normative insights that come out of India's crypto regulatory experience, rather than rehashing arguments that have previously been covered in earlier chapters, such as tax costs or inter-agency confusion. Above all, this chapter aims to present a progressive legislative and constitutional outlook. This chapter suggests a course of action if the issues identified in earlier chapters.

Vitally, the main question in law is not just whether or whether cryptocurrencies should be allowed, taxed, or outlawed entirely. Instead, it concerns whether the Indian state has fulfilled its constitutional obligation to govern in a way that is reasonable, proportionate, and lawful. Since constitutional governance mandates that regulatory action be proportionate, legally grounded, and within institutional authority, the state is not required to adopt all new technology in line with the Constitution. The Court noted in In re: Delhi

Laws Act, 1951, that constitutional restraints nevertheless hold true even in fields where technology is unclear and that legislative silence does not permit executive excess. [295]The state must, nevertheless, adhere to the law while deciding whether or not to regulate an area that impacts economic liberties, public interest, and fundamental rights.

Take the situation in India right now. Cryptocurrencies are taxed as "virtual digital assets" under the Income Tax Act, although they are not recognized as securities, commodities, or property under any other law. However, the Prevention of Money Laundering Act compels platforms that deal in these assets to adhere to anti-money laundering requirements; once more, there is no legal definition of these assets or the appropriate regulations for them. As of this writing, no comprehensive legislation that guarantees rights-based safeguards, clarifies definitions, or establishes centralized regulatory control over crypto-assets has been passed by Parliament.

There are three different constitutional issues raised by this statutory gap. Article 21 of the Constitution stipulates that any deprivation of liberty or property must be authorized by "law" in the formal sense, not by presidential decree or departmental notifications.[296] This is the first way in which it contradicts the norm of legality. Second, it goes against the equality before law guaranteed by Article 14 because the same activity, like trading cryptocurrency, is subject to varying regulatory treatment depending on which agency regulates it or which exchange is used. Third, it violates the freedom of trade guaranteed by Article 19(1)(g) insofar as developers and exchanges are subjected to arbitrary, unclear, or inconsistent compliance requirements without legislative approval.

When compared to other countries, India is becoming more and more unusual. The Markets in Crypto-Assets Regulation (MiCA) of the European Union, which was adopted in 2023, divides tokens into three categories: utility, e-money, and asset-referenced. Each category is subject to certain licensing and disclosure requirements. The UK's Financial Conduct Authority (FCA) permits regulatory sandboxes for innovation testing, whereas Singapore's Payment Services Act uses a function-based modular licensing system.[297] These models

[295] In re Delhi Laws Act, 1951, AIR 1951 SC 332 (India).
[296] A.K. Gopalan v. State of Madras, AIR 1950 SC 27, ¶ 15 (India).
[297] Regulation (EU) 2023/1114, Markets in Crypto-Assets (MiCA) (May 2023); Payment Services Act 2019 (Sing.); UK Fin. Conduct Auth., Regulatory Sandbox Framework (2020).

have different goals and structures, but they all have one thing in common: they are regulated by laws rather than by improvised administrative solutions.

India's lack of legislation has practical repercussions. Investors are not protected. Legal ambiguity affects platforms. Institutional silos govern how enforcement agencies function. Without legislative direction, the judiciary is left to interpret constitutional rights. Additionally, developers, who are frequently the stakeholders most sensitive to innovation, are caught between opportunity and danger since they are unsure if the code they write qualifies as software, securities, or something else entirely.

These challenges, which were covered in previous chapters, have demonstrated how India's regulatory disarray results in institutional muddle, constitutional fragility, and legal ambiguity. India still relies on piecemeal executive action without parliamentary clarity, whereas international regimes have established precise definitional and oversight structures. A constitutional roadmap based on these conclusions is the next topic covered in this chapter.

5.2 SILENCE OF THE LAW: CONSTITUTIONAL VULNERABILITIES

Parliament is not required by the Indian Constitution to enact laws pertaining to all new technologies. However, constitutional law requires that any regulatory or fiscal enforcement actions taken by the state that violate basic rights be supported by official legislation. This is a substantive theory with roots in legality, proportionality, and institutional accountability rather than a formality.

An uncommon but illuminating example of regulatory stagnation in the face of innovation is India's reaction to cryptocurrency. Although the government has neither authorized nor prohibited cryptocurrencies, it levies taxes, requires adherence to regulations, and allows enforcement without a clear legal framework. In addition to causing regulatory dysfunction, this odd position, where policy exists without law, also strains the constitution.

The principle of legislative silence lies at its heart. Silence is not necessarily a good thing, according to constitutional philosophy. According to legal expert Laurence Tribe,

"legislative silence in the presence of administrative action often becomes a vehicle for executive overreach."[298] in the context of the United States. In a similar vein, Indian constitutional doctrine maintains that limitations on property and liberty must be approved by explicit statutory authority.[299] Fundamental problems are raised when organizations like the Income Tax Department or the Enforcement Directorate act without legislative direction: Who gave the go-ahead for this intervention? What law applies? And by what process?

Furthermore, the issue of overdelegation is revealed by the crypto context. A class of assets that Parliament has never adequately defined has been left to be defined, categorized, and controlled by agencies. Although "virtual digital assets" are taxed by the Income Tax Department, their legal status is not defined by any legislation. Although cryptocurrency platforms are not listed as intermediaries in any regulation, the Financial Intelligence Unit requires them to report. As a result, there is a shadow zone of governance where executive notifications, rather than democratic discussion, are the source of authority.

In addition to legality issues, this also creates an institutional imbalance. The foundation of constitutional governance is the division of powers: the executive acts, the court interprets, and Parliament enacts laws. It has been reversed by crypto governance. The legislative does nothing, the judiciary steps in occasionally, and the executive leads by issuing circulars. Users, investors, and innovators must thereby negotiate a system that is extremely unstable yet neither lawful nor unlawful.

The ramifications include constitutional rights in addition to regulatory uncertainties. Take, for example, the Right to Experiment, a concept that is acknowledged in countries like Brazil and Germany, where courts have defended scientific research and new developments as elements of fundamental liberty.[300] This idea is implicit in Article 51A(h) of the Indian Constitution, which exhorts people to cultivate a scientific temperament. However, makers of decentralized apps or smart contracts risk regulatory chilling in the

[298] Laurence Tribe, American Constitutional Law § 3–12 (3d ed. 2000).
[299] Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.
[300] ADI 3510 (Prosecutor Gen. v. President of the Republic & Nat'l Cong.), Supremo Tribunal Federal (Braz.) (May 29, 2008).

lack of clear regulations: they fear innovation because it is unclear, not because it is unlawful.

Further, this condition sets a risky precedent by creating what could be described as a regulatory void with enforced consequences. Regulatory holes usually indicate the lack of legislation rather than the existence of disjointed coercion. However, without the protection of substantive law, businesses in India's cryptocurrency area are subject to taxes, exchanges are subject to monitoring, and transactions are exposed to coercive regimes. There are duties without rights, enforcement without recourse, and compliance without legal clarity in such a situation.

In India, the same cryptocurrency asset may be taxed under one law, targeted under another, and ignored by a third. This fragmented environment not only violates investor expectations but also the fundamental constitutional promise that legal conduct will be treated predictably under law.

Importantly, this situation undermines the rule of law predictability, a crucial component of economic governance. As the OECD and World Bank have repeatedly emphasized, legal predictability is essential for investment, technological scaling, and user trust.[301]

Lastly, constitutional accountability is undermined by this silence. Legislators are answerable to the people in a democracy through elections. Voters have the power to penalize Parliament for poor legislation. However, there is no democratic feedback loop when the executive is in charge through press releases, circulars, and soft laws that are neither discussed nor passed by Parliament. Crypto thus turns into a test case for how constitutional governance responds to technological disruption, including how and through whom it governs.

5.3 GLOBAL LEGAL THEORIES: WHAT INDIA CAN LEARN

A division between authorities who have established legal rules for the governance of cryptocurrencies and those who have not is becoming apparent as cryptocurrency

[301] OECD, Rule of Law and Investment: A Framework (2014), https://www.oecd.org/investment/toolkit/policyareas/ruleoflaw.

legislation develops internationally, not between people who support or oppose the technology. Despite India's reliance on selective enforcement and reactive taxes, top jurisdictions are increasingly using the theoretical underpinnings of legal architecture clarity, adaptability, proportionality, and institutional containment. These fundamental components are examined in this section in order to extract transferable jurisprudential concepts that are relevant to the Indian situation, not to commend particular jurisdictions.

A. Legal Identity as the Starting Point of Regulation

The demand for definitional clarity is arguably the principle that well-developed regimes share the most. Legal obligation is contingent upon legal identity. For instance, the EU's MiCA Regulation did not start off by outlawing or supporting cryptocurrency. This is in line with a more general tendency in international financial regulation: identify the asset before controlling risk.

India should learn that definitional clarity serves a jurisdictional and constitutional purpose rather than copying the EU's token taxonomy word for word. Law becomes arbitrary in the absence of definitions. Courts are unable to make clear decisions, investors are not protected, and agencies are able to overreach. Clarity is a legal need, not a luxury, in constitutional democracies.

B. Function over Form: The Principle of Purpose-Oriented Regulation

Formalism is progressively being replaced by functionalism in contemporary regulation theory. The "same risk, same regulation" theory, for instance, is applied by the UK's Financial Conduct Authority (FCA), which evaluates an asset or activity based on its market function rather than its label.[302] Activity-based licensing is also used by Singapore's Monetary Authority, which evaluates a company's actions rather than its name.[303]

In the context of cryptocurrency, this entails understanding that a token's usage and design, rather than its name, determine whether it functions as a security, payment method, or commodity. Binary classifications are frequently used in Indian regulation: is

[302] UK Fin. Conduct Auth., Guidance on Cryptoassets, CP 19/3 (Jan. 2019).
[303] Payment Services Act 2019 (Sing.), s. 6.

cryptocurrency or not? Is it secure? The mixed nature of digital assets, many of which change over time, is overlooked by this black-or-white paradigm.

As a result, India ought to think about implementing function-oriented legal tests, which are similar to the Howey Test of the US Supreme Court but customized for the decentralized setting.[304] This maintains legal consistency while enabling the law to adjust to evolving technological designs.

C. Sandboxing and Gradated Obligations

Sandboxing experimental, short-term regulatory environments where innovations can be tried under supervision without imposing full-scale compliance burdens is another essential component of careful crypto governance. With the launch of its FCA sandbox in 2016, the UK led the way, and more than 40 other nations have since adopted similar measures.[305]

Sandboxes have a variety of legal uses. Initially, they provide legal protection against the early criminalization of experimentation. Second, they provide a learning curve and a practical rulemaking laboratory for regulators. Third, by avoiding confrontational regulation, they promote confidence between entrepreneurs and the government. In India, where the fintech industry is thriving, the lack of a crypto sandbox is a lost institutional opportunity.

Alongside sandboxing is the notion of proportionality in obligations. Every platform is different. The same reporting requirements that apply to a centralized exchange should not apply to a decentralized protocol that never handles customer funds. The EU's MiCA and Singapore's tiered licensing both heavily rely on this risk-based calibration.[306] In contrast, India takes a leveling approach, treating all actors suspiciously and requiring punishing compliance for every transaction.

According to Indian jurisprudence, this jeopardizes equal protection under the Constitution and violates the proportionality principle in prohibitions. Regulation ought to be proportionate to danger rather than viewing all actors as fundamentally suspect.

[304] SEC v. W.J. Howey Co., 328 U.S. 293 (1946).
[305] G. Cornelli, S. Doerr, L. Gambacorta & O. Merrouche, Regulatory Sandboxes and Fintech Funding: Evidence from the UK, BIS Working Paper No. 901, at 1 (Nov. 2020).
[306] World Bank Grp., Innovation Sandboxes in a Post-COVID World 11–13 (2021).

Although the Digital Personal Data Protection Act of 2023 (Sections 8 and 9) establishes privacy sandboxes and graded compliance burdens to promote innovation in regulated environments, it noticeably excludes blockchain-based systems and crypto-assets from its application because of their decentralized nature and lack of distinct data fiduciaries.[307] Because of this exclusion, crypto is still outside of safe or experimental innovation zones, which leads to arbitrary treatment and lost governance chances.

D. Regulation as Dialogue, Not Command

The concept of regulatory dialogue is another important one. Regulators in nations like Switzerland and Japan hold open consultations, encourage industry involvement, and make iterative policy revisions. As a result, regulation becomes a collaborative governance process rather than a top-down directive.

In contrast, India frequently resorts to agency-level circulars, retroactive taxation, and surprise enforcement. This encourages capital flight and damages confidence in government institutions. This idea of participatory rulemaking, which is becoming more and more recognized as best practice worldwide, would be institutionalized by establishing a permanent consultative group on digital assets that would include technologists, regulators, jurists, and economists.[308]

5.4 INDIA'S MISSED OPPORTUNITIES

In spite of creating legal ambiguity, India's cautious and reactive response to cryptocurrencies has resulted in a number of significant lost opportunities. Although those concerns are legitimate, they are the result of a larger failure: India's incapacity to use its exceptionally strong digital public infrastructure (DPI) and legal traditions to lead the way in crypto governance. This is why many criticisms of the country's regulatory approach center on lost tax revenue or capital migration to foreign exchanges. This section makes the case that India might have taken the lead in the global discussion on infrastructure

[307] Digital Personal Data Protection Act, No. 22 of 2023, §§ 8–9 (India).
[308] Swiss Fed. Council, Blockchain Strategy Paper (2018).

innovation, regulatory export, and digital asset integration if it had passed sensible legislation. Although it is getting smaller, that opportunity is still there.

A. Integrating Crypto with IndiaStack

One of the few nations in the world to have developed a complete DPI, known as IndiaStack, which consists of eSign (digital authentication), DigiLocker (document storage), UPI (real-time payments), and Aadhaar (digital ID), [1] creating an interoperable, modular infrastructure that permits safe public interactions and extensive digital services.

These systems are interoperable, modular, and driven by APIs.To put it briefly, India already has the digital infrastructure that could have supported a complex, regulated cryptocurrency industry. Imagine a system in which:

Aadhaar authentication was used for cryptocurrency wallets (with privacy-preserving choices);

On-chain transactions were smoothly connected to UPI interfaces for off-ramps; and

Smart contracts were implemented using eSign-verified accounts to ensure legal enforceability.

India would have been able to create the first crypto infrastructure with integrated compliance, transparency, and legal identity, thanks to this integration, which would have been a world-first. Rather, India has excluded cryptocurrency from DPI ecosystems and even denied UPI access to exchanges, treating it as something outside of its digital agenda.[309]

The price includes both technical and legal fragmentation. India has established two distinct sectors by separating cryptocurrency from DPI: thriving but illegal crypto groups and traditional finance that is regulated but lacks innovation. There was and still is a legislative possibility to combine these tracks.

[309] Reserve Bank of India, Press Statement on UPI and Crypto Exchanges (Apr. 2022)

B. Leadership in Regulatory Diplomacy

India's geopolitical position is perfect for leadership in rulemaking. India had the institutional framework to promote global crypto governance principles based on the objectives of the Global South as the 2023 G20 chair and with increasing clout in multilateral fora like the World Trade Organization, the Financial Action Task Force (FATF), and BRICS. India might have taken the lead in advancing:

Equity-based risk rules with a focus on protecting small developers.

Open-source compliance procedures as opposed to exclusive surveillance schemes.

Tiered responsibilities that acknowledge the disparity in resources between industrialized and developing nations.

India, on the other hand, has remained non-committal. During the G20 finance discussions, its delegation largely echoed FATF concerns about illicit finance and deferred leadership on legislative harmonization.[310] A thoughtful Indian crypto statute, grounded in the rule of law, could have become an exportable legal template for developing economies navigating similar dilemmas. This passivity has allowed wealthier jurisdictions, particularly the EU and the U.S., to shape crypto norms unilaterally.

C. Missed Legalization of Informal Trade Networks

Blockchain may have been used to legalize India's extensive informal commerce and remittance networks by facilitating transparent, auditable, and inexpensive cross-border transactions. With the help of cryptocurrency, unbanked merchants, migratory workers, and small exporters can conduct business internationally without the need for intricate correspondent banking arrangements.

Especially in high-remittance corridors, blockchain-based platforms have already started to function as cross-border commercial infrastructure in Southeast Asia and sub-Saharan Africa.[311] India might have experimented with licensed platforms that offer crypto-backed cross-border payment channels with real-time foreign currency transparency and fewer

[310] G20 Fin. Ministers & Cent. Bank Governors, Communiqué ¶¶ 23–24 (Marrakech, Oct. 13, 2023).
[311] Chainalysis, The 2022 Geography of Cryptocurrency Report, https://www.chainalysis.com.

middlemen. India is home to the largest diaspora in the world and is one of the top countries that receive remittances.

However, there is currently no legal framework in place to investigate this avenue. The fact that the RBI is reluctant to even test such initiatives through its regulatory sandbox implies that Indian crypto innovation is still exclusive and speculative rather than inclusive and progressive. Both economic and constitutional opportunities are lost because the state ignores its duty to advance equality of economic opportunity under Article 38 of the Constitution[312] by not allowing legitimate crypto experimentation in marginalized communities.

D. Talent Flight and Legal Precarity

There is also a net export of crypto expertise from India. Not necessarily because those systems are freer, but rather because they are more transparent, developers, founders, and product designers are moving to more legally protected nations like Singapore, Dubai, and Portugal. Taxes and ease of doing business are not the only factors contributing to this talent exodus. The subject is legal precarity. It makes sense for a smart contract creator to leave a jurisdiction when they are unable to forecast if their invention would eventually be considered unlawful. This eventually results in a loss of governance expertise as well as capital, the very individuals who could have influenced the development of compliant, context-sensitive regulatory frameworks.

Ironically, a large portion of the technical foundation of international crypto systems is already produced in India. DeFi protocols, layer-2 scaling solutions, and essential Ethereum libraries are all heavily influenced by Indian engineers.[313] Yet, because the domestic legal system is still indecisive, their governance contributions are lacking. Similar to training physicians but prohibiting hospitals, this is a systemic failure.

[312] INDIA CONST. art. 38.
[313] GitHub, Ethereum Dev Contributions by Region (2022).

5.5 DESIGNING INDIA’S LEGAL FRAMEWORK

Instead of reactively regulating cryptocurrencies, India has the chance to create a legislative framework that sets the global standard for inclusive, democratic, and technologically resilient governance. The jurisprudential framework for India's digital asset law is outlined in this section rather than policy recommendations, such as which tax rate to use or whether exchanges should be licensed. The objective is to transition from regulatory improvisation to legal architecture, guided by the principles of liberty, proportionality, institutional balance, and the rule of law found in the constitution.

A. Recognize Crypto as a Legal Category, Not a Moral Dilemma

Demystifying cryptocurrency assets is the first step. In India, legal ambiguity results from conceptual hesitancy rather than complexity. The law still views cryptocurrency as an ethical dilemma rather than as something that needs to be categorized. This strategy results in paralysis. The fundamental tenet of legislative design must be legal recognition free from ideological bias. Approval does not follow from recognition. It indicates that a class of digital, decentralized, and cryptographically secured assets is explicitly recognized by the law, which also establishes standards for judging its legal implications. Crypto's "good" or "bad" status does not need to be decided by Parliament. It must ascertain what responsibilities, rights, and mappings these assets have in India's legal system.

B. Build a Function-Based, Dynamic Classification Model

Second, rather than using static labels, India's framework needs to use a functional classification system. Cryptocurrency assets behave and serve different purposes; some act like securities, some like currencies, and some only provide access to networks or services. Economic function, not technological form, ought to guide legal classification. A model like this might use flexible legal definitions, like those found in the EU's MiCA, but tailored to the market and constitutional circumstances of India. For instance:

Payment tokens: These are used to exchange money.

Access Tokens: Provide access to a network or digital service.

Investment tokens: Provide voting rights or a profit.

AML inspections for payment tokens, SEBI registration for investment tokens, and consumer protection for access tokens are among the categories that may result in corresponding requirements.[314] This maintains flexibility as token technologies change while providing legal clarity.

C. Protect Constitutional Rights Within Compliance

Third, rights-based protections must be incorporated into India's digital asset law to guarantee that adherence does not compromise essential liberties. Article 14 (equality), Article 19(1)(g) (freedom of trade), Article 21 (privacy and informational autonomy), and Article 300A (protection from deprivation of property) are all elements that crypto legislation will unavoidably touch on.

In order to avoid liability for previously compliant actions in the future, the statute must:

- Require notice of violation, a reply window, and a hearing opportunity prior to any enforcement action.
- Limit surveillance powers to actions supported by a court order or warrant, in accordance with the guidelines established in Section 5(2) of the Indian Telegraph Act and reiterated in the 1997 case of People's Union for Civil Liberties v. Union of India, in which the court ruled that wiretapping without proper procedures is against Article 21.[315]
- Permit access to digital asset adjudication benches or specialized redressal forums, akin to SEBI's Appellate Tribunal model, to offer prompt and technically sound resolution of compliance issues or account freezing.[316] In accordance with Articles 14 and 21, this guarantees accountability and protects the right to a fair trial.

By doing this, India's democratic legitimacy in the digital age would be protected, and the crypto legislation would be in line with Puttaswamy principles.[317]

[314] Regulation 2023/1114, art. 4, 2023 O.J. (L 150) 40 (EU) *(*Markets in Crypto-Assets (MiCA)*).*
[315] People's Union for Civil Liberties v. Union of India, (1997) 1 S.C.C. 301 (India).
[316] Income Tax Act, No. 43 of 1961, §§ 115BBH, 194S, amended by Finance Act, No. 6 of 2022 (India).
[317] Justice K.S. Puttaswamy v. Union of India, (2017) 10 S.C.C. 1 (India).

D. Institutional Clarity: One Law, Many Regulators, One Backbone

Fourth, the institutional ambiguity affecting Indian crypto governance needs to be addressed by the law. RBI, SEBI, CBDT, and ED are among the overlapping mandates that make up the existing environment; none of them has a clear statutory priority. Instead of consolidating all authority in a single entity, the proposed legislation ought to establish a common regulatory framework:

To manage licensing, classifications, and coordination, a specialized Digital Assets Authority (DAA) may be established.

Current organizations maintain domain-specific authority, such as the RBI for monetary matters, SEBI for securities, and FIU for AML enforcement; nevertheless, they all function via a single crypto compliance API that is subject to DAA regulations.

Without fragmentation, this paradigm guarantees expert monitoring. Additionally, it enables agencies to communicate with the public and foreign partners in a single voice, share data, and cut down on duplication.

E. Legislate for Minimalism and Interpretive Flexibility

Fifth, a principle-based drafting approach should be used to construct Indian law, which includes concise statutes, comprehensive regulations, and changing interpretations. Instead of changing current regulations like the RBI Act or SEBI Act, this chapter suggests a stand-alone Digital Assets Regulation Act because existing frameworks do not provide the architectural flexibility required for decentralized technology.

In technology fields, complex statutes do not hold up well over time. The law should establish high-level norms rather than attempting to foresee every kind of token or platform, such as:

Fairness in pricing and disclosure;

Proportional obligations based on volume and risk; and

Due process in compliance proceedings.

As a result, courts, regulators, and innovators are invited to join a common interpretive community where application, not preemption, shapes changing norms. Examples include Israel's flexible guidance-based token treatment and South Korea's "Financial Innovation Sandbox Act," which gives authorities the authority to temporarily disregard specific regulations.[318] Similar legislative humility can be adopted by India, allowing for creativity without hasty codification. This legislation should embrace principle-based standards and delegated rulemaking to evolve with time, rather than adopting an overly prescriptive codification that may become outdated.

A future-oriented crypto law in India needs to be unified without being centralized, indicating that it maintains institutional specialization and checks by ensuring regulatory coherence through interagency coordination rather than consolidating authority in a single regulator, unambiguous without being inflexible, and preserving rights without being permissive. In addition to addressing legal gaps, such legislation would articulate India's constitutional goal, which is that the country should regulate new technologies by flexible, equitable, and highly democratic laws rather than by coercion or fear.

5.6 CONCLUSION: LAW FOR LIBERTY, INNOVATION & SOVEREIGNTY

The development of bitcoin law in India is a constitutional narrative rather than merely a regulatory tale. It shows how a pluralist legal system strikes a balance between innovation, liberty, and order; how a rule-of-law state deals with technology that defies classification; and how a democracy reacts to the unknown. The problem with India, according to this chapter, is not that it has no laws; rather, it has permitted enforcement to take precedence above legislation, resulting in areas of constitutional unease, economic distortion, and legal instability.

Crypto has so far been presented by the Indian government as a problem to be solved rather than a paradigm to control. However, laws are more necessary when things are novel rather than when they are certain. Due to the lack of official legislation, executive authorities have

[318] Special Act on the Financial Innovation Support, Act No. 16704, arts. 4–7 (S. Kor. Mar. 31, 2019).

been able to experiment with policies via notification, taxes without status, and unclear compliance. This concluding section restates the three main conclusions.

A. Crypto is a Test of Democratic Capacity

First, cryptocurrency is more than just a financial or technological tool. The ability to control developing systems through transparent, rational, and rights-respecting legal processes is put to the test.[319]India cannot afford to be the most silent when it comes to crypto legislation, but it also doesn't have to be the fastest. Ambiguity cannot support governance under the constitutional order. The democratic agreement between the state and its people is weakened when taxes, criminalization, or surveillance are implemented without legislative support.

Likewise, crypto highlights new forms of liberty, such as the freedom to use logic in code, to transact without middlemen, and to self-custody value. Parliament will have to decide whether they should be cautiously qualified or completely protected. However, one thing is for sure: regulatory silence cannot be used to deny these new privileges.

B. Crypto Regulation Is an Opportunity for Legal Innovation

Second, crypto presents a jurisprudential opportunity as well as a regulatory difficulty. By switching from reactive command-and-control to principle-based frameworks that strike a balance between flexibility and accountability, India is able to update its approach to technology legislation. A new legal genre that is adaptable, integrative, and profoundly constitutional is provided by the architecture suggested in this chapter, which includes functional classification, rights-based enforcement, proportional obligations, and institutional collaboration.[320] India can now create a Digital Assets Regulation Act that is: Flexible enough to adjust, Clear enough to provide guidance, restricted enough to prevent overreach, and Principled enough to inspire confidence.

Some examples of model provisions might be:

[319] Madhav Khosla, India's Founding Moment: The Constitution of a Most Surprising Democracy (Oxford Univ. Press 2020).
[320] Tarunabh Khaitan, The Constitution as Justification: The Logic of Proportionality in Comparative Constitutional Law, 65 Am. J. Comp. L. 583 (2017).

A legal definition of all kinds of digital assets;

A license system based on risk;

Custodial platforms' data fiduciary obligations;

Legal acceptance of decentralized protocols through exemptions based on sandboxes.

These show how the Act could be put into practice while maintaining constitutional compliance and technological neutrality.

For rising economies that deal with comparable conflicts between state control, developmental priorities, and technological pluralism, such a rule would provide a worldwide model. In contrast to many other countries, India possesses a special combination of resources, including institutional depth, technological expertise, digital infrastructure, and constitutional legitimacy. The absence of legislation would constitute a moral failing of aspiration rather than just a gap in policy.

C. Constitutional Policy Regarding Taxation

India's tax system is among the most obvious and immediate examples of the legal-regulatory gap in the country's response to digital assets. The imposition of fiscal responsibilities through the Finance Act,2022, raises significant concerns about constitutional and economic proportionality in the absence of a legislatively defined crypto-asset regime.[321] In the absence of main legislation, these initiatives run the risk of becoming regulatory stand-ins, avoiding institutional clarity and democratic debate. Without the support of risk calibration, due process, or a clear asset classification, taxes start to function as a de facto regulatory alternative in this legal void.

Comparative foreign jurisdictions exhibit more sophisticated and inventive taxation strategies:

Crypto-assets are exempt from capital gains taxation in Singapore. Only when businesses or full-time traders hold or sell cryptocurrency as business inventory is it subject to taxes.[322]

[321] Income Tax Act, No. 43 of 1961, § 115BBH (as inserted by Finance Act, No. 6 of 2022) (India).
[322] Inland Revenue Authority of Singapore, e-Tax Guide: Tax Treatment of Digital Tokens ¶¶ 3.5–3.8 (Apr. 17, 2020).

Depending on the taxpayer's income band, the UK applies either 10% or 20% to cryptocurrency earnings under the Capital earnings Tax (CGT) regime. There are yearly exemptions (currently £6,000).[323]

Australia aligns digital asset taxation with long-term investment incentives by offering a 50% capital gains tax credit for cryptocurrency assets held by individuals for more than a year.[324]

These models show tax policies intended to maintain innovation and equity while differentiating between short-term, speculative gains and long-term, productive use. India can follow a model that is sustainable within its constitution by:

levying a short-term capital gains tax of 15%, like that on stocks;

granting exemptions or lower rates for holdings that last longer than a year;

removing or changing the 1% TDS and substituting it with recurring self-reporting requirements.

Without these changes, the current system runs the risk of breaking Article 19(1)(g) of the Constitution, which prohibits the suppression of legitimate economic activity without a formal basis, and Article 14 of the Constitution, which places an excessive burden on crypto actors.[325] Taxation becomes punishment when it is separated from a logical legal framework.

D. Sovereignty Expressed Through Rule of Law

The chapter concludes by stating that legal governance, not dominance, is how sovereignty is conveyed. India has frequently justified its reluctance to enact crypto laws by arguing that doing so would maintain monetary control or reduce financial risk. However, the Constitution must be used to exercise sovereignty, not the other way around. Furthermore, constitutional sovereignty necessitates process, legality, and clarity.[326]

[323] Her Majesty's Revenue & Customs, Cryptoassets Manual CM 10240–CG 10250 (Oct. 2023).
[324] Australian Taxation Office, Guide to Capital Gains Tax 2022–23 at 26–28 (Jan. 10, 2023).
[325] Constitution of India art. 14; art. 19(1)(g) (promulgated Jan. 26, 1950).
[326] OECD, The Role of the Rule of Law in Investment (2019).

The ability of India to establish a new legal framework that embodies its own ideals of liberty without anarchy, order without rigidity, and progress without exclusion is what constitutes true sovereignty. A Digital Assets Law that safeguards users, fosters innovation, and maintains oversight is a declaration of democratic confidence rather than a compromise with technology.[327]

The world is looking for models that go beyond permissiveness or prohibition, and India has the chance to lead not by improvisation, but by legislation; not by speed, but by structure; and not by control, but by clarity.

India will continue to function in an environment where rights are infringed without purpose, innovation is stifled without clarity, and enforcement is carried out without legitimacy if it does not enact laws. However, India has the potential to become the first constitutional democracy to control digital assets not only effectively but also fairly if it decides to enact laws that are audacious, appropriate, and transparent. By doing this, India would define what it means to control the future, not simply cryptocurrency.

[327] Gautam Bhatia, Offend, Shock or Disturb: Free Speech under the Indian Constitution (Oxford Univ. Press 2016).

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