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BETWEEN INNOVATION AND ILLEGALITY: CRYPTOCURRENCY AND THE QUEST FOR LEGAL CERTAINTY IN INDIA

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Abstract:
Cryptos have had a troubled past, with nation-states quickly banning, taxing, and legalizing them. With the identification of chosen cryptocurrencies as 'strategic reserves', cryptos are entering a revolutionary period where DeFi is becoming TradFi. The fast growth and investor interest in cryptocurrencies is a double-edged sword for India. They provide financial inclusion, fintech innovation, investment, and economic growth. Cryptos, on the other hand, increase systemic volatility, cybersecurity vulnerabilities, consumer protection shortfalls, and illegal financial flows including money laundering and terror funding.
Multifaceted elements fit India's distinct socio-economic setting. This study discusses cryptocurrency criticisms from the perspectives of volatility, security, transparency, intrinsic value, decentralization, and percolation after tracing the growth of cryptography technology in India. The study proposes a legal framework for legalizing and integrating cryptocurrencies in India, drawing from the US, EU, Japan, and other growing nations. It concludes with socio-environmental crypto adoption problems. The article expands on the Supreme Court's Shailesh Babulal Bhatt v. State of Gujarat & Ors. ruling.

Keywords: Cryptocurrency, Crypto Criticism, Virtual Digital Assets, Cryptos in India, Legal Framework.

INTRODUCTION

In January 2025, the US President signed an executive order titled 'Strengthening American Leadership in Digital Financial Technology' to promote US leadership in digital assets and financial technology while maintaining economic liberty.[1] After the previous directive, President Trump issued another order on March 6, 2025, to create a Strategic Bitcoin Reserve and a U.S. Digital Asset Stockpile (Bitcoin, NFTs, Digital Tokens, Stable Coins, and CBDCs), positioning the US as a leader in government digital asset strategy.[2]
As a 'sovereign', the US is late to cryptocurrency mining, storage, and transaction, while Bhutan (government agencies), UAE, El Salvador (legal tender), Singapore, Ukraine, Finland, UK, Venezuela, Georgia, etc. have been involved for over a decade. Besides these nation-states, public and private corporations, sovereign and pension Funds, exchange-traded funds (ETFs), and DeFi/Smart Contracts (Decentralized Finance like Ethereum) own Bitcoin. Portfolio diversity was one motivation for these investments, but with states emphasizing strategic 'reserves', cryptos now have a new dimension.[3]

[1] The White House, Strengthening American Leadership in Digital Financial Technology (Jan. 2025), https://www.whitehouse.gov/presidential-actions/2025/01/strengthening-american-leadership-in-digital- financial-technology/.
[2] Fact Sheet, President Donald J. Trump Establishes the Strategic Bitcoin Reserve and U.S. Digital Asset Stockpile, White House (Mar. 2025), https://www.whitehouse.gov/fact-sheets/2025/03/fact-sheet-president- donald-j-trump-establishes-the-strategic-bitcoin-reserve-and-u-s-digital-asset-stockpile/.
[3] James Butterfill, *CoinShares, Digital Asset Fund Flows Weekly Report* (2024).

US debt is at an insurmountable height (causing serviceability concerns),[4] safe haven investments are on a wild run (Gold, Silver, and critical metals and minerals are on surge), global stock markets are in turmoil, developing nations are facing western hegemony in the world's financial system (asset freeze and other sanctions called for moving away from the Dollar as a reserve currency), and global calls for transitioning from conventional har Cryptos are touted as the future global currency because to their limited supply, immutable blockchain-based decentralized transaction record, underlying value, divisibility, inherent transparency, hegemony-free status, etc. As with every promising technology, states strive to claim their piece by creating their own capacity via research and development or passively controlling the organization producing the breakthroughs. Cryptos are no exception. With the US using advanced Application-Specific Integrated Circuits (ASICs) for crypto mining, China mining and buying through open markets, the UAE and Singapore having the highest percentage of people (25%) owning cryptocurrencies, India's crypto market position is questioned. Whether India and its residents mine, purchase, or produce cryptocurrency?

India has no cryptocurrency vision or policy, thus no to all three queries. Only the 2018 Crypto Token and Crypto Asset (Banning, Control, and Regulation) Bill and 2021 Cryptocurrency and Regulation of Official Digital Currency Bill sought to regulate cryptocurrencies in India. Later, in Budget 2022, the GOI introduced Section 115BBH,[5] which added a flat 30% tax on gains from crypto trading, raising questions like, 'how can tax be levied, when cryptos (unrecognised tender) are not converted into legal tender? and where lies the propriety in levying a flat tax rate on all transactions irrespective of amount?' This double-whammy is further compounded by the fact that, although cryptocurrency mining and trading are permitted in India (after ***IMAI v. RBI, 2020***[6]), there is nothing to address the risks associated with mining (environmental and state grid concerns) and trading (regulatory uncertainty and impact on exchange markets), with taxes going to state coffers.

While these problems may be mostly resolved at home, India's exclusion from the global crypto scene may be more costly in the short and long run, with soft power suffering. To provide an example of short-term expenses, in the early days of cryptocurrency mining, GPU utilization was required for transaction verification. Later, cryptocurrency switched to ASICs for verification, but same GPUs are now essential hardware for the development and training of Large Language Models (LLMs). India's AI aspirations were pushed farther south by missing out on cryptocurrency in its early stages, creating an unanticipated domino effect. Similar to this, groupings of countries (BRICS in particular, who are advocating for a unified currency for trade) may use cryptocurrencies to move away from the dollar system, but India may fall behind due to its lack of vision in both the technological and regulatory spheres.[7] It should be noted that there is a user base for cryptography in India, since states employ it for financial transactions, encrypted communications, forensic data transmission, and land record storage.[8] However, it is doing appallingly when it comes to developing and incorporating cryptocurrencies into its financial system (for example, whereas NFTs are widely used worldwide, the demand for them is not evident in India).[9] In order to prevent India from merely being the end user base of these currencies like LLMs, a vision document outlining a strong cryptography and cryptocurrency system with a complex mechanism for mining, holding, and transaction of cryptocurrencies for all stakeholders can be

[4] Cong. Budget Off., *The Budget and Economic Outlook: 2024 to 2034* (2024).
[5] The Finance Act, 2022, Sec. 115BBH, No. 6 of 2022 (India).
[6] Internet and Mobile Assn. of India v. Reserve Bank of India, (2020) 10 S.C.C. 274 (India).
[7] What Is the BRICS Currency and Is the U.S. Dollar in Trouble? Reuters (Dec. 17, 2024), https://www.reuters.com/markets/currencies/what-is-brics-currency-is-us-dollar-trouble-2024-12-17/.
[8] NITI Aayog, Blockchain: The India Strategy – Part I (Discussing the Present Landscape and Potential Use Cases) (2020), https://www.niti.gov.in/sites/default/files/2020-01/Blockchain_The_India_Strategy_Part_I.pdf.
[9] Why Are NFTs Not Selling in India?, ZebPay Blog (Feb. 8, 2024), https://zebpay.com/in/blog/why-are-nfts- not-selling-in-india.

introduced as the first step to mitigate the same.
Tensions and struggles between nation-states for dominance will arise as the globe transitions from a bipolar to a multipolar order, and the global markets and economy that thrive under stability will experience protracted instability. Additionally, miners and holders of cryptocurrency will control and alter the global economic order when it enters global reserves, and India cannot afford to miss this opportunity.

THE POSITION OF INDIA ON CRYPTOS

India now uses blockchain technology in a number of different fields but does not utilize it for large-scale financial transactions. For example, the state governments of Andhra Pradesh and Maharashtra have tested blockchain-based systems for digital certificates and automobile registration. The Delhi Forensic Science Laboratory (DFSL), in partnership with NIC, uses blockchain technology for digital evidence recording, storage, and safeguarding; the RBI's Central Bank Digital Currency (CBDC) and the e-rupee are based on "blockchain-like" structures; land records in the state of Telangana were digitized and secured using blockchain technology.[10] Government agencies may use Blockchain services to create, host, and use their own blockchain applications, smart contracts, and functionalities at the pan-India level via the Centre of Excellence in Blockchain Technology under NIC (MeitY).[11]

The Supreme Court has repeatedly urged the national government to establish a "clear-cut policy" for cryptocurrencies since this landmark decision, recognizing that current legal frameworks are "completely obsolete" for dealing with the special features of digital assets like Bitcoin.[12] The Court referred to uncontrolled Bitcoin trading as "hawala" and emphasized a long-standing concern about possible abuse and significant financial ramifications.[13] The Court compared uncontrolled Bitcoin transaction to ‘hawala’ commerce and expressed concern about abuse and financial consequences. The Court's analogy of unregulated Bitcoin trade to ‘hawala’ is more than a legal observation; it implicitly frames Bitcoin as a fundamental threat to the established financial order and national security, triggering profound money laundering and terrorism financing concerns.

This extended ‘policy procrastination’ enables the Indian government to study global regulatory changes and hazards without committing to a domestic framework. However, this approach perpetuates a ‘grey area’ that hinders innovation, legal certainty, and investor protection in India, including the risk of brain drain and capital flight to jurisdictions with clearer regulatory landscapes. The legal position of cryptocurrencies in India is mostly determined by court rulings and fiscal policy, not comprehensive, forward-looking legislation. Cryptos go beyond technology to address fundamental philosophical questions about trust (distributed ledger vs. centralized authority), control (individual empowerment vs. state oversight), and the very definition of ‘money’ in a rapidly digitizing global economy. India's pursuit of the e-Rupee, a sovereign, state-controlled alternative to decentralized cryptocurrencies, highlights this ideological divide.
The use of blockchain technology in many public sectors except for monetary transactions, the Supreme Court's focus on cryptocurrency policy, and the Inter-ministerial Group (IMG)'s review of global regulatory frameworks for cryptocurrencies have all supported the creation of a legal framework for regularization and adoption of cryptocurrencies as legal tender. However, decentralized finance (DeFi) has many global critics. The next part analyzes these DeFi criticisms to refute them.

[10] *Supra* note 12.
[11] Centre of Excellence on Blockchain Technology at Gurugram, Digital India, https://www.digitalindia.gov.in/initiative/centre-of-excellence-on-blockchain-technology-at-gurugram/ (last visited July 1, 2025).
[12] Shailesh Babulal Bhatt v. State of Gujarat & Ors. SLP(Crl.) No. 012000 / 2023 (India).
[13] *Id.*

THE CRITIQUES OF CRYPTOCURRENCIES AND THEIR DEBUNKING

Cryptos face (un)surmountable criticism about volatility, transparency, decentralisation, security, underlying value, and percolation, unlike oil, gold, and grains. From afar, these difficulties look real, raising worries about their mass-use and reserves, ruling out their inclusion into countries' financial systems. Crypto was called a swindle and a 'Ponzi Scheme' that would fall to nothing by skeptics.[14] These big labels from famous economists and commentators discouraged people from using cryptos to diversify their investment portfolios and prevented the technology of cryptography from being used for other social good, such as secure financial transactions.[15] To many people's surprise, fear mongering frequently relied on illogical theories and was passed off as fact.[16] The following sections employ argumentation analysis to evaluate various bitcoin dispute arguments and counterarguments and give premises and inferences to support them. Volatility, transparency, decentralisation, security, underlying value, and percolation have dominated the deconstruction.

Since ancient times, people have hoarded goods that suit their requirements and increase in value to resist inflation. Oil, gold, and grains are ideal reserves since they have these two qualities. These commodities may be traded for necessities or used to evaluate intangible services due to their inherent worth. Critics argue that cryptos have no inherent worth and shouldn't be put to reserves. The claim that bitcoin has no value is a critique. 'In this argument, typically without premises, it's terrible to lack intrinsic worth. Bitcoin has no fundamental value. So Bitcoin is horrible.[17] Maybe investing in things without inherent value is pointless. Bitcoin has no fundamental value. Bitcoin isn't a corporation that generates products or services, hence it's less valuable inherently. Clubbed together, both traditional reserves and cryptos hold basic factors of intrinsic value, and the fact that people *'believe'* that these assets hold value, their intrinsic value merely comes from this belief.

The TradFi systems work on the principles of transparency, accountability, and centralised monitoring by the central bank. The monetary and fiscal policy measures laid by the legislature and executives ensure adequate liquidity in the system to keep inflation and other micro-macro parameters range-bound, which in effect smoothens the operations of the whole financial system of the nation. The centralised money mapping system in TradFi systems ensures that financial frauds, terror financing, money laundering, and other criminal activities remain in check (though in effect, the efficacy over these remains a perpetual challenge). The major backlash against the adoption and mainstreaming of cryptocurrencies comes due to their decentralised nature, and the inability of authorities to come up with opportunities to map the transactions and address the issues arising out of DeFi. Counting on their decentralised nature, the Supreme Court in ***Shailesh Babulal Bhatt v. State of Gujarat & Ors.***[18] labelled trading in bitcoin as a refined way of Hawala Business. Undoubtedly, cryptos possess inherent decentralisation tendencies, due to their being built on blockchain technology, wherein transaction records are distributed across a network of computers (nodes) instead of being stored in a central authority's database,[19] to ensure that transactions become practically irreversible. The irreversible nature of transactions adds to the security feature of financial systems, as it prevents a single authority from altering past transactions, reducing the potential for centralized control or interference.

[14] *Crypto-Assets and their Risks: Testimony Before the S. Comm. on Banking, Hous., and Urb. Affs.*, 115th Cong. (2018) (statement of Nouriel Roubini, Professor of Economics, Stern School of Business, New York University).
[15] David Golumbia, The Politics of Bitcoin: Software as Right-Wing Extremism (2016).
[16] John-Paul Koning, *The Faulty Logic of the 'No Intrinsic Value' Objection to Bitcoin*, 12 J. OF Private Enter. 65 (2022).
[17] See, https://www.btcpolicy.org/articles/another-way-to-think-about-bitcoins-value
[18] SLP(Crl.) No. 012000 / 2023 (India)
[19] Satoshi Nakamoto, *Bitcoin: A Peer-to-Peer Electronic Cash System*, at 1 (2008), https://bitcoin.org/bitcoin.pdf., See, Yannick Eckhardt and Johannes Glückler, 'Cryptocurrencies, a controversial innovation? Unpacking argumentation analysis in economic geography' Progress in Economic Geography 3 (2025).

Decentralisation poses hazards that might derail financial systems and jeopardize national security and sovereignty. The solution is in virtual social intermediates holding a lot of private data on their servers with end-to-end encryption. Even if they are outside the concept of a "state" and have no negative rights, these intermediaries can be forced to divulge information/data if public order, security, sovereignty, cordial relations with other states, etc. are endangered. In cryptos, the mining value chain, ownership, and governance are geographically centralized.[20] A few mining pools, hardware manufacturers, and operations control most of the network's computer power. The majority of Bitcoin's hash rate comes from two mining pools, and commercial mining accounts for 25%. Over 62% of bitcoin mining computing capability is concentrated in 0.25% of Earth's surface area and inexpensive power locations. Around 80% of Bitcoin is held by a small group of long-term investors, signaling increased de facto centralization. Centralization of cryptos is expanding due to a few centralized exchanges and wallets. All crypto transactions go through these exchanges and wallets, however authorities may obtain transaction information and freeze wallet access in law-and-order instances. Exchanges and wallets can map crypto transactions, just like social intermediaries must provide information in some situations despite their encryption. As data localization is linked to sovereignty, nation-states may store transaction data from their jurisdiction within the state, making information retrieval easier.

Security and transparency concerns stem from decentralisation. Critics see decentralisation as a chance to engage in illegal trades. One reason cryptos promote unlawful conduct is that loosely regulated crypto exchanges, which are patchwork compared to TradFi asset exchanges, make them appealing hubs for illicit trades. Cryptos' anonymity makes it hard to track criminal transactions. Due to the large number of nodes in the anonymous TOR network, privacy-focused behaviours are common.[21] Hidden identities and privacy technologies enable money laundering, fraud, financial sanctions circumvention, tax evasion, and capital control circumvention. In 2022, illegal addresses got $20.6 bn, cybercriminals laundered $6 billion, and darknet markets made $1.5 bn in bitcoin. Cryptos are becoming virtual black boxes due to decentralisation and anonymity, posing national security concerns.

Counterargument: the decentralized and distributed ledger system, which records transactions in cryptographically linked blocks, enhances trust and security. Proof-of-work or proof-of-stake and public/private key pairs ensure that only the rightful owner may access and authorize transactions without a trusted authority. Blockchain technology may reduce fraud and corruption compared to conventional money due to its openness. It makes it possible to find stolen money and criminals and punish them. Despite common opinion, unlawful bitcoin transactions make up only 0.24% of cryptocurrency transactions, showing a drop. These numbers pale in compared to fiat currency and conventional economic scams. In the past, security and law enforcement authorities were powerless against cryptocurrency-financed crime. Recent regulator actions have shown that cryptocurrency punishments are possible and enforceable, indicating that the crypto space is not a legal vacuum.[22] In an investigation into a money laundering business that hid the origin of $3 billion in Bitcoin, the German Federal Criminal Police Office confiscated $49 million in Bitcoins. Indian Enforcement Directorate (ED) seized ₹1646 crores in cryptocurrencies during money laundering operations, partnering with CoinDCX for digital asset management and storage.[23] Both incidents prove law enforcement can trace,

[20] Cambridge Ctr for Alternative Fin., *4th Global Cryptoasset Benchmarking Study* (2020), https://www.jbs.cam.ac.uk/faculty-research/centres/alternative-finance/publications/4th-global-cryptoasset- benchmarking-study/.
[21] Chainalysis, *The 2025 Crypto Crime Report* (2025), https://www.chainalysis.com/resources/research/crypto- crime-report-2025/.
[22] U.S. Dep't of the Treasury, *Treasury Launches Coordinated Effort to Combat Illicit Use of Digital Assets* (Apr. 18, 2024), https://home.treasury.gov/news/press-releases/jy0916.
[23] Press Information Bureau, Government of India, *ED has frozen crypto assets worth Rs 1646.68 Crore (approx.) under PMLA, 2002* (Mar. 27, 2023), https://pib.gov.in/PressReleasePage.aspx?PRID=1910978.

investigate, and seize cryptos in security matters across fronts. Exchanges and wallets help law enforcement break inside criminal enterprises.

The inclusion of cryptocurrencies in national reserves is further complicated by limited public utility and legitimacy, as consumers remain hesitant to transact through largely unregulated exchanges lacking legal backing. Empirical studies associate crypto adoption with high-risk behavior, libertarian political orientations, and elite technological advantage, resulting in concentration of ownership among early movers and technologically advanced nations. Persistent digital divides—within India and across the Global North–South axis—risk entrenching inequality and excluding disadvantaged populations from meaningful participation in the crypto ecosystem.

Proponents argue that cryptocurrencies advance financial inclusion by enabling permissionless participation and insulating emerging economies from coercive control over global reserve currencies. Empirical indicators such as the Global Crypto Adoption Index—led by India—challenge the narrative of elite capture, demonstrating strong Global South participation driven by usability rather than ideology. Drawing on Richard Thaler's nudge theory, targeted policy design—rather than outright resistance—can pragmatically integrate cryptocurrencies into financial systems without undermining user autonomy.

THE LEGAL FRAMEWORK

In the previous section, common criticisms of cryptocurrencies were examined, and rebuttals were presented to explain their integration with national reserves and broad adoption. Despite criticism, the next sections will examine the legal framework, which is essential to defining a cryptocurrency policy framework. The legal framework for regularizing cryptocurrencies in India must balance legal structure, public-private trust balances, symbolic currency, taxation, criminal financing, and international operational harmonization with established jurisdictional regimes like the US, EU, and emerging economies while maintaining intellectual coherency rooted in sovereignty, individual autonomy, and mobility

India has deliberately avoided formally classifying cryptos as a currency, commodity, or security. Instead, the central government, through the Finance Act, 2022 (subsequently modified in 2025), introduced the broad term 'Virtual Digital Asset' (VDA) under Section 2(47A) of the Income Tax Act, 1961.[24] Since VDAs are used for income tax and TDS, its terminology and categorization are mostly for taxes. It specifically does not make them legal tender or define their legal essence. The VDA categorization includes cryptocurrencies, NFTs, and other digital tokens, but it lacks the clarity needed to handle the varied features and risk profiles of digital assets. VDA categorization was pragmatic, but it only temporarily allowed taxes without legitimizing bitcoins as currencies or TradFi instruments. The

[24] Sec 2(47A), Income Tax Act, 1961- 'virtual digital asset' means—

(a) any information or code or number or token (not being Indian currency or foreign currency), generated through cryptographic means or otherwise, by whatever name called, providing a digital representation of value exchanged with or without consideration, with the promise or representation of having inherent value, or functions as a store of value or a unit of account including its use in any financial transaction or investment, but not limited to investment scheme; and can be transferred, stored or traded electronically;

(b) a non-fungible token or any other token of similar nature, by whatever name called;

(c) any other digital asset, as the Central Government may, by notification in the Official Gazette, specify: *Following sub-clause (d) shall be inserted after sub-clause (c) of clause (47A) of section 2 by the Finance Act, 2025, w.e.f. 1-4-2026:*

any crypto-asset being a digital representation of value that relies on a cryptographically secured distributed ledger or a similar technology to validate and secure transactions, whether or not such asset is included in sub-clause (a) or sub-clause (b) or sub-clause (c): Provided that the Central Government may, by notification in the Official Gazette, exclude any digital asset from the definition of virtual digital asset subject to such conditions as may be specified therein.

bill taxed VDAs but left their nature, rights, and duties undefined. Addressing the following cryptocurrency subtleties might fill the legal gap.

The legal structure for cryptocurrencies and other VDAs depends on whether they are securities, commodities, products, or currencies. Only after defining their core traits can legal framework structures be developed. India used the phrase 'Virtual Digital Asset' to refer to cryptocurrencies and other digital assets, but analyzing the worldwide legal environment may help establish policies.

SEC and CFTC authority over crypto asset categorization in the US is under dispute. The SEC uses the ***Howey Test***[25] to evaluate whether a cryptocurrency is a 'investment contract' and has jurisdiction over it. Bitcoin and Ethereum are 'commodities,' thus the CFTC regulates trade and institutional investment. The Financial Innovation and Technology for the 21st Century Act (FIT21) and GENIUS Act of 2025 propose specific 'Digital Commodity and Digital Assets' definitions, where the asset's value comes from its blockchain system's programmatic functioning. In this structure, the CFTC would regulate digital commodities exchanges, brokers, dealers, and custodians, while the SEC would regulate securities transactions and digital asset issuance.[26]

Japan may reclassify cryptocurrency under the Financial Instruments and Exchange Act (FIEA), which oversees stocks and ETFs. Crypto assets are controlled under the Payment Services Act. This reform would classify crypto as 'financial products,' allowing regulated spot-based crypto ETFs and simplifying the tax system to a 20% capital gains tax like regular stocks. The European Union's Markets in Crypto-Assets (MiCA) regulation classifies crypto-assets into three categories: Asset-Referenced Tokens (ARTs), which reference multiple assets; Electronic Money Tokens (EMTs), which reference a single fiat currency; and 'other crypto-assets,' which include utility tokens and other digital assets. Digital assets are purposely not classified as commodities or securities by MiCA. MiCA differentiates by expressly excluding those that are currently considered "financial instruments" under the EU's Markets in Financial Instruments Directive (MiFID II). MiFID II applies to crypto-assets that fulfill financial instrument standards, whereas MiCA applies the taxonomy of ART, EMT, and Others to all other crypto-assets.[27]

Britain is adding six new regulated activities to its 'securities' law, including operating crypto trading platforms, providing custody services, and participating in and organizing crypto asset transactions. Both 'qualifying crypto assets' and 'qualifying stablecoins' are 'specified investments,' needing FCA permission. UK fiat-backed stablecoins must disclose prospectuses and be closely supervised like securities. The UK integrates crypto into financial services legislation for 'depth over breadth.[28]

Comparative regulatory practice reflects a decisive shift toward activity-based and asset-specific crypto-asset regulation, eschewing blanket prohibitions in favour of calibrated compliance frameworks *(cf. Regulation (EU) 2023/1114 (MiCA), arts. 3–5, 30–45; UK Financial Services and Markets Act 2023, ss. 22A, 87A).* By distinguishing between crypto-asset classes and regulated services, these regimes balance systemic risk mitigation with innovation. In contrast, India's generic Virtual Digital Asset classification has perpetuated regulatory ambiguity, underscoring the need for a granular statutory framework to ensure legal certainty and regulatory coherence *(see Finance Act 2022, s. 2(47A), Income-tax Act, 1961).*

[25] SEC v. W.J. Howey Co., 328 U.S. 293 (1946), See, U.S. Sec. & Exch. Comm'n, *Framework for 'Investment Contract' Analysis of Digital Assets* (2019), https://www.sec.gov/files/dlt-framework.pdf.
[26] Financial Innovation and Technology for the 21st Century Act, H.R. 4763, 118th Cong. (2023-2024).
[27] Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on Markets in Crypto-Assets, and Amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937, 2023 O.J. (L 150) 40.
[28] The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2023, SI 2023/1382 (U.K.).

India's cryptocurrency regulatory landscape is marked by fragmented oversight and the absence of a unified statutory framework. The Reserve Bank of India (RBI) continues to assert jurisdiction on grounds of monetary stability and systemic risk, while simultaneously advancing the development of a sovereign Central Bank Digital Currency. Concurrently, the Securities and Exchange Board of India (SEBI) is positioned to exercise regulatory authority should crypto-assets be classified as securities, having proposed a multi-regulatory oversight model. This institutional overlap highlights the pressing need for legislative clarity to ensure coordinated and coherent crypto-asset governance in India.[29]

The Financial Intelligence Unit–India (FIU-IND) has emerged as the principal enforcement authority for Anti-Money Laundering and Counter-Terrorism Financing compliance, mandating the registration of all Virtual Digital Asset service providers under the Prevention of Money Laundering Act, 2002 since March 2023. However, the absence of a unified statutory framework has resulted in a predominantly reactive regulatory approach, with enforcement efforts focused on addressing fraud and illicit financial flows rather than establishing systemic governance. The withdrawal of the proposed Cryptocurrency and Regulation of Official Digital Currency Bill, 2021—envisaging a dedicated Digital Currency Board of India—further reflects unresolved regulatory intent. This fragmented, multi-agency structure perpetuates policy inertia, jurisdictional overlap, and legal uncertainty, undermining the development of a coherent and predictable digital asset regime in India.[30]

The United States and the European Union exemplify functionally coherent, multi-agency models of digital asset regulation grounded in asset classification and regulatory purpose. In the United States, anti-money laundering compliance is uniformly enforced, while market oversight is distinctly allocated between securities and commodities regulators, ensuring investor protection and market integrity. The European Union similarly combines centralized rule-making and supervisory coordination with decentralized national enforcement, particularly through differentiated oversight of crypto-asset service providers and stablecoins. In contrast to India's fragmented and largely reactive approach, these jurisdictions demonstrate regulatory clarity through clearly delineated institutional mandates and activity-based governance, offering a more predictable and innovation-compatible regulatory environment.[31]

Switzerland's Distributed Ledger Technology Act (2021) establishes a dedicated financial market infrastructure for DLT securities, licensed and supervised by FINMA. By permitting regulated multilateral trading while mandating technical scrutiny of smart contracts and robust continuity safeguards, the framework reconciles innovation with market stability and legal certainty.[32]
The United Kingdom's proposed crypto-asset regime requires full Financial Conduct Authority authorization for firms conducting regulated activities in qualifying crypto-assets and stablecoins, including those marketing to UK retail consumers from abroad. Through a bespoke prudential sourcebook (CRYPTOPRU) and conduct rules on best execution, conflicts of interest, and transaction transparency, the framework emphasizes consumer protection alongside market integrity.

Given the functional diversity of digital assets, a tailored multi-regulator framework aligned with India's financial architecture offers the most pragmatic path to legal certainty and regulatory coherence. Clear jurisdictional allocation—systemic risk and monetary oversight with the RBI, investment-related crypto-assets with SEBI, and AML/CFT enforcement with FIU-IND—must be complemented by a strong inter-

[29] IMPRI Team, *Crypto in India: Towards a Regulatory Framework*, IMPRI INSIGHTS (June 2, 2022), https://www.impriindia.com/insights/crypto-india-regulatory-framework/.
[30] Sunitha Abhay Jain, Regulation of Cryptocurrency – An Indian Perspective, 56 Econ. & Pol. Wkly. 18 (Aug. 21, 2021).
[31] Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on Markets in Crypto-Assets, arts. 98, 111, 2023 O.J. (L 150) 40.
[32] Federal Act on the Adaptation of Federal Law to Developments in Distributed Ledger Technology, AS 2021, (Switz.).

agency coordination mechanism, potentially anchored in an empowered Inter-Ministerial Group, to ensure consistency and proactive governance.

Escrow services play a critical risk-mitigation role in cryptocurrency transactions due to their irreversible and borderless nature. By holding assets in trust until contractual conditions are satisfied, escrow mechanisms reduce fraud and enhance transactional certainty. This function may be performed through third-party escrow arrangements or automated smart-contract-based escrow systems embedded on blockchain networks.[33]

Imposing a central depository model on genuinely decentralized cryptocurrencies is philosophically and technically incompatible, as it reintroduces custodial risk and centralized control antithetical to decentralization. While such a model aligns naturally with sovereign CBDCs like the e-rupee—where the Reserve Bank of India retains full issuance and settlement authority—integrating assets such as Bitcoin would require a layered custodial or tokenisation overlay, potentially linked to RBI-licensed intermediaries and payment infrastructure like the National Payments Corporation of India. This tension underpins India's ongoing debate between centralized monetary control and decentralized financial innovation, echoing experimental reconciliation models seen in initiatives such as Project Hamilton.[34]

The legal status of private key ownership and digital asset protection in India remains underdeveloped, with ownership presently inferred from de facto control over private keys rather than statutory recognition. Although Virtual Digital Assets are acknowledged as taxable assets, Indian law still lacks an explicit classification of cryptocurrencies as "property," leaving ownership rights and proprietary protections legally unsettled.[35] Notwithstanding the absence of crypto-specific legislation, general principles under the Indian Contract Act, 1872 and the Transfer of Property Act, 1882 are sufficiently expansive to accommodate intangible assets. Indian courts have accordingly shown a willingness to recognize proprietary interests in digital assets by granting injunctions and freezing orders, signalling an emerging judicial acknowledgment of crypto-related ownership claims.[36] The Supreme Court's decision in ***Internet and Mobile Association of India v. Reserve Bank of India***[37] marked a critical inflection point by lifting the banking prohibition on cryptocurrencies, thereby restoring functional legitimacy to the sector. While the Court did not expressly recognize cryptocurrencies as property, it implicitly affirmed their lawful economic existence within India's financial system.

The Prevention of Money Laundering Act, 2002 constitutes the principal statutory framework governing illicit financial flows in India and has been expressly extended to Virtual Digital Assets. Since March 2023, all VDA service providers are required to register with the Financial Intelligence Unit–India, subjecting them to stringent KYC/eKYC, record-keeping, and suspicious transaction reporting obligations. FIU-IND thus functions as the central AML/CFT enforcement authority within India's crypto-asset ecosystem.

The Financial Action Task Force remains the principal global standard-setter for AML/CFT, with Recommendation 16 (the 'Travel Rule') mandating verified originator and beneficiary data for virtual asset transfers. India's extension of the PMLA to digital assets broadly aligns with these norms; however, effective parity requires embedding PAN/KYC/AML at all service-provider interfaces, mandating on-chain analytics, and coordinating with international enforcement mechanisms such as

[33] Saifedean Ammous, *The Bitcoin Standard: The Decentralized Alternative to Central Banking* 21 (2018).
[34] Reserve Bank of India, *Concept Note on Central Bank Digital Currency* (Oct. 7, 2022).
[35] The Finance Act, 2022, No. 6 of 2022, Sec. 2(47A) (India).
[36] Pay Perform India Private Limited v. Union of India 2024 SCC OnLine Mad 188.
[37] (2020) 10 SCC 274

Office of Foreign Assets Control. These controls reflect the modern assertion of state authority over digital value flows, balancing individual privacy against collective financial security.

CHALLENGES TO CRYPTOCURRENCIES ADOPTION

Proof-of-Work–based cryptocurrencies raise acute environmental concerns due to their extraordinarily high energy consumption, with a single Bitcoin transaction consuming orders of magnitude more electricity than conventional digital or financial services. Unlike search engines or AI systems that have achieved efficiency gains through optimization, PoW networks exhibit structurally energy-intensive designs with limited scope for sustainable scaling. Despite emerging alternatives such as Proof-of-Stake, the prevailing cryptocurrency ecosystem remains environmentally unsustainable in its current form.

Beyond energy intensity, cryptocurrency mining generates significant e-waste due to the rapid obsolescence of specialized hardware, a concern particularly acute for India given its already strained and informal e-waste ecosystem. Compounding this is a deep digital and financial literacy divide, as highlighted by the Indian Council for Research on International Economic Relations, where unequal access, low awareness, and transactional complexity heighten risks of fraud and exclusion. Without careful regulatory design, crypto-driven financial inclusion risks devolving into large-scale digital disenfranchisement.

CONCLUSION

The recognition of cryptocurrencies as a legal tender in India is certainly a complex interplay of myriad premises ranging from philosophy to technology, and legal entanglements to social challenges. The promising avenues of cryptocurrencies in the form of financial innovation, enhanced remittance efficiency, and greater participation in the global digital economy must be exploited, while keeping formidable challenges in mind. The path forward for India doesn't lie in a binary choice of acceptance or rejection of cryptos, but in a meticulous construction of a balanced regulatory architecture, where neither unbridled *laissez-faire* nor rigid proscription, but rather a dynamic, technology-agnostic legal architecture, accommodates evolving paradigms of digital finance. The case for India crafting its bespoke legislation is of importance today than ever, considering its demographic representation at the global level, surge in soft power, stakes at global high tables, and as world's fourth largest economy. By fostering a financial ecosystem that is secure, innovative, and accountable, India can position itself at the vanguard of the global digital financial revolution, realising the latent promise of cryptocurrencies while safeguarding its macroeconomic and socio-legal fabric. Undoubtedly, the legal architecture must address the crypto's socio-environmental concerns to ensure sustainable and equitable adoption.