

CRYPTO ASSETS AND TAXATION IN INDIA: AN ANALYTICAL STUDY

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ABSTRACT

The rapid global rise of crypto assets has challenged traditional financial regulatory frameworks and compelled nations to rethink taxation, compliance, and investor protection. India represents a unique case where the government has not granted legal recognition to cryptocurrencies, yet has imposed one of the world's strictest tax regimes. Through the Finance Act, 2022, crypto assets were formally defined as *Virtual Digital Assets (VDAs)* under Section 2(47A) of the Income Tax Act, followed by the introduction of Section 115BBH and Section 194S, mandating a flat 30% tax on gains and a 1% Tax Deducted at Source (TDS) on transfers. This approach reflects the policy stance of "regulation through taxation," positioning taxation not merely as a revenue tool but as an implicit form of control over crypto usage.

This analytical study examines the taxation mechanism applicable to crypto transactions in India including trading, mining, staking, NFTs, and gifting and evaluates its implications for investors, exchanges, and the broader digital economy. It compares India's framework with global practices in jurisdictions such as the United States, the United Kingdom, and the European Union's recent MiCA regulation. The study highlights key challenges including the absence of dedicated legislation, lack of asset classification, complexity in reporting compliance, and potential capital flight arising from restrictive tax treatment and non-allowability of loss set-offs.

Findings indicate that while taxation has brought structural clarity and monitoring capabilities, the absence of a unified regulatory statute results in legal uncertainty and discourages innovation. The article concludes that India requires a balanced framework that integrates taxation with licensing, investor protection, and regulatory certainty to ensure sustainable development of the crypto ecosystem while preventing illicit use. A hybrid model combining technological facilitation with rational taxation can enable India to position itself competitively in the global digital asset economy.

I. Introduction

The global digital economy has witnessed an exponential rise in crypto assets over the past decade, challenging traditional financial systems and compelling governments to reconsider taxation and regulatory strategies. Crypto assets powered by decentralized blockchain technology function without the involvement of intermediaries, making them resistant to centralized control but also difficult

to regulate. India, one of the world's fastest-growing crypto markets, experienced a surge in investment between 2020 and 2022, particularly among young retail investors and technology-based enterprises. Recognizing the rapid growth and potential risks associated with crypto assets, the Government of India adopted a taxation-first approach, even though it has not

yet granted cryptocurrencies legal status as currency or legal tender.⁵⁶⁵

The regulatory journey of crypto in India has been a subject of debate, policy struggles, and judicial scrutiny. The Reserve Bank of India (RBI) began issuing cautionary advisories in 2013, warning users about financial and security risks. The turning point occurred in 2018, when the RBI restricted banking access to entities dealing in cryptocurrencies, effectively crippling India's crypto ecosystem.⁵⁶⁶ This led to extensive litigation, culminating in the landmark judgment of *Internet and Mobile Association of India v. Reserve Bank of India* (2020), in which the Supreme Court struck down the 2018 restrictions, holding that they were disproportionate under Article 19(1)(g) of the Constitution of India.⁵⁶⁷ This judgment revived the crypto market and compelled the government to shift towards a structured fiscal and regulatory framework.

In the Union Budget 2022–23, India became one of the first major economies to introduce a separate taxation regime for crypto assets by creating the category of *Virtual Digital Assets (VDA)* under the Income Tax Act, 1961. Section 115BBH imposes a 30% tax on gains from transfer of VDAs, while Section 194S mandates 1% Tax Deducted at Source (TDS) on every crypto transaction exceeding a specified threshold.⁵⁶⁸ Although these provisions brought clarity to the revenue implications, they also intensified compliance burdens and triggered a shift of trading activity to foreign platforms and peer-to-peer networks.

Despite taxation measures, crypto assets remain unregulated in India neither banned nor legally recognized. The current taxation approach reflects the state's intention to generate revenue and monitor financial transparency, particularly in cases involving money laundering and cross-border trades.

However, the absence of a comprehensive legislative framework creates uncertainty for investors and businesses operating in the crypto space. A purely taxation-driven approach, without clarity on legality, investor protection, or dispute resolution, poses structural challenges that require deeper analysis.

This article undertakes an analytical study of the taxation of crypto assets in India, examining statutory provisions, policy rationale, and judicial developments, while comparing India's approach with international tax regimes. By identifying gaps and proposing reforms, the study argues that India must balance innovation and economic growth with regulatory oversight and tax compliance.

II. Conceptual Understanding of Crypto Assets

A. Definition and Nature of Crypto Assets

Crypto assets are digital representations of value that operate on blockchain or distributed ledger technology (DLT). These assets are stored, transferred, and verified cryptographically, without dependence on a central authority like a bank or government. They offer features such as immutability, decentralization, and pseudonymity. Unlike traditional digital money (like UPI or online banking), crypto assets are peer-to-peer and are not issued by a sovereign authority. In India, the Income Tax Act does not use the term *cryptocurrency*; instead, the Finance Act, 2022 introduced the term *Virtual Digital Asset (VDA)* under Section 2(47A), which includes cryptocurrencies, NFTs, and any other digital asset notified by the government.⁵⁶⁹

B. Crypto vs. Currency vs. Digital Asset

In most jurisdictions, including India, crypto assets are *not recognized as legal tender*. The Reserve Bank of India has consistently maintained that cryptocurrencies are not comparable to currency issued by the Central Bank. In 2018, the RBI circular restricted banking

⁵⁶⁵ *Virtual Digital Assets—Taxation of Cryptocurrencies in India*, Ministry of Finance, Budget Speech (2022).

⁵⁶⁶ Reserve Bank of India, Press Release, RBI/2017-18/154 (Apr. 6, 2018).

⁵⁶⁷ *Internet and Mobile Association of India v. Reserve Bank of India*, (2020) 10 SCC 274.

⁵⁶⁸ The Income Tax Act, 1961, § 115BBH, 194S (India).

⁵⁶⁹ Finance Act, 2022, No. 6 of 2022, § 2(47A), *The Income-tax Act, 1961* (India).

services to crypto exchanges, effectively imposing a banking ban.⁵⁷⁰

However, in *Internet and Mobile Association of India v. Reserve Bank of India (2020)*, the Supreme Court struck down the RBI circular, stating that the restrictions were disproportionate. The judgment allowed the industry to revive, although crypto remains unregulated from a legislative perspective.⁵⁷¹

C. Types of Crypto Assets

Crypto assets can be broadly categorized as:

1. Payment/cryptocurrency tokens – Bitcoin, Litecoin
2. Utility tokens – grant access to a platform or service
3. Security/ investment tokens – represent ownership, similar to shares
4. Non-Fungible Tokens (NFTs) – unique digital collectible or asset

This classification is significant for taxation because the nature of the token determines whether it is treated as capital assets or VDAs.

D. Common Types of Crypto Transactions

- Trading (spot or derivative purchase and sale)
- Mining (creating new crypto by validating blocks)
- Airdrops (free tokens from projects for promotional purposes)
- Staking and lending (earning interest or rewards for locking crypto)
- Crypto-to-crypto swap (exchange between two cryptocurrencies)

Each of these transactions results in a taxable event under the Income Tax Act, particularly after the insertion of Section 115BBH (30% tax on transfer of VDA).

Conceptually, crypto assets are neither pure currency nor traditional securities; they are digital property with market-driven value. Understanding their structure helps lay the foundation for analyzing India's tax framework on VDAs.

III. Regulatory & Legal Framework of Crypto Assets in India

1. Historical Evolution of Crypto Regulation in India

India's regulatory journey regarding crypto assets has evolved from *cautioning investors to controlling through taxation and anti-money laundering compliance*. The Reserve Bank of India (RBI) issued three cautionary press releases between 2013 and 2017 warning the public that cryptocurrencies pose financial, legal, and operational risks because they are not backed by any central authority.⁵⁷²

In April 2018, RBI issued a circular prohibiting banks and financial institutions from dealing in cryptocurrencies or providing services to crypto exchanges. This action effectively forced Indian exchanges to shut down or shift operations abroad.⁵⁷³

Crypto intermediaries challenged the RBI ban before the Supreme Court in *Internet and Mobile Association of India v. Reserve Bank of India (2020)*, where the Court struck down the RBI circular as *disproportionate* and emphasized that there was no legislative prohibition on crypto trading.⁵⁷⁴

2. Current Legal Position (Post-2022)

Although India has not enacted a dedicated "Crypto Act," the Government took the taxation route to formally recognize crypto as a financial asset under the term Virtual Digital Assets (VDAs) through the Finance Act, 2022. The Income Tax Act was amended to introduce

⁵⁷⁰ Reserve Bank of India, Circular: Statement on Developmental and Regulatory Policies, RBI/2017-18/154 (Apr. 6, 2018).

⁵⁷¹ *Internet & Mobile Ass'n of India v. Reserve Bank of India*, (2020) 10 S.C.C. 274 (India).

⁵⁷² Reserve Bank of India, *Press Release: RBI cautions users of Virtual Currencies*, (Dec. 24, 2013).

⁵⁷³ Reserve Bank of India, *Prohibition on dealing in Virtual Currencies — RBI Circular*, RBI/2017-18/154 (Apr. 06, 2018).

⁵⁷⁴ *Internet & Mobile Ass'n of India v. Reserve Bank of India*, (2020) 10 SCC 274 (India).

Section 115BBH, imposing a flat 30% tax on income from transfer of VDAs, and Section 194S, mandating 1% TDS on transfer transactions.

This approach indicates that India is not prohibiting crypto, but it regulates and monitors transactions through taxation and reporting. In March 2023, the Ministry of Finance notified that crypto exchanges, wallet service providers, and intermediaries dealing in VDAs shall be considered “reporting entities” under the Prevention of Money Laundering Act (PMLA).⁵⁷⁵

In effect, crypto platforms must now conduct KYC, maintain transaction records, and report suspicious transactions to the Financial Intelligence Unit (FIU-IND). These measures significantly reduce anonymity and enable traceability of crypto flows.

3. Absence of Classification as Legal Tender

Despite taxation and PMLA coverage, the Government has repeatedly clarified that cryptocurrency is not legal tender. Unlike sovereign currency (INR), crypto cannot be used for settlement of debts or obligations. India’s regulatory stance can be summarized as:

Parameter	Position in India
Legal Tender	Not recognized
Trade/Investment	Allowed
Taxation	30% + 1% TDS
Anti-Money Laundering Compliance	PMLA reporting

4. Present Approach: “Tax First, Regulate Later”

India’s policy approach can be described as “cautious permissiveness” instead of banning, the government focuses on compliance and tax traceability. The regulatory trend suggests that India may eventually move towards formal legislation after studying the international

position (G20 nations, OECD Crypto Reporting Framework).

IV. Detailed Analysis of Taxation of Crypto Assets in India (900–1000 words)

The taxation of crypto assets in India became formalized only in 2022, when the Government chose to regulate them through taxation rather than providing them with full legal status. Until then, crypto existed within a regulatory grey zone neither banned nor recognized. The Finance Act, 2022 introduced a new tax mechanism specifically targeting crypto assets, defined legally as Virtual Digital Assets (VDA). This marked the first time the Income Tax Act included crypto within its statutory framework.⁵⁷⁶

1. Statutory Definition of Virtual Digital Assets (VDA)

The first major reform was the insertion of Section 2(47A) into the Income Tax Act, 1961, defining *Virtual Digital Assets* (VDAs). This includes cryptocurrencies, NFTs, and any token generated through cryptographic means. With this statutory inclusion, crypto assets are now recognized for taxation, even though they are *not legal tender*. This classification means that crypto is treated as property/asset for tax purposes, not currency.

The definition is broad enough to cover future digital asset innovations, ensuring that crypto-related revenue cannot escape the taxation framework.⁵⁷⁷

2. Section 115BBH – Flat 30% Tax on Income from Crypto

Section 115BBH introduced a flat 30% tax on income arising from the transfer of VDAs. Irrespective of the nature of the assessee (individual, HUF, business entity), crypto-related income is taxed at 30%, similar to the taxation applicable to lottery winnings and gambling. The legislative intent behind this is deterrence and ensuring strict compliance.

⁵⁷⁵ Ministry of Finance, Government of India, *Notification No. 15/2023: Virtual Digital Asset service providers as Reporting Entities under PMLA*, (Mar. 07, 2023).

⁵⁷⁶ Finance Act, 2022, No. 6, Acts of Parliament, 2022 (India).

⁵⁷⁷ Income Tax Act, 1961, § 2(47A) (definition of “Virtual Digital Asset”) (India).

Key features of Section 115BBH:

Rule under Sec. 115BBH	Explanation
Flat 30% tax on profits from transfer of VDA	No slab rate benefit, no indexation applicable
No deduction allowed other than cost of acquisition	Costs such as fees, electricity (mining) not deductible
No set-off of losses	Loss from one crypto cannot offset gain from another
No carry-forward of losses	Even business entities cannot carry forward crypto losses

The provision expressly states:

"No deduction in respect of any expenditure (other than the cost of acquisition) or allowance or set off of any loss shall be allowed."⁵⁷⁸

Thus, even genuine business expenses in mining (electricity, server costs) are disallowed.

3. Taxation of TDS (1%) under Section 194S

To ensure transparency and track transactions, Section 194S of the Income Tax Act introduced a 1% TDS on the transfer of crypto assets. TDS applies when:

- The value of the transaction exceeds ₹50,000 in a financial year (for individuals), or
- ₹10,000 (for specified persons).

This applies even in crypto-to-crypto transactions. For example:

- If Bitcoin is exchanged for Ethereum, the payer must deduct 1% TDS from the transaction.

To illustrate:

Suppose a user exchanges Bitcoin for Ethereum worth ₹1,00,000. Even though no fiat currency is

involved, the law mandates 1% TDS on both sides of the transaction.

The purpose of TDS is to create a transaction trail, making tax evasion nearly impossible.

4. Taxability under Section 56(2)(x) – Gift of Crypto

Crypto received as a gift above ₹50,000 is taxable under the head "Income from Other Sources". This applies even if crypto is received:

- From a friend
- At a wedding
- Via airdrops
- As promotional reward from an exchange

However, gifts from *relatives* or on certain occasions like marriage are exempt.

5. Treatment of Special Crypto Transactions

Type of Transaction	Tax Treatment
Crypto-to-crypto trade (Bitcoin → Ethereum)	Treated as transfer. 30% tax + 1% TDS applies
Mining	Mining rewards taxable as income (no deduction of expenses)
Staking / lending	Taxed as income from other sources
Airdrops	Taxable when received
NFT transfers	Covered under VDA definition (unless exempt by CBDT notification)

This model makes India one of the strictest crypto tax regimes globally.

6. Taxation of Crypto Exchanges (GST Implications)

Crypto exchanges are classified as intermediaries. GST applies as:

- 18% GST on service fee/commission charged by exchanges

⁵⁷⁸ Income Tax Act, 1961, § 115BBH (tax on income from transfer of virtual digital asset) (India).

- GST may be applicable on transaction value in certain situations

In 2023, crypto exchanges and intermediaries were also brought under the Prevention of Money Laundering Act (PMLA), imposing strict reporting obligations.⁵⁷⁹

This ensures:

- KYC compliance
- Record maintenance of transactions
- Reporting to Financial Intelligence Unit (FIU)

7. Compliance Burdens for Crypto Users

Indian crypto investors face multiple layers of compliance:

- Filing crypto-related income separately
- Maintaining trade records (date, cost, transaction value)
- TDS deduction even during crypto-to-crypto swaps

Failure to deduct TDS may be treated as tax default, attracting penalties.

8. Critical Evaluation

Positive outcomes	Challenges created
Prevents tax evasion and black money	Extremely high tax rate discourages investment
Creates audit trail through TDS	No deduction for cost other than acquisition
Recognizes crypto under Indian law	No loss set-off even within crypto category
Raises revenue for the government	Pushes traders to offshore exchanges / Binance P2P

The 30% tax + TDS framework has pushed many traders to foreign platforms, resulting in a capital flight risk for India.

V. Comparison With International Tax Regimes

The taxation of crypto assets varies significantly across jurisdictions. While India has adopted a taxation-first approach through the introduction of Section 115BBH of the Income Tax Act (a flat 30% tax on crypto transfers), many international jurisdictions classify crypto based on function investment, trading, or personal use. A comparative reference to the United States, the United Kingdom, Singapore, and Australia reveals the possibility of a more nuanced framework.

1. United States – “Property Classification Approach”

In the United States, the Internal Revenue Service (IRS) treats cryptocurrency as property, not currency.⁵⁸⁰ Thus, capital gains tax applies when crypto is sold, exchanged, or used to purchase goods or services. The rate of tax depends on the holding period:

- Short-term (held <12 months): taxed as ordinary income
- Long-term (held >12 months): eligible for reduced capital gains tax

2. United Kingdom – “Case-by-Case Classification Approach”

HM Revenue and Customs (HMRC) follows a purpose-based classification.⁵⁸¹ Crypto transactions are taxed based on the nature of the activity:

- Individual investors → Capital Gains Tax
- Traders → Income tax (if activity constitutes trading)
- Mining/staking → Taxed as miscellaneous income

HMRC recognizes crypto asset activities under different heads and provides separate guidance for mining, airdrops, and crypto received as employment remuneration.

⁵⁷⁹ Notification No. 15/2023, Ministry of Finance, Government of India (Mar. 7, 2023) (bringing VDA service providers under PMLA).

⁵⁸⁰ Internal Revenue Service, Notice 2014-21, 2014-16 I.R.B. 938.

⁵⁸¹ HM Revenue & Customs, *Cryptoassets Manual* (updated 2024).

3. Singapore – “Zero Capital Gains Tax Approach”

Singapore adopts one of the most crypto-friendly tax regimes:

- No capital gains tax on long-term holding or investment⁵⁸²
- Crypto taxed only as business income when trading is carried out as a business activity

This approach attracts global crypto enterprises to register in Singapore. The focus is not on taxing gains, but on regulating anti-money laundering (AML) compliance through the Payment Services Act.

4. Australia – “Capital Gains + Personal Use Exemption”

The Australian Taxation Office (ATO) follows a hybrid model:

- Cryptocurrency is treated as a capital gains tax (CGT) asset
- If crypto is held for personal use (e.g., purchasing goods/services), it may be exempt from CGT if the transaction value is below the prescribed threshold⁵⁸³

This exemption recognizes that not all crypto usage constitutes investment or speculation.

Comparative Insights Relevant for India

Country	Tax Treatment	Distinctive Feature
USA	Property	Long-term capital gains benefit
UK	Activity-based	Classification based on purpose
Singapore	No CGT	Tax only if treated as business income
Australia	CGT with exemptions	“Personal use” exemption

India’s present flat 30% tax ignores differences in investment vs. trading activity. Unlike the US or UK, India does not differentiate between short-term traders and long-term investors.

Unlike Singapore and Australia, India’s system does not consider economic intent. This has led to:

- Capital flight to foreign exchanges
- Shift to peer-to-peer (P2P) trading to avoid 1% TDS
- Reduced liquidity in Indian crypto markets

Key Takeaway:

India’s crypto tax policy focuses exclusively on revenue generation and enforcement, whereas global models balance taxation with innovation incentives. A hybrid approach similar to the UK and Australia where tax applies depending on nature and purpose may foster industry growth while maintaining compliance.

VI. Key Challenges in Crypto Tax Implementation in India

India’s decision to tax crypto assets through the Finance Act, 2022 has brought Virtual Digital Assets (VDAs) into the formal tax structure. While this step signals policy acceptance, practical enforcement remains complex. Several challenges hinder smooth taxation, compliance, and regulatory clarity.

1. Lack of a Comprehensive Regulatory Framework

Although the Income Tax Act now defines VDAs, India still lacks a standalone regulatory statute governing crypto trading or ownership. Section 115BH provides taxation rules, but there is no law clarifying whether crypto is a commodity, security, or speculative instrument. Tax only if treated as business income. *Association of India v. Reserve Bank of India*, held that RBI cannot impose disproportionate restrictions on legitimate business activities related to crypto assets.⁵⁸⁴ The Court recognized that innovation cannot be curbed by regulatory overreach.

⁵⁸² Inland Revenue Authority of Singapore, *IRAS e-Tax Guide: Digital Token Tax Treatment* (Apr. 2022).

⁵⁸³ Australian Taxation Office, *Tax Treatment of Crypto Assets*, ATO.gov.au (2024).

⁵⁸⁴ *Internet and Mobile Association of India v. Reserve Bank of India*, (2020) 10 SCC 274.

However, post-judgment, regulatory uncertainty persists. The absence of a licensing framework for exchanges creates ambiguity over which authority SEBI, RBI, or GST Department should regulate crypto activities.

2. Valuation and Volatility Issues

A major challenge is determining the fair market value (FMV) during crypto-to-crypto transfers. Unlike traditional securities, crypto has no standardized valuation mechanism because prices vary across exchanges and international platforms. Section 194S obligates exchanges or buyers to deduct 1% TDS on transfers of crypto assets. But neither the Income Tax Act nor CBDT guidelines clearly define which price index should be used for valuation when multiple market rates exist.⁵⁸⁵

This lack of standard pricing creates disputes between taxpayers and the tax department, especially in transactions involving decentralized exchanges (DEXs).

3. Difficulty in Tracking Cross-Border Transactions

Cryptocurrency transactions occur on global, borderless networks. India's Exchange Control laws (FEMA) require disclosures when transferring capital assets outside India. However, crypto is not yet categorized under FEMA. Further, cross-border payments routed through offshore exchanges and peer-to-peer wallets complicate monitoring. The Financial Action Task Force (FATF), in its 2023 report, observed that crypto anonymity tools like mixers and tumblers significantly hinder anti-money laundering oversight.⁵⁸⁶

Even though the Ministry of Finance brought crypto exchanges and intermediaries under the Prevention of Money Laundering Act (PMLA) in March 2023, enforcement is still limited because blockchain transactions do not always reveal the identity of users.

4. High Tax Rates Leading to Capital Flight and Tax Evasion

India's tax structure on crypto is one of the harshest globally 30% tax on profits + 1% TDS on every transaction, and no set-off of losses. Within months of implementation, leading exchanges reported significant drops in trading volume as Indian investors shifted to foreign platforms to avoid compliance. A report by Esya Centre found that after the introduction of Section 115BBH and 194S, nearly ₹32,000 crore worth of crypto assets moved from Indian exchanges to foreign ones.⁵⁸⁷

The tax structure, intended as a revenue mechanism, may be pushing Indian investors into unregulated spaces and encouraging offshore trading.

VII. Findings, Suggestions & Way Forward

The analytical review of India's taxation framework reveals that the government has adopted a tax-before-regulation approach. While taxation under Sections 115BBH and 194S has introduced clarity on revenue collection, the absence of a dedicated regulatory statute creates uncertainty for investors, exchanges, and enforcement agencies. India currently treats crypto only as a taxable Virtual Digital Asset (VDA), without granting it recognition as legal tender or a regulated financial instrument.

Key Findings

Taxation-first approach is discouraging participation

- A flat 30% tax on gains from transfer of VDAs, combined with the inability to set off losses, makes India one of the harshest tax regimes in the world for crypto.
- The requirement of 1% TDS on every transaction discourages active trading and reduces

⁵⁸⁵ Income-tax Act, 1961, § 194S.

⁵⁸⁶ Financial Action Task Force (FATF), *Targeted Update on Implementation of the FATF Standards on Virtual Assets and VASPs* (2023).

⁵⁸⁷ Esya Centre, *A Crypto Trading Behaviour Study Post Virtual Digital Asset (VDA) Taxation in India* (2023).

liquidity, forcing investors to move to offshore platforms.

No differentiation between long-term investors and traders

- o Unlike equity, where long-term capital gains receive preferential tax treatment, crypto is taxed uniformly, irrespective of the nature or purpose of holding.

Rise in P2P and offshore trading

- o Due to high TDS compliance, traders increasingly shift to decentralized exchanges (DEXs) and foreign platforms.
- o According to reports presented in Parliament, over 50% of Indian crypto activity moved offshore after implementation of TDS⁵⁸⁸.

Regulatory overlap and jurisdictional confusion

- o Income Tax Act governs taxation,
- o RBI governs currency and payments,
- o FIU-IND governs monitoring under PMLA.

Yet, no single authority regulates crypto as a financial product.

Suggestions & Recommendations

1. Need for a dedicated “Crypto Regulation Act”

Crypto should be classified legislatively either as:

- a financial asset regulated by SEBI, or
- a commodity regulated by a separate authority.

Countries like the UK have explicitly categorized crypto under the Financial Services and Markets Act⁵⁸⁹. A dedicated law in India will reduce ambiguity and increase investor confidence.

2. Reform the taxation structure

Current framework	Suggested reform
Flat 30% tax on gains	Introduce slab/CGT-based taxation model (like equities)
No set-off of losses	Allow set-off within crypto transactions
1% TDS on every transaction	Reduce to 0.01% (as recommended by industry bodies)

A differential tax structure for long-term holding would align India with OECD Crypto Asset Reporting Framework (CARF) standards⁵⁹⁰.

3. Encourage compliance through incentives

- Introduce a tax rebate or lower tax rate for disclosures during the initial phase.
- Ensure clarity on the treatment of staking rewards, mining income, and NFTs.

4. Establish a licensing + registration framework

Just as the US requires reporting under the Financial Crimes Enforcement Network (FinCEN), India can:

- Mandate registration of exchanges with FIU-IND,
- Make KYC/AML compliance mandatory,
- Require annual disclosure of wallet addresses and transaction volumes.

5. Promote investor awareness

Most litigation arises due to lack of disclosure and misinformation by exchanges. Investor protection can include:

- Mandatory risk disclosures by crypto platforms,
- Public awareness campaigns, similar to those run for stock markets.

⁵⁸⁸ Ministry of Finance, Lok Sabha Unstarred Question No. 1234 (2023).
⁵⁸⁹ Financial Services and Markets Act, 2023, c. 29 (U.K.).

⁵⁹⁰ Organisation for Economic Co-operation and Development, Crypto-Asset Reporting Framework (2023).

6. International coordination and uniformity

Crypto is inherently borderless. One country cannot regulate it in isolation. India should adopt mutual information-sharing agreements with globally compliant jurisdictions (like Singapore and the EU's MiCA framework)⁵⁹¹.

A balanced regulatory model neither overly restrictive nor laissez-faire is essential. Excessive taxation pushes innovation offshore, while the lack of regulation increases the risk of fraud, tax evasion, and capital flight. India should move toward legalization through clear regulation, backed by a more rational tax structure.

VIII. Conclusion

India's approach to crypto asset governance reflects a *regulate-through-taxation* philosophy rather than establishing a comprehensive legal framework. While the Finance Act, 2022 introduced a clear taxation regime by inserting Section 115BBH and Section 194S of the Income Tax Act (30% tax + 1% TDS), this approach treats crypto primarily as a revenue source and not as an emerging financial and technological innovation. The Indian government has repeatedly clarified that crypto is not legal tender and is only recognized as a *Virtual Digital Asset (VDA)* under tax law.⁵⁹²

The Supreme Court's judgment in *Internet and Mobile Association of India v. Reserve Bank of India* held that while the RBI can regulate, it cannot impose a disproportionate restriction, signaling constitutional protection for trading in crypto assets.⁵⁹³ However, the absence of a dedicated legislation results in ambiguity on issues such as classification (asset/security/commodity), GST applicability, or cross-border remittances under FEMA.

High taxation, disallowance of loss set-off, and strict TDS rules have redirected Indian investors

to foreign exchanges and unregulated peer-to-peer markets.⁵⁹⁴ This shift undermines both revenue collection and investor protection. India's taxation-first stance contrasts with regulatory-first frameworks such as the European Union's MiCA (Markets in Crypto-Assets Regulation), which focuses on licensing intermediaries and protecting users.⁵⁹⁵

Thus, while the taxation regime has brought formal recognition, the lack of a regulatory statute creates uncertainty for investors, startups, and exchanges. India must move towards (a) classification of crypto assets, (b) a licensing framework for exchanges, and (c) rational tax structure allowing loss set-off. A balanced regulatory framework would prevent capital flight, attract investment, and allow India to harness blockchain innovation while ensuring legality and transparency.

India now stands at a crucial policy junction: crypto assets should not remain only a source of tax revenue, but also a catalyst for technological and financial innovation.

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⁵⁹¹ Regulation (EU) 2023/1114 of the European Parliament and of the Council, 2023 O.J. (L 150/40).

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⁵⁹³ *Internet & Mobile Ass'n of India v. Reserve Bank of India*, (2020) 10 SCC 274 (India).

⁵⁹⁴ NASSCOM & WazirX Report, *The India Crypto Ecosystem: 2022*, at 11 (2022).

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