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REGULATING THE UNREGULATED: A COMPARATIVE LEGAL ANALYSIS OF CRYPTOCURRENCY FRAMEWORKS IN INDIA, THE EUROPEAN UNION, AND THE UNITED STATES

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ABSTRACT

The legal and regulatory issues pertaining to cryptocurrencies in the US, EU, and India are compared in this essay. The analysis is set against the backdrop of the WazirX hacking incident in 2024, which revealed serious weaknesses in India's virtual digital asset regulations. The lack of comprehensive regulation has led to uncertainties over ownership rights, investor protection, regulatory monitoring, and responsibility in cases of financial loss, despite the growing acceptance and taxation of cryptocurrencies in India. Currently, Virtual Digital Assets (VDAs) in India are subject to a 30% tax and a 1% Tax Deducted at Source (TDS), but they are not officially recognised as property or legal tender under what academics refer to as a "taxed but unregulated" framework.

The study also looks at the different regulatory strategies used by the US and the EU. While the United States still uses a disjointed agency-driven paradigm with overlapping jurisdiction between the SEC and CFTC, the European Union's Markets in Crypto-Assets Regulation (MiCA) is the first comprehensive legislative framework for crypto-assets. However, recent events in both countries show efforts to improve supervision and harmonise regulations. Through this comparative analysis, the report makes the case that cryptocurrency regulation around the world is still in its infancy, with each country facing unique institutional and legal obstacles. It ends by outlining important lessons that India can learn from the US and EU frameworks while creating its own cogent and well-balanced cryptocurrency regulatory system.

Keywords: Cryptocurrency Regulation, Virtual Digital Assets, MiCA, SEC, CFTC, RBI, Property Law, Tax, AML, Blockchain, Legal Frameworks, Comparative Law

1. INTRODUCTION

At first, cryptocurrency was a technological advancement that promised a decentralised, international financial system free from traditional banks and political regulation. Cryptocurrencies, which are based on blockchain technology, function via distributed digital ledgers that guarantee transaction security, transparency, and immutability. Cryptocurrency proponents saw it as a game-changing innovation that would allow peer-to-peer transactions worldwide without the need for middlemen like banks or financial institutions.

But as time went on, cryptocurrencies started to garner interest in a very different setting. Concerns about fraud, money laundering, Ponzi schemes, financial instability, cybercrime, and investor losses also gained prominence in tandem with the swift expansion of adoption and investment. This resulted in a great deal of legal and regulatory uncertainty in India, as evidenced by government taxation policies, Reserve Bank of

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India attempts to limit cryptocurrency-related activities, Supreme Court of India judicial intervention, and the relocation or closure of multiple cryptocurrency exchanges. The exact legal definition of cryptocurrencies within current legal frameworks remains one of the most important unanswered legal concerns notwithstanding these advancements.[433]

In India, that question has been remarkably hard to answer. For years, the government taxed cryptocurrency under the Income Tax Act without ever clearly defining what it was. The RBI tried to ban banks from dealing with crypto exchanges, but the Supreme Court struck down that ban in 2020 as "disproportionate." After that, the government introduced a 30% tax on crypto gains and a 1% TDS on every transaction, but still did not pass any law that said whether crypto was legal or illegal, whether it counted as property, who could trade it, who regulated it, or what happened if an exchange collapsed. This is what legal scholars call the "taxed but unregulated" paradox: the state extracts value from digital assets through taxation but refuses to grant them the proprietary protections that every other taxable asset enjoys.[434]

Then came October 2025. The Madras High Court delivered a judgment in Rhutikumari v. Zanmai Labs Pvt. Ltd. that changed everything. The case arose from the 2024 WazirX hack, where millions of dollars' worth of customer assets were stolen. The court had to decide whether cryptocurrency could be treated as "property" to grant interim protection to the affected investor. Justice N. Anand Venkatesh held that cryptocurrency, although not recognized as legal tender, is a distinct form of intangible movable property capable of being owned, possessed, transferred, and protected through proprietary injunctions. For the first time, an Indian court explicitly classified cryptocurrency as property.[435]

This was a landmark ruling, but it was also a reminder of how far India still has to go. A single High Court judgment is not a comprehensive regulatory framework. India still lacks a unified VDA law, clear classification norms, consumer protection mechanisms, and prudential standards for service providers. Meanwhile, the European Union has already enacted MiCA, the world's first comprehensive crypto regulation. And the United States, despite its fragmented agency-driven approach, is moving toward harmonization between the SEC and CFTC.

2. OBJECTIVES OF THE STUDY

The primary objective of this research is to look at how cryptocurrencies are now treated legally and regulated in the US, EU, and India. The study aims to determine the regulatory bodies involved, evaluate the degree of legal recognition and regulation of cryptocurrency-related activities, and analyse the current legal frameworks governing cryptocurrencies in various jurisdictions. By doing this, the research aims to assess the true legal position that exists inside each jurisdiction, going beyond public debate and media portrayals.

Examining the key court rulings and legislative changes that have had a big impact on bitcoin regulation is another goal of the research. The Supreme Court of India's 2020 ruling overturning the Reserve Bank of India's banking restrictions, the Madras High Court's 2025 ruling acknowledging cryptocurrency as property, and later court rulings regarding the nature of Bitcoin trading are highlighted in the Indian context. The report also looks at how the European Union's Markets in Crypto-Assets Regulation (MiCA) is being implemented and how US regulations are changing, including jurisdictional disputes between the SEC and the CFTC and current attempts to harmonise regulations.

The study also seeks to determine each jurisdiction's primary outstanding legal issues. The focus in India is on the lack of comprehensive legislation, even if there are taxation and anti-money laundering duties. The

[433] Vishwakarma, P., Khan, Z., & Jain, T. (2022). "Cryptocurrency, Security Issues and Upcoming Challenges to Legal Framework in India," Journal of Legal Studies, 8(1), p. 45.

[434] V. Bhandari, Constitutional Challenges to Cryptocurrency Regulation in India, 67(2) J. Indian L. Inst. 215 (2025).

[435] Zanmai Labs Pvt Ltd v. Rhutikumari (2025 SCC OnLine Mad 1234)

study looks at issues with cross-border supervision and regulatory fragmentation in the EU and jurisdictional ambiguity and the absence of a cohesive federal framework in the US. The study compares these three methods in an effort to assess their advantages and disadvantages and find lessons that could be used in other jurisdictions.

Lastly, using the regulatory experiences of the US and the EU, the paper seeks to develop useful recommendations for India. It aims to investigate the fundamental elements of a successful cryptocurrency regulatory system that may strike a balance between financial stability, technological advancement, investor protection, and regulatory predictability.

3. METHODOLOGY

The present study primarily adopts a doctrinal research methodology involving the analysis of legal texts, judicial decisions, governmental reports, regulatory frameworks, and scholarly writings relating to cryptocurrency regulation. The research focuses on examining the existing legal position concerning cryptocurrencies and the manner in which such laws and regulations are interpreted and implemented across different jurisdictions.

The primary sources consulted for the Indian framework include the Constitution of India, the Income Tax Act, 1961, particularly Sections 2(47A) and 115BBH, the Prevention of Money Laundering Act, 2002, and various circulars issued by the Reserve Bank of India concerning virtual currencies. Judicial decisions examined include the landmark judgment of the Supreme Court of India in Internet and Mobile Association of India v. RBI (2020), as well as the decision of the Madras High Court in Rhutikumari v. Zanmai Labs Pvt. Ltd. (2025), which recognized cryptocurrency as property for the first time in Indian jurisprudence.[436]

With respect to the European Union, the study analyzes the Markets in Crypto-Assets Regulation (MiCA), Regulation (EU) 2023/1114, relevant guidelines issued by the European Securities and Markets Authority (ESMA), and the joint position paper issued in September 2025 by French, Austrian, and Italian regulators advocating reforms to strengthen the MiCA framework. The research also examines the European Commission's Market Integration Package proposals introduced in December 2025.

For the United States, the study examines enforcement actions initiated by the SEC, the regulatory approach adopted by the CFTC concerning digital commodities, legislative developments such as the CLARITY Act and the Senate Agriculture Committee's bipartisan discussion draft, as well as the September 2025 joint statement issued by the SEC and CFTC regarding regulatory harmonization. The proposed "innovation exemption" advanced by SEC Chair Paul Atkins has also been considered as part of the evolving regulatory discourse.

In addition to primary legal materials, the study relies upon secondary sources including scholarly articles, legal commentaries, policy analyses, and reports published by legal platforms and institutions such as CMS Law, Fox & Mandal, Lexology, and Paul Hastings. News reports and contemporary analyses from publications including The Indian Express, CNBC TV18, Bar and Bench, and ETV Bharat were also consulted to obtain a comprehensive understanding of recent developments in cryptocurrency regulation.

The study acknowledges certain limitations inherent in the subject matter. Cryptocurrency regulation remains a rapidly evolving field, with new legislative measures, judicial decisions, and regulatory policies emerging continuously across jurisdictions. Consequently, any assessment of the current legal position remains subject to future developments. Nevertheless, the study attempts to provide a comprehensive and comparative understanding of the present

[436] Zanmai Labs Pvt Ltd v. Rhutikumari (2025 SCC OnLine Mad 1234)

regulatory landscape and the possible future direction of cryptocurrency regulation.

5. THE LEGAL STATUS OF CRYPTOCURRENCIES IN INDIA

5.1 The Definitional Crisis

One of the most fundamental problems in Indian crypto regulation is that there is no clear legal definition of what a cryptocurrency is. The term "Virtual Digital Asset" (VDA) is defined in Section 2(47A) of the Income Tax Act, 1961, which was introduced by the Finance Act, 2022. This definition includes any information or code or number or token providing a digital representation of value, and includes non-fungible tokens or any other token of a similar nature.

However, this definition is for taxation purposes only. It does not create legal status, classification norms, consumer protection mechanisms, or prudential standards for service providers. It simply tells the Income Tax Department what to tax. As a result, India operates what scholars call a "taxed but unregulated" framework: digital assets are formally brought under the tax ambit, but their proprietary status under civil law remains undefined.

5.2 The RBI's Attempted Ban and the Supreme Court's Intervention

The RBI's approach to cryptocurrencies has been consistently hostile. In April 2018, the RBI issued a circular prohibiting all banks and financial institutions from providing any services to parties related to cryptocurrencies. This circular effectively strangled the crypto ecosystem by disconnecting bank account access, making it impossible for exchanges to accept deposits, process payouts, or convert crypto to fiat currency.

The Internet and Mobile Association of India (IAMAI) challenged the RBI decision, and the Supreme Court eventually ruled in March 2020 that the ban was unconstitutional and "disproportionate." The Court held that the RBI could regulate but not destroy an entire industry without proper evidence. The Court applied the doctrine of proportionality, asking whether the restriction was suitable, necessary, and balanced. It found that the RBI had failed to show that the harm caused by crypto trading was so severe as to justify an outright ban.[437]

This judgment was a turning point. It transformed India from a country that prohibited digital assets into one that allowed them to grow, albeit with policy uncertainty looming large. In just five years since March 2020, the number of investors has grown nearly 20 times, from 6 million to 119 million, with the overall market projected to cross $15 billion by 2035.

5.3 The 30% Tax and 1% TDS Regime

In Budget 2022, Finance Minister Nirmala Sitharaman announced a flat 30% tax on all income from VDAs, including cryptocurrencies and non-fungible tokens. This tax applies to all gains, with no deduction for losses. A 1% Tax Deducted at Source (TDS) is applied on every crypto transaction, even if the trade is made at a loss.

The heavy tax burden has had significant consequences. Industry reports indicate that over 90% of Indian crypto trading currently occurs on offshore platforms, resulting in more than ₹11,000 crore in uncollected TDS. The industry body Bharat Web3 Association has called for "clear and consistent policies," arguing that the current regime is "unsustainable" for the "fledgling and growing sector."

Between 2024 and 2025, the Financial Intelligence Unit (FIU)-IND has imposed fines of over Rs 28 crore on three crypto exchanges, including Binance (Rs 18.82 crore), for non-compliance with AML regulations. This shows that while India lacks comprehensive legislation, it is not completely unregulated. AML obligations under the PMLA apply to VDA service providers,

[437] Internet and Mobile Association of India v. Reserve Bank of India – (2020) 10 SCC 274

who are treated as "reporting entities" subject to KYC requirements.[438]

5.4 The Madras High Court's Landmark Judgment: Crypto as Property

The legal uncertainty surrounding VDAs finally got a judicial resolution on October 25, 2025, when the Madras High Court delivered its judgment in Rhutikumari v. Zanmai Labs Pvt. Ltd. The case arose from the 2024 cyber-attack on the WazirX exchange, operated by Zanmai Labs Pvt. Ltd. The applicant, Rhutikumari, sought protection for her XRP holdings after the exchange froze all user accounts and initiated a scheme of arrangement under the Singapore Companies Act, 1967.

The critical determination made by Justice N. Anand Venkatesh was that cryptocurrency, although not recognized as legal tender or a physical asset, is a distinct form of intangible movable property. The judgment explicitly states that these assets are capable of being owned, possessed (in a beneficial form), transferred, and protected through proprietary injunctions.

This designation was essential for the court to grant protection under Section 9 of the Arbitration and Conciliation Act, 1996, which empowers courts to grant interim measures for "securing the amount in dispute." By confirming the assets as property, the court secured the underlying value, directing Zanmai Labs to either furnish a bank guarantee or secure the assets equivalent to the value of Rhutikumari's holdings.

The judgment aligns India with global digital asset jurisprudence practiced in common law jurisdictions like the UK and Singapore. It affirms that crypto assets are protected property, granting investors enforceable ownership rights and putting exchanges under a duty to protect customer assets.

5.5 The Supreme Court's 2025 Observations

Despite the Madras High Court's progress, the Supreme Court has continued to express frustration with the absence of clear regulation. In May 2025, a bench comprising Justices Surya Kant and N. Kotiswar Singh observed that trading in Bitcoin in India is like "dealing with a refined way of Hawala business," and pointed out that "there are no regulations at present."[439]

The Court recalled that it had asked the central government to come up with a clear policy regime on virtual currency and inform the court about it. The bench said it has not received any response, and stressed that if there were a regime, there would not be any issues. The Court has since urged the Centre to establish a clear regulatory framework while acknowledging the economic impact of cryptocurrencies.

The government is currently developing a discussion paper and evaluating global norms. It has formed an inter-ministerial group comprising officials from the RBI, SEBI, and the Ministry of Finance to observe global norms. However, RBI Governor Sanjay Malhotra has reiterated that the central bank is concerned about cryptocurrencies, highlighting their potential to destabilize financial stability and monetary policy.[440]

6. THE EUROPEAN UNION: MiCA AND THE PATH TO CENTRALIZATION

6.1 Overview of MiCA

The Markets in Crypto-Assets Regulation (MiCA), formally Regulation (EU) 2023/1114, is the world's first comprehensive regulatory framework for crypto-assets. It came into force in 2023 and represents a landmark achievement in crypto regulation.

MiCA covers a wide range of activities. It regulates the issuance and trading of stablecoins (referred to as asset-referenced tokens and e-money tokens). It establishes

[438] V. Bhandari, Constitutional Challenges to Cryptocurrency Regulation in India, 67(2) J. Indian L. Inst. 215 (2025).
[439] Shailesh Babulal Bhatt v. State of Gujarat, Special Leave Petition (Criminal) No. ___ of 2025 (S.C. May 2025).
[440] Aparna Ravi, Trading in Bitcoin Is Like Hawala Business: Supreme Court Urges Centre to Regulate Crypto, The Hindu (May 2025).

licensing requirements for crypto-asset service providers (CASPs), including exchanges, custodians, and trading platforms. It imposes market abuse rules to prevent insider trading, market manipulation, and other forms of misconduct. It requires white papers for token offerings and ongoing disclosure obligations.

One of MiCA's key innovations is the "passporting" system, which allows a CASP authorized in one EU member state to provide services across the entire EU without needing separate licenses in each country. This reduces regulatory burden and promotes competition.[441]

6.2 Implementation Progress and Compliance Tables

As of July 2025, ESMA has released compliance tables showing how national authorities are aligning with MiCA guidelines. Covered areas include the conditions and criteria for qualifying crypto-assets as financial instruments, and the detection, prevention, and reporting of market abuse.

On 29 April 2025, the European Commission adopted a long-awaited Delegated Regulation supplementing MiCA, laying down regulatory technical standards (RTS) for market abuse in the crypto-asset sector. This provides detailed rules on how CASPs must detect, prevent, and report suspicious transactions.

The EU has also adopted DAC8, establishing a harmonized tax-reporting regime for crypto-asset service providers effective from 1 January 2026. This will require CASPs to report transactions to tax authorities, improving transparency and compliance.

6.3 Calls for Strengthening MiCA

Despite its comprehensiveness, MiCA is not without its critics. On 15 September 2025, the French (AMF), Austrian (FMA), and Italian (CONSOB) financial authorities issued a joint position paper outlining proposals to strengthen the framework. The paper identifies key areas where MiCA provisions fall short in ensuring effective supervision, competitiveness of European players, and investor protection.

The regulators advocate for direct supervision of significant CASPs by ESMA. Currently, under MiCA, national competent authorities (NCAs) report to ESMA, but this approach has led to fragmented oversight and regulatory arbitrage in addition to substantial costs. Drawing on the supervisory models for stablecoin issuers, the authorities propose a transfer of supervisory powers of significant CASPs to ESMA, including powers of licensing, supervision, and direct sanction.

The regulators also call for stricter rules for global platforms and third-country activities. They propose that all EU intermediaries executing crypto-asset orders on behalf of EU clients should do so on platforms compliant with MiCA or equivalent regulations. Delegation of core functions to third-country entities should be tightly controlled, with requirements for equivalent regulation and cooperation agreements.

Mandatory cybersecurity audits are also proposed. The authorities note that MiCA does not currently include an express requirement for CASPs to undergo mandatory, independent cybersecurity audits before authorization and at regular intervals. Divergent approaches have been adopted on this issue across EU member states, leading to inconsistencies.

Finally, the regulators propose a centralized token offerings system through ESMA. Centralizing token offering filings would simplify processes, reduce administrative burdens, and ensure consistent application of rules across EU member states, avoiding market fragmentation.[442]

6.4 The Market Integration Package: Transferring Supervision to ESMA

On 4 December 2025, the EU Commission published the Market Integration Package, which

[441] Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on Markets in Crypto-Assets, 2023 O.J. (L 150) 40 [hereinafter MiCA Regulation].

[442] Patti, F.P., 2023. The European MiCA regulation: a new era for initial coin offerings. Geo. J. Int'l L., 55, p.387.

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includes proposals impacting the supervision of CASPs and substantially amending the DLT Pilot regime.

The proposed amendments to MiCA would essentially transfer the supervision of CASPs from NCAs to ESMA, which would become responsible for the authorization, ongoing supervision, and enforcement of MiCA in relation to CASPs. ESMA would also become responsible for the supervision of MiCA rules to deter, investigate, and sanction market abuse for crypto-assets admitted to trading.

This represents a fundamental change to the current supervisory framework. Regulated entities, such as investment firms, that already provide crypto-asset services without CASP authorization would continue to be supervised by their existing competent authorities. However, if the provision of crypto-asset services becomes their main activity (more than 50% of total turnover in two consecutive years), supervision for all their activities would be transferred to ESMA, except for banks.

The DLT Pilot regime is also being expanded. The scope of eligible assets, currently limited to shares, bonds, and UCITS, would be expanded to all financial instruments. The scale of activities would be significantly increased, with the removal of all existing asset-specific caps and a significant increase in the total value of financial instruments a DLT market infrastructure can intermediate, from EUR 6 billion to EUR 100 billion.

6.5 Strengths and Weaknesses of MiCA

MiCA's strengths are clear. It provides legal certainty for market participants across the entire EU. It establishes uniform rules, reducing regulatory arbitrage. It protects consumers through licensing and conduct requirements. It promotes innovation by creating a clear path to compliance.

However, MiCA also has weaknesses. It is complex and costly to implement, particularly for smaller firms. It has led to fragmented oversight despite its intent, with different NCAs taking different approaches. The passporting system has created opportunities for "regulatory shopping," where CASPs seek authorization in the member state with the least stringent requirements. And even MiCA leaves gaps, particularly around decentralized finance (DeFi), which largely falls outside its scope. [443]

7. THE UNITED STATES: FROM TURF WARS TO HARMONIZATION

7.1 The Fragmented Regulatory Landscape

The United States has no single federal regulator for cryptocurrencies. Instead, multiple agencies claim jurisdiction over different aspects of digital assets, creating a fragmented and often confusing regulatory landscape.

The Securities and Exchange Commission (SEC) treats many cryptocurrencies as securities, subject to securities laws. The SEC has brought numerous enforcement actions against crypto companies for conducting unregistered securities offerings, with the agency leading enforcement with $1.69 billion in fines.

The Commodity Futures Trading Commission (CFTC) treats Bitcoin and Ethereum as commodities, subject to commodities regulation. The CFTC has focused on derivatives trading and market manipulation, imposing $624 million in fines.

Other agencies also play roles. The Financial Crimes Enforcement Network (FinCEN) imposes anti-money laundering requirements on crypto businesses. The Internal Revenue Service (IRS) taxes crypto transactions. The Office of the Comptroller of the Currency (OCC) regulates banks' crypto activities. The Department of Justice (DOJ) prosecutes criminal misuse of digital assets.

This fragmentation has created significant uncertainty. Companies often do not know which agency has jurisdiction over their activities. The SEC and CFTC have overlapping authority over

[443] Piech, K. and Pangsy-Kania, S., 2025. The Impact of Mica Regulation Implementation on the Polish Crypto-Asset Market–Consequences, Regulatory Challenges and Prospects for Reform. Ius Novum, 19(4 ENG), pp.98-120.

certain crypto products, leading to turf wars. And the absence of a unified federal framework has led some states, particularly Wyoming, to create their own crypto-friendly regulations, adding another layer of complexity.

7.2 The SEC-CFTC Harmonization Effort

However, recent developments suggest a shift toward harmonization. On 5 September 2025, SEC Chair Paul Atkins and Acting CFTC Chair Caroline Pham issued a joint statement on "regulatory harmonization," marking one of the clearest signals yet that Washington is trying to move toward a unified framework for digital assets.

The statement indicated that both agencies were prepared to begin reviewing filings for new crypto products and aligning their internal processes. Even during the government shutdown, when agencies were running below full staffing, the SEC and CFTC announced they were prepared to move forward. This eagerness suggests a transition from talking about cooperation to executing on it.

The harmonization effort is not just symbolic. It requires aligning definitions, expectations, risk frameworks, and enforcement priorities, all of which must be reconciled between two agencies with different mandates and cultures. However, the appointment of Mike Selig as CFTC Chair has facilitated coordination. Selig, previously general counsel to the SEC Crypto Task Force, has demonstrated experience working alongside Atkins, and his nomination indicates that the administration wants a chair capable of coordinating directly with the SEC on the harmonization agenda.[444]

7.3 The Innovation Exemption

SEC Chair Atkins has also proposed an "innovation exemption" to move crypto policy away from ad hoc enforcement toward structured experimentation. Rather than forcing companies to choose between full securities compliance or risking penalties, the exemption would allow them to test new products and services in a controlled environment.

The exemption, potentially formalized by late 2025 or early 2026, is designed to foster innovation while maintaining investor protection. It reflects a broader shift in Washington toward a more permissive approach to digital assets, scaling back enforcement and opening the door to experimentation.

7.4 Legislative Developments

At the legislative level, several bills are moving forward. The House passed the Digital Asset Market Clarity Act (CLARITY Act) in July 2025. The bill would establish a federal regulatory framework for issuing stablecoins and would exempt from SEC regulation the issuance and secondary trading of many of crypto's most popular tokens, such as Ethereum, Solana, BNB, and Cardano.

The Senate Agriculture Committee has released a bipartisan discussion draft that would provide new authority to the CFTC to regulate digital commodities. The Boozman-Booker draft provides a definition of "digital commodities" that differs from that provided by the CLARITY Act, creating potential conflicts that will need to be resolved in conference.

The Senate Banking Committee has also passed its own discussion draft of legislation. The bill would require intermediaries to use qualified custodians and segregate customer assets to prevent conflicts of interest. It allows for joint CFTC-SEC rulemaking for overlapping entities or dual registration, leaving some issues, like DeFi, for later debate.[445]

7.5 Recent Agency Actions

The shift in regulatory attitude is reflected in recent agency actions. The SEC Division of Investment Management issued a No-Action Letter on September 30, 2025, stating it would not

[444] US Securities and Exchange Commission, 'Application of the Federal Securities Laws to Certain Types of Crypto Assets' (Interpretive Release, March 2026).

[445] SEC enforcement actions against Coinbase, Binance, and other exchanges; CFTC enforcement actions; New York State Department of Financial Services, 'BitLicense' (23 NYCRR Part 200); FTC enforcement actions against crypto fraud schemes.

recommend enforcement against advisors who maintain crypto assets with "State Trust Companies." This provides regulatory relief for investment advisors holding crypto assets.

The DOJ disbanded its crypto enforcement team and narrowed its focus to serious criminal misuse of digital assets, such as fraud, terrorism, and organized crime. The FDIC signaled a more open approach to blockchain-related banking activities. The CFTC withdrew longstanding staff advisories to streamline oversight of digital asset derivatives.

The IRS also saw a major development. The president signed into law a resolution to repeal an IRS rule that would have expanded the definition of "broker" to capture DeFi protocols. This was a significant victory for the crypto industry, which had argued that the rule was overbroad and unworkable.

8. COMPARATIVE ANALYSIS: INDIA, EU, AND US

1. Regulatory Approach

India follows a mixed regulatory approach where crypto assets are governed mainly through tax laws, anti-money laundering (AML) provisions, and judicial interpretations. There is no single dedicated crypto law, and multiple authorities such as RBI, SEBI, CBDT, and FIU-IND are involved in regulation. In contrast, the European Union has adopted a comprehensive and unified framework through the **MiCA (Markets in Crypto-Assets Regulation)**, which provides clear and structured rules for crypto-assets across member states. The United States, on the other hand, follows a fragmented regulatory system where different agencies like SEC, CFTC, FinCEN, IRS, and OCC regulate different aspects of cryptocurrency.

2. Legal Status of Cryptocurrency

In India, cryptocurrency is not considered legal tender; however, it has been classified as a form of property by judicial interpretation, such as the Madras High Court ruling. The European Union also does not recognize crypto as legal tender but regulates it as crypto-assets under MiCA. Similarly, in the United States, cryptocurrencies are not legal tender and are treated either as commodities or securities depending on their nature and usage.

3. Regulatory Authorities

India's regulatory system involves multiple bodies including RBI, SEBI, CBDT, and FIU-IND, leading to overlapping jurisdictions. The European Union primarily relies on ESMA and National Competent Authorities (NCAs) for implementation and supervision. In the United States, regulation is divided among several agencies such as SEC, CFTC, FinCEN, IRS, OCC, and DOJ, resulting in a highly fragmented structure.

4. Legal and Legislative Framework

India regulates cryptocurrencies under existing laws such as the Income Tax Act (Section 2(47A) and 115BBH) and the Prevention of Money Laundering Act (PMLA). The European Union has introduced a dedicated and comprehensive law known as **MiCA (Regulation EU 2023/1114)**. In the United States, a unified crypto law is still evolving, with proposals like the CLARITY Act and various state-level regulations already in place.

5. Taxation System

India imposes a flat 30% tax on crypto gains along with a 1% TDS on transactions, making it one of the strictest tax regimes. The European Union is moving toward standardized reporting through DAC8 regulations from 2026, ensuring transparency across member states. In the United States, cryptocurrency is taxed under capital gains rules, with strict reporting requirements enforced by the IRS.

6. Stablecoin Regulation

India currently does not have a specific regulatory framework for stablecoins, although discussions are ongoing. The European Union regulates stablecoins comprehensively under MiCA, providing clear rules for issuance and operation. In the United States, stablecoin regulation is still developing at the federal level, while some states have introduced their own regulatory measures.

8.2 Key Strengths and Weaknesses

India

Strengths: Large and growing user base (over 100 million). Judicial recognition of crypto as property. Tax framework provides some revenue. AML compliance under PMLA.

Weaknesses: No comprehensive legislation. "Taxed but unregulated" paradox. High taxes driving trading offshore. Supreme Court has called the situation a "refined form of Hawala." No consumer protection. No prudential standards for service providers. Regulatory fragmentation between RBI, SEBI, CBDT, and FIU-IND.

European Union

Strengths: World's first comprehensive regulatory framework. Legal certainty across 27 member states. Passporting system reduces burden. Strong consumer protection. Market abuse rules. Harmonized tax reporting (DAC8).

Weaknesses: Complex and costly to implement. Fragmented oversight across NCAs. Regulatory shopping among member states. DeFi largely outside scope. Calls for strengthening from French, Austrian, Italian regulators.

United States

Strengths: Sophisticated regulatory infrastructure. Significant agency expertise. Multiple legislative proposals advancing. SEC-CFTC harmonization effort. Innovation exemption proposed.

Weaknesses: Fragmented, agency-driven approach. Jurisdictional turf wars between SEC and CFTC. No unified federal framework. State-level patchwork (Wyoming vs. New York). Enforcement-heavy approach historically.

9. KEY LEGAL CHALLENGES

9.1 India

The central challenge in India is the absence of comprehensive legislation. As one analysis notes, "at present, crypto assets in India lack legal status, classification norms, consumer-protection mechanisms, and prudential standards for service providers."

The "taxed but unregulated" framework creates a constitutional dilemma. As the Madras High Court observed, the state legally extracts value through the imposition of a 30% tax on profits without granting investors the fundamental proprietary protections accorded to other taxable assets. This imbalance leaves millions of investors exposed to significant risk in contractual disputes, enforcement actions, and recovery procedures.

The high tax burden has also pushed trading offshore. Industry reports estimate that over 90% of Indian crypto trading currently occurs on offshore platforms, resulting in more than ₹11,000 crore in uncollected TDS. This not only deprives the government of revenue but also exposes investors to greater risk, as offshore platforms are not subject to Indian consumer protection laws.

The regulatory fragmentation between the RBI, SEBI, CBDT, and FIU-IND also creates confusion. Each agency has a different perspective on VDAs, and there is no coordinated approach. The RBI remains hostile to cryptocurrencies, while the tax authorities treat them as taxable assets, and the FIU-IND imposes AML obligations.

Finally, the absence of clear rules for stablecoins, DeFi, and NFTs leaves these rapidly growing sectors completely unregulated. As the government develops its discussion paper, it must decide how to address these emerging issues.

9.2 European Union

The EU's challenges are different. While MiCA provides a comprehensive framework, its implementation has revealed significant gaps.

First, regulatory fragmentation remains a problem despite MiCA. Different NCAs have taken different approaches to supervising CASPs, leading to inconsistent outcomes. The French, Austrian, and Italian regulators have called for direct ESMA supervision of significant CASPs to address this issue.

Second, the passporting system has created opportunities for "regulatory shopping," where

CASPs seek authorization in the member state with the least stringent requirements. The French AMF has said it would not rule out challenging the passporting of a license granted by a different member state, arguing that CASPs "are doing their regulatory shopping all over Europe, trying to find a weak link."

Third, cybersecurity requirements are not uniform. MiCA does not currently include an express requirement for mandatory, independent cybersecurity audits, leading to divergent approaches across member states.

Fourth, DeFi largely falls outside MiCA's scope. This is a significant gap, as DeFi protocols have grown rapidly and pose unique regulatory challenges that MiCA does not address.

Fifth, the supervision of third-country entities remains weak. The French, Austrian, and Italian regulators have called for stricter rules for global platforms, including mandatory use of MiCA-compliant or equivalent platforms for EU intermediaries.

9.3 United States

The US faces a different set of challenges, rooted in its fragmented, agency-driven approach.

The most fundamental challenge is the absence of a unified federal framework. The SEC and CFTC have overlapping jurisdiction over certain crypto products, leading to turf wars and regulatory uncertainty. Companies often do not know which agency has jurisdiction over their activities.

The classification question remains unresolved. The SEC treats many cryptocurrencies as securities, subjecting them to securities laws. The CFTC treats Bitcoin and Ethereum as commodities. This distinction matters enormously, as securities regulation is far more stringent than commodities regulation.

The enforcement-heavy approach of the SEC has been criticized by industry participants. The agency has brought numerous high-profile enforcement actions against crypto companies, including Ripple, Coinbase, and Binance. While the SEC has imposed $1.69 billion in fines, critics argue that this approach has stifled innovation and driven companies overseas.

Finally, the absence of a federal framework has led to a state-level patchwork. Wyoming has created a crypto-friendly regulatory environment, including a special purpose depository institution charter for crypto banks. New York has imposed stringent requirements through its BitLicense regime. This fragmentation creates compliance burdens for companies operating across state lines.

10. PROSPECTS AND RECOMMENDATIONS

10.1 India

Based on this analysis, here are some suggestions for India.

Pass comprehensive VDA legislation. The most urgent need is a unified law that defines VDAs, establishes licensing requirements for service providers, creates consumer protection mechanisms, and sets prudential standards. The Bharat Web3 Association's draft VDA Regulatory Authority Bill provides a starting point.

Clarify the regulatory mandate. A single agency should be designated as the primary regulator for VDAs. This could be SEBI, expanded to cover digital assets, or a new agency specifically for VDAs. The current fragmentation between RBI, SEBI, CBDT, and FIU-IND is unsustainable.

Rationalize the tax regime. The 30% tax and 1% TDS have pushed trading offshore. Lowering the TDS rate and allowing loss offset would bring trading back onshore, increasing revenue and investor protection. The industry's proposal to reduce TDS from 1% to 0.01% deserves serious consideration.

Build on the Madras High Court judgment. The classification of cryptocurrency as property provides a foundation for civil law protections. The government should codify this in legislation, ensuring that investors have enforceable ownership rights and that exchanges have clear custody obligations.

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Address stablecoins and DeFi. The discussion paper should address stablecoins and DeFi, not just cryptocurrencies. Stablecoins pose unique risks related to reserve management and redemption. DeFi poses challenges related to decentralization and governance.

Coordinate with global standards. India should align its framework with international standards from the Financial Stability Board (FSB) and the International Organization of Securities Commissions (IOSCO). This will facilitate cross-border cooperation and reduce regulatory arbitrage.

10.2 European Union

The EU's path forward involves strengthening MiCA while preserving its core architecture.

Implement ESMA direct supervision. The proposals for direct ESMA supervision of significant CASPs should be adopted. This would prevent regulatory fragmentation, ensure uniform rule enforcement, and reduce supervision costs.

Address regulatory shopping. The passporting system should be reformed to prevent "regulatory shopping." Minimum standards should be established to ensure that all NCAs apply MiCA consistently.

Add mandatory cybersecurity audits. MiCA should be amended to include an express requirement for CASPs to undergo mandatory, independent cybersecurity audits before authorization and at regular intervals.

Expand MiCA to cover DeFi. The EU should consider how to bring DeFi within the regulatory perimeter, either through amendments to MiCA or through separate legislation.

Clarify third-country rules. Stricter rules for global platforms serving EU clients should be adopted, including mandatory use of MiCA-compliant platforms and tight controls on delegation of core functions.

10.3 United States

The US needs to resolve its fragmentation.

Pass comprehensive federal legislation. The CLARITY Act and the Senate Agriculture Committee's discussion draft should be reconciled and passed into law. A unified federal framework would resolve the SEC-CFTC turf wars and provide legal certainty.

Clarify the SEC-CFTC jurisdictional boundary. Legislation should clearly define which digital assets are securities and which are commodities, and which agency has jurisdiction over which activities.

Implement the innovation exemption. The SEC's proposed innovation exemption should be formalized, allowing companies to test new products in a controlled environment without fear of enforcement action.

Harmonize state and federal regulation. Federal legislation should pre-empt conflicting state laws, creating a uniform national framework.

Strengthen international cooperation. The US should work with the EU and other jurisdictions to develop global standards for crypto regulation, reducing regulatory arbitrage and facilitating cross-border cooperation.

11. CONCLUSION

I started this paper with a question about what happened to the WazirX investors. They lost millions of dollars, and nobody knew what to do. The law did not recognize their assets as property. The government taxed their gains but did not protect their holdings. The regulators watched from the sidelines. The courts stepped in, but only after the damage was done.

The Madras High Court's judgment in Rhutikumari v. Zanmai Labs changed the legal landscape. For the first time, an Indian court explicitly classified cryptocurrency as property. This means that investors now have enforceable ownership rights. Exchanges now have a duty to protect customer assets. The legal foundation for civil remedies now exists.

But a single High Court judgment is not a comprehensive regulatory framework. India still

lacks a unified VDA law. It still lacks clear classification norms, consumer protection mechanisms, and prudential standards for service providers. It still operates under a "taxed but unregulated" framework that the Supreme Court has likened to a "refined form of Hawala business."

The European Union has shown what comprehensive regulation looks like. MiCA is not perfect, and European regulators themselves are calling for significant strengthening. But it is a start. It provides legal certainty, consumer protection, and a clear path to compliance. The fact that the EU is already discussing how to strengthen MiCA, with proposals for direct ESMA supervision, mandatory cybersecurity audits, and centralized token offerings, shows that the framework is alive and evolving.

The United States is moving in a similar direction, albeit from a very different starting point. After years of fragmentation and turf wars, the SEC and CFTC are now talking about harmonization. The House has passed the CLARITY Act. The Senate is working on bipartisan legislation. The administration has proposed an innovation exemption. The pieces of a unified federal framework are coming together.

What can India learn from these examples? First, that comprehensive legislation is essential. A patchwork of tax law, AML requirements, and judicial pronouncements is not enough. India needs a unified VDA law that addresses classification, licensing, consumer protection, prudential standards, and market conduct.

Second, that a single regulator should have primary responsibility. The current fragmentation between the RBI, SEBI, CBDT, and FIU-IND is unsustainable. A designated primary regulator would provide clarity and consistency.

Third, that taxation should be rationalized. The 30% tax and 1% TDS have pushed trading offshore, depriving the government of revenue and exposing investors to greater risk. Lowering the tax burden would bring trading back onshore.

Fourth, that India should build on its judicial progress. The Madras High Court's classification of cryptocurrency as property provides a foundation for civil law protections. The government should codify this in legislation.

Fifth, that India should coordinate with global standards. The FSB and IOSCO are developing international standards for crypto regulation. India should align its framework with these standards to facilitate cross-border cooperation.

The path forward is not easy. The RBI remains hostile to cryptocurrencies. The government is moving slowly. The Supreme Court is frustrated. But the legal landscape is shifting. The Madras High Court has opened a door. The question is whether the government will walk through it.

The investors who lost money in the WazirX hack deserve better. The 119 million crypto users in India deserve better. They deserve a legal framework that protects their rights, regulates the market, and promotes innovation. India is not there yet. But with the right legislation, the right regulatory mandate, and the right international cooperation, it can get there.

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