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CRYPTOCURRENCY REGULATION IN INDIA

BETWEEN THE VIRTUAL DIGITAL ASSETS FRAMEWORK AND LEGISLATIVE VACUUM

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EXECUTIVE SUMMARY

India stands at a critical crossroads in its approach to cryptocurrency and virtual digital assets (VDAs). As the second-largest crypto market by user base globally, with over 107 million active participants and $6.6 billion in retail investments in 2024, the country operates without a dedicated regulatory statute — a paradox that the Supreme Court of India itself has called "completely obsolete."

The current landscape is defined by a patchwork of partial frameworks: VDAs are formally defined under the Income Tax Act, 1961; exchanges are designated as "reporting entities" under the Prevention of Money Laundering Act, 2002; and the CERT-In cybersecurity directions apply to crypto platforms. Yet there is no licensing regime, no investor protection law, no token classification system, and no dedicated regulatory authority.

This research paper examines the historical arc of Indian crypto regulation, the architecture of the existing VDA framework, the constitutional and legal tensions it creates, the positions of key regulatory actors, and the emerging legislative proposals — including the landmark COINS Act 2025 — that seek to end India's prolonged regulatory vacuum.

Key Findings

India has no comprehensive crypto law (as of June 2026). Crypto is legal to hold and trade but is not legal tender. A punitive 30% flat tax applies with no loss-offsetting. PMLA compliance is mandatory. Courts increasingly demand legislative action. The proposed COINS Act 2025 offers the most detailed legislative blueprint to date, though it remains non-binding.

1. Historical Background

From Banking Prohibition to Judicial Liberation

The regulation of virtual currencies in India has been marked by a contentious and shifting policy history, characterised by institutional anxiety, judicial intervention, and prolonged executive inaction.

2013–2017: Early Warnings and Inaction

The Reserve Bank of India (RBI) issued its first advisory on cryptocurrencies as early as December 2013, warning users and businesses about the financial and legal risks of dealing in virtual currencies. These warnings were repeated in 2017 as Bitcoin surged in value and public interest intensified. However, no formal regulatory action was taken during this period; the government preferred observation over legislation.

April 2018: The RBI Banking Prohibition

In April 2018, the RBI issued a directive requiring all banks and regulated financial entities to refrain from providing any services to individuals or businesses dealing in virtual currencies. This effectively banned Indian cryptocurrency exchanges from using the formal banking system — a devastating blow that caused widespread market disruption, forced many exchanges offshore, and created deep uncertainty about the industry's future in India.

Legal Basis of the 2018 Directive

The RBI justified the directive under its broad mandate to protect the stability of the financial system and shield the monetary order from disruption. However, crucially, the RBI did not characterise the directive as an outright ban on crypto, but as a restriction on banking services to the sector — a distinction that would later become legally significant.

March 2020: The Supreme Court Strikes Down the Prohibition

In the landmark judgment Internet and Mobile Association of India v. Reserve Bank of India (2020), the Supreme Court of India struck down the RBI's 2018 directive. The Court held that the restriction was disproportionate to the harm demonstrated — the RBI had failed to show actual damage to regulated entities caused by cryptocurrency exchanges. The judgment invoked Article 19(1)(g) of the Constitution, which protects the right to practice any profession or carry on any trade or business, and found the prohibition was not a constitutionally permissible restriction.

The Court notably did not rule on the underlying legality or illegality of cryptocurrencies themselves, and explicitly acknowledged that Parliament remained free to legislate a ban if it chose to. This preserved executive discretion while restoring banking access to the crypto industry.

2021: The Ghost of a Ban — The Cryptocurrency and Regulation of Official Digital Currency Bill

In early 2021, the Indian Parliament's legislative calendar listed a draft bill that would have prohibited private cryptocurrencies and created a framework for a state-issued digital currency. This produced a significant market reaction, with trading volumes on Indian exchanges spiking as users rushed to liquidate holdings. The bill was ultimately never tabled or passed. Industry observers noted that the abortive bill signalled the government's ambivalence — reluctant to ban but unwilling to formally regulate.

2022–Present: Taxing Without Legalising

The Finance Act, 2022 marked a turning point of a different kind: rather than legislating a comprehensive framework, the government introduced taxation of VDAs as a pragmatic measure. This created the anomaly of a state that taxes an asset class it has not formally defined in law, subject to rules it has not yet enacted, and administered by multiple overlapping agencies with no designated lead regulator.

2. The VDA Framework: What Exists Today

India's current regulatory architecture for virtual digital assets is not a coherent framework but a set of sectoral interventions layered across three distinct statutes. Each was designed with different objectives and produces overlapping, sometimes inconsistent obligations.

The 30% Tax Anomaly

Income from the transfer of VDAs is taxed at a flat 30% rate under Section 115BBH — the same rate applied to lottery winnings and gambling proceeds. No deduction is permitted except the cost of acquisition, meaning losses on one VDA cannot be offset against gains on another. A 1% Tax Deducted at Source (TDS) applies to transactions exceeding INR 50,000 per year for individuals. The CBDT has acknowledged concern from stakeholders about the liquidity-dampening effect of these rules.

2.1 Tax Regime under the Income Tax Act, 1961

The Finance Act, 2022 introduced Section 2(47A) into the Income Tax Act, formally defining 'Virtual Digital Asset' for the first time in Indian law. The definition covers any information, code, number, or token generated through cryptographic or other means, providing a digital representation of value — whether exchangeable with or without consideration, functioning as a store of value, unit of account, or investment scheme — and capable of being transferred, stored, or traded electronically. NFTs and other tokenised assets are expressly included.

By the government's own data, onshore crypto tax collections between 2022 and 2025 totalled just INR 437.43 crore — a fraction of the market's stated size. This has prompted tax authorities to issue over 44,000 communications to taxpayers for potential non-disclosure and to identify INR 888.82 crore in undisclosed VDA holdings.

2.2 AML/CFT Framework under the PMLA, 2002

The Ministry of Finance notification of March 7, 2023 was a pivotal regulatory intervention. By designating Virtual Asset Service Providers (VASPs) as 'reporting entities' under the Prevention of Money Laundering Act, 2002, the government brought crypto exchanges, wallet providers, and related service providers into a mandatory compliance regime.

Activity	Compliance Obligation Under PMLA
Exchange: VDA ↔ Fiat	KYC, transaction monitoring, suspicious activity reporting to FIU-IND
Exchange: VDA ↔ VDA	Same as above; activity-based, not entity-based
Transfer of VDAs	Travel rule obligations; identify originator and beneficiary
Safekeeping / Custody	Enhanced due diligence; records retention for 5 years
VDA Offerings / ICOs	AML obligations as financial service provider
DeFi Protocols	Unclear — assessed on degree of decentralisation and control

A key feature of the PMLA VASP notification is that it is activity-based and does not require physical presence in India — offshore exchanges serving Indian users are obligated to register with FIU-IND or face enforcement. As of 2025, major exchanges including CoinDCX, CoinSwitch, WazirX, and Binance have registered. The FIU had earlier de-registered nine non-compliant offshore platforms.

2.3 Cybersecurity Obligations under CERT-In Directions

The CERT-In Directions of 2022 imposed mandatory incident reporting, KYC obligations, and record-keeping requirements on virtual asset service providers operating in India. These directions create a third layer of regulation that overlaps with but is not coordinated with PMLA and income tax obligations, further complicating the compliance environment for VASPs.

3. The Regulatory Landscape: A Multi-Actor Fragmentation

India's crypto regulation is not administered by a single authority but distributed across multiple agencies with differing mandates, risk tolerances, and institutional philosophies. This fragmentation is itself a structural source of uncertainty.

Authority	Role and Stance
Reserve Bank of India (RBI)	Monetary policy guardian. Has consistently advocated for a full ban; promotes the e-Rupee CBDC as the preferred digital currency. Governor Sanjay Malhotra (post-2024) maintains institutional caution, though with a less combative tone than predecessor Shaktikanta Das.
Ministry of Finance / DEA	Policy lead for VDA regulation. Heads the inter-ministerial task force. Has been preparing a discussion paper since 2024 (delayed; expected 2025-26). Signals openness to segmented, risk-based regulation.
SEBI	Securities regulator. Has explicitly stated it has not authorised any crypto-linked investment products. Awaits a formal classification of VDAs as securities before asserting jurisdiction. Engaged in ongoing analysis of ICOs and tokenised assets.
FIU-IND	AML enforcement. Central to the PMLA framework; receives suspicious transaction reports; registers VASPs; can de-register non-compliant platforms.
Income Tax Dept. / CBDT	Tax administration. Implements the 30% VDA tax; has opened enforcement against non-disclosure; seeking stakeholder input on policy refinements.
CERT-In	Cybersecurity. Mandates incident reporting, KYC records, and security standards for VASPs under 2022 directions.

The absence of a designated primary regulator means that VASPs must simultaneously comply with FIU-IND registration, CBDT tax rules, and CERT-In cyber directions — without any single authority empowered to issue licences, adjudicate disputes, set consumer protection standards, or oversee market conduct. This institutional gap is at the core of the legislative vacuum.

4. The Legislative Vacuum: Dimensions of the Gap

The term 'legislative vacuum' is not rhetorical. In the absence of a dedicated crypto statute, the following critical legal questions remain unanswered in Indian law:

- Token classification: Are cryptocurrencies securities (regulated by SEBI), commodities (regulated under commodity laws), currencies (regulated by the RBI), or a sui generis asset class? The Madras High Court, in a 2025 ruling, declared crypto to be 'property' using a functional characterisation, but this has no binding legislative effect.
- Licensing regime: There is no requirement for a crypto exchange to obtain a licence from any Indian authority. Registration with FIU-IND is required for AML purposes but confers no legal operating right or consumer protection obligation.

- Custody and asset segregation: No law specifies how customer assets must be held, segregated from exchange assets, or protected in the event of insolvency. The 2024 WazirX hack — which destroyed USD 234 million in customer assets — exposed this gap catastrophically.
- Self-custody rights: Indian law neither explicitly protects nor prohibits self-custody of digital assets in non-custodial wallets. There is no equivalent of the EU's provision for unhosted wallets.
- Investor redress: There is no statutory mechanism through which a retail investor can seek compensation from a failed exchange or recover assets subject to fraud.
- DeFi and NFTs: Decentralised finance protocols and non-fungible tokens are included in the VDA definition for tax purposes but have no corresponding regulatory regime.
- Cross-border transfers and FEMA: The interaction of crypto transactions with India's foreign exchange control regime (FEMA) remains legally ambiguous, creating uncertainty for international transfers and Web3 projects.

Scale of the Vacuum

India has 107+ million crypto users, USD 6.4 billion in estimated market value, and over INR 2.63 trillion traded on offshore platforms between December 2023 and October 2024. The Supreme Court has noted that "banning may be shutting your eyes to ground reality." A GNLU report presented before former Supreme Court judges in 2025 concluded that regulation is urgently needed at this scale.

5. Judicial Pressure: Courts as Reluctant Lawmakers

In the absence of legislative action, India's courts have been pulled into the role of de facto rule-makers for the crypto sector — a role they have accepted with visible reluctance and increasing impatience.

Supreme Court of India — IAMAI v. RBI (2020)

As discussed in Section 1, this landmark ruling set the constitutional baseline: the RBI's blanket banking prohibition was disproportionate, and crypto businesses retain a constitutionally protected right to operate. The Court, however, explicitly declined to pronounce on whether crypto could or should be regulated or banned by Parliament.

Supreme Court — May 2025: 'Laws Are Completely Obsolete'

In May 2025, a bench of the Supreme Court comprising Justices Surya Kant, Dipankar Datta, and Vijay Bishnoi heard a case involving a Gujarat-based businessman accused of Bitcoin-related fraud. The Court made remarks that were unusually direct for an Indian appellate body: it observed that existing laws are 'completely obsolete' in their handling of cryptocurrencies, highlighted a 'grey area' in regulation, and called on the government to act. Justice Kant noted that the government had repeatedly made 'sweeping statements' about monitoring the international environment rather than taking regulatory steps.

In a related April 2025 proceeding, another Supreme Court bench declared the matter to be a policy question beyond judicial decision-making, directing petitioners to approach the appropriate executive authority. This apparent tension — courts urging action while also disclaiming authority to compel it — reflects the institutional impasse at the heart of India's crypto governance failure.

Madras High Court — 2025: Crypto as Property

The Madras High Court issued a significant ruling in 2025 declaring that cryptocurrency is legally characterised as 'property' under Indian law. Using the Vedic concept of 'neti, neti' (not this, not that) to describe the difficulty of fitting crypto into existing legal categories, the Court distinguished it from both currency and conventional securities, anchoring its classification in functional characteristics: crypto can be owned, transferred, and held in trust.

The Court went further, holding that crypto exchanges should be subject to the same standards of corporate governance and prudential standards as banks, insofar as they handle investor funds. The ruling explicitly described itself as a 'nudge to the legislature' and expressed concern about the consequences of a continuing regulatory void.

6. Emerging Legislative Proposals

6.1 The COINS Act 2025

On July 21, 2025, Web3 venture firm Hashed Emergent and policy advisory group Black Dot released the Crypto-systems Oversight, Innovation, and Strategy (COINS) Act — the most detailed model crypto legislation yet produced in India. The Act is non-binding; it carries no legal force unless formally adopted by Parliament. Nevertheless, it provides a comprehensive legislative blueprint and has been widely discussed by policymakers, regulators, and industry participants.

COINS Act — Core Proposals

1. Crypto Assets Regulatory Authority (CARA): A new dedicated regulator, replacing fragmented oversight across RBI and SEBI, comprising 3 judicial representatives and 2 technical experts with 7+ years' experience in crypto/digital technology. 2. Tiered regulation: Custodial exchanges = strict oversight; insufficiently decentralised protocols = minimal disclosure; fully decentralised protocols = no regulation. 3. Tax reform: Elimination of the 30% flat tax and the 1% TDS regime. 4. Digital rights: Self-custody as a legal right; right to anonymous P2P/P2Protocol transfers without mandatory KYC; protection of developer code from liability. 5. Strategic Bitcoin Reserve: Seeded with seized crypto assets and modest market purchases; overseen by Parliament. 6. Stablecoin framework and ICO sandbox with a 2-year grace period for early-stage compliance.

The COINS Act draws on the EU's Markets in Crypto-Assets Regulation (MiCA) and Singapore's regulatory sandbox model, adapted to India's constitutional and market context. It frames digital rights — including privacy, self-custody, and permissionless protocol access — as constitutional extensions of existing fundamental rights.

Critics note that the COINS Act is industry-led and may underweight systemic risk considerations that regulators like the RBI take seriously. The absence of government drafting also means the path to enactment is unclear. However, supporters argue that the Act demonstrates a viable regulatory structure and builds pressure for executive action.

6.2 The DEA Discussion Paper (Pending)

The Department of Economic Affairs has been preparing a discussion paper on crypto regulation since at least 2024. The paper has been repeatedly delayed — attributed in part to internal disagreements between agencies, particularly between the RBI (which favours minimal crypto legitimisation) and other ministries more open to segmented regulation.

A government document leaked in September 2025, reported by Reuters, indicated that India was actively considering resisting comprehensive crypto legislation, on the grounds that formal regulation would confer legitimacy and risk the sector becoming 'systemic.' The document reflected the RBI's position.

As of June 2026, the discussion paper has not been publicly released. A June 2025 draft suggested classifying crypto assets as security, commodity, or currency — a tripartite framework that, if adopted, would distribute regulatory authority across SEBI, commodity regulators, and the RBI respectively.

Status as of June 2026

No comprehensive crypto legislation has been tabled in Parliament. The DEA discussion paper remains unpublished. The Ministry of Finance's CBDT has initiated stakeholder consultations on tax policy refinements. India's Economic Affairs Secretary confirmed in February 2025 that India was reviewing its stance in light of US and EU regulatory developments.

7. India in the Global Context

India's regulatory hesitancy exists against a backdrop of significant global movement toward formal crypto frameworks, which creates both competitive pressure and diplomatic context.

Jurisdiction	Regulatory Approach
European Union	MiCA (Markets in Crypto-Assets Regulation) fully in force since 2024. Comprehensive licensing, stablecoin rules, consumer protection, and market abuse provisions.
United States	GENIUS Act (stablecoin framework) passed 2025. SEC and CFTC jurisdictional contest over crypto securities vs. commodities ongoing; clearer than India but still fragmented.
Singapore	Payment Services Act provides licensing framework for VASPs. Regulatory sandbox for innovation. Referenced as model by the COINS Act.
Bhutan	Assembled a national Bitcoin reserve exceeding USD 1 billion by May 2025, using hydropower revenues. Referenced in the COINS Act's Bitcoin reserve proposal.
Vietnam	Recognised crypto as property and established formal regulations.
G20 / FATF	India, as G20 chair in 2023, endorsed FATF guidance on VASP regulation and the FSB-IMF Synthesis Paper on crypto risk. Commitments create implicit pressure for domestic legislation.
OECD CARF	India is a signatory to the Crypto-Asset Reporting Framework for cross-border information exchange — but lacks the domestic legislation to implement it meaningfully.

The contrast is stark: India endorsed global crypto regulatory frameworks as G20 Chair while having no domestic implementation mechanism. Meanwhile, a SEBI official was quoted in 2025 noting that 'India risks losing its edge if it doesn't align with global standards like the EU's MiCA.' Industry projections suggest that a supportive regulatory environment could add USD 1.1 trillion to India's GDP by 2032 through Web3 and crypto activity.

8. Key Risks and Investor Implications

Consumer and Investor Protection Gap

The WazirX hack of July 2024, in which USD 234 million in user assets were lost, illustrated the acute risk posed by the absence of custody, insurance, and governance standards. There is no statutory investor compensation scheme for VDA losses, no mandatory proof-of-reserves requirement for exchanges, and no insolvency framework specifically designed for crypto custodians. Affected users' legal recourse has been through ordinary civil litigation — slow, expensive, and uncertain.

Tax-Induced Capital Flight

The 30% flat tax and 1% TDS have demonstrably shifted trading volumes to offshore platforms. Between December 2023 and October 2024, Indians traded over INR 2.63 trillion on offshore platforms, most of which are beyond FIU-IND's practical enforcement reach. The tax structure has thus not only reduced domestic exchange liquidity but may be counterproductive from an AML/tax-collection standpoint.

Legal Uncertainty for Web3 Builders

India hosts one of the world's fastest-growing Web3 developer communities. The absence of legal clarity on self-custody, DeFi protocol liability, NFT classification, and FEMA treatment of tokenised transactions has pushed infrastructure projects, gaming studios, and DeFi protocols offshore — to Singapore, Dubai, and the Cayman Islands. This represents a concrete economic loss that the COINS Act explicitly seeks to reverse.

Systemic Risk from Inaction

With 107+ million users and USD 6.4 billion in market exposure, the sector is already sizeable. The RBI's concern that regulation would confer legitimacy overlooks the possibility that the absence of regulation creates systemic risk through opacity: no visibility into leverage, custody concentration, or contagion pathways in a major exchange failure.

9. Conclusion and Policy Recommendations

India's crypto regulatory situation is fundamentally paradoxical: a state that taxes virtual digital assets, mandates AML compliance from exchanges, and has seen its Supreme Court twice intervene in the sector — but that has still not enacted a single dedicated statute governing the industry. The legislative vacuum is not the product of technical complexity alone but of deliberate executive ambivalence, institutional disagreement, and the RBI's persistent preference for prohibition over regulation.

The cost of continued inaction is rising. Users are unprotected, capital is migrating offshore, Web3 innovation is being exported, and international commitments under FATF and OECD CARF lack a domestic implementation framework. The Supreme Court's warning in May 2025 that existing laws are 'completely obsolete' echoes a growing consensus among judges, industry actors, and former regulators.

The following policy directions, drawing on the research presented in this paper, represent a pathway to a coherent regulatory architecture:

- Enact a dedicated VDA statute: Parliament should pass comprehensive legislation that formally defines VDA categories, establishes licensing requirements, specifies investor protection standards, and assigns clear regulatory jurisdiction.
- Establish a dedicated regulator: Whether CARA as proposed by the COINS Act or a variant thereof, a single regulatory authority with technical expertise is essential to replace the current multi-actor fragmentation.
- Adopt a tiered, risk-based classification framework: Distinguish between custodial and non-custodial services, between utility tokens and security

tokens, and between centralised and genuinely decentralised protocols.

- Reform the tax regime: The 30% flat rate and 1% TDS are anti-competitive by international standards. A progressive capital gains structure with loss-offsetting provisions would align with global norms and reduce offshore migration.
- Mandate custody and consumer protection standards: Proof-of-reserves requirements, asset segregation rules, cybersecurity standards, and an investor compensation scheme should be minimum requirements for licensed exchanges.
- Engage with global frameworks: India's OECD CARF commitment requires domestic implementing legislation. Alignment with FATF Travel Rule obligations should be formalised in statute, not left to notification-based guidance.
- Clarify FEMA treatment of VDAs: The foreign exchange implications of cross-border crypto transactions should be explicitly addressed, unlocking legitimate international business activity.

India possesses the market scale, the technical talent, the institutional capacity, and the diplomatic standing to become a global leader in responsible crypto regulation. The COINS Act 2025 offers a detailed blueprint. The DEA discussion paper, whatever its final form, represents official acknowledgment that the status quo is untenable. The question is no longer whether India will regulate — but how quickly, and on whose terms.

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