INDIAN JOURNAL OF LEGAL AFFAIRS AND RESEARCH

Peer-reviewed, open-access, refereed journal

IJLAR

+91 70421 48991
editor@ijlar.com
www.ijlar.com

Volume 3 Issue 7 | Aug 2026 *ISSN: 3049-043X*

DISCLAIMER

The views and opinions expressed in the articles published in the Indian Journal of Legal Affairs and Research are those of the respective authors and do not necessarily reflect the official policy or position of the IJLAR, its editorial board, or its affiliated institutions. The IJLAR assumes no responsibility for any errors or omissions in the content of the journal. The information provided in this journal is for general informational purposes only and should not be construed as legal advice. Readers are encouraged to seek professional legal counsel for specific legal issues. The IJLAR and its affiliates shall not be liable for any loss or damage arising from the use of the information contained in this journal.

Volume 3 Issue 7 | Aug 2026 ISSN: 3049-043X

Introduction

Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJLAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.

Volume 3 Issue 7 | Aug 2026 ISSN: 3049-043X

Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

WWW.ijlar.com
Volume 3 Issue 7 | Aug 2026 *ISSN: 3049-043X*

LEGAL CHALLENGES IN CROSS-BORDER CRYPTOCURRENCY TRANSACTIONS AND THE ROLE OF BANKS

AUTHORED BY - SIMRAN KUMARI
B.B.A.LLB 'B'
Alliance School Of Law, Alliance University Bangalore

Submitted to: Prof. Abhishek Sir

Abstract

Cryptocurrency transactions between nations are an unprecedented challenge to both regulatory authorities and banking institutions worldwide, with India's complexities being unique to its dynamic regulatory framework. This research aims to explore the legal hurdles faced during cross-border Virtual Digital Asset transactions in the Indian context, with an emphasis on the role of banks as mediators in an increasingly decentralised financial system. The research identifies an existing research gap in the application of the Foreign Exchange Management Act, 1999, regulations, and cryptocurrency transactions, specifically regarding the classification of Virtual Digital Assets under existing foreign exchange regulations. Through the application of various cross-border legislation and case laws, with an emphasis on comparative research, the paper examines three research objectives, regarding the existing Indian laws, specifically the Foreign Exchange Management Act, 1999, challenges faced by banks concerning cryptocurrency transactions, both in terms of facilitation and prohibition and differences between the Indian regulatory framework concerning cryptocurrency transactions and the United Kingdom framework. The research identifies several areas of ambiguity regarding the legal classification of cryptocurrency, challenges with the application of the Prevention of Money Laundering Act, 2002, and the paradox of banks being regulated under Reserve Bank of India regulations, acting as mediators to Virtual Digital Asset Service Providers. The research concludes that cryptocurrency transactions in India need legislative reform to strike an appropriate balance between innovation, financial stability, and consumer protection.

Keywords: *Cryptocurrency, Cross-border transactions, Foreign Exchange Management Act (FEMA), Virtual Digital Assets (VDAs), Banking regulation, Reserve Bank of India (RBI), Prevention of Money Laundering Act (PMLA), Blockchain technology*

I. INTRODUCTION

The advent of blockchain technology and cryptocurrencies has revolutionised the conventional financial system, which has given rise to new legal issues that transcend borders. Cryptocurrency, which has been described as a digital or virtual currency that uses cryptography for security, has moved beyond being a mere technological innovation to become a major phenomenon that has affected millions of users across the world.[1] Today, India has the highest number of cryptocurrency users across the world, with over 107 million users, as of 2025, within a system that is characterised by ambiguity rather than legislation.[2] Cross-border transactions involving the transfer of digital currencies from different individuals across different countries have given rise to complex legal issues that have far-reaching implications for the conventional financial system. This has raised several issues regarding sovereignty, AML compliance, taxation, and financial stability, which have become more complex in India, given the lack of legislation on the subject, with existing legislation applying only to fiat currencies.

The banks, which have traditionally remained regulated financial institutions under the Banking Regulation Act, 1949, by the Reserve Bank of India, have a complex role to play in the context of cryptocurrency transactions in India. After the Supreme Court’s landmark judgment in Internet and Mobile Association of India v. Reserve Bank of India,[3] banks were directed to resume services to cryptocurrency exchanges and users, as the RBI’s April 2018 circular prohibiting banks from providing services to cryptocurrency exchanges had been struck down for being disproportionate. Although banks must be more diligent in their AML compliance with regard to Virtual Digital Asset Service Providers, a number of uncertainties remain.

---

[1] ARVIND NARAYANAN ET AL., Bitcoin and cryptocurrency technologies (2016).
[2] India Crypto Market Report 2025, COINSWITCH (Jan. 2025).
[3] Internet and Mobile Association of India v. Reserve Bank of India, (2020) 10 S.C.C. 274 (India).

Research Questions

The key research question that is being addressed by this study relates to the legal ambiguities and challenges associated with the cross-border nature of cryptocurrency transactions, particularly in the context of the Indian regulatory framework, with special emphasis on the role of banking entities. The key research questions being addressed by this study are: What are the existing Indian laws, particularly FEMA and PMLA, concerning cross-border cryptocurrency transactions, and what legal ambiguities exist with regard to the application of these laws to VDAs? What legal, regulatory, and operational challenges are faced by banking entities concerning facilitating or regulating cross-border cryptocurrency transactions, considering the regulatory guidelines of the RBI, FEMA, and PMLA? How does the Indian regulatory framework compare with the UK regulatory framework, and what can be concluded about the scope of possible legal reforms?

Research Gap and Significance

Academic literature on cryptocurrency regulations in India has mostly concentrated on the constitutional legality of regulatory restrictions and taxation laws. However, the interplay of FEMA with cross-border transactions involving cryptocurrency has not been extensively examined. The literature has not sufficiently examined how banks deal with regulatory complexities in serving VDASPs involved in cross-border transactions. The research addresses these gaps by conducting an in-depth examination of regulatory laws, regulations, and a comparison with the comprehensive regulatory framework in the UK.

Methodology and Scope

The research adopts a doctrinal legal research methodology. The study includes an in-depth examination of primary legal sources. The research includes an examination of key Indian laws such as FEMA, 1999; PMLA, 2002; Banking Regulation Act, 1949; and Income Tax Act, 1961, as amended by Finance Act, 2022.[4] The research also includes case law on the Internet and Mobile Association of India v. Reserve Bank of India (2020) and Tata Consultancy Services v. State of Andhra Pradesh (2004).[5] The research also includes a comparison with the regulatory framework in the UK. The study includes an examination of the Financial Services

[4] Finance Act, No. 6, Acts of Parliament, 2022 (India).
[5] Tata Consultancy Services v. State of Andhra Pradesh, (2004) 6 S.C.C. 787 (India).

and Markets Act 2000 (Crypto assets) Regulations 2025 and FCA regulations.[6] The research has a temporal scope of events from 2013 to February 2026.

II. LEGAL AND REGULATORY FRAMEWORK IN INDIA

Reserve Bank of India: Regulatory Authority:

The Reserve Bank of India, established under the RBI Act of 1934, acts as the central banking authority with sweeping powers in the areas of monetary policy and banking regulations. Under Section 22 of the RBI Act 1934, the RBI has the exclusive authority to issue currency notes in India and establish the rupee as the official tender.[7] Under Section 35A of the Banking Regulation Act of 1949, read with Section 36(1)(a) of the RBI has the authority to issue directions to banking companies to ensure that their affairs are not conducted in a manner that may prove detrimental to the interests of depositors.[8]

The RBI's stance on cryptocurrencies has seen considerable changes over time. The RBI issued its first cautionary advisory on virtual currencies in December 2013.[9] On 6th April 2018, RBI issued its highly controversial circular exercising its powers under Section 35A of the Banking Regulation Act of 1949. The RBI directed its regulated entities to stop providing services to individuals and businesses dealing with virtual currencies.[10] However, the RBI's decision to impose such a blanket ban on cryptocurrencies was set aside by the Supreme Court on 4th March 2020 in Internet and Mobile Association of India v. Reserve Bank of India[11] on the grounds of its disproportionate and unconstitutional character.

Exchange Management Act, 1999: Classification Challenges:

The Foreign Exchange Management Act (FEMA) of 1999,[12] established to facilitate external trade and payment systems and promote the development of the foreign exchange market in an orderly manner, does not explicitly cover cryptocurrencies. The lack of clarity under FEMA regarding cryptocurrencies has raised several issues regarding its applicability to cryptocurrency transactions.

Under Section 2(h) of FEMA,[13] 'currency' means currency notes, postal orders, money orders,

[6] Financial Services and Markets Act 2000 (Cryptoassets) Regulations 2025, S.I. 2025 (U.K.).
[7] Reserve Bank of India Act, § 22, No. 2, Acts of Parliament, 1934 (India).
[8] Banking Regulation Act, No. 10, Acts of Parliament, 1949, § 35A, § 36(1)(a) (India).
[9] Reserve Bank of India, Press Release: RBI cautions users of Virtual Currencies against Risks (Dec. 24, 2013).
[10] Reserve Bank of India, Circular on Prohibition on dealing in Virtual Currencies (VCs), RBI/2017-18/154 (Apr. 6, 2018).
[11] Internet and Mobile Association of India v. Reserve Bank of India, (2020) 10 S.C.C. 274 (India).
[12] Foreign Exchange Management Act, No. 42, Acts of Parliament, 1999 (India).
[13] Id. § 2(h).

cheques, drafts, travellers' cheques, letters of credit, bills of exchange, and promissory notes. The term does not explicitly cover cryptocurrencies. Further, under Section 2(n) of FEMA,[14] foreign exchange means foreign currency and shall include any deposits, credits, and balances payable in any foreign currency. Cryptocurrencies are not explicitly mentioned under FEMA and have not been recognised as currency or legal tender by the RBI.

Existing legal scholarship indicates that cryptocurrencies are likely to fall within the definition of "goods" under FEMA based on Supreme Court decisions. In Tata Consultancy Services v. State of Andhra Pradesh (2004),[15] the Supreme Court determined that "software" constitutes "goods" for sales tax, based on a three-prong test of utility, capability of being bought and sold, and capability of being transmitted, transferred, delivered, stored, or possessed.[16] Cryptocurrencies pass this test and are thus likely "goods" for FEMA regulations on import and export of such goods.

FEMA Export and Import Regulations:

The Foreign Exchange Management (Export of Goods and Services) Regulations, 2015, set forth the requirements for export transactions. Regulation 6 of the 2015 Regulation requires that the full value of the goods or software exported must be realised and repatriated into India through the authorised banking channels. This regulation effectively prevents barter exchange of goods or services without the payment of fiat currency passing through the banking channels. If cryptocurrencies are "goods" for the purposes of FEMA, then a transaction between an Indian resident and a non-resident involving the transfer of cryptocurrencies would be a violation of the export regulations if the resident does not receive payment in the form of fiat currency through the bank.[16] This poses significant legal risk for parties engaging in cryptocurrency exchange without converting the cryptocurrencies into fiat currency or passing the payment through the banking channels.

Prevention of Money Laundering Act, 2002: Extension to VDAs:

The Prevention of Money Laundering Act, 2002 (PMLA), did not originally specifically cover cryptocurrency transactions. In recognition of the potential of cryptocurrencies to be used in money laundering and terrorist financing, the Government of India has extended the PMLA to

[14] Id. § 2(n).
[15] Tata Consultancy Services v. State of Andhra Pradesh, (2004) 6 S.C.C. 787, 812-15 (India).
[16] Jaideep Reddy, Crypto-Assets and the Indian Constitution, 16 INDIAN J.L. & TECH. 375 (2020)

Virtual Digital Assets (VDAs) by a notification issued by the Ministry of Finance under S.O. 1072(E) dated 7th March 2023.[17] The notification has amended the definition of "reporting entity" under Section 2(1)(wa) of the PMLA to include entities carrying out designated business in relation to Virtual Digital Assets.

Consequent to the designation of VDAs as reporting entities under the PMLA, the Financial Intelligence Unit-India (FIU-IND) has issued Anti-Money Laundering and Counter-Terrorist Financing Guidelines for Reporting Entities Providing Services Related to Virtual Digital Assets on 10th March 2023.[18] The guidelines issued by FIU-IND to VDASPs are to register with FIU-IND, implement customer due diligence (CDD) measures, maintain records of transactions, report suspicious transactions, and appoint designated directors and principal officers.

FIU-IND has adopted an activity-based approach to define VASPs, which includes the provision of services such as the exchange between VDAs and fiat currencies, transfer of VDAs, safekeeping or administration of VDAs, and providing financial services related to the offering of VDAs. This definition includes centralised exchanges as well as certain decentralised finance systems, although it is difficult to include truly decentralised systems, which are non-custodial in nature.

The registration of FIU-IND has been made mandatory for the operation of VDASPs in India, serving Indian users, or conducting business in India. The consequences of non-compliance with the registration process with FIU-IND are significant, as it attracts a penalty under section 13 of PMLA. In June 2024, FIU-IND levied a fine of approximately ₹18.82 crore on Binance for conducting business without registration with FIU-IND and failing to comply with the requirements of KYC/AML.[19] In January 2025, Bybit Fintech Limited was fined ₹9.27 crore for non-compliance with the registration requirements of FIU-IND. Moreover, in January 2024, FIU-IND issued show cause notices to nine offshore VDASPs, which were later blocked by the Ministry of Electronics and Information Technology for conducting business without registration with FIU-IND.

Taxation Framework: Finance Act, 2022:

Significant taxation provisions for VDAs were introduced under the Finance Act, 2022. VDA

[17] Ministry of Finance (Department of Revenue) Notification, S.O. 1072(E) (Mar. 7, 2023) (India).
[18] Financial Intelligence Unit-India, Anti-Money Laundering & Counter-Terrorist Financing Guidelines for Reporting Entities Providing Services Related to Virtual Digital Assets (Mar. 10, 2023).
[19] Press Release, Financial Intelligence Unit-India, FIU-IND imposes penalty on Binance (June 27, 2024).

has been comprehensively defined under Section 2(47A) of the Income Tax Act, 1961, which states that VDA includes "any information, code, number, or token, generated through cryptographic means or otherwise, which has a digital representation of value that can be transferred, stored, or traded electronically."[20] This includes "cryptocurrency, non-fungible tokens, etc,", excluding Indian and foreign fiat currencies.

Under Section 115BBH, a flat rate of 30% has been prescribed for taxation on income arising from the transfer of VDAs, with no deductions being allowed except for the cost of acquisition. Most importantly, a loss arising from the transfer of VDA cannot be set off against other income, nor can it be set off against income arising from the transfer of VDA in subsequent years. This is a harsh taxation regime, especially for traders who deal with VDAs. Further, under Section 194S, a TDS of one percent has to be made on the consideration paid for the transfer of VDA, subject to certain prescribed thresholds. TDS is applicable for payments made to residents if the aggregate amount of consideration for transfer of VDA exceeds ₹50,000 for specified persons and ₹10,000 for other than specified persons for a financial year.[32]

III.LANDMARK CASE: INTERNET AND MOBILE ASSOCIATION OF INDIA V. RBI

The Supreme Court ruling in Internet and Mobile Association of India v. Reserve Bank of India [21]marked an important landmark in the history of India's virtual currency jurisprudence. The case highlighted the constitutional validity of the RBI circular issued on the 6th of April 2018, which prohibited banks, along with other RBI-regulated entities, from providing any kind of services to entities or individuals who deal with virtual currencies.

The RBI Banking Prohibition Circular:

The RBI circular was issued pursuant to its regulatory powers under section 35A of the Banking Regulation Act, as well as sections 45JA and 45L of the RBI Act, which required entities such as banks, non-banking financial companies, and operators of payment systems to stop providing any services to entities or individuals who deal with virtual currencies.[22] Existing relationships, however, were given three months to wind down their relationships.

[20] Income Tax Act, 1961, § 2(47A) (as amended by Finance Act, 2022) (India).
[21] Internet and Mobile Association of India v. Reserve Bank of India, (2020) 10 S.C.C. 274 (India).
[22] Reserve Bank of India, Circular RBI/2017-18/154 (Apr. 6, 2018).

Supreme Court’s Proportionality Analysis:

The petitioners, which included the Internet and Mobile Association of India, cryptocurrency exchanges, and traders, argued against the circular on several grounds, including that the RBI was not empowered to prohibit the trading of virtual currencies and that the circular was in violation of Article 19(1)(g), which guarantees freedom to practice any profession or carry on any trade, business, or occupation.

The Supreme Court recognised the RBI’s power to regulate virtual currency trading by relying on the Banking Regulation Act, 1949, and the RBI Act, 1934, which enabled it to restrict virtual currency trading. The Court recognised the potential of virtual currencies to create parallel economies, which would undermine the central authority's regulatory monetary system. It was held that the restriction was disproportionate to the regulatory power of the RBI. In applying the proportionality doctrine, which requires that any restriction on the exercise of fundamental rights must be the least restrictive alternative necessary to meet the governmental objective, it was held that the circular was not proportionate to the regulatory power of the RBI. Critically, it was noted that the RBI had not shown any evidence of harm to regulated entities such as banks in the last five years, despite its cautionary circulars dating back to December 2013. The absence of empirical evidence of harm to regulated entities was crucial to the determination of the Court. The Court held that “since access to banking is equivalent to the supply of oxygen in any modern economy, denial of such access to those carrying on a trade not prohibited by law constitutes an extremely disproportionate restriction.” The RBI argued that it was not banning virtual currencies, but it was banning banking facilities, which were essential to virtual currency trading.

Post-Judgment Implications:

Consequently, the Supreme Court struck down the 6th April 2018 circular based on proportionality grounds. The banks were directed to continue offering services to cryptocurrency exchanges and users. However, the decision does not clarify several issues. The Supreme Court did not make an express declaration of the legality or illegality of cryptocurrencies, nor did it discuss their classification under FEMA or other relevant laws. The decision was limited to the issue of proportionality of the RBI’s decision to bar banks from providing services to cryptocurrency operators without delving into the overall regulatory framework that must be put in place to regulate cryptocurrencies.

Moreover, the Supreme Court clearly indicated that the Government of India is free to enact legislation that bans or regulates cryptocurrencies, thereby shifting the responsibility of enacting comprehensive regulations to Parliament. The absence of comprehensive legislation post the Supreme Court's decision has led to an uncertain regulatory framework, with the RBI, FIU-IND, the Enforcement Directorate (ED), and tax authorities regulating different aspects of cryptocurrencies based on their statutory mandates.[23]

IV.CROSS-BORDER TRANSACTIONS UNDER FEMA:

The complexities involved in cross-border cryptocurrency transactions under FEMA laws are many, especially because there is a lack of specific provisions relating to cryptocurrency transactions. In case cryptocurrencies are considered 'goods' under FEMA laws, then three different types of cross-border cryptocurrency transactions will be involved: payment of fiat currencies to a non-resident in exchange for acquiring cryptocurrency, payment of cryptocurrency to a non-resident in exchange for acquiring fiat currencies, and payment of cryptocurrency to a non-resident in exchange for acquiring other cryptocurrencies.

Export Regulations and Repatriation Requirements:

The Foreign Exchange Management Regulations, 2015, relating to the export of goods and services, mandate that the full value of goods exported must be realised and repatriated to India through authorised banking channels.[24] This poses a major problem concerning cryptocurrency transactions across borders. When an Indian resident sends cryptocurrency to a non-resident, failing to receive fiat currencies through an authorised bank, then a major export regulation is breached.

The Enforcement Directorate, which operates under FEMA, has started investigations against cryptocurrency exchanges for violating FEMA laws. This indicates that regulatory bodies are willing to apply FEMA laws to cryptocurrency transactions, even though there is a lack of clarity on how cryptocurrency transactions will be classified under FEMA laws.

Current Account and Capital Account Restrictions:

FEMA divides transactions into current account transactions and capital account transactions. Section 5 of FEMA regulates capital account transactions, stating that these transactions need

[23] Subhadeep Saha, Regulating the Unregulated: India's Legal Conundrum with Cryptocurrencies, SCC TIMES (Jan. 23, 2026)

[24] Foreign Exchange Management (Export of Goods and Services) Regulations, 2015, Regulation 6 (India).

to be done in accordance with the regulations prescribed by the RBI.[25] The division of cryptocurrency transactions into current account transactions or capital account transactions has significant implications.

If cryptocurrency investment is considered a capital account transaction, then it may be regulated or prohibited under the existing regulations. If cryptocurrency investment is considered a current account transaction, then it may be allowed with certain restrictions.

Liberalised Remittance Scheme (LRS) Considerations:

The Liberalised Remittance Scheme (LRS), introduced by the RBI in FEMA, allows individuals to make remittances up to USD 250,000 (United States Dollars two hundred fifty thousand) during a given financial year for current account transactions as well as capital account transactions. It remains to be seen whether cryptocurrency investment qualifies as an LRS transaction. The RBI has not explicitly included or excluded cryptocurrency transactions from the scope of the Liberalised Remittance Scheme. This is causing difficulties for individuals who wish to invest in cryptocurrency exchanges located outside India.

The banks handling LRS transactions require detailed purpose codes along with documentation. The absence of specific purpose codes for cryptocurrency transactions poses difficulties for banks handling customer remittances that may be associated with investments in cryptocurrencies.

V. THE ROLE OF BANKS: COMPLIANCE CHALLENGES AND OPERATIONAL CONSTRAINTS

The position of banks in India, with regard to the operation of cryptocurrencies, is uniquely challenging, given that they are required to serve VDASPs and cryptocurrency users in line with the Internet and Mobile Association judgment, while at the same time complying with the stringent regulatory requirements of different regulatory frameworks.

Post-Judgment Banking Obligations:

After the Supreme Court judgment in March 2020, banks are legally obliged to resume their services to cryptocurrency exchanges and users.[26] At the same time, banks are required to adhere to the RBI guidelines, which place significant importance on risk management and due

[25] Foreign Exchange Management Act, 1999, § 5 (India).
[26] Internet and Mobile Association of India v. Reserve Bank of India, (2020) 10 S.C.C. 274, 305 (India).

diligence with regard to the operation of VDASPs. The RBI has issued circulars to banks requiring them to exercise higher due diligence with regard to the operation of bank accounts of cryptocurrency exchanges, which includes transaction monitoring, reporting of suspicious activities, and regular risk assessment.[27]

Banks are also exposed to legal and reputational risks in dealing with VDASPs. If the VDASPs are involved in money laundering or terrorist financing, the banks that provide banking services may be at risk of being penalised under PMLA despite having done appropriate due diligence.

Know Your Customer and Anti-Money Laundering Obligations:

Banks are under significant KYC and AML obligations, as provided under the RBI's Master Direction, Know Your Customer Direction, 2016, and PMLA regulations. While dealing with VDASPs, banks are expected to ensure that the VDASPs have appropriate KYC and AML mechanisms in place, thereby requiring the banks to conduct due diligence on the due diligence of their own customers.[28]

Cryptocurrency transactions are pseudonymous, thereby creating challenges in transaction monitoring and suspicious transaction reports. The banks are expected to monitor transactions between customer accounts and cryptocurrency exchanges to identify patterns of money laundering, terrorist financing, or other suspicious transactions. However, blockchain transactions are not visible to the banks, thereby creating gaps in transaction monitoring.

Cross-Border Transaction Monitoring:

In the case of cross-border cryptocurrency transactions, there are complexities faced by the banks in the context of FEMA compliance monitoring. The banks are required to ensure that the foreign exchange transactions of the customers are in compliance with the FEMA regulations, such as export repatriation requirements and capital account regulations. However, since the customers are not using the services of the banks for the conversion of cryptocurrencies into fiat currencies while making cross-border transactions, the banks are not aware of these types of transactions and are unable to monitor the FEMA compliance requirements. Thus, there is a paradoxical situation wherein the banks are expected to monitor the FEMA compliance requirements of the customers, while the major cryptocurrency transactions are not

[27] Reserve Bank of India, Circular on Customer Due Diligence for Transactions in Virtual Digital Assets (Mar. 15, 2023).

[28] Prevention of Money Laundering Act, No. 15, Acts of Parliament, 2002, § 13 (India).

passing through the banking channels.

Operational and Technological Challenges:

The operational challenges faced by the banks include the requirements of the cryptocurrency exchanges that demand payment processing services from the banks. The payment processing services include the ability of the cryptocurrency exchanges to make deposits and withdrawals quickly, so that the customers can capitalise on the business opportunities. However, the existing technological platform of the banks might not be sufficient for the quick payment processing services required by cryptocurrency exchanges.[29]

In addition, the banks are also required to develop internal expertise on the blockchain technology used for the operation of cryptocurrencies.

VI.COMPARATIVE ANALYSIS:

The United Kingdom has developed a comprehensive regulatory framework for cryptocurrencies, offering a useful comparison with India's fragmented approach to cryptocurrency regulation. The UK's phased approach to cryptocurrency regulation is useful to understand alternative models for cryptocurrency regulation, striking a balance between innovation, consumer protection, and financial stability.

Legislative Framework:

The UK government introduced the Financial Services and Markets Act 2000 (Crypto assets) Regulations 2025 in Parliament in December 2025, introducing new regulated activities in relation to crypto assets.[30] These regulations introduce new regulated activities, including "operating a crypto asset trading platform," "issuing qualifying stablecoins," "safeguarding crypto assets," "dealing in crypto assets as principal or agent," "arranging deals in crypto assets," and "crypto asset staking."

Firms that carry out these regulated activities require authorisation from the Financial Conduct Authority (FCA), subject to certain exclusions. This approach integrates cryptocurrency regulation into the existing financial services regulatory regime, with adapted versions of existing conduct, prudential, and market abuse rules applied to cryptoasset activities.

---

[29] Nishith Desai Associates, Crypto and Web3 in India: Navigating the Regulatory Landscape, Nishith Desai Associates Research Paper (2023)

[30] Financial Services and Markets Act 2000 (Crypto assets) Regulations 2025, S.I. 2025 (laid Dec. 15, 2025) (U.K.).

Phased Regulatory Implementation:

The UK's approach to cryptocurrency regulation is phased, with Phase 1 of the UK's approach implemented under the Financial Services and Markets Act 2023, dealing with fiat-backed stablecoins and related payment systems. The FCA and Bank of England have issued discussion papers on regulating stablecoin issuance and systemic payment systems involving stablecoins.[31]

Phase 2, implemented in December 2025, regulates crypto asset activities, including trading platforms, intermediation, lending, and staking, with the FCA issuing consultation papers CP25/40 on regulating crypto asset activities, CP25/41 on admissions, disclosures, and market abuse regime, and CP25/42 on prudential requirements in December 2025, with final rules to be introduced in 2026 and becoming fully operational in 2027.

Financial Conduct Authority's Regulatory Approach:

The FCA's approach focuses on proportionality, consumer protection, and market integrity. The FCA's financial promotion rules, which took full effect on 8th January 2024, require risk warnings, a cooling-off period for new investors, a ban on incentives, and a personalised risk summary. This ensures that consumers receive due education about the risks involved in investing in cryptocurrencies.

The FCA's proposed conduct rules for crypto assets align with existing financial services principles, including governance, operational resilience, the Senior Managers Regime, Certification Regime, and financial crime, including the Consumer Duty. This ensures that firms dealing with crypto assets are treated in a similar way to conventional financial services firms, which is important for achieving consistency while at the same time considering the special characteristics of digital assets.

Anti-Money Laundering Framework:

The UK has introduced the Money Laundering, Terrorist Financing, and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs), which were amended in 2019, covering crypto asset exchange providers and custodian wallet providers under the AML regime. Since 10th January 2020, firms in this industry have had to register with the FCA for AML

[31] Financial Conduct Authority, Discussion Paper DP23/4: Regulating crypto assets Phase 1: Stablecoins (Nov. 2023); Bank of England, Discussion Paper: Regulatory regime for operators of systemic payment systems using stablecoins (Nov. 2023).

regulation.[32]

The UK has also introduced the FATF Travel Rule, which came into effect in 2023, requiring Virtual Asset Service Providers (VASPs) to collect and transmit customer data during a transaction.

Once the new crypto asset system is operational, firms that are authorised under FSMA will not require registration under MLR but will instead need to notify the FCA of crypto asset activities while still complying with MLR requirements.

Lessons for India:

The UK's approach, which is comprehensive, phased, and integrated, presents many lessons that India could learn from, especially considering its unique circumstances and challenges. Firstly, comprehensive legislation with clear definitions, regulated activities, and authorisation requirements will help remove regulatory uncertainty while being flexible enough to accommodate technological advancements. Secondly, a phased approach will ensure that there is sufficient time for adaptation by the industry, capacity-building by regulatory bodies, and improvement through consultation feedback. Thirdly, integration with existing financial services will ensure regulatory consistency while leveraging existing financial infrastructure.

India's circumstances, however, are different, with a higher number of retail cryptocurrency users, limited financial service penetration with implications for financial inclusion, and a different constitutional and legal system that will impact financial regulation. Therefore, while lessons can be learned from the UK's approach, a different approach will be needed that balances financial stability maintenance, consumer protection, and encouraging financial innovation while considering India's unique circumstances.

VII. FINDINGS AND DISCUSSION

This research identifies critical legal and regulatory challenges pertaining to cryptocurrency transactions between jurisdictions, as well as the role of banks in the emerging framework.

Legal Ambiguities in FEMA Application:

There are no provisions about cryptocurrencies under the Foreign Exchange Management Act, 1999, thereby creating significant ambiguity with regard to the application of the law. Legal

[32] Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, S.I. 2017/692 (as amended 2019) (U.K.).

analysis of the provisions of FEMA indicates that cryptocurrencies are "goods" as defined under the Tata Consultancy Services v. State of Andhra Pradesh case[33], but no conclusive decision has been reached.

The export repatriation provisions of FEMA, requiring the receipt of payment through authorised banking channels, may be restricting cryptocurrency transactions between jurisdictions, as cryptocurrency transactions do not necessarily involve the movement of fiat currencies. However, the application of the law remains inconsistent, with no overall guidance provided to the industry.

Fragmented Regulatory Framework:

The overall framework of cryptocurrency regulation in India is fragmented, with different regulations applying to different aspects of cryptocurrency transactions. The Prevention of Money Laundering Act, 2002, regulates anti-money laundering provisions, requiring registration under the FIU-IND. Taxation is regulated under the Income Tax Act, 1961; FEMA regulates foreign exchange-related provisions, and the Reserve Bank of India regulates banking.

This has created confusion with regard to the overall authority of the relevant regulators, with no single authority overseeing the overall framework of cryptocurrency transactions.

Despite judicial encouragement, no legislation has been introduced with regard to cryptocurrency transactions, with the Cryptocurrency and Regulation of Official Digital Currency Bill, 2021, being introduced but not tabled in Parliament. As such, India does not have an overall framework of cryptocurrency regulations, unlike other jurisdictions, which are gradually introducing structured reforms with regard to cryptocurrency transactions.

Banking Sector Paradox:

Banks are in a state of ambiguity. After the judgment of the court in the above mentioned case of Internet and Mobile Association of India v. Reserve Bank of India, banks are not allowed to impose any restriction on cryptocurrency businesses. However, at the same time, banks are also required to follow the rules of RBI supervision and AML regulations strictly.

The lack of RBI guidelines on the treatment of Virtual Digital Asset Service Providers (VDASPs) has resulted in conservative banking practices. The lack of information on

[33] Tata Consultancy Services v. State of Andhra Pradesh, (2004) 6 S.C.C. 787, 812-15 (India).

blockchain technology-based transactions that take place outside the traditional financial system also makes the task of surveillance of such transactions difficult for the banks in adhering to the requirements of AML regulations and FEMA regulations.

Enforcement Challenges:

The enforcement of FEMA regulations and PMLA regulations faces major challenges due to the nature of cryptocurrency transactions that are borderless, decentralised, and pseudonymous in nature. Although FIU-IND has imposed penalties on non-compliant VDASPs, the overall ecosystem of the cryptocurrency environment is technically complex for the overall enforcement of the regulations.

Comparative Insights:

The comparison of the Indian scenario with the UK scenario would show that the benefits of enacting comprehensive legislation on the subject, phased regulation of the sector, and its inclusion within the existing financial services regulation are immense.

VIII. CONCLUSION AND RECOMMENDATIONS

This study identifies the existing ambivalence in FEMA's applicability and the complexities in enforcing PMLA regulations. The limited scope of banks serving the cryptocurrency market has also been established.

Recommendations for Legislative Reform:

Comprehensive Cryptocurrency Legislation: The Parliament should introduce comprehensive legislation on the scope of virtual digital assets, regulations on cross-border transactions, scope of regulations, and the scope of regulations and consumer and financial system risks.

FEMA Clarification or Amendment: The FEMA regulations should clearly outline the scope of cryptocurrency regulations and reporting requirements and suggest alternatives appropriate for blockchain technology.

Tax Reform: The Income-tax Act, 1961, including Section 115BBH and the 1% TDS under Section 194S, should permit the set-off of losses and reassess market impact to avoid deterring genuine participants.[34]

[34] India Crypto Exodus: USD 42 Billion Moves Offshore Due to 1% TDS, COINDCX BLOG (Jan. 2, 2026).

Banking Guidance: The RBI should introduce detailed guidelines on the scope of regulations and risks while serving VDASPs.

Regulatory Coordination: There needs to be a formal framework of coordination among RBI, FIU-IND, Enforcement Directorate, SEBI, and tax authorities.

International Cooperation: Since cryptocurrency transactions are borderless in nature, India must strengthen cooperation with FATF initiatives and international regulatory authorities.

Limitations and Future Research:

The study has been based on doctrinal research without access to empirical data on enforcement trends, costs of compliance, and market impact. Future research must be based on surveys, interviews with stakeholders, and quantitative research. The study must also be extended to cover jurisdictions outside the UK.

Concluding Observations:

India is at a crossroads. While regulatory uncertainty may be holding back innovation in this field, it also places Indian consumers and financial institutions at risk. The example set by the UK demonstrates how well-regulated development in this field can lead to greater understanding and growth. The high level of cryptocurrency adoption in India provides an opportunity to create a regulatory framework that encourages innovation, growth, and stability.

BIBLIOGRAPHY

1. ARVIND NARAYANAN ET AL., BITCOIN AND CRYPTOCURRENCY TECHNOLOGIES (2016). https://books.google.co.in/books?id=fW-YDwAAQBAJ&source=gbs_navlinks_s
2. India Crypto Market Report 2025, COINSWITCH (Jan. 2025), https://coinswitch.co/india-crypto-market-report-2025.
3. Reserve Bank of India, Circular on Prohibition on dealing in Virtual Currencies (VCs), RBI/2017-18/154 (Apr. 6, 2018). https://www.rbi.org.in/SCRIPTs/NotificationUser.aspx?Id=11243
4. Jaideep Reddy, Crypto-Assets and the Indian Constitution, 16 INDIAN J.L. & TECH. 375 (2020) https://repository.nls.ac.in/ijlt/vol15/iss2/5/
5. FIU-IND AML & CFT Guidelines for VDA Reporting Entities (Mar. 10, 2023) https://fiuindia.gov.in/pdfs/downloads/VDA08012026.pdf

6. FIU-IND Order imposing penalty on Binance (June 2024) https://fiuindia.gov.in/pdfs/judgements/Binance_Order_10_2024.pdf
7. RBI Master Direction on LRS (Jan. 1, 2016) https://www.rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=10192
8. Prevention of Money Laundering Act, No. 15, Acts of Parliament, 2002, § 13 (India). https://fiuindia.gov.in/files/AML_Legislation/pmla_2002.html
9. Subhadeep Saha, *Regulating the Unregulated: India's Legal Conundrum with Cryptocurrencies*, SCC TIMES (Jan. 23, 2026) https://www.scconline.com/blog/post/2026/01/23/regulating-unregulated-india-legal-conundrum-cryptocurrencies/
10. Nishith Desai Associates, Crypto and Web3 in India: Navigating the Regulatory Landscape, Nishith Desai Associates Research Paper (2023), https://nishithdesai.com/Content/document/pdf/Articles/CryptoWeb3India.pdf
11. Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, S.I. 2017/692 (as amended 2019) (U.K.). https://www.legislation.gov.uk/uksi/2017/692
12. Financial Conduct Authority, Discussion Paper DP23/4: Regulating crypto assets Phase 1: https://www.fca.org.uk/publications/discussion-papers/dp23-4-regulating-cryptoassets-phase-1-stablecoins