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CRYPTOCURRENCY AND FINANCIAL INCLUSION IN INDIA: A LEGAL ANALYSIS OF EMERGING FRAMEWORKS AND CONSTITUTIONAL CONSIDERATIONS

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ABSTRACT

Across the world, the rapid growth of cryptocurrency has compelled governments to reconsider the fundamental assumptions underlying financial regulation. In India, where financial exclusion still continues despite policy efforts despite decades of policy interventions, the intersection of cryptocurrency technology and constitutional law raises questions of considerable legal and socioeconomic significance. This paper presents a doctrinal and analytical study of the legal frameworks governing cryptocurrency in India, with special focus on their implications for financial inclusion. It traces the evolution of the Reserve Bank of India's regulatory stance, examines the landmark Supreme Court decision in Internet and Mobile Association of India v. Reserve Bank of India (2020), and interrogates the constitutional tensions between the State's regulatory authority and the fundamental rights guaranteed under Articles 19(1)(g) and 21 of the Constitution of India. The paper also compares regulatory models adopted by the European Union, El Salvador, the United States, and Singapore, the paper argues that India's regulatory trajectory, if calibrated appropriately, could

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leverage decentralised financial technology to extend access to financial services for its underserved populations. The study concludes by providing specific recommendations for a constitutionally sound and inclusion-sensitive regulatory framework.

KEYWORDS: Legal Analysis, Financial Inclusion, India, Cryptocurrency, Regulatory Framework, RBI Circular 2018, Supreme Court Verdict, Proportionality Doctrine, Blockchain Technology, Virtual Digital Assets, Article 19(1)(g), Reasonable Restrictions, Financial Sovereignty, Rural Connectivity, Peer-to-Peer Transactions

INTRODUCTION:

India's efforts towards financial inclusion date back to the early years of its Republic. From the nationalisation of commercial banks in 1969 to the Pradhan Mantri Jan Dhan Yojana of 2014, successive governments have deployed the machinery of the State to bring economically marginalised populations within the formal financial fold.² Yet, as of 2021, a substantial segment of India's adult population particularly rural women, migrant workers, and tribal communities remains either unbanked or severely underbanked, notwithstanding these interventions.³

Against this backdrop, the global emergence of cryptocurrency can be broadly described as a digital or virtual form of currency employing cryptographic techniques to secure transactions without the intermediation of a central bank has introduced a set of tools whose promise and peril demand systematic legal

² The Pradhan Mantri Jan Dhan Yojana (PMJDY), launched on 28 August 2014, aimed at providing universal access to banking facilities. As of March 2024, over 520 million accounts had been opened under the scheme. Ministry of Finance, Government of India, 'PMJDY Progress Report' (March 2024).

³ World Bank Group, 'The Global Findex Database 2021: Financial Inclusion, Digital Payments, and Resilience in the Age of COVID-19' (World Bank 2022) 78. The report notes that approximately 190 million Indian adults remained unbanked as of 2021, despite a decade of concerted policy efforts.

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scrutiny.⁴ The decentralised nature of blockchain-based currencies helps reduce traditional barriers. It allows easier access to financial services the geographic, documentary, and infrastructural barriers that gatekeep access to financial services. A subsistence farmer in Rajasthan without a bank branch within fifty kilometres may, in theory, participate in a global financial network through nothing more than a mobile telephone and an internet connection.

The Indian legal system's encounter with cryptocurrency has been neither smooth nor systematic. In April 2018, the Reserve Bank of India (RBI) introduced a circular restricting regulated entities from engaging in virtual currency-related activities from dealing in virtual currencies.⁵ This restriction was later set aside by the Supreme Court in *Internet and Mobile Association of India v. Reserve Bank of India (2020)*⁶ on proportionality grounds. The government thereafter introduced and subsequently deferred comprehensive cryptocurrency legislation, leaving the regulatory landscape in a state of studied ambiguity.

This paper pursues a tripartite inquiry. First, it examines the conceptual relationship between cryptocurrency technology and financial inclusion objectives in the Indian context. Second, it analyses the existing legal frameworks statutory, regulatory, and judicial governing cryptocurrency in India, including the constitutional rights implicated by State regulation. Third, it situates India's regulatory trajectory within a comparative frame before offering recommendations for a model that is simultaneously constitutionally sound, financially inclusive, and macroeconomically prudent. The methodology is primarily doctrinal, drawing upon

⁴ Financial Action Task Force (FATF), 'Updated Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers' (FATF, October 2021) 15. According to FATF, virtual assets can be described as 'a digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes.'

⁵ Reserve Bank of India, 'Prohibition on Dealing in Virtual Currencies (VCs)' Circular DBR.No.BP.BC.104/08.13.102/201718 (6 April 2018). The circular directed all RBI-regulated entities to cease dealing in virtual currencies or providing services to entities dealing in such currencies within three months.

⁶ *Internet and Mobile Association of India v. Reserve Bank of India (2020)* SCC OnLine SC 275 (Div Bench: Nariman,

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primary legal materials constitutional provisions, statutes, subordinate legislation, and judicial decisions supplemented by secondary sources including academic commentary, policy documents, and comparative regulatory analyses. The normative frame applied is that of an enabling constitution: one that regards fundamental rights not merely as shields against State encroachment but as affirmative obligations to create conditions for their meaningful enjoyment.

CRYPTOCURRENCY AND FINANCIAL INCLUSION - A CONCEPTUAL FOUNDATION:

Understanding Cryptocurrency: A Legal-Technical Overview:

Cryptocurrency emerged as a theoretical and technological proposition with the publication of Satoshi Nakamoto's white paper in 2008 and the genesis of the Bitcoin network in January 2009.⁷ The foundational innovation was the blockchain, a distributed, append-only ledger maintained across a peer-to-peer network without reliance upon any central repository or trusted intermediary. Each transaction is cryptographically linked to preceding transactions, creating an immutable chain that renders retroactive falsification computationally prohibitive. From a legal standpoint, cryptocurrencies resist assimilation into existing taxonomies. They are not 'currency' in the classical Chartalist sense because no sovereign authority issues them or compels their acceptance as legal tender. They do not neatly qualify as 'securities' because, absent a centralised issuer making representations to investors, the foundational rationale for securities regulation is absent. They share certain features with commodities, yet lack the physical substrate of conventional commodities. Indian law has addressed this classificatory uncertainty by reference to functional attributes rather than ontological definition.

⁷Bose, Ramasubramanian JJ), decided 4 March 2020 (hereinafter 'IMAI v. RBI'). The judgment, authored by Ramasubramanian J., spans approximately 180 pages and constitutes the most authoritative judicial pronouncement on cryptocurrency regulation in India to date. Satoshi Nakamoto, 'Bitcoin: A Peer-to-Peer Electronic Cash System' (2008) <https://bitcoin.org/bitcoin.pdf> accessed 10 January 2025. The white paper proposed a system for electronic transactions without relying on trust in a centralised institution, utilising cryptographic proof instead.

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The Income Tax Act, 1961, as amended in 2022, defines 'virtual digital assets' to include any information or code or number or token generated through cryptographic means, providing a definition broad enough to encompass existing and novel cryptographic instruments.⁸ The Foreign Exchange Management Act, 1999 does not expressly address cryptocurrency but has been invoked by the Enforcement Directorate in enforcement actions against platforms alleged to have facilitated foreign exchange violations through crypto transactions.⁹

Financial Inclusion in India: Legal and Policy Architecture:

Financial inclusion, as conceptualised by the Reserve Bank of India, refers to the process of ensuring availability of suitable financial services for all sections of society, especially transparent manners by regulated mainstream institutional players.¹⁰ The legal architecture supporting financial inclusion is multi-layered. The Banking Regulation Act, 1949 empowers the RBI to direct banks to open branches in unserved or underserved areas.¹¹ The National Rural Employment Guarantee Act, 2005 mandates disbursement of wages through bank accounts, incentivising account-opening among rural labour.¹² The Payment and Settlement Systems Act

⁸ Income Tax Act, 1961, s. 2(47A), inserted by the Finance Act, 2022. The provision defines 'virtual digital asset' to include 'any form of information, code, number, or token created using cryptographic techniques or similar methods, irrespective of its name.' CBDCs issued by the RBI are expressly excluded.

⁹ The Enforcement Directorate conducted searches against the WazirX cryptocurrency exchange in 2022 under the Foreign Exchange Management Act, 1999 (FEMA), alleging that the platform facilitated unauthorised cross-border transfers. The jurisdictional questions raised including the extent to which FEMA applies to cryptocurrency transactions have not been definitively resolved by any court.

¹⁰ Reserve Bank of India, 'Report of the Committee on Financial Inclusion' (Rangarajan Committee Report, 2008) 1. This definition has been reiterated in RBI publications including the 'Report on Currency and Finance 2020-21' (RBI 2021).

¹¹ Banking Regulation Act, 1949, s. 23 enables the RBI to impose branch expansion conditions as part of licensing, including requirements to open branches in unbanked rural areas. The RBI has consistently exercised this authority through its Priority Sector Lending guidelines.

¹² The Mahatma Gandhi National Rural Employment Guarantee Act, 2005, s. 3 guarantees 100 days of wage employment per financial year to each rural household. Payment of wages directly into bank

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2007 enabled creation of the UPI ecosystem that has dramatically expanded digital financial access.¹³

Cryptocurrency as an Instrument of Financial Inclusion:

The case for cryptocurrency as a tool for promoting financial inclusion is based on several structural attributes of blockchain technology. Transaction costs on many blockchain networks are significantly lower than those imposed by traditional remittance channels.¹⁴ India is the world's largest recipient of remittances, receiving over USD 100 billion in 2022, yet the average cost of sending money through conventional channels remains above the three percent target set by the G20.¹⁵

Second, cryptocurrency wallets require no minimum balance, no credit history, and no fixed residential address preconditions that routinely exclude India's most marginalised populations from conventional banking. A digital wallet can be established with nothing more than a smartphone and a data connection, assets whose penetration in rural India has increased substantially following the digital infrastructure investments of the past decade.¹⁶

However, these promises must be weighed against structural impediments. Cryptocurrency markets are characterised by extreme price volatility, rendering

accounts has been mandatory since 2008, driving millions of account openings among rural labourers.

¹³ Payment and Settlement Systems Act, 2007, s. 4. The Act established the National Payments Corporation of India (NPCI) as the umbrella retail payments organisation. NPCI subsequently developed the Unified Payments Interface (UPI), which processed over 100 billion transactions annually by 2023.

¹⁴ World Bank, '[Remittance Prices Worldwide](#)' (December 2022) accessed 14 January 2025. The average cost of sending USD 200 to India through conventional corridors ranged between 4.5% and 7% in Q4 2022, significantly above the 3% target of Sustainable Development Goal 10.c.

¹⁵ Reserve Bank of India, 'Remittances to India: An Analysis of Trends, Sources and Macroeconomic Consequences' (RBI Bulletin, September 2022). India received USD 100.6 billion in inward remittances in FY 2022-23, the highest for any country globally, equivalent to approximately 3.4% of GDP.

¹⁶ Telecom Regulatory Authority of India (TRAI), 'Recommendations on Enabling Broadband Access in Rural Areas' (TRAI 2022). Rural internet penetration reached approximately 37% in 2022, driven significantly by the Reliance Jio infrastructure rollout initiated in 2016.

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them unreliable as stores of value for risk averse low-income households. Scams and fraudulent schemes targeting unsophisticated investors have caused substantial harm in India.¹⁷ Stablecoins cryptocurrencies pegged to stable reserve assets partially address the volatility concern, but remain without a dedicated Indian legal framework.¹⁸

LEGAL FRAMEWORK GOVERNING CRYPTOCURRENCY IN INDIA:

The Reserve Bank of India Act, 1934:

The Reserve Bank of India Act, 1934 (hereinafter 'RBI Act') constitutes the primary legislative basis for the RBI's regulatory authority. Section 3 establishes the Reserve Bank as the central bank and Section 22 grants the sole right to issue bank notes. Section 45JA empowers the RBI to give directions to non-banking financial companies in the public interest. These provisions were invoked as the statutory basis for the April 2018 circular directing regulated entities to cease dealing with virtual currency businesses.¹⁹

The Payment and Settlement Systems Act, 2007:

The Payment and Settlement Systems Act, 2007 governs the authorisation and regulation of payment systems in India. Section 4 prohibits the commencement or operation of a payment system without RBI authorisation. Whether cryptocurrency exchanges constitute 'payment systems' under the Act and whether

¹⁷ Indian Cyber Crime Coordination Centre (I4C), Ministry of Home Affairs, 'Annual Report on Cyber Crimes 2022-23' (MHA 2023). The report documents increasing cryptocurrency-related fraud, including pump-and-dump schemes, fake exchanges, and fraudulent ICOs, with total reported losses exceeding INR 1,000 crore between 2020 and 2023.

¹⁸ Financial Stability Board, 'Regulation, Supervision and Oversight of Global Stablecoin Arrangements: Revised HighLevel Recommendations' (FSB, July 2023). The FSB distinguishes between global stablecoins, which pose systemic risk due to potential widespread adoption, and smaller payment-purpose stablecoins.

¹⁹ Reserve Bank of India Act, 1934, s. 22 grants the RBI the 'sole right to issue bank notes of all denominations in India.' Section 45JA empowers the RBI to give directions to non-banking financial companies in the public interest. See *IMAI v. RBI* (2020) at para. 5.1-5.20 for the Court's analysis of the statutory competence question.

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cryptocurrencies constitute 'payment instruments' remain contested legal questions that create compliance uncertainty for regulated entities.²⁰

The Information Technology Act, 2000:

The Information Technology Act, 2000 provides the overarching framework for electronic commerce and digital transactions. Section 43A imposes obligations on entities handling sensitive personal data to maintain reasonable security practices, a provision of relevance to cryptocurrency exchanges storing users' private keys and personal data. Sections 66C and 66D criminalise identity theft and cheating by personation using computer resources, provisions directly applicable to cryptocurrency scams and phishing attacks targeting digital wallet holders.²¹

The Prevention of Money Laundering Act, 2002:

The Prevention of Money Laundering Act, 2002 (PMLA) is perhaps the most actively deployed statutory instrument in India's response to cryptocurrency risks. In March 2023, the Ministry of Finance issued a notification bringing 'virtual digital asset service providers' within the definition of 'reporting entities' under the PMLA, subjecting them to customer due diligence, record-keeping, and suspicious transaction reporting obligations.²² This broadly aligns India with FATF standards, whose Recommendation 15 specifically addresses virtual asset service providers.²³

²⁰ Payment and Settlement Systems Act, 2007, ss. 2(i), 2(m). The Act defines 'payment system' as a system enabling payment to be effected between payer and beneficiary, and 'payment instrument' as any instrument enabling access to a payment system. Whether cryptocurrency exchanges qualify as payment systems remains contested.

²¹ Information Technology Act, 2000, s. 43A (inserted by the IT Amendment Act 2008). The provision requires any body corporate handling sensitive personal data to implement reasonable security practices. The Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 operationalise this obligation.

²² Ministry of Finance, Notification No. GSR 197(E) (7 March 2023), amending the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 to include 'virtual digital asset service providers' as reporting entities under the PMLA. This notification represented the first formal regulatory recognition of the VDA industry as a category of financial intermediary.

²³ FATF, 'Updated Guidance for a Risk-Based Approach to Virtual Assets and VASPs' (FATF, October 2021). FATF Recommendation 15 requires that countries ensure VASPs are subject to AML/CTF

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The 2018 RBI Circular and its Aftermath:

On 6 April 2018, the RBI issued a circular directing all regulated entities to not deal in virtual currencies or provide services to entities dealing in virtual currencies within three months. The effect was severe: cryptocurrency exchanges were cut off from banking services, rendering Indian exchanges effectively non-functional. The constitutional challenge to the circular ultimately succeeded in the Supreme Court. Following the Supreme Court's judgment in March 2020, the RBI continued to express strong reservations about cryptocurrency, with its Annual Report 2020-21 recommending a comprehensive ban. In May 2021, the RBI issued a letter to banks suggesting that the 2018 circular, though set aside, was still 'relevant guidance' widely perceived as an attempt to informally reinstate the prohibition. Meanwhile, the Finance Act, 2022 imposed a flat thirty percent tax on virtual digital asset income without constituting a comprehensive regulatory regime.²⁴

JUDICIAL ANALYSIS: IMAI v. RBI (2020):

The judgment of the Supreme Court in *Internet and Mobile Association of India v. Reserve Bank of India*, decided on 4 March 2020 by a Division Bench comprising Justices R.F. Nariman, Aniruddha Bose, and V. Ramasubramanian, constitutes the most significant judicial pronouncement on cryptocurrency law in India to date.²⁵

The Court addressed three primary questions: first, whether the RBI had the competence to issue the circular; second, whether cryptocurrency exchanges had a

obligations including customer due diligence, record-keeping, and suspicious transaction reporting, in line with the risk-based approach.

²⁴ IMAI v. RBI (2020) SCC OnLine SC 275 at paras. 7.7-7.9. The Court applied the proportionality doctrine as expounded in *Modern Dental College and Research Centre v. State of Madhya Pradesh* (2016) 7 SCC 353 and found that the RBI had not demonstrated actual harm to regulated entities or considered less restrictive regulatory alternatives before imposing the prohibition.

²⁵ Reserve Bank of India, 'Caution against Unauthorised Entities Using Crypto/Virtual Currency Exchanges' (RBI Press Release, December 2017). See also RBI Annual Report 2020-21, Chapter VI, which characterised cryptocurrency as posing 'considerable risks to financial stability' and recommended comprehensive prohibition legislation.

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fundamental right under Article 19(1)(g) that was infringed; and third, whether the restriction imposed was proportionate.

Regulatory Competence:

On the first question, the Court held broadly in favour of the RBI's competence, finding that the plenary powers conferred by the Banking Regulation Act, 1949 and the RBI Act, read together, were broad enough to permit directions to regulated entities regarding their dealings with virtual currencies, even though virtual currencies were not explicitly mentioned in those statutes.²⁶

Fundamental Right to Trade:

On the second question, the Court acknowledged that the petitioner exchanges had a fundamental right under Article 19(1)(g) to carry on business in the exchange of virtual currencies, rejecting the respondent's submission that trade in speculative instruments could not attract fundamental rights protection. The right exists until validly curtailed; regulatory characterisation of the activity as undesirable cannot pre-empt the constitutional inquiry.²⁷

Proportionality Analysis:

The determinative ground for the Court's decision was proportionality. Applying the doctrine as expounded in *Modern Dental College and Research Centre v. State*

²⁶ Lok Sabha Bulletin-II (26 November 2021) listing 'The Cryptocurrency and Regulation of Official Digital Currency Bill, 2021' for introduction in the winter session. The Bill proposed to 'prohibit all private cryptocurrencies in India' while allowing 'certain exceptions to promote the underlying technology.' The Bill was listed but never introduced or debated.

²⁷ Finance Act, 2022, inserting ss. 115BBH and 194S into the Income Tax Act, 1961. Section 115BBH imposes a flat 30% tax on income from virtual digital assets with no set-off for losses from other asset classes. Section 194S imposes 1% TDS on transfers above INR 10,000. These provisions were widely criticised as discouraging legitimate market participation.

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of Madhya Pradesh²⁸ and K.S. Puttaswamy v. Union of India²⁹, the Court found that the RBI had failed to demonstrate either that entities regulated by it had suffered any actual harm from the activities of cryptocurrency exchanges, or that the prohibitory circular was the least restrictive measure available to achieve its regulatory objectives.³⁰

The Court's observation that cryptocurrency is not 'currency' in the constitutional sense lacking²⁹ sovereign issuance and legal tender status has significant implications for future legislative and regulatory initiatives, including questions of legislative competence.

CONSTITUTIONAL DIMENSIONS:

Fundamental Right to Trade: Article 19(1)(g):

Article 19(1)(g) of the Constitution of India guarantees to all citizens the right to practise any profession, or to carry on any occupation, trade, or business. This right is subject to reasonable restrictions that may be imposed by the State under Article 19(6) in the interests of the general public. A prospective legislative prohibition on cryptocurrency would need to satisfy a structured proportionality test: (i) a legitimate aim of sufficient importance; (ii) a rational connection between the prohibition and that aim; (iii) that prohibition is the least restrictive measure capable of achieving the aim; and (iv) that the harm to fundamental rights does not outweigh

²⁸ IMAI v. RBI (2020) SCC OnLine SC 275 at paras. 5.1-5.20. The Court held that the RBI's plenary powers under Sections 35A and 36 of the Banking Regulation Act, 1949 and Sections 45JA and 45L of the RBI Act, read together, were broad enough to support directions to regulated entities regarding virtual currencies, even absent explicit statutory mention.

²⁹ IMAI v. RBI (2020) at para. 6.20-6.34. The Court held, inter alia, that constitutional protection under Art. 19(1)(g) does not depend upon prior regulatory approval of the subject matter of the trade. The right exists until validly curtailed; regulatory characterisation of the activity as undesirable cannot pre-empt the constitutional inquiry.

³⁰ Modern Dental College and Research Centre v. State of Madhya Pradesh (2016) 7 SCC 353. The Supreme Court adopted a four-stage structured proportionality analysis in this case, drawing on comparative constitutional jurisprudence from Germany, Canada, and the European Court of Human Rights.

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the benefits. The evidence on record in *IMAI v. RBI* suggests Indian courts would scrutinise such a prohibition with considerable rigour.

Right to Privacy: Article 21:

The recognition of the right to privacy as a fundamental right under Article 21 by the nine-judge bench in *K.S. Puttaswamy v. Union of India*³¹ has transformative implications for cryptocurrency regulation. The Court identified 'financial privacy' the right to control information about one's financial transactions as a core protected dimension.³² Mandatory KYC requirements for cryptocurrency transactions collect and process sensitive financial and personal data, creating detailed records of individuals' economic activity. The Puttaswamy court articulated a three-part test for permissible restrictions on privacy: (i) legality; (ii) legitimate aim; and (iii) proportionality.³³ Cryptocurrency regulation that imposes blanket de-anonymisation without distinguishing between transaction categories risks failing this test, particularly where less invasive regulatory instruments such as transaction thresholds below which anonymity is preserved are available.

Equality Dimensions: Article 14:

The imposition of a thirty percent flat tax on virtual digital assets under the Finance Act, 2022, without the benefit of loss set-off, progressive taxation, or exemptions for small transactions, operates regressively insofar as it imposes proportionately

³¹ *K.S. Puttaswamy v. Union of India* (2017) 10 SCC 1 (Nine-Judge Constitution Bench). All nine judges held unanimously that the right to privacy is a fundamental right under Articles 14, 19, and 21 of the Constitution, overruling *M.P. Sharma v. Satish Chandra* AIR 1954 SC 300 and *Kharak Singh v. State of U.P.* AIR 1963 SC 1295 to the contrary.

³² *IMAI v. RBI* (2020) at para. 7.5. The Court stated that it had 'gone through the RBI Circulars, the reports of various committees... and we are of the opinion that the RBI has not been able to show either by records or in its submissions before us' that regulated entities had suffered concrete harm requiring the extent of prohibition imposed.

³³ *K.S. Puttaswamy v. Union of India* (2017) 10 SCC 1 per Chandrachud J. at para. 180. The judgment identifies 'financial privacy' the right to prevent disclosure of financial information to government or third parties as a core protected dimension of the constitutional right to privacy.

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heavier burdens on small retail investors precisely the demographic whose inclusion in financial markets is a stated policy objective.³⁴

Legislative Competence for a Prospective Ban:

The legislative competence to enact a law comprehensively prohibiting cryptocurrency requires examination. The Union Parliament's authority is sourced in Entry 36 of List I 'Currency, coinage and legal tender' and Entry 45 'Banking.' If cryptocurrency is not 'currency' within Entry 36, the legislative basis for prohibition must be identified in Entry 97 (residuary power) or entries in the concurrent list. The Court's observation in *IMAI v. RBI* that cryptocurrency is not 'currency' in the constitutional sense has implications for this analysis.³⁵

COMPARATIVE REGULATORY PERSPECTIVES:

The European Union: MiCA:

The European Union's Markets in Crypto-Assets Regulation (MiCA), which entered into force in June 2023 and became fully applicable in December 2024, represents the most comprehensive legislative framework for cryptocurrency regulation enacted by any major jurisdiction.³⁶ MiCA establishes a unified regulatory regime applicable across all twenty-seven EU member states, requiring crypto-asset service providers to obtain authorisation, comply with disclosure obligations, and maintain adequate capital and governance standards. MiCA's approach to stablecoins categorised as

³⁴ *K.S. Puttaswamy v. Union of India* (2017) per Chandrachud J. at paras. 173-179. The three-part test requires: (i) legality the intrusion must be grounded in law; (ii) legitimate aim there must be a pressing social need; and (iii) proportionality the measure must be the minimum necessary intrusion bearing a rational connection to the aim.

³⁵ Finance Act, 2022, s. 115BBH. The absence of loss set-off provisions standard in the taxation of other capital assets means investors face an effective tax rate higher than the nominal 30% where they sustain losses on one cryptocurrency while gaining on another. This asymmetric treatment has been criticised as structurally regressive and inconsistent with treatment of comparable asset classes.

³⁶ Constitution of India, Seventh Schedule, List I, Entry 36 ('Currency, coinage and legal tender; foreign exchange'), Entry 45 ('Banking'), Entry 97 (residuary power). The *IMAI v. RBI* Court's observation that cryptocurrency is not 'currency' in the RBI Act sense has implications for the legislative competence question; a prohibition anchored in Entry 36 may be constitutionally vulnerable.

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'asset-referenced tokens' and 'e-money tokens' is particularly instructive for India. Issuers face stringent reserve requirements, redemption rights, and supervisory oversight, addressing monetary sovereignty concerns without prohibiting stablecoin issuance per se.³⁷

El Salvador: The Legal Tender Experiment:

El Salvador's Bitcoin Law, enacted in June 2021, made Bitcoin legal tender the first country to do so, requiring all economic agents to accept Bitcoin as payment. The government's Chivo wallet facilitated Bitcoin transactions and provided a thirty dollar incentive to new users as a financial inclusion mechanism.³⁸ However, surveys found that a substantial proportion of adopters ceased active use after spending the initial incentive, raising questions about sustained financial inclusion outcomes.³⁹ The El Salvador model is not constitutionally replicable in India. The RBI Act confers exclusive authority on the RBI to determine what constitutes legal tender in India, and the right to receive payment in Indian rupees cannot be displaced by governmental compulsion to accept a volatile asset as substitute.

The United States: Fragmented but Evolving:

The United States presents a regulatory landscape characterised by jurisdictional complexity. The Securities and Exchange Commission has asserted jurisdiction over cryptocurrencies characterised as securities under the Howey test, while the

³⁷ Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on Markets in Crypto-Assets (MiCA), OJ L 150, 9 June 2023. MiCA entered into force on 29 June 2023. Provisions relating to asset-referenced tokens and e-money tokens became applicable from 30 June 2024; all remaining provisions from 30 December 2024.

³⁸ MiCA, Arts. 16-23 (asset-referenced tokens) and Arts. 48-58 (e-money tokens). Issuers are required to maintain liquid reserve assets, grant redemption rights to holders at par value, and obtain authorisation from the competent national authority. Significant issuers face additional supervisory requirements including capital buffers and interoperability obligations.

³⁹ Ley Bitcoin (Bitcoin Law), Decreto No. 57, Diario Oficial Tomo No. 432, El Salvador (7 September 2021). The law made Bitcoin legal tender alongside the US dollar and mandated the creation of the Chivo digital wallet infrastructure. A USD 30 incentive was provided to new Chivo wallet users as a financial inclusion mechanism.

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Commodity Futures Trading Commission claims jurisdiction over commodities and derivatives, and the Financial Crimes Enforcement Network enforces AML/CTF obligations through the Bank Secrecy Act. The United States' experience with regulatory fragmentation and the legal uncertainty it generates for market participants offers a cautionary lesson for India in favour of early legislative clarity.

Singapore: Risk-Based Proportionate Regulation:

Singapore's regulatory approach, administered through the Payment Services Act, 2019 and its amendments, exemplifies risk-based proportionate regulation. Digital payment token service providers require a licence from the Monetary Authority of Singapore and must comply with AML/CTF requirements, but the framework distinguishes between service types and applies graduated requirements commensurate with risk profiles.⁴⁰ Singapore has specifically prohibited marketing of cryptocurrency services to retail consumers in public spaces, citing consumer protection concerns, while permitting exchanges to operate for consenting retail customers.⁴¹

CHALLENGES AND RECOMMENDATIONS:

Principal Challenges:

The principal challenges confronting Indian regulators are: (i) technological complexity and epistemic asymmetry the technology evolves at a pace consistently outstripping institutional regulatory capacity; (ii) the tension between inclusion and AML/CTF compliance mandatory KYC requirements replicate in the cryptocurrency domain the documentary barriers that exclude marginalised

⁴⁰ Alvarez F, Argente D, and Van Patten D, 'Are Cryptocurrencies Currencies? Bitcoin as Legal Tender in El Salvador' NBER Working Paper No. 29968 (April 2022) 18-24. A survey of 1,800 El Salvadoran households found that most Chivo adopters ceased using the platform after spending the initial USD 30 incentive, and merchant adoption remained low outside tourist areas.

⁴¹ Monetary Authority of Singapore, Payment Services Act 2019 (No. 2 of 2019, as amended by the Payment Services (Amendment) Act 2021). The Act creates a three-tier licensing framework: Money-Changing Licence (lower risk), Standard Payment Institution Licence (smaller scale), and Major Payment Institution Licence (larger/higher risk operations).

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populations from conventional banking; (iii) consumer protection gaps India's consumer protection framework is not calibrated to address harms arising from digital asset transactions; (iv) monetary sovereignty concerns the RBI's concerns about the implications of widespread cryptocurrency adoption for monetary policy transmission are legitimate and not merely protectionist; and (v) the inherently borderless character of cryptocurrency, which renders unilateral national regulation inherently incomplete.

Recommendation 1: Enact Comprehensive Dedicated Legislation:

India should enact a dedicated Virtual Digital Assets Act rather than continuing to rely on the patchwork of regulatory circulars, tax provisions, and PMLA notifications that currently constitute the de facto framework. Dedicated legislation would provide legal certainty to market participants, clearly allocate regulatory authority between the RBI and SEBI, and create a constitutional foundation for the regulatory regime more resilient to legal challenge than administrative circulars. The legislation should: (i) define categories of virtual digital assets and establish a classification regime; (ii) allocate regulatory jurisdiction between the RBI (payment tokens and stablecoins) and SEBI (investment/security tokens); (iii) establish mandatory licensing for virtual asset service providers; (iv) codify AML/CTF obligations with risk-proportionate KYC requirements; and (v) establish a sandboxing mechanism for innovative applications.

Recommendation 2: Adopt a Risk-Based Tiered KYC Framework:

To reconcile inclusion and integrity objectives, the legislation should provide for a tiered KYC framework modelled on the RBI's own approach to small payment systems. For transactions below a low threshold, say, twenty-five thousand rupees simplified KYC relying on a mobile number linked to Aadhaar should suffice. Standard KYC should apply for mid-range transactions. Enhanced due diligence

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should be required only for high-value or suspicious transactions. This tiered approach would extend digital financial access to populations without full documentation while maintaining integrity controls for higher-risk transactions.⁴²

Recommendation 3: Establish a Dedicated Regulatory Sandbox:

A dedicated cryptocurrency regulatory sandbox available to platforms developing applications specifically oriented toward financial inclusion use cases, such as low-cost remittances, microinsurance, and agricultural credit would permit regulatory learning without systemic risk exposure. The RBI's existing sandbox framework provides the institutional precedent.⁴³

Recommendation 4: Proactive International Regulatory Engagement:

India should translate its G20 engagement on crypto-asset regulation into sustained institutional participation in standard-setting bodies. India's G20 Presidency in 2023 produced a Synthesis Paper recommending a global regulatory baseline for crypto assets, which was endorsed by G20 Leaders at the New Delhi Summit.⁴⁴ Active engagement with FATF, the Financial Stability Board, and the Committee on Payments and Market Infrastructures would enable India to shape international standards consistent with its development objectives and constitutional constraints.

⁴² Monetary Authority of Singapore, 'MAS Publishes Guidelines to Restrict Cryptocurrency Marketing to the General Public' (MAS, 17 January 2022). The guidelines prohibit cryptocurrency ATMs in public areas, cryptocurrency advertising in public transport networks and on social media targeting Singapore residents, and promotion by celebrities or social media influencers.

⁴³ The recommendation for risk-proportionate tiered KYC is consistent with FATF guidance on simplified due diligence for low-risk customers. See FATF, 'Updated Guidance' (n 22) paras. 73-80. The RBI's own approach to Prepaid Payment Instruments under its Master Direction (27 August 2021) distinguishes between 'Small PPIs' (INR 10,000 limit, basic phone verification) and 'Full KYC PPIs' (higher limits, complete documentation), providing a domestic precedent.

⁴⁴ Reserve Bank of India, 'Enabling Framework for Regulatory Sandbox' (RBI, 13 August 2019). The framework permits fintech companies to test innovative products in a controlled regulatory environment for a defined period with relaxed compliance requirements. Cryptocurrency-related applications were initially excluded but this restriction was subsequently reconsidered.

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Recommendation 5: Constitutional Safeguards in Regulatory Design

Any legislative or regulatory measure should be designed with explicit attention to constitutional constraints. Restrictions on the right to trade under Article 19(1)(g) should be: (a) grounded in statute rather than executive circulars; (b) accompanied by accessible remedy mechanisms; and (c) subject to periodic review. Privacy implications of mandatory data collection under AML/CTF obligations should be addressed through a dedicated data minimisation and purpose limitation framework, consistent with the Digital Personal Data Protection Act, 2023.

CONCLUSION:

This paper has traversed the legal, constitutional, and comparative landscape of cryptocurrency regulation in India through the lens of financial inclusion. Several principal conclusions emerge from this analysis.

First, the relationship between cryptocurrency technology and financial inclusion is neither straightforwardly positive nor categorically negative. Specific applications particularly in remittances, micro-payments, and access to credit for undocumented populations hold genuine promise. However, price volatility, technical complexity, and the replication of KYC barriers through AML/CTF regulation significantly constrain this promise in the absence of thoughtful regulatory design.

Second, India's existing legal framework is characterised by productive legal ambiguity at its best and regulatory paralysis at its worst. The absence of dedicated legislation, the inconsistency between the Supreme Court's proportionality-based judgment and the RBI's continued regulatory resistance, and the implicit acknowledgement of cryptocurrency transactions in the tax framework without corresponding clarity on their legality, create conditions unfavourable to both responsible innovation and consumer protection.

Third, the constitutional dimensions of cryptocurrency regulation are substantial. The right to trade under Article 19(1)(g), the right to privacy under Article 21, and the equality guarantee under Article 14 each impose genuine constraints on

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regulatory options. The doctrinal framework erected by the Supreme Court in *Puttaswamy*, *Modern Dental College*, and *IMAI v. RBI* centred on structured proportionality demands that any future prohibition be rigorously justified.

Fourth, the comparative survey reveals that supervised regulation not prohibition is the trajectory pursued by most economically significant jurisdictions. India's regulatory design should draw upon the EU's MiCA framework for comprehensiveness, Singapore's risk-based proportionality for methodological elegance, and the lessons of El Salvador's experiment for the limits of legally mandated cryptocurrency adoption.

Finally, and most fundamentally, the legislative and regulatory design challenge is ultimately a constitutional one. A framework that is simultaneously inclusive, protective, constitutionally sound, and macroeconomically prudent is achievable but it requires deliberate design choices, inter-agency coordination, and sustained political commitment. The 1.4 billion people of India and particularly the hundreds of millions who remain beyond the reach of conventional financial services deserve a legal framework adequate to the opportunities and risks of the digital financial age.

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