
TAXATION OF CRYPTOCURRENCIES IN INDIA: LEGAL CHALLENGES UNDER THE INCOME TAX ACT AND GST

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ABSTRACT

Taxes on cryptocurrencies in India present a unique set of problems at the intersection of income tax and indirect tax regimes. Since the Finance Act, 2022, added Sections 115BBH and 194S to the Income Tax Act, virtual digital assets (VDAs) have been subjected to a flat 30% tax, 1% TDS on transactions, and disallowance of set-off of loss. While this regime is a policy preference towards revenue extraction and deterrence, it disproportionately affects retail investors and constrains market growth. Indirect taxation-wise, the absence of explicit classification of cryptocurrencies under the CGST Act as goods, services, or actionable claims has created huge uncertainty, particularly in cross-border, peer-to-peer, and barter transactions involving NFTs. Drawing upon doctrinal analysis and comparative experience from the United States, United Kingdom, and Singapore, this paper highlights how India's tax treatment deviates from global best practices in favour of punitive compliance over facilitative regulation. The paper argues that the current regime poses a risk of violating constitutional principles of proportionality and equality under tax law. The paper concludes with suggested reforms, including the creation of a single digital asset tax code, reconsideration of the 30% levy as a capital gains-based regime, permitting loss offsets, and issuance of a GST notification following Singapore's exemption of digital tokens. In the process, the paper contributes to the broader discourse on striking a balance between tax certainty and innovation in India's emerging digital economy.

1. Introduction

The emergence of blockchain technology and the growing popularity of cryptocurrencies have presented regulatory challenges for tax departments worldwide. Numerous countries have struggled to adopt a consistent and comprehensive approach to taxing these digital assets. The conventional definitions of currency, assets, and securities have been challenged by cryptocurrencies, often evading the categories of legacy tax regimes. Consequently, countries have taken different approaches to the classification and taxation of cryptocurrencies. In India, following the introduction of the Finance Act of 2022, regulatory measures began to take shape. A legal definition for virtual digital assets (VDA) was added to the Income Tax Act, imposing a 30% tax on income arising from their transfers. Despite this, there is still ambiguity in the treatment of VDAs under the GST framework.

This paper aims to examine India's approach to the taxation of cryptocurrencies critically, analyze updates introduced in the Finance Bill 2025, and conduct a comparative analysis of the tax treatment of digital assets across different jurisdictions. By doing so, the objective is to evaluate India's current policy to determine whether it is coherent, consistent, and administratively feasible as new financial technologies emerge.

Furthermore, regulating cryptocurrencies intersects with the Constitution, specifically Sections 14 (equality) and Section 265 (the authority to levy taxes must be based on law), as well as the broader principles of proportionality and fairness. The state's power to levy taxes must be exercised with a clear legislative mandate and transparency; if this clarity is missing, especially in an emerging area, the enforcement of taxes can become arbitrary. This is especially important in the context of decentralized technologies, a space where conventional tax doctrines have had to adapt to address the gaps in enforcement and compliance.

2. Legal classifications

The recognition of cryptocurrencies in India remained unclear, even after the Supreme Court in *Internet and Mobile Association v. RBI* struck down the RBI's ban on banking facilities for crypto businesses in 2020; it did not constitute a blanket approval of crypto as a legal tender or financial instrument. Only after the 2022 Financial Act did cryptocurrency gain a legislative identity under the ambit of tax law, as part of VDAs.

Definition and scope:

The Finance Act, 2022, section 2(47A), inserted by section 3, provides a definition that VDA includes any code, number, or token generated through cryptographic means that provides a digital representation of value that can be traded, transferred, or stored electronically. The definitions include Non-Fungible Tokens (NFTs) and grant the central government the power of inclusion or exclusion. Indian or foreign currency, as well as government-issued digital currencies such as the e-Rupee, are excluded from the definition; they are considered legal tender.¹ The definition was designed to encompass cryptocurrencies such as Bitcoin and Ethereum: a further notification, notification no. In 2022, the Central Board of Direct Taxes clarified that NFTs are not included in VDAs and represent tangible assets, which are more akin to title documents and are taxed based on the asset they represent.²

CBDC and Scope of Exclusion:

After the introduction of the Central Bank Digital Currency by the RBI a further clarification was made that CBDC is a legal tender and hence is not a VDA. Legal tender is exempt from VDA-related tax provisions under Section 115BBH.³

Expanded definition – Post financial bill, 2025:

Under the 2025 financial bill, an expanded and clarified rendition of section 2 (47A) is proposed, which includes any crypto asset operating through a distributed ledger or any similar technology, regardless of whether it fits in the original subclauses (a) – (c).⁴ This construction is broader and accounts for future forms of digital assets, while precluding loopholes due to function or token type. This proposed definition shows the government's intent to establish a uniform tax regime across the evolving spectrum of crypto assets. It minimizes tax avoidance through definitional ambiguity. Still, the classification of VDAs is limited to the Income Tax Act; an equivalent clarification in GST is not present, and it continues to suffer from interpretive inconsistencies.

¹ Manohar Samal, 'Solving Challenges in the Levy and Collection of the Goods and Services Tax on Virtual Digital Assets (Cryptoassets) in India' (2024) 9 *Journal of Tax Administration* 103.

² Ibid

³ Ibid

⁴ Finance Bill 2025, Bill No 14 of 2025

3. Direct Taxation under the IT Act

Section 115BBH of the act, as introduced by the 2022 finance act, is at the center of India's direct tax framework, representing the country's first formal attempt at taxing and recognizing VDAs

30% flat tax:

A 30% flat tax is imposed by Section 115BHH on any income arising from the transfer of VDAs, which does not allow for any deduction of expenditure or allowance apart from the cost of acquisition. It also holds that the losses from one VDA cannot be set off against the profits of another or against a gain under another head.⁵ There are concerns about the lack of proportionality and arbitrariness, as the 30% tax rate is significantly higher compared to the capital gains tax applicable to equities or debt instruments. The 30% rate is deemed "inherently penal" without justification when compared to existing asset classes.⁶

One per cent TDS, Section 194S:

Section 194S of the Act requires deducting one per cent tax at source on payments for the transfer of VDAs. This is applicable to cash and in-kind transactions, and even if the cryptocurrency is transferred as a bater, it applies.⁷ A major compliance burden has been imposed by this section, particularly for peer-to-peer transactions, as it is impractical to identify the counterparty for TDS. This can be seen as pushing the burden of identification and collection to the parties, some of whom are not in the formal system.⁸

Amendments and Issues:

The 2025 Bill doesn't change the thirty per cent tax rate but gives a clarification that surcharge, and Cess applicability reassert the disqualification of losses for set off and proposes more reporting from cryptocurrency intermediaries.⁹ This framework is criticized for being regressive, especially keeping in mind India's aim to promote digital innovation. There are also

⁵ Ibid

⁶ Damián Boada, *Bridging the Map and the Territory: International Taxation Issues in Relation to Cryptocurrencies* (King's College London, Dickson Poon School of Law, 2020)

⁷ Finance Act, 2022, Section 194S

⁸ Manohar Samal, 'Solving Challenges in the Levy and Collection of the Goods and Services Tax on Virtual Digital Assets (Cryptoassets) in India' (2024) 9 *Journal of Tax Administration* 103.

⁹ Finance Bill 2025, Bill No 14 of 2025

fears that this framework may result in the rise of informal and unregulated platforms for trading, reducing transparency.¹⁰

4. GST Ambiguities and Challenges

Even after the formal recognition of VDA, there are uncertainties in the application of the Goods and Services Tax (GST)- the indirect tax framework.

What is the nature of cryptocurrency, Goods or Services?

The major ambiguity is regarding the classification of cryptocurrencies, whether they are goods or services under CGST. “Goods” as per section 2(52) include movable properties excluding money and securities. “Services” as under section 2(102) are defined as anything other than goods, money, or securities. Cryptocurrencies are not considered money because they are not recognized as legal tender by the Reserve Bank. Their nature as assignable and tradable aids to their classification as intangible goods.¹¹ The Harmonized System of Nomenclature does not have a slot for crypto; India aligns its classifications in GST to this system. This has resulted in diverging interpretations by tax officials, particularly for the import or export of crypto assets.¹²

Crypto exchanges:

Right now, there is an eighteen per cent GST on commissions earned from facilitating trades, classified under Chapter heading 9971, which applies to financial services.¹³ Proposals to charge GST on the entire value of the transaction may emerge, but it would be operationally infeasible as exchanges don’t keep the full value of the transaction, and a lot of the time lack legal identification of the buyer or seller.¹⁴

Additional structural issues:

There are a lot of issues and adding to the ambiguity is the application of GST to crypto. GST

¹⁰ Mansi Pandey, 'Law & Policies Related to Digital Currency: An Analytical Study from an Indian Perspective' (2024) 7 *Int'l J L Mgmt & Human* 2227.

¹¹ Manohar Samal, 'Solving Challenges in the Levy and Collection of the Goods and Services Tax on Virtual Digital Assets (Cryptoassets) in India' (2024) 9 *Journal of Tax Administration* 103.

¹² *Ibid*

¹³ Ministry of Finance Notification No. 11/2017

¹⁴ Manohar Samal, 'Solving Challenges in the Levy and Collection of the Goods and Services Tax on Virtual Digital Assets (Cryptoassets) in India' (2024) 9 *Journal of Tax Administration* 103.

is a destination-based taxation model; in cross-border trades, the place of supply is not clear in person-to-person and or decentralized trades. In barter transactions where crypto is used for consideration, for example, for NFTs, GST provides no clarity on which leg of the transaction is taxable, resulting in possible double taxation and classification mistakes.¹⁵ It is uncertain whether input tax credit can be claimed while using crypto in B2B transactions, particularly when invoice chains are broken. The lack of legislative clarity can be seen to result in compliance by fear rather than consent, as crypto platforms give GST to steer clear of penalty proceedings.¹⁶

5. Legal disputes and constitutional issues

Legal and constitutional challenges have arisen from the tax regime for VDAs, especially in terms of being arbitrary, procedural fairness in indirect and direct taxes.

Constitutional grounds:

An argument is made that the thirty per cent tax, along with not allowing tax setoffs as per section 115BBH, violates Article 14 of the Constitution. The tax rate of cryptocurrencies is disproportionately higher without being offered the same treatment as other capital assets, such as stocks or debt instruments. An unreasonable classification is created by the provision. This different treatment can be seen as punitive, lacking a rational nexus with the state's goal of revenue collection and regulatory consistency.¹⁷ The enigma in the application of GST regarding the classification of VDAs and cross-border trades can be considered to violate Article 265, which states that no tax can be levied except by authority of law. The current scenario of platforms having to pay GST under protest or facing penalty proceedings shows a gap in legal authority and administrative action; the question of the validity of such practices comes under constitutional scrutiny.¹⁸

Policy pushback:

The constitutional validity of these provisions has been challenged before the courts. This

¹⁵ Ibid

¹⁶ Ibid

¹⁷ Mansi Pandey, 'Law & Policies Related to Digital Currency: An Analytical Study from an Indian Perspective' (2024) 7 *Int'l J L Mgmt & Human* 2227.

¹⁸ Manohar Samal, 'Solving Challenges in the Levy and Collection of the Goods and Services Tax on Virtual Digital Assets (Cryptoassets) in India' (2024) 9 *Journal of Tax Administration* 103.

includes TDS having a retrospective effect under section 194S, along with taxes that are paid in losses because of market volatility being nonrefundable.¹⁹

6. Comparative analysis

We will investigate the different global approaches to the taxation of cryptocurrencies. India has a restrictive tax framework for cryptocurrencies; other jurisdictions have taken different or more nuanced frameworks. Comparing the regimes in the United States, the United Kingdom, and Singapore to India shows different policy approaches which can be adopted for clarity and or administrative feasibility.

The United States:

Cryptocurrencies are treated as property by the Internal Revenue Service for federal tax purposes. Any gains from selling or exchanging are taxed under the head of capital gains; accordingly, it is subject to short-term or long-term capital gain tax. The 2021 Infrastructure Investment and Jobs Act mandated brokers to file Form 1099 and report crypto transactions.²⁰ This framework has a lot of clarity in terms of classification, but there are critiques of the IRS's lack of guidelines on DeFi, airdrops, and staking. This system aligns itself well with tax categories that already exist, reducing uncertainty.²¹

United Kingdom:

The framework by the HM Revenue and Customs (HMRC) treats cryptocurrencies as property as well, and not as legal tender. Personal investment and trading activity are distinguished under the UK tax regime, with personal investments being subjected to capital gains tax and trading activities being subjected to income tax. In addition to this, clear guidance about taxation of staking, airdrops, and mining exists. The specific treatments of all crypto activities ensure more certainty and reduce litigation.²²

¹⁹ Vicki Wei Tang and Tony Qingquan Zhang, 'Taxation, Regulation, and Cryptocurrency Pricing' (2022) Georgetown University and University of Illinois at Urbana-Champaign <https://ssrn.com/abstract=4397135>.

²⁰ Internal Revenue Service, Notice 2014-21

²¹ Elizabeth Nevle, 'Tales from the Crypt: Global Trends in the Taxation of Cryptocurrency' (2021) 24 *Currents: Journal of International Economic Law* 116.

²² Ibid

Singapore:

Till 2020, under the Goods and Services Tax (GST), cryptocurrencies were considered a taxable supply, but after public consultations, from January 1, 2020, digital payment tokens were exempt from GST. Singapore has come up as supportive of cryptocurrencies, as the IRAS doesn't impose any capital gains tax on the transactions of crypto. Their model can be seen to foster digital innovation.²³

Insights for India:

India's framework can be seen as lacking proportionality and discouraging compliance, focusing on the thirty per cent flat tax and the unclear status under GST. The UK and US show the benefit of integrating cryptocurrencies within the existing frameworks of trading tax and property tax. The model followed by Singapore is compelling in terms of indirect tax, as they have a clear tax and regulatory model.

7. Policy recommendations

The Indian regime has a lack of balance between regulation and potential for innovation; the policy is rigid in asserting legal control. The framework under both the Income Tax Act and GST shows uncertainty and rigidity, requiring reforms.

In the theory of tax policy, horizontal equity is foundational, i.e., like should be treated alike. The exclusion of VDAs from the same treatment as other capital assets undermines this. John Rawls' Veil of Ignorance, an argument can be made that a just system wouldn't arbitrarily punish a category because of its novelty and or perceived risk.

Tax rate under section 115BBH:

The flat rate of thirty per cent on VDAs appears to be too aggressive when compared to the capital gains tax applicable to other assets.²⁴ India could benefit from a system like that of the United States and the United Kingdom, implementing a tiered capital gains approach, where,

²³ Manohar Samal, 'Solving Challenges in the Levy and Collection of the Goods and Services Tax on Virtual Digital Assets (Cryptoassets) in India' (2024) 9 *Journal of Tax Administration* 103.

²⁴ Mansi Pandey, 'Law & Policies Related to Digital Currency: An Analytical Study from an Indian Perspective' (2024) 7 *Int'l J L Mgmt & Human* 2227.

depending on the holding time and nature of transactions, they would be taxed.

Clarifications Regarding TDS Compliance and Allowing Loss Set Offs:

Procedural safeguards under section 194S need to be simplified, particularly for peer-to-peer transactions, for better compliance. Allowing losses in VDAs against profits from VDAs will ensure equity in taxation.

GST rate structure and classifications for VDAs:

A notification addressing the following problems in the GST application is needed:

- a. Do VDAs classify as “goods” or “services”?
- b. Valuation mechanisms and applicable tax rates?
- c. Will barter transactions using crypto be taxed?

Answering these questions would remove ambiguities in interpretation and reduce litigation.²⁵

8. Conclusion

Significant strides have been made in the taxation of cryptocurrencies in India, with the groundwork being laid down by the 2022 act and the 2025 bill for a formal regime falling under the IT Act. This process, though, suffers because of uncertainties and harsh treatment, contributing to litigation, confusion in terms of compliance and dissatisfaction of investors.

While drawing a comparison to the jurisdictions of the United States and United Kingdom, we have seen the integration of cryptocurrencies into their existing frameworks with some flexibility and the contrasting system in Singapore, which gives priority to innovation through exceptions. India must build on the groundwork towards a more coherent, less harsh, and more predictable tax system for VDAs. By enabling offsetting losses, rationalizing the tax, ensuring clarity in GST treatment, and adopting the best practices globally, India can have a framework which is proactive and not reactive. This framework would be more well-balanced in terms of

²⁵ Manohar Samal, ‘Solving Challenges in the Levy and Collection of the Goods and Services Tax on Virtual Digital Assets (Cryptoassets) in India’ (2024) 9 *Journal of Tax Administration* 103.

economic growth and enforcement.

The nature of the current tax regime is disproportionate, with the flat thirty per cent rate and not being allowed to offset losses, it fails to show the economic reality of VDAs, where a lot of volatility is present. The disallowance of deductions coupled with the one per cent TDS increases the possibility of noncompliance voluntarily, especially by individual investors. After the comparative analysis, the current model in India lags in a nuanced risk-weighted approach, which is important for the effective regulation of a new, emerging asset class. Moving forward, the legislation must give priority to harmonizing tax objectives with policies that also enable market growth, making the policy more in line with broader economic and constitutional goals. Such structural reform will help India avoid having a tax policy for cryptocurrencies which is fragmented or must indulge in coercive compliance, and help it be transformative in the financial frontier.