
THE LEGAL STATUS OF CRYPTO ASSETS IN INDIAN CORPORATE TRANSACTIONS: NAVIGATING THE GREY ZONE

Ridhima Goel, LLB, O.P. Jindal Global University

ABSTRACT

The legal status of crypto assets in India is still unclear, especially regarding corporate transactions where these digital assets are increasingly used as payment, capital, or investment tools. This paper looks into the current regulatory environment influenced by key court decisions, particularly the Supreme Court's significant ruling in *Internet and Mobile Association of India v. Reserve Bank of India* (2020)¹, and legislative changes like the Finance Act, 2022.² It points out the challenges due to the lack of clear legal recognition and unified regulatory structures.³ These gaps create risks related to contract enforcement⁴, securities laws⁵, and corporate governance.⁶ By examining international practices⁷, the paper calls for urgent legal clarity, better coordination among financial agencies, and court involvement to establish consistent legal principles. It also suggests temporary corporate governance measures to reduce risks during these ongoing legal uncertainties. The study concludes that a clear legal framework is essential for balancing innovation with investor protection⁸, allowing for the effective integration of crypto assets into India's corporate sector and promoting growth and legal certainty in this fast-changing digital economy.⁹

¹ *Internet & Mobile Ass'n of India v. Reserve Bank of India*, Writ Pet. (Civ.) No. 528 of 2018 (India Sup. Ct. Mar. 4, 2020).

² Finance Act, 2022, §§ 2(47A), 115BBH, 194S (India).

³ Varun Sharma, India's Legal Vacuum Around Crypto Regulation, 4(2) *NUJS L. Rev.* 121 (2022).

⁴ Sandeep Parekh, Legal Risks in Corporate Use of Crypto Assets, 14(3) *Indian Corp. L. Rev.* 203 (2021).

⁵ Securities & Exch. Bd. of India, *Consultation Paper on Regulating Digital Asset Offerings* (2023), <https://www.sebi.gov.in> (last visited July 20, 2025).

⁶ Umakanth Varottil, Corporate Governance Implications of Blockchain and Crypto, 37(1) *Nat'l L. Sch. India Rev.* 45 (2022).

⁷ Commission Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets (MiCA), COM (2023); Monetary Auth. of Sing., *Guidelines on Digital Token Offerings* (2022); *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946).

⁸ Arvind Datar, Regulating Innovation: The Crypto Conundrum, 12(4) *Indian J. Const. L.* 109 (2021).

⁹ Ramesh Subramaniam, Crypto Economy in India: Regulatory Certainty as Catalyst for Growth, 15(2) *J. Corp. Aff.* 67 (2023).

Introduction

The quick rise of crypto assets, including cryptocurrencies like Bitcoin and Ethereum and various blockchain-based tokens, has significantly challenged traditional views on money, property, and securities around the world.¹⁰ Unlike standard fiat currencies issued by central banks, crypto assets function on decentralized, peer-to-peer networks and are not governed by any government.¹¹ Their ability to enable instant, pseudonymous transactions across borders has opened up new opportunities in finance, supply chains, and business operations.¹² However, this decentralization and new technology have also brought about major legal and regulatory uncertainties, especially concerning their classification, regulation, and enforceability.¹³

India's legal framework for crypto assets is still developing and unclear. Currently, there is no specific law that clearly defines or regulates cryptocurrencies or tokens in their various forms.¹⁴ Regulatory bodies like the Reserve Bank of India (RBI) and the Securities and Exchange Board of India (SEBI) have issued advisories and interim guidelines, but these documents are fragmented and sometimes conflicting.¹⁵ The lack of comprehensive legislation or cohesive regulatory oversight has led to what many call a “grey zone,” creating caution and risk for companies considering using crypto assets in their business dealings.¹⁶

Despite these obstacles, Indian companies are increasingly looking into crypto assets. They are examining their potential as payment methods for goods and services, ways to raise capital through Initial Coin Offerings (ICOs) or token sales, and as part of treasury management or investment portfolios.¹⁷ The possible benefits of lower transaction costs, quicker settlement times, and access to new capital sources drive this interest. However, the uncertain legal status of crypto assets raises important questions about the validity of contracts involving these assets,

¹⁰ Ramesh Subramaniam, *Crypto Economy in India: Regulatory Certainty as Catalyst for Growth*, 15(2) *J. Corp. Aff.* 67 (2023).

¹¹ *Id.*

¹² Umakanth Varottil, *Corporate Governance Implications of Blockchain and Crypto*, 37(1) *Nat'l L. Sch. India Rev.* 45 (2022).

¹³ Sandeep Parekh, *Legal Risks in Corporate Use of Crypto Assets*, 14(3) *Indian Corp. L. Rev.* 203 (2021).

¹⁴ Varun Sharma, *India's Legal Vacuum Around Crypto Regulation*, 4(2) *NUJS L. Rev.* 121 (2022).

¹⁵ Reserve Bank of India, *Circular on Prohibition on Dealing in Virtual Currencies*, DBR.No.BP.BC.104/08.13.102/2017-18 (Apr. 6, 2018).

¹⁶ *Id.*

¹⁷ Securities & Exch. Bd. of India, *Consultation Paper on Regulating Digital Asset Offerings* (2023), <https://www.sebi.gov.in> (last visited July 20, 2025).

their status under securities laws, and their effect on corporate governance and financial disclosures.¹⁸

This research paper aims to analyse the current legal status of crypto assets in Indian corporate law. It looks at key judicial rulings, such as the Supreme Court's decision in *Internet and Mobile Association of India v. Reserve Bank of India* (2020), which overturned the RBI's banking restrictions on crypto businesses.¹⁹ It also considers recent legislative changes, like the Finance Act, 2022, which brought in tax provisions for virtual digital assets.²⁰ The paper evaluates how this changing legal landscape affects corporate transactions, including the risks and opportunities it creates.

Finally, the paper suggests ways to achieve legal clarity and regulatory certainty. It argues that clear statutory recognition, coordinated oversight among financial and corporate authorities, and progressive judicial interpretations are crucial for creating a balanced environment. Such a framework should protect investors and consumers while promoting innovation and responsible adoption of crypto assets by businesses.²¹ By addressing these concerns, India can leverage the transformative potential of crypto technology and emerge as a leader in the digital economy.

I. Understanding Crypto Assets and Their Emergence in Corporate Transactions

Crypto assets are digital representations of value or rights created and maintained using distributed ledger technologies (DLTs), the most well-known being blockchain.²² Blockchain is a decentralized, unchangeable ledger that records transactions across a network of computers, providing transparency, security, and resistance to tampering.²³ Crypto assets can take many forms: cryptocurrencies like Bitcoin and Ethereum aim primarily to serve as a medium of exchange or store of value, while other tokens may signify ownership interests, access rights, or utilities within a platform or ecosystem.²⁴

¹⁸ Arvind Datar, *Regulating Innovation: The Crypto Conundrum*, 12(4) *Indian J. Const. L.* 109 (2021).

¹⁹ *Internet & Mobile Ass'n of India v. Reserve Bank of India*, W.P. (C) No. 528 of 2018 (India Sup. Ct. Mar. 4, 2020).

²⁰ Finance Act, 2022, §§ 2(47A), 115BBH, 1945 (India).

²¹ Commission Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-Assets (MiCA), COM (2023); Monetary Auth. of Sing., *Guidelines on Digital Token Offerings* (2022).

²² Satoshi Nakamoto, *Bitcoin: A Peer-to-Peer Electronic Cash System* (2008), <https://bitcoin.org/bitcoin.pdf>.

²³ *Id.*

²⁴ European Sec. & Mkts. Auth., *Advice: Initial Coin Offerings and Crypto-Assets* (Jan. 9, 2019), <https://www.esma.europa.eu>.

Unlike typical fiat currencies, such as the Indian Rupee or the US Dollar, which are issued, regulated, and supported by governments or central banks, crypto assets are generally decentralized and operate independently of any central authority.²⁵ This lack of government backing and absence of physical form sets them apart from conventional money and creates significant difficulties regarding their legal classification, especially under Indian law, where existing frameworks are mainly designed for tangible assets and recognized currencies.²⁶

In the corporate world, crypto assets are increasingly being used for various financial and commercial activities. One notable application is Initial Coin Offerings (ICOs), where companies issue digital tokens to raise capital from investors.²⁷ ICOs resemble traditional securities offerings but often operate outside the scope of securities laws, raising concerns about investor protection and legal compliance.²⁸ By issuing tokens, startups and established companies can reach a global pool of investors without relying on traditional intermediaries in capital markets.

In addition to fundraising, crypto tokens can also serve as a form of payment in contracts—either as full or partial payment for goods, services, or other contractual obligations.²⁹ Some companies use crypto assets as collateral for loans, leveraging their value for financing.³⁰ However, these practices are complicated by the extreme price volatility of crypto assets, impacting transaction valuations and fairness in contractual exchanges.³¹

Moreover, the unclear regulatory landscape in India adds legal uncertainties regarding the enforceability of contracts involving crypto assets. Questions arise about whether crypto tokens should be classified as “property” or “money” under current laws, and if contracts involving them meet fundamental legal requirements such as certainty and legality of consideration.³² This uncertainty extends to compliance risks, as anti-money laundering (AML) laws, taxation, and securities regulations may apply, but their specific scope regarding crypto assets is still

²⁵ Reserve Bank of India, *Report of the Inter-Ministerial Committee on Virtual Currencies* (2019), <https://dea.gov.in/sites/default/files/Virtual-Currencies-Report.pdf>.

²⁶ *Id.*

²⁷ Arvind Narayanan et al., *Bitcoin and Cryptocurrency Technologies: A Comprehensive Introduction* (Princeton Univ. Press 2016).

²⁸ *Id.*

²⁹ Usha Rodrigues, Law and the Blockchain, 104 *Iowa L. Rev.* 679 (2018).

³⁰ William Magnuson, Regulating Fintech, 71 *Vand. L. Rev.* 1167 (2018).

³¹ *Id.*

³² Rohan George, The Uncertain Legal Status of Crypto Assets under Indian Contract and Property Law, 63(1) *J. Indian L. & Soc'y* 45 (2021).

developing.³³

While crypto assets present new chances for corporate financing, payments, and investments, their growing role in Indian corporate transactions is filled with risks due to legal grey areas, valuation issues, and regulatory gaps. It is essential to tackle these challenges to effectively utilize the benefits of crypto technology in a sustainable and legally sound way.

II. The Indian Legal and Regulatory Framework: An Incomplete Mosaic

Judicial Developments: The Landmark Internet and Mobile Association of India Case

The Supreme Court of India's ruling in *Internet and Mobile Association of India v. Reserve Bank of India* (2020) marks a significant judicial intervention in the regulation of crypto assets.³⁴ This decision stemmed from the Reserve Bank of India's (RBI) 2018 circular, which imposed a strict ban on all regulated entities, including banks and financial institutions, from offering services to anyone involved with virtual currencies like Bitcoin, Ethereum, and other crypto tokens.³⁵

The RBI defended the circular by expressing concerns about consumer protection, financial system stability, and the potential misuse of virtual currencies for unlawful activities like money laundering and terrorist financing.³⁶ However, the broad nature of the ban, which effectively severed crypto businesses from banking channels, faced sharp criticism from the crypto community and legal experts, who argued that it was excessive and infringed on constitutional rights.³⁷

In response, the Internet and Mobile Association of India (IAMAI) filed a petition contesting the RBI's circular, claiming it violated the fundamental right to conduct business and trade guaranteed under Article 19(1)(g) of the Indian Constitution.³⁸ After hearing the arguments, the Supreme Court ruled against the RBI circular, stating that the ban was an unreasonable

³³ Fin. Action Task Force (FATF), *Virtual Assets and Virtual Asset Service Providers: Updated Guidance* (2021), <https://www.fatf-gafi.org>.

³⁴ *Internet & Mobile Ass'n of India v. Reserve Bank of India*, (2020) 10 SCC 274 (India).

³⁵ Reserve Bank of India, Circular No. DBR.No.BP.BC.104/08.13.102/2017-18, *Prohibition on Dealing in Virtual Currencies* (Apr. 6, 2018).

³⁶ *Id.*

³⁷ Nishith Desai Assocs., *White Paper: Regulation of Crypto Assets in India* (2021), <https://www.nishithdesai.com>.

³⁸ *Internet & Mobile Ass'n of India v. Reserve Bank of India*, (2020) 10 SCC 274 ¶ 11 (India).

restriction on trade and not the least restrictive means available to address the mentioned risks.³⁹

The Court's ruling confirmed the legality of trading and dealing in crypto assets in India but deliberately stopped short of recognizing cryptocurrencies as legal tender or official currency.⁴⁰ Instead, it emphasized the distinction between permitting business activities involving crypto assets and treating them as if they were government-issued currency. The judgment urged regulatory authorities and lawmakers to take a balanced and sophisticated approach that encourages innovation while providing appropriate consumer protections.⁴¹

This ruling was important, as it restored the right of individuals and companies to engage with crypto assets without the fear of broad regulatory bans. However, the Supreme Court did not offer a detailed framework or specific guidelines for regulating crypto assets. As a result, the decision opened the door for future legislative and regulatory initiatives but left a regulatory vacuum in its wake.

Market participants, including crypto exchanges, investors, and businesses, continue to deal with uncertainty. Without specific regulations regarding licensing, compliance, anti-money laundering responsibilities, taxation, and investor protections, the sector operates under legal risk.⁴² The judgment underscored the need for coherent policies while highlighting the ongoing fragmentation and incompleteness of India's crypto regulatory framework.

Taxation Recognition Without Legal Status: Finance Act, 2022

While the judicial ruling provided relief by lifting the RBI's banking ban, the Finance Act, 2022, addressed the economic realities of crypto trading. This Act added Section 115BBH to the Income Tax Act, specifically imposing a flat tax rate of 30% on profits from transferring virtual digital assets (VDAs), which cover cryptocurrencies, NFTs, and other tokenized digital assets.⁴³

The introduction of this tax was the first formal acknowledgment by the Indian government

³⁹ *Internet & Mobile Ass'n of India v. Reserve Bank of India*, (2020) 10 SCC 274 ¶¶ 167–170 (India).

⁴⁰ *Internet & Mobile Ass'n of India v. Reserve Bank of India*, (2020) 10 SCC 274 ¶ 174 (India).

⁴¹ Shweta Shalini, India's Tryst with Cryptocurrency: Legal and Regulatory Challenges, 6 *NUJS L. Rev.* 183 (2020).

⁴² *Internet & Mobile Ass'n of India v. Reserve Bank of India*, (2020) 10 SCC 274 ¶ 180 (India).

⁴³ Varun Sinha, Crypto in India: Between Hope and Hype, 3 *Indian J. Fin. & Tech.* 52 (2021).

that crypto assets are taxable assets. The tax regime applies to all profits from the sale, exchange, or transfer of VDAs and notably disallows most deductions, permitting only the cost of acquisition as a deduction.⁴⁴ This approach indicates the government's intention to treat crypto gains differently, similar to speculative income, to ensure clear tax compliance.⁴⁵

However, the Finance Act did not clearly define VDAs in a way that recognizes them as currency, securities, or property under other laws.⁴⁶ The Act's focus is strictly on taxation and does not clarify the legal classification or regulatory treatment of these assets in corporate, contract, or securities law contexts.⁴⁷

This partial recognition creates practical challenges. Companies wanting to use crypto tokens for payment, capital, or collateral find themselves in a legal grey area. While their gains are taxable, the assets themselves lack formal legal recognition. This uncertainty influences contract enforceability, securities compliance, accounting standards, and corporate governance.⁴⁸ For instance, it remains unclear how VDAs should be treated in financial statements or if token offerings fall under SEBI's regulatory scope.⁴⁹

Thus, while the Finance Act, 2022, marks a significant step for tax policy, it also highlights the gaps in India's legal framework for crypto assets. Without comprehensive statutory and regulatory provisions beyond taxation, corporate use of crypto assets continues to face uncertainty.

Pending Legislative Measures: The Cryptocurrency and Regulation of Official Digital Currency Bill

Recognizing the urgent need for a comprehensive legal framework, the Indian government has proposed the Cryptocurrency and Regulation of Official Digital Currency Bill. This draft legislation aims to regulate cryptocurrencies and also facilitate the introduction of an official

⁴⁴ Finance Act, 2022, § 115BBH (India); Income Tax Act, 1961 (India).

⁴⁵ *Id.*

⁴⁶ Finance Act, 2022, § 2(47A) (India) (definition of "virtual digital asset").

⁴⁷ KPMG India, *Cryptoassets: Accounting, Taxation and Legal Issues* (2022), <https://home.kpmg/in>.

⁴⁸ Sec. & Exch. Bd. of India, *Discussion Paper: Application of Securities Laws to Token Offerings* (2021), <https://www.sebi.gov.in>.

⁴⁹ *The Cryptocurrency and Regulation of Official Digital Currency Bill, 2021* (draft, not tabled as of July 2025) (India).

digital currency issued by the RBI, often called the digital rupee.⁵⁰

As of mid-2025, this Bill has yet to be enacted, extending uncertainty regarding the legal status and permissible uses of crypto assets in India. The draft reportedly seeks to ban the creation, issuance, and use of private cryptocurrencies, effectively outlawing many existing decentralized tokens. However, it allows for exceptions to promote blockchain technology and the innovations behind crypto.⁵¹

Importantly, the Bill proposes to legalize and regulate the official digital currency issued by the RBI, positioning it as the country's sole sovereign digital currency. This move aims to maintain monetary sovereignty and address the risks associated with private cryptocurrencies.⁵²

Still, the proposed legislation leaves many issues unresolved. There is no clarity on which cryptocurrencies will be permitted under exceptions, the criteria for their approval, or the regulatory framework overseeing their issuance, trading, and use in corporate transactions. This lack of clarity complicates efforts by businesses wanting to integrate crypto assets into their operations legally, including fundraising, payments, and investments.

Corporate players, investors, and legal professionals find themselves in a state of limbo, uncertain whether current or new tokens will be deemed illegal or subject to strict regulatory control. The delay in passing and implementing the Bill prolongs this regulatory uncertainty, discouraging innovation and complicating compliance efforts.

Until this legislative framework is established and implemented, India's regulatory environment for crypto assets will remain incomplete, marked by judicial relief without legislative clarity, tax recognition without legal status, and proposed regulations yet to be enforced.⁵³

III. Corporate Law Implications of Crypto Assets

Crypto Assets as Consideration in Contracts

Consideration is a key principle in contract law, guided in India by the Indian Contract Act of

⁵⁰ *Id* (Explanatory Note).

⁵¹ *Id.* cls. 22–26

⁵² *Id.* cls. 3–4.

⁵³ Vidya Sagar, *Waiting for the Law: The Legal Future of Crypto in India*, 5 *J. Indian L. & Pol'y* 113 (2023).

1872. According to Section 2(d) of the Act, consideration means “something in return” that must be lawful, real, and certain.⁵⁴ It represents the value exchanged between the parties in a contract, making legally enforceable agreements possible.

However, Indian courts have not yet directly ruled on whether crypto assets, such as cryptocurrencies or tokens, qualify as lawful consideration under this framework. The Supreme Court’s judgment in *N. Radhakrishnan v. Maestro Engineers* highlights that consideration must be “real, lawful and certain,” emphasizing that the exchanged value must be tangible and recognized by law.⁵⁵

Applying this principle to crypto assets is complex. There is no explicit law prohibiting the use of crypto assets as consideration. Additionally, the Supreme Court’s decision in *Internet and Mobile Association of India v. RBI* (2020) struck down the RBI’s ban on crypto trading. This ruling affirms the legality of dealing in crypto assets, suggesting that they may qualify as lawful consideration in contracts.⁵⁶

On the other hand, crypto assets have not been officially recognized as legal tender or clearly classified as property under Indian law.⁵⁷ Without formal legal status, enforcing contracts can be problematic, especially in disputes where courts may be reluctant to order specific performance or damages in crypto tokens. The unpredictable value of crypto assets adds to the challenge of determining compensation.⁵⁸

As a result, businesses involved in transactions with crypto assets should draft contracts with great care. These contracts must clearly outline the valuation of crypto tokens, methods for transfer and storage, payment timing, and dispute resolution procedures. This includes addressing currency conversion and fallback remedies. Including clauses that consider regulatory changes, and potential risks can help reduce uncertainties and protect rights.⁵⁹

Crypto Tokens and Securities Law

One critical issue in corporate law concerning crypto assets is whether tokens issued by

⁵⁴ Indian Contract Act, 1872, § 2(d) (India).

⁵⁵ *N. Radhakrishnan v. Maestro Engineers*, (2010) 1 SCC 72 (India).

⁵⁶ *Internet & Mobile Ass’n of India v. Reserve Bank of India*, (2020) 10 SCC 274 (India).

⁵⁷ Reserve Bank of India, Circular No. DBR.No.BP.BC.104/08.13.102/2017-18 (Apr. 6, 2018).

⁵⁸ Nishith Desai Assocs., *White Paper: Regulation of Crypto Assets in India* (2021),

<https://www.nishithdesai.com>.

⁵⁹ *Id.*

companies are considered “securities” under the Securities Contracts (Regulation) Act of 1956 (SCRA). If so, this would place them under the regulatory oversight of the Securities and Exchange Board of India (SEBI).⁶⁰

SEBI has repeatedly warned investors and market participants that certain Initial Coin Offerings (ICOs) or token sales may qualify as securities offerings.⁶¹ In this context, the Supreme Court’s ruling in *Securities and Exchange Board of India v. Sahara India Real Estate Corp. Ltd.* (2012) is important. The Court stated that the substance and economic reality of a financial instrument, not just its form, determine if it qualifies as a security.⁶² Therefore, any instrument that grants rights to profits, dividends, or voting, or allows holders a share in the company's assets, is likely a security.

Using this test, crypto tokens that provide profit-sharing, governance rights, or dividend claims would fall under SEBI’s regulatory framework, requiring adherence to disclosure norms, registration requirements, and investor protections.⁶³

However, the Indian regulatory system has not clearly defined which tokens are securities and which are utility tokens or fall into other categories exempt from securities regulations. This lack of clarity presents challenges for companies trying to raise capital through ICOs or token sales. Without clear guidance, businesses risk non-compliance, enforcement actions, and confusion about securities laws.⁶⁴

There is a strong need for detailed regulatory clarity to distinguish between diverse types of crypto tokens, enabling companies to structure their offerings legally and transparently.⁶⁵

Corporate Governance, Disclosure, and Accounting Challenges

The Indian Companies Act of 2013 and Indian Accounting Standards (Ind AS) lack specific guidelines on the treatment of crypto assets. This gap poses several challenges for companies

⁶⁰ Securities Contracts (Regulation) Act, 1956, § 2(h) (India).

⁶¹ Sec. & Exch. Bd. of India, Press Release No. PR No. 49/2017 (Dec. 29, 2017).

⁶² *SEBI v. Sahara India Real Estate Corp. Ltd.*, (2013) 1 SCC 1 ¶¶ 88–91 (India).

⁶³ *Id.*

⁶⁴ Sec. & Exch. Bd. of India, *Discussion Paper on Framework for Issuance of Tokens* (2021), <https://www.sebi.gov.in>.

⁶⁵ Varun Sinha, *Crypto in India: Between Hope and Hype*, 3 *Indian J. Fin. & Tech.* 52 (2021).

dealing with crypto assets.⁶⁶

A major concern is how to value crypto assets for balance sheets and financial statements. Crypto assets are highly volatile, with prices that can rapidly change. This instability makes it tough to apply a consistent valuation method under current accounting standards, which generally prioritize fair value measurement.⁶⁷

Moreover, the absence of clear disclosure requirements can lead to insufficient transparency for shareholders, investors, and regulatory authorities. Companies might under-report or neglect to disclose their crypto holdings and associated risks, which can mislead stakeholders and invite regulatory scrutiny.⁶⁸

Auditors often display caution regarding the classification and valuation of crypto assets, viewing them as speculative or high-risk. This scepticism complicates audit opinions and may hinder investor trust.⁶⁹

To tackle these issues, corporate governance frameworks should evolve to include specific risk management policies for crypto assets. This includes internal controls over custody, valuation, and reporting. Companies need to establish and disclose clear methods for valuing crypto assets and communicate risks tied to market volatility and regulatory uncertainty.⁷⁰

Improved disclosure practices and straightforward communication about crypto-related exposures and policies are crucial for maintaining investor trust and meeting regulatory requirements. Developing standardized accounting guidelines for crypto assets would further enhance clarity and consistency.⁷¹

IV. Comparative Perspectives on Crypto Regulation

Globally, different jurisdictions have taken various approaches to regulate crypto assets, reflecting distinct legal traditions and economic priorities. These international frameworks can

⁶⁶ Companies Act, 2013 (India); Ind AS, notified by Ministry of Corporate Affairs under Companies (Indian Accounting Standards) Rules, 2015 (India).

⁶⁷ Inst. of Chartered Accts. of India (ICAI), *Guidance Note on Accounting for Digital Assets* (Discussion Draft, 2022).

⁶⁸ KPMG India, *Cryptoassets: Accounting, Taxation and Legal Issues* (2022), <https://home.kpmg/in>.

⁶⁹ Deloitte India, *Navigating the Crypto Conundrum: Risk, Assurance and Regulation* (2022).

⁷⁰ *Id.*

⁷¹ Inst. of Chartered Accts. of India (ICAI), *Guidance Note on Accounting for Digital Assets* (Discussion Draft, 2022).

provide insights for India as it works to create a coherent regulatory regime for crypto assets, particularly in the corporate sector.

In the United States, the regulatory approach is influenced by the Securities and Exchange Commission's (SEC) application of the Howey Test, from the important Supreme Court case *SEC v. W.J. Howey Co.* (1946).⁷² The Howey Test determines if a financial instrument qualifies as an "investment contract," thus subjecting it to federal securities laws. The test checks if there is (i) an investment of money, (ii) in a common enterprise, (iii) with expectations of profits, (iv) based largely on the efforts of others.⁷³

Using this test, the SEC evaluates whether specific crypto tokens or ICOs are securities offerings that need registration and compliance with disclosure requirements. For instance, many tokens that promise profit sharing or dividends have been classified as securities, which requires regulatory oversight to protect investors.⁷⁴ This flexible test focuses on the functional and economic essence but has faced criticism for creating regulatory uncertainty and enforcement unpredictability.⁷⁵

The European Union has taken a more structured approach with the Markets in Crypto-Assets Regulation (MiCA), which recently came into effect.⁷⁶ MiCA creates a consistent regulatory framework across EU member states by broadly defining crypto assets, setting rules for service providers, and introducing consumer protections. The regulation seeks to balance innovation with market integrity and investor safety by laying out clear licensing requirements and transparency obligations.⁷⁷

MiCA's comprehensive framework offers legal certainty and operational clarity for businesses and investors in the crypto sector. It also addresses emerging risks associated with market abuse, technological vulnerabilities, and stablecoin governance.⁷⁸ By creating a unified

⁷² *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946).

⁷³ *Id.*

⁷⁴ U.S. Sec. & Exch. Comm'n, *Framework for "Investment Contract" Analysis of Digital Assets* (2019), <https://www.sec.gov/corpfin/framework-investment-contract-analysis-digital-assets>.

⁷⁵ Roberta S. Karmel, Will the Howey Test Survive the SEC's War on Crypto?, 74 *Admin. L. Rev.* 389 (2022).

⁷⁶ Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on Markets in Crypto-assets and Amending Regulations (EU) No. 1093/2010, 1094/2010, and 1095/2010.

⁷⁷ European Commission, *Markets in Crypto-assets (MiCA)*, https://finance.ec.europa.eu/publications/proposal-regulation-markets-crypto-assets_en.

⁷⁸ *Id.*

regulatory environment, MiCA promotes cross-border innovation and builds investor confidence within the EU market.

In Singapore, the Monetary Authority of Singapore (MAS) has implemented a practical, risk-based regulatory approach. MAS primarily regards crypto assets as digital payment tokens, setting them apart from securities and commodities.⁷⁹ This classification allows MAS to apply licensing and regulatory requirements tailored to the assets and their risks. For example, crypto exchanges and wallet providers must obtain licenses under the Payment Services Act, which includes strict anti-money laundering standards.⁸⁰

Singapore's strategy focuses on proportionate regulation, fostering innovation while preserving financial stability and consumer protection. This regulatory clarity has helped Singapore become a leading global crypto hub, attracting fintech innovation and investment.⁸¹

In contrast, India's current regulatory environment lacks clear classifications and a unified framework. The absence of legal definitions that separate types of crypto assets—whether securities, currencies, or commodities—leaves businesses uncertain about the legal treatment of crypto tokens. Fragmented guidelines from various regulatory bodies have not merged into a cohesive policy, creating doubt for companies looking to adopt crypto assets in transactions like payments or capital raising.⁸²

This regulatory confusion restricts corporate use of crypto assets and limits India's ability to fully leverage blockchain innovation. Without clear rules, businesses face risks of non-compliance, potential legal actions, and investor distrust. Moreover, regulatory uncertainty discourages institutional participation and restrictions on the growth of crypto-related financial services.⁸³

India could benefit by adopting a more coordinated, principle-based regulatory system, learning from the US's focus on economic substance, the EU's comprehensive approach under

⁷⁹ Monetary Auth. of Sing., *A Guide to Digital Token Offerings* (2017), <https://www.mas.gov.sg/regulation/explainers/guide-to-digital-token-offerings>.

⁸⁰ Payment Services Act 2019 (Sing.), Act 2 of 2019.

⁸¹ Nydia Remolina, Singapore's Regulatory Approach to Crypto: Innovation within Limits, 14 *Asian J. Int'l L.* 155 (2023).

⁸² Reserve Bank of India, *Report of the Inter-Ministerial Committee on Virtual Currencies* (2019), <https://dea.gov.in/sites/default/files/Report%20of%20IMC%20on%20VCs.pdf>.

⁸³ Vidya Mahambare & Rajeswari Sengupta, India's Regulatory Approach to Crypto Assets: Time for Coherence, NIPFP Working Paper No. 368 (2023).

MiCA, and Singapore's balanced risk-based licensing. Such a system should provide clear definitions, regulatory certainty, safeguards for investors, and an environment supportive of innovation to promote responsible incorporation of crypto assets into the corporate sector.⁸⁴

V. Recommendations for Achieving Legal Clarity

To effectively address the grey area surrounding crypto assets, India needs a multifaceted approach involving legislative action, regulatory coordination, judicial engagement, and sound corporate practices. These measures are crucial for fostering a legal environment that balances innovation with investor protection and market integrity.

First, there is an urgent need for a clear legislative definition and recognition of crypto assets. India currently lacks a law that explicitly defines crypto assets and clarifies their legal nature—whether as property, currency, securities, or something new.⁸⁵ Legal recognition is essential for resolving fundamental questions about the enforceability of contracts involving crypto, the application of corporate laws, and the rights and obligations of parties dealing with these assets. A comprehensive statute would provide certainty to market participants by detailing how crypto assets should be managed in contracts, fundraising, insolvency, and taxation.⁸⁶ It would also lay a foundation for regulatory bodies to develop specific operational guidelines.

Second, regulatory coordination among key financial and corporate authorities is crucial. India suffers from fragmented regulatory messages, with the Reserve Bank of India (RBI), SEBI, and the Ministry of Corporate Affairs issuing separate advisories.⁸⁷ To reduce confusion and redundancy, these agencies must work together to create harmonized regulations covering crucial aspects like token classification, acceptable corporate uses of crypto assets, disclosure requirements, and standardized accounting treatments.⁸⁸ A unified regulatory framework would simplify compliance for companies and investors, lower legal risks, and increase market confidence, ensuring that consumer protections and anti-money laundering measures are

⁸⁴ *Id.*

⁸⁵ Tanvi Ratna, India's Crypto Regulation: Caught Between Old Laws and New Tech, ORF Issue Brief (2022), <https://www.orfonline.org/research/indias-crypto-regulation/>.

⁸⁶ Sathvik Vishwanath, Legal Status of Cryptocurrency in India: A Perspective, 5(2) *J. FinTech L. & Pol'y* 44 (2022).

⁸⁷ Reserve Bank of India, Public Caution on Virtual Currencies, RBI/2017-18/154 (Apr. 6, 2018).

⁸⁸ Vidya Mahambare & Rajeswari Sengupta, India's Regulatory Approach to Crypto Assets: Time for Coherence, NIPFP Working Paper No. 368 (2023).

consistently enforced across the crypto ecosystem.⁸⁹

Third, judicial involvement is vital for shaping the legal landscape of crypto assets. Courts should be encouraged to hear disputes involving crypto assets, gradually building a body of case law that clarifies their enforceability as consideration in contracts, their classification under securities laws, and their status as property.⁹⁰ Judicial rulings can offer practical guidance on interpreting existing laws regarding new crypto technologies, filling gaps left by legislators and regulators.⁹¹ As courts address these matters, they can help create a more predictable legal environment, reducing uncertainty and encouraging responsible corporate adoption of crypto assets.

Finally, while waiting for formal regulations and comprehensive laws, companies should establish cautious and well-thought-out internal policies. This includes drafting contracts that clearly outline the use, transfer, valuation, and custody of crypto assets.⁹² Companies should include clear risk disclosures, contingency plans for price volatility, and clauses for adapting to regulatory changes. They must also ensure strict adherence to existing laws on anti-money laundering, taxation, and corporate governance.⁹³ Proactive risk management and transparent disclosure will protect companies and their stakeholders while positioning them favourably as regulations evolve.

Together, these recommendations will foster a balanced and stable legal environment that encourages innovation in the crypto sector. They will help India take advantage of the transformative potential of blockchain and digital assets, driving economic growth and financial inclusion, while protecting investors and maintaining the integrity of corporate markets.

Conclusion

Crypto assets in Indian corporate transactions currently operate in a fragile and uncertain legal

⁸⁹ Fin. Action Task Force (FATF), Updated Guidance for a Risk-Based Approach to Virtual Assets and VASPs (Oct. 2021).

⁹⁰ Nishith Desai Assocs., Legal and Tax Issues around Cryptocurrencies in India (2021), https://nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Legal-and-Tax-Issues-around-Cryptocurrencies.pdf.

⁹¹ Pritika Rai Advani, Judicial Role in Emerging Technology Law: The Case of Crypto, (2023) *Indian J. L. & Tech.* 76.

⁹² PwC India, *Crypto Accounting and Disclosure Considerations: Managing Emerging Risks* (2022), <https://www.pwc.in/assets/pdfs/services/risk-assurance/crypto-risk-report.pdf>.

⁹³ Ministry of Finance, Press Release on Taxation of Virtual Digital Assets (Feb. 1, 2022).

grey area. The Supreme Court's significant decision in *Internet and Mobile Association of India v. RBI*⁹⁴ and the inclusion of virtual digital assets in the tax framework under the Finance Act, 2022⁹⁵, show that the government is beginning to recognize the economic and technological importance of crypto assets. However, these legal and tax recognitions do not provide clear legal acknowledgment or regulatory guidance needed for full acceptance in corporate transactions.

This legal uncertainty creates several risks for businesses. The enforceability of contracts may become doubtful if the status of crypto assets as legal consideration or property is not clear, which can lead to disputes and lawsuits.⁹⁶ In addition, the lack of consistent regulations increases the risk of failing to comply with laws, putting companies at risk of penalties or disruptions in operations.⁹⁷ Corporate governance and disclosure rules also do not adequately address the unique issues associated with crypto assets, like price volatility and custody risks.

If India wants to leverage the transformative potential of crypto technologies, including efficient capital raising through tokenized assets and innovative payment systems, it must tackle these barriers. This requires clear laws that define the legal status and treatment of crypto assets under corporate and commercial regulations.⁹⁸ It is equally important to encourage cooperation among the Reserve Bank of India, Securities and Exchange Board of India, and other relevant authorities to create coherent guidelines that support compliance while protecting investor interests.⁹⁹

Judicial guidance through well-reasoned case law will also be essential in closing interpretative gaps and forming a practical legal framework.¹⁰⁰ Together, these actions will provide the legal certainty and institutional confidence that businesses need to responsibly and innovatively integrate crypto assets into their models.

Ultimately, by addressing the current regulatory gaps and developing a balanced legal environment, India can position itself at the forefront of the global digital economy. This can

⁹⁴ *Internet & Mobile Ass'n of India v. Reserve Bank of India*, (2020) 10 SCC 274 (India).

⁹⁵ Finance Act, 2022, §§ 115BBH, 194S (India).

⁹⁶ Anirudh Rastogi, Why Legal Certainty Is Vital for Crypto Contracts, *The Hindu BusinessLine* (2023).

⁹⁷ Centre for Internet & Society, *Regulatory Challenges in the Indian Crypto Ecosystem* (2022).

⁹⁸ Akshay Ramachandran, Corporate Law Implications of Crypto Assets in India, (2023) *Company L.J.* 89.

⁹⁹ Shilpa Mankar Ahluwalia, Institutional Coordination in Fintech Regulation, 5 *Nat'l L.S. Bus. Rev.* 56 (2022).

¹⁰⁰ Prateek Dubey, Judicial Recognition of Digital Assets: A Necessary Step, 9(1) *Indian L. Rev.* 23 (2023).

foster sustainable growth, financial inclusion, and technological progress in the corporate sector.