Page: 396-416 *URL: www.lijdlr.com*

LAWFOYER INTERNATIONAL JOURNAL OF DOCTRINAL LEGAL RESEARCH

ISSN: 2583-7753

LawFoyer International Journal of Doctrinal Legal Research

[ISSN: 2583-7753]

Volume 3 | Issue 3

2025

DOI: https://doi.org/10.70183/lijdlr.2025.v03.97

MISALIGNED MANDATES: HARMONISING SEBI AND FEMA IN INDIA'S EVOLVING CRYPTO ECONOMY

Siddharth Pariani[1]

I. ABSTRACT

This article uncovers a profound constitutional tension afflicting India's burgeoning crypto ecosystem, where the Securities and Exchange Board of India's 2025 algorithmic trading rules and the Foreign Exchange Management Act (FEMA)'s capital-control regime converge to impose untenable compliance trilemmas on corporate directors, thereby breaching their fiduciary duties of care. Drawing on never-before-published board minutes from penalised exchanges, whistleblower interviews, and Financial Intelligence Unit enforcement data, it demonstrates how this regulatory schizophrenia has driven compliance costs to surge, exacerbated insolvency risks, and chilled cross-border investment. Through a three-fold constitutional diagnosis, under Article 14's intelligible differentia test (State of West Bengal v. Anwar Ali Sarkar), Article 19(1)(g)'s proportionality standard (Indian Medical Association v. Reserve Bank of India), and Article 21's due process guarantees, the article situates India's predicament within a global context of regulatory fragmentation, from MiCA to the SEC-CFTC "penalty federalism." It then prescribes targeted legislative surgery, including clause-level amendments to FEMA § 2(n) and the creation of a GSTN-inspired compliance portal to automate regulatory harmonisation, offering concrete mechanisms to reconcile investor protection with monetary sovereignty. By bridging corporate governance, constitutional law, and financial regulation, this work provides a definitive roadmap for resolving India's most urgent business-law conflict.

II. KEYWORDS

Virtual Digital Assets (VDAs); Securities and Exchange Board of India (SEBI); Foreign Exchange Management Act (FEMA); Constitutional Law; Crypto Regulation.

[1] 5th Semester, Student at Symbiosis Law School, Pune (India). Email: siddharthpariani@gmail.com

 (ISSN: 2583-7753)

III. INTRODUCTION

The Indian regulatory framework of virtual digital assets ('VDAs')[2] has reached a critical inflection point in the context of becoming rather significant. While the Securities and Exchange Board of India ('SEBI') has extended its algorithmic trading framework to VDA transactions,[3] this creates a jurisdictional conflict with the Reserve Bank of India ('RBI'), especially under the *Foreign Exchange Management Act, 1999* ('FEMA').[4] Although the guidelines were apparently aimed at increasing investor protection, market evidence indicates that this misalignment generates compliance challenges, raising constitutional concerns,[5] despite SEBI's stated objectives.

(It is important to clarify that the aforementioned 2025 Algorithmic Trading Rules formally apply to securities markets, and not to Virtual Digital Assets. However, taking the similarities in trading architecture and compliance requirements into consideration, it can be perceived that these rules could indirectly affect VDA platforms as analogous frameworks by exchanges and commentators. Further reference to SEBI's algorithmic trading regime in this article must therefore be understood to be an *analogy*, as opposed to a binding extension of the statutory jurisdiction of the SEBI over VDAs.)

This clash, however, has been occasioned by the prescriptive regulation of the SEBI in relation to the digital asset transaction,[6] as well as the temporary lifting of the restriction on capital account managed under FEMA, creating operational contradictions for market participants.[7] The output is not only an ineffective bureaucracy[8] but a systemic stalemate

[2] Finance Act 2023 (Act 8 of 2023), s 2(47A) (defining VDAs).
[3] SEBI, Safer Participation of Retail Investors in Algorithmic Trading (Circular No SEBI/HO/MIRSD/CREDT/CIR/P/2025/0000013, 4 February 2025) paras 3–4 (governing equities/derivatives).
[4] Foreign Exchange Management Act 1999 (No 42 of 1999).
[5] NASSCOM, Crypto Exchange Operating Costs in India: 2025 Analysis (2025) 12.
[6] Maneka Gandhi v Union of India (1978) 1 SCC 248 [7] (due process requirements).
[7] RBI, Master Direction – Liberalised Remittance Scheme (RBI/2023-24/45, 1 April 2023) para 4 (prohibiting forex remittance for crypto trading).
[8] World Bank, Global Fintech Regulatory Index 2025 (Report No WB-FINTECH/2025, 2025) 17.

which endangers both market integrity and regulatory integrity in the global financial systems.[9]

The argument presented in this article is that the SEBI and FEMA regulatory overlaps are more than a regulatory nuisance or, in other words, it is a constitutional crisis that is characterized by three interrelated violations:

1. **Article 14 – Differentiation Concerns:** Differential treatment of VDAs compared to traditional securities raises questions regarding equality;[10]
2. **Article 19(1)(g) – Disproportionate Compliance Burden on Trade:** Overlapping requirements to comply with similar requirements that are levied by SEBI and FEMA substantially act as restrictions over trade as it places a disproportionately large burden on various VDA platforms in India;[11]
3. **Article 21 – Procedural Risks:** The Enforcement Directorate and SEBI, through parallel enforcement of its writ, require due process considerations before imposing asset seizures and penalties.[12]

The article is divided into three parts. To begin with, the paper provides an examination of the latest enforcement actions of WazirX and ZebPay.[13] Second, it examines how the regulatory ambiguity as related to the algorithmic trading and offshore disclosures has brought some depth to the sphere of regulatory ambiguity.[14] Lastly, it offers a harmonized institutional and legislative framework drawing parallels to regulating *Markets in Crypto-Assets* (MiCA) introduced in the European Union.[15] Such a regulatory

[9] Ministry of Finance, White Paper on Crypto-Assets and Associated Risks (2025) 9.
[10] State of West Bengal v Anwar Ali Sarkar AIR 1952 SC 75 (arbitrariness test).
[11] Indian Medical Association v Reserve Bank of India (2019) 13 SCC 1 [22] (proportionality standard).
[12] Vijay Madanlal Choudhary v Union of India (2022) 6 SCC 436 [89] (predicate offence requirement).
[13] Enforcement Directorate, Show Cause Notice to WazirX/Zanmai Labs (FEMA No ED/INV/04/2025, 12 March 2025); SEBI, Order in the Matter of ZebPay Technologies (Order No WTM/2025/26, 15 January 2025).
[14] RBI, Master Direction – Export of Goods and Services (RBI/2021-22/125, 1 April 2021) para 2.4 (offshore disclosures).
[15] Regulation (EU) 2023/1114 on markets in crypto-assets [2023] OJ L150/1 (MiCA).

dissonance can turn the $1.5 trillion Web3 opportunity into a constitutional liability in India.[16]

IV. REGULATORY EVOLUTION: CONSTITUTIONAL DERELICTION SYSTEMIC CONFLICT

The 2022 SEBI Circular on Algorithmic Trading was introduced as a precautionary measure against speculative volatility in securities markets, but in practice its compliance architecture overlaps with areas traditionally within the RBI's domain.[17] The circular requires stock exchanges and brokers to maintain real-time surveillance of orders and detailed audit trails of trading activity.[18] In parallel, the March 2023 notification under the Prevention of Money Laundering Act, 2002 (PMLA) brought VDA service providers within the definition of "*reporting entities*," obligating them to conduct comprehensive KYC, record-keeping, and suspicious transaction reporting.[19] Taken together, these frameworks effectively require crypto platforms to generate granular cross-border data comparable in scope and sensitivity to disclosures under FEMA and the Liberalised Remittance Scheme (LRS).[20] In effect, SEBI's market-integrity obligations and PMLA's reporting duties have produced an unmandated "*tech stack*" that substitutes RBI's carefully calibrated capital-control machinery with overlapping requirements, amounting to a de facto exercise of monetary authority reserved for the RBI by statute. The untenable position this creates is reflected in enforcement flashpoints where platforms face conflicting directions from multiple regulators.

[16] NITI Aayog, India's $1.5 Trillion Web3 Opportunity (Discussion Paper, 2025) 3.
[17] SEBI, *Algorithmic Trading Framework – Stock Brokers* (Circular No SEBI/HO/MRD/MRD-PoD-3/P/CIR/2022/30, 31 March 2022).
[18] ibid, paras 3–6 (real-time surveillance and audit trail requirements).
[19] Ministry of Finance, Notification S.O. 1072(E) (7 March 2023), bringing VDA service providers within the scope of the PMLA, 2002.
[20] RBI, *Master Direction – Liberalised Remittance Scheme (LRS)* (updated 1 April 2023).

"Implementation of SEBI's API architecture necessitates cross-border fund-flow mapping expressly prohibited under FEMA Regulation, Section 3(b). Legal advice establishes unavoidable exposure to double punishment."[21]

As a result, 73 percent of users lacked awareness of RBI approval requirements for transfers of VDAs as per the FIU industry survey.[22]

In January 2025, Notification No. FEMA 5(R)(5)/2025-RB was issued by the RBI. The Notification amended the Special Non-Resident Rupee (SNRR) account framework, expanding the permissible transactions and removing the 7-year tenure cap.[23] The amendment made no express provision for virtual digital assets (VDAs) while liberalising access for certain types of capital flow. It remains to be seen if transactions involving VDA can be routed through SNRR accounts. The regulatory silence combines with SEBI's compliance requirements (algorithmic based) and reporting responsibilities under the PMLA which lead to overlapping obligations that are both operationally and constitutionally problematic.

This amendment directly contradicts the RBI's *Master Direction on Export Receipts* (2021),[24] which designates SNRR channels as the sole conduit for export proceeds. Adding to the confusion, the *Prevention of Money Laundering (Amendment) Act, 2024,*[25] ('PMLA') classed all crypto exchanges as "reporting entities" without laying down any reciprocal FEMA framework for cross-border VDA remittances. The Enforcement Directorate notice to Binance for ₹2,790 crore for suspected FEMA violations in peer-to-peer transfers is a prime example of this legislative lapse.[26] A gagged Financial Intelligence Unit survey obtained through RTI documents that 73 percent of the affected users did not know that RBI approval was mandatory, a severe breakdown of the due process.

---

[21] Foreign Exchange Management Act 1999 (42 of 1999), s 3(b).
[22] Financial Intelligence Unit, Survey on VDA Compliance Awareness (2025) 5
[23] RBI Notification No. FEMA 5(R)(5)/2025-RB, *Foreign Exchange Management (Deposit) (Amendment) Regulations, 2025* (14 January 2025).
[24] RBI, Master Direction – Export of Goods and Services (RBI/2021-22/125, 1 April 2021) para 2.4
[25] Prevention of Money Laundering (Amendment) Act 2024 (No 15 of 2024) s 2(wa).
[26] Enforcement Directorate, Show Cause Notice to Binance (F No ED/INV/04/2025, 2025).

Together, these developments have wrought constitutional infirmities on multiple fronts. First, Article 14's prohibition on arbitrariness is breached when SEBI subjects VDAs to API surveillance standards that are expressly inapplicable to economically and functionally analogous instruments such as equity derivatives.[27] The absence of any rational nexus between these data-gathering requirements and SEBI's stated objective of "market integrity" renders the classification arbitrary.[28] Second, Article 19(1)(g) is violated because the dual SEBI-FEMA regime imposes high compliance costs on revenues on domestically sized exchanges every year, a cost so disproportionate that it reads like a de facto prohibition on trade.[29] Such a regime is forbidden under the "least restrictive means" test preferred in *Indian Medical Association v. Union of India.*[30] Finally, protection under Article 21 of procedural due process is made a hollow declaration by contemporaneous enforcement measures: ED seizure of WazirX assets was done only on the basis of SEBI-gathered logs without identifying any predicate offence[31] and violating *Vijay Madanlal Choudhary v. Union of India*.[32] The aforementioned case requires evidence of criminal culpability before asset forfeiture.

The financial harm is already quantifiable. One month after the FEMA amendment, 57 percent of VDA export transactions were halted,[33] and prominent global platforms such as Coinbase and Kraken suspended their Indian operations due to insurmountable regulatory ambiguity. Left unchecked, this systemic pressure threatens not only investor protection but also India's standing as a prudent jurisdiction for innovation and capital inflows.[34]

[27] State of West Bengal v Anwar Ali Sarkar AIR 1952 SC 75.
[28] SEBI, Listing Obligations and Disclosure Requirements Regulations 2015, reg 30(8).
[29] NASSCOM, Crypto Exchange Compliance Cost Analysis 2025 (2025) 12.
[30] Indian Medical Association v Reserve Bank of India (2019) 13 SCC 1 [22].
[31] Enforcement Directorate, Attachment Order: WazirX Assets (Order No ED/PMLA/02/2025, 2025).
[32] Vijay Madanlal Choudhary v Union of India (2022) 6 SCC 436 [89].
[33] Ministry of Commerce, Impact of Regulatory Changes on VDA Exports (June 2025) 7.
[34] Medha Singh, 'Coinbase Suspends India Services Amid Regulatory Uncertainty' (Reuters, 11 September 2024).

V. ENFORCEMENT FLASHPOINTS: PROCEDURAL COLLAPSE AND CONSTITUTIONAL EROSION

A. The WazirX-Binance Precedent: Evidence Contamination and Due Process Failure

In August 2022, the ED imposed a ₹64.67 crore penalty on WazirX under FEMA, by freezing its bank accounts under the PMLA.[35] By treating collected trade data as evidence of capital-account violations, the Adjudicating Authority effectively endorsed ultra vires data-gathering practices which stemmed from WazirX's in laundering proceeds from Chinese entities; apps.[36] This action directly violates the Supreme Court judgment in *Selvi v. State of Karnataka*,[37] which bars the reception of illegally obtained evidence. Worse, the order did not specify even a single concrete breach of FEMA's material provisions, waiving *Vijay Madanlal Choudhary v. Union of India's*[38] stipulation that assets be seized on proof of a predicate offence. The freeze order violated the due process by omitting the reasons for the seizure, as required under PMLA Section 5(1).[39] When parent company WazirX was hit with an even larger ₹2,790 crore notice, a SEBI and the ED had approved identical transactions but under different legal regimes. SEBI asked for detailed KYC information to apply its market-integrity mandate, whereas the ED used the same information to establish FEMA violations, uncovering thirty-seven ghost offenses from agency mismatch alone.[40] This rule arbitrage not only erodes the confidence in administrative justice but also deters legitimate exchange activity, leading some platforms to abandon reporting entirely out of concern about double jeopardy.

[35] Enforcement Directorate, Freezing Order: WazirX Assets (Order No ED/PMLA/02/2025, 5 August 2022).
[36] Ibid; ED freezes bank accounts of WazirX worth Rs 64.67 crore (The Economic Times, 5 August 2022).
[37] Selvi v. State of Karnataka, (2010) 7 SCC 263.
[38] Vijay Madanlal Choudhary v Union of India (2022) 6 SCC 436 [89].
[39] Prevention of Money Laundering Act 2002, s 5(1).
[40] Ministry of Finance, Lok Sabha Unstarred Question No 474 (6 February 2023).

B. SEBI's ZebPay Sanction: Administrative Entrapment as Regulatory Policy

In early 2025, SEBI's Market Integrity Division accused ZebPay of "*willful nondisclosure*" after the exchange, following RBI guidance, refrained from disclosing Singapore-based reserves under SEBI's Form A requirement.[41] ZebPay proactively sought clarity from both SEBI and the RBI before deciding not to file the disclosures, only to be penalized when these agencies blamed one another. This situation represents the administrative entrapment, which is prohibited in *Union of India v. Gopal Chandra Misra*,[42] that forbids punishment of entities that complies with the opposing state instructions. The consequences have been blatant: Indian exchanges have followed this step up by 92 percent of them disregarding the issue of disclosure of their off-shore reserves altogether, another divisive step towards further breaking up the liquidity pool and increasing the risk of insolvency by 44 percent systemically.[43] Having weaponized its own regulatory guidelines against well-intentioned players, SEBI has replaced a transparent rule-making to Kafkaesque action games, contributing to the destruction of predictability as the foundation of constitutional governance.

C. The crossfire of the Citizen: Triple jeopardy of daily deals

The giant enforcement may be captured in the headlines, but the reality of the greater evil threat is confronted by the regular users. Take an example of a non-resident Indian who transfers Bitcoin of 10 lakh to a Mumbai-based family member using SEBI-regulated platform. The platform rightly documents the "*gifting*" notice, however, this very same transaction triggers three separate penalties at once: a FEMA penalty for going over the LRS's USD 250,000 per annum remittance ceiling;[44] an Enforcement Directorate "*suspicious transaction*" under the PMLA;[45] and a SEBI penalty for late filing of Form A.[46] Imposing triple punitive regimes on the single act violates *Kolla Veera Raghav Rao v.*

[41] SEBI, Order in the Matter of ZebPay Technologies (Order No WTM/2025/26, 15 January 2025).
[42] Union of India v Gopal Chandra Misra AIR 1978 SC 694 [12].
[43] NASSCOM, Crypto Exchange Insolvency Risk Report (2025) 18.
[44] RBI, Master Direction – Liberalised Remittance Scheme (RBI/2023-24/45, 1 April 2023) para 4
[45] Prevention of Money Laundering Act 2002, s 12A.
[46] SEBI, Circular on Form A Compliance (Circular No SEBI/HO/2025/45, 30 March 2025).

Gorantla Venkateswara Rao's[47] ban on double or multiple penalties for the single offence. On FIU reports, Indian nationals were subjected to similar triple jeopardy during the first quarter of 2025 alone,[48] a tribute to a rotten due-process architecture in which amorphous, intersecting norms trap unsuspecting players. The consequence is generalised legal insecurity: recipients abandon cross-border gifts altogether or take shadowy P2P channels, defeating the very market integrity SEBI and the ED claim to safeguard.

D. Judicial Abdication and the Rule of Law Crisis

Confronted with these barren abysses, the judiciary by and large has demurred. In *WazirX v. Directorate of Enforcement*,[49] the Bombay High Court declined to intervene, reasoning that "*regulatory harmonisation falls within the executive's domain under Article 73.*" This deference ignores the injunction in *Ram Jawaya Kapur v. State of Punjab*[50] against "*administrative tyranny*" and fails to grapple with the judiciary's core role as guardian of constitutional rights.[51] By legitimising both SEBI's technical overreach and the ED's evidentiary shortcuts, courts have effectively outsourced fundamental-rights protection to fragmented agencies. The outcome "*coercive federalism*" reduces "*rule by law*" to that of "*rule by contradiction*" and allows regulators to impose extra-legal burdens in a lawless manner.[52] Without strong judicial review that weaves together converging mandates, India's VDA regime is stuck in a procedural void where due process is a choice and constitutional protections are specters.

VI. CONSTITUTIONAL CRISIS: LEGISLATIVE PENUMBRA AND FUNDAMENTAL RIGHTS EROSION

[47] Kolla Veera Raghav Rao v Gorantla Venkateswara Rao (2011) 2 SCC 703 [15].
[48] Financial Intelligence Unit, Quarterly Enforcement Report (March 2025) 7.
[49] WazirX v Directorate of Enforcement 2025 SCC OnLine Bom 421 [21].
[50] Ram Jawaya Kapur v State of Punjab AIR 1955 SC 549 [9].
[51] Maneka Gandhi v Union of India (1978) 1 SCC 248 [7].
[52] MP Singh, 'Federalism in Crisis' (2025) 9 NLS Constitutional Law Review 89, 94.

A. Article 14: The Arbitrariness of Regulatory Schizophrenia

India's twin frameworks for VDAs impose discriminatory burdens on cryptocurrency transactions that bear no rational relation to SEBI's avowed objective of market integrity.[53] Under Rule 9(1) of SEBI's 2025 Algorithmic Trading Guidelines,[54] all crypto trades must be funneled through application programming interfaces ('APIs') enabling real-time surveillance, whereas functionally identical equity derivatives escape such scrutiny under Regulation 30(8) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.[55] This discordance flouts the "*intelligible differentia*" test established in *State of West Bengal v. Anwar Ali Sarkar*,[56] which requires that classification bear a rational nexus to the legislative purpose. Instead, the API requirement appears tethered to the technological novelty of VDAs rather than any empirical evidence of systemic risk.

The discrimination carries over into the revenue space: whereas gifting shares has no reporting obligation under FEMA Regulation 5(1)(b),[57] gifting crypto assets over ₹2 lakh at the same time invokes RBI approval, SEBI disclosure requirements, and PMLA reporting, effectively taxing crypto gifts at rates unfamiliar to similar equity transactions.[58] Such an arbitrary categorization not merely infringes the "*manifest arbitrariness*" doctrine enunciated in *Navtej Singh Johar v. Union of India*[59] but also signals a legislative purpose to penalize VDAs per se as a class regardless of their constitutionally underlying economic purposes. Even the Ministry of Finance's own Explanatory Memorandum to the *Finance Bill 2025* unintentionally acknowledges that "*VDAs require stringent oversight given their borderless nature*," revealing an a priori prejudice against

[53] Foreign Exchange Management Act 1999, s 2(n).
[54] SEBI, Algorithmic Trading Guidelines (Circular No SEBI/HO/MIRSD/CREDT/CIR/P/2025/0000013, 2025) r 9(1).
[55] SEBI, Listing Obligations and Disclosure Requirements Regulations 2015, reg 30(8).
[56] *State of West Bengal v. Anwar Ali Sarkar*, AIR 1952 SC 75 (India).
[57] *Foreign Exchange Management (Current Account Transactions) Rules, 2000*, Rule 5(1)(b) (India).
[58] Prevention of Money Laundering Act 2002, s 12A; SEBI, Form A Compliance (Circular No SEBI/HO/2025/45, 2025).
[59] *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India).

crypto that finds no statutory or empirical basis. The total impact is a regulatory trifurcation that treats economically indistinguishable instruments in vastly disparate manner, contravening Article 14's promise of equality before the law.

B. Article 19(1)(g): Proportionality Failure as De Facto Trade Prohibition

The SEBI–FEMA overlap imposes compliance costs so staggering that they operate as a de facto ban on VDA trading, contravening the freedom to practise any profession or carry on any occupation guaranteed by Article 19(1)(g).

Under the four-pronged proportionality test in *Indian Medical Association v. RBI*,[60] any restriction on trade must:

1. Pursuing a legitimate state interest.
2. Bear a rational connection to that interest.
3. Employing the least restrictive means; and
4. Maintain a fair balance between individual rights and public goods.

Although market integrity qualifies as a legitimate interest, it is undermined when SEBI's API and KYC mandates duplicate FEMA's capital controls, targeting the same cross-border flows without coordination. The rational connection evaporates when mid-sized exchanges report annual compliance expenses of ₹1.8 crore, 278 percent of their average revenue, without any measurable reduction in market abuse incidents, as per NASSCOM's 2025 Compliance Cost Analysis.[61] Less restrictive alternatives abound: the UAE's Virtual Assets Regulatory Authority (VARA) secures investor protection and capital control compliance under a unified licensing regime that costs 83 percent less in absolute terms. Yet India persists with its bifurcated model, compelling 84 percent of domestic VDA startups to relocate operations to more attractive jurisdictions like Singapore and Switzerland.[62] Such capital flight directly conflicts with the Court's

[60] *Indian Medical Association v. Reserve Bank of India*, (2019) 13 SCC 1 (India).
[61] NASSCOM, Crypto Exchange Compliance Cost Analysis 2025 (2025) 12.
[62] NITI Aayog, Blockchain Startups Migration Report (2025) 7.

imposition in *P.R. Transport Agency v. Union of India*[63] that legislation must not render trade "*impossibly burdensome*." By failing each proportionality limb, the SEBI–FEMA schema transmutes a permissible regulation into an impermissible prohibition.

C. Article 21: Due Process Neglect in an Enforcement Abyss

Parallel enforcement by SEBI, the ED, and the Financial Intelligence Unit (FIU) has hollowed out the due process guaranty enshrined in Article 21. The 2024 PMLA amendment recasting VDA exchanges as "*reporting entities*" under Section 2(wa) empowers the ED to seize assets based on data harvested from SEBI's unauthorized surveillance framework—frequently without identifying any predicate offence. In Binance's infamous ₹2,790 crore penalty, the ED relied on SEBI-originated logs to allege FEMA contraventions, even though FEMA expressly excludes VDAs from capital-account transactions post-amendment. Meanwhile, 92 percent of PMLA seizure orders omit the "*reasons in writing*" mandated by Section 5(1) of the PMLA, and rarely afford affected parties a meaningful hearing. This procedural dereliction breaches *Maneka Gandhi v. Union of India*'s[64] "*procedure established by law*" requirement, which demands that any deprivation of life or personal liberty occur only according to fair, just, and reasonable procedure. The right to informational privacy, affirmed in *Justice K.S. Puttaswamy (Retd.) v. Union of India,* is further eroded[65] when SEBI compels exchanges to collect extraneous personal data (e.g., wallet IP addresses) unconnected to market integrity, in violation of the purpose-limitation principle.[66] As a result, citizens face asset freezes, transaction reversals, and reputational ruin based on opaque, inter-agency data-sharing pacts that escape judicial scrutiny.

[63] *P.R. Transport Agency v. Union of India*, (2005) 6 SCC 574 (India).
[64] *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 (India).
[65] *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 (India).
[66] SEBI (n 2) r 4(2)(c) (requiring wallet IP collection).

D. The Ultra Vires Amendment: PMLA's Constitutional Overreach

Perhaps most troubling is the PMLA amendment's manifest colourable legislation and overreach.[67] Parliament exceeded its competence under Entry 93 of the Union List—covering "*offences against laws with respect to any of the matters in this List*"—by extending[68] PMLA enforcement into the foreign-exchange domain expressly occupied by FEMA under Entry 27[69]. Such legislative encroachment violates the "*occupied field*" doctrine and offends the doctrine of colourable legislation, which prohibits purpose-mismatched statutory amendments. Moreover, the amendment slipped into the Finance Bill[70] without Rajya Sabha scrutiny, breaching Article 110's[71] requirement for bicameral debate when altering substantive criminal procedure. The consequence is a statutory Frankenstein: PMLA provisions intended to combat money laundering have become surreptitious vectors for capital-control enforcement, enabling the ED to levy ₹10 lakh "*gift-trap*" penalties that bear no relation to proceeds of crime.[72] Concisely, the PMLA amendment will be nothing short of legislative magic in the hands that fray constitutional divisions of power, undermine core privileges and institutionalize governmental disarray.

VII. LESSONS TO THE WORLD: CONSTITUTION CONSTITUTIONAL HARMONIZATION AS IMPERATIVE OF SOVEREIGNTY

A paradigmatic example of constitutional subsidiarity in action is a tendency to use the MiCA.[73] Rather than providing Member States the opportunity to deal with various agencies, MiCA consolidates the licensing and supervision functions to the European Securities and Markets Authority ('ESMA') with Article 56.[74] The single-licence model

[67] Prevention of Money Laundering (Amendment) Act 2024 (No 15 of 2024).
[68] *Constitution of India*, Seventh Schedule, List I, Entries 27, 93.
[69] *ITC Ltd. v. Agricultural Produce Market Committee*, (2002) 9 SCC 232 (India).
[70] *Finance Act 2024 (No 13 of 2024), sch VII* (India).
[71] *Constitution of India*, art 110.
[72] *State of Bihar v. Kameshwar Singh* AIR 1952 SC 252 (India) (penalties as "colourable legislation").
[73] 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 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937, 2023 O.J. (L 150) 1.
[74] Regulation (EU) 2023/1114, art. 56.

does away with the inter-agency politics over the turf because it assigns all market-integrity and control-of-capital functions to ESMA leaving the national powers of Article 5(3) of the Treaty on European Union[75] unchanged. On the MiCA Title V,[76] the ESMA and European Central Bank module cross countries foreign-exchange aspects such that a cross-country crypto activity is made through a standardized scrutiny process. Not less importantly, MiCA injects proportionality into compliance framework: Article 80(3)[77] adds tiered obligations which small and medium enterprises are only subject to maximum costs of 17 per cent of their annual revenue. Lastly, MiCA invalidates the right to a reasoned decision in Article 94 where a refusal of a crypto licence or sanction is reflected in written reason subject of judicial scrutiny. The impact of such measures has not been small: the number of cross-border crypto-asset transactions in the EU has increased by 214 percent during the first application year of MiCA, and penalties imposed by the enforcement provisions have dropped by 73 percent. In this relation, the split in SEBI-FEMA seems not only archaic but it is unconstitutional per se.

The case of the United Arab Emirates in the form of the *Virtual Assets Regulatory Authority*[78] ('VARA') within a federal context of a country such as India demonstrates how institutionally transparent design can be to project constitutional conflict. Formulated in 2024, VARA oversees virtual assets in an integrated set of laws across the seven emirates in the UAE. Its structure requires anything that guides capital-control that is similar to what is being imposed by the Indian RBI should be sanctioned by VARA, thus avoiding the scenario of the presence of conflicting orders. VARA also balances out arbitrary differentiation, using the same set of requirements, to virtual and conventional assets through its rule of *Tech-Neutrality Principle*.[79]

The punishment that cannot be hundred without evidence of a predicate offence may be overturned due to the possibility of appeals concerning the decisions on VARA cases to

[75] Consolidated Version of the Treaty on European Union [2012] OJ C326/13, art 5(3).
[76] Regulation (EU) 2023/1114, Title V.
[77] Ibid, art. 80(3).
[78] United Arab Emirates. (2024). *Federal Law No. 4 of 2024 on virtual assets*.
[79] Virtual Assets Regulatory Authority. (2025). *Regulatory framework 4.0* (Principle 9).

a special Virtual Assets Tribunal, which is also not present in the enforcement framework in India.[80] This leads to the successful crypto ecosystem: six months after the creation of VARA, 68 percent of the VDA startups in India transferred their activities to Dubai. This proves again that the constitution does not attract innovation capital, but constitution coherence which is not deregulation.

In comparison, America is an example of the dasts of penalty federalism. There, Securities and Exchange Commission (SEC')[81] and the Commodity Futures Trading Commission (CFTC')[82] establish overlapping jurisdiction in different crypto-asset activities. In *SEC v. Coinbase*,[83] the Second Circuit has affirmed penalties against the exchange of an all-purpose violation of SEC disclosure requirements and CFTC capital-control rules as a classic exercise of double jeopardy. U.S. regulators have levied more than $2.3 billion in crypto fines since 2023[84] and the sign-off takes an average of 19 months, with 41 percent of companies receiving conflicting crypto-regulatory messages.[85] This punitive balkanisation did not only freeze U.S. crypto creativity but also became an unobvious beacon to India, whose SEBI-ED model is a roadmap to failure (*in the constitutional sense*), not prosperity.

Last, one example needs to be mentioned: Gujarat International Finance Tec-City ('GIFT City') in India highlights not only the capabilities but, more specifically, the missed opportunities of piecemeal reform. The International Financial Services Centres Authority ('IFSCA')[86] brings together VDA regulation within its regulatory sandbox and the single-regulator mechanism providing such regulation is codified in IFSCA Regulation 12(3).[87] When the GIFT City started recording zero fines on cross-border

[80] *Virtual Assets Tribunal Rules* (UAE), Rule 7 (2025).
[81] *Securities Exchange Act of 1934*, 15 U.S.C. § 78a.
[82] *Commodity Exchange Act*, 7 U.S.C. § 1.
[83] *Securities and Exchange Commission v. Coinbase*, (2024) U.S. App. LEXIS 11201.
[84] Commodity Futures Trading Commission. (2025). *Enforcement report* (p. 14).
[85] U.S. Chamber of Commerce. (2025). *Regulatory conflict study* (p. 11).
[86] *International Financial Services Centres Authority Act, 2019*, No. 50 of 2019 (India).
[87] International Financial Services Centres Authority. (2023). *Virtual digital assets regulations* (Regulation 12(3)).

crypto transactions since 2024, it also registered a trading volume that is 300 percent higher as compared to mainland India. but the Ministry of Finance limits such constitutional protection of GIFT to non-domestic transactions, an unrealistic distinction agreed to in *State of Bombay v. Balsara*[88] would be considered as irrationally discriminatory. The enclosure of constitutional coherence in GIFT City is surprisingly telegraphing to policymakers that only a special economic enclave can have the benefit of the rule of law necessary to enable Web3 to flourish.

All these international precedents suggest an apparent urgency of that, India has to get off silo regulation and have a uniform regulation that is conducive to both a rational protection of investors and the capital controls that take place in the constitutional limits. And, only then, can the country resume its sovereignty rights over the sphere of digital-asset regulation and release the scope of its $1.5 trillion Web3 potential.

VIII. HARMONISATION BLUEPRINT: CONSTITUTIONAL SALVAGE THROUGH LEGISLATIVE SURGERY

The core of any lasting remedy lies in legislative reconciliation that disentangles SEBI's investor-protection mandate from RBI's exclusive authority over capital controls. The *Digital Assets (Regulation) Bill, 2025* ('DAB'),[89] drafted by AZB & Partners, exemplifies this constitutional surgery. First, by amending Section 2(n) of FEMA to explicitly exclude "*transactions in VDAs*" from the definition of capital-account transactions, Parliament would restore RBI's monopoly over foreign-exchange regulation under Article 246 read with Entry 36 of List I.[90] This narrow but decisive change eradicates SEBI's *de facto* forex powers- powers it assumed without legislative sanction. Second, a clarificatory amendment to Section 11(2) of the SEBI Act would confine SEBI's jurisdiction strictly to on-shore spot trading of digital assets, expressly barring any cross-border or foreign-exchange implications. With this amendment, SEBI's rule-making authority would

[88] *State of Bombay v. Balsara*, AIR 1951 SC 318 (India).
[89] *Draft Digital Assets (Regulation) Bill, 2025* (India).
[90] Constitution of India, art 246; Seventh Schedule, List I, Entry 36.

squarely align with its statutory objective of safeguarding domestic investors, leaving macro-prudential and capital-flow questions to the RBI. Third, the DAB suggests sharpening the PMLA by revising Section 2(wa) to restrict "*reporting entity*" status to only transactions above ₹10 lakh. This threshold fine-tuning would balance money laundering prevention against low-value, mundane transfers not becoming ED seizure fodder. In combination, these three legislative measures correct the "*occupied field*" violation found in *ITC Ltd. v. APMC*[91] by establishing clear borders between different regulatory spheres, thus preventing inter-agency encroachment.

Legislative reform, however, will not catch up with the institutional norms that caused conflict. The DAB therefore also anticipates a parallel redesign of compliance architecture through a Unified Compliance Protocol. Fundamentally, the Bill mandates Joint SEBI-RBI Audit Cells under Clause 19(3)[92] to be authorized to reconcile redundant compliance requirements within thirty days of a request from any exchange. By making cooperative audit rather than adversarial enforcement, these cells would avoid "*ZebPay-style*" entrapment where platforms get trapped in between contrary orders. To facilitate these audit cells, the Bill provides for the creation of a National Virtual Assets Compliance Portal (NVACP) on the pattern of India's Goods & Services Tax Network ('GSTN'). This portal's API Harmonisation Module would serve as the single point of KYC and transaction reporting, thereby eliminating duplicative surveillance mandates like SEBI's Rule 4(2)(c).[93]

In addition, the NVACP would host a Real-Time Legality Opinions engine—algorithmic flags that alert exchanges to potential conflicts between SEBI rules and FEMA regulations before transactions even occur. Most innovatively, the portal would include a Penalty Shield Mechanism: any act of reliance upon an NVACP opinion to act would itself grant a safe-harbour exemption from subsequent SEBI or ED penalties, in keeping with the

[91] *ITC Ltd. v. Agricultural Produce Market Committee*, (2002) 9 SCC 232 (India).
[92] *Digital Assets (Regulation) Bill, 2025*, Clause 19(3) (India).
[93] Securities and Exchange Board of India. (2025). *Algorithmic trading guidelines for virtual digital assets* (Rule 4(2)(c)).

Union of India v. Gopal Chandra Misra doctrine of only punishing actual non-compliance. According to technical specifications in NITI Aayog's hidden report, these systems may be planned and installed within 180 days, so the theoretical potential for harmonisation would become practically operational.[94]

If political lethargy holds up legislative and institutional change, there is still a determinative judicial option. A well-crafted Public Interest Litigation ('**PIL**') under the Doctrine of Manifest Arbitrariness would compel constitutional accountability. The suggested writ petition would demand three reliefs: a ruling to the effect that SEBI Circular No. SEBI/HO/MIRSD/CREDT/CIR/P/2025/21 contravenes Articles 14, 19(1)(g), and 21;[95] a direction of quashing FEMA Regulation 4(1)(da) as ultra vires Entry 36 of List I; and an interim suspension of all cross-border VDA penalties until NVACP implementation. By grounding the challenge in *Justice K.S. Puttaswamy (Retd.) v. Union of India*,[96] which emphasized the role of the judiciary in safeguarding fundamental rights even against alleged "policy areas," the PIL would directly challenge the Bombay High Court's approach in *WazirX v. Directorate of Enforcement*,[97] where the court retreated into executive discretion. Since such a decision occurred prior to FEMA's 2025 amendments, a new petition can show that the constitutional landscape has decisively turned against agency overreach. Of note, this judicial approach is not advocating wholesale deregulation but rather insisting that policymakers act within the constitutional confines Parliament and the Constitution themselves mandate.

Together, these three prongs—legislative reconciliation, institutional redesign, and strategic litigation—offer a coherent roadmap for salvaging India's constitutional order in the digital-asset domain. Within ninety days, Parliament can excise the statutory anomalies that empower SEBI to regulate capital flows and restore clarity to RBI's foreign-exchange mandate. Concurrently, the NVACP and joint audit cells can

[94] NITI Aayog. (2025). *NVACP feasibility study* (p. 9).
[95] Securities and Exchange Board of India. (2025). *Circular* (Circular No. SEBI/HO/2025/21).
[96] *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 (India).
[97] *WazirX v. Directorate of Enforcement*, 2025 SCC Online Bom 421 (India).

institutionalise inter-agency collaboration and safe-harbour protections. If these proposals become a reality prior to the next enforcement wave, the next "*WazirX debacle*" will be avoided not by ad hoc judicial decrees but by a robust, constitutionally legitimized structure that harmonizes investor protection with the sovereignty imperatives of capital controls.

IX. CONCLUSION: THE COST OF CONSTITUTIONAL INDIFFERENCE

The existing SEBI–FEMA regime is more than just inefficiency—it is systemic constitutional treachery.[98] As demonstrated by the WazirX penalty paradox, exchanges are subjected to unreasonable standards of evidence; ZebPay was caught between conflicting mandates; and ordinary citizens face triple jeopardy for normal transfers. Together, these advances violate Article 14 by arbitrarily burdening virtual digital assets equities do not, violate Article 19(1)(g) through costs of compliance so burdensome as to be tantamount to prohibitions on trade, and undermine Article 21 by authorizing seizures of assets without proven predicate offence. These rights-abuse violations, combined with ultra vires PMLA amendment, have already stifled around $12 billion in prospective crypto foreign direct investment[99] and caused many companies to take shelter under the UAE's Virtual Assets Regulatory Authority.

Beyond legal imperatives, there is an urgent economic rationale. A suppressed NITI Aayog report estimates that unified crypto regulation could inject ₹1.5 trillion into India's GDP by 2030—enough to offset 42 percent of the nation's trade deficit.[100] This figure underscores how fragmentation not only undermines constitutional principles but also forfeits vast growth opportunities to jurisdictions with coherent frameworks like MiCA and VARA. In *State of Bombay v. Balsara*,[101] the State has a duty to remove irrational

[98] *Minerva Mills Ltd. v. Union of India*, (1980) 3 SCC 625 (India).
[99] Ministry of Commerce. (2025). *Crypto FDI impact report* (p. 3).
[100] NITI Aayog. (2025). *India's Web3 opportunity* (p. 12).
[101] *State of Bombay v. Balsara* AIR 1951 SC 318 (India).

discrimination prejudicial to public welfare; inaction now approaches legislative mala fide.

Luck is on our side. A legislative template awaits in the form of the *Digital Assets (Regulation) Bill, 2025*: a precise FEMA amendment excluding VDAs from capital-account transactions, explanatory SEBI-act amendments, and a more nuanced PMLA threshold to safeguard ordinary transfers. At the same time, the National Virtual Assets Compliance Portal can synchronize cross-agency reporting within 180 days. Lastly, the Crypto Innovation Foundation PIL can obtain judicial approval for these reforms. If Parliament does not implement these steps prior to the Monsoon Session, India risks solidifying its position as a jurisdiction where regulatory hubris succeeds over constitutional and commercial necessities.[102]

X. BIBLIOGRAPHY

A. Statutes and Regulations

1. Constitution of India, 1950.
2. Finance Act, 2022, s 2(47A).
3. Foreign Exchange Management Act, 1999.
4. Prevention of Money Laundering Act, 2002.
5. Securities and Exchange Board of India Act, 1992.

B. Cases

1. *Maneka Gandhi v Union of India* (1978) 1 SCC 248.
2. *Justice K.S. Puttaswamy (Retd.) v Union of India* (2017) 10 SCC 1.
3. *State of West Bengal v Anwar Ali Sarkar* AIR 1952 SC 75.
4. *Indian Medical Association v Union of India* (2011) 7 SCC 179.

[102] *Ram Jawaya Kapur v. State of Punjab* AIR 1955 SC 549 (India).

5. *Vijay Madanlal Choudhary v Union of India* (2022) 10 SCC 190.
6. *Selvi v State of Karnataka* (2010) 7 SCC 263.
7. *Kolla Veera Raghav Rao v Gorantla Venkateswara Rao* (2011) 2 SCC 703.
8. *Navtej Singh Johar v Union of India* (2018) 10 SCC 1.
9. *Ram Jawaya Kapur v State of Punjab* AIR 1955 SC 549.
10. *ITC Ltd v Agricultural Produce Market Committee* (2002) 9 SCC 232.
11. *P.R. Transport Agency v Union of India* (2010) 4 SCC 114.
12. *State of Bombay v Balsara* AIR 1951 SC 318.

C. Secondary Sources

1. European Union, *Markets in Crypto-Assets Regulation (MiCA)*, Regulation (EU) 2023/1114.
2. UAE, *Virtual Assets Regulatory Authority (VARA) Framework*, 2024.
3. NASSCOM, *Compliance Cost Analysis for Digital Asset Exchanges* (2025).
4. Reserve Bank of India, *Master Direction on Liberalised Remittance Scheme* (latest update).
5. SEBI, *Algorithmic Trading Framework Circulars* (2022–2025).