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DIGITAL ASSETS AND THE LAW: AN INDIAN PERSPECTIVE WITH COMPARATIVE LESSONS FROM THE US AND UAE

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I. ABSTRACT

Digital assets have rapidly emerged as a defining feature of the global financial ecosystem. Cryptocurrencies, stablecoins, non-fungible tokens (NFTs), and Central Bank Digital Currencies (CBDCs), all rooted in blockchain technology, are reshaping our understanding of value, ownership, and financial systems. In India, while adoption has surged, the regulatory and legal framework remains fragmented, reactive, and ambiguous. Against this backdrop, the research highlights India's lack of a coherent, innovation-positive legal framework that strikes a balance between financial stability and technological growth. Employing a doctrinal and comparative methodology, the study examines statutes, case law, regulatory notifications, and scholarly commentary. It reviews existing literature to highlight the research gap and situates India's regulatory efforts within an international context. The analysis reveals that while India focuses primarily on taxation and anti-money laundering measures, the US prioritises investor protection through enforcement, and the UAE fosters innovation through structured classifications and licensing. The paper concludes that India must adopt a hybrid model that combines clarity in classification, coordinated regulation, investor safeguards, and regulatory sandboxing. Such a framework will not only mitigate risks but also enable India to emerge as a leading jurisdiction in digital asset regulation.

II. KEYWORDS

Digital Assets, Virtual Digital Assets (VDAs), Blockchain Technology, Cryptocurrency Regulation, Central Bank Digital Currencies (CBDCs).

III. INTRODUCTION

"Regulatory ambiguity is the greatest threat to the potential of digital assets. Innovation thrives on clarity." – Chris Dixon, General Partner, Andreessen Horowitz. Digital assets

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have rapidly emerged as a defining feature of the contemporary financial landscape. Their disruptive potential has challenged traditional regulatory frameworks across jurisdictions. In India, the regulatory trajectory has been cautious and fragmented, characterised by temporary restrictions, taxation measures, and selective application of existing statutes. This uncertainty has led to both investor anxiety and policy debate. In contrast, other jurisdictions have adopted more structured approaches, such as the US, with its evolving enforcement and legislative model, and the UAE, with its innovation-driven framework.

This paper examines these comparative approaches to highlight lessons for India. By situating India's regulatory dilemma alongside the US and UAE, it explores how a hybrid model can balance innovation, systemic stability, and investor protection.

A. Research Problem

The rapid proliferation of digital assets has created a disruptive financial ecosystem that challenges traditional legal and regulatory paradigms. In India, while tax recognition and Anti-Money Laundering (AML) inclusion have been introduced, there is no comprehensive legal framework to govern digital assets. This results in ambiguity regarding classification, investor protection, and innovation. A key concern is the absence of an "innovation-friendly framework," which in practical terms would mean a regime that provides legal clarity, proportionate compliance obligations, access to regulatory sandboxes, and support for new business models without excessive restrictions. Such a framework would encourage technological development while ensuring consumer safeguards.

By contrast, India's current approach reflects a "risk-averse framework," characterised by blanket prohibitions (such as the erstwhile RBI banking ban), heavy taxation, and reactive compliance measures that discourage entrepreneurship and investment in the sector. These contrasting approaches can be measured by whether regulation provides clarity, promotes experimentation, and fosters responsible growth, or whether it imposes deterrent costs and uncertainty that stifle innovation.

In contrast, other jurisdictions have adopted more structured approaches that highlight India's regulatory gap. The US has relied on enforcement-led oversight and,

more recently, moved towards asset-specific legislation such as the *GENIUS Act* for stablecoins, which balances investor protection with innovation. The UAE, by comparison, has established an innovation-oriented framework through clear asset classification and licensing, attracting global digital asset businesses. These examples illustrate that India's problem is not one of global impossibility, but of a regulatory choice.

Furthermore, the regulatory challenge in this field is inherently temporal. Digital asset technologies and markets evolve at a pace that outstrips conventional law-making. Any framework that is too rigid or delayed risks becoming obsolete by the time it is implemented. Thus, the research problem is not only the absence of a coherent and balanced framework in India, but also the urgent need for a regulatory model that can adapt dynamically to the fast-changing nature of digital assets.

B. Research Objectives

1. To trace the evolution and conceptual foundations of digital assets globally and in India.
2. To critically analyse the legal and regulatory framework of digital assets in India.
3. To compare India's regulatory stance with the approaches adopted by the US and UAE.
4. To identify regulatory gaps in India and suggest reforms that balance innovation with investor protection.

C. Research Questions

1. How are digital assets defined and classified in India compared to the US and UAE?
2. What are the primary legal and regulatory challenges India faces in regulating digital assets?
3. What lessons can India learn from the US and UAE regulatory models?

4. How can India develop a coherent, innovation-friendly, and risk-based framework for digital assets?

D. Research Methodology

This paper adopts a doctrinal and comparative legal research methodology. The doctrinal approach involves a detailed study of statutory provisions such as the *Income-tax Act, 1961*, the *Prevention of Money Laundering Act, 2002*, and regulatory measures issued by the Reserve Bank of India (RBI) and the Securities and Exchange Board of India (SEBI). Judicial precedents, most notably *Internet and Mobile Association of India v. Reserve Bank of India*, have been examined directly from primary sources. In the US, primary legal materials such as regulatory enforcement actions and statutory developments were accessed in English, supplemented by academic commentary. With respect to the UAE, official English translations of statutory texts and regulatory frameworks were consulted where available; however, due to the linguistic barrier posed by Arabic primary sources, the analysis has been supplemented by secondary academic and policy literature. Secondary sources across all jurisdictions—including scholarly articles, reports from international organisations (IMF, FATF, WEF), and policy papers have been employed to enrich and contextualise the doctrinal analysis.

E. Scope and Limitations

The scope of this paper is confined to the legal and regulatory dimensions of digital assets in India, with comparative references to the US and UAE. It does not delve into the technological coding or economic forecasting aspects of digital assets. The study is limited to statutory, regulatory, and judicial frameworks up to August 2025.

F. Literature Review

Scholarly work on digital assets has primarily revolved around their disruptive potential and regulatory challenges. *Zetzsche, Buckley, and Arner* highlight how the US has developed a fragmented, enforcement-led regulatory model, raising concerns about legal uncertainty and investor protection.[2] The International Monetary Fund

[2] Dirk A. Zetzsche, Ross P. Buckley & Douglas W. Arner, *Regulating a Revolution: From Regulatory Sandboxes to Smart Regulation, 23 Fordham J. Corp. & Fin. L. 31, 45-52 (2017).*

has underscored the risks of regulatory arbitrage and called for global coordination to ensure financial stability in the digital asset space.[3] Similarly, the Financial Action Task Force has provided detailed guidance on applying anti-money laundering (AML) and combating the financing of terrorism (CFT) standards to virtual assets and service providers.[4] In contrast, policy reports examining the United Arab Emirates—such as the Dubai Virtual Assets Regulatory Authority framework—illustrate a proactive and innovation-friendly regulatory approach, positioning the UAE as a model for emerging economies.[5]

While these contributions are valuable, two types of research gaps are evident. First, in terms of substantive gaps, most Indian literature remains descriptive, focusing either on taxation, AML inclusion, or the Reserve Bank of India's prohibition, without offering a systematic comparative analysis. Comparative studies, when they exist, typically examine India in relation to a single jurisdiction (often the US or the EU). The UAE's innovation-oriented model, which contrasts sharply with India's cautious stance, has received little comparative attention alongside US enforcement practices.

Second, and more importantly, there are methodological gaps. Much of the existing scholarship employs a black-letter or doctrinal approach in isolation, describing statutory developments without embedding them in a broader comparative or policy framework. Few works attempt a structured cross-jurisdictional comparison that brings together India, the US, and the UAE in a single analytical framework. Even fewer integrate doctrinal analysis with forward-looking, innovation-focused evaluation of regulatory sandboxes, investor safeguards, or adaptive mechanisms. This lack of methodological diversity limits the ability of existing studies to propose context-specific yet globally informed reforms.

[3] Int'l Monetary Fund, *Global Financial Stability Report: Cryptoassets as the Future of Money?* (Oct. 2021), https://www.imf.org/en/Publications/GFSR/Issues/2021/10/12/global-financial-stability-report-october-2021.
[4] Fin. Action Task Force, *Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers* (June 2019), https://www.fatf-gafi.org/media/fatf/documents/recommendations/RBA-VA-VASPs.pdf.
[5] Dubai Virtual Assets Regulatory Authority (VARA), *Regulatory Framework for Virtual Assets* (2022), https://www.vara.ae/en/regulations

This paper, therefore, addresses both the substantive and methodological gaps. It contributes uniquely by situating India's regulatory dilemma within a three-jurisdiction comparative framework, drawing on the US's enforcement-driven approach and the UAE's innovation-driven model. By combining doctrinal analysis of statutory provisions, regulatory notifications, and judicial precedents with comparative insights from multiple jurisdictions, the study advances a normative recommendation for India: the design of a balanced and innovation-positive framework informed by global best practices.

IV. HISTORICAL BACKGROUND

A. Conceptual Foundations and Early Innovations (Late 20th Century)

The conceptual foundations of digital assets started gaining ground in the late 20th century with the inception of electronic cash systems. In 1998, cryptographer *Nick Szabo* proposed "*Bit Gold,*" [6] a conceptual decentralised digital currency that would allow for secure, trustless transactions without intermediating authorities by having users solve cryptographic puzzles and using a proof-of-work (PoW) mechanism to validate submissions. Although "Bit Gold" was never actualised as a system or method of digital currency, it recommended resolutions to significant issues related to double-spending and making value-verification claims. Szabo, therefore, established a foundational intellectual and technical basis that would later facilitate, organise, and inspire the proliferation of Bitcoin-style currencies and associated innovations. Szabo's anticipated decentralised digital scarcity foreshadows the justifications that characterise many blockchain-based assets today and exemplify the tension between digital and traditional cash systems, economies, and cultures.[7]

B. Emergence of Cryptocurrencies and Blockchain Technology (2009–2013)

Cryptocurrencies made their debut in 2009 with the launch of Bitcoin, created by an individual or group under the pseudonym *Satoshi Nakamoto*. Bitcoin is a cryptocurrency that operates on blockchain technology, i.e. a distributed ledger that

[6] Nick Szabo, Bit Gold (Dec. 29, 2008), https://unenumerated.blogspot.com/2005/12/bit-gold.html.
[7] Filippo Zatti & Rosa Giovanna Barresi eds., *Digital Assets and the Law: Fiat Money in the Era of Digital Currency* (Routledge 2023).

enables peer-to-peer transactions without the need for intermediaries. By addressing the double-spending problem in digital currency and introducing a transparent and secure method for direct transactions between parties, Bitcoin paved the way for the emergence of numerous other cryptocurrencies. These alternative cryptocurrencies were designed either to improve upon Bitcoin's model or to define their own niche within the growing cryptocurrency market.[8]

C. Diversification and Technological Advancements (2014–2017)

In 2015, the digital asset ecosystem expanded in scope and shape with the launch of Ethereum, which offered developers a new way to create decentralised applications (dApps) and smart contracts (i.e., self-executing contracts with the terms of the agreement written directly into code). In addition, ICOs (Initial Coin Offering) during this timeframe emerged as a new method of raising capital for startups and blockchain projects, allowing founders to issue tokens in exchange for future project-related revenues. However, as projects began conducting ICOs, an increasing focus on funder protection began to emerge.[9]

D. Institutional Adoption and Regulatory Responses (2018-Present)

This phase was marked by heightened institutional interest, with global banks investigating blockchain applications and the development of cryptocurrency services. Regulators across the world began formulating frameworks to deal with the challenges posed by digital assets. As an example, the *US Securities and Exchange Commission* (SEC) applied existing securities laws to digital assets in light of the debates surrounding appropriate classifications and compliance as they transition to digital assets. At the same time, the *Financial Stability Oversight Council* (FSOC) evaluated the risks associated with the financial stability posed by cryptocurrency and focused on the need for adequate regulatory oversight.[10]

[8] Swift Inst., *Defining Digital Assets: Past, Present, Future* (2022), https://www.swift.com/swift-resource/251789/download
[9] Wulf A. Kaal, Digital Asset Market Evolution, 45 J. CORP. L. 47 (2019).
[10] Cong. Research Serv., Digital Assets and SEC Regulation, CRS Report R46208 (2023), https://crsreports.congress.gov/product/pdf/R/R46208

E. Integration with Traditional Financial Systems and Emerging Trends (2020s)

During the 2020s, there have been attempts to integrate digital assets into the mainstream financial system. Central banks are working on CBDCs, which would, to some measure, offer the benefits of digital assets and the trust of fiat. The tokenisation of real-world assets, such as real estate and commodities, is also being explored, which could increase liquidity and accessibility in markets.[11] Regulatory approaches continue to evolve, with jurisdictions adopting diverse strategies to strike a balance between innovation, consumer protection, and financial stability.[12]

V. UNDERSTANDING DIGITAL ASSETS

Building upon the historical trajectory of digital innovations, a nuanced comprehension of 'digital assets' themselves is fundamental to navigating their complex legal and regulatory landscape. This section aims to establish a comprehensive conceptual framework by first examining global definitional perspectives from leading international bodies and then detailing the diverse categories of these assets, from cryptocurrencies to CBDCs. Finally, it will distil the specific Indian legal definition of digital assets, highlighting its scope and implications within the Indian context. This foundational understanding is crucial before exploring the regulatory responses they have elicited across various jurisdictions.

A. Global Perspective

As per the *Financial Action Task Force (FATF*), 'A digital asset is a digital representation of value that can be digitally traded or transferred and can be used for payment or investment purposes. Digital assets do not include digital representations of fiat currencies, securities, and other financial assets that are already covered elsewhere in the FATF Recommendations.'[13]

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[11] World Econ. F., Digital Assets Regulation: Insights from Jurisdictional Approaches (2023), https://www3.weforum.org/docs/WEF_Digital_Assets_Regulation_2024.pdf

[12] .P. Morgan, The Evolution of Digital Assets (2023), https://www.jpmorgan.com/content/dam/jpm/cib/complex/content/securities-services/regulatory-solutions/evolution-of-digital-assets.pdf

[13] Fin. Action Task Force, *Updated Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers* (Oct. 2021), https://www.fatf-gafi.org/media/fatf/documents/recommendations/Updated-Guidance-VA-VASP.pdf

The *International Monetary Fund (IMF)* posits that digital assets are digital representations of value made possible by advances in cryptography and distributed ledger technology. They may be used as a medium of exchange, unit of account, or store of value and may or may not have legal tender status.[14]

The *World Economic Forum (WEF)* defines digital assets as a new asset class based on blockchain infrastructure, encompassing cryptocurrencies, stablecoins, utility tokens, NFTs, and tokenised versions of traditional assets.[15]

B. Types of Digital Assets

1. **Cryptocurrencies**: These are decentralised digital currencies that operate independently of any central bank or government. They operate on blockchain technology to record and verify transactions through consensus mechanisms like PoW or Proof-of-Stake (PoS). Examples include Bitcoin and Ethereum.
2. **Stablecoins**: Stablecoins are digital tokens designed to maintain a stable value by being pegged to an underlying reserve asset, such as fiat currency or commodities. They are commonly used to facilitate trading and remittances within the crypto ecosystem without exposure to volatility. Examples include Tether and Paxos Gold.
3. **Non-fungible tokens (NFTs)**: NFTs represent unique digital assets and are stored on a blockchain, making them indivisible and non-interchangeable. They are frequently used in digital art, gaming, intellectual property, and virtual identities. Examples include CryptoPunks and Bored Ape Yacht Club (BAYC).
4. **Security tokens**: Security tokens confer ownership rights or revenue shares in an enterprise or asset and are often governed by securities law, e.g. tZERO – a regulated trading platform offering tokenised equity.

[14] Int'l Monetary Fund, *The Ascent of Digital Money*, IMF Staff Discussion Note SDN/19/01 (July 2019), https://www.imf.org/en/Publications/Staff-Discussion-Notes/Issues/2019/06/27/The-Ascent-of-Digital-Money-46966
[15] World Econ. F., *Digital Assets Regulation: Insights from Jurisdictional Approaches* (Jan. 2023), https://www3.weforum.org/docs/WEF_Digital_Assets_Regulation_2024.pdf

5. **Utility tokens:** They provide access to a service, feature, or network but do not imply ownership or investment returns, e.g. Basic Attention Token (BAT) – used for incentivising users and creators within the Brave browser ecosystem.
6. **Central bank digital currencies (CBDCs)**: CBDCs are digital legal tenders issued and backed by a country's central bank, representing a digital form of fiat currency. They aim to offer the safety and stability of traditional money with the convenience of digital transactions. Examples include Digital Rupee (e₹), Digital Yuan (e-CNY) and Sand Dollar.

C. Indian Perspective

A legal definition of digital assets was introduced in India for the first time through the *Finance Act, 2022*, with the insertion of Section 2(47A) into the *Income Tax Act, 1961*. The term "*Virtual Digital Asset*" is defined as follows:

"Virtual Digital Asset" means:

(a) any information, code, number or token (not being Indian currency or any foreign currency), generated through cryptographic means or otherwise, by whatever name called, providing a digital representation of value exchanged with or without consideration, with the promise or representation of having inherent value, or functions as a store of value or a unit of account, and includes its use in any financial transaction or investment, but not limited to investment schemes;

(b) a non-fungible token or any other token of similar nature, by whatever name called;

(c) any other digital asset, as the Central Government may, by notification in the Official Gazette, specify.[16]

This definition excludes government-issued currencies like the Digital Rupee and foreign fiat currencies, thereby solely focusing on privately issued digital assets like cryptocurrencies and NFTs.

[16] Gov't of India, *Finance Act, 2022*, § 2(47A); Income Tax Dep't of India, https://incometaxindia.gov.in

VI. LEGAL AND REGULATORY FRAMEWORK OF DIGITAL ASSETS IN INDIA

Having established a global and Indian definitional framework for digital assets, including their various types and the unique challenges they present, the focus now shifts to how these novel instruments are being addressed within India's legal and regulatory landscape. The diverse characteristics of these assets, from cryptocurrencies to NFTs and CBDCs, necessitate specific regulatory considerations. This section will critically analyse the current fragmented and multi-agency approach adopted by India, examining the implications of statutory recognitions, regulatory guidance, and judicial interventions.

At present, India lacks a cohesive legal framework for regulating digital assets. India's regulation of digital assets is occurring on a piecemeal and multi-agency basis, inclusive of tax authorities, the Reserve Bank of India (RBI), the Financial Intelligence Unit (FIU-IND) and the Enforcement Directorate (ED). Digital assets have been legally defined for tax purposes, but there is no statute or regulatory code that governs their creation, trading, and overall legal position.

A. Statutory Recognition: The Income Tax Act, 1961

The Finance Act, 2022, represented the first major impetus for official recognition of digital assets within India when it amended the Income Tax Act, 1961, and defined the term "Virtual Digital Assets." The definition under Section 2(47A) includes any information, code, number, or token generated through cryptographic means or otherwise, having a digital representation of value that can be transferred, stored or traded electronically, excluding Indian and foreign currencies. Now, under the Income Tax Act, 1961:

1. Section 115BBH imposes a flat 30% tax on income generated from the transfer of VDAs.[17]

[17] *Income Tax Act, 1961*, § 115BBH, inserted by *Finance Act, 2022*, w.e.f. Apr. 1, 2022.

2. Section 194S introduces a 1% TDS (Tax Deducted at Source) on payments made for transfer of VDAs above ₹50,000 annually (or ₹10,000 for specific individuals).[18]

B. Regulatory Guidance from the Reserve Bank of India (RBI)

In 2018, the Reserve Bank of India (RBI) issued a circular prohibiting banks and financial institutions from providing services related to cryptocurrencies. However, in *Internet and Mobile Association of India v. Reserve Bank of India*, the Supreme Court overturned the RBI circular, finding it violative of Article 19(1)(g) of the Constitution. After the decision of the Supreme Court, the RBI decided to move to its own CBDC, i.e., the Digital Rupee (e₹), which was launched in pilot form in 2022–23. A CBDC is not a private crypto asset, but is, in essence, a legal tender backed by sovereign authority.[19]

C. Inclusion of Virtual Digital Assets under the PMLA, 2002

The Prevention of Money Laundering Act, 2002 (PMLA) has attained renewed salience with respect to digital assets, particularly cryptocurrencies and NFTs, in light of concerns about their use in crime, including terror financing, drug smuggling, ransomware attacks, and tax evasion. In a critical development to ensure transparency and legal accountability in the digital asset ecosystem, the Ministry of Finance issued a notification on March 7, 2023, recognising that VDA transactions fall within the jurisdiction of PMLA. The notification was issued under Section 2(1)(sa)(vi) of the PMLA, making VDA service providers *Reporting Entities* under the statute.[20]

This indicates that exchanges of Indian cryptocurrency, custodial wallets, and any entity involved in the transfer, safekeeping, or management of VDAs will now be subjected to anti-AML obligations like:

1. KYC (Know Your Customer) verification,
2. Record keeping of financial transactions,

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[18] *Income Tax Act, 1961*, § 194S, inserted by *Finance Act, 2022*, w.e.f. July 1, 2022.
[19] *Prevention of Money Laundering Act, 2002*, § 2(1)(sa)(vi), inserted by Ministry of Finance Notification No. S.O. 1072(E) (Mar. 7, 2023), published in *Gazette of India*, Extraordinary, Part II, § 3(ii).
[20] Reserve Bank of India, *Concept Note on Central Bank Digital Currency* (Oct. 2022), https://www.rbi.org.in/Scripts/PublicationReportDetails.aspx?UrlPage=&ID=1218

3. Suspicious transaction reporting (STR) to FIU-IND,
4. Producing information when demanded by a regulatory or investigative agency.

In its regulatory treatment of VDAs, India has adopted what commentators describe as a "mid-way" approach. Rather than either prohibiting or fully deregulating crypto-assets, the government has extended existing compliance obligations into the digital space. This is most evident from the Ministry of Finance Notification of 7 March 2023, which brought VDAs and service providers under the *Prevention of Money Laundering Act 2002*, thereby making them subject to AML and CFT requirements.[21]

Similarly, the Finance Act 2022, read with provisions inserted into the *Income Tax Act 1961* (notably ss 115BBH and 194S), created a taxation framework for VDAs by imposing a flat 30% tax on income from such assets and a 1% TDS on transactions.[22] In a parliamentary response in July 2025, the Ministry of Finance clarified that crypto-assets remain "currently unregulated" but are nevertheless covered by these compliance regimes, illustrating that the state has deliberately opted for regulatory integration rather than either legalisation or prohibition.[23] Collectively, these measures represent a stepwise regulatory move that secures immediate oversight while allowing time for the government to develop more comprehensive legislation tailored to digital assets.

While this decision addresses the concerns of money laundering and terror financing, it has also increased the compliance costs imposed on Indian startups and crypto exchanges. Nevertheless, this step was a prudent compromise from a regulatory perspective, aiming to find an appropriate equilibrium between safety, innovation, and financial stability.

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[21] Government of India, Ministry of Finance (Department of Revenue), Notification S.O. 1072(E), *Gazette of India*, Extraordinary, Part II, § 3(ii) (Mar. 7, 2023), https://egazette.gov.in/WriteReadData/2023/244184.pdf

[22] *Income Tax Act, 1961*, §§ 115BBH, 194S, inserted by *Finance Act, 2022*.

[23] India, Lok Sabha, Unstarred Question No. 1340, *Regulations for Virtual Digital Assets (VDA)* (answer by Minister of State for Finance Pankaj Chaudhary, July 28, 2025), https://sansad.in/getFile/loksabhaquestions/annex/185/AU1340_kPWHiB.pdf?source=pqals

D. Absence of Regulation by Securities and Exchange Board of India (SEBI)

In India, although several regulators are acting upon the emergence of VDAs, the SEBI, the statutory regulator for the securities markets in India, has yet to provide comprehensive regulatory guidance aimed at Initial Coin Offerings (ICOs), Security Token Offerings (STOs), DeFi products, and similar investment-like digital product offerings. This regulatory void is in contrast to the US, where the SEC (Securities and Exchange Commission) has indicated that numerous digital tokens are securities, applying the test of whether they are offered or sold to investors.

In India, under the *Securities Contracts (Regulation) Act, 1956 (SCRA)*, the term "securities" is defined in Section 2(h) to include shares, bonds, debentures, government securities, and "any other instruments as may be declared by the Central Government."[24] The Act, however, does not explicitly indicate that digital tokens or crypto-assets would be included within its scope; nor has any notification or amendment been brought forth by the Central Government to include VDAs within the purview of the Act. This omission creates a grey area in the Indian legal landscape. Certain VDAs like investment tokens, or DeFi products, do share attributes with traditional securities, e.g. the expectation of profit or pooling of investment, or participation in the efforts of others, yet the failure to include tokens or crypto-assets under Indian securities law creates a jurisdictional ambiguity.[25]

The "*Howey Test*" is used by the SEC to ascertain whether a token is a security. Suppose the asset involves an investment of money in a common enterprise, with a reasonable expectation of profits, derived from the efforts of others. In that case, it is regarded as a security. Applying the same test to Indian crypto tokens, a significant portion of them would likely fall within the ambit of securities.

Several enforcement actions by the SEC, including high-profile cases such as *SEC v. Ripple Labs Inc.*[26] and *SEC v. Coinbase*,[27] demonstrate a global trend toward classifying

[24] Securities Contracts (Regulation) Act 1956, s 2(h).
[25] Committee to Propose Specific Actions in Relation to Virtual Currencies, Ministry of Finance, Government of India, Report (2019) (Chair: Subhash Chandra Garg).
[26] *SEC v. Ripple Labs Inc.*, No. 20-CV-10832 (S.D.N.Y. 2020).
[27] *SEC v. Coinbase Global Inc.,* No. 23-CV-04738 (S.D.N.Y. 2023).

digital tokens functionally, regardless of their technological status. In contrast, SEBI has not publicly adopted or articulated a comparable test or framework.

E. Regulatory Position of the Reserve Bank of India (RBI)

The RBI's reaction to digital assets has transitioned from unequivocal disapproval to a more cautious approach in recent years, particularly with the evolution of the CBDC ecosystem. While the response has transitioned this far, the RBI continues to maintain a tightly constrained, risk-averse posture on VDAs, including cryptocurrencies. The RBI's discomfort with cryptocurrencies began as early as 2013, when it publicly first issued its cautionary note to consumers about the volatility, consumer protection concerns, money laundering risks, and lack of backing or intrinsic value of digital assets. RBI's discomfort eventually resulted in the issuance of a circular dated April 6, 2018, banning all regulated entities, including banks and NBFCs, from engaging with or providing services to entities that engaged in virtual currencies. This prohibition restricted crypto exchanges from a regulated banking infrastructure and served as a de facto ban on the trading of cryptocurrencies.[28]

In 2020, however, this position was overturned in *Internet and Mobile Association of India v. Reserve Bank of India*,[29] when the Supreme Court struck down the RBI circular, ruling that the step amounted to a disproportionate restriction on the right to carry on trade or business under Article 19(1)(g) of the Constitution, and further held that in the absence of a legislative ban, such a blanket restriction could not be sustained under the RBI's regulatory powers. Notably, in May 2021, the RBI issued a clarificatory circular stating that the 2018 circular was no longer operative due to the Court's decision.[30]

Despite remaining antagonistic to private digital assets, the RBI proceeded to develop India's own CBDC. The Finance Act, 2022, allowed the creation of a Digital Rupee as a form of legal sovereign digital currency distinct from private tokens. Section 22A of

[28] Reserve Bank of India, Circular: *Prohibition on Dealing in Virtual Currencies* (Apr. 6, 2018).
[29] *Internet & Mobile Ass'n of India v. Reserve Bank of India*, (2020) 10 SCC 274.
[30] Reserve Bank of India, Circular: *Customer Due Diligence for Transactions in Virtual Currencies* (May 31, 2021).

the RBI Act, 1934, was amended to permit the RBI to issue digital currency.[31] At the end of 2022 and early 2023, the RBI conducted pilot projects of the wholesale and retail CBDC, respectively. This further illustrates a 'public-private dichotomy' in India's approach, as the regulatory landscape prohibits or restricts private tokens whilst exploring state-backed alternatives.[32]

F. Attempts at Codification: The Legislative Vacuum

The Cryptocurrency and Regulation of Official Digital Currency Bill, 2021, sought to ban private cryptocurrencies, allowing only the RBI's CBDC. However, it was never tabled, with the government citing the need for 'global consensus.'[33]

A draft law known as the Digital India Act (DIA) is set to replace the Information Technology Act, 2000, and will likely define digital assets, regulate intermediaries, and establish a regulatory sandbox for new technologies.[34] The ongoing neglect of the Indian Government to enact any digital asset legislation has resulted in a vacuum of legal certainty. Because of this, the courts and regulators are compelled to make ad hoc adjudications about legal issues associated with digital assets, resulting in compliance challenges and inhibition of India's ability to play a meaningful role in Web3 as an innovator.

VII. COMPARING THE INDIAN REGULATORY APPROACHES TO DIGITAL ASSETS WITH THE US AND UAE

The preceding section reveals that a piecemeal approach characterises India's regulatory framework for digital assets, primarily focused on taxation and anti-money laundering measures, and marked by a legislative vacuum. While this reflects a cautious stance, it also highlights the challenges of balancing financial stability with the imperative for innovation. To draw meaningful lessons and identify potential

[31] *Reserve Bank of India Act, 1934*, § 22A (as amended by the Finance Act, 2022).
[32] R. Gandhi & R. Menon, Crypto and Central Banking: A Perspective from India, 58 Econ. & Pol. Wkly. 15 (2022).
[33] Vidhi Centre for Legal Policy, *Regulating Crypto-Assets in India* (2021), https://vidhilegalpolicy.in/wp-content/uploads/2021/11/Regulating-Crypto-Assets-in-India.pdf
[34] Ministry of Electronics & Information Technology (MeitY), *Concept Note on Digital India Act* (2023), https://meity.gov.in

pathways for a more coherent Indian framework, it is crucial to examine how other leading jurisdictions have navigated similar complexities. Therefore, this section undertakes a comparative study, contrasting India's regulatory position with the enforcement-led, multi-agency oversight prevalent in the US and the innovation-oriented, clarity-driven model adopted by the UAE.

A. The United States: Enforcement-Led, Multi-Agency Oversight

The regulatory framework in the US is marked by its complexity and functional approach, involving numerous federal and state authorities. A complete federal law on digital assets does not exist, but enforcement through the interpretation of existing laws serves as oversight. The primary regulatory authorities and frameworks are:

1. **Securities and exchange commission (SEC):** The SEC enforces federal securities law and determines which cryptocurrencies are to be considered securities under the "Howey Test", particularly concerning ICOs and staking-as-a-service programs. The SEC's sanctions against *Ripple Labs* are noteworthy for the ramifications surrounding whether XRP is a security or not.[35]
2. **Commodity futures trading commission (CFTC):** The CFTC classifies certain cryptocurrencies like Bitcoin and Ethereum as commodities under the Commodity Exchange Act, thereby regulating derivatives and futures contracts on those assets.[36]
3. **Financial crimes enforcement network (FinCEN):** FinCEN requires cryptocurrency exchanges and wallet providers to register as Money Services Businesses (MSBs) with it and be subject to AML and reporting regulations under the Bank Secrecy Act (BSA).[37]
4. **Office of the comptroller of the currency (OCC):** The OCC has issued interpretive letters to federally chartered banks that allow them the

[35] U.S. Securities and Exchange Commission, *Framework for "Investment Contract" Analysis of Digital Assets* (2019).
[36] In re Coinflip, Inc. d/b/a Derivabit, CFTC Docket No. 15-29 (Sept. 17, 2015).
[37] Financial Crimes Enforcement Network, *Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies* (May 9, 2019).

privilege to custody crypto assets and to engage blockchain networks for payment settlement.[38]

B. Features:

1. **Litigation-driven regulation:** The regulatory environment is primarily shaped by enforcement actions and judicial decisions, creating countless variables and uncertainty for businesses operating in this domain.
2. **State-level licensing:** In addition to arguably excessive federal regulation, certain states like New York require companies to obtain a *BitLicense,*[39] exacerbating the compliance burden.
3. **Proposed legislative reforms:** Several bills, such as the *Lummis-Gillibrand Responsible Financial Innovation Act (2022),*[40] seek to create a cohesive regulatory framework, but have yet to be enacted.

C. Recent Legislative Development in the United States: The GENIUS Act (2025)

A major development in the US regulatory landscape was the enactment of the *Guarding Effective National Issuance of Uniform Stablecoins (GENIUS) Act,*[41] signed into law in July 18, 2025. This marks the first comprehensive federal legislation specifically targeting stablecoins, a category of digital assets that had previously been subject to fragmented oversight.[42]

D. Key Features of the GENIUS Act:

1. **Reserve backing and transparency**: All payment stablecoins must be backed 100% by high-quality liquid assets. Issuers are mandated to provide

[38] Office of the Comptroller of the Currency, Interpretive Letter No. 1170 (July 22, 2020).
[39] N.Y. Comp. Codes R. & Regs. tit. 23, ch. I, pt. 200 (2015).
[40] Responsible Financial Innovation Act, S. 4356, 117th Cong. (2022).
[41] Guiding and Establishing National Innovation for U.S. Stablecoins Act of 2025, S. 394, 119th Cong. (2025), https://www.congress.gov/bill/119th-congress/senate-bill/394
[42] White House, *Fact Sheet: President Donald J. Trump Signs the GENIUS Act into Law* (July 18, 2025), https://www.whitehouse.gov/fact-sheets/2025/07/fact-sheet-president-donald-j-trump-signs-genius-act-into-law/

monthly public disclosures of reserves, thereby ensuring transparency and accountability.[43]

2. **Permitted payment stablecoin issuers (PPSIs)**: The Act establishes a licensing regime for PPSIs, subjecting them to oversight by both federal and state regulators.[44]
3. **Consumer protection and insolvency**: The Act grants stablecoin holders' priority in insolvency proceedings and prohibits misleading marketing claims or representations regarding asset safety.[45]
4. **Regulatory coordination**: The law clarifies the roles of different regulatory bodies, providing a foundation for future harmonisation across US agencies.[46]

E. Implications

The GENIUS Act marks a significant shift in the US regulatory landscape, transitioning from an enforcement-dominated model to one that incorporates targeted, asset-specific legislation. This approach blends investor protection with systemic stability while fostering innovation. For India, this development highlights the need to move beyond generic definitions and adopt asset-specific regulatory frameworks—particularly for classes such as stablecoins while also mandating transparency requirements through disclosure and reserve practices to enhance investor confidence. Equally important is the establishment of statutory mechanisms that clarify and coordinate the regulatory roles of the RBI, SEBI, and the Ministry of Finance, ensuring a coherent and unified approach to digital asset regulation.

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[43] Simpson Thacher & Bartlett LLP, *GENIUS Act Establishes Regulatory Framework for Stablecoins* (July 22, 2025), https://www.stblaw.com/about-us/publications/view/2025/07/22/genius-act-establishes-regulatory-framework-for-stablecoins

[44] Pillsbury Winthrop Shaw Pittman LLP, *Congress Passes GENIUS Act, Establishing Framework for Stablecoin Regulation* (July 2025), https://www.pillsburylaw.com/en/news-and-insights/congress-genius-act-framework-stablecoin-digital-asset-regulation-us.html

[45] ArentFox Schiff LLP, *GENIUS Act Ushers in a New Era of U.S. Stablecoin Regulation and Digital Asset Leadership* (July 2025), https://www.afslaw.com/perspectives/alerts/genius-act-ushers-new-era-us-stablecoin-regulation-and-digital-asset-leadership

[46] KPMG, *Crypto and Digital Assets: Final GENIUS Act and Other Developments* (July 25, 2025), https://kpmg.com/us/en/articles/2025/crypto-and-digital-assets-final-genius-act-and-other-actions-reg-alert.html

F. United Arab Emirates: Innovation-Oriented and Regulatory Clarity

In contrast to the US, the UAE has taken a proactive and comprehensive approach to regulating digital assets. Instead of perceiving virtual assets as a risk, the country views them as a means to establish its technological and economic supremacy. The following are the principal legal and regulatory authorities regarding digital assets in the UAE:

1. **Virtual assets regulatory authority (VARA)**

   Established under *Dubai Law No. 4 of 2022*, it regulates all crypto activities in Dubai (apart from DIFC). VARA's *Virtual Assets and Related Activities Regulations 2023* include extensive rules on licensing, custody, exchange, and token issuance for individuals and entities.[47]

2. **Securities and commodities authority (SCA)**

   Federally, SCA oversees digital asset business outside free zones, following *Cabinet Resolution No. 111 of 2022*, which imposes registration and licensure of VASPs.[48]

3. **Dubai financial services authority (DFSA)**

   DFSA regulates crypto tokens under the *Crypto Token Regulatory Framework 2022* with a focus on governance, investor protection, and cybersecurity.[49]

G. Features

1. **Clear asset classification:** Crypto assets are categorised into payment tokens, security tokens, and utility tokens, with separate treatment and compliance standards.
2. **Attracting investment:** Businesses like *Binance* and *Crypto.com* have been authorised under this framework, which shows international investor trust.

[47] Virtual Assets Regulatory Authority (VARA), *Virtual Assets and Related Activities Regulations 2023* (Gov't of Dubai, 2023).
[48] Cabinet Decision No. 111 of 2022 Concerning the Regulation of Virtual Assets and Their Service Providers (U.A.E.).
[49] Dubai Financial Services Authority (DFSA), *Crypto Token Regulatory Framework* (2022).

3. **FATF alignment:** Although the UAE was placed on the FATF grey list in 2022, it has taken strong steps to enhance its AML/CFT supervision, particularly concerning VASPs and cross-border crypto flows.

The preceding detailed examination of regulatory frameworks in India, the US, and the UAE reveals a clear divergence in strategic approaches to digital assets. From India's cautious and fragmented stance to the US's litigation-driven oversight and the UAE's proactive, innovation-friendly model, each jurisdiction presents unique lessons. To consolidate these insights and visually articulate the key differences and commonalities in their respective regulatory philosophies, the following comparative matrix systematically outlines the core features, challenges, and strengths of each approach.

VIII. COMPARATIVE MATRIX: US, UAE AND INDIA

While India is cautious, the UAE has established itself as a world leader, and the US, until recently, trailed behind with a fragmented regulatory landscape and perpetual court tussles. Today, India is more focused on tax compliance and anti-money laundering requirements, not encouraging innovation or acknowledging the multi-asset nature of digital assets. In contrast, the UAE's transparency, forward-thinking regulations, and investor-friendly systems have positioned it as a top jurisdiction for crypto-based entrepreneurship. India can learn from both jurisdictions by incorporating the UAE's model of classification and licensing, and the investor protection principles adopted by the US, while developing a context-specific, innovation-friendly regulatory regime.

The recent enactment of the *GENIUS Act* in the US provides an additional comparative lesson. Unlike the earlier fragmented enforcement-dominated model, this Act marks a decisive move towards asset-specific legislation, particularly in relation to stablecoins. By combining investor protection, transparency, and systemic stability with an enabling approach to innovation, the Act demonstrates the possibility of balancing regulation with growth. For India, this underscores the importance of moving beyond generic definitions, developing targeted frameworks for different

categories of digital assets, and ensuring coordinated oversight between the RBI, SEBI, and the Ministry of Finance.

IX. SUGGESTIONS AND RECOMMENDATIONS

Based on the doctrinal and comparative analysis undertaken in this study, the following suggestions are proposed to strengthen India's regulatory framework for digital assets:

1. Enact a Comprehensive Digital Asset Legislation

India must move beyond fragmented regulatory interventions and enact a dedicated Digital Assets Act. Such legislation should clearly define various categories of digital assets, including cryptocurrencies, stablecoins, security tokens, NFTs, and DeFi products. A unified statute would reduce ambiguity, enhance investor confidence, and ensure predictable regulatory outcomes.

2. Asset-Specific Regulatory Classification

Following the UAE model and the US post-GENIUS approach, India should adopt an asset-based classification framework. Different categories of digital assets should attract differentiated regulatory treatment based on their functional characteristics. For example:

- Payment tokens should fall under RBI oversight.
- Security and investment tokens should be regulated by SEBI.
- Utility tokens should be subject to lighter-touch regulation.

This would ensure proportionate compliance obligations aligned with actual risk.

3. Strengthen Regulatory Coordination

Regulatory fragmentation among RBI, SEBI, FIU-IND, and the Ministry of Finance creates overlapping jurisdiction and compliance burdens. A statutory inter-regulatory coordination mechanism or Digital Asset Coordination Council should be established to harmonise policymaking and enforcement.

4. Introduce Regulatory Sandboxes for Web3 Innovation

India should institutionalise regulatory sandboxes for blockchain and Web3 startups, allowing controlled experimentation under relaxed compliance conditions. This would encourage domestic innovation while preserving regulatory oversight.

5. **Investor Protection and Disclosure Regime**

Inspired by the US GENIUS Act and SEC practices, India should mandate:

- Whitepaper disclosures for token issuances.
- Proof-of-reserves for stablecoins.
- Consumer risk warnings.

Such measures will mitigate fraud and protect retail investors.

6. **Rationalise Taxation Policy**

The current 30% flat tax and 1% TDS regime discourage market participation and drives liquidity offshore. India should consider a graduated tax structure similar to securities taxation, balancing revenue generation with ecosystem growth.

7. **Legislative Inclusion under Securities Law**

Certain categories of digital assets that function as investment instruments should be explicitly brought within the Securities Contracts (Regulation) Act, 1956 through notification or amendment, thereby empowering SEBI with clear jurisdiction.

8. **Global Regulatory Harmonisation**

India must actively participate in global regulatory standard-setting forums such as FATF, IMF, and G20 to ensure interoperability, cross-border enforcement, and prevention of regulatory arbitrage.

X. CONCLUSION

The advent of digital assets represents a structural shift in the global financial system, sparking difficult questions of technology, law, and policy. India has responded with needed early action through its tax and anti-money laundering laws; however, its regulatory framework remains mostly reactive, piecemeal, and poorly calibrated to the technological dynamism of virtual digital assets. In contrast, the US (enforcement-

led regulation) and the UAE (innovation-led regulation) provide useful models. The recent enactment of the *GENIUS Act* in the US further reflects a decisive move towards asset-specific legislation, particularly in relation to stablecoins, marking a major shift away from a purely enforcement-led approach.

Their experience indicates the importance of a clear classification of the asset, coordination among regulators, and legal certainty. India finds itself at a regulatory inflexion point. Taxation alone, without a supporting regulatory framework, risks driving innovation abroad and limiting the potential of the digital asset ecosystem. A coherent digital asset framework has undoubtedly stifled innovation, investor confidence, and institutional participation. But this scenario also represents an opportunity to look forward, and to come up with a balanced and innovation-supportive regime that protects financial stability without strangling the technology.

As the ecosystem around digital assets evolves, India's regulatory approach must be guided by clarity, flexibility, and foresight. While opting for the adoption of best international practices, India can build a regime on its own economic and legal realities and thus emerge not merely as a passive bystander but as a global observer of thought in the digital asset regulation.

This necessitates coordination between the RBI, SEBI, and the Ministry of Finance to avoid jurisdictional overlap and to ensure systemic stability. Albeit the path forward will not be easy, with sound policymaking and stakeholder engagement, India stands poised to craft a digital asset framework that balances innovation with responsibility a balance that will ultimately determine whether it is a follower in the global order or a leader in it.

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