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LEGAL ASPECTS OF BLOCKCHAIN TECHNOLOGY IN INDIA: TAXED AND TRACKED, BUT NOT YET REGULATED

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In January 2024, an investor made an investment of ₹1.98 lakh in XRP through the WazirX exchange in Chennai. However, six months later, hackers successfully hacked the platform's wallet and stole more than USD 230 million worth of Ethereum ERC-20 tokens. As a result, the exchange froze the account of this investor as well. Then the issue of compensation of the loss of every user emerged, and the investor had one main question: are her coins really her property or she is just a claimant without any secured rights? The investor approached the Madras High Court¹ but the statute of India gave no clear answer to her question and the judge had to formulate his decision using Article 300A of the Constitution of India² and cases from the United Kingdom as well as New Zealand. In September 2026 the chair of Parliament's finance committee summed up the wider problem, the government is neither accepting virtual digital assets nor regulating them.³

Start with what is settled. In 2020 the Supreme Court set aside the RBI's 2018 circular that cut crypto businesses off from banks, holding it disproportionate, though it accepted the RBI's power to act on financial-system risks.⁴ So trading is explicitly not banned. What fills it in place are as followed, the first is the question of tax, income from transferring a virtual digital

¹*Rhuthikumari v. Zanmai Labs Pvt. Ltd.*, O.A. No. 194 of 2025, 2025:MHC:2437 (Madras H.C. Oct. 25, 2025) (India).

²India Const. art. 300A

³Dishita Malvania, 'Government Is Not Accepting VDAs, Not Regulating Either': India Panel Chief on Crypto, The Crypto Times (Sept. 16, 2026), <https://www.cryptotimes.io/2026/09/16/government-is-not-accepting-vdas-not-regulating-either-india-panel-chief-on-crypto/> (last visited Oct. 3, 2026).

⁴*Internet and Mobile Association of India v. Reserve Bank of India*, (2020) 10 S.C.C. 274 (India), W.P. (C) No. 528 of 2018 (Mar. 4, 2020).

asset is charged at a flat 30 per cent, only the cost of acquisition is deductible, losses cannot be set off, and 1 per cent TDS is applied on the payment. These were ss. 115BBH and 194S of the Income-tax Act, 1961,⁵ and since 1 April 2026 they continue under the Income-tax Act, 2025.⁶ The second overlay is anti-money-laundering. A March 2023 notification made exchanges, custodians and similar providers “reporting entities” under the PMLA, so they register with FIU-IND and keep KYC and transaction records.⁷ By March 2026, 54 providers had registered.⁸ Smart contracts are the less worrying part. Section 10A of the IT Act says a contract is not unenforceable merely because it was formed electronically, and s. 11(c) attributes a record to a system programmed to run automatically for the originator.⁹

Now look at what each overlay is for, Taxation is there to protect revenue and the PMLA guards against laundering. However, neither says anything to the person holding the token. Who owns an asset sitting on an exchange? What happens after a hack or an insolvency? Who hears the dispute? The Ministry of Finance told the Lok Sabha that FIU-IND does not publish its list of registered providers, partly so that registration is not mistaken for a licence or a promise of user protection.¹⁰ The result is an activity that is taxed and watched, with nobody asked to regulate it. The Supreme Court saw the root of this in 2020, noting that an asset shown as currency to one regulator and a commodity to another will “elude regulation”.¹¹

The Madras High Court held, *prima facie*, that crypto is property capable of being held in trust and that an exchange owes fiduciary duties over client tokens. But this was an interim order in an arbitration application, and the judge himself observed that Indian law defines “property” only in statutes with specific contexts.¹² The privacy side of it all is another can of worms, Section 12(3) of the DPDP Act obliges a data fiduciary to erase personal data on request, unless

⁵Income-tax Act, 1961, §§ 115BBH, 194S (India)

⁶Income-tax Act, 2025 (India)

⁷Ministry of Finance, Notification S.O. 1072(E) (Mar. 7, 2023) (India); Prevention of Money Laundering Act, 2002, §§ 2(1)(sa)(vi), 2(1)(wa) (India)

⁸Lok Sabha Unstarred Question No. 5805, Ministry of Finance, Dep't of Econ. Affairs (Mar. 30, 2026) (India),

⁹Information Technology Act, 2000, §§ 10A, 11(c), Act No. 21 of 2000 (India).

¹⁰Lok Sabha Unstarred Question No. 5805, *supra* note 8.

¹¹*Internet and Mobile Association of India v. Reserve Bank of India*, *supra* note 4.

¹²*Rhuthikumari v. Zanmai Labs Pvt. Ltd.*, *supra* note 1.

retention is needed for the specified purpose or by law.¹³ A ledger built to be append-only cannot do that. The European Data Protection Board, facing the GDPR version of this clash, accepted that actual deletion may be technically impracticable once personal data sits on a chain, and advised keeping it off-chain.¹⁴ India's DPDP Rules, 2025 say nothing about blockchains or immutability. Their erasure rule, r. 8, is tied to e-commerce, gaming and social media platforms, and most of the Rules do not commence until May 2027.¹⁵

The solution for this whole new field of blockchain is not a new full crypto code or legislation. A short statute on custody and disclosure would do most of the work, in three parts. Firstly, a provider holding tokens for clients should keep a register of each client's position, keep client tokens apart from its own, and answer for losses attributable to it. Article 75 of the EU's MiCA Regulation does this client assets are legally segregated so that the provider's creditors cannot reach them, and liability is capped at the market value of what was lost.¹⁶ That would have settled the Chennai investor's question by statute rather than by an interim order. Secondly, a regulator with actual supervisory power needs to be present. The Standing Committee's July 2026 report already suggests, pending legislation, an interim self-regulatory organisation under SEBI or the RBI.¹⁷ Thirdly, Registered providers should not write personal data on-chain beyond wallet identifiers, they would hold it off-chain with only a keyed hash on the ledger, so a s. 12(3) request is met by deleting the off-chain record and key.¹⁸ The DPDP Rules already classify virtual tokens as a means of protecting personal data, so the concept is not new to Indian law.¹⁹ Objections include the belief that regulation grants legal recognition to cryptocurrency. Chairs noted that RBI was not seeking legal recognition for cryptocurrency

¹³Digital Personal Data Protection Act, 2023, § 12(3), Act No. 22 of 2023 (India).

¹⁴European Data Protection Board, *Guidelines 02/2025 on Processing of Personal Data Through Blockchain Technologies* §§ 4.2, 5.2 & Annex A Recommendation 2 (Version 1.1, adopted Apr. 8, 2025)

¹⁵Digital Personal Data Protection Rules, 2025, G.S.R. 846(E), rr. 1(4), 6(1)(a), 8 & Third Sch. (India).

¹⁶Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on Markets in Crypto-Assets, art. 75.

¹⁷Standing Committee on Finance, 36th Report on the Securities Markets Code, 2025 (July 23, 2026) (India), *as reported in* Malvania, *supra* note 3.

¹⁸Digital Personal Data Protection Act, 2023, § 12(3), *supra* note 13; European Data Protection Board, *Guidelines 02/2025*, *supra* note 14.

¹⁹Digital Personal Data Protection Rules, 2025, r. 6(1)(a), *supra* note 15.

during their meetings in July 2026.²⁰ However, custody regulations do not turn cryptocurrencies into money they merely specify the parties responsible for resolving disputes about them. India is already taxing cryptocurrencies and the courts have deemed it as public property, so the debate is only about regulating reality instead of ignoring it.

²⁰Malvania, *supra* note 3.