

Mapping the Tax Policy and Laws Relating to Cryptocurrency in India and USA: A Comparative Analysis

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Abstract

This research explores the regulatory framework of two rapidly evolving nations, India and USA, in the area of cryptocurrency and tax. One of them is a developed country while the other is still a developing country. This study focuses on highlighting the current regulatory tax framework and laws relating to cryptocurrency; including the roles of the regulating bodies. The study further highlights the global trend of adoption of cryptocurrency via graphs or charts. The authors with the help of examples has also tried to explain as to how the citizens of USA calculate their taxes on cryptocurrency. Through comparative analysis this study aims to propose recommendations for the growth of this market in India.

KEYWORDS: Cryptocurrency, IRS, Taxation, Capital Gains, Exchanges

Introduction

Cryptocurrency came into existence by the launch of Bitcoin in 2009 by an anonymous entity known as Satoshi Nakamoto. It operates on the technology known as blockchain which is a distributed Ledger system that ensures transparency and security by recording transactions on a network of computers. These currencies are not controlled by any single entity unlike traditional currencies which are issued by the central banks. Over the years thousands of these currencies have evolved, from Ethereum's smart contract to ripple's focus on cross-border payments. The growing adoption of these hands prompted a surge in their adoption by businesses, institutions and even governments exploring ways to integrate such currencies into their operations. However the rise is not without any challenges. One of such is the taxation policies and the challenge of creating framework for a better functioning of it. Cryptocurrency taxation is an evolving topic particularly in the USA as well as India. In the USA the IRS first issued guidance on taxations of cryptocurrency in the year 2014 defining them as property rather than currency. They further clarified that cryptocurrencies are subject to capital gains tax similar to that of real estate and stocks. Further, it defines that any gain from the sale or exchange of these cryptocurrencies must be reported on the tax returns of the citizens. The IRS approach aims at ensuring compliance while minimising tax evasion in this ever growing sector.

On the other hand India has adopted a very over cautious approach towards cryptocurrency. In the year 2018, the Reserve Bank of India imposed a ban on cryptocurrency transactions. However in the year 2020, the Supreme Court lifted this ban creating a surge in cryptocurrency trading. But the lack of clear tax guidelines has left many investors uncertain about their obligations. In the year 2022, the Indian government introduced a taxation system for crypto currencies imposing a flat 30% tax on income derived from digital assets and a 1% tax deducted at source also known as TDS on transactions. This marked an historical shift as it acknowledged the existence of cryptocurrencies.

The divergent approaches of the USA and India will help in understanding the discourse on cryptocurrency taxation. Understanding the cryptocurrency taxation is very crucial for several reasons. Firstly, it plays an important role in shaping

the behaviour of investors and traders. It fosters a sense of legitimacy and encourages more people to participate in this market. Secondly, the taxation of cryptocurrency directly has implications for government revenue. The increasing popularity of the digital currencies has the potential to create huge amount of tax revenue for the government.

Statement of Problem

The rapidly evolving cryptocurrency presents unique challenges in the area of regulatory framework for nations specifically the developing ones such as India. Thus, leading to confusion among taxpayers and regulators which thereby increases tax evasion and regulatory non-compliance. Both the countries are trying to reap the benefits of this digital currency which makes it important to understand the regulatory frameworks of both the nations.

Research Questions

1. What are the key regulatory bodies which are involved in taxation in the USA and India?
2. How do the regulatory frameworks of both the countries differ?
3. What lessons can be learnt from the different tax policies of the USA that can be incorporated in the Indian tax policy?

Research Methodology

It is a Doctrinal research and mixed methods to comprehensively analyse the regulatory frameworks of both the nation. A comprehensive literature review has been done to understand the existing research on cryptocurrency in both these nations. A comparative analysis has been done between both the nations to understand existing framework and lacunas. Secondary data from different platforms have been used to reflect the evolving nature of cryptocurrency research in both these nations.

Expected outcome of research

The researcher aims to highlight the procedure of taxation policies and regulations prevalent in the USA and compare it with the Indian scenario. Also, to provide certain recommendations that the framers could use while drafting legislations for Indian citizens.

Abbreviations

IRS- Internal Revenue Service
SEC- Securities and Exchange Commission
CFTC- Commodity Futures Trading Commission
FinCEN- Financial Crimes Enforcement Network
SEBI- Securities and Exchange board of India
CBDC- Central Bank Digital Currency
AML- Anti-Money Laundering
KYC- Know Your Customer
BTC- Bitcoin
RBI- Reserve Bank of India

USA

The laws in the USA regarding crypto currency are not well defined and it keeps on evolving. Different agencies create digital assets differently based on the crypto characteristics; the SEC, CFTC and the IRS, each have unique interpretations of crypto currencies.

As far as SEC is concerned, they treat crypto currencies as securities. The agencies concerned with the investor protection and require that all the offerings qualify as investment contracts and be formally registered. In the year 2023, the SEC took the approach of regulation by enforcement by filing major lawsuits against companies like coin base. SEC also approved Bitcoin and Ethereum exchange traded funds in the year 2024. The CFTC treats crypto currencies as commodities. It argues that such cryptocurrencies are commodities as they are similar to Gold or oil. This agency defines commodity as assets which can support future contracts and it also regulates an active market for crypto currency futures. Further it has also initiated enforcement actions against unregistered Bitcoin future exchanges. Lastly, the IRS treats crypto currencies as Property.

By categorizing this way, such digital assets means that every sale, trade or purchase using crypto currency is taxable and capital gains tax rate apply. It began treating crypto assets as Property from the year 2014. The short term capital gains is equal to the ordinary tax rate and are charged when investors hold the asset for less than a year. For assets held for more than a year the IRS applies the Long-term capital gains taxes. The owners of crypto currency are also required to maintain records of the position of cryptocurrencies for tax purposes. This includes the receipts, sales, exchanges, disposition of the transaction at fair market value.

Prior to crypto currencies, there were mainly three types of money; commodity, money, credit, money, and Fiat money. The examples of commodity money included gold and silver overtime. For included gains to use as a medium of exchange in addition to its original industrial purpose in case of gold and silver, the price is set by the demand for these commodities and the supply being mined out of the Earth. The second type of money is the credit money which differs from commodity money.

It is issued as a redeemable rate with commodity money or Fiat money. It retains its value because it is widely accepted as a medium of exchange. The last type of money is the Fiat money. Today all government issues currencies which are fiat currency which means that the money itself has its no intrinsic value but obtains its value from the government degree. The value of currency is not linked to the value of commodity, but on the trust of the government or the central bank that issues such Fiat money. In contrast, crypto currency such as Bitcoin, they have a mathematically limited amount of supply and also limited and precisely determinable supply inflation. Due to its digital nature and decentralization, it is not easily fit into the three traditional types of money. Furthermore, in 2015, the CFTC stated that Bitcoin and crypto currencies are properly defined as commodities.

Electronic Money

Electronic Money includes any centralized virtual currency such as Bitcoin and centralized virtual currencies such as ripple or Magic the gathering. It can further refer to any centralized Digital payment system, such as PayPal. It can also include any online bank deposit issued to customers by private bank such as Wells Fargo or Bank of America. The majority of Fiat money issued by government is available electronically as compared to physical. Electronic money can be defined as such monetary units that are represented as one and zero in a computer programming language. It can serve as a substitute for cash and checks.

Virtual currency

Many define crypto currency as a form of virtual currency. Crypto currency transactions are completed on distributed ledger, such as the Bitcoin network or Ethereum network, which are not dominated in dollars or any other countries we currency. This is Similar to PayPal where currencies are converted into digital bits that Paypal recognizes as PayPal accounting units. Once the currency is not available in its physical form, it is deemed as a virtual currency.

The USA has adopted a much decentralised approach regarding regulations relating to Cryptocurrency. The IRS has clearly defined such currency as property and has provided details as to how it will be taxed. So, every time an investor sells or exchanges his property he has to calculate his capital gain/loss based on the market value at the time of the transaction. Definition of Crypto-currency as per IRS¹,

“Cryptocurrency is a type of virtual currency that uses cryptography to secure transactions that are digitally recorded on a distributed ledger, such as a Blockchain. A transaction involving cryptocurrency that is recorded on a distributed ledger is referred to as an “on-chain” transaction; a transaction that is not recorded on the distributed ledger is referred to as an “off-chain” transaction.”

Definition of Virtual Currency as per IRS²,

“...a digital representation of value that functions as a medium of exchange, a unit of account, and a store of value other than a representation of the United States dollar or a foreign currency.”

¹<https://www.irs.gov/individuals/international-taxpayers/frequently-asked-questions-on-virtual-currency-transactions>, last visited on 13/09/2024

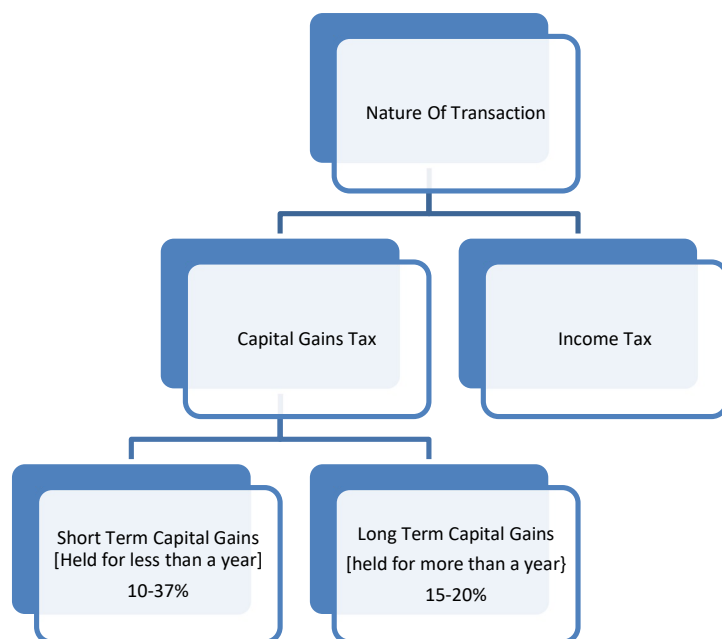
²supra

Hence, any sale or purchase of such assets would be dealt under Capital Gains Tax, as they are capital in nature. Whereas when the above is received as a compensation for a product or service or as interest, they are taxable as Income.

Transactions which are taxed:

1. Selling crypto-currency for fiat currency
2. Trading one crypto-currency for another
3. Using crypto-currency for trading of goods and services
4. Earning crypto-currency as income
5. Received crypto-currency through mining or staking activities
6. Giving crypto-currency as gift or donation(subject to gift rules)
7. Inherit crypto-currency (subject to state laws)

Whether the transaction will come under the head of Capital Gains Tax or Income Tax will depend on the nature of the transaction.



Source: Author

Short Term Capital Gains Tax Rates in USA for the year 2023³

³ https://kryptos.io/guides/usa-cryptocurrency-tax-guide?utm_source=googleads&utm_medium=search&utm_campaign=21499448301&utm_term=&campaignid=21499448301&adgroupid=&keyword=&device=c&gad_source=1&gclid=CjwKCAjwxY-3BhAuEiwAu7Y6syVu4b6Mrx4WHPAOU1GiFyaTh_srxY7za8Wj4HA6qA6tYhwq4AwT5BoC3j8QAvD_BwE, last visited on 13-09-2024

Tax Rate	Single	Married filing jointly	Married filing separately	Head of household
10%	\$0 to \$11,000	\$0 - \$22,000	\$0 to \$11,000	\$0 - \$15,700
12%	\$11,001 - \$44,725	\$22,001 - \$89,450	\$11,001 - \$44,725	\$15,701 - \$59,850
22%	\$44,726 - \$95,375	\$89,451 - \$190,750	\$44,726 - \$95,375	\$59,851 - \$95,350
24%	\$95,376 - \$182,100	\$190,751 - \$364,200.	\$44,726 - \$95,375	\$95,351 - \$182,100
32%	\$182,101 - \$231,250	\$364,201 - \$462,500.	\$182,101 - \$231,250	\$182,101 - \$231,250
35%	\$231,251 - \$578,125	\$462,501 - \$693,750.	\$231,251 - \$346,875	\$231,251 - \$578,100
37%	\$578,126+	\$693,751+	\$346,876+	\$578,101+

Source: <https://kryptos.io/guides/usa-cryptocurrency-tax-guide>, last visited on 13-09-2024

Long-Term Capital Gains Tax Rate in the USA for 2023⁴

Tax Rates	Single	Head of Household	Married filing jointly	Married Filing Separately
15%	\$44,626 - \$492,300	\$59,751 - \$523,050	\$89,251 - \$553,850	\$44,626 - \$276,900
20%	\$492,301+	\$523,051+	\$553,851+	\$276,901+

Source: <https://kryptos.io/guides/usa-cryptocurrency-tax-guide>

NOTE: If Long Term Capital Gains is less than \$44,625(2023) then it won't be taxed.

For example:

Transaction Date	Type	Quantity	Coin
14/01/2023	BUY	2	BTC
16/02/2023	BUY	2	ETH
17/04/2023	SELL	1	BTC
18/06/2023	SELL	2	ETH
06/01/2024	SELL	1	BTC

As evident from the above, 3 disposals were made.

Out of the three, two disposals were made during the same year i.e. short term and one was made after one year i.e. long term.

1st Disposal (short term)- 1BTC sold on 17/04/2023. Let's assume that Eric made a capital gain of \$8,000.

2nd Disposal (short term)- 2ETH sold on 18/06/2023. Let's assume that Eric made a capital gain of \$2,000.

3rd Disposal (long term)- 1BTC sold on 06/01/2024. Let's assume that Eric made a capital gain of \$14,000.

So, total Short term capital gain of Eric- \$8000+\$2000 = \$10,000. This amount is subject to short term capital gains tax.

Total Long term Capital Gains- \$14,000. This will not be subject to taxation as this is less than \$44,625.

Income Tax

Below mentioned are some transactions which are taxed under the heading of Income Tax.

1. Receiving crypto-currency as airdrops
2. Getting paid in crypto-currency in exchange for a product or a service
3. Mining crypto-currency as a hobby
4. Hard forks
5. Referral programs
6. Staking rewards

⁴supra

Below is a table of the Income Tax rates for the year 2023⁵.

Tax Rate	Single	Married filing jointly	Married filing separately	Head of household
10%	\$0 to \$11,000	\$0 - \$22,000	\$0 to \$11,000	\$0 - \$15,700
12%	\$11,001 - \$44,725	\$22,001 - \$89,450	\$11,001 - \$44,725	\$15,701 - \$59,850
22%	\$44,726 - \$95,375	\$89,451 - \$190,750	\$44,726 - \$95,375	\$59,851 - \$95,350
24%	\$95,376 - \$182,100	\$190,751 - \$364,200.	\$44,726 - \$95,375	\$95,351 - \$182,100
32%	\$182,101 - \$231,250	\$364,201 - \$462,500.	\$182,101 - \$231,250	\$182,101 - \$231,250
35%	\$231,251 - \$578,125	\$462,501 - \$693,750.	\$231,251 - \$346,875	\$231,251 - \$578,100
37%	\$578,126+	\$693,751+	\$346,876+	\$578,101+

Source: <https://kryptos.io/guides/usa-cryptocurrency-tax-guide>

How to calculate Crypto-currency Income in the USA?

Calculation from Income is comparatively easy than Capital Gains. The taxable value of Crypto asset received as income is their fair market value on receipt. Three accounting methods are permitted by IRS for Capital gains calculation.

1. FIFO - First asset one buys is the first asset one sells (Most commonly used method)
2. LIFO - Last asset one buys is the first one to sell
3. HIFO – Consider Highest acquisition price to be the cost basis

Let's understand this with the help of an example:-

Transaction Date	Type	Quantity	Coin	Amt. (\$)
02/02/2023	BUY	2	BTC	40,000
04/03/2023	BUY	1	BTC	21,000
15/04/2023	BUY	10	ETH	22,000
29/04/2023	BUY	2	ETH	6,000
08/05/2023	SELL	2	BTC	68,000
17/07/2023	SELL	1	BTC	35,000
19/08/2023	SELL	8	ETH	27,600

In the above example 3 disposals were made.

Let's look at these separately and calculate the capital gain/loss.

1st disposal

2BTC sold for \$34,000 each.

Since tokens were acquired on two different dates for different prices, we need to figure out which one was sold by Eric.

For this, we use specialised accounting method as suggested by IRS.

Let's use FIFO for calculations.

So, BTC sold were the ones acquired on 02/02/2023 for \$20,000 each.

Cost basis- \$20,000 Disposal Amount-\$34,000

Capital Gain/Loss= Disposal- Cost; 34,000-20,000= \$14,000 (For 1BTC)

Gain from 2BTC= 2*\$14,000= \$28,000.

2nd Disposal

1BTC sold for \$35,000. This was acquired on 04/03/2023 for \$21,000.

Cost basis- \$21,000 Disposal amount- \$35,000

Capital Gain/Loss= 35,000-21,000=\$14,000

3rd Disposal

8ETH sold for \$3400 each. Using FIFO method, these belong to same group acquired on 15/04/2023.

Cost basis- \$2,200 Disposal Amount-\$3400

Capital Gain/Loss=3,400-2,200= \$1,200 (For 1ETH)

Collective gain from all the 3 disposal= $28,000+14,000+9,600(1200*8) = \$51,600$

So the total Capital gain that will be taxed is \$51,600.

EXEMPTIONS

1. Allowance of Tax free capital gains

US citizens are allowed a tax free Capital Gain up to \$44,625 or less for Individual Filers; \$89,250 or less for married couples filing jointly.

2. Gifting of Crypto-currency

The US citizens enjoy annual gift tax exclusion upto \$17,000 worth of crypto assets to anyone and the transaction is considered as tax free.

3. Long term capital gain tax

One can take advantage by holding onto crypto assets for a year or more with a reduced long term capital gains tax ranging between 0 and 20%.

Treatment of Crypto losses

1. Any losses incurred before 2017 are tax deductible if one has relevant documents to prove ownership and theft of these assets.

2. Tokens that have been delisted from exchanges due to regulatory changes, one can dispose of these assets to generate fictitious losses and deduct those losses. One can do that by selling these tokens at a centralised or decentralised exchange, swapping them for some other token, or by simply burning them.

Reporting Crypto Transactions

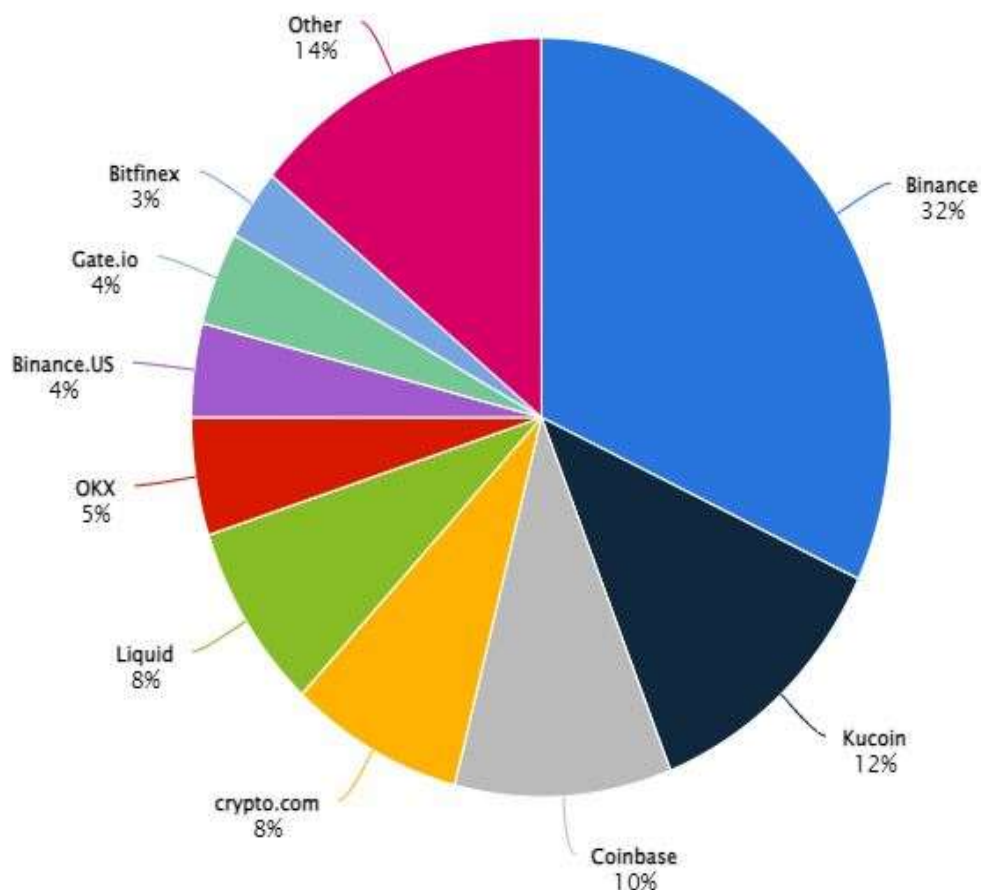
1. Form 8949 – This is used to report the sales and exchanges of capital assets including cryptos. Each transaction must be listed including the date acquired, date sold, sale proceeds, cost basis and gain/loss.

2. Schedule D- It is used to summarize the total capital gains and losses reported on Form 8949 and calculate net Capital Gain or Loss.

3. Schedule 1- In case, any income is earned from mining or as payment of services, one must report it in the additional income.

4. Form 1099- Crypto exchanges submit their transaction report through this form.

Market share of Cryptocurrency trading platforms in the USA



Most recent update: Mar 2024

Sources: Statista Market Insights, Financial Statements of Key Players

India

Cryptocurrencies have gained momentum in India since its inception. It is an unregulated space which has raised several questions regarding its legal and regulatory practice, particularly in the field of taxation. Understanding the taxation framework of cryptocurrency is extremely important to highlight the lacunas in the current system and also harnessing it to its full potential. The regulatory environment related to cryptocurrency has been very uncertain. In 2008, the RBI put complete ban on cryptocurrency transactions and trading. But, this ban was lifted by the Supreme Court in the year 2020 making it a landmark ruling. As the field of cryptocurrency continues to grow there is a need to establish clear tax guidelines so as to foster investor confidence. The government while framing regulations must strike a balance between innovation and ensuring compliance.

Tax Policy and Cryptocurrency in India

In the year 2022, the RBI framed a tax policy that all gains from cryptocurrency will be taxed at flat 30%. Additionally a 1% TDS will apply on transactions above a certain threshold. This step of RBI reaffirmed that the ban was lifted on cryptocurrency in India.

Below mentioned are some top cryptocurrency exchanges of India:-

Name of Exchange	Cryptocurrencies available	Trading Fees	Deposit	Withdrawal	Payment Methods	KYC
WazirX	250+	0.10% to 0.40% based on 30-day trading volume and WRX holdings	Crypto deposits free	Crypto withdrawals vary depending on coin	INR currently suspended	Yes, Pan Card
CoinDCX	100+	0.04% to 0.50% based on 30-day trading volume	Free	Free	UPI, Debit/Credit Card	Yes, Pan Card
Bitbns	400+	0.25% with discounts for BNS holders	Free	Free excluding instant withdrawals	UPI, Bank, P2P USDT	Yes, Pan Card
Mudrex	150+	0.2%	Free	Up to 2%	UPI , USDT, Bank Transfer	Yes, Pan Card
Coinswitch	170+	0% to 0.49% depending on the exchange used	Free	Free	NEFT, RTGS, IMPS	Yes, Pan Card
ZebPay	100+	0% for quick trade crypto-crypto trades or 0.5% for crypto-fiat trades	Free	Free	IMPS, NEFT, RTGS	Yes, Pan Card
Paxful	BTC, USDT, USDC	0.5% for crypto conversions	Free	Up to 1%	ACH, Credit/Debit Card, PayPal	Yes, Photo ID
Binance	500+	0.0120% to 0.1% maker/taker fees based on 30-day trading volume	Dependent on payment method	Dependent on payment method	INR only supported through P2P or third party	Yes, Photo ID
Unocoin	50+	0.2% for makers and 0.3% for takers	Dependent on payment method	Dependent on payment method	IMPS, NEFT, Credit/Debit Card	Yes, Photo ID

Source: <https://koinly.io/blog/best-crypto-exchange-india/>

Comparative Analysis between USA and India

Subject Area	USA	INDIA
Regulatory Framework	SEC(regulates securities),CFTC(regulates crypto derivatives),FinCEN(enforces AML and KYC)	RBI (Banned crypto-currency in 2018 which was lifted in 2020 by Supreme Court)
Tax Treatment	Capital Gains Tax and Income Tax Reporting Requirement- Form 8949 & schedule D	Income Tax- Flat rate of 30% on gains with no deduction except those which were incurred in same financial year. Mandatory to disclose all holdings and transactions in Income Tax Return.
Market size	• Largest crypto market	Rapidly growing but small market size as compared to USA.

	• Provides wide range of products such as ETFs, Futures & Options in Crypto	
Technological Adoption	Widespread Blockchain adoption in finance, healthcare and supply chain.	Less adoption and still developing
Consumer Protection and security	Has a robust measure for consumer protection including regulations for anti-fraud practices and cybersecurity standards.	Less developed
Legal and Compliance Issues	Imposes strict AML and KYC requirements on users and exchanges	AML and KYC regulations are in place but enforcement and clarity are required
Public Awareness and Education	High	Less as compared to USA
Government Initiatives and support	Active exploration of CBDC, Strong support for research and development	Proposal for CBDC in pilot stage in the year 2022.
Adaptability	High acceptance in daily life and financial transactions	Growing among younger demographics and tech savvy individuals

Conclusion & Suggestions

The study reflects that both the countries, USA and India are exploring and adopting Blockchain technology, but their challenges are different. However, USA has a more established and regulated crypto-currency environment as compared to India. It has greater market maturity and infrastructure. Therefore, India should focus on bringing clarity in terms of regulatory framework so that innovation is promoted while the misuse of it is prevented. This can be done by developing mechanisms to protect investors from fraud and scams; by establishing proper forums to address disputes regarding cryptocurrency; by mandating KYC and AML procedures, etc. India should further encourage the use of CBDC to co-exist with cryptocurrency which can foster adoption and acceptance. The Indian government should further conduct nationwide workshops and awareness programmes to promote informed decision making. Furthermore, collaboration with other countries and organizations is equally essential in order to learn from their successful integration of cryptocurrency policies in their system. It is the need of the hour for India to adopt these suggested measures so that India becomes one of the leading countries in terms of cryptocurrency.

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