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Submission date: 14-Oct-2025 01:55PM (UTC+0300)

Submission ID: 2780775435

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Word count: 1902

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Research Proposal

On

**The Scope of Financial Crime Legislation: A
Comparative Analysis of the Application of the
Money Laundering Prevention Act, 2012
(Bangladesh) and Prevention of Money-
Laundering Act, 2002 (India) to Virtual Digital
Assets**

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Date of Submission

30.09.2025

**Research Topic: Anti Money Laundering Enforcement for
Cryptocurrencies**

Subject Area: Financial Crime Law

Introduction

The rapid global expansion of Virtual Digital Assets (VDAs) necessitates urgent regulatory action, a priority underscored by the G20 and the Financial Action Task Force (FATF) to mitigate illicit finance risks [1]. This research addresses the resulting legal schism in South Asia where two major economies have adopted sharply conflicting strategies using pre-digital financial crime legislation. Bangladesh applies a model of blanket criminal prohibition under the broad scope of the Money Laundering Prevention Act, 2012 (MLPA), enforced by strict Central Bank circulars [2]. Conversely, India operates a model of proportional regulation, utilizing the Prevention of Money-Laundering Act, 2002 (PMLA) to designate Virtual Asset Service Providers (VASPs) as mandatory Reporting Entities, thus forcing compliance into the formal system [3], [4].

The core problem is that this jurisdictional inconsistency creates profound legal uncertainty and a demonstrable risk of regulatory arbitrage, whereby illicit actors exploit the disparity in compliance and enforcement to facilitate cross-border financial crime [5], [6]. This study is crucial because it seeks to determine whether the MLPA's approach of total prohibition or the PMLA's framework of designated compliance offers a more effective and legally sustainable defense against money laundering. By comparing the penal enforcement actions of Bangladesh against the procedural enforcement duties of India, this analysis will provide a critical blueprint for legislative harmonization needed to secure regional financial integrity [7], [8].

Research Objectives and Questions

Research Objectives

- To identify the fundamental statutory differences and gaps between the Bangladesh MLPA, 2012, and the Indian PMLA, 2002, concerning the legal classification and treatment of Virtual Digital Assets (VDAs).
- To comparatively analyze the effectiveness of India's procedural VASP compliance and enforcement against Bangladesh's strategy of total penal prohibition in mitigating VDA-related money laundering.
- To propose specific legislative and regulatory harmonization recommendations for the Bangladeshi MLPA to align with FATF standards and address the demonstrated cross-border illicit finance risks.

Specific Research Questions

- What are the key jurisdictional and definitional differences between the Money Laundering Prevention Act, 2012 (MLPA, Bangladesh) and the Prevention of Money-Laundering Act, 2002 (PMLA, India) in their application to Virtual Digital Assets (VDAs)?
- How does each legislation specifically define "proceeds of crime" in relation to VDAs, particularly where the underlying criminal activity may be conducted using, but not necessarily involve, VDAs?

- Does the Bangladeshi MLPA explicitly reference Virtual Assets or Virtual Asset Service Providers (VASPs), or must enforcement rely on analogies to traditional "money" or "property"?
- How has the Indian PMLA framework, through amendments or subsequent regulatory guidelines (e.g., those by the Financial Intelligence Unit - India), formally incorporated VASPs into its reporting⁵ and compliance mechanisms?
- What specific Know Your Customer (KYC) and Customer Due Diligence (CDD) obligations are mandated for VASP-like entities in India under the PMLA framework, and how does this compare to the de facto prohibition on financial services to crypto in Bangladesh?
- Is Bangladesh's blanket prohibition under the MLPA more effective in mitigating money laundering risk than India's regulated approach, or does it simply drive VDA activity into the informal or grey market?
- What specific legislative⁶ or regulatory reforms are required in the Bangladeshi MLPA to effectively implement the Financial Action Task Force's (FATF) standards on Virtual Assets?

Literature Review and Theoretical Framework

This research is anchored in two critical legal debates surrounding the regulation of Virtual Digital Assets (VDAs) in South Asia. First is the structural inadequacy of applying pre-digital financial legislation to novel cryptographic instruments. Second is the principle of proportionality, which dictates the legal limits of government prohibition.

A) The Adequacy of Analog Laws

Global anti-money laundering (AML) frameworks, including the Money Laundering Prevention Act, 2012 (MLPA) in Bangladesh and the Prevention of Money Laundering Act, 2002 (PMLA) in India, were primarily designed to regulate transactions involving fiat currency, traditional securities, and tangible property. The core problem, as noted by scholars, is that VDAs inherently² resist classification under these traditional legal analogues [9]. Cryptocurrencies function as a "digital representation of value" that can be digitally traded but lack the fundamental characteristics of central bank-issued legal tender, thus challenging the statutory definitions of "currency" under acts like India's Reserve Bank of India Act, 1934 [2].

Applying the definition of "property" or "goods" is equally insufficient. While some jurisdictions treat VDAs as a commodity for tax purposes (as seen in India's VDA taxation regime), this classification fails¹¹ to capture their transactional speed, borderless nature, and capacity for pseudo-anonymity [10]. The Financial Action Task Force (FATF), whose standards mandate that countries treat Virtual Asset Service Providers (VASPs) as reporting entities, has explicitly recognized the need to move beyond traditional definitions, acknowledging that VDAs can obfuscate the origin of funds and inhibit timely identification of suspicious activity [5], [1]. Existing scholarship suggests that without clear, technology-specific definitions and obligations, enforcement relies on tenuous legal extrapolation, particularly in the penal context of the MLPA, where explicit statutory

inclusion is often demanded [11]. The result is a regulatory gap that criminal enterprises leverage by routing activities through jurisdictions with weaker or anachronistic laws [12].

B) The Principle of Regulatory Proportionality

The research uses the legal concept of Regulatory Proportionality as its core theoretical framework. This principle mandates that any state action that restricts a fundamental right, such as the right to carry on a trade or business (protected under Article 19(1)(g) of the Indian Constitution), must be proportionate to the public purpose it seeks to achieve and should be the least restrictive means available [6].

The seminal application of this doctrine in the South Asian VDA context is the 2020 Indian Supreme Court judgment in *Internet and Mobile Association of India (IAMAI) v. Reserve Bank of India (RBI)*. The Court struck down the RBI's 2018 circular, which effectively banned VDA trading by prohibiting banks from dealing with VASP entities [13]. The Court's reasoning hinged on the finding that while the RBI had the power to regulate, the blanket prohibition was disproportionate to the risks cited, especially since the RBI could not demonstrate any actual adverse impact on its regulated entities [14]. The judgment established a precedent for evidence-based, proportionate regulation over speculative prohibition [15].

By contrast, Bangladesh's continued reliance on the blanket prohibition under the MLPA, enforced through Central Bank circulars, operates outside this proportionality test, given the absence of comparable judicial review on this specific issue. The MLPA's penal nature allows for complete restriction, but raises questions about its legal sustainability and its alignment with global best practices that favour regulation over total prohibition.

Methodology

This research employs a Comparative-Doctrinal Legal Analysis to investigate the statutory frameworks governing financial crime related to Virtual Digital Assets (VDAs) in Bangladesh and India.

The analysis hinges on examining and juxtaposing primary legal texts across these two common law jurisdictions. Primary Sources include the full text of the Money Laundering Prevention Act, 2012 (MLPA) (Bangladesh), the Prevention of Money-Laundering Act, 2002 (PMLA) (India), relevant Bangladesh Bank circulars, and the judicial reasoning of the Indian Supreme Court in *IAMAI v. RBI*.

The comparative procedure involves three analytical steps:

- **Doctrinal Dissection:** Comparing core statutory definitions (e.g., "proceeds of crime") and the implicit VDA classification under the MLPA versus the explicit classification under the PMLA.

- **Enforcement Mechanism Comparison:** Contrasting the penal enforcement actions (arrest, seizure) under the MLPA's blanket prohibition with the procedural compliance duties (KYC/CDD, VASP reporting) enforced under the Indian PMLA.
- **Risk Assessment Synthesis:** Assessing the effectiveness and legal sustainability of each model by directly comparing the legal fragility of Bangladesh's prohibition against the regulatory complexity of India's system to identify points of regulatory arbitrage.

Expected Outcomes and Contribution of the Study

This research is anticipated to yield two primary outcomes: an analysis that demonstrates the legal fragility of Bangladesh's total prohibition model under the MLPA, and a finding that India's regulated PMLA approach, while more sustainable, faces significant challenges in enforcing compliance across decentralized finance (DeFi) platforms [8]. This comparative assessment confirms that the divergent legal approaches have created dangerous points of regulatory arbitrage, undermining regional AML/CFT efforts [2].

The study's most significant contribution will be its practical value to regional regulatory and intelligence bodies. It offers a direct blueprint for the Bangladesh Financial Intelligence Unit (BFIU) and FIU-India to harmonize their AML/CFT standards regarding VDAs, which is essential for effective cross-border cooperation [6], [8]. The policy recommendations will specifically address the necessary legislative reforms for Bangladesh to transition from its current total prohibition to a risk-based regulatory model that effectively implements the global FATF standards for Virtual Assets and VASPs, thereby strengthening the financial integrity of the South Asian economic corridor [16], [1].

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