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EVOLVING FINANCIAL TRANSACTIONS AND THE APPLICABILITY OF THE INDIAN TRUSTS ACT, 1882

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ABSTRACT

During the last few decades, the financial environment, both in India and abroad, has undergone a paradigm shift. Economic transactions have been transformed by new technologies, digital banking, electronic fund transfers, cryptocurrencies, blockchain, peer-to-peer lending, and AI-driven financial platforms. Traditional finance was based on physical assets and direct contracts while modern systems use digital assets, decentralised structures and more advanced asset management methods. This change has raised major legal issues with respect to ownership rights, liability, fiduciary duties and regulation.

The legal frameworks that oversee financial relationships were mainly created at a time when technology had not yet transformed commercial activities. The Indian Trusts Act of 1882 is one such law that was established during colonial India to govern private trusts and outline the rights and responsibilities of parties in fiduciary relationships. This Act sets up a system where one person or entity holds property for another's benefit and requires the trustee to act with loyalty, good faith, and care[1]. However, with the rise of modern financial methods that include digital assets and decentralized systems, we must consider whether the principles and rules in the Indian Trusts Act can sufficiently address today's financial transactions[2].

While the Act does not specifically mention digital assets or technological finance, its core principles regarding fiduciary relationships and duties remain important. Still, the rise of new financial structures has led to doubts about how well trust law principles apply in these cases.

[1] Medha Srivastava & Akshit Kapoor, *Trusts in India*, Atlas Law Partners (July 5, 2017), https://atlaslawpartners.com/wp-content/uploads/2019/05/trusts-in-india.pdf

[2] Shawn Bayern, Dynamic Common Law and Technological Change: The Classification of Bitcoin, 71 Wash. & Lee L. Rev. Online 22 (2014).

The greater use of technology in finance calls for a look into whether traditional trust law can truly respond to today's needs or if legal changes are necessary to deal with new legal issues.

CONCEPT AND SCOPE OF THE INDIAN TRUSTS ACT, 1882

The Indian Trusts Act of 1882 was created mainly to manage private trusts and ensure proper handling of property held for someone else's benefit. Section 3[3] of the Act defines a trust as an obligation linked to property ownership based on the trust placed in the owner for the benefit of another individual or for both the owner and another person.

The foundation of trust law is based on fiduciary responsibility. A fiduciary relationship exists when one party trusts another, creating an obligation to act honestly, fairly, and in the best interest of the beneficiary. Trustees must carry out their duties with the highest level of care and avoid conflicts of interest. These responsibilities involve protecting trust property, managing it carefully, treating beneficiaries fairly, and being completely transparent.

The importance of trust law goes beyond standard family arrangements and charitable organizations. In today's business landscape, trust principles frequently appear in banking transactions, investment structures, pension funds, and corporate governance. The broad equitable principles behind the Indian Trusts Act allow it to apply to many financial relationships, even without specific references to new technology[4].

However, the idea of trust property in the Act originally related to physical or traditionally recognized forms of property. The rise of digital assets and virtual financial instruments creates challenges in determining whether these assets can be viewed as trust property under current laws.

EMERGENCE OF NEW FINANCIAL TRANSACTIONS AND ASSOCIATED LEGAL CHALLENGES

The financial landscape has undergone significant changes due to rapid technological development. Traditional banking systems are increasingly being complemented or replaced by electronic payment systems and digital platforms. Mobile apps, internet banking, Unified

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Indian Trusts Act, 1882, § 3

[4] Max I. Raskin, The Law and Legality of Smart Contracts, 1 Geo. L. Tech. Rev. 305 (2017).

Payments Interface (UPI), digital wallets, and online investment platforms have fundamentally changed how individuals and businesses handle transactions[5].

The growth of financial technology, known as fintech, has introduced new ways of financial interaction that often involve little human involvement and heavily rely on technology. Financial institutions are now using algorithms and automated systems to manage transactions and investments. These setups raise legal concerns about liability and the identification of parties responsible for protecting assets.

Cryptocurrencies and blockchain-based assets are among the most significant developments in modern financial systems. Unlike traditional currencies issued by governments and regulated by central authorities, cryptocurrencies function through decentralized networks, where transactions are verified via distributed ledger systems. The decentralized nature of these systems brings forth challenges related to ownership, control, and regulatory oversight.

Further complications arise from smart contracts, which are self-executing agreements that operate on coded instructions within blockchain platforms. These contracts automatically fulfill specified obligations once certain conditions are met. Because smart contracts operate with minimal human oversight, determining fiduciary duties and trustee responsibilities becomes much more complex[6].

As a result, today's financial arrangements often lie outside the scope originally imagined by nineteenth-century legal frameworks.

APPLICABILITY OF TRUST PRINCIPLES TO DIGITAL FINANCIAL SYSTEMS

Despite technological advancements, many fundamental principles of trust law still apply to changing financial structures. Financial institutions often hold assets for clients and have powers similar to those traditionally held by trustees. Investment managers, custodians of securities, and digital asset platforms operate with confidence, discretion, and fiduciary responsibilities[7].

Trust law requires trustees to protect property and act in the best interests of beneficiaries. Similar duties can arise in digital financial systems where service providers manage user funds

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[5] Atul Kakde & Ramakant Vaidkar, *Understanding Trusts: Formation, Benefits, Challenges, and Legal Framework*, Astrea Legal Associates LLP, https://astrealegal.com/publications/understanding-trusts-formation-benefits-challenges-and-legal-framework/

[6] CHRIS BRUMMER, *FINTECH: LAW AND REGULATION* (2019).

[7] *Id*

or control financial assets. For instance, cryptocurrency exchanges and online investment platforms commonly hold users' assets in custody and have significant control over how they are managed.

Challenges emerge when trying to identify a trust relationship in decentralized systems, where no single individual or institution holds exclusive authority. Traditional trust arrangements rely on identifiable trustees and beneficiaries. In contrast, decentralized financial systems often feature networks of participants that operate through automated processes[8].

Another important issue is whether digital assets qualify as trust property. While traditional property includes both movable and immovable assets, digital assets often have intangible traits that complicate their legal classification. Without clear statutory recognition, uncertainty remains about how trust law applies to these assets.

JUDICIAL APPROACH AND RELEVANT CASE LAWS

Judicial decisions have been essential in broadening the interpretation of fiduciary relationships and adjusting legal principles to fit new circumstances.

In Internet and ***Mobile Association of India v. Reserve Bank of India***[9], the Supreme Court looked at restrictions the Reserve Bank of India placed on entities involved with cryptocurrencies. While the Court did not declare cryptocurrencies to be legal tender, it acknowledged the growing importance of digital financial systems and stressed the need for proportional regulatory measures. The judgment showed judicial recognition of technological changes in financial markets and highlighted the need for legal principles to keep pace with emerging realities.

Another significant decision is Central Board of Secondary Education v. Aditya Bandopadhyay, where the Supreme Court explained fiduciary relationships as those arising when one party places trust in another. Although this case did not directly address financial technology, the principles regarding fiduciary obligations are relevant for today's financial intermediaries.

Additionally, in ***Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd.***[10], the Supreme Court recognized the importance of regulatory frameworks in financial

[8] AVTAR SINGH, *LAW OF TRUSTS* (3d ed. 2018).
[9] **Internet and Mobile Association of India v. Reserve Bank of India**, (2020) 10 SCC 1 (India).
[10] **Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd.**, (1987) 1 SCC 424 (India).

systems, emphasizing that financial activities relying on public trust need proper legal oversight.

In ***Vishwanath v. Shri Thakur Radhaballabhji***[11]**,** the judgment highlighted the equitable nature of trust law and its ability to adapt to different circumstances.The Supreme Court looked into principles related to beneficial interests and the legal nature of property held for someone's benefit. The Court highlighted that the core of a trust relationship is not just the transfer of legal ownership. It is about the obligations that come with that ownership for the benefit of another person or entity. This decision illustrates the broader fair basis of trust law, where legal ownership and beneficial ownership can exist separately.

The judgment further acknowledged that trust principles are based on fairness, trust, and fiduciary duty, not strict technical rules. This interpretation is important because it shows that trust law relies on fair principles meant to protect beneficiaries' interests and ensure proper management of property. Courts can look past the form of a transaction and focus on its substance to decide if fiduciary duties are present[12].

This principle becomes more relevant as financial transactions evolve. Modern financial arrangements involving digital assets, online custodial platforms, and tech-driven investment structures often create situations where one party controls assets for another's benefit. Even if these transactions do not resemble traditional trust setups, the underlying relationship of trust and beneficial interest may warrant applying trust principles. Therefore, the reasoning in the aforementioned case may promote a broader and more flexible interpretation of trust law for current financial arrangements that the Indian Trusts Act, 1882, did not specifically address.

CHALLENGES IN APPLYING THE INDIAN TRUSTS ACT TO EVOLVING TRANSACTIONS

The rise of digital finance and technology-driven transactions creates notable challenges in applying the Indian Trusts Act, 1882, since the law was established when transactions primarily involved physical assets and direct relationships. Today’s financial systems involve intangible assets, automated decision-making, decentralized structures, and global transactions that

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[11] **Vishwanath v. Shri Thakur Radhaballabhji**, AIR 1959 SC 1186 (India).

[12] Medha Srivastava & Akshit Kapoor, *Trusts in India*, Atlas Law Partners (July 5, 2017), https://atlaslawpartners.com/wp-content/uploads/2019/05/trusts-in-india.pdf

challenge the assumptions of traditional trust law[13]. Although the broad equitable principles of the Act remain relevant, practical implementation faces several legal uncertainties.

1. Absence of Express Recognition of Digital Assets as Trust Property

One major challenge is the lack of statutory provisions that recognize digital assets within the Indian Trusts Act framework. Under Section 3, trust property is defined as the subject of a trust, implying it consists of property over which beneficial rights are created. However, the Act does not specifically account for modern property forms like cryptocurrencies, digital securities, blockchain assets, or non-fungible tokens (NFTs)[14].

The difficulty arises because traditional property concepts typically involve tangible or clearly defined intangible rights. Digital assets often exist within decentralized networks and do not have physical presence. Ownership depends on controlling digital keys instead of physical possession.

This issue is especially important in the context of cryptocurrency regulation. ***In Internet and Mobile Association of India v. Reserve Bank of India***, the Supreme Court recognized the increasing significance of cryptocurrency systems and their growing role in financial markets. While the Court overruled RBI's restrictions as excessive, it did not conclusively categorize cryptocurrencies as property. Therefore, uncertainty persists about whether these assets can be considered valid trust property.

The lack of statutory recognition raises multiple concerns:

• Confusion over beneficial ownership

• Challenges in identifying trust assets

• Issues with transferability

• Difficulties in assigning fiduciary duties

[13] *Id*

[14] CHRIS BRUMMER, *FINTECH: LAW AND REGULATION* (2019).

2. Difficulties in Identification and Protection of Trust Property According to Section 12[15] of the Indian Trusts Act, 1882, trustees must understand the nature and condition of trust property, and Section 13[16] requires them to protect the title of that property.

Traditional trust law assumes trust assets are identifiable and can be protected by standard legal means. However, in modern financial systems, digital assets can be fragmented, transferred almost instantly across various platforms, or stored in anonymous digital wallets.

Cryptocurrency transactions particularly complicate matters, as ownership may depend entirely on holding cryptographic keys. If these keys are lost, the assets may become permanently inaccessible, even though legal ownership remains.

Additional complications arise because:

• Digital assets can transfer anonymously.

• Transactions happen almost instantaneously.

• Assets might be shared among multiple beneficiaries.

• Asset values fluctuate constantly.

The issue of beneficial ownership and fiduciary responsibilities was also discussed in ***Vishwanath v. Shri Thakur Radhaballabhji,*** where the Court highlighted that trust relationships come with obligations connected to ownership and beneficial interests. Applying these principles to virtual assets is still uncertain.

3. Identification of Trustees in Decentralized Financial Systems

The Indian Trusts Act assumes a clearly identifiable trustee who accepts responsibility and undertakes obligations toward beneficiaries. Section 10[17] states that any person capable of holding property can be a trustee, while Section 11[18] mandates that the trustee execute the trust and fulfill its purpose.

However, decentralized financial systems significantly challenge the traditional framework of trust law. Control and management of assets often rest with multiple participants instead of a single identifiable entity. In contrast to conventional trust arrangements, where a trustee has

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[15] Indian Trusts Act, 1882, § 12
[16] Indian Trusts Act, 1882, § 13
[17] Indian Trusts Act, 1882, § 10
[18] Indian Trusts Act, 1882, § 11

exclusive authority and responsibility over trust property, decentralized financial mechanisms operate through technology and collective participation. Transactions in these systems often rely on algorithms. Decision-making authority may be spread among many network participants, and smart contracts can automatically fulfil obligations without human involvement. Moreover, these systems often work without the oversight of any central authority.

These features create considerable legal uncertainty about applying traditional trust principles. The decentralized nature of these transactions raises key questions about identifying parties who hold fiduciary obligations and who is legally accountable. There is uncertainty about whether software developers who create financial protocols can be seen as trustees. It is unclear if algorithmic systems can be held to fiduciary standards and who should bear liability in cases of tech failures or programming errors. Figuring out the right party for beneficiaries to seek remedies from in the case of loss or breach is also quite complicated. Since the Indian Trusts Act of 1882 was made with the belief that identifiable human actors would exercise decision-making authority, it does not adequately address situations where authority is spread among anonymous participants in decentralized networks. As a result, applying traditional trust principles to these arrangements remains legally unclear and requires further interpretation or changes in legislation.

4. Smart Contracts and Lack of Human Discretion

The growth of blockchain technology and smart contracts introduces another significant challenge. Smart contracts automatically execute obligations based on coded instructions, without requiring human intervention.

Trust law traditionally relies on human judgment and discretion. Section 11 of the Indian Trusts Act requires trustees to execute trusts according to the author's intent, while Section 15[19] demands that trustees exercise ordinary care in managing trust property.

However, automated systems are unable to use equitable discretion.

Challenges include:

• Lack of judgment in special circumstances

• Inability to adjust outcomes based on fairness

[19] Indian Trusts Act, 1882, § 15

• No accountability for programming mistakes

• Uncertainty over liability

The traditional standard of the "prudent man" under Section 15 is difficult to apply to automated systems because software cannot independently assess reasonableness[20].

5. Challenges in Applying Fiduciary Duties to Modern Financial Intermediaries

Trust law relies fundamentally on fiduciary duties. Trustees must act in good faith and avoid conflicts of interest.

Key provisions include:

• Section 15[21]: Duty of reasonable care

• Section 17[22]: Duty of impartiality

• Section 19[23]: Duty to maintain accounts and provide information

• Section 20[24]: Guidelines on investing trust funds

Modern financial platforms increasingly perform functions that closely resemble those traditionally associated with trustees under trust law. Financial technology institutions, digital investment platforms, cryptocurrency exchanges, and online custodial services frequently assume responsibilities that involve the management and protection of assets belonging to users. Such platforms often hold customer funds on behalf of clients, manage investment portfolios through automated or discretionary mechanisms, exercise decision-making powers concerning financial transactions, and store digital assets within electronic systems or virtual wallets.

These activities demonstrate characteristics analogous to fiduciary relationships, as users place confidence in such institutions for the proper administration and safeguarding of their assets. Similar to trustees under the Indian Trusts Act, these entities may possess substantial control over financial resources that are beneficially owned by another party. Consequently, obligations concerning loyalty, good faith, transparency, and reasonable care become increasingly relevant

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[20] *Extinction of Trust in Indian Trust Act*, FACE Harvard, https://face.meei.harvard.edu/extinction-of-trust-in-indian-trust-act
[21] Indian Trusts Act, 1882, § 15
[22] Indian Trusts Act, 1882, § 17
[23] Indian Trusts Act, 1882, § 19
[24] Indian Trusts Act, 1882, § 20

within such relationships. However, despite performing functions resembling those of trustees, modern financial platforms often operate within contractual and technological frameworks that differ substantially from traditional trust arrangements. This creates uncertainty regarding the extent to which existing trust law principles and fiduciary obligations can be applied to contemporary financial intermediaries[25].

The concept of fiduciary relationships was explained by the Supreme Court in **Central Board of Secondary Education v. Aditya Bandopadhyay**[26], which noted that fiduciary relationships are established when one party places trust in another.

Applying these principles to fintech companies and digital asset custodians proves challenging because contractual arrangements often attempt to reinterpret the responsibilities traditionally associated with trustees.

6. Jurisdictional Difficulties and Cross-Border Transactions

Traditional trust arrangements usually operate within clear territorial boundaries. Modern financial transactions often cross -national borders.

For example:

- A cryptocurrency exchange may function from another country.
- Trustees might live in different jurisdictions.
- Assets could exist on globally distributed blockchain networks.
- Beneficiaries may be in multiple countries.

As a result, significant legal uncertainties emerge regarding the regulation and adjudication of cross-border financial transactions. The transnational nature of digital financial systems creates difficulties in determining the applicable legal framework governing the rights and obligations of parties involved in a transaction. Questions frequently arise regarding which jurisdiction's laws should apply, particularly where parties, assets, and technological infrastructures are situated in different countries[27]. Similar concerns also arise with respect to identifying the

[25] Rashmi, *Finance Bill 2025: Key Tax Reforms for Charitable Trusts and Their Impact*, CAclubindia.
[26] **Central Board of Secondary Education v. Aditya Bandopadhyay**, (2011) 8 SCC 497 (India).
[27] Ajay Bahl, *Building Trust and Judicial Reform: The Twin Imperatives of an Aspirational India*, AZB & Partners

appropriate judicial forum possessing authority to adjudicate disputes arising from such transactions.

Further complexities arise in relation to the recognition and enforcement of foreign judgments. Since digital transactions often involve multiple jurisdictions simultaneously, courts may encounter challenges in determining whether judgments delivered by foreign courts should be recognized and enforced within domestic legal systems. Additionally, procedural difficulties may emerge in implementing and enforcing judicial remedies across jurisdictions, particularly where digital assets are transferred rapidly across decentralized networks or held through anonymous platforms. Consequently, the borderless nature of modern financial transactions creates substantial challenges for traditional legal mechanisms that were designed primarily for territorially confined relationships and transactions.

Traditional trust law does not offer enough guidance for dealing with cross-border digital financial transactions.

7. Enforcement and Recovery Difficulties

The Indian Trusts Act provides remedies for breaches of trust and protection of beneficiaries' rights. However, enforcing these remedies is challenging in digital financial systems.

Common enforcement issues include:

- Anonymous ownership structures.
- Difficulty tracing assets.
- Instantaneous transfer methods.
- Platform insolvency.
- Technological barriers.

International cases show efforts to recognize digital assets as legally protected property. In ***AA v Persons Unknown***[28], the court acknowledged cryptocurrency as property that can be legally protected and recovered.

Although this ruling came from outside India, it highlights how courts might progress when addressing new financial systems.

[28] **AA v. Persons Unknown**, [2019] EWHC 3556 (Comm) (Eng.).

These challenges suggest that while the core principles of the Indian Trusts Act are still important, the rise of digital finance reveals significant gaps in the legal framework. Courts may temporarily address these issues through interpretation, but lasting clarity needs changes to the law that clearly recognize digital assets, technological intermediaries, and decentralized financial systems. These changes would enhance trust law's ability to manage evolving financial transactions in the digital age.

CONCLUSION

The Indian Trusts Act of 1882 remains a key piece of legislation governing fiduciary relationships and responsibilities. The principles of loyalty, good faith, prudence, and accountability in the Act still hold importance in today’s financial environments. However, the fast advancement of financial technologies has revealed shortcomings in traditional legal frameworks created in a different time.

While court interpretations have shown flexibility in applying legal principles to new scenarios, depending only on judicial intervention may not provide enough certainty. The lack of clear acknowledgment of digital assets, confusion around decentralized systems, and jurisdictional complications highlight the need for legislative reforms. Modern financial systems require legal tools that can merge traditional trust principles with technological progress.

Therefore, the Indian Trusts Act should be updated to explicitly include digital assets, electronic trust property, and technology-driven financial relationships. These reforms would ensure that trust law remains effective and relevant in overseeing the increasingly complex financial landscape of the twenty-first century.