



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal – The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK
LEGAL

EDITORIAL **TEAM**

Raju Narayana Swamy (IAS) Indian Administrative Service **officer**



Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru

and a professional diploma in Public Procurement from the World Bank.

diploma in Public

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.



Senior Editor

Dr. Neha Mishra



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.



Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

DUTIES AND LIABILITIES OF TRUSTEES **UNDER INDIAN TRUST ACT 1882**

AUTHORED BY - P. GODHAWARI¹ & K K NAKSHATHRA²,
Assistant Professors,
School Of Law, Vistas, Chennai

ABSTRACT

Trust laws in India are characterized and managed in the Indian Trusts Act. Meaning of Trust is defined in Section 2 of the Act. As indicated by the section, trust implies a commitment attached to the responsibility for, and emerging out of a certainty rested in and acknowledged by the proprietor, or pronounced and acknowledged by him, for the advantage of another, or of another and the proprietor. A point-by-point talk on the Trust laws is being given here under to give a superior and powerful comprehension of the Trust laws. In its least difficult frame, a trust is made when a settlor exchanges property to a trustee to hold it for the advantage of at least one recipient. There are three legitimate abilities to manage as a primary concern in this unique situation: the settlor who settles the property, the trustee who holds the property on trust, and the recipient who appreciates the advantages of the trust. A trust is a relationship whereby property (real or individual, unmistakable or impalpable) is held by one party for the advantage of another.

KEYWORDS: *Trust, Trustee, duties, liabilities, beneficiary.*

INTRODUCTION

The origin of 'Trusts' can be traced back to the ancient times when human motivation to do charity and dedicate property for charitable and religious purposes found its manifestation in the form of dharmashalas, annachatras, sadavarts, educational and medical institutions, construction of water tanks and wells, bathing ghats, implanting trees etc. with the emergence of idol worship, endowments for temples and idols came into existence. In addition to public

¹ Assistant Professor, School of Law, VISTAS, Chennai. Email id: godhawariperumal1997@gmail.com

² Assistant Professor, School of Law, VISTAS, Chennai. Email-id: advkknakshathra@gmail.com

endowments/wakfs, private trusts can also be formed for looking after the welfare, age, illness, disability or any other reason.

The individual who rests or announces the certainty is known as the "author of the trust. The individual who acknowledges the certainty is known as the trustee. The individual for whose advantage certainty is acknowledged is known as the beneficiary. The topic of the trust is called trust property or trust money. Advantageous intrigue is the enthusiasm of the recipient. The record or composing by which trust is made is known as the instrument of trust. A trust is in this way an acknowledgment of a commitment by a man in reference to some property or assets to utilize or hold it for the advantage of those for whom the trust is made.

AIM

The aim of the paper is to study the concept of trust under the Indian Trusts Act, 1882 and analyzing the rights, powers, duties and disabilities of a trustee under the Act.

RESEARCH METHODOLOGY

Only secondary sources have been referred for this study. The primary sources include interviews with people were not possible. Secondary sources include books related to Trusts and research articles on the concept of trust were referred. Ample websites and blogs have also been referred for the study.

DEFINITION OF TRUST

According to section 3 of Indian Trust Act 1882 "A Trust is an obligation added to the responsibility for property, and emerging out of a certainty rested in and acknowledged by the proprietor, or announced and acknowledged by him, for the advantage of another, or of another and the proprietor" Trivia: This definition has never been altered since its inception.

TRUSTEE UNDER THE TRUST LAWS

About the trustee Section 10 of the Indian Trust Act, 1882 says that each individual equipped for holding property might be a trustee. In any case, where a trust includes the activity of prudence, a man who is skillful to contract can be a trustee. No individual is, be that as it may, bound to acknowledge a trust. At the point when a man is assigned as a trustee, he has the alternative to acknowledge or renounce the trust. He may mean his acknowledgment by words,

composed or talked, or by direct. What is vital, in any case, is that his expectation to acknowledge ought to be sensibly sure under the trust laws.

Where merchandise is exchanged to a man in trust for acknowledgment and installment of his obligations, and the transferee understands the estimation of the products, or where cash is moved in trust and the proposed trustee isolates the cash from the rest of the assets, this direct add up to an acknowledgment of the trust under the trust in laws in India.

DUTIES AND LIABILITES OF TRUSTEE

Duties of trustee

- **DUTY TO EXECUTE TRUST-** Section 11 of the Indian Trusts Act, 1882 requires the trustee to satisfy the reason for the trust. In completing the reason for the trust the trustee needs to take after the bearings of the creator given at the season of the production of the trust. Such headings might be adjusted occasionally by the assent of the considerable number of recipients who are skilled to contract. Where a recipient is clumsy, assent of the common court of unique purview will be important under the put stock in laws in India. The section exempts the trustee from obeying any bearings which would be impracticable, unlawful or plainly damaging to the recipients. The clarification to the section says that a trust for installment of obligations would incorporate installment just of the obligations of the creator of the trust in existing and recoverable at the date of the instrument of trust, or where such instrument is a will, at the date of his passing, and in the event of intrigue free obligation, to pay just the vital. The delineations to the section make it clear that a trustee delegated to offer the trust arrive by open closeout can't do as such by private get; a trustee named to offer the trust land to a predetermined individual for a predefined entirety, may pitch it to another and for less rice, if every one of the trustees, being able to contract, so approve; a trustee for a lady and her youngsters, who is guided by the creator to loan cash to the lady's significant other may decline to do as such if the spouse has turned out to be wiped out. Loaning cash to a ruined would be clearly harmful to the recipients of the trust.
- **ACQUAINTANCE WITH TRUST PROPERTY-** Section 12 requires the trustee to educate himself of the condition of trust property. As quickly as time permits, in the wake of tolerating his office, the trustee will undoubtedly familiarize himself with the nature and conditions of put stock in property. Where essential, he ought to get

exchange of the put stock in property to himself. On the off chance that he finds that the trust cash has been put resources into lacking or unsafe security, he ought to recoup the speculation. The section of the trust laws in India conveys two delineations moreover. As indicated by one of them: The trust property is an obligation extraordinary on individual security. The trustee's dedication is to recoup the dedication instantly. The second outline is something like this: The trust property is exchange out the hands of one of two co-trustees. No optional power is given by the instrument of trust. The other co-trustee must not engage the past to hold the cash for a more expanded period than the conditions of the case required.

- **PROTECTION OF TO TITLE TRUST PROPERTY-** Conservation of trust property is one of the fundamental elements of trustees under the trust in laws in India. The trustee needs to declare his entitlement to the property and to ensure the title to the property. For these reasons the trustee has the ability to keep up and guard suits and every single other expert under the put stock in laws in India. Subject to the arrangements of the instrument of trust and remembering the nature and sort of trust in property, the trustee may do anything which is vital for the protection of the put stock in property. The main outline to the section is this way: The trust property is undaunted property which has gone to the hands of the creator of the trust under an unregistered deed. Subject to the arrangements of the Indian Registration Act, 1877, the trustee's obligation is to make the instrument of trust be enrolled.

Under the arrangements of the Bombay Trusts Act, 1950, a privilege has been presented for protection of trust property among others upon people having interests in the trust.

The Supreme Court hung based on this arrangement that at least two trustees of an enlisted open trust were qualified for record a suit for a declaration for recuperation of the ownership of trust property against a man holding it antagonistically to the trust. That articulation, the court stated, was sufficiently wide to incorporate not simply the recipients of a sanctuary, math, wakf and so on, yet in addition the trustees. In this manner, offended parties 2 and 3, who were individuals from the author's family i.e., recipients, were qualified for go to at execution of love or administration in the sanctuary and furthermore qualified for share in the dissemination of offerings to the divinity and along these lines answer the depiction individual having interest• as characterized in the Act. The trustees need to take legitimate care in understanding the estimation of the property. The Supreme Court saw on the certainties of a case:

The property of altruistic and religious gifts or organizations must be desirously secured

in light of the fact that a substantial fragment of the group has valuable intrigue in that Deal by private arrangements which isn't noticeable to people in general eye and may even offer ascent to open doubt ought not, subsequently, be allowed unless there are exceptional motivations to legitimize the same. Care must be taken to settle the save cost in the wake of determining the market an incentive for defending the enthusiasm of the enrichment.

- **DUTY NOT TO SET UP ADVERSE TITLE-** Each trustee is under an obligation not to set up jus tertii against his own recipient. An operator, for instance, can't endeavor to hold the property of his vital guaranteeing that it is his property. No bailee can guarantee as against his bailor that the property under bailment has a place with him. Such people likewise can't assert that the property has a place with a third individual. So, Section 14 makes it an obligation of the trustee not to set up any claim to the property either for himself or for third individual.

- **DUTY OF CARE AS IMPOSED UNDER TRUST LAWS-** The standard of care in reference to trust property expected of a trustee is expressed in Section 15.

Care required from trustee: A trustee will undoubtedly manage the trust property as painstakingly as a man of customary judiciousness would manage such property on the off chance that it was his own; and, without an agreement despite what might be expected, a trustee so managing isn't in charge of the misfortune, decimation or decay of the put stock in property.

Under the administer expressed in the section a trustee needs to take as much care of the trust property as a man of conventional reasonability would have taken of his own property. On the off chance that his managing of the trust property demonstrates the standard of care of a sensible man, he would not be subject for nay misfortune, devastation or weakening of the put stock in property. It can, in any case, be given in an agreement him that he would be obligated at all occasions. In such a case he would be at risk for misfortune and so forth whether any carelessness on his part is included or not.

- **COVERSION OF PERISHABLE PROPERTY UNDER THE TRUST IN LAWS**
-Where a trust has been made for the advantage or a few people in progression and the trust property is of squandering nature of a future or reversionary intrigue it is the obligation of the trustee to change over the property into a property of perpetual and promptly beneficial character under the put stock in laws in India. He might not need to do as such if there is an arrangement in the instrument of trust against any such

transformation. The obligation expressed in the section is outlined by two cases given in the section of the trust in laws in India. As indicated by one of them the trust property comprises of three leasehold houses. The trust is for the advantage of one and, after his passing, for another. There is nothing in the trust-deed to demonstrate that the houses are intended to be delighted in by the recipients in specie. The trustee should offer the houses and put the returns in the securities recorded in Section 20 and known as put stock in securities. As indicated by the second delineation the trust-deed, notwithstanding believing the houses additionally says that all the furniture in the houses should likewise be for the pleasure in recipients in progression. This reality demonstrates that the houses and furniture are intended to be delighted in specie. The trustee is under no commitment to offer them under the put stock in laws in India.

- **TRUSTEE TO BE IMPARTIAL UNDER THE TRUST LAWS-** Where there are a larger number of recipients than one, the trustee will undoubtedly be fair under the put stock in laws in India. He needs to see that the trust control is practiced for the advantage of all similar and not for one at the cost of the other. Where, in any case, the trustee has the caution to allocate benefits among the recipients, he may in a reasonable and true blue exercise of his carefulness continue as he loves. The court won't have the capacity to meddle in his carefulness unless there is evidence of mala fide segregation under the trust in laws in India. As indicated by the delineation added to the section a man is a trustee for the advantage of three people. He has been given the circumspection to settle on a decision between a few indicated methods of contributing the trust in property. The trustee in compliance with common decency picks one of those modes. The court won't meddle, despite the fact that the aftereffect of the decision might be to extremely the relative privileges of the three recipients.
- **TRUSTEES TO PREVENT MISUSE OF THE TRUST IN PROPERTY UNDER TRUST LAWS-** Where a trust has been made for the advantage of a few people in progression and one of them being in control of the trust in property, is doing or undermining to do any demonstration which is ruinous or for all time harmful to put stock in property, it turns into the obligation of the trustee to find a way to keep the property from being squandered.
- **ACCOUNTS AND INFORMATION UNDER THE TRUST LAWS-** A trustee is under an obligation, (a) to keep clear and precise records of the put stock in property, and, (b) at all sensible circumstances, at the demand of recipients, to outfit them with

full and exact data with regards to the sum and satiate of trust property under the put stock in laws in India.

LIABILITIES OF TRUSTEES UNDER TRUST LAWS

Liabilities of trustees are expressed in Sections 23 to 30 of the put stock in laws in India. They are as follows: –

1. Liability of breach of trust–

Where the trustee submits a rupture of trust, he is subject to made great the misfortune which the trust-property or the recipient has in this way managed unless the recipient has by misrepresentation incited the trustee to confer the break, or the recipient, being capable to contract, has himself, without pressure or undue impact having been presented as a powerful influence for him, agreed in the break, or in this manner submitted in that, with full learning of certainties of the case and of his rights as against the trustee.

A trustee submitting a rupture of trust isn't at risk to pay enthusiasm aside from in the accompanying cases:

1. Where he has really gotten intrigue;
2. Where the break comprises in absurd deferral in paying put stock in cash to the recipient;
3. Where the trustee should have gotten intrigue, however has not done as such;
4. Where he might be decently ventured to have gotten intrigue.

2. No set-off against Liability under the trust in laws in India-

Where rupture of trust is in two unmistakable regards, one causing misfortune and the other bringing a pick up, the trustee can't state that his risk for the misfortune ought to be lessened by set-off against it the pick-up caused by the other breach. It takes after that if rupture of trust causes misfortune, the trustee needs to hold up under it. In the event that it achieves a pick-up it will go to the advantage of put stock in property. The trustee can't guarantee any lessening in his obligation for the misfortune as against the pick-up.

3. The Position of co-trustees under the put stock in laws

Section 26 of the trust laws in India additionally gives three particular circumstances in which a trustee ends up at risk for the blame of his co-trustees, however this sort of obligation is allowed by the section to be avoided by an agreement actually.

- a) Where he has conveyed the trust property to his co-trustee without seeing to its appropriate application;
- b) Where he has enabled his co-trustee to get the put stock in property and does not make due enquiries about his co-trustee's dealings with it, or enables him to stay in selective ownership for a period longer than is sensibly essential the situation being what it is;
- c) Where he comes to know about a rupture of trust in conferred by his co-trustee or expected to be submitted, and either effectively disguises it or does not find a way to ensure the enthusiasm of the recipient.

Where a trustee participates in marking papers for accepting trust property and he has a proof that he didn't really get it, he won't be at risk by uprightness of such mark just for any misapplication of the trust property by the co-trustee who really got the property.

4. A few Liabilities and Contribution under the trust laws

Where the co-trustees together submit a break of trust, or where one of them by his carelessness empowers the other to confer a rupture, each will be severally or by and by subject to the recipient for the entire of the misfortune occasioned by the break. Along these lines far as the recipient is concerned, he has alright to continue against every last trustee who is at risk in the conditions. However, as between co-trustees' equity request that they should endure as indicated by their individual flaws. In the event that one of them is just as blame and alternate has been held obligated for his blame, the defaulting trustee must offer reimbursement to his kindred trustee for the sum which as been recouped shape him. Where every one of them are similarly liable and one of them has paid the misfortune, he may recoup square with commitment frame his co-trustees. The main special case is that the trustee who has been blameworthy of misrepresentation, is to qualified for sue for commitment.

5. Repayment of Trustee under the trust laws

In the customary conditions trustees are separately chargeable just for such cash, stocks, assets and securities as they individually really get and should not be responsible for others, nor for any investor, representative or other individual in whose hands any trust property might be put, nor for the inadequacy or insufficiency of any stocks, assets or securities, nor generally for automatic misfortunes. This is, in any case, subject to the arrangements of Sections 23 and 26.

CONCLUSION

Persons who are enumerated in Chapter IX which deals with relations in the nature of trust are declared by Section 95 to be occupying the position of a trustee. Therefore, they will be bound to perform the same duties and will be subject to the same liabilities and disabilities as if they were the trustees of the property in the full sense of the word. If he properly employs the property in cultivation, or trade or business, he will be entitled to reasonable remuneration for his trouble, skill and loss of time. Where the property is held by him under a contract with the beneficiary himself, he may, without the permission of the court, become lessee or mortgagee of the property. Thus Section 96, which is the last section of the Act and of the chapter on relations in the nature of trust, provides that the provisions of the chapter will not affect the rights acquired by a person in good faith and for consideration. The provisions of the chapter cannot also be used to create obligations in evasion of any law for the time being in force.

REFERENCES:

1. Indian Trusts Act, 1882 by M.P. Tandon;
2. Principles of Equity with Trust and Specific Relief by Dr. M.P. Tandon
3. Equity Trusts & Specific Relief by B.M. Gandhi, 5th edition;
4. Indian Trust Act, 1882 [Bare Act];
5. Equity and Trusts Law by Gary Watt, 7th edition;
6. <https://blog.ipleaders.in/trust-law-india/>;
7. <http://www.legalhelplineindia.com/trust-laws-in-india/>;
8. <https://www.timesofmalta.com/articles/view/20121004/business-comment/Trusts-settlor-trustee-and-beneficiary.439611>;
9. <https://www.scribd.com/doc/176737962/The-Trustee-Under-Indian-Trusts-Act>;
10. http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Trust_and_Trust_Laws-The_World_Trust_Survey.pdf;
11. https://en.wikipedia.org/wiki/Indian_Trusts_Act,_1882;
12. <http://legalbank.blogspot.in/2013/05/getting-to-know-indian-trusts-act-1882.html>;
13. www.lawman.net.in;
14. www.lawrato.com;
15. www.lawyersclub.com;
16. www.legalblog.in;
17. www.livelaw.in
18. www.lawoctopus.com;
19. www.legalservicesindia.com;
20. www.blog.ipleaders.in;