TRUSTEES POWER OF INVESTMENT: CASE ANALYSIS

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ABSTRACT

This research paper conceptualizes the concept of "trust" and the trustee's powers with regard to investments in different mutual funds or investment schemes for the beneficiary's income or capital growth, which should be in accordance with the trust agreement. The ability given to a trustee to choose investments on behalf of a trust is referred to as investment powers of a trustee. The basic goal of a trustee's investing powers is to make sure that trust assets are handled wisely to satisfy the needs of the beneficiaries. The trust and its beneficiaries may receive significant financial rewards from a trustee's investment decisions. However, it is essential to critically analyze these benefits and weigh them against the potential risks and drawbacks. Trustees must exercise due diligence in selecting and monitoring investments, avoid conflicts of interest, and ensure that their investment decisions align with the trust's objectives and interests. By doing so, trustees can enhance the trust's overall returns and ensure that it remains a reliable source of financial support for its beneficiaries over the long term. Lastly, the legislations introduced in India, United Kingdom and the United States govern such aspects pertaining to trust and the financial benefits accrued namely The Indian Trust Act, 1882, Trustees Act, 1925, The Uniform Probate Code, 1969 and the Uniform Trust Code, 2000 amongst others which in the limelight of landmark cases such as Vishwanath Pandurang Awati and others v. State of Maharashtra[i], Bombay Environmental Action Group and Others v. Union of India and Others[ii], Cowan v Scargill[iii] and Bartlett v Barclays Bank[iv] help analyse the respective legislations.

Keywords: Investment, Financial benefits, legislations, The Indian Trust Act, 1882, Trustees Act, 1925, The Uniform Probate Code, 1969, Uniform Trust Code, 2000, case analysis.

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INTRODUCTION

A trust typically consists of the trust's creator or author, the trustee, and the trust's beneficiary. The "author of the trust" is the individual who expressly declares or reposes their confidence in another person. The trust's subject matter is known as the "trust property" or "trust money," and the person who accepts the confidence offered by the trust's creator is known as the "trustee." The beneficiary is the person for whose benefit the trust and confidence are imposed.

Under the Modern Trust structure, trustees are given investment powers, enabling them to make investments on the beneficiary's behalf. The beneficiary's benefit and well-being must be taken into consideration when the trustee performs his duties. To secure the safety of the trust money and prevent future litigation or disagreements, the trust deed should specifically indicate a trustee's power to invest. It may even specify the kind of investments the trustee is permitted to make.

In general, the trust's creator wants to give the trust's beneficiary income and capital. Therefore, the trustee's primary responsibility is to maximize the beneficiary's income and capital growth while protecting the value of the trust fund or property. When the trust agreement is silent on the aspect of the trustee's investment authority or the types of investments, the trustee may nevertheless apply that authority prudently while keeping in mind the accepted standards for investing. The trustee must also periodically examine such investment plans. Furthermore, a widely recognized principle embodied in the Trusts (Jersey) Law, 1984 provides that the trustee is granted such powers under the purview of Article 24(1) of the Law if the trust instrument does not contain provisions dealing with the investment of the trust money.

According to Article 24(1), *"a trustee must in relation to the trust property have all the powers of a natural person acting as the beneficial owner of such property, subject to the provisions of the trust and subject to the trustee's duties under this Law."*[iv]

The original trust fund, which is established when a trust is constituted, may be made up of assets, cash, or a combination of the two. The trustee's responsibility to protect the trust's assets begins with the collecting of assets upon taking office and lasts until the property is finally distributed to those who are entitled to it. The trustees must become familiar with the conditions

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of the trust and the condition of the property they will control right away. They must also make sure that funds are invested wisely and oversee the proper custody of all securities and other property. The trustees must decide whether they are permitted to keep the initial trust fund as it is and if so, whether in fact they should do so.

TRUSTEES POWER OF INVESTMENT IN INDIA

The entire law that establishes the authority and responsibilities of trustees in India is known as the Indian Trust Act, 1882[vi]. The Act gives trustees important rights, including the authority of investment. With the use of this authority, trustees can manage and invest trust assets in a way that maximises returns while protecting beneficiaries' interests. The trustee's investment authority is a crucial one that gives them the ability to manage and invest the trust's assets in a way that maximises returns. Trustees have the authority to invest in a variety of assets, including stocks, shares, debentures, and other securities, thanks to the Indian Trust Act. However, the Act also establishes some restrictions and requirements to guarantee that the trustee's investment choices are not capricious or arbitrary but rather are made in the beneficiaries' best interests.

The general investing authority that trustees have access to is outlined in Section 20 of the Indian Trust Act. According to this clause, "a trustee may invest trust property in any of the securities named in section 20(1) of the Indian Trusts Act, 1882[vii], subject to any restrictions imposed by the trust deed." The trustee may invest in a wide range of securities, including government securities, shares, debentures, stocks, and other securities, according to Section 20(1) of the Act.

The trustee as enumerated in the aforementioned section has an overriding duty when investing the trust funds, firstly, the trustee has a duty of care towards the beneficiary and therefore, must act in their best interest in consonance with the trust deed and secondly, the trustee must consider whether there is a need to diversify the trust funds. The trustee duty of care implies *"the duty of the trustee is not to take such care only as a prudent man would take if he had only himself to consider, the duty is rather to take such care as an ordinary prudent man would take*

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if he were minded to make an investment for the benefit of other people for whom he felt morally bound to provide."[viii] The Act also includes a prudent investor provision that mandates trustees make cautious and wise investments. This rule is intended to guarantee that the trustee always acts in the beneficiaries' best interests and never in a careless or speculative manner while making investment decisions. The responsible investor rule mandates that trustees manage and invest trust assets in a reasonable and sensible manner. They must take into account elements including investment risk and return, beneficiary needs, and the economic climate at the time of investing.

The Indian Trust Act additionally lays forth particular criteria and limitations for trustees when making investments with trust property in addition to the cautious investor criterion. These rules are intended to safeguard the interests of the beneficiaries and guarantee that the trustee makes prudent investment choices. The Act's Section 20A[ix] outlines the limitations on the types of investments that a trustee is not allowed to make. For instance, a trustee is not permitted to make investments that are not permitted by the trust agreement or the law. They are not allowed to make investments that might put the trust's assets at danger or create a conflict of interest. These limitations guarantee that trustees make the finest, most ethical, and lawful investing judgements possible.

The Act also allows for the trustee to appoint investment managers. The Act's Section 21[x] permits the trustee to designate an investment manager to oversee the trust's assets. The investment manager needs to be knowledgeable and skilled in managing investments. The trustee is released from the duty of directly managing the trust property by the appointment of an investment manager. The trustee must still pick the investment manager carefully and oversee him or her with diligence. The Supreme Court of India concluded that the right to property was not an absolute right and might be subject to reasonable restrictions in the public interest in the case of Vishwanath Pandurang Awati and others v. State of Maharashtra. The powers of the trustee are affected by this principle implying that the trust deed's terms must be followed when exercising a trustee's discretionary power of investment. Trustees' authority is affected by the rules established in the Vishwanath Pandurang Awati case about restrictions on the right to property. Trustees are required to manage trust assets in a way that is advantageous to the beneficiaries of the trust and to operate in their best interests.

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Furthermore, trustees in India have recently become more conscious of the importance of sustainable and ethical investing in businesses with sound environmental, social, and governance (ESG) practises and staying away from those that take part in harmful environmental activities. In the case of **Bombay Environmental Action Group and Others v. Union of India and Others,** it was determined that in order to act in the beneficiaries of the trust's best interests, the trustees must safeguard and preserve the environment.

COMPARATIVE ANALYSIS

The United Kingdom

The trustee's authority includes the ability to invest, appropriate, advance, charge, and issue loans, among other things, and is not just limited to allocating or distributing the trust fund or trust property in accordance with the trust deed. The Power of Appropriation asserts that if a trust fund contains an asset that is worth more than the beneficiary's entitlement, the asset may be sold to the beneficiary, and that the trustee may appropriate actual items from an estate rather than liquid funds for the satisfaction and discharge of a legacy or the entitlement of the residuary estate, this is a standard power and is generally accepted principle and is enumerated under the Administration of Estates Act[xi]. However, this power of appropriation can only be exercised by the trustee with the consent of the beneficiary and if the beneficiary is a minor, then in such an instance the consent of the parent or of the guardian needs to be obtained.

The normal rule that the beneficiary cannot access or control the trust funds until the stated beneficiary reaches the age of majority is an exception in the Power of Advancement arrangements. To the beneficiary listed in Section 32 of the Trustees Act of 1925[xii], the trustee may advance capital while exercising the power of advancement.

Before, unless specifically stated in the trust deed, trustees were not entitled to compensation for their services. The Trustee Act, 2000[xiii], which replaced the Trustees Act of 1925, permits charges to be made in cases when the document's charging clause does not cover the cost of the trustees' services. The Power of Investment is also enumerated under the Trustee Act, 2000 wherein the trustee can make investments on behalf of the beneficiary while exercising due diligence and observance. Lastly, the power to make loans is not enumerated in any statute however, the trust deed can include a power for trustees to make loans to beneficiaries.

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In the case of **Cowan v Scargill**, the money given by Arthur Scargill as a donation which was deemed to be in the form of a gift to the union and that he had complete control over how to spend the money. The donation was actually a trust, with the donors as the beneficiaries and the union acting as the trustee, as determined by the court. Furthermore, the court found that the donors had a legitimate expectation that their donation would be used for the specific purpose of supporting the striking miners, and that Scargill did not have the authority to use the funds for any other purpose. The principle established by virtue of this case is that the object of the trust must be fulfilled and the interest of the beneficiary with respect to the investment made by the trustee must be upheld.

The United States

In accordance with the provisions listed under this Act, the Uniform Probate Code[xiv] was developed in the United States to regulate all elements of wills, inheritance disputes, guardianship of minors or incompetent people, durable powers of attorney, and trust administration. The Uniform Prudent Investor Act[xv] lays out the duties of a trustee with regard to the administration and investing of trust assets. The obligations of a trustee with regard to distribution to beneficiaries are likewise covered under the Uniform Trust Code. This Code under Article 8[xvi] enlists duties of the trustees one of which states that The Uniform Prudent Investor Act prescribes and bestows upon a trustee with responsibilities for the management and investment of trust property.

Furthermore, Section 417[xvii] of the Uniform Trust Code enumerates that the terms of the trust permit the trustee for investment of the trust fund and even states that in cases of multiple beneficiaries if a conflict arises with respect to the investment objectives, this section provides a refuge for such conflicts vide combination or division which need not be proved either by the court or by the beneficiaries. A trustee may combine or divide trusts without the beneficiaries' approval, but only after giving qualifying beneficiaries advance notice of the planned combination or division. This is in accordance with Section 813[xviii], which requires the trustee to keep the beneficiaries reasonably informed about trust management, including by providing qualified beneficiaries with prior notice of a number of specific activities that may have a significant impact on their interests. In the **Bartlett v. Barclays Bank case**, the trustees let a business in which the majority of the trust fund was invested to make risky and losing

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investments. The trustees were held accountable for failing to exercise proper caution and violating the trustees' legal obligations.

Lastly, as per Section 802 of the said Code[xix], the trustee owes a duty of loyalty solely towards the interest of the beneficiaries for any sale, encumbrance, transactions involvement the investment or management of the trust funds. A trustee is not assumed to have a conflict of interest when investing in the securities of an investment firm or investment trust for which the trustee, or an associate, performs services in a role other than that of trustee. The investment business or investment trust may pay the trustee for these services in addition to paying it for acting as trustee out of fees levied to the trust.

CONCLUSION

As compared to the laws that were previously in existence, the legislation that was introduced to regulate trusts offers trustees the ability to invest trust funds as though they were the sole owners. All trustees have a legal obligation to exert the care and skill that is "appropriate in the circumstances," according to the law. A trustee would have a stronger duty of care if they were operating in their professional role or had specific expertise and experience. This statutory obligation is applicable whether choosing between making or reviewing an investment, buying, managing, or ensuring real estate, or choosing a third party to help with the investment process.

The laws' standard investing standards outline important guidelines that must be followed. Initially, trustees must make sure the investments they choose are appropriate for the particular trust. Second, trustees must think about the purpose of the trust, the needs of the beneficiaries, the investment time horizon, and the degree of risk that trust investments are subject to. In summary, trustees have substantial authority over the management of trust funds and the selection of investments. These powers are typically outlined in the trust instrument and are subject to certain legal and ethical duties, including the duty of loyalty, prudence, and impartiality.

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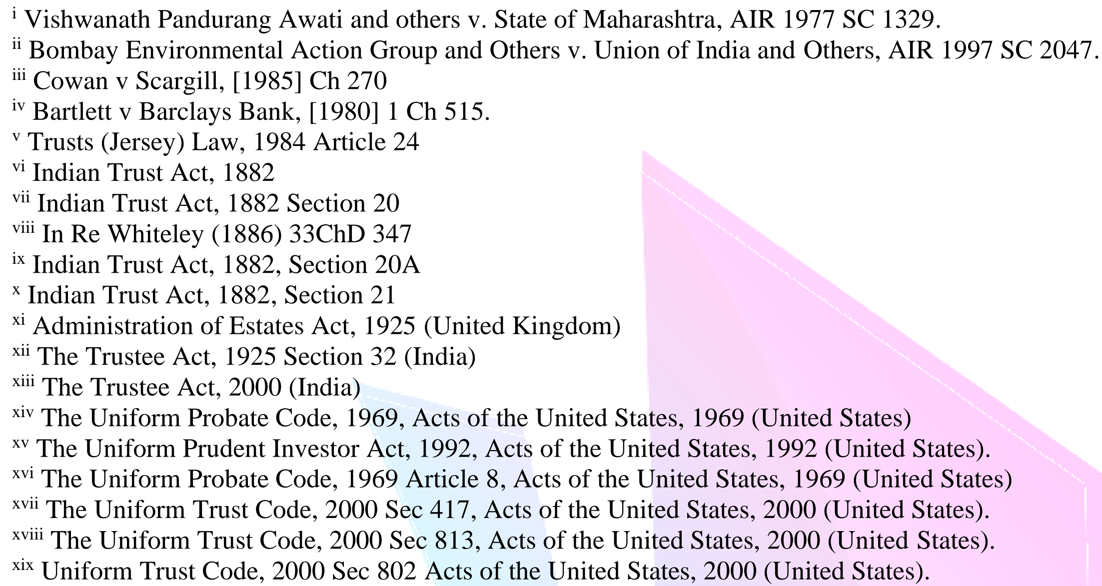
ENDNOTES



[i] Vishwanath Pandurang Awati and others v. State of Maharashtra, AIR 1977 SC 1329.
[ii] Bombay Environmental Action Group and Others v. Union of India and Others, AIR 1997 SC 2047.
[iii] Cowan v Scargill, [1985] Ch 270
[iv] Bartlett v Barclays Bank, [1980] 1 Ch 515.
[v] Trusts (Jersey) Law, 1984 Article 24
[vi] Indian Trust Act, 1882
[vii] Indian Trust Act, 1882 Section 20
[viii] In Re Whiteley (1886) 33ChD 347
[ix] Indian Trust Act, 1882, Section 20A
[x] Indian Trust Act, 1882, Section 21
[xi] Administration of Estates Act, 1925 (United Kingdom)
[xii] The Trustee Act, 1925 Section 32 (India)
[xiii] The Trustee Act, 2000 (India)
[xiv] The Uniform Probate Code, 1969, Acts of the United States, 1969 (United States)
[xv] The Uniform Prudent Investor Act, 1992, Acts of the United States, 1992 (United States).
[xvi] The Uniform Probate Code, 1969 Article 8, Acts of the United States, 1969 (United States)
[xvii] The Uniform Trust Code, 2000 Sec 417, Acts of the United States, 2000 (United States).
[xviii] The Uniform Trust Code, 2000 Sec 813, Acts of the United States, 2000 (United States).
[xix] Uniform Trust Code, 2000 Sec 802 Acts of the United States, 2000 (United States).