FROM TANGIBLE PRODUCTS TO VIRTUAL CUSTODY: RE-IMAGINING BAILMENT FOR THE DIGITAL AGE

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ABSTRACT

The Indian bailment doctrine, which is enshrined in Chapter IX of the Indian Contract Act of 1872, is structurally out of step with modern digital custody arrangements. The protective architecture of the Bailment Law vanishes when people and businesses entrust digital assets to cloud providers, crypto custodians, and other intermediaries whose "custody" is mediated through credentials, keys, and permissions, and whose "return" frequently takes the form of restored access rather than physical redelivery. This is in contrast to classical bailment, which effectively distributes risk and duties around delivery, possession, reasonable care, and redelivery of tangible "goods." The paper demonstrates why analogies from other contexts (such as "software as goods" reasoning) do not address bailment-specific issues regarding delivery, control, and redelivery in digital environments by means of doctrinal analysis of Indian bailment's possession-oriented logic and its awkward fit with intangibility, duplication, and platform self-help. It also clarifies why current private-law and regulatory alternatives, such as standard-form contracts, consumer remedies, and the Digital Personal Data Protection Act of 2023, only offer at most limited coverage and don't address issues with proprietary risk allocation. Using doctrinal analysis and comparative developments on digital assets, the paper shows that existing Indian contract, consumer, and data-protection frameworks lack a default private-duty of redelivery or restoration of access, enabling platform lockouts to function as de-facto self-help security. Hereby the central contribution of this paper is targeted statutory reform proposal: insertion of a new Section 148A recognising "digital bailment" alongside classical bailment, defining delivery in terms of exclusive or superior technological control and adapting duties of reasonable care, redelivery (including restoration of access), and lien-like rights to the digital context, alongside an explanation of what delivery of digital assets would entail. The article concludes that such a reform would modernise Indian private law without distorting bailment's foundations, while producing concrete consequences in data-breach liability, service shutdown disputes, and platform fee enforcement.

1. INTRODUCTION

> *"Consumers entrust their photos to Apple instead of scrapbooks; businesses put their documents on Amazon's servers instead of in file cabinets; seemingly everything runs in the cloud. Were these belongings tangible, the relationship between owner and intermediary would be governed by the common-law doctrine of bailment."*[1]

The statement made by Danielle D'Onfro encapsulates a major conundrum in modern private law. The custody of tangible items, such as automobiles in hotel parking lots, jewellery in bank lockers, packages in transit, and machinery left for repair, has been governed by bailment for centuries. However, when we invest our money in bitcoin exchanges or our life in cloud storage, the same law essentially goes silent. Traditional bailment is based on material "goods." Intangible assets are currently our most valuable assets.

For present purposes, "digital bailment" can be understood as the surrender of custody or effective control over digital assets which include data, electronic records, or tokens to another person for a particular purpose, coupled with that person's obligation to safeguard the asset and to redeliver it or reinstate access at the end of the arrangement.[2] Indian law, however, defines bailment in terms of "goods", and leading commentary and case law treat those goods as necessarily tangible and physically possessable.[3] As a result, users of cloud services, crypto-custodial platforms, and dematerialised securities currently stand outside the protective umbrella of Chapter IX of the Indian Contract Act, 1872 ("ICA").[4]

Comparative scholarship and statutory developments suggest that this is an artificial gap. Courts and regulators elsewhere have begun to treat certain digital assets as objects of property, and scholars have argued that bailment should evolve accordingly[5]. If Indian law refuses to

[1] Danielle D'Onfro, The New Bailments, 97 WASH. L. REV. 97, 97 (2022).
[2] See Michael J. O'Connor, Digital Bailments, 22 U. PA. J. CONST. L. 1271, 1273–79 (2020); D'Onfro, supra note 1, at 100–04; Rohan Karan Mehta, "Medieval" Law in "Modern" Tech: Bailment and Indian Crypto Exchanges, 17 NUJS L. REV. 1, 4–8 (2024).
[3] Indian Contract Act, 1872, § 148, No. 9, Acts of Parliament, 1872 (India); FREDERICK POLLOCK & DINSHAH FARDUNJI MULLA, THE INDIAN CONTRACT AND SPECIFIC RELIEF ACTS 613–14 (4th ed. 1919).
[4] See Mehta, supra note 2, at 6–9 (noting absence of clear bailment recognition for crypto custody); Dr. Santosh Kumar, Bailment in the Digital Era: Applicability of Traditional Principles to Virtual Goods and Cloud Storage, The Infinite, Vol. 2, Issue 7, at 1, 2-4 (July 2025).
[5] See Law Comm'n of Eng. & Wales, Digital Assets: Final Report, Law Com No. 412, paras. 1.9, 3.32–3.54 (2023); D'Onfro, supra note 1; O'Connor, supra note 2; Mehta, supra note 2.

recognise functionally identical relationships merely because the asset is intangible, users remain exposed not only in episodes of cloud failure or crypto-exchange collapse, but also in everyday frictions: data breaches, abrupt service shutdowns, and arbitrary suspensions. This paper examines the problem of digital bailment in Indian law, draws on doctrinal and comparative materials, and argues for a modest statutory reform: the introduction of a new section 148A creating "digital bailment" alongside classical bailment.

2. CLASSICAL BAILMENT UNDER THE INDIAN CONTRACTS ACT

The conventional definition of bailment is the assignment of personal property control, without title transfer, from a single individual to someone else for a specified reason.[6] The ICA codifies the law of bailment in Chapter IX, sections 148–171. Section 148 provides that the *"delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned…or otherwise disposed of according to the directions of the person delivering them"* is bailment.[7] The bailor is the person who provides the goods, and the bailee is the person who collects them.

Indian courts and commentators have distilled four elements:

1. Delivery of possession of goods by the bailor to the bailee;
2. Acceptance of such possession by the bailee;
3. A specific purpose (such as carriage, storage, repair, or safe keeping); and
4. A duty to return the items or handle them in any other way as directed by the bailor after that goal is achieved.[8]

Delivery in this sense is more than mere physical proximity. A transfer of custody is required; the bailee must take control of the items with the goal of possessing them. The act of possession itself blends hostility with factual control; it is the power to deal with goods to the exclusion of

[6] AVTAR SINGH, LAW OF CONTRACT & SPECIFIC RELIEF 671–73 (12th ed. 2016).
[7] Indian Contract Act, 1872, § 148, No. 9, Acts of Parliament, 1872 (India).
[8] See POLLOCK & MULLA, supra note 3, at 615–17; iPleaders, Contract of Bailment and Pledge, https://blog.ipleaders.in/contract-of-bailment/ (last visited Dec. 12, 2025).

others and the intention to exercise that power.[9]

Indian cases has emphasised that bailment is a substantive relationship rather than a formal contract label. In ***Taj Mahal Hotel v. United India Insurance Co. Ltd.***, a hotel that accepted vehicles into its custody for parking was held to be a bailee, owing a duty of reasonable care, even though there was no separate contract labelled as such.[10] In ***State of Bombay v. Memon Mahomed Haji Hasam***, the State, having seized trucks, was treated as a bailee and held responsible for their avoidable depreciation.[11] These decisions show that the core of bailment lies in delivery, control, and an obligation of care and return; the presence or absence of consideration or express terminology is incidental.

Bailment also serves important policy functions. It allocates the risk of loss between owner and custodian according to who controls the goods and is best placed to prevent harm; it reverses burdens of proof when goods are not redelivered; and it supplies background duties that parties cannot easily contract away.[12] If these are the reasons bailment exists, they apply with even greater force to the digital intermediaries who now hold our data and digital capital. Yet the doctrinal apparatus is confined to tangible goods.

3. THE CHALLENGE OF DIGITAL ASSETS

Bailment under the Indian Contract Act is not merely a definitional exercise about whether something can be called "goods". It is a legal relationship structured around specific incidents of custody, namely delivery, possession or control, and redelivery in accordance with the bailor's directions[13] That architecture was developed with physical chattels in mind, where custody is typically exclusive and return is a concrete act of restoration. The Contract Act also does not define "goods", and courts and commentators often look to the wider commercial law vocabulary for interpretive guidance, including the Sale of Goods Act, 1930, which defines "goods" broadly as movable property other than actionable claims and money, and expressly includes "stock and shares".[14] Yet the statutory breadth of "goods" under the Sale of Goods Act does not, by itself, make bailment doctrine workable for digital assets. The Sale of Goods

[9] See SINGH, supra note 6, at 673–76.
[10] *Taj Mahal Hotel v. United India Ins. Co. Ltd.*, (2020) 2 SCC 224 (India).
[11] *State of Bombay v. Memon Mahomed Haji Hasam*, AIR 1967 SC 1885 (India).
[12] See D'Onfro, supra note 1, at 102–07; POLLOCK & MULLA, supra note 3, at 625–26.
[13] Indian Contract Act, 1872, § 148, No. 9 of 1872 (India).
[14] Sale of Goods Act, 1930, § 2(7), No. 3 of 1930 (India).

Act is primarily concerned with sale and transferability, whereas bailment doctrine presupposes a custody capable of being delivered, held, and returned in a legally intelligible manner.[15]

The application of bailment-related rules reveals this discrepancy in judicial reasoning. The Chhattisgarh High Court interpreted Section 171 (banker's lien over "goods bailed") in ***Dr. Achinto Chakraborty v. Chairman & Managing Director, State Bank of India***, by arguing that "any goods" requires a tangible, movable item and used the Sale of Goods Act definition to exclude money and similar claims.[16] The significance of *Achinto* is less that it conclusively settles the conceptual limits of bailment, and more that it reflects a judicial tendency to read "goods" through a possession oriented lens, consistent with the internal logic of Chapter IX.[17] That logic sits uneasily with digital assets, where "custody" is typically mediated through credentials, keys, and permissions, where the "same" asset may be copied rather than moved, and where return often takes the form of restored access rather than physical redelivery.

A practical illustration of the mismatch appears in disputes where a service provider holds a client's business data and then a payment or termination fight breaks out. In ***Your Response Ltd v. Datateam Business Media Ltd***, the database manager effectively locked the customer out of its own electronic database while outstanding fees were contested, trying to treat its control over access as equivalent to possession so it could assert a common law lien.[18] The Court of Appeal rejected the move, holding that a possessory lien does not attach to intangible electronic data, and treated the withholding of access as a contractual wrong rather than a possession-based security right.[19] The consequence, in real terms, is a governance vacuum on both sides: the customer cannot rely on a stable proprietary rule of "return what was delivered" akin to bailment redelivery, and the provider cannot rely on a possession based lien to secure payment. The parties are pushed back into contract drafting and litigation over implied terms and termination rights, which is exactly the pattern your paper targets in cloud and platform custody. The deeper reason is the same boundary emphasised in ***OBG Ltd v. Allan***, conversion and related possessory remedies are historically structured around interferences with chattels, not purely intangible claims, and the law resists treating "control" over an intangible as

[15] See Sale of Goods Act, 1930, pmbl. & §§ 4–8 (focusing on contracts of sale and transfer of property in goods).
[16] *Dr. Achinto Chakraborty v. Chairman & Managing Director, State Bank of India*, 2017 SCC OnLine Chh 1589, ¶ 13 (India).
[17] See id. ¶¶ 13–16 (construing "goods" in § 171 by reference to tangible movables and the Sale of Goods Act).
[18] *Your Response Ltd v. Datateam Bus. Media Ltd*, [2014] EWCA (Civ) 281, [2015] QB 41 (Eng.).
[19] Id.; see also *Your Response Ltd v Datateam Business Media Ltd – WLR Daily*, [2014] WLR (D) 131 (Mar. 14, 2014) (Eng.) (holding that a common law lien is not available over an electronic database because it is not property susceptible of possession).

"possession" that triggers strict, property style remedies.[20] A close Indian analogue is the Delhi High Court's interim intervention in ***Digi Yatra Foundation v. Data Evolve Solutions Pvt Ltd.***[21] Faced with a continuity risk in a live digital infrastructure and concerns over passenger data, the Court restrained the service provider from accessing or transferring data and, crucially, ordered a court-supervised handover of the practical indicia of control: server and application access, key credentials (including AWS), app store controls, domain certificates, and relevant source code. The dispute therefore illustrates the same doctrinal mismatch as *Datateam*: what must be "returned" in digital custody is typically operational control and access, not a tangible object capable of possessory redelivery.

For similar reasons, analogies drawn from other doctrinal contexts do not seamlessly translate into bailment protection. In ***Tata Consultancy Services v. State of Andhra Pradesh***, the Supreme Court treated software as "goods" for a taxing statute because it was capable of abstraction, use, transmission, and commercial sale.[22] That functional classification may support arguments, such as Rohan Mehta's, that cryptocurrencies ought to be treated as goods in appropriate contexts.[23] However, the tax statute inquiry in *TCS* does not answer the bailment specific questions that determine liability in digital custody, such as what constitutes delivery, how possession or control is established, what redelivery means where replication is possible, and how risks of commingling or unilateral access suspension should be allocated. Conversely, where Parliament has supplied asset specific custody architecture, courts have been willing to treat electronic records as objects of proprietary control. The Depositories Act, 1996 makes dematerialised securities legally operable through book entries and regulated intermediaries,[24] and in ***PTC India Financial Services Ltd v. Venkateswarlu Kari***, the Supreme Court treated such electronic holdings as effective collateral within that statutory framework.[25] The broader

[20] *OBG Ltd v. Allan*, [2007] UKHL 21, [2008] 1 AC 1, [2007] 2 WLR 920 (appeal taken from [2005] EWCA (Civ) 106, [2005] QB 762) (UKHL) (confirming that conversion is confined to tangible property and does not extend to purely intangible contractual rights).
[21] *Digi Yatra Found. v. Data Evolve Solutions Pvt. Ltd.*, CS(COMM) 265/2024 (Del. High Ct. Mar. 28, 2024) (order) (granting an ad-interim injunction restraining use or transfer of passenger data and directing a supervised transition and handover of platform, including IT server access and app operation access), discussed in Internet Freedom Found., *DigiYatra: Who Owns Your Data?* (Nov. 18, 2025), https://internetfreedom.in/digiyatra-who-owns-your-data/.
[22] *Tata Consultancy Servs. v. State of Andhra Pradesh*, (2005) 1 SCC 308, ¶¶ 23–27 (India).
[23] Rohan Karan Mehta, "Medieval" Law in "Modern" Tech: Bailment and Indian Crypto Exchanges, 17 NUJS L. REV. 1, 10–18 (2024).
[24] Depositories Act, 1996, §§ 7–10, No. 22 of 1996 (India).
[25] *PTC India Fin. Servs. Ltd. v. Venkateswarlu Kari*, 2022 SCC OnLine SC 608, ¶¶ 32–37 (India).

lesson is that digital custody becomes legally tractable when the law specifies the incidents of control and transfer. Chapter IX, in its present form, does not.

Importantly, the difficulty cannot be reduced to a simple tangible versus intangible divide. For the limited purpose of sale and commercial transfer, Parliament has already adopted a functionally expansive conception of "goods". Section 2(7) of the Sale of Goods Act, 1930 expressly includes "stock and shares" within the definition of goods.[26] That statutory inclusion, however, does not automatically carry over into Chapter IX of the Contract Act, because the Sale of Goods Act is principally concerned with transferability and marketability, whereas bailment presupposes a custody relationship capable of delivery, holding, and redelivery.[27] The persistence of a possession-oriented approach in bailment-linked reasoning is illustrated by *Dr. Achinto Chakraborty*, where "goods bailed" under Section 171 is approached as presupposing a tangible movable article.[28] The consequence is an asymmetry: while shares are readily treated as objects of sale, general bailment doctrine has not been equivalently adapted to govern custody and return of modern, non-physical holdings, which instead are managed through asset-specific regimes such as the Depositories Act, as reflected in *PTC India*.[29]

4. DOCTRINAL STRAINS: TANGIBILITY, DUPLICATION AND PRIVACY

Attempting to force digital assets into the mould of classical bailment generates at least three doctrinal strains.

The **Tangibility-Possession** issue comes first. Bailment requires something that can be physically delivered and possessed. Digital assets are infinitely repeatable and intangible. In his writing about Fourth Amendment rights, Michael O'Connor makes the case that "possession" can be interpreted in terms of control: the person who has the "better key," or the actual ability to bar others from accessing a digital resource, is in possession of it, whether or not it is physical. According to this perspective, a cloud provider or cryptocurrency custodian

[26] Sale of Goods Act, 1930, § 2(7), No. 3 of 1930 (India) (defining "goods" to include "every kind of movable property other than actionable claims and money; and includes stock and shares…").
[27] See id. pmbl., §§ 4–8 (framing the Act around contracts of sale and transfer of property in goods, rather than custody).
[28] *Dr. Achinto Chakraborty v. Chairman & Managing Director, State Bank of India*, 2017 SCC OnLine Chh 1589, ¶ 13 (India) (reading "goods" in § 171 as referring to tangible movables and excluding money and similar claims).
[29] Depositories Act, 1996, §§ 7–10, No. 22 of 1996 (India); *PTC India Fin. Servs. Ltd. v. Venkateswarlu Kari*, 2022 SCC OnLine SC 608, ¶¶ 32–37 (India) (treating dematerialised securities held through a depository framework as effective collateral within the statutory scheme).

that has the authority to grant, suspend, or revoke access to customers' assets is in constructive possession and may, in theory, be a bailee.

Secondly, there is the **Duplication and Redelivery** problem. Traditional bailment assumes that the bailee holds a particular physical possession that must be returned. With data, there may be multiple identical copies across servers and backups; "return" often means restoring access rather than handing back a unique object. D'Onfro's functionalist account of bailment suggests that this should not be fatal: if the point of bailment is to allocate risk and ensure redelivery in some meaningful sense, giving back access to the same information may be enough.[30] But the law must explicitly say so, rather than silently relying on analogies to boxes and bales.

Thirdly, there is the **Privacy and Misuse** problem. Classical bailment assumes that the bailee may not use the goods except for the purposes authorised by the bailor. In the digital world, custodians routinely mine, profile, and monetise user data for their own purposes. William LaRosa proposes using bailment concepts as a baseline standard of care for data security and as a way to limit a custodian's ability to exploit data.[31] Miles Skedvold's survey of U.S. data-breach litigation, however, shows that courts struggle to fit such cases into traditional tort or contract categories and are often reluctant to impose robust duties.[32] Without clear recognition of bailment, users have to fight uphill battles to obtain redress.

In India, these strains are partially addressed, but not resolved, by the Digital Personal Data Protection Act, 2023. The Act deals with the handling of personal data through notice, consent, purpose limitation, and security safeguards; it creates a system of "data fiduciaries" and grants data principals rights to seek access, correction, and erasure. It also empowers a Data Protection Board to levy penalties for non-compliance.[33] What it does not do is conceptualise personal data as the object of property rights, allocate proprietary risk between user and custodian. Its remedial architecture is primarily regulatory and administrative. For many digital relationships, such as cloud storage of non-personal business data or custody of crypto tokens, the DPDP Act

[30] D'Onfro, supra note 1, at 105–08.
[31] William LaRosa, New Legal Problems, Old Legal Solutions: Bailment Theory as the Baseline Data Security Standard of Care Owed to an Opponent's Data in Discovery, 167 U. PA. L. REV. 775, 775–80 (2019).
[32] Miles C. Skedvold, A Duty to Safeguard: Data Breach Litigation Through a Quasi-Bailment Lens, 25 J. INTELL. PROP. L. 201, 201–03 (2018).
[33] Digital Personal Data Protection Act, 2023, §§ 2, 8–10, 15–19, No. 22, Acts of Parliament, 2023 (India).

does not apply at all.[34]

The upshot is a patchy regime: law carefully governs the carriage and storage of tangible goods but leaves the custody of digital assets to a mixture of adhesion contracts and incomplete regulation.[35]

5. EXISTING FRAMEWORKS: CONTRACT, CONSUMER PROTECTION, DATA PROTECTION AND TRUST LAW

One might ask whether contract, consumer law, data protection, and trust law, taken together, already do the work that digital bailment is supposed to do.

A. Contract

Terms of service govern how each digital custodian conducts business. These are nearly invariably unilateral standard-form contracts that are offered on a take-it-or-leave-it basis. They usually state that "you retain ownership of your content," but they also disclaim responsibility for loss, service suspension, and, in certain situations, unauthorised access.[36] It is unrealistic to expect these terms to set a meaningful baseline of custodian responsibility. Their function is to minimise exposure, not to articulate a duty of care or a clear allocation of risk.[37]

B. Consumer protection and its limits

The Consumer Protection Act, 2019, together with the rules on e-commerce and the establishment of the Central Consumer Protection Authority (CCPA), undoubtedly offers users some protection vis-à-vis digital custodians. Cloud providers, exchanges and platform operators are "service providers"; unfair contract terms, misleading representations about security, and defective services can trigger complaints before consumer fora or regulatory action by the CCPA.[38] In theory, a user who loses access to their data or tokens could seek compensation on the ground of "deficiency in service", and consumer regulators can order

[34] Id. § 3; see also PRS Legislative Research, Digital Personal Data Protection Bill, 2023, https://prsindia.org/billtrack/the-digital-personal-data-protection-bill-2023 (last visited Dec. 12, 2025).
[35] See Kumar, supra note 4, at 6–8.
[36] See D'Onfro, supra note 1, at 121–25 (analysing cloud-service contracts and ownership disclaimers).
[37] See O'Connor, supra note 2, at 1276–77.
[38] Consumer Protection Act, 2019, §§ 2(42), 2(47), 17–21, No. 35, Acts of Parliament, 2019 (India); Consumer Protection (E-Commerce) Rules, 2020, rr. 3–6, G.S.R. 462(E) (July 23, 2020) (India).

discontinuance of unfair practices and impose penalties.

Yet consumer law confronts two structural constraints in this context. First, it is individualised and reactive. Relief depends on users filing complaints *ex post*, often for relatively modest sums, in fora that are already overburdened. Consumer law does not, by itself, impose a baseline allocation of proprietary risk or require custodians to structure their affairs in a way that keeps user assets off the balance sheet. Digital bailment, by contrast, would operate at this deeper level: it would define *ex ante* who bears the risk of loss, what standard of care applies, and whether user assets remain the bailor's property or form part of the bailee's estate.

C. Data protection

The DPDP Act gives data principals restricted rights and places significant duties on data custodians.[39] Although it is an essential privacy tool, it is not intended to address issues like whether a custodian must separate user data from its own assets or whether a user's assets should be on. Additionally, it does not include all types of digital assets; certain non-personal digital resources and anonymised data are excluded.[40] A digital-bailment framework would therefore complement, rather than duplicate, data-protection law by supplying a law of obligations oriented around control, return, and proprietary interests.

A hard test for any "contract is enough" thesis is platform distress, where customer holdings are technologically segregated (separate wallets, separate client IDs) yet economically treated as a pool at the moment of failure. The Madras High Court's decision in ***Rhutikumari v. Zanmai Labs Pvt. Ltd.*** (WazirX) is a clean Indian illustration.[41] The applicant's XRP holdings were reflected in a designated wallet on the exchange, but the platform's operational freeze, coupled with the pendency of a scheme of arrangement before the Singapore High Court, created a realistic prospect that the customer's "asset" would be recharacterized as a distributable claim within a restructuring process rather than something returnable as of right. The Court records the applicant's case that the exchange holds the coins as custodian and in trust, and it treats the proposed "socialisation of losses" as a non-trivial governance move not obviously grounded in the bilateral contractual framework.[42] The case shows Indian courts

[39] Digital Personal Data Protection Act, 2023, No. 22 of 2023, §§ 4–10, 11–15 (India).
[40] Id. § 3.
[41] *Rhutikumari v. Zanmai Labs Pvt. Ltd., O.A. No. 194 of 2025, 2025 MHC 2437 (Madras High Ct. Oct. 25, 2025).*
[42] See Acuity Law, The Madras High Court's WazirX Ruling: Perspectives Beyond Cryptocurrency as "Property" ¶¶ 20–22 (Dec.16,2025),https://acuitylaw.co.in/the-madras-high-courts-wazirx-ruling-perspectives-beyond-

already being asked to supply that architecture through interim, proprietary-style restraints, but without a general statutory default, outcomes remain heavily contingent on asset-specific reasoning, forum posture, and the platform's internal custody design.[43]

D. Trust law

Trust law is a classic way of creating property-like rights: beneficiaries enjoy equitable proprietary interests enforceable against third parties.[44] The problem is not that trusts are non-proprietary; it is that they do not arise automatically in ordinary platform relationships. Standard cloud or exchange terms rarely manifest a clear intention to create a trust or to segregate client assets off the custodian's balance sheet.[45]Asking courts to retrofit trusts into these relationships would require stretching the doctrine well beyond its conventional limits and might upset settled distinctions between contractual and fiduciary obligations.[46]

A distinct question would be addressed by a digital-bailment structure. It would ask whether, as a matter of statute, the combination of delivery, control, and an obligation to return or restore access to digital assets could attract bailment-type duties rather than whether a platform has willingly taken on the position of trustee. It would provide background proprietary protection without replacing consumer, trust, or data protection laws; they would continue to function in tandem with it.[47]

6. LEGISLATIVE DESIGN: TOWARDS SECTION 148A

If digital bailment is desirable, how should the law achieve it? Broadly, there are two routes.

The first is interpretive: courts could stretch the word "goods" in section 148 to cover digital

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cryptocurrency-as-property/ (last visited Dec. 21, 2025) (summarising the petitioner's case that her XRP holdings were held in trust by Zanmai and criticising the proposed "socialisation of losses" under the Singapore scheme); and LexCounsel, The High Court of Madras Recognises Crypto Assets as Property; Grants Interim Protection to Investor in WazirX Dispute ¶¶ 70–74 (Dec. 4, 2025), https://lexcounsel.in/the-high-court-of-madras-recognises-crypto-assets-as-property-grants-interim-protection-to-investor-in-wazirx-dispute/ (last visited Dec. 21, 2025) (noting the Court's reliance on Zanmai Labs Pvt. Ltd. v. Bitcipher Labs LLP and fiduciary obligations of exchanges).

[43] See generally Acuity Law, *The Madras High Court's WazirX Ruling: Perspectives Beyond Cryptocurrency as "Property"* ¶¶ 85–103 (Dec. 16, 2025), https://acuitylaw.com/the-madras-high-courts-wazirx-ruling-perspectives-beyond-cryptocurrency-as-property/ (last visited Dec. 21, 2025).

[44] See generally GRAHAM VIRGO, THE PRINCIPLES OF EQUITY & TRUSTS 3–6 (4th ed. 2020).

[45] See Mehta, supra note 2, at 19–23.

[46] See Law Comm'n of Eng. & Wales, supra note 5, paras. 7.23–7.26.

[47] See D'Onfro, supra note 1, at 135–38.

assets, relying by analogy on decisions like *TCS*.[48] Formal continuity is a benefit of this route, but it runs the danger of obscuring significant differences. For instance, the UK Law Commission recently recommended that some digital assets be recognised as a separate type of personal property ("third category things") rather than folding them into "things in possession" or "things in action" and thereby unsettling established doctrines premised on tangibility.[49] Redefining "goods" in the Contract Act to include intangibles would similarly put pressure on the concepts of possession and delivery that underlie Chapter IX.

The second route is legislative: Parliament could insert a new section 148A creating "digital bailment" alongside classical bailment and define "digital assets" for that limited purpose. This article favours the latter approach for two reasons. First, Indian private law has historically been statute-led; a clear textual amendment would accelerate doctrinal uptake and reduce uncertainty.[50] Secondly, a dedicated provision would signal that digital custody is not only a regulatory problem but also a core contract-and-property issue. A possible formulation is as follows:

Section 148A – Digital Bailment

(1) Where any person (the "digital bailor") delivers any digital asset to another person (the "digital bailee") for a particular purpose, and the digital bailee expressly or impliedly undertakes to hold, safeguard, process, or otherwise deal with such digital asset and to return it or restore access to it upon fulfilment of that purpose, a relationship of digital bailment is created.

(2) For the purposes of this Chapter, "digital asset" means any information, record, token, or other resource represented or stored in electronic form in respect of which the bailor has a legally protected entitlement, and which is reasonably identifiable and capable of return, export, or restoration of access, and which is delivered by the bailor by conferring exclusive or superior control through technological means.

[48] See Mehta, supra note 2, at 24–27 (arguing for the extension of "goods" to crypto).
[49] Law Comm'n of Eng. & Wales, supra note 5, paras. 3.32-3.54; see also Property (Digital Assets etc) Act 2025, c. 29 (U.K.) (confirming that a thing is not denied the status of property merely because it is neither a thing in possession nor a thing in action).
[50] See generally POLLOCK & MULLA, supra note 3, at 1–5 (noting codified nature of Indian contract law).

(3) For the removal of doubts, it is hereby declared that the expression 'digital asset' for the purposes of this section shall not include

a) mere contractual right to receive or use any service;

b) access to, or use of, any software functionality, platform, or application as such; or

c) records, logs, metadata, or other internal operational data generated and retained by the digital bailee solely for its own business or compliance purposes.

unless the arrangement, having regard to its substance, is principally one of custody or safekeeping for the benefit of the digital bailor and is coupled with an undertaking to return the digital asset or to restore access thereto in accordance with sub-section (1).

(4) Unless otherwise agreed, a digital bailee shall take reasonable care of the digital assets bailed, having regard to the nature of the assets, the risks of unauthorised access or loss, and the state of technology, and shall, upon the purpose of the bailment being fulfilled, return the digital assets or restore access to them to the digital bailor or deal with them according to the digital bailor's directions.

(5) Where, in the course of a digital bailment, the digital bailee has lawfully expended labour or skill in relation to the bailed digital assets and remuneration in respect of such labour or skill is due, the digital bailee may, subject to contract and any other law for the time being in force, withhold or suspend access to, or transfer of, such digital assets until such remuneration is paid; such withholding or suspension shall, for the purposes of this Chapter, be treated as a lien.

(6) Save as otherwise provided in this section, the provisions of this Chapter shall apply, mutatis mutandis, to digital bailment.

Explanation: *For the purposes of this section, "delivery" of a digital asset includes the conferment of exclusive or superior control, including by transfer of private keys, credentials, administrative access, or unilateral permissions enabling the bailee to exclude access, freeze,*

restore, or transfer the asset.

Sub-section (2) deliberately avoids an exhaustive technical definition of digital assets. It focuses on association with persons and the possibility of exclusive control through technological means, leaving room for courts to decide, over time, which assets qualify.[51] Sub-section (3) adapts the classical duty of reasonable care to the digital context, explicitly referring to cybersecurity risks. Sub-section (4) translates the possessory lien into the language of constructive possession and control: a digital bailee "retains" the asset by suspending access or transfer, rather than by physically holding a chattel.[52] The lien is confined to situations where the bailee has actually expended labour or skill and is subject to contract and other law, preventing overbroad platform self-help.

7. IMPLICATIONS OF THIS AMENDMENT

A. Everyday consequences of digital bailment

Recognising a bailment relationship would also have day-to-day consequences in at least three kinds of disputes.

First, **data breaches and loss or corruption of data**. Under classical bailment, once the bailor proves delivery and the bailee's failure to redeliver, the burden shifts to the bailee to show that the loss occurred without negligence.[53] Translating this logic to digital custody would mean that where a user establishes that data or tokens were entrusted and can no longer be accessed as agreed, the custodian must affirmatively explain the loss and show that it took reasonable security measures. This is more demanding than the current patchwork of contract and tort claims, where users must often reconstruct complex technical failures and prove negligence from the outside.[54]

Secondly, **service outages and platform shutdowns**. When a custodian discontinues a service, migrates infrastructure, or undergoes corporate restructuring, users may suddenly find access curtailed or subject to onerous new conditions. A law of digital bailment would make clear that the bailee's primary obligation is to return the asset or restore access on terms comparable to

[51] Cf. Law Comm'n of Eng. & Wales, supra note 5, para. 1.3 (defining "digital asset" broadly).
[52] See O'Connor, supra note 2, at 1280–82.
[53] See SINGH, supra note 6, at 683–86; POLLOCK & MULLA, supra note 3, at 625-26.
[54] See LaRosa, supra note 31, at 777–80; Skedvold, supra note 32, at 204–09.

those originally agreed, subject only to reasonable variation and unavoidable technical constraints. It would also clarify the measure of damages where restoration is no longer possible, analogous to compensation for non-return of goods in classical bailment.

Thirdly, **fee disputes and platform self-help**. In practice, digital custodians sometimes suspend user accounts or freeze withdrawals over disputed charges or alleged breaches. Sub-section 148A(4), by recasting lien as a limited right to withhold access pending payment for labour or skill actually expended, would discipline such practices. It would authorise a form of "digital lien" grounded in constructive control, but confine it to situations where the custodian has genuinely added value (for example, through bespoke processing or maintenance) and only until lawful charges are paid.[55] This prevents custodians from invoking vague contractual powers to lock users out entirely, while still recognising their legitimate interest in being paid.

B. Regulatory context

A digital-bailment framework would not operate in a vacuum. It would sit alongside the Information Technology Act and its intermediary rules, the DPDP Act, sectoral financial regulation, and securities law. The point is not to displace these regimes but to supply a general law of obligations and proprietary interests that they must respect. For example, securities regulation already treats depositories and participants as holding dematerialised securities for investors; digital bailment would generalise that intuition to a broader set of custodial relationships.[56] Likewise, data-protection law would continue to regulate processing of personal data, while bailment would govern the underlying custodial relationship and risk allocation. Consumer-protection law would remain available as an individual-level remedy but operating against a backdrop of clearly defined custodial duties.

C. Contractual Modification and Mandatory Minima

It would be overstated to suggest that bailment duties are incapable of contractual modification. Bailment in practice frequently operates alongside contract, and custodians often seek to limit responsibility through standard form terms. The doctrinal and normative case for recognising a bailment like framework for digital custody is therefore not that it renders contract irrelevant,

[55] See O'Connor, supra note 2, at 1280–84.
[56] See Depositories Act, 1996, §§ 7–10; SEBI (Depositories and Participants) Regulations, 2018, regs. 26–29 (India).

but that it supplies stable default duties and burden allocation rules that should not be neutralised by boilerplate disclaimers. In particular, sweeping exclusions that undermine the core incidents of custody, reasonable care, and redelivery should be treated with scepticism in consumer and asymmetric bargaining contexts, and should not be permitted to excuse gross negligence, wilful misconduct, or conduct that defeats the essential purpose of the custodial arrangement. A statutory model of electronic bailment can therefore operate as a set of minimum standards, leaving room for commercial tailoring while preventing contractual terms from hollowing out the protective content of custody.

8. CONCLUSION

Indian bailment law was crafted for a world of tangible chattels. Its contours are clearest when we think of packages on lorries and trunks in warehouses. But commerce and daily life have migrated into the virtual realm. Individuals and firms now rely on digital custodians for safekeeping of assets that are no less valuable for being intangible. Leaving these relationships to a mix of adhesion contracts, *ex post* consumer complaints, and sectoral regulation is no longer adequate.[57]

Inserting a targeted provision on digital bailment into the Contract Act would modernise bailment without distorting its foundations. It would close a real gap in the law, not only in spectacular failures such as exchange collapses, but also in the ordinary frictions of digital life, data breaches, sudden shutdowns, and fee disputes, where users today rely on fragile combinations of contract, tort and regulatory discretion. It would balance consumer protection and contractual freedom, and align Indian doctrine with comparative developments that recognise digital assets as objects of property.[58] Above all, it would honour Roscoe Pound's reminder that "law must be stable, but it must not stand still."[59] Classical concepts such as bailment can and should evolve to meet the realities of virtual custodianship.

[57] See Kumar, supra note 4, at 6–8.
[58] See Law Comm'n of Eng. & Wales, supra note 5; O'Connor, supra note 2; D'Onfro, supra note 1.
[59] ROSCOE POUND, AN INTRODUCTION TO THE PHILOSOPHY OF LAW 1 (1922).