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## Critical Appraisal of Bailor and Bailee

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*A bailment, according to Section 148 of the Indian Contract Act of 1872, is a contract in which one person transfers things to another person for some purpose. Different portions of this Chapter IX specify the bailee's duty with regard to the commodities bailed to him. The change of possession, whether physical or constructive, is the most important aspect of bailment. The person who delivers the goods is known as the Bailor, and the person who receives the goods is known as the Bailee. The article focuses on bailment contracts as a specific type of contract, including their definition, basics, and the rights and duties of the parties concerned.*

**Keywords:** *bailment, bailor, bailee, Indian contract act, delivery.*

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### INTRODUCTION

**Bailment** is a common occurrence in everyday life. Bailment implies a relationship in which one individual's very own property is briefly held by someone else. The responsibility for items or things is with one individual and the belonging is with someone else. Bailment is accordingly a significant subject of public interest. If the supplied item is not to be specifically returned or accounted for, there is no bailment<sup>1</sup>. The term 'bailment' is derived from the French word

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<sup>1</sup> *Gangaram v Crown* (1943), AIR Nag 436

'ballier,' which means 'to deliver.' The Contract of Bailment is characterized under **Chapter IX of the Indian Contract Act, 1872**, and is included between Articles 148 and 181<sup>2</sup>. **Section 148**<sup>3</sup> of the ICA lays down the definitions of the terms "bailment", "bailor" and "bailee" as follows:

"A bailment is 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." The agreement of bailment is very wide in its degree as it covers various occasions like conveying gold to a goldsmith for making a trimming, conveying pieces of clothing for dry-cleaning, conveying a telephone/watch, or some other article for fixing, and so on.

### CONDITIONS OF A VALID BAILMENT CONTRACT

**1. Delivery ought to be upon a contract** - The conveyance of items should be done for a specified reason and with the understanding that once the object is met, the products will be returned to the bailor. If an individual's goods are transported by someone else without a contract, no bailment will occur within the meaning of the definition. The agreement could be explicit or implied. In the case of *Ram Ghulam v Government of U.P.*<sup>4</sup>, the action got dismissed by the **Allahabad High Court** on the grounds that the commodities were not in their possession under the terms of a contract. Bailments can exist without the requirement for contracts as well<sup>5</sup>. They are said to exist sui generis, and that implies that openly collecting or guardianship of another person's property is a bailment of tracking down not obliged by any agreement.<sup>6</sup>

**2. Delivery of possession** - The conveyance to the bailee might be made by doing anything which places the merchandise in the ownership of the expected bailee or of any individual approved to hold them for his sake.<sup>7</sup> A change of possession is required in order to form a

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<sup>2</sup> Indian Contract Act, 1872, ss 148 and 181

<sup>3</sup> Indian Contract Act, 1872, s 148

<sup>4</sup> *Ram Ghulam v Government of U.P.* (1950), AIR All 206

<sup>5</sup> *Tilendra Nath Mahanta v United Bank Of India And Ors.* (2002) 111 CompCas 571 Gauhati

<sup>6</sup> *Building and Civil Engineering Holidays Scheme Management Ltd. v Post Office* (1964) EWCA Civ J1117-1

<sup>7</sup> *Kaliaperumal v Visalakshmi Achi* (1938), AIR Mad 32

bailment<sup>8</sup>. When it comes to delivery, the exclusive right of possession must be transferred.<sup>9</sup>This delivery of possession was held in the case of *Ultzen v Nicols*<sup>10</sup>.

**3. Delivery ought to be for some purpose** - The bailment of products is consistently for a few goals and given that the things are gotten back to the bailor, or discarded according to his/her command when the goal is satisfied. This bailment trademark separates it from numerous other comparative exchanges.

**4. Return of goods** - Once the goal has been met, the bailee will undoubtedly return the products or in any case arrange them as per the bearing of the individual conveyed them<sup>11</sup>. The essence of bailment is the bailee's obligation to return or dispose of the property in accordance with the guidelines<sup>12</sup>. Even after the objective has been fulfilled, directives for returning or disposing of the item may be given.<sup>13</sup>Even though the bailment's terms are silent on return, an implied contract exists in a bailment that the objects will be returned within a reasonable period of time once the purpose has been achieved.<sup>14</sup>

## DUTIES OF A BAILOR

The following are Bailor's responsibilities:

### ***1. Bailor's Responsibility to disclose Material Flaws:***

**Section 150 of the Indian Contract Act** says - *"The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware, and which materially interfere with the use of them, or expose the bailee to extraordinary risks; and, if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults."*

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<sup>8</sup> *Canara Industrial and Banking Syndicate Bank Ltd. v V. Romachandra Ganopalhy Prabhu* (1968), AIR Mys 133

<sup>9</sup> *Cruttons Ltd. v Midland Silicones Ltd.*, (1962) AC 446

<sup>10</sup> *Ultzen v Nicols* [1894] 1 Q.B. 92

<sup>11</sup> *Jagdish Chandra Trikha v Punjab National Bank* (1997) VIAD Delhi 753

<sup>12</sup> *State of Maharashtra v Britannia Biscuits Co. Ltd.*, (1994) 5 SCALE 44

<sup>13</sup> *Teckchand v Mahadeo* (1922), AIR Nag 127

<sup>14</sup> *Chaturgun v Shahzady* (1930), AIR Oudh 395

The shortcomings which are expected to be unveiled are (I) those which really influence the utilization of the products bailed, or (ii) which might open the bailee to uncommon dangers. Inability to unveil such deformities involves a risk to pay harm. Such harms probably emerged straightforwardly from such blames. There are 2 kinds of bailment:

**Gratuitous Bailor** - Somebody who loans his articles or products with next to no charge, is known as a "needless bailor". The bailor is only liable for calamities that arise as a result of undisclosed risks.

**Bailor for Reward** - A bailor for reward is someone who loans his property for hire in exchange for monetary compensation. He would be responsible whether or not or not he knew about the blunder. He is benefitting from his occupation, so it is his obligation to guarantee that the products he gives are sensibly protected to the inspiration of bailment.

The lender is not liable for any deficiencies in the lent objects that he is unaware of in the case of gratuitous bailment.<sup>15</sup>In the landmark case of *Blakemore v Bristol and Exster Ry. Co.*<sup>16</sup>, it was established that the lender has a duty to the borrower not to conceal from him any faults known to the lender that may make the loan risky or unprofitable to him. For the case of Bailor for Reward, the landmark case of *Hyman & Wife v Nye and Sons*<sup>17</sup> can be referred to. The court determined that the respondent would be required since it was his job to provide a carriage fit for the purpose for which it was hired as care and expertise could deliver it.

## 2. *Duty to bear Expenses:*

**Section 158 of the Indian Contract Act** says: "*Where, by the conditions of the bailment, the goods are to be kept or to be carried or to have work done upon them by the bailee for the bailor, and the bailee is to receive no remuneration, the bailor shall repay to the bailee the necessary expenses incurred by him for the purpose of the bailment*". This part is expected to set out the obligation of a bailor in regard to a gratuitous bailee. In this manner, the legislature needed to determine the classes of bailment, for

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<sup>15</sup> *Mac Carthy v Younge* [1861] 6 H & N 329

<sup>16</sup> *Blakemore v Bristol and Exster Ry. Co.*, [1858] 8 E & B 1035, 1051

<sup>17</sup> *Hyman & Wife v Nye and Sons* [1881] LR 6 QBD 685

example, for (I) authority, capacity, warehousing, (ii) for transport by the individual, rail line, air, ocean, engine vehicle, and so on and (iii) for work and labour to be done, for example, fix work, washing, pressing, designing, watching, checking.

### ***3. Duty to Compensate the Bailee***

**Section 159<sup>18</sup> of the Indian Contract Act** says:

“The lender of a thing for use may at any time require its return, if the loan was gratuitous, even though he lent it for a specified time or purpose. But, if, on the faith of such loan made for a specified time or purpose, the borrower has acted in such a manner that the return of the thing lent before the time agreed upon would cause him loss exceeding the benefit actually derived by him from the loan, the lender must, if he compels the return, indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived.”

The rights and responsibilities of a gratuitous bailor are outlined in this section. Similarly how the bailee may be gratuitous, the bailor may be gratuitous as well. The article's gratuitous bailor or lender should normally follow the terms and conditions of bailment or gratuitous loan, but if he needs the article back sooner, he might request it. If he does so, he must compensate the bailee for any loss incurred by the prior demand. Under **Section 164<sup>19</sup>**, the bailee may likewise sue the bailor for misfortunes on the off chance that the bailor unyieldingly bails products with a defective title.

### ***4. Duty to Return Goods***

**Section 160<sup>20</sup> of the Indian Contract Act** says: “*It is the duty of the bailee to return, or deliver according to the bailor’s directions, the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished.*”

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<sup>18</sup> Indian Contract Act, 1872, s 159

<sup>19</sup> Indian Contract Act, 1872, s 164

<sup>20</sup> Indian Contract Act, 1872, s 160

When the ideal chance for which they were bailed has expired, or the reason for which they were bailed has been achieved, it is the bailee's obligation to return, or transfer as per the bailor's requirements, the merchandise bailed, without request. This part sets out the main obligation of the bailee. Bailor can practice his entitlement to get back the products either straightforwardly or can give headings to be returned for example in the event that the bailor had kept the merchandise with the warehouseman and got a distribution center receipt and in the event that he underwrites over the such receipt to a bank for getting the credit, the bank would be qualified for guarantee back the products as a transferee of the receipt<sup>21</sup>.

## DUTIES OF A BAILEE

### *1. Duty to take Reasonable Care*

**Section 151<sup>22</sup> of the Indian Contract Act says:** *"In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quantity, and value as the goods bailed."*

A gratuitous bailee is required to treat the property entrusted to him with the same care as a reasonable, wise, and careful person would treat identical goods in his own home<sup>23</sup>. In reality, an average bailee for reward does not appear to be bound to anything more.<sup>24</sup> Liability is incurred under this section for negligence<sup>25</sup> and the level of care the bailee is expected to provide is determined on a case-by-case basis.<sup>26</sup> The type, quality, and quantity of the commodities bailed, as well as the purpose of the bailment and reasonably available safekeeping facilities, will all be taken into account when determining whether enough care was taken.<sup>27</sup>

Even if the orders were made and accepted in such a way that a prior special contract was formed, the bailee's obligation to deal with the goods in accordance with the bailor's instructions

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<sup>21</sup> *Central Warehousing Corporation v Central Bank of India* (1972) LNIND AP 23

<sup>22</sup> Indian Contract Act, 1872, s 151

<sup>23</sup> *Giblin v McMullen* [1869] LR 2 PC 317, 339

<sup>24</sup> *Searle v Laverick* [1874] LR 9 QB 122

<sup>25</sup> *Union of India v Amar Singh* (1960) SCR (2) 75

<sup>26</sup> *Shiv Nath Rai Ram Dhari v Union of India* (1965), AIR 1666

<sup>27</sup> *Gopal Singh v Punjab National Bank* (1976), AIR Del 115

is ancillary to the bailment contract and arises upon delivery of the goods.<sup>28</sup> In the historic case of *Blount v War Office*<sup>29</sup>, the British War Office requisitioned the plaintiff's home. The plaintiff was permitted to keep certain items in the house secured safely. Some of the soldiers stationed there broke inside the room and stole several silver plates since they were not properly controlled. The Ministry of War was found to be at fault. Furthermore, Bailee's responsibilities include not only the obligation to make all reasonable steps to minimise risks but also the obligation to take all relevant measures to safeguard the commodities if such risks occur<sup>30</sup>.

## ***2. Duty not to make any Unauthorized Use***

**Section 154<sup>31</sup> of the Indian Contract Act** says: “*If the bailee makes any use of the goods bailed, which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.*”

The bailee may only use the items for the purposes for which they were bailed. If the commodities were used improperly, the bailee would be fully liable for any loss or damage to the products. Even a natural disaster or an unavoidable occurrence could not be utilised as a defence. In some situations, the bailee may use the goods for preservation, as was held in *Fothergill v Monarch Airlines Ltd.*<sup>32</sup> A vehicle was sent for repair to a workshop in *Alias v EM. Patil.*<sup>33</sup>, and the business owner allowed the vehicle to be driven by an unlicensed employee, resulting in the death of one person in an accident. The bailee was ordered to compensate both the deceased and the vehicle owner because the use of the vehicle was deemed illegal, and liability was ruled absolute. The insurer also reimbursed the deceased and obtained compensation from the owner of the vehicle.

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<sup>28</sup> *Streeter v Horlock* [1822] 1 Bing 34

<sup>29</sup> *Blount v War Office* [1953] IWL 736

<sup>30</sup> *Lakhichand Ramchand v G.I.P. Rly. Co.*, (1912) 14 Bom. LR 165

<sup>31</sup> Indian Contract Act, 1872, s 154

<sup>32</sup> *Fothergill v Monarch Airlines Ltd.*, (1980) 2 All ER 696, p 702

<sup>33</sup> *Alias v EM. Patil* (2004), AIR Ker 214

### 3. *Duty not to Mix*

This duty is explained in Sections 155, 156, and 157<sup>34</sup> of the Indian Contract Act. These three clauses establish a bailee's culpability if he mixes up the commodities bailed with his own. With or without the bailor's consent, the mixture can take place. When the bailor's consent is taken, then as per **Section 155**<sup>35</sup> "*the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced.*" If the commodities are mingled without the bailor's permission, there are two additional contingencies: (i) where the goods are separable, as per **Section 156**<sup>36</sup> of the ICA, "*the property in the goods remains in the parties respectively; but the bailee is bound to bear the expense of separation or division, and any damage arising from the mixture.*" and (ii) where the goods are impossible to separate, as per **Section 157**<sup>37</sup> of the ICA, "*the bailor is entitled to be compensated by the bailee for the loss of the goods*"

### 4. *Duty to Return*

**Section 160**<sup>38</sup> of the Indian Contract Act says: "*It is the duty of the bailee to return, or deliver according to the bailor's directions, the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished.*"

If the bailing intention has been met or the duration for which the products were bailed has expired, the bailee should return the items to the bailor without prompting. In the event that he doesn't do as such, it will hold the things at his risk and he will be responsible for any misfortune or harm to the products. A bailment contains an implied commitment to return the articles in a reasonable period after the object is served, even if no deadline is mentioned for return<sup>39</sup>. In *Shaw & Co. v Symmons & Sons*, the plaintiff entrusted the defendant, a bookbinder, with books to be bound, and the latter undertook to provide them in a reasonable amount of time. The defendant was unable to provide all of the books within a reasonable time after the plaintiff

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<sup>34</sup> Indian Contract Act, 1872, ss 155, 156 and 157

<sup>35</sup> Indian Contract Act, 1872, s 155

<sup>36</sup> Indian Contract Act, 1872, s 156

<sup>37</sup> Indian Contract Act, 1872, s 157

<sup>38</sup> Indian Contract Act, 1872, s 160

<sup>39</sup> *Chaturgun v Shahzady* (1930), AIR Oudh 395

requested them, and they were later burned in an unintentional fire on his property. The defendant was held accountable for the destruction of the books. Section 165<sup>40</sup> specifies that in circumstances when there are many owners of the merchandise bailed, the bailee is obligated to restore it to any of the owners or according to the headings supplied to him. A bailee who refuses to deliver unless under some illogical or unreasonable condition has defaulted<sup>41</sup> and the bailee's default is presumed when the bailee fails to return the bailed item for no apparent reason.<sup>42</sup>

### *5. Duty not to Set up Jus Tertii*

**Jus Tertii** is a **Right of a third party** and this duty and this duty is also known as the estoppel of the bailee. Even if someone claims ownership or has a greater title to the products than the bailor, the bailee must return the commodities to the bailor in a secure manner and is not liable to the owner for conversion. A third party claiming ownership of the articles may file a court suit preventing the bailee from returning the commodities to the bailor and resolving the title issue.

### *6. Duty to Return Increase*

**Section 163<sup>43</sup> of the Indian Contract Act** says: *“In the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed.”*

This provision specifies that if any profit is made from the commodities bailed, it must be paid to the bailor together with the products, and the bailee is not permitted to keep it. However, until the purpose of the bailment is completed or the time term of the bailment contract has expired, the bailor cannot claim profit or growth. In the landmark case of *Motilal Hirabhai v Bai Mani*<sup>44</sup>, it was held that new shares were seen as an increase and the bailor was entitled to them.

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<sup>40</sup> Indian Contract Act, 1872, s 165

<sup>41</sup> *GIP Rly v Firm of Manikchand Premji* (1931), AIR Nag 29

<sup>42</sup> *Kush Kanta Barkakati v Chandra Kanta Kakati* (1924), AIR Cal 1056

<sup>43</sup> Indian Contract Act, 1872, s 163

<sup>44</sup> *Motilal Hirabhai v Bai Mani* (1925) 27 BOMLR 455

## INTERPRETATIVE ANALYSIS

After evaluating the current system of laws regarding contracts of bailment, specifically the duties of a bailor and a bailee, through a legislative lens (as per the provisions of the Indian Contract Act, 1872) and a jurisprudential lens (as per English and Indian case laws), it is absolutely essential that an interpretative analysis of the same be undertaken, by identifying the deficiencies and drawbacks in the existing provisions, and subsequently, recommending methods to correct the same.

## PROVISION FOR BAILMENT AS A QUASI-CONTRACT

Notably, it is not necessary for contracts of bailment to be either stated or implicit by fact; contracts of bailment can also be implied by law. When one person lawfully acquires another person's personal property and continues to hold it in situations where he is required by law to keep it safe and return or deliver it to the owner, that person and the owner are typically viewed as bailee and bailor by force of law, regardless of whether there is express or implied mutual consent. In American law, these quasi-contracts of bailment are frequently recognised. **Lord Coleridge CJ** made a similar observation in *Queen v McDonald*<sup>45</sup>. However, such quasi-bailment contracts are not yet recognised under Indian law.

**Recommendation:** While it is not proposed that the definition of bailment in Section 148<sup>46</sup> be changed, it is recommended that a new section be introduced to Chapter IX of the ICA to define these quasi-contracts of bailment. Furthermore, it must be stipulated that the bailor and bailee must execute the same responsibilities and be subject to the same obligations as if they were bound by an express or implicit bailment contract as defined in Section 148.

## EXPRESS PROVISION FOR EXCLUSION FROM LIABILITY UNDER SECTION 151

The topic of whether or not a bailee may restrict the imposition of liability under Section 151 by expressing the same in the contract of bailment is a fundamental concern surrounding the duties

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<sup>45</sup> *Queen v McDonald* [1965] CanLII 51

<sup>46</sup> Indian Contract Act, 1872, s 148

of a bailee. While this is specifically permitted by a number of other sections, including Sections 152, 163, 165, 170, 171, and 174, Section 151 itself is silent on the matter. In addition, there appears to be a jurisprudential debate on the subject. Sankaran Nair J. decided in a concurring opinion in the case of *Sheikh Mahamad Ravuther v The British India Steam Navigation Co. Ltd*<sup>47</sup> that a bailee may not be able to release himself totally from liability imposed by Section 151. He relied on the aforementioned argument given the absence of an express provision on the subject. Despite the fact that this perspective was not supported in subsequent rulings such as *Home Insurance Co v Ramnath Co*<sup>48</sup>, it is essential that the dispute be resolved.

**Recommendation:** The words "in the absence of any special contract" may be incorporated into Section 151 of the ICA, similar to Sections 152, 163, 165, 170, 171, and 174, so that there exists an express provision that a contract to that effect would exempt the bailee from liability under Section 151.

## REVISION OF PROVISIONS RELATING TO CONTRACTS OF BAILMENT

The **Thirteenth Report of the Law Commission** on the Indian Contract Act, issued in 1958, presented various proposals for the reform of provisions incorporated within the ICA, bearing in mind the broad jurisprudential and legal improvements that had happened since 1872. A number of proposals were made about the complexities of the laws within Chapter IX of the Act as well, which included contracts of bailment. Unfortunately, there has been no attempt on the part of the Legislature to lend legitimacy to these proposals, even sixty-four years later. Additionally, with the passing of time and legal and economic advances spanning the globe, even more flaws and weaknesses are being recognised in the laws. Furthermore, the drafting of Section 160 of the Act solely provides for the bailor's remedies in the event that the bailee mixes commodities. The rights correspond to the bailee's obligation to keep the commodities separate. However, if the items are not delivered, the bailor has no recourse under this clause. There is a

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<sup>47</sup> *Sheikh Mahamad Ravuther v The British India Steam Navigation Co. Ltd.*, (1906) 16 MLJ 573

<sup>48</sup> *Home Insurance Co v Ramnath Co.*, (1955), AIR Mad 602

need to add a sub-section to allow for the bailor's remedies in addition to the rights previously specified in the section.

**Recommendation:** It is suggested that the Government initiate an in-depth assessment and review of the provisions of Chapter IX of the ICA, bearing in mind the recommendations of the Law Commission Report, the prevalent jurisprudential approach, and international perspectives, in order to detect additional gaps in the existing legal structure. After doing so, the government may strive to adopt extensive reforms in the field to ensure that there are no legal loopholes pertaining to bailment contracts.

### DISCREPANCIES IN JUDICIAL PRECEDENTS

As has been dwelt upon earlier, there seems to be a rising level of disparity in the precedents put down by several High Courts on problems connected to contracts of bailment, particularly in the context of statutory ambiguity about the same. Owing to constraints imposed by the territorial character of jurisdictions of the High Courts, differing verdicts may be valid in various parts of the country with respect to similar matters of law. In a number of circumstances, such rulings may even be completely antithetical to one other.

**Recommendation:** To ensure uniformity in the application of such judgments, it is proposed that the Supreme Court of India take into account the variance in precedents among territorial jurisdictions and explicitly declare the law of the land with respect to bailment contracts.

### CONCLUSION

The interpretive analysis of the duties of a bailor and a bailee under the terms of the Indian Contract Act, 1872 allowed for a fuller knowledge of the current legal framework so that any flaws in it could be recognized and recommendations made for their correction. While Chapter IX of the Indian Contract Act of 1872 comprehensively covers the obligations of a bailor and bailee, as well as other laws connected to bailment contracts, there are still a number of ambiguities and holes in the existing rules that must be remedied. In addition, a list of solutions for the same issue has been provided. In light of the importance of bailment contracts and their

connection to daily life, it is crucial that the Legislature, the Executive, and the Judiciary collaborate to eliminate the disparities in the law regarding bailment contracts.