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LAW OF CONTRACTS : ADAPTABILITY AND ERRATA IDENTIFICATION

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Abstract

The contract of bailment has been one of the most common form of transactions since time immemorial, from lending and borrowing goods in everyday life to the more expensive forms such as lease and tenancy, all are governed by a singular law which decides the laws and liabilities of the parties involved. Legally described in section 148 of the Indian Contract Act, 1872, bailment is described as the delivery of goods from one person to another usually for a specified period of time. This consist of a bailor and bailee and each their rights and duties have been inked from sec 151 to159. However, in this paper, we will be focusing on the duties of the bailee and indirectly explaining the rights of the bailor as one person's right is the duty of another. This shall be explored in a threefold manner by establishing, evaluating and making an erratum of the respective provisions of this Act.

Keywords – Bailor, Bailee, Gratuitous bailment, liability, comparison

I. Introduction

The Indian Contract Act contains the contract of bailment along with other contracts such as that of indemnity, guarantee, agency and etc. Bailment is defined as - 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 direction of the person delivering them. The person delivering the goods is called the "bailor". The person to whom they are delivered is called the "bailee".⁵⁴⁴ However, it is to be noted that it is not necessary for the bailor to be the owner of the goods bailed, he can simply be the carrier. For example, when we order food from a restaurant, the delivery person delivering the food becomes the bailor of the food item, although he does not hold possession of the said item. It is also important to note that goods delivered for a purpose other than that of returning them or their disposing off after the

accomplishment of the said purpose does not come under the ambit of bailment.⁵⁴⁵

The bailor and bailee in a contract have certain rights and duties that have been prescribed from sec 151 – 161. We will explore their relationship by comparing and analysing each section divided in three sets. The first set will cover sections 151 and 152, the second will provide for sections 153 and 154 and finally the last set would provide the comparison of sections 159, 160 and 161.

II. Establishing the provisions

A) Set I

This set discussed the duties of the bailee starting out with the foremost and most important duty of the bailee, the duty to take reasonable care. Defining it word by word - *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*

⁵⁴⁴ Indian Contract Act, 1872, §148, No. 9, Acts of Parliament, 1872 (India)

⁵⁴⁵ Gangaram v Crown (1943), AIR Nag 436

bailed.⁵⁴⁶ This meant that the court the court has prescribed a certain standard of care to be undertaken by every bailee.

⁵⁴⁷ In common law the bailee was held responsible for every loss incurred upon the goods by holding him strictly liable even without any fault of his own.⁵⁴⁸ Indian law on the other hand was flexible regarding the bailee's liability and disposed him off of any liability which arose even after practicing due care and diligence.⁵⁴⁹ It is important to note that the Court sets the standard of care according to the quality and type of goods and does not lay down a cast iron rule to determine reasonable care.⁵⁵⁰ However the burden of proof is on the bailee to establish that he did not act negligently ⁵⁵¹and his duty would extend even after the expiry of the contract, as long as he holds possession of the goods.⁵⁵²

Section is defined in the words of the legislation as - *The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in section 151.*⁵⁵³ It lists the various situations in which the liability of the bailee would be exempted, for example if the contract itself denies the claim of the bailor to seek ⁵⁵⁴

152 is an exception to section 151 and provides situations in which the liability of the bailee would be exuded. The phrase - *amount of care of it described in section 151*, forms the bridge between the two provisions, since both the sections talk about the bailee taking reasonable care and the second one justifies the grounds on which the bailee can be discharged of liability. For example, in *Shanti Lal v. Tara Chand*

*Madan Gopal*⁵⁵⁵, the court held that the bailee would not be held liable for loss of grains if they were taken away by flood, and hence came under Act of God. However if the bailee loses the goods of the bailor along with his own goods, he cannot be said to have taken reasonable care of both the goods and would not come as an exception under sec 153.⁵⁵⁶ The jury is still out on the bailee's chances of escaping liability with the help of a special contract which is governed by S.152.

The bailee can increase his liability through a special contract under sec 152, but cannot fall short of the duty of care prescribed under sec 151, although the court has allowed for the same in few cases⁵⁵⁷.

B) Set 2

Section 153 ⁵⁵⁸of the Act talks about the termination of the bailment due to the act of the bailee inconsistent with the conditions of the bailment, the contract becomes voidable at the option of the bailor.

Section 154 of the act declares the bailee legally bound to compensate the bailor for any loss caused to him due to the unauthorized use of his goods.

In a contract of bailment, the bailee is under a fundamental obligation not to do any act inconsistent with the bailment. Wrongful use or disposal of the goods by the bailee ⁵⁵⁹will entitle the bailor to terminate the bailment and recover possession. Deliberate mis delivery of the goods bailed⁵⁶⁰ or the storing of the goods in a place or manner different from the one agreed upon⁵⁶¹ are held to come within this rule of fundamental breach.

A recent illustration of the principle represented in this section, however, is found in *Konda R.*

⁵⁴⁶ Indian Contract Act, 1872, §151, No. 9, Acts of Parliament, 1872 (India)

⁵⁴⁷ Johns, I., 2021. Critical Appraisal of Bailor and Bailee. *Jus Corpus LJ*, 2, p.693.

⁵⁴⁸ *Southcot v. Bennet*, (1601) 78 ER 401.

⁵⁴⁹ *Taj Mahal Hotel v. United Indian Insurance Co Ltd*, (2020) 2 SCC 224

⁵⁵⁰ *Shanti Lal v. Tara Chand*, AIR 1933 All 158

⁵⁵¹ *Coldman v. Hill*, [1918-19] All ER Rep 434

⁵⁵² Nilima Bhandbhade, Pollock & Mulla: Indian Contract & Specific Relief Acts (12th edn, Butterworths, 2001) 1959.

⁵⁵³ Indian Contract Act, 1872, §152, No. 9, Acts of Parliament, 1872 (India)

⁵⁵⁴ Chakraborty, A., 2014. Duty of care of bailee: The evolution of doctrine of reasonable care in common law. Available at SSRN 2373722.

⁵⁵⁵ *Shanti Lal v. Tara Chand Madan Gopal*, AIR 1933 All 158.

⁵⁵⁶ Norman Palmer, *Palmer on Bailment* (3rd, Sweet & Maxwell Ltd, 2009) 763.

⁵⁵⁷ Pollock and Mulla: *Indian Contracts and Specific Relief Acts*, Vol. 2, 1982 (R.G. Padia ed., 13th edn. 2006)

⁵⁵⁸ Indian Contract Act, 1872, §153, No. 9, Acts of Parliament, 1872 (India)

⁵⁵⁹ *Nyberg v. Handelaar*, [1892] 2 Q.B. 202.

⁵⁶⁰ *Alexander v. Railway Executive*, [1951] 2 K.B. 882.

⁵⁶¹ *Lilley v. Doubleday*, [L.R.] 7 Q.B.D. 510.

*Eswara Iyer & Sons v. Madras Bangalore Transport*⁵⁶², where the Court held a carrier liable for misdelivering the goods notwithstanding an exception clause.

In an assumed sale or pledge of the property bailed by the bailee, an unauthorized use of the property resulting in its injury, or any unwarranted action inconsistent with the contract of bailment—would furnish good cause for either party injured to terminate the bailment; but in such cases there should be notice given, by the party seeking to so terminate it, to the other party, and such notice should be reasonable.⁵⁶³

The section 153 discusses the situation in which the bailee acts inconsistently with the goods in said use, and section 154 prescribes that due to unauthorized use of said goods, the bailee is liable to pay compensation to the bailor for the loss hence caused. In the former section, the law only allows for the termination of the contract, however the latter discusses the termination alongside providing additional damages to the bailor. Sec 154 becomes an extension of section 153, providing dual relief to the bailor. While section 153 is about the termination of a contract, sec 154 is concerned about the title of the goods that have been destroyed or compromised.

When the plaintiff, the bailor, assigned the defendant to use a car as a bailee and evidence established that he was using it for personal purposes in violation of their agreement, the defendant was held accountable for the damages resulting from this usage. The things cannot be given to a third party without the bailor's permission, even though the bailment is for the bailee's use. Where the borrower's legitimate enjoyment of the commodities requires the employment of a third party, the borrower has only limited delegated authority. Thus, if A loans his bike to

B for a single ride, only B may ride it; yet, if A lends his bike to B for a month, B's family may presume that A meant it for them to use. Renting a machine, on the other hand, may include monitoring and usage by someone other than the real and responsible borrower.⁵⁶⁴

C) Set 3

The final set is concerned with the three provisions of section 159⁵⁶⁵, which explains the restoration of goods lent gratuitously, Section 160⁵⁶⁶ on Return of goods bailed, on expiration of time or accomplishment of purpose, Section 161⁵⁶⁷ on Bailee's responsibility when goods are not duly returned.

When the concept of Gratuitous bailment emerged, not much importance was given to the concept of consideration as the *doctrine of consideration* had not yet emerged, hence it became difficult to ascertain the liability of the bailee.⁵⁶⁸ In section 164, the rights of the bailor and obligations of the bailee are highlighted. 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 home⁵⁶⁹. He is responsible to restore the goods else he'll be liable to pay to the bailor whatever benefit he derived from the use of the goods lent gratuitously⁵⁷⁰. The bailor also has the right to ask back for the goods lent, at any time before the termination of the contract⁵⁷¹.

The defendants in *Ishfalli Hassanally v Ibrahim Dajibhai*⁵⁷² refused to pay rent or return a grass worker that stopped working after its purchase. In the same section, illustration (b) raises the question of whether the rule applies when A leases a specific carriage from B rather than

⁵⁶² Konda R. Eswara Iyer & Sons v. Madras Bangalore Transport, (1964) 2 M.L.J. 181

⁵⁶³ Philip T. Van Zile. Elements of the Law of Bailments and Carriers including Pledge and Pawn and Innkeepers (2).

⁵⁶⁴ Dikshit, P., 2022. Critical Analysis of the Duties of Bailor and Bailee. Jus Corpus LJ, 3, p.324.

⁵⁶⁵ Indian Contract Act, 1872, § 159, No. 9, Acts of Parliament 1872 (India)

⁵⁶⁶ Indian Contract Act, 1872, § 160, No. 9, Acts of Parliament 1872 (India)

⁵⁶⁷ Indian Contract Act, 1872, § 161, No. 9, Acts of Parliament 1872 (India)

⁵⁶⁸ C. V. Davidge, Bailment, 41 L. Q. REV. 433 (1925).

⁵⁶⁹ Giblin v McMullen [1869] LR 2 PC 317, 339

⁵⁷⁰ Commonwealth Portland Cement Co. v. Weber, Lehman & Co., (1906) 91 L.T. 813.

⁵⁷¹ G. W. Paton, Duty in Gratuitous Bailment, 1 U. Queensland L.J. 17 (1948).

⁵⁷² *Ishfalli Hassanally v Ibrahim Dajibhai*, AIR 1921 Bom 191

one chosen by B. Rental decisions are based on questions of implicit guarantee or unstated contract requirements, and broad guidelines should be developed with extreme caution. Any such exemption under the Contract Act does not appear to qualify the rather positive phrasing of the second paragraph of this section.

If the goods are damaged or lost not by the bailee's fault, then his refusal to restoration of goods bailed is justified under law. A bailment is an implied promise to return the objects within a reasonable time after the accomplishment of its purpose, regardless of whether or not a deadline has been set⁵⁷³. According to the ruling in *Ebrahim Ahmed Mehter v Samuel Balthazar*⁵⁷⁴, the bailee's heirs are liable for the bailor's loss in an event of the bailee's death. The following conditions must be met for the bailee to be obligated to the bailor for the loss, destruction, or degradation of the commodities bailed and the compensation thereof or to keep the goods after the time for which they were bailed:

- The bailee must have defaulted;
- The commodities were not recovered, delivered, or tendered at the stipulated destination
- The items should have suffered loss, destruction, or damage.

Each condition must be met to seek a claim for damages.

The provision of 159 although advocating the return of goods to the bailor, differs greatly from sec 160 and 161 the former of which is the cause of the latter. Sec 159 talks about gratuitous bailment, while sec 160 and 161 talk about non – gratuitous bailment i.e., bailment for reward. Sec 159 discusses the right of the bailee along with the bailor while sec 160 and 161 only refer to the right of the bailor to his goods. All of them however refer to a specific deadline of the contract that is to be met by the bailee. Sec 159

is in contrast to sec 161 as it refers to the right of the bailee to seek compensation from the bailor for the lost and costs ensued in a gratuitous bailment if he decides to re – possess his goods while section 161 is concerned with the right of the bailor over the goods in possession of the bailee if not returned in time.

III. Evaluate the provisions

A) Set 1

There is a lot of uncertainty in sections 151 and 152 since the interpretation of the provisions is significantly higher than the wording of the provisions. In addition, the sections are silent on who has the burden of evidence, what exactly qualifies as a reasonable level of care, and what is and is not covered by such a standard. One must search for judicial explanations to understand the same. The term "which materially interferes with their usage" in Section 151 appears to include the case of a bailment for an heir. It is found that the item is not suitable for the use for which it was hired. The rented object must typically be returned by the bailee at the conclusion of the rental period. The Indian Contract Act of 1872, on the other hand, is mute on what to do if the items are found to be unfit for their intended use.

B) Set 2

It is well-settled law that a wrongful use or disposal of the goods by the bailee determines the bailment and allows the bailor to claim the rights and remedies of a person entitled to such a possession ; a wrongful act means, for the purpose of the given provision, a trade entirely inconsistent with the terms of the bailment. The English authorities get into specifications as to the precise kind of wrong committed and the precise form of remedy available closely resembling the scriptures of European or Hindu philosophy; but, as these are intimately connected with the old common law system of pleading, which finds no resonance in the given context⁵⁷⁵.

⁵⁷³ Chaturgun v Shahzady AIR 1930 Oudh 395

⁵⁷⁴ Ebrahim Ahmed Mehter v Samuel Balthazar AIR 1916 MB 93

⁵⁷⁵ Fenn v. Bittleston (1851) 7 Ex. 152

C) Set 3

This set is concerned with the returning of goods after the termination of time period bailment or at the wish of the bailor in case of gratuitous bailment. Once the time period for which they were bonded has passed or the intended purpose has been achieved, the bailee must return the items without being asked for them, or deliver them in accordance with the bailor's instructions. It is the bailee's responsibility to return, or transfer as per the bailor's needs, the goods bailed, without being asked, after the perfect chance for which they were bailed has passed or the purpose for which they were bailed has been realised. Bailor can exercise his right to obtain the products either directly or by providing directions for their return. For instance, if the bailor had left the goods with the warehouseman and obtained a distribution centre receipt, and then signed over the receipt to a bank for the purpose of obtaining credit, the bank would be eligible to obtain the products' return as a transferee of the receipt.⁵⁷⁶

IV. Errata identification

A) sec 151

The words, "in the absence of any contract" in S.152⁵⁷⁷ may indicate that the law-maker's objective was to enable the bailee to limit the extent of his liability. In the *Bombay Steam Navigation Co v Vasudev Baburao*⁵⁷⁸ case, the court held that this provision does not explicitly prohibit a person reducing his scope of liability and even if that was the case, it would be restricting the liberty of people to enter into a contract of bailment according to their choice. The Law Commission of India had also taken note of this viewpoint in its thirteenth report and suggested amending S.151 to allow for a decrease in the bailee's liabilities.⁵⁷⁹

Hugh Evander Willis' belief that all bailees should be permitted to release themselves from duty for negligence unless specifically forbade by special legislative enactments was likewise founded on the idea of contract freedom.⁵⁸⁰ The interpretation of S.152 described above, however, can also be interpreted as negating S.151's requirement that the bailee exercise an absolute minimum level of care. When both sections are taken into consideration, it is reasonable to conclude that S.151 establishes a minimum standard of care for the bailee, and that if that standard of care has not been increased by a contract as described in S.152, the bailee will only be held accountable when he fails to uphold S.151. This view also suggests that it is unfair and inappropriate to release a bailee from responsibility for his carelessness.

In *M Siddalingappa v T. Nataraj*⁵⁸¹, The court ruled that a dry cleaner could not contract himself out of the minimal duty of care required by S. 151, therefore he could not avoid liability for damage to clothing based on the stipulations on the back of the receipt. Additionally, the exemption clauses are invalid if they conflict with public policy.⁵⁸² Therefore, we see that there are contrasting judgments on this aspect. Although, the words in S.152⁵⁸³. This makes it clear that a bailee can increase his obligation. The courts will assess whether a bailee can be released from liability due to a contract to that effect after taking all relevant case facts into account. However, if a particular contract has increased the bailee's obligation, the level of care will be determined in accordance with S.152, and the bailee cannot assert the defence of observing a minimal standard of care in accordance with S.151.⁵⁸⁴

Proposed Draft – *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*

⁵⁷⁶ Central Warehousing Corporation v Central Bank of India (1972) LNIND AP 23

⁵⁷⁷ Supra. See 10.

⁵⁷⁸ Bombay Steam Navigation Co v. Vasudev Baburao, AIR 1928 Bom 5

⁵⁷⁹ Thirteenth Report of the Law Commission of India 1958, para 125 recommended amending S.151 by adding the words 'in the absence of any special contract' in it as cited in Nilima Bhandbhade, Pollock & Mulla: Indian Contract & Specific Relief Acts

⁵⁸⁰ Hugh Evander Willis, 'The Right of Bailees to Contract against Liability for Negligence' [1907] Harvard Law Review, Vol. 20, No. 4 297, 317

⁵⁸¹ M Siddalingappa v T. Nataraj, AIR 1970 Mys 154

⁵⁸² RS Deboo v M.V. Hindelkar AIR 1995 Bom 68

⁵⁸³ Supra, see 10.

⁵⁸⁴ P C Markanda, Building & Engineering Contracts (3rd, Lexis- Nexis Buttersworth Wadhwa, Nagpur 2010).

prudence would, under similar circumstances, in absence of any special contract take of his own goods of the same bulk, quality and value as the goods bailed.⁵⁸⁵

B) sec 152

It should be noted that under English law, in an action against a stranger for loss of goods caused by his negligence, the bailee in possession can recover the value of the goods, although he would have had a good answer to an action by the bailor for damages for the loss of the thing bailed." Whatever the real historical interpretation of mediaeval law may be, his right is the universal right of a lawful owner against a wrongdoer and does not depend on his duty to the bailor today⁵⁸⁶. Because they are identical to those of any other legitimate possessor and do not derive from the bailment contract but rather from the fact of possession, the bailee's rights against strangers are obviously not defined in the current Act. The bailee must use caution. A bailee of goods is not liable for loss of the goods by theft in his shop if it can be proven that he took as much care of the articles bailed as an ordinary prudent man would take of his own goods of the same quality and value under comparable circumstances.⁵⁸⁷ For the same reason, if A sends jewels to B for repair with the request that B return the jewels in a value payment packet after repair, and B does so, B is not responsible for the loss of the jewels solely because he neglected to insure the parcel. while the owner himself chooses not to insure the gems while sending them out for repair, it is not indicative of a lack of care on his part that a prudent person would exercise in the same situation.⁵⁸⁸

Proposed draft - *The bailee, is not responsible for the loss, destruction or deterioration of the goods bailed, if he has taken the amount of care of it described in section 151.*⁵⁸⁹

C) sec 159

Gratuitous bailment has seen a lot of evolution in the past few years. The English law was stringent regarding the liability of the bailee, holding him responsible for all cases of theft, or damage to goods, exempting only those caused by an Act of God or Enemy of the State. However, relief was soon granted to the bailee's title with the advent of the concept of gratuitous bailment, a bailment where goods were provided without consideration. This was first laid down in *R v Viscount Hertford*⁵⁹⁰ the liability of robbery was waived off of a gratuitous bailee and further extended its protection to innkeepers and hotels.⁵⁹¹ However, despite the progressive incline of the legal position of the bailee, the Indian law has not shown the same amount of acceptance towards the position of the gratuitous bailee. The wordings of the provisions state that - *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.*⁵⁹² The security of the bailee of is compromised due to the lack of legal protection provided to him via this provision, as he holds no possession of the goods guaranteed to him, despite of the compensation provided in return for the incurred loss. For example, if A had a stethoscope that he borrowed from B, who urgently requested it to be returned while A was performing an examination on a patient. Due to B's insistence and his right under section 159, A would not be able to treat the patient whose

⁵⁸⁵ Supra, see 3.

⁵⁸⁶ The Winkfield" [1902] P. 42, C.A., overruling Claridge v. South Staffordshire Tramway Co. [1892] 1 Q. B. 42, 54, 59

⁵⁸⁷ Lakshmi Das v. Babu Megh (1900) Punj. Rec. 90.

⁵⁸⁸ Boseck § Co. v. Maudlestan (1900) Punj. Rec. 70.

⁵⁸⁹ Supra, see 10.

⁵⁹⁰ R v. Viscount Hertford, 39 ER 1041

⁵⁹¹ See L.J. Blom-Cooper, "Second Report of the Law Reform Committee on the Law of Innkeepers' Liabilities for Property of Travellers, Guests and Residents" (1955) 18 MLR 374; Hotel Proprietors Act, 1956

⁵⁹² Supra, see 22.

condition would either worsen or would cease to exist altogether, and no amount of compensation would suffice for that grave of a loss.

Proposed Draft – *—The lender of a thing for use may not 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 in amounts equal to the loss incurred.*⁵⁹³

V. Conclusion

This paper successfully analysed three main provisions of the Indian Contract Act that concern the contract of bailment ranging from sec 151 to sec 160. The first part of the paper analyses these provisions by dividing these into three sets; sec 151 and sec 152 in Set 1, sec 153 and sec 154 in Set 2 and finally sec 159, sec 160 and sec 161 in Set 3. Then these sets are compared with one another to finally arrive at an erratum which lists the various anomalies in these provisions and suggests changes in the drafting for proper interpretation of the law. The first provision for the errata, sec 151 realizes the duty of the bailee towards the bailors good while the second provision of sec 152 exempts him from that very duty. Sec 159, while standing out from its prior counterparts, also plays a vital role in establishing the rights of the bailor in gratuitous bailment.

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- [40] The Winkfield" [1902] P. 42, C.A., overruling Claridge v. South Staffordshire Tramway Co. [1892] 1 Q. B. 42, 54, 59
- [41] Lakshmi Das v. Babu Megh (1900) Punj. Rec. 90.
- [42] Boseck \$ Co. v. Maudlestan (1900) Punj. Rec. 70.
- [43] R v. Viscount Hertford, 39 ER 1041
- [44] See L.J. Blom-Cooper, "Second Report of the Law Reform Committee on the Law of Innkeepers' Liabilities for Property of Travellers, Guests and Residents" (1955) 18 MLR 374; Hotel Proprietors Act, 1956