

**A  
Project  
On**

**THE NATURE OF BAILMENT AND  
LIABILITY OF STATE FOR THE GOODS  
SEIZED BY THE POLICE FROM AN  
ACCUSED: AN APPRAISAL**

Submitted towards the partial fulfillment of  
I<sup>ST</sup> SEM of M.B.A, LL.M. for the Subject

**LAW OF CONTRACTS**



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## ACKNOWLEDGEMENT

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I am fortunate enough to study in **National Law University, Jodhpur** in the guidance of the Management Faculty.

I am very thankful to **MR. Atul Pandey**, for giving me such an important live project, which can be made use of in the practice.

It is highly exhilarating for me, to have completed this dissertation work under the valuable and efficient guidance of **MR Atul Pandey**. He not only guided me since the premature stage of the work planned round the clock, but also his continuous guidance, valuable suggestions and discussions bring this work to reach to its aims. I wish to express my deep sense of gratitude to such a cheerful, energetic and enthusiastic person.

At last but not the least, I express my sincere sense of gratitude to my **Parents** for their blessings, that is always a source of Inspiration for me, and the **Almighty** without whom there won't be any existence of mine.

*Amit Kumar Kashyap.*

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## INTRODUCTION

Bailment is another type of special contract. Since it is a 'contract', naturally all basic requirements of contract are applicable. - - Bailment means act of delivering goods for a specified purpose on trust. The goods are to be returned after the purpose is over. In bailment, possession of goods is transferred, but property i.e. ownership is not transferred.

Bailment is dealt with contract act only in cases where it arises from a contract but it is not correct to say that contract there cannot be a bailment without an enforceable contract.

The delivery of goods should be made for some purpose and upon a contract that when the purpose of delivery is fulfilled the goods shall be returned to the bailor. when a person's goods go to another without any contract then there is no bailment within the meaning of sec 148.

The bailment arises out of a contract only and in case state the provisions of article 299 apply where the state is protected for its sovereign functions

Since then the law has evolved to say that the standard of care is equal for all categories of bailment, such that the standard of care expected of a bailee is to use such care a careful and vigilant person would exercise in the custody of his or her property of the like character and in the like circumstances. In addition, it should be noted that in bailment cases the onus of proof is on the bailee to demonstrate that they were not negligent in losing or damaging the property.

## BAILMENT UNDER INDIAN CONTRACT ACT

Bailment is the process of placing personal property or goods in the temporary custody or control of another. The custodian or holder of the property, who is responsible for the safe keeping and return of the property, is known as the bailee. The person who delivers or transfers the property to the bailee is known as the bailor. For a bailment to be valid, the bailee must have actual physical control of the property with the intent to possess it. The bailee is generally not entitled to the use of the property while it is in his possession, and a bailor can demand to have the property returned to him at any time.

The word "bailment" was originally derived from a French word meaning "to deliver". In law, a bailment occurs where one person voluntarily delivers chattels to another person on trust that they will be returned in their original or altered form, and without any transfer of ownership of the chattels occurring. In other words, it is where one person gives property to another person, expecting to get it back. The test is if the transaction has the following four elements:

- 1) The delivery of the exclusive right of possession by the bailor,
- 2) Voluntarily accepted by the bailee,
- 3) With an assumption of the responsibility by the bailee  
To keep the goods safe,
- 4) And the obligation to return the thing bailed

In a bailment, the person delivering the property is called the bailor, and the recipient of the property is the bailee. Under certain circumstances it is also possible for a sub-bailment to exist, where the bailee then bails the goods to another person, who becomes a sub-bailor.

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 person delivering the goods is called the "bailor". The person to whom they are delivered is called, the "bailee".

Explanation.-If a person already in possession of the goods of another contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor of such goods, although they may not have been delivered by way of bailment.

The essence of bailment is the transfer of possession. The ownership remains with the owner. There cannot be a bailment of immovable property.

### **THE ESSENTIALS OF BAILMENT**

There are following essentials of bailment:

#### **1. Delivery of possession**

Delivery of possession should be is here different mere custody. The goods must be handed over to baillee for whatever purpose of bailment. Delivery may be actual or constructive as under sec 149

Actual delivery is when bailor hands over the baillee physical possession of goods and constructive delivery takes place when there is no change of physical possession but some thing is done by baillee to put bailor in possession.

#### **2. Delivery should be upon contract**

Contract should be that after use goods will be returned when possession goes to another person without any contract then there is no bailment.

#### **3. Delivery should be upon some purpose**

Bailment is always made for some purpose and is subject to condition that when purpose is accomplished the goods will be returned to the bailor. There is no bailment where goods are not specifically accounted for.

A deposit of money with a banker is not bailment as he is not bound to return the same notes and coins.

Bailment can be only of 'goods'. As per section 2(7) of Sale of Goods Act, 'goods' means every kind of movable property other than money and actionable claim. - - Thus, keeping money in bank account is not 'bailment'. Asking a person to look after your house or farm during your absence is not 'bailment', as house or farm is not a movable property.

### **Bailment of pledges**

Pledge is special kind of bailment, where delivery of goods is for purpose of security for payment of a debt or performance of a promise. Pledge is bailment for security. Common example is keeping gold with bank/money lender to obtain loan. Since pledge is bailment, all provisions applicable to bailment apply to pledge also. In addition, some specific provisions apply to pledge. The bailment of goods as security for payment of a debt or performance of a promise is called "pledge". The bailor is in this case called the "pawnor". The bailee is called the "pawnee". [Section 172].

The bailee can only avoid liability if they can show the loss or damage was caused by:

- 1) An act of God,
- 2) An act of the Crown's enemies (ie an act of war)
- 3) The fault of the consignor (person sending the goods)
- 4) An inherent fault in the goods

## LAW FOR GOVERNMENT CONTRACTS

On the question of the maintainability of a suit against the Government Reference has to be made to Article 299 of the Constitution, Section 176 of the Government of India Act, 1935, Section 32 of the Government of India Act, 1919, and Section 65 of the Government of India Act, 1858

Thawardas Pherumal v union of India, AIR1955 (SC) 468 it was held by SC that the government can only be bound by the contract that are entered into a particular way and which are bound by proper authority.

Article 299(1) provides that all contracts made under executive power of state must expressed to be made by the governor of state and all such contracts made in the exercise of that power must be executed on behalf of governor by such persons and in such manner as he may direct or authorize.

### Objective of article 299

The provision of article 299 was inserted for the sake of mare form. They are there to safeguard the government against unauthorized contracts. If in fact a contract is unauthorized or in excess of authority it is right that government should be safeguarded.

It would be disastrous to hold that thousand of government officials are daily entering in into variety of contracts, often of a petty nature, and some times in an emergency, cannot contract orally or through correspondence.

It may be that government will not be bound by contract in that case, but it may be very difficult thing that contract are void and of no effect. It only means that the principle cannot be sued, but we take it there would be nothing to prevent ratification, especially if that was for benefit of government.

In view of article 299 there can be no implied contract between government and another person. The reason being that if such contract were allowed the would in effect make article 299 useless.

The contractual liability of state under India constitution is same as that of individual unde ordinary law of contracts. The liability of state is same as that of India company before1858.

In P. and O. steam navigation co. v. secretary of state of India, the court drew a distinction between acts done in exercise of sovereign power and acts done in exercise of non sovereign power 'that is the act done in the conduct of undertaking which might be carried on by private persons. No liability will accrue for acts committed by public servant where such act relates to exercise of sovereign function of the sate.

Contract with government not in conformity with article 299 is void. Further it is well satelled that article 299(1) Applies to contracts made in exercise of executive power and not in case of statutory power.

## NATURE OF BAILMENT AND LIABILITY WHEN POLICE SEIZED THE GOODS FROM ACCUSED

Whether the state is liable for the seizure of goods by the police depends upon the decision of the court on the point that the confiscation was done on the basis of offence committed or mere suspicion.

Till the final decision of the court the police have to act as bailee of goods and have to apply due care and diligence to protect those goods.

Further if the goods are seized under the order of court then there is no contract and where there is no contract there is no bailment. Bailment results from a contract between the parties.

IN **Ram Gulam and others v. state of U.P** where ornaments were stolen from the house of the plaintiffs. They were recovered from another house, on a search made by the police and seized as stolen property, in exercise of powers conferred in that behalf by the Code of Criminal Procedure. They were produced as exhibits at the trial of those, who were prosecuted in connection with the theft. They were accordingly kept in the Collectorate Malkhana, from where they were again stolen, and are now untraceable. The plaintiffs applied unsuccessfully to the Magistrate for an order for their restoration to them and then instituted the present suit, which was dismissed on the finding that the Government was not liable to compensate the plaintiffs. The rule embodied in the maxim 'respondent superior is subject to the well-recognized exception that a master is not liable for the acts of his servants performed in discharge of a duty imposed by law that the Government is not liable to answer the plaintiffs' claim as the act was done in exercise on the power of sovereign function.

The goods if seized by the police is under order of superior authority then it is sovereign function of state thus there will be no contractual liability on state for bailment.

But where the police have acted on mere suspicion and have seized the goods according to the procedure established under criminal procedure code. Then until the final decision of the court is declared the police have to act as a bailee of goods and the burden of proof is upon bailee to show that he has exercised reasonable care.

If the person to whom the goods are delivered is not bound to restore them to person delivering them or to deal with them according to his directions then there relationship is not that of bailor and bailee.the contractual liability. The liability as a bailee does arise independent of the contract.

The nature of bailment would stand on same footings if the decision of final authority is awaited. And police have to perform contractual liabilities of bailment and it is the duty of police to protect the goods till the final order of that authority.

The duties of police as bailee of seized goods with regards to bailed goods are to:

- 1) Take care of the goods
- 2) Retain possession of the goods
- 3) Not to use/misuse the goods
- 4) Return the goods

In case when the goods are seized by police under superior authority order or court order then there is no obligation on police to act as a bailee of goods further the state is protected from these kinds of liabilities under article 299 of constitution of India.

**In kasturi lal v. state of U.P AIR 1965 SC 1039** A person was taken was taken into custody on suspicion of being in possession of stolen property and taken to police station. His property including certain quantity of gold and silver was taken out from him and kept in malkhana till the disposal of the case .the gold and silver were misappropriated by the police constable who fled to Pakistan. The appellatant sued the state of U.P for return of goods and in the alternative claimed damages for the loss caused by negligence of police. The state contended that no

liability accrue for acts committed by a state. The SC held that state was not liable

The court held that power to arrest the person, to search him and to seize the property found with him are powers conferred on the the specified officer by statute and and characterized as sovereign powers.

In **state of A.P v. challa Ramakrishna reddy, AIR 2000 SC 2083** the court held that bin case of violation of fundamental rights the defense of sovereign immunity cannot be accepted.

Thus the police should have acted according to procedure established by law for protection.

## Conclusion

Originally, the standard of care owed by a bailee to a bailor in taking care of goods depended upon the type of bailment entered into. the liability to act as a bailee of goods only arise out of a valid contract for entrustment and delivery of property from bailor to bailee and in case of state liability as abailee the provision of article 299 apply.

Further there is need for the enactment of a legislation to regulate and control claim of state for immunities on the lines of crown proceeding act of England.

In the present context there is no need of immunity to state as state is also acting as a private company in its functioning.

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