# DUTY OF REASONABLE CARE: UNDER THE INDIAN CONTRACT ACT, 1872

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**ABSTRACT:**

Duty of reasonable care of the bailee has been expressly defined in the section 151 of the Indian contract act 1872 and it defines the duty of reasonable care of the bailee as an ordinary prudent man in a contract of bailment and the contract of bailment has been defined in section 148 of Indian contract act 1872, where a good is delivered from one person to another for some purpose that is to be returned or disposed of on the directions of the bailor when the purpose is accomplished. This research paper highlights the concepts arose from the section 151 and 152 of Indian contract act 1872 that talks about the care that is to be taken by the bailee in a contract of bailment and the liability of the bailee when reasonable care is taken respectively. In this research paper the concept of exemption of liability is well clarified with the perspective of Pollock & Mulla and how is it different to the judgments by few high courts. The thirteenth law commission report for contract act,1872, and the changes brought by it to the provisions given in the section 151 of Indian contract act of 1872. This paper discusses the issue of decreasing the liability of a bailee in a contract of bailment. This paper aims to analyse the concept of liability for the bailee. This also helps to comprehend the intensity of the liability that may arise due to lack of duty of reasonable care of the bailee. In this paper analytical research methodology has been used to critically analyse the theory of fiction in the section 151 of Indian contract act 1872.

## INTRODUCTION

The Indian contract act, 1872 identifies the contract of bailment in which there is a delivery of goods (any movable property except actionable claims and money[1]) by bailor to bailee for some purpose, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of bailor, upon a contract[2]. Though there is an exception to the bailment in which there is a responsibility of the person who finds goods belonging to another, and takes them into his custody, is similar to the bailee though there is no contract between them[3]. There are separate rights and duties assigned to the bailee and bailor.

As per the sections in Indian contract act of 1872, there are duties that has been entitled to the bailee in a contract of bailment, which include,

Firstly, Duty of reasonable care which says in the bailment the bailee is responsible 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 gods of the same bulk, quality and value as the goods bailed[4]. And if the bailee has taken reasonable care then the bailee is not liable for the loss, destruction or deterioration of the thing bailed[5].

Secondly, Duty not to make unauthorised use[6] in which the bailee uses the goods bailed in a manner which is inconsistent with the terms of the contract or is an un authorised use, he shall be liable for any loss even though he is not guilty of negligence, and even if the damage caused to the good is the result of an accident.[7]

Thirdly, Duty not to mix in which the bailee must not mix the goods of his own goods with the goods delivered to him by the bailor, but must keep them separate from his own goods. If the bailee mixes the other goods with his own goods three concepts arose that is the mix is done with the bailor's consent[8], without bailor’s consent which can be separated[9] and without bailor’s

[1] Sales of Goods Act, 1930, §2 (7)
[2] Indian Contract Act, 1872, §148
[3] Indian Contract Act, 1872, §71
[4] Indian Contract Act, 1872, §151
[5] Indian Contract Act, 1872, §152
[6] Indian Contract Act, 1872, §153
[7] Indian Contract Act, 1872, §154
[8] Indian Contract Act, 1872, §155
[9] Indian Contract Act, 1872, §156

consent which cannot be separated[10].

Fourthly, Duty to return in which It is the duty of the bailee to return, or deliver according to the bailor's direction, 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.[11] The liability of the bailee when he has not duly returned the goods bailed will be their as he will be responsible for any loss, destruction or deterioration of the goods from that time[12].

Fifthly, Duty not to set up “jus tertii” which says that In a bailment bailee is not entitled to question the title of the bailor or to set up “jus tertii” which means to believe that the goods bailed belong to the third person[13].

Sixthly, Duty to return increase which says If there is no agreement to the contrary, the bailee has a duty to return the natural increases or profits accruing to the goods during the time of bailment to the bailor[14]

This research paper deals with the duty of reasonable care that is a duty of bailee as an ordinary prudent person which means a person should act what is expected of the most people in most cases. Here the bailee is bound to take care of the goods as an ordinary prudent person, under similar circumstances, take care of his own goods of the same bulk, quality and value as the goods bailed[15]. The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the things bailed if he has taken the amount of care as an ordinary prudent person[16].

This research paper also deals with the main question that arises from the duty of reasonable care is about the relief in the liability of a bailee, can the liability of the bailee be decreased or waived if its mentioned in the contract itself. There have been contradictory answers on the same question, some scholars have said that the concept of strict liability would be applied here as in the definition of bailment its clearly mentioned that the same good has to be returned after the purpose is accomplished but in the few judgments by the high courts it states that the

[10] Indian Contract Act, 1872, §157
[11] Indian Contract Act, 1872, §160
[12] Indian Contract Act, 1872, §161
[13] Indian Contract Act, 1872, §166
[14] Indian Contract Act, 1872, §163
[15] Indian Contract Act, 1872, §151
[16] Indian Contract Act, 1872, §152

liability can be decreased if both bailee and bailor agrees to it and has contract about the same.

## DUTY OF REASONABLE CARE

### *Section 151: Care to be taken by bailee*

*"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, quality and value as the goods bailed."*[17]

According to the clause, the bailee must treat the goods bailed with the same care that a prudent man would give his own belongings in a like situation. For every kind of bailment, the same level of care is required. The bailee has the responsibility to handle the commodities as a reasonably prudent person in his position would have handled them in a comparable circumstance. This indicates that the obligations set forth in this section are universal and general in character. This section covers all bailment contracts; it does not address any special circumstances. The above section provides that the bailee has a duty to take care of the bailed goods as a prudent person would take care in similar circumstances.

### Concept through judgments:

In *Coggs v. Bernard*[18], a distinction was made between a mandate, where the duty was to use reasonable care, and a deposit, where there was no liability except for gross negligence[19]. However, later, English judicial opinion is in favour of the view that the duty of every bailee is to take reasonable care, and not to convert them[20]. The standard of care is required that is the standard demanded by the circumstances of each particular case and it is subjective[21].

In *union of India v. Udho Ram &* Sons[22] Certain goods consigned by a merchant to the respondent. Some of the goods were lost in transit. The respondent sued the railway authorities for damages for the loss on ground that the loss 'Was incurred due to the negligence of the railway authorities. The defence raised was that loss occurred due to factors beyond the control

[17] Indian Contract Act, 1872, § 151
[18] 92 Eng. Rep. 107 (1703)
[19] Ibid
[20] Morris v CW Martin & Sons Ltd 1966 1 QB 716
[21] Houghland v R R Low 1962 CLY 157
[22] AIR 1963 SC 422

of the railway authorities. The suit was dismissed by the trial court. On appeal the High- Court reversed the judgment of the trial court and found that the loss was caused by the negligence and misconduct of the railway authorities in as much as the railway police failed to take precaution to see that no body interfered with the goods. The Union of India appealed to the Supreme Court by way of certificate granted by the High Court. Held, that the responsibility of the railway under s.72 of the Indian Railways Act is subject to the provisions of s.151 of the Indian Contract Act and the Railway as a bailer was bound to take as much care of the goods bailed to it as a man of ordinary prudence would under similar circumstances. The loss having taken place due to the negligence of the railway servants the railway is liable for the loss incurred by the respondent. In *Blount v. War Office*, The War Office seized a home that belonged to the complainant. He was permitted to store a few items in a closed room of the house. Because they lacked self-control, the troops occupying the residence broke into the room, causing damage and stealing items. It was decided that the War Office was responsible for the loss because it did not maintain the residence as an owner would.

Indian contract act of 1872, section 151 prescribes a uniform standard of care in all bailment cases, that is a degree of care which a man or ordinary prudence would take of his own goods of the same type and under similar circumstances. If the care devoted by the bailee falls below this standard, he will be liable for the loss, damage or deterioration to the goods bailed.

## LIABILITY OF THE BAILEE

### *Section 152: Bailee when not liable for loss, etc, of the things bailed*

*The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the things bailed, if he has taken the amount of care of it described in section 151.*

The above section in the Indian contract act 1872 explicitly tells the liability of the bailee when he has taken the due amount of care and has acted as an ordinary prudent person would under similar circumstances, of his own goods of the same bulk and value as the goods bailed. It implies that the bailee is not responsible for the loss, destruction or deterioration of the things bailed only if he has taken reasonable care of the goods and reasonable care is defined in the section 151 of the Indian Contract Act, 1872.

**Concept through judgments:**

Loss by theft: When the goods bailed are stolen from the bailee during the bailment when the goods were in the custody of the bailee then he will be liable if he has not taken the reasonable care that a ordinary prudent person would and there was a negligence from the side of the bailee.

In the case *Jan and Sons v. A. Cameron*[23], the plaintiff's articles were stolen from the hotel room while he was away. Here, hotelier was held liable as the room was not in secure condition and he had a duty of reasonable care as per section 151 but his act was negligent and he was held liable for the loss suffered by the plaintiff and he did not got remedy under section 152.

In the case of *Rampal Ramchand Aggarwal v. Gourishankar Hanuman Prasad*[24] the bailee kept the bailed ornaments of the bailor locked in a safe and kept the keys also in the same room where the ornaments are kept. The room where the ornaments bailed and keys of the safe are kept is on the ground floor of the house and is easily accessible to burglars by just removing a latch and the ornaments was stolen from the house from the custody of the bailee. Here, in this case the bailee was held liable for the loss suffered by the bailor because of negligent act by the bailee as he did not take reasonable care of the goods bailed as an ordinary prudent person would take under similar circumstances.

**EXEMPTION OF LIABILITY**

"In Indian contract act, 1872 by Pollock & Mulla (15th edition), considered that a bailee's contract purporting to exempt himself wholly from liability for negligence was not valid. relying on the dissenting judgment of Sankaran Nair J. in the case of *Sheik Mohamad v. British Indian Steam Navigation Co. Ltd.*[25], whose obiter dictum, that is the judgement given by him is contrary to the dicta of the other two judges who were in majority in the case. This was based on the express provision for contracting out in section 152 and 148 of the Indian contract act of 1872, and on the ground that throughout the chapter on bailments, wherever a rule of law is to operate only in the absence of a contract to the contrary, it is expressly so stated in the section 163, 165, 170, 171 and 174. In *M. Siddalingappa v. T. Nataraj*[26], a drycleaner could not

[23] 1922 ILR 44 All 735
[24] AIR 1952 Nag 8.
[25] 1 Ind Cas 977
[26] AIR 1970 Kant 154

repudiate any liability for damage to clothes on the basis of a condition printed on the back of a receipt, because he would not contract himself out of the minimum duty of care prescribed under s. 151. In *RS Deboo v. M.V. Hindlekar*[27], a stipulation sought to restrict the liability of a launderer in case of loss or damage to goods to lesser of the amount of 50 percent of the price of goods, or 20 times the laundry charges. This clause was held opposed to public policy."[28]

Contrary to the Pollock and Mulla's consideration, some judgments has been held by various other High Courts that the bailee can exempt himself from liability, by a contract between both bailee and bailor as there is no reason that why someone should not be allowed to have consent to keep bailor's property as long as the bailor assumes all responsibility for it. This has been acknowledged by the Law Commission of India in its thirteenth report , which says that this section be changed and the addition of a clause to limit the bailee's obligation.

## *13^TH LAW COMMISSION REPORT OF INDIA*

*"**123.** This section embodies the common law rule as to the liability of bailees other than common carriers and innkeepers. Common carriers and innkeepers were liable as insurers of goods; i.e., they were responsible for every injury to the goods occasioned by any means, except only the act of God and of the King's enemies. The English Common Law with regard to common carriers was partly incorporated in the Carriers Act, 1865. According to the Privy Council the responsibility of a common carrier is not within the Contract Act and is governed by the Carriers Act, 1865, and the common law of England.*

*Carriers by sea for hire are not common carriers with- in the meaning of the Carriers Act. There is a conflict of authority as to the responsibility of such carriers being governed by the Common Law of England or by sections 151 and 152. The Calcutta High Court, in Mac Killican v. The Compagnie Des Messageris Maritimes des France[29], held that a foreign carrier is not a commercial carrier and that if the contract of affreightment is made in India, the liability would be governed by the provisions of sections 150 and 151. The Madras High Court[30] has held that the liability was that of common carriers according to the Common Law of England. The correct view would ap- pear to be that the proper law of Contract of affreight-*

[27] AIR 1995 Bom 68
[28] The Indian contract act, 1872, Pollock & Mulla , R Yashod Vardhan , 15th edition
[29] 1881 ILR 6 Cal 227
[30] Hajee Ismail Sait And Sons vs Wilson And Co. on 31 January, 1918, 45 Ind Cas 942

*ment is the law by which the parties intended that their contract should be governed.*

*We do not, however, make any recommendation about the law of carriers in this part of our report, as we propose to deal with that subject separately.*

***124.** The liability of an innkeeper should be governed by sections 151 and 152. The view of the Allahabad High Court in Jain & Son v. Cameron*[31] *should, in our opinion, be preferred to the view of the Bombay High Court in Whateley v. Palanji*[32]*. We do not think that it is necessary to make any change in the sections on this account, as we feel that the Courts are not likely to take a view con- trary to the decision of the Allahabad High Court on this point.*

***125**. Whether a bailee can contract himself out of the liability imposed by section 151 has been the subject of controversy in Courts. In Sheikh Mahamad Ravuther v. The British India Steam Navigation Co. Ltd*[33]*., Sankaran Nair, J. held (contrary to the views of the other two judges- White C. J., and Wallace J.) that a contract by a bailee purporting to exempt himself wholly from liability for negligence was not valid. This view was founded on the fact that while there are express provi- sions for contracting out in several other sections e.g., Ss. 152, 163, 165, 170, 171 and 174 there is no such provision in S. 151. This view did not find favour even in later cases in the Madras High Court' nor was it ever followed in Bombay". Indeed Beaumont C. J. of the Bombay High Court thought that it would be a startling thing that person's sui juris are not at liberty to enter into such a contract of bailment as they may think fit. He relied on the absence of an express provision in the Act prohibiting a party from contracting out of section 151. We accept the majority view as correct. In order to resolve this controversy, we recommend that the words in the absence of any special contract be added in section 151."*[34]

## CONCLUSION

The bailee has a number of obligations in a contract of bailment, for example, to take care of property entrusted to him as an ordinary prudent person. They must also act in good faith, which means they must not do anything to prevent the bailor from using their property. The bailee is obliged to take reasonable care of the property entrusted to him by the bailor. They must also act in good faith, which means they must not do anything that would deprive the

[31] 1922 ILR 44 All 735
[32] 1866 3 Bom. H.C. Rep. 137
[33] 1 Ind Cas 977
[34] 13th law commission report of India (contract act,1872)

bailor of the value or use of their own property. For example, if bailee borrows, bailor's car, then bailee must use it carefully and avoid activities that could damage the vehicle and use it like an ordinary prudent person. There is a test of ordinary prudence to infer how a bailee should act in contract of bailment and the concept of reasonable care. The bailee must also act in good faith, which means that he must not do anything that would deprive the bailor of the value or enjoyment of the property. The bailee must return the good to the bailor as soon as possible if it is no longer needed. In case of delay, the owner must provide an explanation as to why the return was delayed. In addition, the bailee must return the property to the bailor if the bailor claims it back, that is, redelivery of goods. The bailee is also obliged not to use the property without permission or allow others to do so. The bailor and bailee both have certain rights, such as the right to receive the property back from the bailee when it is no longer needed which means when the purpose is accomplished. For example, if you lend your car to a friend and he returns it damaged, you have the right to claim compensation from him. If the property is damaged or lost in the bailee's possession, the bailor is entitled to demand compensation from the bailee for the loss or damage occurred to the goods bailed. The amount of compensation is based on the value of the property at the time of its transfer to the bailee. If the bailee recovers the property before the end of the agreed period, the bailee has the right to receive compensation for the costs or losses caused by the transfer of the property. The bailee also has the right to sue the insured if he finds that he has not fulfilled his obligations stipulated by law. The bailor can sue the bailee even if he finds that he has not fulfilled his obligations stipulated by law.

This research paper showed the various aspects of the duty of reasonable care of the bailee in the contract of bailment as per the Indian contract act, 1872. The emphasis on the exemption of liability is done in the paper because this is a topic where contradictory views are seen between the high courts and even between the scholars. The valuable authority given in the report about the contract act of 1872 by the law commission of India in its thirteenth report. This shows how flexible Indian laws are and how much changes are done on regular basis and how much changes need to be done in the different statutes of the country.

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