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# **BAILMENT UNDER THE INDIAN CONTRACT ACT, 1872 IN THE DIGITAL ECONOMY: AN ANALOGICAL ANALYSIS OF DIGITAL ASSETS AS ‘GOODS’**

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Javeed A, LL.B. (Hons.), PES University

## **ABSTRACT**

The significant evolution of technology has rapidly transformed every aspect of the world, including commerce, property, and contractual relationships. With the rise of the digital economy, intangible assets such as cryptocurrencies, non-fungible tokens (NFTs) and data have emerged as valuable economic resources that are routinely entrusted to third-party service providers in a manner functionally akin to traditional bailment. Yet the concept of bailment under Chapter IX of the Indian Contract Act, 1872 has continued to govern and is confined to tangible movable goods creating a tension with the rise of digital assets. This paper undertakes an analogical analysis of bailment to examine whether digital assets can be accommodated within the framework of the Indian Contract Act, 1872.

This paper argues that although digital assets do not fall within the traditional definition of the goods, whether ‘control’ over the digital assets may function as a substitute for physical possession thereby enabling digital custodians to be treated as bailees. The study examines whether the principles of delivery and return under the Indian Contract Act, 1872 can be interpreted in such a manner that accommodates the digital transfers and the custodial relationships.

**Keywords:** Bailment, Digital Assets, Goods, Delivery, Intangible Property, Tangible Property, Digital Economy, Possession, Control, Cryptocurrency.

## INTRODUCTION

The term 'bailment' is derived from the old French word 'baillier', meaning 'to handover,' 'to entrust' or 'to deliver.' The origin of bailment can be traced back to English common law, where possession in goods was delivered for a specific purpose without the transfer of ownership. The same concept has been codified in Chapter IX of the Indian Contract Act, 1872 from Section 148 to 181, where it is a transaction between the parties, whereby one person delivers the goods to another for a specific purpose, the delivery may be actual or constructive, and up on fulfilment of such purpose the same goods have to be returned or otherwise disposed as per the direction of the person transferring the possession. The person delivering the possession is called bailor and the person to whom the possession is delivered is called the bailee.

Thus, from an analysis of the concept of bailment under section 148 the essential elements required under the transaction of bailment are:

- a. There is an actual or constructive delivery of possession of goods to another.
- b. Such delivery is for some specific purpose.
- c. There is no transfer of ownership.
- d. Return or disposal upon completion of the purpose.

Further, Bailment may be either gratuitous or for a reward wherein the former neither the bailor nor the bailee is entitled to any remuneration and in the latter for some mutual benefit of both bailor and the bailee. This legal framework has adequately governed the concept of bailment for over a century with respect to movable goods. However, the rapid advancement of technology has fundamentally altered the nature of property and contractual relationships.

In the contemporary digital economy, data and digital assets have emerged as valuable resources. Digital assets are created, stored and recorded on the blockchain ledger, and range from data and cryptocurrencies. These assets have acquired significance and economic value with the technological progress. For an asset to be considered as a digital asset, it must have the ability to create and generate value and should then be able to transfer ownership through purchase, gifting or other means. Digital assets include cryptocurrencies, non-fungible tokens

popularly known as NFTs, Data in cloud storages. These digital assets especially data is predominantly transferred among Individuals and entities including to third parties such as technological platforms, service providers and cloud service operators. Although they lack physical form, they possess economic value and require similar protection as to traditional goods.

The concept of bailment traditionally confined to tangible movable properties, the idea of digital assets or data, which are intangible in nature, considering as a subject to fall within the ambit of bailment arises at the intersection of law and technology concerning the applicability of traditional bailment principles to intangible digital assets.

### **OBJECTIVE OF THE STUDY**

- a. To examine the concept of bailment under the Indian Contract Act, 1872.
- b. To analyse legal nature and classification of digital goods.
- c. To analyse the definition and scope of goods under the Indian Contract Act, 1872 and Sale of Goods Act, 1930.
- d. To explore the applicability of bailment principles to digital assets through analogical reasoning.
- e. To assess the adequacy of existing legal framework and propose necessary reforms for regulating digital bailment in India.

### **RESEARCH PROBLEM**

The concept of bailment under Chapter IX of the Indian Contract Act, 1872 is premised upon the physical delivery and possession of movable goods. The Act was enacted at a time when goods were invariably tangible, and delivery necessarily involved the physical transfer of a corporeal object. With the emergence of digital assets and cloud storage systems, the understanding of possession, delivery, and return has changed. Further in the contemporary digital economy, transactions increasingly involve the custody and control of digital assets which lack physical form while the Act does not specify whether such digital assets fall within the ambit of goods for the purpose of bailment. This creates the uncertainty regarding the

applicability of principles of bailment to digital assets.

## **RESEARCH QUESTIONS**

- a. What is bailment and what are its essential elements under Indian Contract Act, 1872 and how have they been interpreted by courts?
- b. What is the legal nature of digital assets, and can they be classified as goods?
- c. How are goods defined under Indian Contract Act 1872 and Sale of Goods Act, 1930? Should the definition of goods be redefined to include digital assets?
- d. Can bailment principles enshrined under Indian Contract Act be made applicable to digital goods?
- e. Is the current statutory framework under Indian contract Act adequate or the digital assets necessitate reforms?

## **RESEARCH HYPOTHESIS**

The study hypothesises that although digital assets are not expressly recognised as ‘goods’ under the traditional definition the judicial recognition of intangible commodities such as electricity demonstrates that tangibility is not an absolute pre-requisite for inclusion within the definition and the scope of goods. The functional similarities between bailment and digital storage or custodial arrangements therefore justify an analogical application of bailment principles, revealing a significant doctrinal inadequacy in existing in the framework of Indian contract law.

## **RESEARCH METHODOLOGY**

This research employs a doctrinal research methodology which relies primarily on authoritative legal sources to analyse how the classical law of bailment under the Indian Contract Act can be analogically extended to the modern digital economy.

The study is also qualitative in nature and is based on the in-depth examination of the statutory provisions specifically Sections 148 to 181 of the Indian Contract Act and the definition of goods under the Sale of goods Act alongside the judicial interpretations that define the scope

of the intangible property. Central to this study is an analogical analysis that seeks to bridge the gap between traditional tangible movables and digital assets it argues that while digital assets are functionally similar to the physical goods their intangible nature creates a technical difference in custody and delivery that are currently not explicitly considered by the Indian law.

Secondary sources such as the legal commentaries, reviewed journals, articles and legal databases have been used to build the framework of the digital bailment and its normative utility in addressing the legal relationship between the users and the digital platforms.

This research is primarily limited to the Indian legal framework focusing on the interpretive role of the judicial body in adapting the traditional principles of the possession and delivery of the digital assets like the cryptocurrency and electronic data without the use of the empirical or the comparative data.

## **LITERATURE REVIEW**

### **a. Vijay Pujar, “Digital Bailment,” *Indian Journal of Legal Review*, Volume 5 Issue 11(2025).**

Vijay Pujar’s paper on Digital Bailment provides one of the earliest discussions on the classical bailment principles that are evolving in the digital environment. The author highlights that the U.S courts have often accepted electronics data as aailable property. This paper relies on the Danielle D’Onfro’s *New Bailments* to show that the cloud storage raises doubts on possession especially when the data is encrypted and is inaccessible to the provider. The author also compares the cloud storage with the safe deposits lockers to analyse whether a similar duty of care exists. In Indian Context, the author links the *Puttaswamy*’s case to the idea that the deletion of the data resembles returning goods suggesting a possible shift towards recognising digital bailment. Overall, this paper shows that traditional bailment is inadequate for the digital assets.

### **b. Contract and Specific relief – Avatar Singh, 12th Edition.**

This book provides a comprehensive explanation of the classic principles of bailment under the Indian Contract Act. The book highlights that the bailment is traditionally confined to tangible and movable goods and requires delivery, transfer of possession and an obligation to

return the same goods. Importantly, the author also explains the doctrine of constructive delivery showing that possession can exist even without physical handover when control or the right to control is transferred.

**c. The Institute of Company Secretaries of India, Jurisprudence, Interpretation and General laws.**

The ICSI study material provides the foundational principles of the jurisprudence and general legal concepts, including property, possession, ownership and the nature of right. In the context of digital bailment, this becomes significant because the traditional definition of goods under bailment may require a purposive interpretation rather than a rigid and a literal one. Overall, the material provides theoretical support for extending classic legal principles to the modern digital environment where control rather than physical custody that determines the legal relationships.

**d. Professional's Bare Act – Indian Contract Act, 1872.**

This book sets out the statutory framework governing bailment under Sections 148 to 181. The bare provisions emphasise delivery of goods, transfer of possession and return of the identical goods reflecting the classical requirement of the tangible movable property. In the context of this paper, the Bare Act highlights the existing statutory limitations while simultaneously showing that bailment principles especially those tied to possession and duty of care.

**e. Rohan Karan Mehta, “Can Crypto-assets be bailed? Analysing the buyerexchange relationship,” NUJS Law Review, Volume 17(2024).**

Mehta's paper examines whether the relationship between the crypto-exchange platforms and the users can be classified as bailment under the Indian Law. The author highlights that the Indian scholarship on bailment and the crypto is sparse and existing literature has not addressed whether virtual digital assets like the cryptocurrency can qualify as “goods”. Which draws from the foreign jurisdiction the author notes that while some common law system treats such relationship as trusts due to the intangible nature of crypto assets, the Indian legal position remains unclear. The author also analyses case like the Achinto and the treatment of the dematerialised shares to argue that constructive possession may allow the intangible assets to fall within the bailment.

## DISCUSSION AND ANALYSIS

### **Statutory Framework and Essential Elements of Bailment**

In everyday commercial life and personal transactions, there are many instances of entrustment of goods or movable properties by one person to another for a specific purpose, this sort of situation arises countless number of times a day making entrustment of goods or movable properties a routine occurrence. For instance, a person may entrust his watch to repairer for repairs, or a person may handover cloth to a tailor for the purpose of stitching, or a vehicle may be handed over to a valet for parking or goods may be stored in a warehouse for safekeeping or a company entrusts confidential files to a secure destruction agency with instructions to shred them. Each transaction reflects the temporary transfer of possession without transfer of ownership for a specific purpose with an obligation to return the goods or movable property upon completion of that purpose or disposed of in a manner as directed by a person.

In all the foregoing instances, the delivery or entrusting of goods by one person to another is known as bailment. Bailment thus denotes the legal relationship that arises when goods or movable property are delivered by one person to another under an agreement that such property shall be returned or otherwise disposed of in accordance with the directions of person entrusting the property i.e., transferring the possession, upon fulfilment of a specified purpose. The defining characteristic of bailment is the transfer of possession without transfer of ownership, as title remains with the person entrusting throughout the subsistence of the arrangement. As the concept of bailment is premised upon the delivery of goods, its application is restricted to movable property and excludes immovable property from its scope.

Chapter IX, Sections 148 to 181 of the Indian Contract Act, 1872 deal with the provisions of bailment and Section 148<sup>1</sup> defines bailment as a transaction whereby one person delivers goods to another person for some valid purpose, upon a contract that they have entered into, when the purpose is accomplished the goods must be returned or otherwise disposed of according to the directions of the person delivering them. The person who delivers the goods is called the bailor and the person to whom they are delivered is called the bailee.

In case of *Tilendra Nath v. United Bank of India*<sup>2</sup>, it was held that Bailment is established only

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<sup>1</sup> The Indian Contract Act, No. 9 of 1872, S. 148

<sup>2</sup> *Tilendra Nath v. United Bank of India*, AIR 2002 GAU 1

when there is 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 disposed of according to the direction of the person who delivers the good and it is the duty of the Bailee to deal with the goods according to the direction of the Bailor.

Thus, the essential element of bailment that emerge are:

- a. Delivery of goods for change of possession.
- b. Delivery must be purpose specific and usually contractual.
- c. Obligation to return or dispose the goods as specified by bailor.
- d. Specific movable property.

**a. Delivery of goods for change of possession:** The delivery of goods must involve a change of possession in the legal sense, as governed by Section 149<sup>3</sup> i.e., the bailee must have de facto control of the property and mere custody does not amount to change of possession. One who has custody of the goods without possession is not a bailee. E.g., The mere leaving of a box in a room of another person's house without handing over the key of the box or the mere deposits of valuables in a bank locker does not itself constitute bailment unless the other person has the actual possession or some control over it and moreover, it does not amount to delivery within the meaning of section 149<sup>4</sup> In the leading case of *Kaliaperumal Pillai v. Visalakshmi*<sup>5</sup>, a lady employed a goldsmith for the purpose of melting old jewellery and making new ones, Every evening she used to receive half of the jewels made by the goldsmith and put it in a box and lock it up while the box was left in the room of a goldsmith she retained the key herself, upon the jewels being stolen, lady sued the goldsmith, holding him as liable as a bailee. However, it was held by the court, that the mere leaving of the box in a room in the defendant's house when the plaintiff herself took away the key does not constitute delivery within the meaning of the provision in section 149 and it does not constitute bailment. As held in the case of *Ultzen vs. Nicols*<sup>6</sup>, Where the plaintiff enters the defendant's restaurant to dine-in and his coat was taken by a waiter and hung on a hook behind while the plaintiff was dining

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<sup>3</sup> The Indian Contract Act, No. 9 of 1872, S. 149

<sup>4</sup> The Indian Contract Act, No. 9 of 1872, S. 149

<sup>5</sup> *Kaliaperumal Pillai v. Visalakshmi*, AIR 1948 Mad 32 (India)

<sup>6</sup> *Ultzen v. Nicols*, [1894] 1 QB 92 (Eng.)

his coat was stolen. Here it was held that the waiter in this case had taken the possession of the coat and selected a place himself for safekeeping and thus the defendant was held liable and was considered to be a bailee. This demonstrates that delivery must involve a change in possession to form one of the essentials of bailment.

Further, the delivery maybe actual which involves physically handing over the possession of the goods or it may be constructive, which takes place when the person in possession acknowledges holding the goods on behalf of the buyer and subject to the buyer's instructions. For example, after selling the goods a seller may continue to hold them on behalf of the buyer which amounts to constructive delivery, Symbolic delivery, on the other hand, occurs when a symbol is handed over instead of the goods themselves. In such cases the goods are not physically transferred rather the means of obtaining possession is delivered.<sup>7</sup>

**b. Delivery must be purpose specific and usually contractual:** The goods delivered should be for some specific purpose it may be lent, hired or deposited for safe custody or as a security for a debt. Section 148 contemplates delivery based upon a contract. Usually the delivery of goods is a result of contract But this feature, though usual, is not essential as in case of State of Gujarat v. Menon Muhammad Haji Hassan <sup>8</sup> The Supreme Court rejected the contention that Bailment must arise from a contract and held that bailment arises under contract only in cases where it originates from a contract but it is not correct to say that there cannot be a bailment without an enforceable contract. Thus, if the goods or property are given to someone or taken by someone without an enforceable contract, the person in possession of the goods or property still has the duty as bailee and the bailor is entitled to demand the property or its value.

**c. Obligation to return or dispose as specified by the bailor:** One of the essentials of bailment is that the Bailee i.e., the person in possession of goods is obliged to return the goods or dispose of them according to the directions given by the bailor and such directions to return or dispose may be given even after the accomplishment of the purpose of bailment. It is to be noted that even if the contract is silent as to the return of the goods there is an implied term in a bailment to return the goods within a reasonable time after the accomplishment of the purpose. It is not a bailment if there is no obligation to return the same subject to the condition either in its original form or in the altered form as may be required by the bailor.

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<sup>7</sup> Inst. of Co. Secretaries of India, Jurisprudence, Interpretation and General Laws 654 (2025).

<sup>8</sup> Kannambra Nayar Veetil Valia v. P.N. Krishna Pattar, AIR 1943 Mad 74 (India).

**d. Specific Movable property:** a foremost essential of bailment is that there must be a delivery of goods or movable property to give rise to the relation of bailor and bailee and to constitute contract of bailment. Further there cannot be a bailment of immovable property.

### **Goods: Can digital assets be classified as goods?**

The Indian Contract Act, 1872 does not expressly define "goods"; the term is defined in Sale of Goods Act, 1930 under section 2(7) and it relies on this definition owing to the intertwined relationship between the two legislations. As provided by Law Commission, prior to the enactment of Sale of Goods Act, the law governing the sale of goods in India was contained in Chapter VII of Indian Contract Act reflecting the principles derived from English common law. Section 76 of the Indian Contract Act, 1872 previously defined 'goods', and the Sale of Goods Act, 1930 retained that definition.

The interrelationship between the two statutes is further reinforced by section 2(15) of Sale of Goods Act, 1930<sup>9</sup> which provides that terms not defined therein but defined under Indian Contract Act, 1872 shall bear the same meaning. Further in case of *Kannambra Nayar v. P.N. Krishna Pattar*<sup>10</sup> the Madras High Court held that the term goods in the Indian Contract Act must be understood in the same sense as under the Sale of Goods Act, 1930 emphasising the historical continuity between the two legislations.<sup>11</sup>

The rapid expansion of digital commerce is characterised by intangible assets and technology driven transactions, challenges the traditional concept of bailment. At this point it becomes necessary to briefly clarify what constitutes a digital asset. Broadly, digital assets are electronically stored, non-physical representations of value that exist in electronic form and are capable of ownership, transfer, and commercial exploitation. They include cryptocurrencies, data, non-fungible tokens and tokenized blockchain based assets including certain forms of digital media. Unlike traditional tangible property digital assets derive their existence and security from cryptographically secured distributed ledger technologies and comparable digital infrastructure. The fundamental question that therefore arises is can digital files, data, or cryptocurrency collectively termed digital assets be classified as 'goods' within the meaning of existing legal framework. The statutory definition of goods under Sale of Goods Act, 1930 is

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<sup>9</sup> The Sale of Goods Act, No. 3 of 1930, S. 2(15) (India).

<sup>10</sup> *Kannambra Nayar Veetil Valia v. P.N. Krishna Pattar*, AIR 1943 Mad 74 (India).

<sup>11</sup> Rohan Karan Mehta, 'Medieval' Law in 'Modern' Tech: Bailment and Indian Crypto Exchanges, 17 NUJS L. Rev. 1 (2024).

confined to movable property.

Section 2(7) of Sale of Goods Act, 1930<sup>12</sup> defines 'goods' as every kind of movable property, excluding actionable claims and money. Since digital assets are intangible in nature and do not qualify as tangible movable property, they fall outside the ambit of 'goods' as defined thereunder. As a result, digital assets cannot be subject of bailment under the existing legal framework, but the act of entrusting data a form of digital asset to a cloud storage provider resembles the structure of the bailment.

Digital possession no longer requires holding of assets physically, rather it denotes control and the ability to access, modify, restrict or transfer digital assets. With the emergence of SaaS i.e., Software-as-a-Service, cloud computing and smart contract the delivery and possession entirely exist within virtual environments.<sup>13</sup> In such a situation, users entrust their digital assets to third-party service providers who have control over storage and management. This further raises issues regarding liability, security and trust as possession is no longer physical custody but is redefined by technical and contractual arrangements<sup>14</sup>. Further, in cases of cryptocurrency exchanges, users transfer control of their digital assets to a platform with the expectation of flexible transaction. But in cases of insolvency, fraud or cyber intrusion, the absence of clear classification of such digital assets as 'goods' complicates the remedies.<sup>15</sup> Unless judicial interpretation or legislative intervention extends bailment principles to digital assets or bring it within the purview of goods users may remain exposed to doctrinal uncertainty.

But Judicial interpretation in certain contexts has expanded the meaning and understanding of goods beyond strict physical tangibility. Courts have gradually acknowledged that control and custody can apply not only to physical objects but also to digital assets.

In case of *Commissioner of Sales Tax v. Madhya Pradesh Electricity Board*<sup>16</sup>, the Supreme Court was confronted with the question whether electricity could be treated as 'goods'. Although electricity does not possess physical form in the conventional sense, the court held

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<sup>12</sup> The Sale of Goods Act, No. 3 of 1930, S. 2(7) (India).

<sup>13</sup> R. Brownsword, *Law, Technology and Society: Reimagining the Regulatory Environment* (Routledge 2019).

<sup>14</sup> M. Darshika, *Bailment in the Digital Era: Reimagining Custody & Control*, Surana & Surana (Nov. 26, 2025)

<sup>15</sup> *Reconceptualizing Bailment in the Age of Cryptocurrency Exchanges*, 16 NUJS L. Rev. 215 (2024).

<sup>16</sup> *Commissioner of Sales Tax, Madhya Pradesh, Indore v. Madhya Pradesh Electricity Board, Jabalpur*, AIR 1970 SC 732 (India).

that it nevertheless satisfied the legal conception of goods. It observed that the electricity can be transmitted, transferred, stored, delivered, possessed etc., in the same way as any other movable property and if there can be sale and purchase of electric energy like any other movable object, then it may be covered within the purview of definition of goods.

The recognition of electricity as goods demonstrates two things:

- a. That tangibility is not an indispensable characteristic of goods.
- b. That functional approach focusing on commercial attributes rather than material form.

Significantly, the decision reflects a shift from a purely physical understanding of goods toward an economic and functional analysis. Thus, it weakens the assumption that goods must be corporeal and confining it to traditional movable and tangible property. Further, digital assets can also be analogically held as goods as they share several similar characteristics that has been emphasised in this case i.e., transferability, transmission, storage, economic value and other characteristics like movable goods.

The court in *Vikas sales corporation v. Commissioner of commercial taxes*<sup>17</sup>, held that movable property includes both corporeal and incorporeal properties. In case of *Tata Consultancy Services v. State of Andhra Pradesh*.<sup>18</sup> The Supreme Court held that the computer software though intangible in essence, can be considered as 'goods' when it is capable of consumption, transmission, transfer, deliver, storage and possessed particularly when embedded on a tangible medium such as compact disc. The court emphasised the functional and commercial attributes of a software rather than its physical form.

Further in case of *BSNL v. Union of India*<sup>19</sup> held that electromagnetic waves are not goods, the court in this case laid down the test to determine what constitutes as goods. It requires (a) Ability to trade (b) Utility and (c) being able to transmit, transfer, deliver, stored and possessed.

So, by drawing conclusion by these reasonings and above cited precedents it may be contended that digital data stored in cloud environments similarly possesses attributes of transferability,

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<sup>17</sup> *Vikas Sales Corp. v. Commissioner of Commercial Taxes*, (1996) 4 SCC. 433 (India).

<sup>18</sup> *Tata Consultancy Services v. State of Andhra Pradesh*, (2005) 1 SCC 308 (India).

<sup>19</sup> *Bharat Sanchar Nigam Ltd. v. Union of India*, (2006) 3 SCC 1, 71, 92(A) (India)

storage, possession and deliverability. If the defining characteristics of goods lie in their capacity to be commercially exploited and controlled rather than materialistic form alone the classification of certain digital assets as goods is conceptually defensible. Thus, by relying on the courts functional attributes while interpreting the term goods digital assets may be analogically treated as goods.

### **Application of the bailment principles to digital assets**

Having examined the statutory meaning of “goods” and the judicial expansion of that concept beyond strict tangibility, the next query is whether the foundational principles of bailment can be made applicable within the digital environment. If digital assets are capable of functional classification as goods, the logical sequence is to examine whether transactions involving their transfer and custody satisfy the essential elements of bailment under the Indian Contract Act, 1872.

Bailment is fundamentally concerned with transfer of possession of movable property for a specific purpose, accompanied by an obligation to return or dispose of the property in accordance with bailor’s direction. However, in contemporary digital ecosystems, Digital possession no longer requires holding of assets physically, rather it denotes control and the ability to access, modify, restrict or transfer digital assets via cryptographic keys, custodial wallets, server-side access and platform-based management. The shift from physical to digital control necessitates expanding bailment principles to digital assets.

Data, being a form of digital asset, can be stored in cloud service platforms such as AWS, Microsoft Azure, and Google Cloud. A cloud service provider is a third-party entity that offers scalable computing infrastructure or software applications over the internet. In such arrangements users and businesses entrust digital assets to this technical infrastructure, thereby transferring functional control while retaining ownership a structure that closely resembles bailment.<sup>20</sup>

**a. Delivery of possession:** Delivery under bailment may be actual or constructive. In digital transactions, delivery does not take physical form but occurs through a transfer of

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<sup>20</sup> Google Cloud, What Is a Cloud Service Provider?, <https://cloud.google.com/learn/what-is-a-cloud-serviceprovider>

control.<sup>21</sup> When a user uploads confidential or commercially sensitive data to a cloud service provider the user relinquishes exclusive physical custody while the provider assumes technical control over storage infrastructure. Although the user retains the access credentials, the effective control over storage systems primarily rests with the service providers. Such an arrangement resembles constructive delivery, where possession is transferred without physical handing over. This provides the shift from corporeal custody to effective control.

**b. Purpose and Contractual basis:** Bailment requires that delivery is made for a specific purpose. In digital transactions, this requirement is ordinarily satisfied where data is transferred from a local device to remote servers for clearly defined objective such as secure storage, backup and access it across location. When users upload information to cloud service provider the entrustment is not indefinite or gratuitous, but it is undertaken for specific purpose including safeguarding data, facilitating sharing and ensuring accessibility across location. Thus, the element of purpose being fundamental to bailment is said to be functionally present in cloud storage arrangement.

**c. Obligation to Dispose or Return:** Another defining feature of bailment is that the bailee is under obligation to return the good or dispose them in accordance with the directions given by the bailor once the purpose is fulfilled. In the context of digital transaction this obligation is on the third-party entity providing services. Their duty is to allow retrieval of stored data or enable migration from one platform to another platform or permanently delete the data upon request or termination of services this function is evident that just as a bailee is obliged to return goods digital custodian must also return access or control over the digital asset.

### **Application of the Bailee's Duties/Rights in the Context of Digital Assets**

If digital custody arrangements are functionally comparable to bailment, the logical extension is to examine whether the duties imposed on the bailee under the Indian Contract Act, 1872 can be analogically made applicable to entities that assume or have been entrusted with control over digital assets as the responsibility in such arrangements bears notable similarity to bailment.

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<sup>21</sup> Lisa E. Schaures, Shamim Mohandessi & Tess Rabin, Possessing the Unpossessable – Holding Digital Assets in Your UCC Hands, Seyfarth Shaw LLP

### **Bailee's duty to take care**

Section 151 of the Indian Contract Act, 1872<sup>22</sup> deals with the duty of care to be taken by bailee. 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. If the data entrusted to the bailee is stored by him in an unsafe location subsequently leading to damage, the bailee would be liable in accordance with the duty imposed under section 152 of the Indian Contract Act, 1872<sup>23</sup>. Similarly, a cloud storage provider entrusted with data is expected to exercise reasonable care to protect it from any unauthorised use, technical failures or accidental deletion.<sup>24</sup>

### **Bailee's duty to return the goods**

When the goods are bailed the bailor expects them to be returned on demand or upon fulfilment of subject which goods were bailed under the contract of bailment. Section 160<sup>25</sup> outlines the duty to return goods or deliver such goods in accordance with the directions of the bailor at the accomplishment of purpose. A digital contract signed by the user while entrusting their data to cloud storage service, the user expects data to be accessible at any time on demand, unless otherwise provided in the contract. Similarly, the cloud service provider has a duty to return the data upon termination of the service or upon request by the user. The rationale of this duty is to prevent unauthorized retention of goods beyond the requirement.<sup>26</sup>

### **Right to lien**

Lien in legal terms is defined under section 170 of Indian Contract Act, 1872, it provides that under the contract of bailment when the bailee renders any services involving the exercise of labour or skill in respect of the goods bailed, he has a right to retain such goods until he receives the due remuneration for the services rendered, unless contract provides otherwise. Analogically, Cloud data refers to digitally stored information being managed by the storage service providers, when the data is stored by the service provider, they essentially act as bailee

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<sup>22</sup> The Indian Contract Act, No. 9 of 1872, S. 151

<sup>23</sup> The Indian Contract Act, No. 9 of 1872, S. 152

<sup>24</sup> Tamanna Yadav, Evolving Concept of Bailment in Digital Age: Indian Contract Law and Cloud Liens, IndiaCorpLaw (May 28, 2025), <https://indiacorplaw.in/2025/05/28/evolving-concept-of-bailment-in-digital-ageindian-contract-law-and-cloud-liens/>

<sup>25</sup> The Indian Contract Act, No. 9 of 1872, S. 160

<sup>26</sup> Tamanna Yadav, Evolving Concept of Bailment, *supra* note 24.

rendering services such as data storage involving the exercise of labour or skill to protect data. The cloud service provider may retain the goods essentially digital data in this regard until the bailor makes the remuneration due to him for the services rendered. Such situations are commonly encountered through platforms like Google Storage, iCloud or OneDrive.<sup>27</sup>

In case of Amazon Web Services, Inc. v. ACIT<sup>28</sup> the authority has not directly addressed the concept of cloud lien. This gap is significant as cloud lien is highly relevant in the circumstances involving control over user data, specifically when access to the user's data is restricted due to non-payment or breach of term. Such situations give rise to important concerns regarding data access and retention.

### **Comparative Analysis: The UK & The US**

Having examined the Indian position, it is instructive to undertake a comparative analysis of jurisdictions from which Indian Contract Law historically derives influence, particularly the United Kingdom and the United States.

#### **Position in the United Kingdom**

The UK has not yet recognised digital bailment in its statutory framework; however, significant steps towards such recognition have been taken. The Law Commission's Final Report<sup>29</sup> has importantly recognised the growing significance of digital assets in the modern world. Further, the Property (Digital Assets etc) Bill<sup>30</sup> has classified digital assets as personal property under the third category.<sup>31</sup>

In the English Court of Appeal, it was held that purely digital information doesn't qualify as "goods" under traditional doctrine of bailment due to the absence of physical form<sup>32</sup>. This highlighted a significant gap existing in the law and in response UK law commission with the enactment of Electronic Trade documents Act 2023 indicates the growing awareness of the

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<sup>27</sup> Tamanna Yadav, Evolving Concept of Bailment, supra note 24.

<sup>28</sup> Amazon Web Services, Inc. v. ACIT, ITA Nos. 522 & 523/Del/2023, (Income-tax App. Trib. Delhi) (Aug. 1, 2023)

<sup>29</sup> Digital assets, Law Commission (Eng. & Wales) [https://lawcom.gov.uk/project/digital-assets/?utm\\_source](https://lawcom.gov.uk/project/digital-assets/?utm_source)

<sup>30</sup> Property (Digital Assets etc) Bill [HL] (Bill 237, 59/1) (U.K.), <https://publications.parliament.uk/pa/bills/cbill/59-01/0237/240237.pdf>

<sup>31</sup> Tamanna Yadav, Evolving Concept of Bailment, supra note 24

<sup>32</sup> Your Response Ltd v Datateam Business Media Ltd[10], [2014] EWCA Civ 281

need to modernize the definitions to accommodate digital realities.<sup>33</sup>

### **Position in the United States**

The US has been similar but not yet expressly recognised the digital bailment as a formal doctrine but, the digital custody relationships have been largely governed through contractual and tort-based framework. The cloud service providers in the US, predominantly Google cloud requires its users to sign a service-based contract granting them the right to deny access or suspend service upon failure to make remuneration due for the services provided.

In 16-2752 - In Re: Yahoo! Inc. Customer Data Security Breach Litigation<sup>34</sup>, the court held the legal obligation of cloud providers and highlighted their responsibility to ensure security of the data entrusted to them.

Further, The European Union's General Data Protection Regulation (GDPR) provides that data controllers entrusted with personal data are required to implement appropriate security measures, notify affected parties of breaches, and compensate those harmed by data mismanagement. This framework analogically emphasises key attributes found in bailment relationships.<sup>35</sup>

Collectively, the international approaches highlight both the doctrinal complexities which are involved in extending the traditional property principles to digital assets considering the rapid growth in the technology and digital environment and to the growing recognition towards custodial responsibilities in the digital era.

### **Expansion in legal reforms and its Challenges**

Instead of enacting of an entirely new provisions governing digital bailment, the legislation could evolve by expanding the scope of the definition of "goods" to include digital assets such as data, cloud storage, cryptocurrency, NFT's and so on. This opens the possibility of extending bailment and lien doctrines. Thus, amending the definition of 'goods' under the current statutory framework i.e., The Sale of Goods Act, 1930 and Indian Contract Act, 1872 will assist in addressing the issue that may arise in digital transaction which are like the nature of bailment.

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<sup>33</sup> M. Darshika, *Bailment in the Digital Era: Reimagining Custody & Control*, Surana & Surana

<sup>34</sup> *In re: Yahoo! Inc. Customer Data Security Breach Litigation*, Case No. 5:16-md-02752-LHK.

<sup>35</sup> Regulation (EU) 2016/679, arts. 5, 25, 32–34, 82 (General Data Protection Regulation, 2016).

Further addition of a bill in the form of Digital Asset (Entrustment and Regulation) bill could provide a specialised legal regime to regulate data handling, ensuring accountability and standards of care for bailees.

While through the Digital Personal Data Protection Act, 2023 India has introduced a robust framework for the processing of digital personal data by recognising the right of an individual to protect their personal data representing a fundamental shift in how entities must handle individuals' personal data<sup>36</sup>. However, it falls short of recognising custodial or possessory duties corresponding to bailment. The major obstacle in expanding principles of bailment is possession, which could be addressed by incorporating the concepts of Digital custody into privacy legislation.

## **CONCLUSION**

The foregoing analysis demonstrates that India's traditional law of bailment rests on the premise of physical delivery and tangible goods which is increasingly misaligned with the realities of the digital economy. Digital assets such as data, cloud storage, cryptocurrency and so on do not fall within the definition of "goods" yet they function in ways that resemble the classical bailment especially in terms of entrustment, control, and return. Judicial developments particularly in recognising the intangible commodities such as electricity and software as "goods" demonstrate that the Indian legal system can adopt the functional and the purposive interpretative approach.

This paper concludes that although the traditional doctrine of bailment is grounded in physical possession, it offers sufficient conceptual flexibility to accommodate digital assets through purposive interpretation. Redefining the scope of "goods" in the Sale of Goods Act or creating a dedicated digital asset custody framework shall deliver an essential clarity. As digital transactions increasingly shaping the economic interactions, India's laws must adapt to acknowledge digital entrustment and enforce the related duties while keeping bailment's core principles relevant and protective of the user rights in the digital environment.

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<sup>36</sup> The Digital Personal Data Protection Act, No. 22 of 2023

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