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DO BANK LOCKERS CONSTITUTE BAILMENT? -AN INDIAN PERSPECTIVE

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ABSTRACT

In this world of 7.98 billion people, all of us are striving to excel in our lives, investments, and assets act as a catalyst in this process. However, to keep these assets safe, people put them in bank lockers. What sort of relationship does the bank have with the customer then? Is it bailment or is it not? This study examines the interaction between the locker clients and service providers, as well as the legal posture adopted by legislation by reviewing court decisions on the matter. The position of the Indian and American Judiciary has been compared and an overall outcome is that the position in India is still very unclear on whether the bank lockers constitute bailment. According to a circular by RBI, banks are liable if they commit negligence, however, do not possess the duties and rights of a bailee. Perhaps, it is a progressive step looking at how the United States considers bank lockers as bailment.

Keywords*: bank lockers, contract, bailment, India, America,*

INTRODUCTION

People are getting into the habit of investing and buying goods because the economy is getting stronger. It's important to remember that the world isn't perfect and that some people may try to take everything you own. Bank Lockers are a service that lets people get a safety deposit box, put all of their belongings in the back, and pay a fee every year. Nearly every private bank in India charges a fee to use a bank locker. Indians use bank safes and vaults more often. As demand grows, the rights and responsibilities of both customers and companies are getting harder to understand. The law says that the bank has a special relationship with people who rent bank lockers. The goal of this paper is to find out what kind of relationship there is between people who use vault services and the companies that offer those services. It will also try to figure out what the law says about the subject by looking at what courts have said about it. Also, a quick look is taken at the laws of the United States to see

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what problems might come up with the above legal relationship. At the same time, an attempt is made to understand how the courts of the two different legal systems (American and Indian) feel about treating this relationship as if it were a bailment.

So, the research objective for this paper is:

- To analyze whether bank lockers constitute bailment in India

REVIEW OF LITERATURE

1. Safe Deposit Business: Its Bailment Law – Rollin C. Huggins(1955)[1]

When a safe deposit company rents a safe deposit box to a lessee and the lessee puts property in the box rented from the safe deposit company, the renter becomes the bailee of the property. The bailment has been set up. Even though the two sides have come to a different understanding, this is still the case. The customer could be called the renter, the lessee, the person with the contract, or another name. Even though this is the case, he is still considered a bailor by the law, no matter what the contract says. In the same way, even though the contract uses different words, the safe deposit company is a bailee.

2. Liability and the Safety Deposit Box – Walter C. McGhee Jr.(1956)[2]

Safe deposit boxes are not guaranteed to be safe, and no responsibility is assumed beyond what is necessary by law. As a result, the legal connection between the renter of a safety deposit box and the bank or corporation that provides it should be reviewed. Under the Texas Banking Code of 19431, the bank and box renter are lessor and lessee and landlord and tenant in the absence of a contract. The rights and duties of the bank and box renter are governed by the legislation of this relationship, and the lessee is regarded to be in possession of the box and its contents for all purposes. A safety deposit box's contents can be accessed and removed by any joint owner. The bank is not liable for any damage caused by such persons' access or removal. The contents of any box with a six-month rent delinquency can be removed by the bank. The bank has a lien on the contents to satisfy late rental and box opening fees. If the obligation is not paid within two years, the contents may be auctioned in the same way as

[1] Rollin C. Huggins, Safe Deposit Business: Its Bailment Law , 72 BANKING L. J. 774 (1955).
[2] Walter C. McGhee Jr., Liability and the Safety Deposit Box, 2 S. TEX. L.J. 249 (1956)

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a deed of trust is. The bank-box renter connection is described in Texas statutes as a lessor-lessee relationship, but numerous courts have construed it as a bailment, with the bank acting as a bailee for hire. Items or money are regularly lost without cause, or the contents of the box are stolen by unknown individuals.

3. The legal relationship between thr bank and its safe deposit customer- Richard A. Lord(1983)[3]

This article investigated the customer-bank safe deposit box link. As previously stated, the relationship is mostly contractual in nature, but public policy concerns may preclude the bank from evading accountability for basic issues. Courts have not been afraid to apply judicial constraints in the absence of contractual terms specifying the link. Despite the fact that the courts have tended to define, limit, and fit the safe deposit relationship into more traditional legal arrangements, their judgements have been upheld. It has caused significant problems, many of which the courts that established them have not completely addressed. Some legislatures have addressed the topic of legal relationships. Even though legislative enactments have been more thoughtful than judicial responses, they have failed to address numerous major challenges that concern banks on a daily basis. Despite the existence of an excess of regulatory restrictions, only new statutes can effectively and uniformly address these issues. First, acknowledge that the legal term of the partnership is far less significant than its rights and duties. Safe deposits may be subject to bailment law and various landlord-tenant restrictions. However, it is time to move beyond labels and address the day-to-day concerns of banks and customers. This article addressed some of those concerns and proposed remedies. Before the issues become intractable, the courts and legislators should investigate the bank's relationship with its safe deposit customer and devise solutions that satisfy both parties. Until then, 1980s banks will deploy solutions from a time when safe deposit boxes were uncommon and only used by the wealthy.

4. Safe Deposit Vaults/Lockers – Bailment or Lease? -Hareesh Kumar Kolichala(2022)[4]

They are subject to the authority of both the banks and the individuals that rent out the lockers. The person who rents the locker does not hand over all of the items to the lender at the beginning of the

[3] Richard A. Lord, The Legal Relationship between the Bank and Its Safe Deposit Customer, 5 CAMPBELL L. REV. 263 (1983).

[4] Kolichala, H. K. (2022). Safe Deposit Vaults/Lockers – Bailment or Lease? *Vinimaya*, *42*(2), 55-60. https://www.proquest.com/scholarly-journals/safe-deposit-vaults-lockers-bailment-lease/docview/2580077570/se-2

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rental period. The items are neither handed to the bank in order for the bank to keep them safe, nor are they provided to the bank by themselves. The banker is the only person who can enter the premises where the boxes are stored because they are the only ones with the key. Only the person who hires the locker is permitted to enter it and use it in the manners specified by the owner. Therefore, the transaction does not involve a lease nor a bailment of the goods by the person renting the locker. The Indian judicial system has reached the conclusion that the process of renting a locker is a convoluted one. However, given the restrictions placed on the usage of the locker, it is possible that the relationship in question is one of licensor and licensee rather than lessor and lessee or bailor and bailee.

ANALYSIS

Legislative Angle

The Indian Context

According to **Section 148**[5] of the Indian Contract Act of 1872, a bailment is the delivery of goods by one person to another for some purpose, with the agreement that they will be returned or otherwise disposed of when the purpose is completed.

Bailment includes things, not services. And 'goods' according to **section 2(7) of the Sale of Goods Act** means every kind of movable property other than money and actionable claim, so keeping money in a bank account is not bailment and services or personal favors such as asking someone to look after your mansion in your absence is not bailment, as a house is not a movable property.[6] In bailment, both the bailors and the bailees have certain rights and duties. However, the banks are not supposed to follow any duty and nor do they have any rights.

RBI Notification on 18th August 2021[7]

RBI put out a circular which came into effect on January, 01,2022 on the topic: Bank locker Locker/Safe Custody Article Facility provided by the banks - Revised Instructions To comprehend it in short, the banks must set up a policy that has been approved by the Board and explains in detail

[5] Section 148 of The Indian Contract act, 1872
[6] Section 2(7) of the Sale of Goods Act
[7] Reserve Bank of India, Bank locker Locker/Safe Custody Article Facility provided by the Banks-Revised Instructions(Issued on 18th August, 2021)

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what they are responsible for if the contents of the lockers are lost or damaged because of their carelessness. This is because banks have a separate duty of care to maintain and run their locker or safety deposit systems with care. The duty of care includes making sure the locker system works well, keeping unauthorized people from getting into the lockers, and putting up the right protections against theft and robbery. Also, banks must follow the Master Directions on Frauds when it comes to how they must report robberies, dacoits, thefts, and break-ins. The bank is not responsible for any damage to or loss of the contents of a locker that is caused by a natural disaster or an act of God, such as an earthquake, flood, lightning strike, or thunderstorm, or by an act that is the customer's fault or negligence. But banks must take good care of their locker systems to protect their buildings from these kinds of disasters. It is the bank's job to make sure that the building where the bank locker vaults are located is safe and secure. It is the bank's job to make sure that things like fire, theft, burglary, robbery, dacoity and building collapse don't happen on the bank's property because of the bank's own mistakes, negligence, or anything else it does or doesn't do. Banks can't say that they're not responding to their customers if the contents of their lockers get lost. If the loss is caused by one of the things listed above or by fraud committed by an employee or employees of the bank, the bank will have to pay an amount equal to 100 times the annual rent of the bank locker[8]. The bank locker memorandum of hiring the locker stipulates that the bank is not responsible for losses due to war, civil commotion, theft, or burglary. Unless there's internal fraud or misappropriation, banks won't be responsible for locker valuables.[9] The bank locker agreement explicitly indicates that the hirer's assets are stored in the vault at his or her own risk. The contract states that the bank will take all care to protect the locker and its contents. The agreement makes it clear that the bank assumes no liability for vault contents.[10]

Judicial Journey in India

To establish a conceptually clearer picture to obtain answers regarding the connection between the bank locker service provider and a customer, Indian courts have time and again outlined a few essential requirements that ought to be met to recognize this legal relationship as one of bailment. The case ***Kalliaperumal Pillai v. Visalakshmi***[11]was very important in figuring out what "possession"

[8] Ibid
[9] Supra Note 7
[10] Understanding the nuances of bank locker liability, https://www.motilaloswal.com/blog-details/Understanding-the-nuances-of-bank-locker-liability/1282
[11] Kaliaperumal Pillai v Visalakshmi, AIR 1938 Mad 32

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means. It established that true "possession" is determined by who has "control" over the goods, not who has custody of them. In another important case, ***Tilendra Nath Mahanta vs. United Bank of India***[12] and others, it was said that the money deposited can never be said to have been "bailed," because money is not a "good," and the money given back to the client is not the same money that had been deposited by the client. But the case ***Atul Mehra v. Bank of Maharashtra***[13] is a prominent one on the relationship between a person who rents a bank locker box and the person who rents it to them. The appellant rented a bank locker box at the bank of the respondent and put some jewelry in it. Respondent's bank was robbed, and all of the lockers, including the appellants', were broken and the goods were taken. It turned out that the bank had not followed the security rules, and the strong room, which should have been made of hard metal parts and concrete, was made of wood. The appellant said that since these ornaments were in the bank's possession, it was a case of bailment, and since the bank, in its role as a bailee, hadn't taken reasonable care, ***section 151 of the Indian Contract Act*** [14] said that the appellant should be paid back. The bank, on the other hand, tried to say that their legal relationship was like that between a landlord and a tenant and that they shouldn't be held responsible for not protecting something that they didn't own or know everything about. In this case, the court reaffirmed that the other courts had been right to rely on ***Mohinder Singh Nanda v. Bank of Maharashtra***[15] and stated that there can't be a bailment relationship unless the bailee knows and controls the goods alone. There was no agreement between the appellant and the respondent that told the bank what was in the bank locker box and gave the bank control over it. Since the bank was unaware of the quality, quantity, and value of the jewelry kept in the bank locker box, the bank cannot be said to have been given "entrustment" or "control" of the contents of the box, and therefore there was no transfer of possession. Hence, a case of bailment wouldn't arise by mere hiring of a bank locker box, unless and until the bank has exclusive knowledge and possession of the contents of the box. In the case of ***Amitabha Dasgupta v. United Bank of India***[16], 2021 SCC SC 124 where The panel of MM Shantanagoudar and Vineet Sarana directed United Bank of India to pay the Appellant Rs. 5,00,000 in compensation for breaking his locker accidently. If the officers are retired, the costs should be borne by the bank; if they are still employed, the costs should be removed from their pay. For litigation fees, the Appellant will receive Rs. 1,000,000. The Court emphasised that the customer

[12] Tilendra Nath Mahanta Vs. United Bank of India and Ors
[13] Atul Mehra v. Bank of Maharashtra AIR 2003 P H 11, II (2003) BC 570
[14] Section 151 of the Indian Contract Act, 1872
[15] Mohinder Singh Nanda v. Bank of Maharashtra 1998 ISJ (Banking) 673
[16] Amitabha Dasgupta v. United Bank of India, 2021 SCC SC 124

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is totally at the mercy of the bank, which is more resourceful, for asset protection, therefore banks cannot wash their hands and claim that they have no duty to their customers for locker operation. The judgment said, *"The very purpose for which the customer avails of the locker hiring facility is so that they may rest assured that their assets are being properly taken care of. Such actions of the banks would not only violate the relevant provisions of the Consumer Protection Act, but also damage investor confidence and harm our reputation as an emerging economy."*

American Perspective

In America, the law favors customers and presumes a bailment contract between the customer and the bank. Because the bank drafted the agreement, any liability ambiguity is held against them. Banks began offering locker services casually in the late 19th century avoiding tedious paperwork. When not specified in writing or orally, courts almost always adjudicated bailment. Bank Locker rentals are similar to bailment because of their nature and purpose.The bar of the required standard of care on the part of the bank locker company was set even higher in the case of ***Roberts v. Stuyvesant Safe-Deposit Co.***[17] In this case, the bank locker box provider company was held liable for "being negligent in exercising the amount of care that was diligently required on their part", and for allowing government officials to seize the contents of the bank locker box. Even though there was no explicit agreement of bailment between the two parties, the court held that since the plaintiff had relied on the bank locker boxes provided by that company to store their assets, therefore allowing government officials to access and seize those assets (despite them having warrants regarding the same) construes negligence on the part of the company. In ***Goldbaum v. Bank Leumi Trust Co***[18], it was held that the bank should not be allowed to exculpate itself from a contractual liability only because there existed no written agreement defining the relationship between the two parties. It was argued that even though a contract of bailment is said to have been formed in the absence of an agreement contrary to it, it is implied that the bank could practice a higher standard of care, but cannot reduce the required standard of care on its part.

[17] Roberts v. Stuyvesant Safe Deposit Co., 33 N.Y. St. Rep. 175 (1890)
[18] Goldbaum v. Bank Leumi Trust Co. of New York, 543 F. Supp. 434 (S.D.N.Y. 1982)

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CONCLUSION

The primary goal of this article was to provide an analysis of the position taken by Indian courts regarding the topic of the nature of the relationship that exists between customers of bank locker boxes and the companies that provide those boxes. This article's secondary goal was to discuss the topic of the nature of the relationship that exists between customers of bank locker boxes and the companies that provide those boxes. In doing so, we made sure to take into account the legal stance that the United States of America takes on the matter at hand. The gaps that are created as a result of the courts adopting this position have the potential to be exploited to an unreasonable degree by the banks as well as the service providers who offer bank locker box services. When there is no explicit contract to that effect, concluding that there is not a connection of bailment when there is none at all can give rise to a broad variety of problems for the clientele. This problem could be solved by adopting the legal attitude taken in the United States, which presumes the existence of a bailment and applies it to the situation at hand. In this way, financial institutions would be required to give a higher level of care than is required at present to comply with the regulation. If the burden of drafting these agreements were placed on the banks, not only would they be required to be more thorough and careful in their work, but they would also be in the advantageous position of having the upper hand in these kinds of disputes because banks are typically the ones who come up with the terms of these kinds of agreements. If the burden of drafting these agreements was placed on the banks, it would not only force the banks to be more thorough and careful in their work, but it would also place the banks in the position of having the upper hand In the process of establishing any legal question, the courts ought to make every effort to guarantee that any decision or any legal principle that they lay down should not present an opportunity to improperly take the same to exploit the general populace. They should make this guarantee by making sure that any decision or any legal principle that they lay down should not present an opportunity to exploit the general populace. Because the contractual connection regarding bank lockers does not exactly correspond to either a lease or a licensing agreement, appropriate legislation is required to determine this matter.