
ARE ADVOCATES UNDOUBTEDLY PROTECTED UNDER THE RIGHT TO LIEN?

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ABSTRACT

This research paper speaks about the right to lien for advocates. Right to lien allows an advocate to retain files under his possession of his client until dues are paid off. This paper tries to put forth the current issues in the rule of law under the Indian Contracts Act. This literature review tries to highlight the vagueness of the precedents in brief and urges the legislature and judiciary to revise the prevailing laws by comparing them with the Right to Lien across UK and USA.

Introduction

Bailment, a word which dates back to French origin word called as ‘**Baillier**’ means to deliver. According to law, it can be defined as delivery or handing over of goods for a certain period of time or purpose. Herein, there are two parties –

- **Bailor** – the one who deliver goods
- **Bailee** – to whom the goods are delivered

Section 148 of the Indian Contracts Act talks about bailment.¹ It basically means that a bailment arises between bailor and the bailee when bailor transfers possession of some movable goods to the bailee on such condition that the bailee will transfer such goods back to the bailor or dispose off as per instructed after the purpose is accomplished. An example of bailment would be Aman lends a car to Brijesh for riding or taking care. Money does not fall under the purview of goods. In bailment, there has to be a specific purpose i.e. either to return the goods or the discard such goods. The delivery of possession can be either actual or constructive.

Literature Review

When it comes to Lien, it is a narrower concept which comes under the purview of Bailment. Lien can be defined as “the right to retain possession of the property or goods belonging to another until some debt or claim is paid.” The right is lost as the possession of such goods is lost. There are two types of Lien –

- **Particular Lien – Section 170 of the Indian Contracts Act** defines particular Lien as “where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labor or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them.”²

For instance, Aryaman delivered his car to Himanshu, a garage owner for denting and painting of his car door which Himanshu does as per instructed. Himanshu is entitled to retain the car till he is paid for the services rendered to Aryaman.

- **General Lien – Section 171 of the ICA** speaks about the general lien of bankers, factors, wharfingers, attorneys and policy-brokers. It states that, “bankers, factors,

¹ THE INDIAN CONTRACTS ACT, NO. 9 OF 1872, INDIA CODE § 148

² INDIAN CONTRACTS ACT, NO. 9 OF 1872, INDIA CODE § 170

wharfingers, attorneys of a High Court and policy-brokers may in the absence of a contract to the contrary, retain as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect.”³

For instance, Abhijit has two bank accounts i.e., Savings and Current Account. Savings account has a balance of INR 5000. But there is an overdraft of INR 12000 in the current account. Thus, the bank has the right to lien on Savings account for the amount which is due on the current account.

As per stated in the above provisions, it can be inferred that the provisions are vague in nature and are faulty in nature. Various legal scholars have pointed out that the existence of right of lien is not complete and are defective in nature.⁴

As in the case of **P. Krishnamachariar v. The Official Assignee of Madras**⁵, the court observed that the lien is an exclusive right which is available only to the solicitors and attorneys and the advocates don't have such right. Who is an Advocate? An advocate is one who provides legal aid to the aggrieved and practices in court. Whereas a solicitor is one who litigates but cannot plead cases in open court. But as per the **Advocates Act 1961**, now attorneys are not considered as a separate form of lawyers i.e. advocates are the only set of practitioners as also held in the case of **Lalchand Ramchand v. Pyare Dasrath Chamar & Anr.**⁶. Even in English law attorneys and advocates can practice whereas solicitors cannot.

But in the case of **R.D Saxena v. Balram Prasad Sharma**⁷, the court observed that an advocate does not have a lien on the documents of the client. In the case of **Tayabji Dayabhai & Co. Jetha Devji & Co.**⁸ and in the case of **Damodar v. Morgan & Co.**⁹ the court held that an attorney has a lien on money in court i.e. a common law lien and an attorney is only entitled to get the fees due to him and not a general lien i.e. a particular lien, respectively. There are various cases with similar issues adjudicated in different courts such as the **Narayandas**

INDIAN CONTRACTS ACT, NO. 9 OF 1872, INDIA CODE § 171

⁴ Priyasha Corrie, *Research Gate*,

https://www.researchgate.net/publication/228226323_Advocate's_Lien_A_Critical_Review_of_the_Stance_in_India

⁵ AIR 1932 Mad 256

⁶ AIR 1971 MP 245

⁷ AIR 2000 SC 3049

⁸ AIR 1927 Bom 542

⁹ AIR 1934 Cal 341

Sundarlal v. Narayandas Harbhagat¹⁰, A.K. Bijili Sahib v. Dadhamia Bhalambai¹¹, Pyare Dasrath Chaman & Anr.¹² and Damodardas Agarwal v. R Badrilal¹³. But none of the case put forth any concrete guidelines i.e. vague in nature for courts across India to follow the same guidelines. Thus, the case of R.D. Saxena v. Balram Prasad supersedes other cases which extensively speaks on **Section 171 of the Contracts Act, Article 22(1) of the Constitution, Bar Council Rules.**

Analysis

When it comes to the legal profession, client satisfaction and income are two important aspects. There are instances wherein an advocate is dissatisfied with the client who refuses to pay the costs incurred by the advocate. For such instances, in Tennessee, remedies are provided to the advocates. Those are –

- “A Passive, possessory common law retaining lien on the client’s papers for the general balance due.
- An equitable lien on the clients funds or property involved.
- A statutory charging lien, giving a plaintiff’s attorney a lien on this client’s ‘right of action’ with an implied power of enforcement and sale.
- An independent action against the client for fees, either on a contract basis or in quantum meruit.
- A consensual lien against the client’s property with foreclosure sale, provided there is valid attachment and perfection of such lien.”¹⁴

Even in cases of Maritime Lien, the creditor has been vested with rights to retain the property until the debtor pays the dues for services rendered to him.¹⁵ If we analyze the right of lien in Massachusetts, it can be observed that there have also been issues deciding whether the advocate/attorney has lien over the files/papers of the client for his bills due.

¹⁰ AIR 1932 Bom 363

¹¹ AIR 1936 Mad 48

¹² AIR 1971 MP 245

¹³ AIR 1987 AP 264

¹⁴ Margaret H. Tucker, Attorney vs. Client: Lien Rights and Remedies in Tennessee, 7 MEM. ST. U. L. REV. 435 (1977).

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¹⁵ Dr. Ram N. Sharma, *An Analysis of Maritime Lien and its Practice in India*, 4 Global Journal For Research Analysis, (2005) https://www.worldwidejournals.com/global-journal-for-research-analysis-GJRA/recent_issues_pdf/2015/April/April_2015_1430373269__147.pdf

One such judgment was given in 1814 which stated that, “At common law an attorney has no lien, upon a judgment recovered by him, for his fees or disbursements.”¹⁶ In addition to this, there have been various cases discussing the advocates lien but the case of *Getchell v. Clark* still supersedes all of them.¹⁷ Lord Mansfield in 1779 stated that, the advocate can ask for a decree against his client from receiving any money recovered in a suit until all his dues are paid. ¹⁸ Several states in US talk about advocate right on lien by way of statutes. For instance, in Colorado, an advocate has lien on any money or property in his hands until the dues are paid to him by his client. In addition to this, states like Iowa, Dakota, Georgia, Kansas, Kentucky amongst many others do vest the above mentioned right to the advocates.¹⁹ Papers in the possession of the advocate are indispensable in nature. Papers can be of intrinsic value or not. But can act as a strong surety for an advocate. An advocate doesn't have any lien on such papers which he hasn't received in his professional business i.e. no lien on papers such as mortgagee, trustee, etc. In addition to this, he can have a lien on the articles/witness exhibits he received under professional capacity. Even though the client has a right to change his advocate whenever he likes. But there are certain impositions given by the law in order to secure the advocate i.e. papers from advocate cannot be taken until his reasonable dues are paid. Just like a worker/farmer who spends his money and labor even advocates do spend their resources, money, labor, they are entitled to keep the things in possession until he gets paid for his rent. Eldon, Lord Chancellor states that, “the general lien must prevail”. ²⁰ But there are ways a lien can be waived –

- Setting unreasonable claims
- Parting from the possession
- Filing a suit

When an advocate gets a judgment in his favor for such rent due to him, then the advocate's right of lien is waived off. Even a promissory note from the client does not divest the advocate from lien on such possession. In Oregon, the advocate still have an opportunity to collect the rent due to him through a charging lien even though the court settled the case. They further

¹⁶ George K. Black, *Attorneys' Lien in Massachusetts*, 24 B.U. L. REV. 224 (1944).

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¹⁷ *Getchell v. Clark* (1809), 5 Mass. 309.5

¹⁸ *Wilkins v. Carmichael* (1779), 1 Dougl. 101; see also *Welsh v. Hole* (1779), 1 Dougl. 238.5

¹⁹ Leonard A. Jones, *An Attorney's General or Retaining Lien*, 20 AM. L. REV. 727 (1886)

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²⁰ *Sterling, Ex parte*, 16 Ves. 258.

stated that the lien would be attached to the ‘settlements proceeds’ or the advocate may continue with the course of action in order to protect the lien. Advocates in Illinois enforce the right to lien frequently so as to get the entitled fees. And they use various provisions to invoke such recovery. But the Illinois court in order to assist the advocates to collect their fees. They have introduced two liens – Attorney’s retaining lien and the others is equitable lien. Promoting advocates to work towards unified security interests in the client’s property or using the lien as per Right to Lien.²¹

The case of R.D. Sharma is still open to criticism on various grounds. Files that an advocate has lien over can be called as goods as per Section 2(7) of Sale of Goods Act. A contract of bailment prevails among the advocate and the client as there is delivery of goods as well as there is contract that they shall be returned or disposed off as instructed. Given the overburdening of the Indian judiciary, it is better if the advocates enforce the right to lien rather than filing suits for menial fees. In addition to this, right to lien does not infringe Article 22(1) of the constitution i.e. client can still change his lawyer. Moreover, I think that exercising such right does not lead to misconduct as the client has failed to pay the due fees. And exercising such right is merely an insurance. There would be no remedy left with the advocates so as to ask for the fees entitled to him. Lastly, the relationship among the advocate and the client is no different than the relationship of a principal and agent. Thereby, an agent is entitled to retain goods, papers under his possession by the client until he is paid off his due expenses.

Conclusion and Discussion

I believe that such provisions introduced in Illinois cannot be directly applied given the Indian context and both the legislature and judiciary must revisit the prevailing right to lien over the documents of the client. Such right which is of immense importance, must be drafted without any unequivocal terms. As laid down by the court in the case of **Lucky-Goldstar International Inc. v. International Manufacturing Sales Co.,**

- “Keeping in mind the financial status of the client
- Fees asked must also be rational
- Client is agreeing to clear of all the debt

²¹ R. J. Robertson Jr., Attorney's Liens in Illinois: An Analysis and Critique, 30 S. ILL. U. L.J. 1 (2005)

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- Lien should not be a method of fraud
- Rights and interests must not prejudice”

Such guidelines by way of legislatures and statutes could be introduced for unequivocal protection of both the parties. And I strongly feel that the advocates should be allowed to hold documents of the client under his possession until the dues are paid so as for the advocate community to survive and for the efficient functioning of the Indian Judiciary. But the burden of revising such right is on the judiciary as advocates have possession of important documents which might raise issues of privacy.