

**DE JURE NEXUS LAW JOURNAL**

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**CONCEPT OF PLEDGE UNDER INDIAN CONTRACT ACT, 1872****ABSTRACT**

*This article deals with all the aspects of contract of Pledge, that how the contract of Pledge works, essentials of Pledge, what are the rights and remedies of parties under this contract, developments in the Contract of Pledge, etc. The Indian Contract Act of 1872 governs the formation and enforcement of contract in India and its territories. The contract of Pledge is generally governed by Indian Contract Act but states laws may also regulate pawnbroking like Tamil Nadu Pawnbrokers Act, 1943, Karnataka Pawnbrokers Act, 1961, etc.<sup>1</sup> The contract of Pledge is a kind of Special Contract and holds a special importance in economic transactions. These special kinds of contracts find mention in Chapter VIII of the Indian Contract Act. The act elaborates the Contract of Pledge under the head of Chapter IX of Bailment sub head, that is, Bailment of Pledge and the relevant sections for the Contract of Pledge are from 172 to 179. Pledge is a special kind of bailment. The Contract of pledge is a bailment of personal property as a security for debt or performance of a promise. There are some certain rights and duties of the parties defined in the Indian Contract Act which parties can exercise and have to follow. These types of contracts are enforceable in the courts of India.*

**INTRODUCTION**

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<sup>1</sup> Volume 2, (Pollock and Mulla) (The Indian Contract Act and Specific Relief Acts), Page no. 1559, (Lexis Nexis, 16<sup>th</sup> Edition).

Contract of Pledge is defined under Section 172 of Indian Contract Act. It is the bailment of goods as security for the payment of debt or performance of promise. The bailor in this type of contract is called the 'pawner' and the bailee is called the 'pawnee'. It is the delivery of some personal goods due to non payment of debt or obligations.

Illustration- A (debtor) takes a loan of INR 50,000 from C (creditor). A keeps his car as a security for the loan. This is a valid pledge.

Generally, if a person asks sum of money from another person and says to the creditor that he will return it within a stipulated time, the creditor wants his assurance of money. So, for this assurance, the debtor who is taking sum of money gives his personal property to the creditor as the security for that loan amount. Pawnor gives assurance to the pawnee by delivery of possession of goods to the pawnee as security. After the repayment of the debt amount or performance of promise, the pawnee have to give back the goods to pawnor. Pawnee cannot make any unauthorized use of the goods pledged. If the pawnor has failed to repay the debt or unable to perform his promise, pawnee has the right to sell the goods as well as sue the pawnor. This is how Contract of Pledge works.

### **ESSENTIALS OF A VALID PLEDGE**

There are certain essentials which are required to constitute a valid pledge. These are as follows:-

1. **Delivery of Possession-** There must be delivery of goods to the pawnee. There is no need of transfer of title, only delivery of goods suffices. The two main types of possession that can be delivered. It must be noted that the delivery must be temporary. These types of delivery is mentioned in Sale of Goods Act, 1930.
  - i. **Actual Delivery of Possession-** In this type of possession, the goods are physically given into possession of the pawnee. The goods are directly handed over to the pawnee. Ex- Delivery of possession of furniture, jewelry, car, etc.
  - ii. **Constructive Delivery-** This type of delivery can be done without changing the possession and custody of the goods. Ex- Delivery of the keys of godown where the goods are stored, giving the keys of the locker where the jewelry is kept, etc. Constructive delivery is sometimes also referred as delivery by attornment.
2. **Pursuance of Contract-** The delivery of the possession of goods must be made in the pursuance of the contract. Delivery can be made prior to and after the advances. It

was held in the case of *Blundell Leigh v Attenborough*<sup>2</sup> that if the delivery of the goods has taken place and advance has been received, it will be considered as a valid pledge. In this case, the delivery preceded the advance. It was considered that the plaintiff was willing to accept the advance for the goods that she had delivered prior. The Contract of Pledge was considered to be valid in this case.

### **RIGHTS AND DUTIES OF PAWNEE**

The rights of pawnee are mentioned below:-

1. **Right of Retainer-** According to Section 173, pawnee may retain the goods not only for payment of debt but also for the interest on it and all necessary expenses incurred on it in respect of possession or preservation of the goods. (Section 173).
2. **Pawnee's right not to retain goods other than the debt or promise for which they are pledged-** According to Section 174, pawnee can retain the goods for the purpose of payment of debt or promise for which the goods were pledged not for any other debt or promise unless there is a contract to contrary. If the pawnee fails to return the goods in time, he will be held liable under Section 160 and 161.
3. **Right to extraordinary expenses incurred-** According to Section 175, pawnee has right of repayment of the extraordinary expenses incurred by him for the preservation of goods pledged.
4. **Right of Pawnee where Pawnor makes default-** According to Section 176, pawnee has right to bring a suit against pawnor or retain the goods as collateral security or may sell the goods, on giving reasonable notice to pawnor. If the pawnee sells the goods and if the profits were low as compared to the amount due by pawnor, the pawnor is obliged to pay the balance. If the profit is more than the amount due by pawnor, pawnee is obliged to return the balance to pawnor.

Duties of Pawnee are as follows-

1. **Duty to take reasonable care of the goods pledged-** The pawnee is expected to take care of the goods as a man of ordinary prudence as a bailee under Section 151.<sup>3</sup> If the pawnee damages the goods, the pawnor will be discharged from the liabilities.

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<sup>2</sup> *Blundell Leigh v Attenborough* (1921) 3 KB 235 (CA).

<sup>3</sup> Volume 2, (Pollock and Mulla) (The Indian Contract Act and Specific Relief Acts), Page no. 1565, (Lexis Nexis, 16<sup>th</sup> Edition).

2. Duty not to make unauthorized use of goods- Pawnee can make use of the goods for the purpose for which the goods are pledged. Pawnee cannot make any unauthorized use of the goods pledged unless there is a contract to contrary.
3. Duty to return the goods- The pawnee has a duty to return the goods when the purpose of contract of pledge has accomplished.
4. Duty to return the accretions on the pledged goods- Pawnee cannot retain the accretions on the goods pledged as security. The accretions belong to the pawnor only.
5. Duty not to mix the goods- Pawnee shouldn't mix the pledged goods.

### **RIGHTS AND DUTIES OF PAWNOR**

The most important right that the pawnor has is Right to Redeem. It is the most valuable right of the pawnor. According to Section 177, if there is a certain time for the payment of debt, or performance of the promise and the pawnor makes any default in payment of debt or performance of the promise at the certain time, he may redeem the goods pledged at any time before the sale of that goods, but in this, case he must have to pay some addition to what was due for the expenses which have arisen from his default. The pawnor's right to redeem expires after the sale of goods is made.

Duties of Pawnor are mentioned below:-

1. Duty to pay ordinary and extraordinary expenses- Pawnor has the duty to pay for all the expenses incurred by the pledgee in respect of the preservation and possession of the pledged goods.
2. Duty to repay the rent and any interest on the debt- Pawnor has the duty to repay the debt and interest if there is any according to the contract.
3. Duty to pay damages to Pawnee- Pawnor has the duty to pay for the damages that has been suffered by the pawnee in respect of possession and preservation of the pledged goods.

### **OTHER IMPORTANT FEATURES AND DEVELOPMENTS IN THE CONTRACT OF PLEDGE**

Pledge by Hypothecation- Hypothecation is a mode of creating a security without the delivery of title or possession. The pawnee has the charge over the goods and has right to take possession and sell the goods to recover his dues.

Illustration- A pledged his cinema projector to B. B allowed A to keep the cinema projector since it is the main equipment of running the cinema. This pledge by hypothecation considered as a valid pledge.

Pledge by Mercantile Agent- The definition of mercantile agent is given in Sale of Goods Act, 1930. A mercantile agent is a person who is appointed to represent his owner in the dealings with third party. The owner here is called “principal” and the person appointed is “mercantile agent” or simply “agent”. When a mercantile agent with the consent of the principal has the possession of goods or document of title made any pledge in the course of business and with good faith will be valid. The concept of pledge by mercantile agent is mentioned in section 178.

Pledge by document of title- Section 2(4) of the Sale of Goods Act, 1930 provides the definition of document of title. Document of title includes a bill of lading, dock, warrant, railway receipt or any other document used in the ordinary course of business as proof of the possession of goods or authorization to transfer or receive goods represented. In the landmark case of *Morvi Mercantile Bank Ltd vs Union of India*<sup>4</sup>, Supreme Court held that document of title can also be considered as goods and will form a valid pledge.

### CONCLUSION

Pledge is a form of security to assure the creditor for the repayment of debt or performance of any promise. It is very similar to bailment but has some features of distinction also. Pledge is only for the purpose of security for the payment of debt or performance of a promise and the pawnee has right to sell the goods if any default is made by pawnor but bailment is delivery of goods for specified purposes and the bailor has no right to sell the goods. In the contract of pledge, both the parties, that is pawnee and pawnor has certain rights and duties which they have to follow.

The subject of a contract of pledge is goods that are able to delivery. The goods must be identified at the time of the contract of pledge. The essentials of a valid pledge include delivery of goods and that delivery must be in the pursuance of the contract. Initially, document of title was not considered as goods, but with the Supreme Court’s interpretation, it is considered as goods and will constitute a valid pledge. The contract of pledge proved beneficial for the people and increased the flow of economic transactions.

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<sup>4</sup> *Morvi Mercantile Bank Ltd v Union of India*, AIR 1963 SC 1954