



## Legal lens on liens: General lien insights

Rudraksh Singh Sisodia, Anshumaan Tandon, Rishab Jain

Department of Law, College- Rajiv Gandhi National University of Law, Patiala, Punjab, India

### Abstract

This paper delves into the legal concept of liens, focusing on general lien insights within the Indian and English legal frameworks. A lien allows one party to retain possession of another's property until certain conditions, often involving payment, are met. Historically recognized as a self-help remedy in common law, liens have evolved with trade and commerce, necessitating judicial oversight to prevent arbitrary property withholding that could disrupt business transactions. The paper distinguishes between liens and pledges, emphasizing the natural occurrence of liens from obligations or unpaid debts.

Two types of liens are analysed: particular and general. The paper explores various examples, including bankers' rights over pledged assets and agents' rights under Section 221 of the Indian Contract Act.

A significant portion examines attorneys' liens under English and Indian law, highlighting their historical context and judicial interpretations. The landmark case *RD Saxena v. Balaram Prasad Sharma* is analyzed, where the Supreme Court of India clarified that case files do not qualify as goods under Section 171, thus attorneys cannot claim a lien on them. The judgment underscores the need for clear definitions and boundaries for solicitors' liens.

The paper concludes with a critical view of attorneys' liens, suggesting that while they are crucial for securing fees, they should not be misused to the detriment of clients. It advocates for alternative fee arrangements and stricter regulation to balance attorneys' rights with ethical standards and client protection.

**Keywords:** Contracts, case laws, India, english law, doctrine, liens

### Introduction

In legal parlance, a lien refers to the right of one person or organization to hold onto another's property until the other party satisfies specific requirements or demands. These expectations, which can include amounts of money owed or activities to be completed, can vary greatly. Liens were first recognized as a type of "self-help" remedy within the common law system.

This meant that they could be used independently without the need for court action.

The idea of a lien was examined as trade and commerce developed, which resulted in an awareness of its possible disadvantages. Courts discovered that unrestrained use of these antiquated remedies may create a situation in which people withhold property arbitrarily, hindering the flow of business dealings. This development highlights a change in the legal treatment of lien toward a more controlled and sophisticated approach that aims to balance the rights of the parties concerned while preserving the larger interests of business activity.

According to the Honorable Supreme Court, the notion of lien represents a basic right granted to individuals to retain ownership of assets until their legitimate demands are fulfilled. Importantly, this privilege is derived from legal statutes rather than just contracts, highlighting its greater importance in the entire legal diaspora than just the existing contractual provisions.

The range of instances that demonstrate the jurisprudential recognition of the right of lien is indicative of its wide applications and implications. Notably, an unpaid seller maintains a lien over the items in their possession, and agents have a lien for unpaid compensation on the property of their principal. In addition, bailees have the right to lien over property that is entrusted to them, highlighting the legal principle's applicability in a variety of situations.

When distinguishing between a lien and a promise, it becomes clear that although both involve having ownership of assets, the former just involves the right to keep possession without having the power to sell the asset. In contrast to a pledge, which is based on a written contract between the parties, a lien results naturally from the fulfillment of an obligation or the presence of an unpaid debt. However, parties to a transaction may nevertheless specifically establish a lien by means of insertion of a clause relating to it in contract, so changing or relinquishing its inherent rights.

The voluntary possession of the goods is essential to a pledge, whereas a lien is dependent on the fulfillment of responsibilities or the discharge of obligations. This important distinction defines the domain of lien within the larger context of commercial and contractual interactions, highlighting the complex interaction between legal rights and contractual responsibilities.

A thorough explanation of the definition of lien—including its legal foundation and historical roots—is provided in Diplock's ruling in *Tappenden v. Artus* <sup>[1]</sup>. The discussion presents lien as a notion that dates back to a time when contractual remedies were still in their infancy and developing. The claim that a lien develops as a corollary of contractual responsibilities rather than as a direct result of a contract agreement per se is the basis of Diplock's approach. This viewpoint casts doubt on the widely held belief that a lien has properties similar to those of an express or implicit contractual right established by mutual consent between parties.

### There are two kinds of lien are as follows: 1. Particular Lien 2. General Lien

1. When it comes to a particular lien, a person is still able to refuse to give up ownership of products until the

associated charges are resolved. The specific provision of a bailee's particular lien is outlined in Section 170 of the Indian Contracts Act. It states that, unless otherwise specified in the contract, a bailee who has performed labor-intensive services related to the purpose of the bailment is entitled to keep the bailed goods until they are paid fairly for their services. An apt example for this provision would be: A brings a rough diamond to jeweler C, who cuts and polishes it. C is entitled to keep the stone as long as he is compensated for the services he rendered.

An agreement between the automobile owner and the firm was established in the court case of *Hatton v. Automobile Maintenance Firm, Limited*, specifying the company's obligation to maintain, repair, and supply enough gasoline for the vehicle<sup>[2]</sup>. The vehicle owner was required to reimburse the business with Rs. 8000 in exchange. But the company didn't get paid like they were supposed to, so they filed a lien against the vehicle. During his consideration, Judge Sargeant J recognized the notion that the repairer automatically acquires a lien on the item for the associated costs when it is repaired. He did point out that there isn't a clear legal precedent on whether a contractor who only performs maintenance can get paid with a lien for the costs expended. Thus, it was found that lien is not available for each and every case but it is only available where actual skill and labor has been employed by the person claiming the right.

2. A general lien is defined in Section 171 of the Indian Contract Act, of 1872, and it applies mainly to certain service providers like bankers, factors, wharfingers, lawyers, and policy brokers. These service providers have the right, absent a contrary agreement, to keep the commodities entrusted to them as collateral for any unpaid balance owed by their clients.

The clause emphasizes that by keeping the products that were bailed to them, service providers are usually able to guarantee the payment of amounts owed by their clients. It does, however, clearly specify that this right cannot be asserted unless it is specifically mentioned in the parties' contract. Notably, the Act takes a careful approach to its implementation, emphasizing the need for clear contractual stipulations even as it recognizes the existence of a general lien. Common law recognizes lien as a "primitive remedy," but it is rarely aggressively pushed because its unrestricted use may allow for the indiscriminate withholding of commodities, which could impede trade and commerce.

According to this section, parties that are entitled to the right to General Lien are as follows

1. Bankers
2. Factors
3. Wharfingers
4. Attorneys of the High Court
5. Policy-brokers

**Bankers:** A well-established legal notion is a general lien held by banks, especially with regard to products and securities that clients put into their bank accounts. Until there is an implicit contract that conflicts with such a lien, this right is maintained. For example, when a borrower pledges gold jewelry to a bank as collateral, the assets of the borrower are subject to a lien from the bank. In the event

that the borrower takes out another loan after repaying the first, the bank may keep some assets as collateral. In this case, the bank may claim that the additional loan has been satisfied by keeping the assets.

**Factors:** An agent who is given commodities only to sell on behalf of the principal is called a factor. The factor has the right to hold onto possession of the products in order to sell them in the regular course of business. Furthermore, the factor has the authority to use its broad lien rights for any unpaid debt. When a bicycle is entrusted to a factor, for example, that factor is entitled to retain ownership of the bicycle until its charges are resolved. It is important to stress that the items must be transferred to the factor within the framework of business activities in order for the right of lien to apply.

**Wharfingers:** A place next to bodies of water called a "wharf" is where cargo is usually loaded and unloaded. When commodities are handed to a wharfinger, they remain under their ownership until the charges for using the wharf are paid, according to the idea of a general lien.

**Attorneys of the High Court:** This will be discussed in detail in the coming part of this research.

**Policy-brokers:** Additionally, the insurance agent has a general lien right that covers customers who have purchased insurance policies from them. This right includes any unpaid balances that the client owes the agency for the insurance policies.

In order to collect any money owed to the agent, Section 221 grants the agent a lien on the principal's property. Unless otherwise specified in a written agreement, the agent is required and permitted to hold onto any papers, assets, or movable or immovable items that belong to the principal until all money owed to the agent for commission, payments, and services provided in relation to the property has been made or accounted for. This suggests that the main may owe the agent money through commission or other compensation, or through expenses the agent incurs while acting on behalf of the agency.

In the *Gopaldas v. Thakurdas* case, the High Court examined the clause pertaining to an agent's lien. Under their jurisdiction, the agent in question was a company that was hired to buy products for principals<sup>[3]</sup>. There were times when the agent had to pay costs out of pocket, even though the principals supplied money for some items. In order to pay the principals back, the agents ultimately had to sell their belongings. The Court pointed out that because the agent lacked clear jurisdiction over the products, it may not be appropriate for them to sell them. However, the agent was regarded as entitled to recoup as much of their outlay as possible because they had used personal funds and were therefore in the position of a tacit pledgee.

The agent may withhold products that are not in their possession until the unpaid balance is paid, according to this specific section. It's crucial to remember that this does not mean the agent has the power to sell the products. The terms of bailment and pledge, rather than Section 221 of the Indian Contract Act, of 1872, regulate the lien on the goods in the event that the principal pledges them, turning them into pawnees. The exclusive right to keep ownership of the principal's assets is granted by a lien. Since agents are

regarded as third parties under the agreement, the lien will be limited if the provisions of the agreement limit the principal's rights.

### **Rights of attorneys under english law and indian law**<sup>[4]</sup> **English law**

This is a privilege that is legally protected in many cases. There are two different kinds of liens: special liens (charging liens) and general liens (sometimes known as possessory or holding liens). A wide lien as security and payment for services rendered, attorneys may retain client files, documents, cash, stocks, and other assets obtained legally and throughout the course of their professional practice. With the latter, a lawyer can only charge for judgments, prizes, or orders that they successfully obtain on behalf of their clients. According to the ruling, the focus is on the expenditures and other expenses incurred as a result of the litigation.

The fundamental idea of a lien has been around since the Roman Empire and continued until Napoleon's reign. Regarding the specific definition of an attorney's lien as it exists now, consider the case of *Cohen v. Goldberger*.<sup>4</sup> In this instance, there was a dispute involving present business partners, a former partner in a partnership, and a company creditor. An attorney with a right of lien "should be paid her fee out of the judgment she has secured, as there is an inference that it was her skill that was important to getting such a verdict issued in the first place," the Court states, citing equity requirements. A formal agreement expressing the same is not necessary<sup>[5]</sup>.

The right of offset is another type of lien that has its roots in common law<sup>[6]</sup>. This kind of lien allows the attorney to make use of any money she has already received from the client to cover the full amount of compensation she is owed. According to the court in *Diehl v. Friester*, "A request to set off one judgment against another is an appeal to the equitable power of the Court which may be granted or refused based on the facts of each case<sup>[7]</sup>". An attorney in this situation is entitled to compensation for her services, but not for a particular lien, which is only protected in limited circumstances<sup>[8]</sup>.

Since a solicitor's lien allows the lawyer to collect fees without expensive court intervention, many nations see it as a powerful legal remedy. It is seen as a valid strategy to apply pressure to the debtor. Lawyers have occasionally been allowed by judges to file liens against one- or three-tenths of the money obtained through judgments<sup>[9]</sup>.

### **Indian Law**

Section 171 of the Indian Contract Act states that absent a specific agreement to the contrary, no other person has the right to keep the commodities that have been bailed to them as security for such balance. It specifies that "Bankers, factors, 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." Unlike other persons, attorneys are allowed to keep whatever has been bailed to them as security for a general balance of account, unless there is a contract stating otherwise.

The lien laws of England were adopted in earlier rulings, such as *Tyabji Dayabhai & Co. v. Jetha Devji & Co*<sup>[10]</sup>. In the case of *Narayandas Sundarlal Rathi v. Narayandas Harbhagal*<sup>[11]</sup>, the Bombay High Court granted the lawyer's

request for support, enabling him to assert a broad claim over assets, money, and property obtained on behalf of his client, along with a lien on documents and records. In 2000, the Supreme Court finally made a decision on this issue in *RD Saxena v. Balaram Prasad Sharma*<sup>12</sup>.

### **Case study: rd saxena v. Balaram prasad sharma air 2000 sc 2912**

**Facts of the case in contention:** Upon becoming a member of the Madhya Pradesh State Bar Council, the petitioner has been practicing law in Bhopal courts. In 1990, he was selected to be the legal advisor for the Madhya Pradesh State Co-operative Bank Ltd. However, the Bank terminated his retainer and required him to give up all of its case files in 1993. The appellant submitted a combined bill with a total outstanding of Rs. 97,100/- instead of returning the documents, refusing to release the files until his obligations were fulfilled. The Bank filed a complaint with the State Bar Council in 1994, alleging professional misconduct on the part of the appellant because he had neglected to return the files to his client. The complaint was forwarded to the District Bar Council's Disciplinary Committee and then to the Bar Council of India in accordance with Section 36-B of the Advocates Act. After conducting an investigation, the Bar Council of India's Disciplinary Committee found that the appellant had committed professional misconduct.

**What was held in the following case:** The Advocates Act was passed in 1961, and the Advocates Act's Section 171 cannot be used to seek a lien by an Advocate since the papers given to an Advocate for a particular case cannot be considered "goods," according to a Supreme Court ruling. The legislation has made it clear that case files, even if they contain copies or some original documents, are not goods under Section 171 with regard to attorneys. Therefore, keeping such files does not count as a bailment of goods. What is intended by the goods mentioned in Section 171 shall be defined in accordance with the definition of "goods" provided by the Sale of Goods Act.

**Analysis of the case:** Under Section 171 of the Indian Contract Act, 1872, bankers, factors, wharfingers, attorneys of a High Court, and policy brokers may hold commodities as security for a general balance of account, unless otherwise stipulated in a contract. However, files that contain copies of records are not the same as the things mentioned in this section. Section 2(7) of the definition of "goods" Section 171 items should be interpreted in light of the Sales of Goods Act, 1931, which covers "movable property, except for actionable claims and money, and things attached to or forming part of the land that can be severed before or under the contract of sale." As such, it is not possible to regard an attorney's file-keeping as goods bailed.

According to Section 148 of the Indian Contract Act, bailment is the transfer of goods from one person to another for a specified use with a promise that they will be returned or disposed of in line with the person who supplied them. On the other hand, no products are delivered, and there is no contract to give back or throw away legal documents that belong to a lawyer. The items listed in Section 171 of the Contract Act must be tradable and exchangeable for money. These goods must therefore be marketable. Since case files cannot be bought, sold, or traded for cash, they are not

covered by Section 171 of the Contract Act. Consequently, there is disagreement and ambiguity regarding the necessity of taking a solicitor's lien into account.

Prior to answering this question, it's critical to consider several factors.

### What is the final position after this judgment?

Some scholars contend that a lien cannot be recognized as a legal right since attorneys are unlikely to sue their clients in order to enforce it without the help of a third party. This is due to various reasons, such as the potential for malpractice lawsuits, damage to one's reputation, and wasted time, money, and effort. Unlike other legal remedies, a solicitor's lien does not create a scenario where genuine rights are bestowed. However, proponents of this privilege argue that it is necessary, particularly in light of how expensive and time-consuming legal services are often. A lien is placed on documents to protect them right away. Even while creating such a right in statutes creates certain practical challenges, it is nevertheless thought to be an essential tool for lawyers and shouldn't be eliminated.

The laws pertaining to a solicitor's lien on documents were fully stated in the English case *In re Road Rapid Transit Co.* Previous to being employed by the liquidator, one Neely was working as the company's solicitor<sup>[12]</sup>. Subsequently, the liquidator set him free and designated a new lawyer, requesting that he furnish Neely with all the records pertaining to the case that had been brought to his attention prior to and subsequent to the company's directive to be concluded. The court declared: "The solicitor had no available lien on documents he received after the orders of the firm's winding up, but he had a legal right of lien on the papers he possessed prior to the order of the company's winding up."

However, critics argue that because lawyers have a stronger negotiating position, they frequently misuse this privilege. The defenseless client has two options when a lawyer obtains important documents: either comply with the lawyer's demands and pay the sum demanded, or refuse the paperwork and try to start a new, more expensive, and drawn-out legal battle with the assistance of another attorney<sup>[13]</sup>. Customers often select the first option. These critics go on to say that this kind of privilege is against society in general and professional ethics in particular.

They contend that the benefit of such a privilege is not shared by the legal profession as a whole. For example, such permission is no longer accepted in France or India and is in fact considered to be illegal<sup>[14]</sup>.

Unquestionably, "An attorney is entitled to her rightful fee; however, abusing one's freedom to intimidate a client is incompatible with the ethical standards of the legal profession." The lien right blatantly transgresses the moral and professional requirements of behavior for attorneys. Attorneys are required to safeguard their clients' papers and information since they are considered their guardians. On the other hand, when the lawyer's pocketbook comes first, such moral and ethical principles are abandoned. In order to get legal advice to help him overcome his prior counsel, a client who is already unable to pay his lawyer's fee must now find another one and pay his charge.

Critics argue that charging a lien only permits attorneys to keep money that is owed to them by the client and has been collected on their behalf, as opposed to a retaining lien<sup>[15]</sup>. If the attorney receives the fee directly, she is free to keep it;

but, if the attorney delivers it to the court, she may ask the court to compensate her for the cost. Although problems might occur, this kind of lien has far fewer negative effects.

### Conclusion

As the discussion above makes clear, a solicitor's lien is unfair and unjust. Giving solicitors more authority would just make things more complicated because they already have a strong negotiating position. Rather than limiting liens, one possible remedy is to manage fees. This approach can be beneficial because it saves money up front for both parties, even if it is uncommon in legal systems. Hourly rates, agreed-upon recurring payments, or contingency fees—where the lawyer gets paid based on how the case works out—can all be used. Clients will then search for lawyers who are willing to take on their cases and offer sufficient defense for both parties. Additionally, alternative fee agreements, or AFAs, are being established to provide clients and lawyers with other options.

Ultimately, it is imperative that the legal system consider all relevant circumstances in each case prior to deciding whether to allow an attorney's lien. If this isn't considered, this privilege may wind up being counterproductive to its intended goals. Because of this, it's critical to consider a variety of moral and legal considerations as well as alternate, less harmful means of legal fees. Fee restriction and alternative fee arrangements are a couple of the practical ways to stop client exploitation and maintain their faith in lawyers.

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