CONCLUSION-

In view of the above discussion, it is submitted that a ‘quasi contract’ is neither based on a proposal nor on an acceptance- express or implied. Accordingly, it does not depend on a promise. It is inferred by law from conduct of, for example, A and B where A renders some lawful service voluntarily in favour of B and benefit of such service is enjoyed by B.

Various dictionaries, Judiciary and different jurists have defined the term quasi contract in their own ways but they all reach a common conclusion that a quasi contract is neither an express promise nor an implied one. Unlike a contract, it is not a consensual relation between the persons covered by it. For example, according to Chambers Dictionary ‘Quasi’ as a Latin term has been defined in the words- ‘as if’ and the term ‘contract’ means an agreement, especially a legally binding one. Thus, the Chambers Dictionary may be taken to define the quasi contract in the words ‘as if a contract’ i.e. similar to contract. Similarly, on the basis of Random House Webster’s Dictionary which also defines the terms ‘quasi’ and ‘contract’ separately. A quasi contract can be said to be a relation resembling to those created by a contract. To Oxford Dictionary quasi contract is an obligation of one party to another imposed by law independently of an agreement between the parties.
Anson\textsuperscript{1} is of the opinion that what is restitution today was known as quasi contract in the past. To support his view he quotes statements of certain Lord Justices like, Bowen L. J., Lord Sumner and Sir William Holdsworth. Thus, it follows that Anson regards quasi contract as restitution. But at the same time, his book also mentions that a quasi contract is a relation not created by contract and is based on notion of prevention of unjust enrichment. Paton\textsuperscript{2} while classifying the term obligation, says that it may arise from 1) contract, 2) quasi-contract, 3) tort or delict, 4) quasi-delict. So, it is obvious that Paton has mentioned the term quasi contract and quasi contractual obligation. To P.S. Atiyah\textsuperscript{3} a quasi-contractual action which was taken earlier is called today, a claim for restitution. Chitty\textsuperscript{4} uses both the terms ‘quasi contract’ and ‘restitution’ frequently for each other. Williston\textsuperscript{5} is of the opinion that quasi contractual obligations are imposed by the law for the purpose of bringing about justice without references to the intention of the parties. Pollock & Mulla\textsuperscript{6} point out that a quasi contract belongs to an entirely different legal category, having nothing to do with genuine contracts, express or implied. Munkman uses the term a quasi-contract as an obligation to pay a sum of money (liquidated or unliquidated) which arises independently of any contract or tort.\textsuperscript{7} Bracton\textsuperscript{8}, a leading lawyer of medieval age was of the opinion that the quasi-contract was

\textsuperscript{1} Anson’s Law of Contract, 28\textsuperscript{th} ed., p. 17.
\textsuperscript{2} G.W. Paton, A Text Book Of Jurisprudence, 4\textsuperscript{th} ed., 2007, p. 276.
\textsuperscript{3} P.S. Atiyah, Atiyah’s Introduction to The Law of Contract, 6\textsuperscript{th} ed., p. 408.
\textsuperscript{6} Pollock & Mulla, Indian Contract & Specific Relief Acts, 14\textsuperscript{th} ed., Vol. II, p. 1041.
\textsuperscript{7} John H. Munkman, The Law Of Quasi-Contracts, Sir Isaac Pitman & Sons Ltd. (London)- Publisher, pp. 1 & 2.
\textsuperscript{8} See John H. Munkman, The Law Of Quasi-Contracts, p. 2.
recognised under Roman Law. The quasi-contractual obligations were called under Roman Law as obligations *quasi ex contractu*.

For judicial support to quasi contractual obligations and basis of it, we are naturally attracted to the landmark judgment delivered by Lord Mansfield in *Moses v. Mc. Ferlan.* In the instant case, it was laid down that an unjust enrichment by the defendant at the cost of plaintiff has to be prevented on the basis of natural justice and equity. Thus, he treated the theory of ‘unjust enrichment’ which the quasi contract depends on. It is why Lord Mansfield is recognised as **founder of quasi contractual obligations by expressing his opinion in the present case.** However, the opinion of Lord Mansfield was not accepted by the House of Lords in *Sinclair v. Brougham* as in this case, the judgment was relied on an **implied-in-fact contract theory.** The plaintiffs were allowed to recover money on the basis of this theory. That is, the money was allowed to be recovered on the basis of rateable (pari passu) distribution of the mixed fund but not on the basis of quasi contract. **Lord Haldane, Lord Sumner and Lord Parker** forming the majority preferred the term ‘implied contract’ rather than quasi contract in the present case. This view of House of Lords continued to prevail for a long time but again it was not considered good in *Fibrosa Spolka Akeyjna v. Fairbairn Lawson Combe Barbour Ltd.* In the present case implied in fact contract theory was not relied upon and again **the theory of unjust enrichment was restored. Lord Wright** pronouncing the judgment of the House of Lords in this case, preferred the view expressed by Lord Mansfield that an unjust enrichment is the basis of

\[9\] (1760) 2 Burr 1005, at p. 1012: (1558-1774) All E.R. 581.
\[10\] (1914) A.C. 398.
\[11\] (1943) A.C. 32: (1942) 2 All E. R. 122, H. L.
quasi contract. So, briefly stating prevention of an unjust enrichment can be regarded as the basis of quasi contractual obligation.

Regarding remedies for breach of a contract or quasi contract during medieval period it can be mentioned that- 1) wager of law (i.e. social action), 2) covenant 3) account, 4) debt, 5) assumpsit, and 6) indebitatus assumpsit have been the remedies available to the aggrieved party at different intervals of time. However, these forms of actions were abolished by S. 49 of Common Law Procedure Act, 1852. The procedure was further simplified by Judicature Act, 1873. Further, the doctrine of laissez faire developed in England in 19\textsuperscript{th} century as one of the prominent aspects of economic changes provided opportunities for freedom of contract and gave radical contribution to the speedy and viable development of horizon of law of contract. It is well settled that contract is known as Law of Obligation. Further, Law of Obligations has been classified into three categories- 1) contractual obligations, 2) tortious obligations, and 3) restitutionary obligations. Thus, it is the quasi contractual obligation as called in early days, is now called as restitutionary obligation.

Quasi contract differs from contract primarily, on the ground that a quasi contract is not based on a promise: it is inferred by law from conduct of the parties while a contract depends on a promise- express or implied. On the other hand, a Trust is creation of a contract, but a quasi contract is not creation of a contract. Similarly, a quasi contract has basically, different feature from a tort in respect that in a quasi contract obligation is limited to its parties and does not extend to any other person. However, in a tort the liability of the defendant (i.e. tort feasor)
is limited not only to the plaintiff (i.e aggrieved person) but it also extends to public in general.

Under the English Law, the quasi contractual obligations have been basically classified into four categories as follows:

1. Obligation to repay *money had and received*, or cases of *restitution*.
2. Obligation to repay *money paid at the defendant’s request*, or cases of reimbursement.
3. Obligation to pay the *fair value of goods* delivered or services rendered (*quantum valebat*, or *quantum meruit*) or cases of recompense for benefits conferred.
4. Obligation to account or *money had and received from a third party*.

Under the category of ‘obligation to repay money had and received, or cases of restitution,’ claim for recovery of such money is allowed which is paid under *mistake of fact, fraud, undue influence, extortion, under pressure of legal proceedings, duress* and thereby the contract becomes void ab initio. To illustrate, the case of *Kelly v. Solari*\(^\text{12}\) may be quoted here. The life policy taken by the Director of an assurance company was lapsed. But this fact was forgotten by the Director and he made the payment or premium. It was held by the Court that though the payment was made by the Director under influence of mistake of fact even though it was recoverable as the contract was void ab initio. Similarly, in *Refuge Assurance Co. Ltd. v.*

\(^{12}\) (1841) 9 M. & W. 54.
Kett Lewell\textsuperscript{13} it was held that if the fraud is committed by the agent, the principal can be held liable to refund the money under quasi contractual obligation. In Moore v. Fulham Vestry\textsuperscript{14} it was observed by Lord Halsbury, the Lord Chancellor of the House of Lords that money paid under a judgment is recoverable if it has been paid under pressure of legal process. He further observed that the money so paid can be recovered when the plaintiff proves that the judgment was obtained by fraud.

Upon happening of certain events, the plaintiff is entitled to recover money paid to the defendant. The events may be failure of consideration, breach of contract, frustration of contract and abortive contracts. For example, in Holmes v. Hall\textsuperscript{15} it was held that where consideration of contract completely fails, the money paid by the plaintiff in respect of such contract can be recovered. Regarding recovery of money had and received we can trace orders in equity. There are some rules in equity which are helpful in supporting quasi contractual obligations. In Re Diplock’s Estate\textsuperscript{16} the refund of money and charities were allowed in favour of legal heir on the ground of the principle of equity.

Under the sub-head of ‘obligation of reimbursement: money paid at the defendant’s request, or cases of reimbursement,’ claim for reimbursement is allowed for such money which is paid voluntarily on behalf of the defendant. Where, for example, the defendant is under legal obligation to pay some money and the plaintiff was under some

\begin{footnotes}
\item[13] (1909) A.C. 243.
\item[14] (1797) 7 T. R. 269.
\item[15] (1704) 6 Mod. 161.
\item[16] (1947) 1 All E.R. 522.
\end{footnotes}
legal compulsion to discharge the defendant’s liability, and he actually pays the money voluntarily, he can recover it from the defendant under quasi contractual obligation.

Within the scope of the classification of ‘obligation under quantum meruit’ (cases of recompense), claim for compensation on the basis of quantum meruit or restitution is allowed for voluntary act or delivery of goods by the plaintiff to defendant where the benefit of such act or goods is enjoyed by the defendant. Sometimes, remuneration in the form of value of goods is awarded on the ground of quantum valebat. For example, in Craven Ellis v. Cannons Ltd.\textsuperscript{17} it was laid down that the obligation to pay reasonable remuneration for the work done when there is no binding contract between the parties is imposed by a rule of law, and not by an inference of fact arising from the acceptance of services, or goods. It is one of the quasi contractual obligations. Again, compensation for necessaries supplied to a minor, lunatic etc. can be sought under the sub-head of quantum meruit. In Nash v. Inman\textsuperscript{18} it was held that in a case where necessaries are supplied to an infant, the real foundation of an action is an obligation which the law imposes on the infant to make a fair payment in respect of his needs satisfied. Further, a quasi contractual obligation may arise even in the case where breach of a contract is caused especially, where breach occurs due to partial performance of the contract. Again, frustration of contract and maritime salvage also provide the situation where claim for compensation can be allowed in pursuance of quantum meruit.

\textsuperscript{17} (1936) 2 K.B. 403.
\textsuperscript{18} (1908) 2 K.B. 1.
Under the category of **obligation to recover money had and received from a third party: (the obligation to account)** claim for money received from a third person is allowed since the time of **Henery VIII.** Such money could be recovered by the plaintiff from the defendant through the **writ of Account** before the development of writ of **Indebitatus Assumpsit.** The writs of **Debt** and **Account** were replaced by the writ of **Indebitatus Assumpsit.** To examine the point **Williams v. Everett** may be quoted. In the instant case Kelly had given some bills of exchange to his bankers with instructions to collect bills and pay his creditors. This information was also given by Kelly to the creditors. The plaintiff who was one of the creditors sued the bankers for his debt. His claim was not allowed. The Court observed that as the bankers (defendant) still hold the money according to Kelly’s directions and had not assented to hold it to the plaintiff’s use. Again, as it was held in **A.G. v. Goddard,** even **bribes** received by a **servant** during course of his employment on behalf of employer for providing service or ensuring any other work of the person giving the bribes is recoverable by the employer as such money can be treated to be the money for use of the employer.

In **United States of America** (U.S.A.), quasi contract or restitution has been dealt with in the Restatement (Second) of The Law of Contracts in a pragmatic way. Especially, after amendment of Ss. 158 and 272 of the Restatement (Second), restitutionary remedy is available to the plaintiff when he has discharged the contract or when performance of the contract becomes impracticable on account of frustration, mistake,

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20 (1811) 14 East. 582.
21 (1929) 98 K.B. 743.
fraud, duress or in a like situations. It is also remarkable to note that after such amendment, now the Court has liberty to grant either restitution to the party falling victim of avoidance of contract due to reasons as mentioned here or it may grant, instead of restitution, such a relief which appears to it as a requirement of justice. Such requirement may include parties’ **reliance interest**. Here the term reliance interest refers to the interest of parties relying on performance of the contract.

When attention is drawn on quasi contract in **India**, it can be submitted that the term like ‘quasi contract’ or ‘quasi contractual obligation’ or ‘restitution’ has not been expressly mentioned in any of the provisions of the Indian Contract Act, 1872. What has been incorporated in this Act on this point is the expression ‘of certain relations resembling those created by contract’ in Chapter V of the Act. This chapter spreads over **five Sections** namely, Section 68 to 72 of the Act. It is these provisions which make principles equivalent to the English doctrine of quasi contract or restitution. **Sections 68 & 69 of the Act** incorporate provisions supporting the claim for necessaries supplied and claim for money paid respectively.

**Section 68** of the Indian Contract Act, 1872 deals with the principle of law which helps a person to seek reimbursement for necessaries supplied by him to a person incapable of entering into a contract or to persons to whom such incapable person is legally bound to supply necessaries. It is pertinent to mention that this Section does not apply where necessaries are supplied to a person who is competent to contract. For instance, in **Kanhayalal Bisandayal Bhivapurkar v.**
Indarchand ji Hamirmal ji Sisodia\textsuperscript{22} it was held that S. 68 of the Indian Contract Act, 1872 will not apply where necessaries have been supplied to someone, who as a person competent to contract is bound to support. In such a case reimbursement cannot be sought. The expression “\textit{a person incapable of entering into a contract}” has neither been defined in S. 68 of the Act nor has it been explicitly defined in any of the Sections in Indian Contract Act. But by virtue of the provision of S. 11, \textit{minor, lunatic and persons debarred by law} can be put in category of persons who are incapable entering into a contract. It is well known that an agreement made with any of such person is void \textit{ab initio}. For example, where one party to an agreement is minor, the agreement is void \textit{ab initio} in the light of the principle laid down by the Privy Council in the leading case of \textit{Mohori Bibi v. Dharmodas Ghose}.\textsuperscript{23} However, reimbursement under S. 68 of the Act is made for necessaries only through the property of such minor, lunatic or a person disqualified from contracting by law because such liability is not personal but it is proprietary. It is worth mentioning that where an agreement has been made on behalf of a minor for his benefit by his guardian having an authority in this respect, the agreement may be allowed. But a minor has an authority to avoid the agreement made by his guardian after attaining majority by way of filing a suit or by any other act or omission. In \textit{Surta Singh v. Pritam Singh}\textsuperscript{24} it was held by the Court that a contract within the competence of the guardian and for the benefit of the minor is valid

\begin{footnotes}
\item[22] A.I.R. 1947 Nag. 84.
\item[23] (1903) 30 Cal. 539, 548 (P.C.): (1903) 30 I.A. 114.
\end{footnotes}
and binding on the minor, but the minor may avoid the transaction on attaining the majority.

The term **necessaries** has not been defined in the Indian Contract Act, 1872. So, it’s meaning in common parlance, can suffice the purpose and consequently, it can be defined to include all such goods and money which are necessarily required to support a person so that he can live a dignified life as well as his reasonable requirements are fulfilled. In *Jogan Ram Marwari v. Mahadev Prasad Sahu*\(^\text{25}\) briefly stating meaning and scope of necessaries it was observed by the Court that objects of mere luxury or excessively costly articles though of real use are not necessaries. It further opined that interest on value of goods supplied as necessaries cannot be included in necessaries. Sometimes, **old age** of a person may render him disqualified from contracting under S. 12 read with S. 11 of the Indian Contract Act, 1872. But in such a case, it is necessary that the old person on account of his age must not be in a mental position to understand nature of transaction and its effect upon his interest. If it is so, an old aged person may be treated as a person of unsound mind.\(^\text{26}\) However, mere **weakness of mind** of a person is not unsoundness of mind provided he is in a mental capacity to understand nature and effect of contract made by him. Such principle of supported by the Court in *Kanhaiyalal v. Harring Laxman Wanjari*.\(^\text{27}\)

**Section 69** of the Act provides “*a person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.*” Thus, under

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\(^{25}\) (1909) 36 Cal. 768.


\(^{27}\) A.I.R. 1944 Nag. 232.
S. 69 of the Act an idea of quasi contractual liability is implicit. The liability is related to reimbursement to a person who is interested in payment of money which the person making the reimbursement is legally bound to pay and who actually pays it. The special mentioning of the term ‘reimbursement’ under S. 69 clearly shows that claim can be made only for reimbursement and not for repayment of money. Moreover, claim for reimbursement can be allowed only when the plaintiff proves the existence of three conditions- i) the plaintiff is interested in payment, ii) the defendant is legally bound to make such payment, and iii) the plaintiff actually pays such amount. Again, the reimbursement can be sought only for such money which the defendant was legally bound to pay to a third person and not to the plaintiff. For example, in *Rasappa Pillai v. Mittu Zamindar Dorai Swami Reddiar*\(^{28}\) it was observed by the Court that the term ‘bound by law’ does not mean bound by law to the plaintiff, but that the defendant, at the suit of any person, might be compelled to pay. It is relevant to mention that the obligation of the defendant must be an existing obligation.

**Quasi Contractual or Restitutionary Obligations** have also been impliedly dealt with under Sections 70, 71 and 72 of the *Indian Contract Act, 1872*. The principle incorporated under S. 70 of The Act is based on the judgment delivered in the English case of *Lampleigh v. Brathwait*\(^{29}\) and on the English doctrine of quantum meruit. Here the doctrine of quantum meruit means ‘as much as he deserves’ and the doctrine of *quantum valebat* means ‘as much as it is worth’. Section

\(^{28}\) A.I.R. 1925 Mad. 1041.

70 of the Act aims at supporting, for example, the plaintiff to claim compensation from defendant when the plaintiff lawfully does anything for defendant, or delivers anything to him, not intending to do so gratuitously provided the defendant enjoys the benefit thereof. For claiming remedy under this Section, the plaintiff is required to establish that - i) he has done some act (i.e. has rendered some service) or delivered some goods to the defendant lawfully, ii) the act was done or goods were delivered not intending to do so gratuitously (i.e. with intention to receive compensation, and iii) the defendant reaped the benefit of such act or goods. Though, all the elements have equal gravity yet, the element that ‘the other person for whom something is done or to whom something is delivered must enjoy the benefit thereof’ has been emphasised by the Hon’ble Mr. Justice Gajendragadkar (afterwards C.J. of India) in the leading case of State of West Bengal v. B. K. Mondal & Sons. Quantum meruit is an alternative remedy to damages. It is not available upon breach of a contract because it does not provide a right to claim damages which is available upon such breach. It is beyond contractual domain. It is a kind of quasi contractual right enabling a person to claim compensation and not the damages. So, the doctrine of quantum meruit or quantum valebat provides for a remedy to the plaintiff against the defendant for voluntary act of the plaintiff. If the price of such work or service is fixed by a contract, compensation on the basis of quantum meruit cannot be awarded. Such principle was laid down in Alopi Prasad & Sons Ltd. v. Union of India. Again, as it was laid down by the Supreme Court in Mulamchand v. State of Madhya

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Pradesh,\textsuperscript{32} S. 70 of the Act, \textit{embodies the equitable principle of restitution and unjust enrichment} and it is not based on a contract. The Supreme Court further observed, in the instant case, held that though a contract made with the Government cannot be enforced under Art. 299(1) of the Constitution on account of being invalid yet if requirements of S. 70 of the Contract Act have been fulfilled, it can still be enforced because even the Government cannot be allowed to enrich itself unjustly at the cost of people. Thus, the observation of the S.C. in the present case makes it clear that the principle underlying S. 70 of the Act has its edifice on the principle of restitution or unjust enrichment.

The doctrine of quantum meruit is applicable in a number of different situations. Some of them can be mentioned here. For example, where a contract is declared \textit{invalid}, the doctrine of quantum meruit is applicable. Similarly, it may be applied in a \textit{void agreement}. Again, in an \textit{illegal agreement}, the doctrine is applicable. The Principle of \textit{Salvage} under the English law is also relevant to be quoted here as it is very similar to the doctrine of quantum meruit. \textbf{But in case of repudiation of a contract the principle of quantum meruit does not apply.} The principle stated in this section is based on equitable principle of restitution or quasi contract. Again, in \textit{Mulamchand v. State of Madhya Pradesh}\textsuperscript{33} it was observed by the Supreme Court that S. 70 of the Act is not based on a contract but it embodies the equitable principle of restitution and unjust enrichment.


\textsuperscript{33} A.I.R. 1968 S.C. 1218.
On the other hand, in U.S.A., when some benefit is given by one person to another by doing some work or rendering some service without latter’s request the person conferring the benefit is entitled to reimbursement from the person receiving the benefit. But for this purpose it is necessary that- i) the benefit has been given voluntarily, ii) with intention not to confer such benefit gratuitously and, iii) the benefit is enjoyed by the person to whom it is given.\textsuperscript{34}

My submission is that payment of money should also be considered to be included in the expression ‘does anything’ under S. 70 of the Act. The reason lies in the logic that since payment of money has not expressly been excluded by the provision of the S. 70 of the Act therefore, its implied inclusion under the Section finds sense bearing and logical support.

The principle relating to responsibility of finder of goods has been stated under S. 71 of the Act. It provides by this Section that where a person finds goods belonging to some other person and takes it into his custody, he by implication of law enjoys status of a bailee. As a result, he is under a liability to preserve the goods, discover true owner and deliver the goods when true owner is found. However, responsibility of a finder of goods under S. 71 of the Act is based on three fundamental elements that- (i). The goods was found by the finder, (ii). The goods belongs to some other person and it does not belong to the finder, and (iii). The finder picked up the goods and took it into his custody.

The finder of goods has to take care of the goods in the same way as a bailee is required under S. 151 of the Indian Contract Act, 1872 with

\textsuperscript{34} See Pollock & Mulla, Indian Contract & Specific Relief Acts, 14\textsuperscript{th} ed., Vol. II, p. 1072.
regard to the goods bailed. Thus, a cumulative effect of provisions ensconced under Ss. 71, 148, 149, 151, 152, 159, 160 and 161 is that a finder of goods is placed under the same liability regarding goods as it is undertaken by bailee under a contract of bailment. In Municipal Board of Revenue v. Abdul Razzak\textsuperscript{35} it was observed by the Court that where bailee dies after committing any default, his estate can be held liable to the bailor for such default. The heir of the bailee acquires the status of a constructive trustee with regard to goods bailed. It can be submitted on the strength of this judgment that since a finder acquires status of a bailee therefore, even after death of the finder of goods his legal heirs can be held responsible to the true owner of the goods through estate of deceased finder. However, where goods is not taken into custody by a person, he cannot be held liable to the owner for any damage to the goods. For instance in Union of India v. Mahommad Khan\textsuperscript{36} where some land was leased out to the defendant and on such land, plaintiff’s timber was lying which was not taken away by the plaintiff even after notice given by the defendant, the Court did not hold the defendant liable for damage cause to timber in course it’s removal because the defendant did not take the timber into his custody.

The finder of goods has right of lien over the goods for trouble and expenditures incurred by him in preservation of such goods. He is also entitled to receive compensation from the owner in lieu of trouble and expenditures which he spends in keeping the goods safe while in his custody. But he cannot sue for such expenses because his act is gratuitous and he acquires a status just like that of a gratuitous bailee.

\textsuperscript{35} A.I.R. 1931 Oudh 15.

\textsuperscript{36} A.I.R. 1959 Ori. 103.
under S. 159 of the Act. However, where some specific reward is offered by the owner of goods, the finder of the goods has right to sue the owner for such reward under S. 168\textsuperscript{37} of the Act and upon refusal by the owner to pay the reward, the finder of goods has even right to sue the owner for such reward under this Section.

It can be pointed out that liability under S. 72 of the Indian Contract Act, 1872 exists not because of a contract but because of a quasi contract. It is because it depends primarily, on equity though in India it is statutory as it is provided under the codified law i.e. the Indian Contract Act, 1872. It covers within its scope the liability of a person to whom money is paid or anything is delivered by mistake or under coercion. Thus, liability under S. 72 is restricted to the circumstances where money is paid or anything is delivered by one person to another due to mistake or coercion. Such liability can be said to be based on the equitable principle of unjust enrichment. In Thomas Abraham v. National Tyre & Rubbder Co. of India Ltd.\textsuperscript{38} the Supreme Court regarding basis of S. 72 and an unjust enrichment observed that the law under this Section implies an obligation to repay the money which is an unjust benefit.

Recovery of payment of extra taxes under mistake of fact or mistake of law can be allowed within ambit of this Section provided the plaintiff establishes that he has suffered loss or injury. To explain this

\textsuperscript{37} S. 168 of Indian Contract Act, 1872- “Right of finder of goods; may sue for specific reward offered.-The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner; but he may retain the goods against the owner until he receives such compensation; and, where the owner has offered a specific reward for the return of goods lost, the finder may sue for such reward, and may retain the goods until he receives it.”

\textsuperscript{38} A.I.R. 1974 S.C. 602
point, in *Mafatlal Industries Ltd. v. Union of India*,\(^{39}\) the tax burden of the assessee was passed on to a third person by mistake. The claim of assessee for refund of such extra payment was not allowed by the Supreme Court on the ground that the plaintiff had not suffered any loss.

It is relevant to mention here that the term ‘coercion’ used in S. 72 of the Contract Act may not be the same as it has been defined under S. 15 of the Act. It is because where money has been paid by a person under pressure of prevailing situation, it can be recovered under S. 72 of the Act even though such pressing situation is not covered by S. 15 of the Act defining the term coercion.

It is pertinent to submit that the quasi contract and provisions incorporated under **Section 68 to 72 of the Act** are founded on the **concept of social justice**. Basically, **Social Justice** may be said to be justice to all the members of society irrespective of their personal status, wealth, property, education, religious leaning, political affinity, ethical values and so on. Broadly speaking, the concept of social justice is based on distributive justice. The noble idea underlying the distributive justice\(^{40}\) depends on reasonable distribution of wealth, properties, taxes, opportunities among persons in all the fields of life. It follows therefore, that social justice does not only mean formulation and implementation of reservation policies for weaker sections of society but it also means justice to every member of society including downtrodden by providing them necessary facilities and opportunities to lead a dignified life and develop according to their talent, qualities and merit.

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Efforts have been made by several distinguished jurists, thinkers and philosophers to define the terms ‘justice’ and ‘social justice’ according to their own perceptions and ideologies during different age of time. Prominent among them are, for example, Socrates, Plato, Aristotle, Thomas Aquinas, Blaise Pascal, Jethro Brown, Paton, Kelsen, Roscoe Pound, Karl Marx, Swami Vivekanand, Mahatma Gandhi- the Father of the Nation, Pt. Jawahar Lal Nehru, the first Prime Minister of free India, Dr. B.R. Ambedkar. The approach of the S.C. with regard to the concept of social justice as expressed especially in pursuance of Art. 38 of the Constitution in *Air India Statutory Corporation v. United Labour Union*,\(^{41}\) is also extremely relevant on the point. But the essence of justice is giving each man or group his or its due, what is due to each depends on the ethos of political system, and the property relations governing a given society.\(^{42}\)

The Preamble of our Constitution which can be regarded as its soul reflects the noble idea of our forefathers- the Constitution makers, for promotion of inter alia social justice. Further, guaranteeing the Fundamental Rights (e.g. Articles 14,15,16,17,21,29,30 etc), Constitutional Rights, provisions relating to Directive Principles of State Policy and a number of other provisions of the Constitution of India consist of the idea of social justice directly or indirectly. For example, Clauses (1) & (2) of Art. 16 provide for equal opportunity to all the citizens for employment or appointment under the State and expressly prohibit discrimination only on the ground of religion, race, caste, sex, descent, place of birth, residence or any of them. *Art. 16(4)* stands for

\(^{41}\) A.I.R. 1997 S.C. 645.
protective discrimination as it protects discrimination. By 77th Amendment Act to the Constitution in 1995 Clause (4-A) was added to Art. 16. This amended clause i.e. Art. 16(4-A) empowers the State to make any provision for reservation in matters of promotion for Scheduled Castes and Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State. Similarly, the Constitution 81st (Amendment) Act, 2000 has also added in new clause (4-B) to Art. 16 of the Constitution. This amendment enables to end the 80% limit for Scheduled Castes and Scheduled Tribes and Other Backward Classes in backlog vacancies which could not be filled up due to the non availability of eligible candidates of these categories in the previous year or years.

The implementation of recommendation of Mandal Commission for reservation to persons of backward classes by Sri V.P. Singh, then the Prime Minister of India and upholding its constitutional validity by the Supreme Court of India with slight modifications are relevant examples of steps taken by the Government and the Judiciary in furtherance of social justice. After overruling Devadasan’s case, the principle laid down by the S.C. in Indra Sawhney v. Union of India,\textsuperscript{43} that the carry forward rule is valid so long as it does not, in a particular year, exceed 50 percent of vacancies. The limit of 50 percent can only be exceeded in an extra ordinary situation prevailing in a State (i.e. far flung States, Nagaland etc.). Such approach of the S.C. is great and can be held in high stream in establishing and promoting the concept of social justice in the Nation.

\textsuperscript{43} A.I.R. 1993 S.C. 477.
The drastic measures taken by the U.N.O. can be treated, in one way or another, as dynamic endeavour for promotion of social justice. For example, one of the basic objectives of World Health Organisation is to ensure proper health care to each and every person in the world especially of such persons who are too poor to take medical help. Similarly, the Preamble of International Labour Organisation provides for reasonable pay for work of every labourer and equal distribution of necessary resources among them. Universal Declaration of Human Rights which makes it clear that every human being in the world is entitled to exercise all the human rights equally. Such notion of the Declaration can also be considered in promotion of the concept of social justice not only at the local level but also at the global level.

In this stride, it is relevant to submit that the idea of social justice has been promoted for example, not only by the Constitutional provisions, criminal law, industrial law, judicial approach, efforts taken by the Indian Legislature, by various policies and schemes of the government, U.N.O. etc. but it can also be said to be promoted by the Law of Contract. The whole domain of the Law of Contract can be treated to be based on the idea of social justice. A contractual relation is consensual but at the same time a contract can also be regarded as potential means to fulfil needs of parties to it and achieve the ultimate goal underlying the contract. Likewise, a quasi contract or restitutionary obligation can also be said to have the idea of social justice implicit under it. In the light of the provisions impliedly relating to it incorporated under Section 68 to 72 of the Indian Contract Act, 1872 with the title ‘certain relations resembling those created by contract’
an effort has been made to correlate such provisions with the concept of social justice.

Thus, the principle ensconced under **Section 68** of the Act does justice to incapable person on the one hand and on the other hand, justice is also done by such principle to the person furnishing the necessaries by granting reimbursement to him. So, it can be submitted that the provision of the Section is though directly related to the parties but indirectly it promotes the idea of social justice, social solidarity and social security among members of society. **Section 69** of the Act provides that a person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other. It therefore, follows that the provision of this Section implies an idea of promoting the feeling of brotherhood and mutual cooperation among society and impliedly promotes the concept of social justice in addition to remedial justice to the concerned parties. Likewise, it is evident that provision mentioned under **Section 70** of the Act represents the English doctrine of quantum meruit and suggests that the person should be reimbursed for the voluntary act done by him or voluntary service rendered by him to another person provided such other person derives benefit of the act or service so rendered. The principle underlying this Section aims at preventing unjust enrichment. It is from this standpoint that in spite of doing justice to the party who has done voluntary act or rendered service voluntarily, this principle gives a message of social justice impliedly. Again, the principle of law stated under **Section 71** of the Act places a finder of goods in the same status where a bailee stands. It gives right to the finder of goods to seek compensation from true owner of the goods for discovering, finding and
delivering the goods to the true owner. A quasi contract can be inferred between finder of goods and the true owner whereby the true owner owes an obligation by implication of law to make compensation to the finder of goods. Therefore, it can be submitted that the provision of this Section stands not only for justice to the finder of goods but it also implies the idea of social justice. Similarly, Section 72 of the Act makes it clear that a person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it. The principle incorporated under this Section also stands for preventing an unjust enrichment by one person at the cost of another person. Consequently, provision of this Section can be looked at from the standpoint that it also implies the idea of quasi contract by providing remedy to the party paying the money or delivering the goods and at the same time it can be said that it implies the concept of social justice as well in the sense that no person in society doing such act which has been mentioned under it can be left unremedied.

It can therefore, be submitted that the provisions of Section 68 to 72 of the Indian Contract Act, 1872, in addition to providing remedial justice can also be said to reverberate with the rhythm of social justice. That is to say, quasi contractual obligations can be regarded to imply, in one way or other, the idea of social justice; rather it would be more appropriate and logical to say that the social justice is a current flowing under quasi contractual or restitutionary obligations because principles of law incorporated under these provisions of the Act despite providing justice to the aggrieved party also send a noble message of social justice to the public at large that whosoever falls victim of an unjust enrichment would positively be entitled to the appropriate remedy.
SUGGESTIONS-

On the strength of above discussion the following suggestions can be submitted –

1. Regarding nomenclature, my submission is that it would not be illogical if nomenclature to such relation is attributed as a quasi contract. The reason lies in the logic that quasi contract and restitution are frequently used by various jurists and Judiciary for one another despite the fact that what was called quasi contract earlier is called restitution in the modern age. However, Chapter V of the Indian Contract Act, 1872 neither mentions the term ‘quasi contract’ nor ‘restitution’ but it mentions the expression, ‘certain relations resembling those created by contract’ as title of the chapter. The dictionary meaning of quasi contract is ‘just like a contract’ or ‘relation similar to that created by a contract.’

2. Another reason advanced by the researcher for preferring the use of term ‘quasi contract’ over ‘restitution’ is that restitution is generally considered as a remedy for reimbursement, restoration of thing, or refund of money while quasi contract denotes a relation inferred by law between two persons.

3. Section 69 of the Indian Contract Act, 1872 deals with the cases of reimbursement by plaintiff to the defendant where the defendant is interested in payment of some money which the plaintiff is legally bound to pay and the defendant actually pays it. My submission is that the cases of claiming contribution by the plaintiff from the defendant to the money for which both are bound but it is wholly paid by the plaintiff cannot be said to be relevant to be covered by S. 69 of the Act. The
language of the Section is quite clear in its meaning therefore, there appears no much need to accept the recommendation of the Law Commission of India in its 13th Report (submitted in 1958, under para 90) whereby it has proposed insertion of a new expression ‘who though not bound by law to pay’ before the term is interested in the payment of money… under S. 69 of the Act.

4. I feel it appropriate to propose that the inclusion of claim for recovery of money paid by one person to another voluntarily may also be considered within the spirit of Section 70 of the Act as in no way such inclusion will tarnish the very foundation of the Section. In this regard, I find myself in a position to be absolutely inconsonance with the recommendation of the Law Commission of India in 1958 by para 92 of its 13th Report. After such modification S. 70 of the Act will run as under:

“Where a person lawfully does anything for another person, or delivers anything or pays any money to him, not intending to do so gratuitously, and such other person accepts and enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or restore, the thing so done or delivered or the money so paid.”

5. Agreeing completely with the recommendation of the Law Commission of India submitted in 1958 through its 13th Report (paras 95 to 100), I submit that cases of money paid or thing delivered under fraud, misrepresentation etc. may also be covered by S. 72 by an amendment so as to make the Section more exhaustive I its application and scope.
such amendment and accepting the concerned recommendation of the Law Commission the Section will run in the following words-

“a person to whom money has been paid, or anything delivered by mistake or under coercion or by fraud or misrepresentation or undue influence must repay or return it.”