CHAPTER-4

THE POSITION UNDER THE INDIAN LAW- SECTIONS 70, 71 & 72

In this chapter provisions of Sections 70, 71 and 72 of The Indian Contract Act, 1872 have been examined. The relevant decided cases have been discussed to strengthen the effect and application of these provisions.

1.1 SECTION 70 OF THE ACT (OBLIGATION OF PERSON ENJOYING BENEFIT OF NON GRATUITOUS ACT) -

Section 70 of The Indian Contract Act, 1872 provides:

“Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person 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.”

Illustrations-

(a) A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them.

(b) A saves B's property from fire. A is not entitled to compensation from B, if the circumstances show that he intended to act gratuitously.
The principle incorporated under S. 70 of The Indian Contract Act, 1872 is based on judgment delivered in *Lampleigh v. Brathwait*¹ and on the English doctrine of quantum meruit. As the doctrine of quantum meruit has been discussed at length under Chapter 2 of the thesis dealing especially with the English Law, a brief recap of it at this juncture may suffice the purpose.

### 4.1.1 *QUANTUM MERUIT*-

Quantum meruit is a remedy alternative to damages. It is not available upon breach of a contract because it does not provide a right to claim damages 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. It is to be noted that damages is awarded upon breach of a contract to such party who falls victim of the breach, while quantum meruit is awarded to such person who does something voluntarily for benefit of another.

Where for example some work has been done lawfully by A in favour of B or anything lawfully is delivered by A to B and B enjoys benefit thereof, B is bound to make compensation to A on the basis of work done by A i.e. on the basis of quantum meruit. The doctrine prevents B from enjoying *unjust enrichment* or unlawful gain or ill-gotten gain or wrongful gain. So, the doctrine of *quantum meruit* or *quantum valebat* provides for a remedy to the plaintiff against the defendant. It is normally awarded for work done or some service rendered by the plaintiff in favour of the defendant only because no

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contract has been made between them and price of work or service has not been fixed by the contract. If the price of such work or service is fixed by a contract, quantum meruit cannot be awarded to provide compensation to the plaintiff upon breach of such contract as held in *Alopi Prasad & Sons Ltd. v. Union of India*. In the instant case the plaintiff’s were acting as the agent of the Government of India. They were authorised to purchase Ghee to be used by army personnels. Payment to the plaintiffs was agreed to be made on cost basis for different items of work involved. However, when performance of the contract was in progress, the Second World War broke and intervened the performance. The result was that the rates which were fixed in peace time were entirely superseded totally due to change in conditions affected by war. Revised rates of goods were demanded by the agents from the Government but they received no reply from side of the Government. Moreover, the agents kept continuance of supply of goods. The contract was terminated by the Government in 1945. The plaintiffs made claim for payment by the Government on enhanced rates.

But the Supreme Court did not allow the claim of plaintiffs for payment on enhanced rates. It observed that the agents had right to receive remuneration under terms of that contract which was made earlier by the Government.

It follows that the plaintiffs faced commercial hardships in supplying the goods on enhanced rates due to war but the Supreme Court did not allow payment on enhanced rates. The observation of the Supreme Court also emphasizes that payment was to be made only

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according to terms and conditions of the original contract entered into between the parties before outbreak of war. My submission is that when plaintiffs made demand from the Government to pay on enhanced rates and Government did not reply, they could have broken the contract and stopped the supply. Since, they did not stop the supply and rather kept up the continuance of supply, therefore, it can be presumed that they, themselves supplied goods agreeing upon terms and conditions of original contract. It is why the Supreme Court did not allow their claim to receive remuneration on enhanced rate.

Similarly, in **State of Karnataka v. Stellar Construction Co.** a road building contract was given to the plaintiff by the Government of Karnataka. At the time of contract, the contractor was told to take all the possibilities while doing the work in pursuance of such contract. But the contractor had to spend more money than expected on transport of commercial goods. The Government refused to pay for such extra money spent by the Contractor. Thereupon, the contractor sued the Government for payment of extra money spent by it under S. 70 of the Indian Contract Act, 1872. But the Court did not allow the claim of the plaintiff. The Court observed that any disadvantage suffered by the contractor during execution of the work cannot be made a ground of making an additional claim over and above the contract rates.

Here the doctrine of quantum meruit means ‘**as much as he deserves**’. It signifies that the plaintiff is entitled to claim compensation to such extent to which he deserves. Therefore, he cannot claim compensation from the defendant for his act done or services rendered.

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exceeding the amount which he deserves. Further, the doctrine of *quantum valebat* means ‘as much as it is worth’. It means the plaintiff is entitled to claim compensation from the defendant for his act done or services rendered equivalent to such amount which is worth his act or services. It further means that the amount of compensation fixed by the Court of Law to be awarded to the plaintiff should be worth his act or services. Thus, in common sense it can be said that a reasonable compensation has to be awarded by the Court of Law to the plaintiff if the plaintiff has done some voluntary act or rendered some voluntary service lawfully in favour of the defendant who has actually taken its benefit.

In *Patel Engineering Co. Ltd. v. Indian Oil Corporation Ltd.* the Patna High Court held that the principle of quantum meruit is based on a quasi contract which arises in a sense of implied contract and not express contract. When a party has partially performed his obligation, he may sue upon quantum meruit neglecting the contract but without neglecting a contract or repudiating it, the principle of quantum meruit cannot be invoked. However, where the rate for the finished goods is expressly included in the contract and the parties expressed their extra claim on the contract, the principle of quantum meruit does not apply.

While delivering the judgment the Patna High Court relied on *Heyman v. Darwins Ltd.* where it was laid down that quantum meruit does not apply if breach of the whole contract is caused by the parties

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6 (1942) 1 All E.R. 337 at 360.
because upon such breach damages is the appropriate remedy. Quantum meruit can be awarded for a partial breach of contract or for some work or services rendered lawfully by the plaintiff to the defendant. Alopi Prasad & Sons Ltd. v. Union of India as discussed above was also relied on by the Patna High Court in Patel Engineering Ltd. case. In Alopi Prasad & Sons Ltd. v. Union of India the Supreme Court observed that compensation quantum meruit is awarded for the work done or services rendered when the price whereof is not fixed by a contract. For work done or services rendered pursuant to the terms of a contract, compensation quantum meruit cannot be awarded where the contract provides for consideration payable in that behalf.

It is therefore evident that quantum meruit is applicable where a person has done some work or rendered some service lawfully and voluntarily in favour of another person who enjoys benefit thereof. In such a case a quasi contract is made between these two persons. Consequently, the person deriving the benefits is bound to make compensation to the person who has voluntarily done the work or rendered service. The person enjoying the benefit is quasi contractually bound to compensate. Such obligation is based on quantum meruit. If the person enjoying the benefit of the work so done or service so rendered his gain will be an ill gotten gain which cannot be allowed by law to be retained by the person enjoying the benefit without paying some compensation for it.

In State of West Bengal v. B. K. Mandal & Sons7 it was laid down that S. 70 of the Indian Contract Act, 1872 adopts the niceties of

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the English Law on the subject of Quasi Contract. The Section is not founded on contract but embodies the equitable principle of restitution and unjust enrichment. Further, in **Mulamchand v. State of Madhya Pradesh**\(^8\) the Supreme Court has observed that S. 70 of the Indian Contract Act, 1872 embodies the principle of restitution and unjust enrichment and it is not based on a contract. The Supreme Court held that though a contract made with the Government cannot be enforced under Art. 299(1) of the Constitution 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. The Court further held that a claim made by one person against another under S. 70 is not on the basis of any subsisting contract between the parties, but on a different kind of obligation. In the present case no claim of restitution of the plaintiff was allowed because the plaintiff could not prove what work had been done by him for the Government. It is because this section requires proof of the work done by the plaintiff for the benefit of the defendant. Again, in **Kotah Match Factory v. State of Rajasthan**\(^9\) while deciding a case on S. 70 of the Indian Contract Act, 1872 the Rajasthan High Court followed the decision of the Supreme Court in Mulamchand v. State of Madhya Pradesh and held that the juristic basis of the obligation under S. 70 is not founded upon any contract or tort but upon a third category of law, namely quasi contract or restitution.

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It is to be noted that the principle of unjust enrichment incorporated in S. 70 of the Indian Contract Act, 1872 is wider than the English Law. Such opinion was expressed by Madras\(^{10}\) and Andhra Pradesh\(^{11}\) High Courts. The Madras High Court held that the terms of this Section are unquestionably wide but applied with discretion. They enable the Courts to do substantial justice in cases where it would be difficult to impute to the persons concerned relations created by contract. It is evident from this decision that on the basis of S. 70 the Indian Courts have discretion to do substantial justice to the plaintiff who has voluntarily and legally done some act or rendered some service to the defendant who has enjoyed benefits thereof. This section is not limited only to the English concept of restitution. S. 70 of the Act has to be interpreted not on the basis of English law but according to its clear and explicit terms.\(^{12}\)

Believing the Halsbury’s Law of England\(^{13}\) under English Law, the principle quantum meruit or *quantum valebat* is used in the following three senses. These denote-

i. A claim by one party to a contract, for example, on breach of the contract by the other party, or under an enforceable, void or illegal agreement, for reasonable remuneration for what he has done;

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\(^{13}\) Vol. 40 (1) 4th ed.
ii. A mode of redress on a new contract which has replaced a previous one, also to enable recovery of a reasonable sum as additional remuneration for extra work under an existing contract;

iii. A reasonable price or remuneration which will be implied in a contract where no price or remuneration has been fixed for goods sold or work done.

It is to be noted that the last two are based on a contract but not the first one. Here it is evident that claim for a quantum meruit for work voluntarily done under a contract terminated for breach or under an enforceable void or illegal agreement are based on a quasi contract. That is to say, such a claim for quantum meruit is quasi contractual.

- The doctrine of quantum meruit is applicable where a contract is declared invalid. That is to say, where under a contract some work is done by a party according to its term and other party enjoys its benefit but later on the contract is held invalid, the party who has done the work is entitled to claim compensation for such work with the help of doctrine of quantum meruit. In D. Vanjeeswara Iyyar v. District Board South Arcot\(^{14}\) it was held by the Court that when for some technical reason a contract is declared invalid, an implied contract is assumed under such circumstances. By virtue of such assumption, the person for whom the work is to be done is deemed to contract to pay reasonably for the work done to the person who does the work. It is clear from the verdict of the Madras High Court in this case that the principle of quantum meruit is well applicable in a contract which is declared

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\(^{14}\) A.I.R. 1941 Mad. 887.
invalid provided a party to it has done some work in favour of other party and such other party has derived the benefit of the work done so.

- **Further, the doctrine of quantum meruit maybe applied in a void agreement.** There are certain provisions in the Indian Contract Act which impliedly deal with a void agreement and there are certain other provisions under it which expressly deal with void agreements. Briefly stating the following table depicts such void agreements which have been impliedly and expressly provided by different provisions of the Indian Contract Act, 1872-

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<td>1.</td>
<td>An agreement is void when a party to it is incompetent to contract.</td>
<td>S. 11- It impliedly deals with void agreement.</td>
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| 2. | An agreement is void when both the parties are under mistake as to a matter of fact. | S. 20- There are two exceptions-
(i) A contract to refer the dispute which may arise later on to arbitration, and
(ii) A contract to refer the dispute which has arisen to arbitration. |
<p>| 3. | An agreement is void when consideration or object of it is unlawful. | S. 23 |</p>
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<td>4.</td>
<td>An agreement is void if a part of its consideration or object is lawful and other part is unlawful and the lawful part is inseparable from the unlawful part.</td>
<td>S. 24</td>
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<td>5.</td>
<td>An agreement without consideration is void.</td>
<td>S. 25- There are three exceptions-&lt;br&gt;(i) Gift on account of natural love and affection,&lt;br&gt;(ii) Promise to make compensation for past voluntary services, and&lt;br&gt;(iii) Promise to make compensation for time barred debt.</td>
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<td>6.</td>
<td>An agreement in restrained of marriage except than that of a minor is void.</td>
<td>S. 26</td>
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<td>7.</td>
<td>An agreement in restraint of trade, etc. is void.</td>
<td>S. 27- Sale of goodwill is an exception.</td>
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<td>8.</td>
<td>An agreement by which a party is absolutely restrained from enforcing his right arising out of a contract by bringing legal proceedings, is void.</td>
<td>S. 28</td>
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<td>9.</td>
<td>An agreement the meaning of which is not certain, or capable of being made certain is void.</td>
<td>S. 29</td>
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<td>10.</td>
<td>An agreement by way of wager is void.</td>
<td>S. 30</td>
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<td>11.</td>
<td>An agreement contingent on an impossible event is void.</td>
<td>S. 36</td>
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<td>12.</td>
<td>An agreement to do an impossible act is void.</td>
<td>S. 56 Para I</td>
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<td>13.</td>
<td>A minor can become an agent but the whole agreement is not void. The agreement is void only to the extent that minor is not liable to the principal.</td>
<td>S. 184- It impliedly deals with void agreement.</td>
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The general rule is that the quantum meruit can be claimed in a quasi contract and not in a contract. It is because it is not such a kind of remedy which can be available for breach of a contract. In Government of Gibraltar v, Kenney\(^{15}\) the plaintiff was a surveyor. The case was for arbitration. The agreement made between the parties had ceased to exist. The plaintiff claimed compensation on the basis of quantum meruit i.e. for services rendered by him in pursuance of agreement. Though the agreement ceased to apply, the Court allowed his claim for compensation

\(^{15}\) (1956) 3 All E.R. 22 at 26.
on the basis of quantum meruit. The Court laid down that the doctrine of quantum meruit is not a remedy for a breach of contract nor does it arise on frustration but it is an incident which does arise as a consequence of the contract or arising out of it. Where a person does some work under an agreement which was really void, he cannot be held disentitled from recovering compensation on the ground of quantum meruit. Similarly, where a person has done some work in favour of other, in pursuance of an oral agreement, he is entitled to claim compensation on the basis of quantum meruit from the other party even though the former does not prove the fact that an oral agreement was made between them. For example, in V.R. Subramanyam v. B. Thayappa\(^\text{16}\) the Supreme Court held that if a party to a contract renders a service to the other not intending to do so gratuitously and the other party has obtained benefit thereof, he is entitled to compensation for the value of service rendered by him. If the former fails to prove an oral agreement, compensation quantum meruit can still be awarded to him.

In *Craven-Ellis v. Canons Ltd.*\(^\text{17}\) it was laid down by the King’s Bench that where a contract is void as being made without authority, a plaintiff who has rendered services under it may be entitled to recover compensation on the basis of quantum meruit. In the instant case a contract to appoint a person as a managing director of a company was found to be a nullity. The Court observed that the managing director, who renders services after his purported appointment, was entitled to recover compensation on the ground of quantum meruit even though the contract was void.

\(^{16}\) A.I.R. 1966 S.C. 1034.

\(^{17}\) (1936) 2 K.B. 403 at 412.
• In case of repudiation of a contract the principle of quantum meruit does not apply. The quantum meruit is applicable in a quasi contract. In *Heyman v. Darwins*\(^{18}\) it was laid down that in the case of repudiation of a contract, where the injured party sues upon the contract, he refers to its terms at least in order to ascertain the damages. In the case of quantum meruit, he is not proceeding under the contract but upon quasi contract. The obligation he incurs and the sum he recovers from those provided in the contract and are not dependent upon its terms.

• Quantum meruit claim can be applied for illegal agreements. It is well known that an agreement is illegal when its object or consideration are illegal i.e. unlawful. An agreement having its object unlawful is void and accordingly it cannot be enforced by law. S. 23 of the Indian Contract Act, 1872 deals with such kind of situation. S. 23 of the Act provides for five such conditions in which the object is unlawful and an agreement having any one of the five objects is void under this Section itself. The Section 23 of the Act enumerates that the consideration or object of an agreement is lawful unless-

\[ \text{a) It is forbidden by law; or} \]

\[ \text{b) It is of such a nature that, if permitted, it would defeat the provisions of any law; or} \]

\[ \text{c) It is fraudulent; or} \]

\[ \text{d) It involves or implies injury to the person or property of another; or} \]

\(^{18}\) (1942) 1 All E.R. 337 at 360.
e) The Court regards it as immoral or oppose to public policy

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

In other words, where object or consideration is, for example, forbidden by law, the agreement is void under S. 23 of the Act. Here the term forbidden by law means forbidden by law expressly or forbidden by law impliedly. This category includes those acts which have expressly or impliedly being described by any criminal law as an offence. Similarly, if an agreement consists of any of the four other considerations or objects as stated under S. 23 of the Act, the agreement is void. No claim arising out of an illegal agreement can be enforced by law. The maxim *Ex turpi causa non oritur action* is worth quoting here. The maxim signifies that no right of action arising out of an illegal agreement can be enforced. It simply means that where an agreement is illegal and thereby accordingly it is void, a claim arising out of it cannot be enforced by the Court of law.

Thus, it is pertinent to mention that when a party to an illegal agreement has done some work in furtherance of such agreement, he is entitled to seek compensation from the other party for the work done so. For example, in *Clay v. Yates*\(^{19}\) it was observed that although when an innocent party learns that the object of an agreement is illegal, he must refuse to continue the performance of the agreement, he may sue on a quantum meruit for the lawful work already done.

Again, where a contract is apparently legal but later on it is known to the plaintiff that it is illegal, he cannot afterwards, enforce it but if he has done some work according to its terms and conditions, he has right to claim compensation for such work on the basis of quantum meruit. In India under Para II of S. 56 of the Act roles relating to what is called Doctrine of Frustration in England has been incorporated. It provides that ‘A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.’ It is amply clear from this section that where after a contract is made and before its performance, some event happens which makes the performance impossible or unlawful, the contract become void. However, if the plaintiff has done some work according to term of such contract, he can claim compensation from the other party on the basis of doctrine of quantum meruit.

Therefore, it can be submitted that an illegality of an object or consideration of an agreement renders the agreement illegal and thereby accordingly void. But if a party to it has done some work required by such agreement innocently, he is entitled to claim compensation from the other party with the support of the doctrine of quantum meruit irrespective of the fact that the agreement is void.

- The Principle of Salvage under the English law is also relevant to be quoted here as it is very similar to the doctrine of quantum meruit. The principle of salvage suggests that when a person saves a ship or cargo or both of them from peril i.e. any kind of disaster, the owner of the ship and cargo is liable to pay compensation for the act
done so because a quasi contract is made between the person who saves the ship or cargo or both of them and the owner of the ship.

However, if the person saves the ship or cargo has an opportunity to enter into a contract and bargains with the owner for remuneration and the contract is really made, he is entitled to such remuneration which is fixed by the contract. In such a case quasi contractual obligation of the owner of the ship disappears. For example, in the Troilus Case20 it was observed by the Court that in salvage, an obligation is imposed by law irrespective of any contract express or implied, as distinguished from towage which only arises from a contract, express or implied. Usually, services are rendered and the question of salvers’ compensation arises later.

Before the judgment delivered in this case there is another case namely, The Five Steel Berges21, it was held that the right to salvage may arise out of an actual contract: but it does not necessarily do so. It is a legal liability out of the fact that property has been saved, that the owner of the property who has had the benefit of it shall make remuneration to those who have conferred the benefit on him, notwithstanding that he has not entered any contract on the subject.

Thus, keeping in view these two judgments, it can be submitted that a person who saves a ship or goods loaded on it or both of them, is entitled to seek compensation from the owner of the ship and goods. If such liability of saving the ship and goods is fixed by a contract, the liability of the owner to pay compensation is surely contractual. But

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20 (1950) 1 All E.R. 103.
21 (1890) 15 P.D. 142 at 146.
where contract does not provide any such obligation i.e. the obligation to rescue ship and cargo, and the ship and cargo are saved from peril, the liability of the owner to pay compensation obviously becomes quasi contractual.

- **Quantum Meruit** can also be compared with **damages** because these two remedies are sometimes considered on the same footing. But this notion is not true as these are entirely different from each other in meaning, application and effect. The remedy of quantum meruit is generally available in a quasi contract. It is also available when under a contract the promise after performing a part of his promise refuses or fails to perform remaining part of the promise and claims compensation for the part of promise performed by him. On the other hand the remedy of damages\(^\text{22}\) is available when one party to a contract has performed his promise completely but the other party refuses to pay for it or (in case of a contract consisting of reciprocal promises\(^\text{23}\)) refuses to perform his promise. In **Planche v. Colburn**\(^\text{24}\) the plaintiff had completed a part of the work of publication according to terms of the contract. He was ready to complete the whole work of publication but the defendant stopped him to do so. The plaintiff was held entitled to claim compensation on the ground of quantum meruit. The Court laid down that a quantum meruit is only available if the original contract is discharged. If the contract is still open, the remedy of quantum meruit cannot be used but only damages can be claimed. Similarly, in **De Bemardy v. Harding**\(^\text{25}\) an agent was appointed by the principal. The

\(^{22}\) Sections 73 to 75 of The Indian Contract Act, 1872.

\(^{23}\) S. 2 (f), S. 51 to 55 and S. 57 of The Indian Contract Act, 1872.


\(^{25}\) (1853) 8 Ex. 822.
function of agent was to sell tickets to watch a funeral. But the principal terminated the agency wrongfully. The agent’s claim to seek compensation for the work done by him was allowed. Defining quantum meruit and damages precisely in *Heyman v. Darwins Ltd.* the Court opined that damages is compensatory and quantum meruit is restitutionary. The amount which any injured party is entitled to recover may differ accordingly as it is assessed on one the other of these two principles.

The view of the Supreme Court of India in some decided cases expressed on the point is worth quoting here. For example, *State Of Madras v. Gannon Dunkerely & Co. Ltd.* was especially a case relating to sales tax on the goods used in a building construction treating them allegedly as such goods which were sold under S. 4 of The Sale of Goods Act, 1930. The Court held that it was a work contract and materials or goods used in completing the building cannot be treated to be sold goods. But this case also focuses on quantum meruit and damages. The Supreme Court laid down that a claim for quantum meruit is a claim for damages for a breach of a contract and the value of materials used in a building contract is a factor relevant only as furnishing a basis for assessing the amount of compensation. The claim is not for the price of goods sold and delivered but for damages. This is also the position under S. 65 of The Indian Contract Act, 1872. The Court further said that this goes counter to the accepted view of this doctrine.

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26 (1942) A.C. 356 at 398.
Again, in Puran Lal Shah v. State of U. P.,\textsuperscript{29} the appellant (plaintiff) had submitted a tender to construct 3 miles of Nainital Bhowali Road at 13% below the rates given in Schedule B to the notice issued by the Government of the United Provinces on 30\textsuperscript{th} September, 1946. This tender was accepted and a contract was signed on 20\textsuperscript{th} November, 1946. It was alleged by the appellant that the rates given in Schedule B were based on the calculation that stone required for the road construction work would be available at a distance of 26 Chains while as a matter of fact no stone was available within that distance. The appellant had in fact to get stone from Gadhera and Bhumedar from a distance of 79 and 100 Chains respectively. It was his contention that by reason of non availability of the stone and the definite understanding and assurance given by the local authorities of the P.W.D. that higher rates could be given for the extra work done over and above the work provided in the contract be carried on the work. It was also alleged that during the construction work on the road very hard shale rock came in the way not originally provided for in the contract, as such he was entitled to get the costs for the work so done at the current rates from the P.W.D. which was not paid to him. In respect of these items of work done as also due to his having done the work by bringing stone from a longer distance than was given in the estimates, the appellant claimed Rs. 48,840 due as balance together with interest by way of damages at 12\% amounting to Rs. 17,582 making a total of Rs. 66,422. When this claim was rejected by the Government, the appellant gave notice under S. 80 of the C.P.C and thereafter filed a suit for the above amount.

\textsuperscript{29} A.I.R. 1971 S.C. 712.
The Trial Court allowed the suit but the High Court of Allahabad set aside the decree of the Trial Court. Thereupon, this appeal was made by the appellant in the Supreme Court. The appeal was dismissed by the Supreme Court. The Supreme Court observed that instructions given by the Government were part and parcel of the original contract. As such unless the appellant gave notice under that paragraph that he is not prepared to do the extra work over the 30% at normal rates, he cannot claim anything other than at the rates mentioned in the contract, unless he had settled fresh rates for that extra work. There is no evidence nor is it claimed by the appellant that he had given any notice as required under Paragraph 5 of the special instructions and since he did the work without fulfilling these requirements he is not entitled to claim any amount at a higher rate for the extra work done.

The plaintiff’s argument was also that if no payment is made for extra work to him at a higher rate under the contract, he should be paid for it on the basis of the doctrine of quantum meruit.

Replying this contention of the plaintiff, the Supreme Court laid down that where work is done under a contract pursuant to the terms thereof, no amount can be claimed by way of quantum meruit. The Division Bench of the Supreme Court explained application of the doctrine of quantum meruit as follows-

_The principle of quantum meruit is rooted in English law under which there were certain procedural advantages in framing the action for compensation for work done. In order to avail of the remedy under quantum meruit, the original contract must have been discharged by the defendant in such a way as to entitle the plaintiff to regard himself_.

21
as discharged from any further performance and he must have elected to do so. The remedy is however, not available to the party who breaks the contract even though he may have partially performed part of his obligation. This remedy by way of quantum meruit is restitutionary, that is it is recompense for the value of the work done by the plaintiff in order to restore him to the position which he would have been in if the contract had never been entered into. In this regard, it is different to a claim for damages which is compensatory remedy aimed at placing the injured party as near as may be the position he would have been in had the either party performed the contract.

It follows from this judgment of the Supreme Court that the remedy claimed on the basis of quantum meruit is restitutionary. It means the plaintiff has to be compensated for the value of the work done or services rendered. The purpose of restitutionary remedy is to restore the position of the plaintiff where he was if no contract had been entered into. On the other hand, the remedy of damages is compensatory. The object of the remedy of damages is to place the aggrieved party as near as in the position he would have been if the other party had performed his obligation.

It is further to be noted that the remuneration or compensation to be paid for extra work has to be determined by interpretation of the Court keeping in view the contract as a whole. It can be awarded under S. 70 only when the Court deems fit on the basis of interpretation of contract. For example, in State of Rajasthan v. Motiram,30 after inviting tender the Government made a contract with the plaintiff to

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construct drainage siphons. But later on the specification of the contract were altered by the Engineer. The result of such alteration was that duration of work prolonged, cost of material and cost of labour charges increased. The plaintiff brought an action claiming payment of increased money spent in extra work on the basis of quantum meruit. The claim of the plaintiff was not allowed. The Court observed that so long as the contract remained in existence and was not frustrated, it was not open to the contractor to ignore the express terms of the contract and therefore his claim of payments at the rates different from those stipulated in the contract cannot be enforced on the basis of quantum meruit or S. 70 of the Indian Contract Act, 1872. Thus, it is evident from this case that the enforcement of claim of compensation for extra work done by a contractor depends on interpretation of the Court on the basis of the contract in totality.

4.1.2 KEYSTONE OF S. 70 OF THE INDIAN CONTRACT ACT, 1872-

A contract- expressed or implied is not keynote of S. 70 of the Indian Contract Act, 1872 (hereinafter referred to as Act). What is keynote of this section is some voluntary act done or service rendered not gratuitously by one person for the benefit of another who, in fact, enjoys benefits thereof. That is to say, S. 70 does not require any subsisting contract for its basis. It is because this section neither requires any proposal and acceptance nor any promise and consequently nor any express or implied contract for its application. It requires some work done or service rendered voluntarily and not gratuitously by a person for another. The latter should enjoy the benefit of such work or service. Therefore, as soon as benefit is enjoyed by the person for whom the
voluntary act is done or service is rendered, non gratuitously, a quasi contractual obligation comes into being under S. 70 of the Act. By virtue of such obligation the person enjoying the benefit is quasi contractually bound to compensate the person who has done the act or rendered a service.

The principle stated in this section is based on equitable principle of restitution or quasi contract. In Damodara Mudaliar v. Secretary of State for India in Council\textsuperscript{31} it was observed by the Court that the principle stated in S. 70 of the Act is based on Lampleigh v. Brathwait\textsuperscript{32} and on Roman Law indirectly. Again, in 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. It further observed that where a claim is made by one person against another under S. 70 of the Act, such claim cannot be said to be based on a subsisting contract between the parties, but on a different kind of obligation. Such obligation is quasi contractual or restitutionary.

Thus, where for example some goods is supplied by the plaintiff to the defendant voluntarily and non gratuitously and the defendant accepts such goods. Compensation is awarded on the basis of S. 70 to the plaintiff by the defendant. The concept of compensation under this section can be said to be based on implied conduct of the parties supplying the goods and accepting the goods. Similarly, where some work is done or service is rendered by plaintiff to the defendant

\textsuperscript{31} (1894) I.L.R. 18-19 Mad. 410.
\textsuperscript{32} (1615) Hob. 105.
\textsuperscript{33} A.I.R. 1968 S.C. 1218.
voluntarily and non gratuitously, the plaintiff can rest his claim on the basis of a quasi contract or restitution. He can also plead that if his goods are not returned or compensation is not given by the defendant to him for his goods, work, or service, the defendant will reap the benefit of an unjust enrichment at the cost of the plaintiff. Such conduct of the defendant is neither just nor legal nor logical. Therefore, awarding of compensation to the plaintiff under this section is based on prevention of an unjust enrichment by the defendant.

4.1.3 **CONCEPT UNDERLYING THE SECTION**-

The concept of prevention of an unjust enrichment goes as an undercurrent to S. 70 of the Act. The basic idea of this section is to compensate a person who does something lawfully, voluntarily and non gratuitously in favour of another person who enjoys benefit thereof. It is because of the fact that if no compensation is awarded by the Court of Law for example to the plaintiff, he will fall victim of injustice and inequitable approach of the Court. It is the prime duty of the Court of Law to deliver justice in a case which is brought to it for decision. So, if a case is brought to the knowledge of the Court which is related to S. 70 of the Act, the Court will surely grant relief in favour of the plaintiff by awarding compensation to him on the basis of reasonableness of the work of the plaintiff benefitting the defendant. It is why it is said that the S. 70 implies the idea of formation of a quasi contract depending on conduct of the parties and inferred by law or the remedy available on the basis of this section may also be termed as restitutionary in nature.

When we compare S. 70 of the Act with the English Law on the point we can submit that S. 70 is wider than English Law. For example,
in *Jarao Kumari v. Basanta Kumar Roy*\(^{34}\) the Calcutta High Court observed that S. 70 of the Act goes for beyond English Law. Similarly, in *Suchand Ghosal v. Balaram Mardana*\(^{35}\) it was opined by the Court that the terms of S. 70 of the Act are unquestionably wider than the English Law but applied with discretion they enable the Courts to do substantial justice in cases where it would be difficult to impute to the persons concerned relations created by contract. It is obvious from this judgment that S. 70 of the Act aims at providing substantial justice in those cases which create relations like a contract but are not in fact based on a contract. Again, in *Govindarajulu Naidu v. S.S. Naidu*\(^{36}\) and in *Nellie Wapshare v. Pierce Leslie & Co. Ltd.*\(^{37}\) the Madras High Court express the same view that S. 70 is wider than the English Law which was expressed by the Calcutta High Court in Jarao Kumari’s Case.

Under the English Law, when some work is done or goods is delivered by one person to another in course of business which cannot be regarded as gift and if such work or goods is accepted, a real agreement is made. It is not required that such agreement should be in words. By virtue of the agreement so made reasonable consideration has to be given by the person who takes benefit of the work done or goods supplied. On the other hand, when we rely on S. 70 and S. 71 of the Act it can be submitted that where a person finds some lost goods and restores it to its real owner, he is entitled to receive compensation in lieu of services given by him on the basis of quasi contract being created by law between finder of goods and owner of goods. However, when some reward has been offered for such lost goods and the finder has notice of such

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\(^{34}\) (1904) 32 Cal. 374.

\(^{35}\) (1910) I.L.R. 38 Cal. 1.

\(^{36}\) (1958) 2 Mad. L.J. 148.

reward, he will be entitled to the reward by accepting and fulfilling conditions of general offer made by the owner of goods. But if the finder has no notice of the reward\textsuperscript{38} (i.e. if the finder has no knowledge of reward being offered) he is entitled under Ss. 70 & 71 to claim reasonable compensation from the owner of goods provided he has found and restored the goods to the true owner without having intention to act gratuitously.

When we examine the illustration (a) of S. 70 of the Act we can say that a quasi contract is made between A and B as soon as B treats the goods as his own which was left by A at his house under mistake and uses it for his own purpose. Consequently B becomes liable to compensate A quasi contractually for such goods. Under the English Law also B is liable to compensate A on the basis of quasi contract inferred by law between A and B.

In England, when a person without a prior request assumes an obligation or makes a payment for the benefit of another he cannot enforce the right of indemnity\textsuperscript{39}. But if he can establish that he assumed such obligation on account of necessity in a specific situation (e.g. salvage), he can be held entitled to reimbursement provided the Court of Law treats such situation as just and reasonable. For example, in \textbf{Owen v. Tate}\textsuperscript{40} the plaintiff without knowledge of defendants obliged a third person. The Court held that unless the defendants support the obligation undertaken by the plaintiff, it would not be just and equitable to grant him reimbursement.

\textsuperscript{38} Lalman Shukla v. Gouri Dutt, (1913) 11 All. L.J. 489.
\textsuperscript{39} See Pollock & Mulla, Indian Contract & Specific Relief Acts, 14\textsuperscript{th} ed., Vol. II, p. 1072.
\textsuperscript{40} (1975) 2 All. E.R. 129 at 134.
Again, in Damodara Mudaliar v. Secretary of State for India in Council, the Madras High Court has very nicely expressed its opinion regarding the wide scope of S. 70 of the Act as compared to the English law. It has observed that certainly, there may be difficulties in applying a rule stated in such wide terms as is that expressed in S. 70. According to the Section it is not essential that the act shall have been necessary in the sense that it has been done under circumstances of pressing emergency or even the act it shall have been an act necessary to be done at sometime for the preservation of property. It may therefore be extended to cases in which no question of salvage enters. It is not limited to persons standing in particular relations to one another, and except in the requirement that the act shall be lawful, no condition is prescribed as to the circumstances under which it shall be done.

It is very much evident from this judgment that S. 70 of the Act has very wide dimension from the standpoint of its application. It is not applicable only in case of emergency. That is to say, an act may be done or service may be rendered by one person lawfully for the benefit of another person under this section not only in emergency but also in normal circumstances. Similarly, the section is applicable not only for saving goods of another from being destroyed in circumstance of peril but it also applies to preserve goods of another in normal condition. Again, the section does not require that there must be an existence of some pre relationship between the person who does the act or renders service and the person for whom such act is done or service is rendered. Consequently, it can be submitted that the principle incorporated under S. 70 of the Act does not necessarily require an emergency being faced.

41 I.L.R. (1895) 18 Mad. 88.
by the defendant nor does it necessarily require any prior relationship between the parties (i.e. between plaintiff and defendant). What does it require is that the act must be done or service is rendered lawfully and such act or service must be done or rendered not with intention to do it gratuitously.

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.42

4.1.4 ESSENTIALS TO CLAIM COMPENSATION UNDER SECTION 70 OF THE ACT-

When we examine the provision of S. 70 of the Indian Contract Act, 1872, it can be submitted that there are three essential conditions on which basis the obligation to make compensation is held. These are: (1). A person must have done lawfully anything for another person or delivered anything to him, (2). He must have done such act or delivered something not intending to do so gratuitously and (3). The other person must have enjoyed the benefit of such act or thing. These conditions have been emphasised by Hon’ble Mr. Justice Gajendra Gadkar (after words C.J.) in State of West Bengal v. B. K. Mondal & Sons43. He expressed his opinion that it is plain that three conditions must be

satisfied before this Section can be invoked: (1). A person should lawfully do something to another person or delivered something to him; (2). In doing the said thing or delivering the said thing he must not intend to act gratuitously; and (3). The other person for whom something is done or to whom something is delivered must enjoy the benefit thereof.

Again, in **Union of India v. Sita Ram Jaiswal**\(^{44}\) the Supreme Court reiterated its view as expressed its view in the case of State of West Bengal v. B. K. Mondal & Sons. In this case (i.e. Union of India v. Sita Ram Jaiswal) the Supreme Court has cautioned the trial Courts throughout the nation not to allow the plaintiff’s claim under S. 70 of the Indian Contract Act, 1872 unless three ingredients of S. 70 or pleaded properly in the plaint. These ingredients are **first**, the goods are to be delivered lawfully or anything has to be done for another person lawfully; **second**, the thing done or the goods delivered is done or delivered not intending to do so gratuitously; **third**, the person to whom the goods are delivered or thing is done enjoys the benefit thereof.

In order to provide objectivity to discussion on applicability of S. 70 of the Act it is desirable to examine the aforementioned three conditions separately. Further, it is to be noted that for the sake of convenience of study, the person doing the work or rendering the service may be treated as plaintiff and the person for whom such work is done or service is rendered may be called as defendant.

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\(^{44}\) A.I.R. 1977 S.C 329.
4.1.5  A Person Must Lawfully Do Anything Or Deliver Anything To Another Person-

The principle underlying the section makes it clear that the plaintiff who claims compensation under this section should have done some act or rendered some service in favour of the defendant. It is equally necessary that the act so done or service so rendered must be lawful. It is because the term ‘lawfully’ itself has been mentioned in this section. Therefore, for an illegal act or for some service rendered unlawfully by the plaintiff for the defendant cannot enable the plaintiff to bring an action for seeking compensation from the defendant. In all what is required regarding nature of act or service done or rendered by the plaintiff is that such act and service must be fitted within legal parameter. If the act is not legal or the service is not lawful, S. 70 of the Act will not be applicable and plaintiff’s suit against the defendant to hold him liable to pay compensation will naturally fail. Again, the claim for compensation must not be illegal or it must not be based on an illegal consideration or object as incorporated under S. 23 of the Indian Contract Act, 1872.

In State of West Bengal v. B. K. Mondal & Sons\(^\text{45}\) in pursuance of an order of Government’s officer of West Bengal, the plaintiff constructed certain things like road, guard room, office room, rooms for clerks, kitchen and godown. These constructions were utilised by the department of Civil Supply. The Government accepted the construction work but refused to make payment for the same on the ground that the construction were not according to formalities prescribed by the

Government under Art. 299 of the Constitution. But the Supreme Court rejecting such plea of the State of West Bengal held that the plaintiff was entitled to claim compensation under S. 70 of the Indian Contract Act. 1872 because the construction work completed by the plaintiff were utilised by the Government and thus benefit of such construction work was enjoyed by it. The Court further observed that the State was liable under S. 70 of the Act because it had accepted the construction work done by the plaintiff while there was clear option for the Government to accept or not to accept such construction work done by the plaintiff. Similarly, in *Union of India v. Sita Ram Jaiswal*[^46] the Supreme Court held that when goods given by one person to another lawfully without his request, is accepted by the latter, the person supplying the goods is entitled to claim price of the goods under S. 70 of the Act. When such goods has been accepted under a contract, no remedy for price of the goods can be claimed under S. 70. The Court was of the opinion that Constitutional formalities are required to be fulfilled in a contract and not in a quasi contract.

It is evident from these judgments that even though the contract was not valid but the claim of the plaintiff for price of construction work was allowed by the Supreme Court by virtue of S. 70 of the Act. All the three conditions for enforcement of S. 70 were present in this case.

In *New Marine Coal Co. (Bengal) Pvt. Ltd. v. Union of India*,[^47] the Supreme Court very carefully expressed its opinion on S. 68 and S. 70 of the Indian Contract Act. 1872. It observed that the position of the State cannot be compared with that of a minor. The minor is

[^46]: (1976) 4 S.C.C. 505.
excluded from the operation of S. 70 for the reason that his case has been specifically provided for by S. 68. What S. 70 prevents is unjust enrichment and it applies as much to the corporation and Government as to individuals… Besides, in the case of a minor, even the voluntary acceptance of the benefit of the work done or thing delivered, which is the foundation of the claim under S. 70, would not be present and so, on principle S. 70 cannot be invoked against a minor.

The principle laid down in New Marine Coal Co. v. Union of India was reaffirmed in Pillo Dhun ji Shaw Sidhwa v. Municipal Corporation of City of Poona⁴⁸ certain motor parts were supplied to the corporation. When claim for price of such parts was made, the Municipal Corp. pleaded that the contract was not made according to Bombay Municipal Corporation Act, 1949. With the help of such plea the corporation tried to escape its liability to pay price of the goods. The Supreme Court held that even though the contract under which goods were supplied was not valid according to Municipal Corporation Act. 1949 but the corporation was liable to pay price of the goods under S. 70 of the Indian Contract Act, 1872.

Again, the Supreme Court reiterated its view as expressed in New Marine Coal Co. v. Union of India and Pillo Dhun ji Shaw Sidhwa v. Municipal Corporation of City of Poona in another case namely, Panna Lal v. Deputy Commissioner Bhandara.⁴⁹ In the present case a hospital was constructed by the plaintiff. It was accepted and its benefit was taken by the State. The Supreme Court held that the State was liable to pay construction price under S. 70 of the Indian Contract Act. 1872

⁴⁹ (1973) 1 S.C.C. 639.
even if the contract did not conform to the formalities prescribed by the Government.

However, in *Karamshi Jethabhai Somayya v. State of Bombay*\(^\text{50}\) the Supreme Court observed that where an executory contract is not complied with the statutory requirements, it cannot be enforced. S. 70 does not apply for such contracts. It is obvious from this judgment that where a contract has not been performed and it is not according to conditions prescribed by the Constitution, S. 70 of the Act cannot help the plaintiff to seek compensation.

Again, in *B. R. Subramanayam v. B. Thayyapa*\(^\text{51}\) the Supreme Court laid down that if under an oral contract, a contractor has done his work and the other party has taken its benefit, he is entitled to claim compensation for the work under S. 70 of the Act even though he fails to prove the subsistence of an oral contract. Likewise, in *Union of India v. M/s J. K. Gas Plant*,\(^\text{52}\) the plaintiff company utilised a part of steel supplied to it by the Government of India. At the direction of the Government i.e. at the direction of Controller of Steel, Kanpur, Uttar Pradesh the remaining unused steel was delivered by the plaintiff company to another concerned person called G. Bros. G. Bros. held the goods on behalf of the Government. The plaintiff company requested the Government for payment of remaining steel goods which it supplied to G. Bros. at the direction of the Government. But the Government refused to pay for such delivery of steel. Thereupon, the present suit was filed by the plaintiff against the Government. The plea of the Government

\(^{50}\) A.I.R. 1964 S.C. 1714.


\(^{52}\) A.I.R. 1980 S.C. 1330.
defending the case was that it is not liable for payment of price of remaining goods supplied to G. Bros. because it was merely controlling the supply and distribution of iron and steel. So, the plea of the Government was that the party (G. Bros.) receiving the steel should be held liable for payment of price of the goods. On the other hand, the plea of the plaintiff was that since it has supplied the goods to G. Bros. therefore, it is the Government which is liable for payment of price of remaining steel supplied to G. Bros. But the Supreme Court rejected the plea of the Government and held that the Government is liable under S. 70 of the Indian Contract Act, 1872 for price of goods supplied by the plaintiff to G. Bros. the Court observed that while directing the plaintiff company to deliver steel to another concerned person (i.e. G. Bros.), the Controller of Steel, Kanpur was dealing with the goods as if they belong to the Government of India and so it should be liable to pay for them.

In **Rakurti Manikyam v. Madidi Satyanarayana**\(^53\) it was observed by the Andhra Pradesh High Court that the term ‘lawfully’ refers to both ‘does’ and ‘delivers’ anything and does not extend the applicability of S. 70 to unlawful contracts. In the instant case some quantity of paddy was delivered by the plaintiff to the defendant against the price control order. It was accepted by the defendant. When claim for compensation was brought by the plaintiff against the defendant and S. 70 was invoked, it was held by the Court that even acceptance of paddy by the defendant did not create a lawful relationship between the parties so as to attract S. 70 of the Act. Similarly, in **Ayodhya Prasad Singh v. Narayan Prasad Jalan**\(^54\) an unauthorised dealer sold some controlled

\(^{54}\) A.I.R. 1962 Pat. 326.
goods to a non permit holder. Such sale was in violation of the provisions of the Iron and Steel Control Order. In a suit brought by the seller against the buyer for unpaid price, the Court held that the claim is not maintainable under S. 70 as the sale is illegal and that goods were not delivered lawfully by seller to the buyer.

In State of West Bengal v B. K. Mondal & Sons the plaintiff (respondent) had done some extra work in favour of the Government without any agreement for such extra work. The work was done in relation to a contract which was made between Government and the plaintiff. S. 175(3) of the Government of India Act, 1935 has forbidden such act. In a claim to seek compensation for such extra work the Court allowed the claim. The Supreme Court, explaining the term ‘lawfully’ observed that the word ‘lawfully’ is a not a surplusage and must be treated as an integral part of S. 70 of the Contract Act and even if it is taken to refer to an object of consideration which is forbidden by S. 23 of the Contract Act, it cannot be taken to mean as requiring the State to pay under S. 70 of the Contract Act for the services which it has enjoyed was something forbidden by S. 175(3) of the Government of India Act, 1935. Payment for extra work done in connection with a contract without any agreement could be recovered under S. 70 of the Contract Act. Declaring the majority judgment Hon’ble Mr. Justice Gajendragadkar further observed that there must subsist some lawful relationship between a person claiming compensation and the person against whom it is claimed, for that is the implication of the word ‘lawfully’ in S. 70 of the Act. However, that relationship must arise not because the party claiming something has done something for the party against whom

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compensation is claimed, but because what has been done by the former has been accepted and enjoyed by the latter. It is only when the latter accepts and enjoys what is done by the former that a lawful relationship arises between the two, and it is the existence of the said relationship which gives rise to the claim for compensation.\textsuperscript{56}

It is therefore clear from this judgment that the act done or services rendered by the plaintiff to the defendant must be lawful. It is only when S. 70 of the Act will apply to help the plaintiff seek compensation from the defendant on the basis of quasi contract. Further, a legal relationship must exist between the parties under S. 70 of the Act. That is to say, undoubtedly, S. 70 of the Act does not require any pre-existing contract between the parties nor is it based on a subsequent contract. But on account of a lawful act done voluntarily or lawful service rendered voluntarily by the plaintiff for the defendant, the benefit of which is enjoyed by the defendant, a legal relationship between these two parties is inferred and accordingly a quasi contractual obligation to pay compensation to the plaintiff is imposed upon the defendant by law.

It can also be submitted that S. 70 applies to the cases where a contract made with the Government is not valid according to Art. 299 of the Constitution of India and a party to such contract has rendered his services or has done some work according to the terms of the contract. It means the person who has acted in furtherance of such void contract is entitled to seek compensation from the Government for his act done or services rendered in furtherance of the invalid contract so made with the Government.

\textsuperscript{56} Pollock & Mulla, Indian Contract & Specific Relief Acts, 14\textsuperscript{th} ed., Vol. II, p. 1081 may also be seen.
In *Indu Mehta v. State of U.P.*\(^5^7\) the plaintiff was a lady advocate. She was offered by the District Magistrate with request to render her services as an Assistant District Council for a certain period. She accepted the offer and in furtherance of an agreement so made gave the services of her expertise in the concerned cases to the government. She was paid some amount of remuneration. But her appointment was found to be void under S. 24(2) of the Criminal Procedure Code, 1973. She was asked by the government to refund such remuneration which she was paid for her services. In a suit brought by her, the Allahabad High Court held that she was entitled to retain the remuneration already received and also to recover the remaining remuneration for the services given by her even though her appointment was void. This judgment makes it clear that even though the appointment of a person on any post turns out to be void, the person who has been so appointed is entitled under S. 70 of the Act to receive compensation for the services rendered by him in furtherance of such contract. Further, if such person has been paid some advance money for his services, he can retain it under S. 70 of the Act and can enforce his right to recover remaining amount till he has rendered his service.

Similarly, in *Fakir Chand Seth v. Dambarudhar Bania*\(^5^8\) by virtue of State Control Order, purchase of paddy was prohibited. The plaintiff was not aware of such an order of the State. He paid certain amount of money to the defendant for purchasing paddy. Later on, when he came to know of the order, he claimed his money under S. 70 of the Indian Contract Act, 1872. The Court allowed him to recover his money.

\(^{5^7}\) A.I.R. 1987 All. 309.  
\(^{5^8}\) A.I.R. 1987 Ori. 50.
It is to be noted that the application of S. 70 of the Indian Contract Act, 1872 can be effective only when something is done voluntarily for another or some goods is delivered voluntarily to another person without his request. The section can also be applied when it comes to the knowledge that contract is void on account of non fulfilment of essential formalities though the work is done or goods is supplied under such void contract. For instance in State of U.P. v. Murari Lal59 a contract was made by the Government with the respondent. According to the contract the respondent who was an owner of cold storage had to provide some space in his cold storage for storing goods to be supplied by the Government. However, the Government did not supply the goods while some space for storage of the goods in cold storage was left open for it during the whole season. The contract was entered into by an officer of the Government. It was held by the Supreme Court that S. 70 of the Indian Contract Act, 1872 does not apply in such a case, for the respondent cannot be treated to have done such act which could be enjoyed by the Government. So, neither the respondent was allowed to maintain his action under this section against the Government nor against that officer who had made the contract.

But where a contract with the Government consists of all the requirements of a contract enforceable by law, the Government may be held liable to pay salary and other consequential benefits to an employee in case such employee stays over a service on account of an interim order of the Court. For example, in Ramakrishnan Nair v. State of Kerala60 a teacher was to retire at the age of 55 years. However, he

60 (1989) 2 K.L.J. 100. Avtar Singh, Contract and Specific Relief, 11th ed., p. 552 & 553 may also be seen.
obtained stay order from the Court on the ground that he was entitled to continue in service up to age of 60 years. By virtue of such stay order he continued to remain in service beyond 55 years of age before final decision could come into effect. That is to say, before final decision came into effect, he exceeded 55 years of age while rendering his service. It was held by the Court that as the conduct of plaintiff was not unlawful as he remained in service not by usurpation but under order of the Court, therefore he was entitled to recover monetary benefits during the overlapping period.

In *Noor Mohammad v. Mohammad Jijddin*61 it was held by the Madhya Pradesh High Court that S. 70 of the Indian Contract Act, 1872 does not exclude cases of joint liability of joint beneficiaries who are jointly enriched in any way in an unjust manner at another’s cost.

In *Shyam Bihari Prasad Singh v. State of Bihar*62 the plaintiff was appointed as a lecturer a University. The Vice Chancellor of the University made agreement with such person for the service. However, the post on which he was appointed was not sanctioned by the Government. His claim for salary was allowed by the Court of Law under S. 70 of the Indian Contract Act, 1872 even though the agreement for service was invalid. This judgment clearly establishes that on account of benefit of the services given by the plaintiff and enjoyed by the students and the University itself, the claim of salary was allowed. Further, the judgment prevented an unjust enrichment to be taken by the University at the cost of plaintiff.

61 A.I.R. 1992 M.P. 244.
In Ashok Vandhan Bhagat v. West Bengal Essential Commodity Supply Corp. Ltd.\(^\text{63}\) on an invitation of the Corporation, the petitioner submitted tender for the supply of rape seed oil at the rate of Rs. 353/- per quintal. For the purpose, the petitioner deposited Rs. 2,85,930/- as a cost of 750 quintal of the oil. But when he went to take delivery of oil, he found that the oil was replaced by water and the content was only 10%. Thereupon, the petitioner filed the Writ Petition requesting the Court to direct the respondent to deliver 750 quintals of oil or in the alternative to refund a sum of Rs. 2,86,000/- together with interest at the prevailing rate. The Corporation is an instrumentality of State… Public authorities are not entitled to be unjustly enriched at the cost of people. It was held by the Calcutta High Court held that the Corporation has no authority to retain the money obtained by practising fraud. The respondent Corporation was directed by the Court to refund the sum of money Rs. 2,86,000/- with interest at the rate of 12% per annum from the date of receipt of delivery date of payment within a payment of 2 weeks from the date of judgment.

In Food Corporation of India v. Vikas Majdoor Kamdar Sahkari Mandi Ltd.\(^\text{64}\) the Supreme Court explained very elaborately significance and the application of S. 70 of the Indian Contract Act, 1872 and the doctrine of quantum meruit. It laid down that the provisions of S. 70 of the Indian Contract Act, 1872 are based on the doctrine of quantum meruit but this is not all. S. 70 of the Indian Contract Act, 1872 is of much more liberal construction and the principle contained therein is wider than the principle of quantum meruit. The principle of quantum


meruit is often applied where for some technical reasons a contract is held to be invalid. Under such circumstances an implied contract is assumed by which the person for whom the work is to be done under contract to pay reasonably for the work done to the person who has done the work. The principle of S. 70 of the Act has no application where there is a specific agreement in operation. Further, if a party to a contract has done some additional construction for another not intending to do it gratuitously and such other party has obtained benefit, the former is entitled for compensation for the additional work not covered by the contract. If an oral agreement is pleaded, which is not proved, he will be entitled to compensation under S. 70 of the Act. Payment under this section can also be claimed for work done beyond the terms of the contract when the benefit of the work has been availed of by the defendant.

But, where rate of work is fixed by contract, the contractor cannot claim compensation mere on the ground that he has spent more money in completing the work than that which was fixed by the contract. To illustrate, it can be said that in Satya Narayan Construction Co. v. Union of India & Others\(^6\) a contract was made by the contractor (i.e. plaintiff company) with the Government for cutting earth and sectioning to profile etc. The rate fixed by the contract for the work was Rs. 110/- per cubic metre. However, the claim of the contractor was that he incurred a huge amount in the work of blasting rock. Consequently, he had to spent more money than was fixed by the contract. Therefore, he claimed also compensation for the enhanced money and the contract money. Thus, he claimed compensation from the Government at the rate

\(^6\) (2014) 2 S.C.C. 252.
of Rs. 210/- per cubic metre. The Arbitrator granted the award in respect of the amount claimed by the contractor. But, upon an appeal made by the Government to the High Court, the award was not accepted by the High Court. Thereupon, the present appeal was filed by the contractor in the Supreme Court. Dismissing, the appeal the S. C. held that the contractor was not entitled to claim additional amount of money merely because he had to spend more money for carrying out such work. It was not open to the Arbitrator to determine the rate of work as it was beyond his authority. Thus, the claim for compensation brought by the plaintiff for additional money was not held maintainable under S. 70 of The Indian Contract Act. The reason was that mere spending more money by him than it was fixed by the contract cannot enable the plaintiff to seek compensation for such money under S. 70 of the Act.

Again, it is to be noted that the question of awarding compensation for additional work done by a party to a contract is decided by the Court of Law on the basis of the facts, circumstances and reasonableness of a case. It is not liable to be rejected out rightly. If it appears to the Court reasonable and just, compensation may be awarded under S. 70 of the Act for additional work done by a party for the benefit of another party. For example, in Gopal Chandra Bhui v. Bakura Zilla Parishad & Ors.\(^6\) tender was invited by the Bakura Zilla Parishad for constructing a pucca nala. Sealed tenders were submitted by several persons. It was the plaintiff’s tender (appellant tender) that was accepted by the Zilla Parishad. The plaintiff started the work in pursuance of the contract. In course of such work it was found by the plaintiff that a large heap of earth was there which was to be excavated for completion of the

\(^6\) A.I.R. 2015 Cal. 124.
work. Such excavation of large heap of earth was not included in the contract. On a verbal instruction of some authority the plaintiff excavated the earth non gratuitously. The plaintiff claimed compensation for additional work of excavation on the basis of S. 70 of The Indian Contract Act. The contention of Zilla Parishad was that as the extra work done by the plaintiff was done only on the basis of a verbal permission, his claim is not maintainable. The contention of the Zilla Parishad was also that since the work of construction of pucca nala was not completed by the plaintiff therefore, the contract was cancelled and the security money deposited by him was also ordered to be forfeited by the Zilla Parishad. Reliance was placed by the Zilla Parishad specially on State of West Bengal v. B. K. Mondal & Sons, A.I.R. 1962 S.C. 779 and Food Corporation of India & Ors. v. Vikas Majdoor Kamdar Sakhakari Mandli Ltd., (2007) 13 S.C.C. 544. On the other hand the contention of the plaintiff was that he did the extra work of excavation of a huge heap of earth on the direction of an authority and the work was done non gratuitously. So, he was entitled to compensation for it on the principle of quantum meruit implied under S. 70 of The Indian Contract Act. For deciding the quantum of money for extra work, the case was remanded to Trial Court (the Court of Civil Judge- senior division) at Bakura District. But, the Supreme Court observed that the contractor (appellant/plaintiff) was entitled to compensation for extra work done by him on the principle of quantum meruit because the extra act of contractor of excavating earth was non gratuitous and authority was benefited by it.
Bank of India v. Swaroop Reddy\(^67\) is another case where the bank was directed to pay the landlord additional amount for its overstay as a tenant. Briefly the facts were that the bank was tenant in plaintiff’s house under a contract. But the bank overstayed in the house. The bank also did not pay the increased rent which was acknowledged by it. The Court held that the bank was liable to pay the plaintiff the entire amount of claim made in the suit which included rent for overstay and increased rent. Similarly, in Charu Bhatnagar v. H.P.M.C.\(^68\) the plaintiff supplied to the defendant certain quantity of fruits. The fruits were accepted by the defendant. The plaintiff was not mutated owner of the orchard. However, his claim for payment of price of fruits was allowed by the Himachal Pradesh High Court under S. 70 of the Indian Contract Act, 1872.

In Union of India v. J. K. Gas Plant,\(^69\) in pursuance of instructions issued by the Government a person transferred steel allotted to him in excess to a third person. But he did not pay the price of such steel. The Supreme Court held that the Government was liable to pay price of steel to the person who supplied them on instruction of the Government. Such claim was allowed by the Court under S. 70 of the Indian Contract Act, 1872.

It is to be noted that a voluntary payment of money by one person to another is also included under the words “does anything” as used under S. 70 of the Indian Contract Act, 1872. It is because making payment of money also amounts to doing something. Consequently, for

\(^{67}\) A.I.R. 2001 A.P. 260.  
\(^{68}\) A.I.R. 2006 H.P. 119.  
such money claim may be brought under S. 70 of the Act. As the expression “payment of money” has also been used under S. 69 of the Act, therefore it should not be supposed that payment of money has been excluded under S. 70 of the Act. Such opinion was expressed by the Bombay High Court in *Desai v. Bhava Bhai.* But in *Sheo Nath v. Sarjoo Nonia,* it was decided by the full Bench of Allahabad High Court that payment of money lawfully and voluntarily made by one person to another is not included in the expression does anything as provided under S. 70. However, majority of the Courts are of the opinion that payment of money is included in the expression ‘does anything’ as incorporated under S. 70 of The Indian Contract Act.

My submission is also 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. A number of decided cases are there where with the help of judicial interpretation the Courts have, from time to time included the term ‘payment of money’ within the domain of S. 70 of the Act. For example, in *Federal Bank v. Goseph* the bank gave discount in order of payment and also gave credit to its customer. The bank claimed reimbursement for its act of discount and credit to the customer. The suit of the bank was allowed against the customer under S. 70 of the Indian Contract Act, 1872. The Kerala High Court observed that such act of the

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70 (1880) 4 Bomb. 643.
71 A.I.R. 1934 All. 220.
72 (1990) 1 K.L.T. 889. Avtar Singh, Contract and Specific Relief, 11th ed., p. 547 may also be seen.
bank amounts to do something done by the bank for the benefit of the customer who really accepted it.

The person making the payment must have a lawful interest in such payment. If his interest is not lawful the payment of money, will not entitle him to make claim for compensation under S. 70 of the Act. 73

Where payment of money is for the benefit of the plaintiff and not for the benefit of the defendant, the claim of the plaintiff against the defendant for reimbursement under S. 70 of the Indian Contract Act, 1872 is not maintainable. In Binda Kuar v. Bhonda Das74 the plaintiff paid revenue when he was in wrongful possession of the defendant’s land. The land belonged to the defendant. While payment of the revenue was made by the plaintiff, he was under wrongful possession of the land. The payment of revenue was made by the plaintiff for his own benefit and not for the benefit of the defendant. He was not allowed to claim recovery of the revenue money from the defendant under S. 70 of the Act because such payment was for plaintiff’s benefit. Likewise, Raghavan v. Alamelu Ammal,75 is another case where S. 70 of the Indian Contract Act, 1872 was not held to be applicable as the payment of tax was made by the plaintiff not for defendant’s benefit. In the instant case, the Income Tax authority assessed the plaintiff for payment of income tax. The plaintiff paid the tax. But he pleaded that it was the defendant who was liable to pay the tax. However, the plaintiff was held

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74 (1885) I.L.R. 7 All. 660.
75 (1907) 31 Mad. 35. Pollock & Mulla, Indian Contract & Specific Relief Acts, 14th ed., Vol. II, p. 1084 may also be seen.
not entitled to recover the paid tax from defendant under S. 70 of the Act for the payment of tax was not for benefit of the defendant.

On the basis of letter and spirit of principle of S. 70 of the Indian Contract Act, 1872 it can be submitted that the section does not apply for contribution among joint doers of the act. For example, A and B are jointly interested to do some lawful act for another person C. But in fact the act is done only by A, he cannot seek contribution from B for expenses incurred in doing such act. In Damodara Mudaliar v. Secretary of State for India in Council\(^\text{76}\) the Madras High Court laid down that where two persons are interested in a certain thing being done and one of them does it, he cannot recover under S. 70 of the Indian Contract Act, 1872, the proportionate share of the expenses incurred in its performance from the other who has benefitted by it.

However, it is noteworthy that contribution may depend on facts and situations and its claim may vary from one case to another. For example, in the present case of Damodara Mudaliar a tank was repaired by the Government which was used for irrigation of lands. Some of the lands belonged to villagers and the remaining lands were owned by the Government. The repairing of the tank had also become necessary for preservation of tank. The Government did not repair the tank gratuitously. The Government was allowed to make claim under S. 70 of the Indian Contract Act, 1872 from the defendants for a part of costs of repairing incurred by it. Similarly, in Khairat Hussain v. Haidri Begum,\(^\text{77}\) certain land was owned by several persons. It was mortgaged to a person for some debt. The mortgagee told the mortgagors that if debt

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\(^\text{76}\) (1894) 18 Mad. 88.

was not paid to him, he would sell the mortgaged land. Upon such
threatening given by the mortgagee, one of the co-sharers of the land
paid the mortgage debt with a view to preventing the mortgaged land
from being sold. The co-sharer who paid the loan was allowed by the
Court to seek contribution from other co-sharers in respect of such
payment. Again, in *Nirdosh Munda v. Jakaria Munda*\(^78\) certain
property was hired on rent jointly by tenants. The whole rent was paid
only by one of the joint tenants to landlord without request of other
tenants. The payment was made by only one tenant with intention that he
would receive proportionate contribution from other tenants. He was
held entitled to receive proportionate compensation from his co-tenants

S. 70 of the Act applies for both some act done lawfully or
something delivered lawfully by a person for the benefit of another
person. It is necessary that the *delivery of goods* must be made lawfully
in the same way as an act is done or service is rendered lawfully by one
person for the interest of another person. Consequently, the person who
delivers something lawfully is entitled to claim compensation for such
thing from the person to whom such thing is delivered and who enjoys
benefit thereof.

It is well known that something done or delivered lawfully can
invite attention of S. 70 of the Act only when such something has been
delivered or done for benefit of the defendant and not benefit of the
plaintiff. On the same proposition it is to be noted that the payment of

\(^78\) A.I.R. 1915 Cal. 157.
money should not be made only for benefit of plaintiff himself but it must be for the benefit of the defendant.

It is further worth mentioning that a person for whom some voluntary act is done or service is rendered can only be held liable to pay for it under S. 70 of the Indian Contract Act, 1872 only when he has an option or choice to reject the act or service. That is to say, when a person A does something voluntarily for the benefit of B, S. 70 of the Act will hold B liable only when B had option either to reject or accept the act. In such a case B is liable under this section when he accepts i.e. enjoys benefit of the act done so. Again, where A renders some service voluntarily to B and B enjoys it benefit, B I can be held liable under S. 70 of the Act only when he had an option either to reject the service or accept the service given so by A. it simply means that under S. 70 of the Act B cannot be held liable to pay compensation to A when he has an option to accept or reject voluntary act done or service rendered by A. It is because a person (e.g. B) cannot be compelled to accept benefit of some act done or service rendered by another person (e.g. A).

It is therefore submitted that one concept underlines S. 70 of the Act is that it prevents an unjust enrichment to be enjoyed by one person at the cost of another. On the other hand, the another very nice concept which is implicit under S. 70 of the Act is that the section strikes a balance between two kinds of approaches one of which is that a person cannot be allowed to interfere with the lawful functioning of another person and another is that a person cannot be compelled for such act or service which has been imposed on him. These two parts of concepts are implied in form of rules under S. 70 of the Indian Contract Act, 1872. By
the act of judicial interpretation, the Courts undertake an obligation to establish balance between them.\(^{79}\)

It is pertinent to mention that S. 70 of the Indian Contract Act, 1872 covers the cases of such act which is done by a party to a contract after the **contract is terminated**.\(^{80}\) It means where some work is done by a party to a contract even after termination of contract and benefit of such work is enjoyed by the other party, the person doing a work is entitled to claim compensation for the work under S. 70 of the Act provided he did the act with intention of being paid for it.

Similarly, where under Art. 299 of the Constitution no contract is made or contract is void on account of non fulfilment of prescribed conditions and some work is done or goods is supplied in furtherance of such contract, the person doing the work or supplying the goods can seek recourse of S. 70 of the Indian Contract Act, 1872 to receive compensation from the Government. For example, in **Anil Harish v. Government of Maharashtra**,\(^{81}\) the Secretary of the Government was not authorised to make lease contract on behalf of the Government with the plaintiff. But despite having such authority, he executed lease deed on behalf of the Government. The lease was also not made in writing. Thus, Art. 299 of the Constitution of India was not complied with and contract was not completed. Nevertheless, the Government was held entitled to recover rent of the lease-hold under S. 70 of the Indian

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\(^{80}\) Food Corporation of India v. Gopal Chandra Mukherjee, (2003) 2 I.C.C. 797 (Cal.) may be seen. Avtar Singh, Contract and Specific Relief, 11\(^{th}\) ed., p. 551 may also be seen.

Contract Act, 1872. Again, in **P. C. Wadhwa v. State of Punjab**\(^82\) the plaintiff was selected in Government service. He was sent for training. But after training he refused to join the service. The Government sued him for cost of training. The argument of the Government was that he was sent for training after giving his consent freely and voluntarily and he took advantage of training. Therefore, he should be held liable to pay cost of the training. It is to be noted at this juncture that the Government could have waved cost of training but it did not do so. It was held by the Court that the Government was entitled to claim compensation under S. 70 of the Indian Contract Act, 1872 even though the entire contract could not be completed because the candidate did not join the service finally.

In another case of **Kishan Lal v. Bhanwar Lal**\(^83\) the Supreme Court discussed the scope of S. 222 of the Indian Contract Act, 1872\(^84\) relating to agent’s right for lawful act done in favour of the principal. It is worth mentioning that when agent is entitled to receive indemnity from his principal for consequences of unlawful acts done by him in scope of agency. In the instant case the agent was authorised by the principal to enter into wagering agreements with third persons. In the exercise of such authority conferred upon him, the agent entered into wagering agreement with the third person and suffered loss. It was held by the Supreme Court that the agent was entitled to receive compensation for loss incurred by him for making wagering transactions with third person, for a wagering agreement is void but not unlawful under S. 30 of the Indian Contract Act, 1872. This section was compared

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\(^{82}\) A.I.R. 1987 P&H 117.
\(^{84}\) S. 222 of the Indian Contract Act, 1872 runs as follows: “The employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authority Conferred upon him.”
with S. 70 of the Indian Contract Act, 1872. However, the radical difference between provisions of these two sections (i.e. Ss. 222 & 70 of the Indian Contract Act, 1872) is that under S. 222 of the Act an act is done by the agent in the exercise of his lawful authority while under S. 70 an act is done or service is rendered by one person for the benefit of another lawfully but voluntarily. To illustrate further, the case of Hazarimal Kochnaji v. Khemchand Maggaji\(^{85}\) can be quoted here. At the direction of defendant, the plaintiff paid certain amount of money to a Panchayat for removing disqualification of defendant. The Court allowed the claim of the plaintiff for recovery of the money paid by him. The Court observed that the plaintiff can be treated to have acted as an agent of the defendant. It further said that the money which was paid by the plaintiff was neither for a wrongful purpose nor was the plaintiff a party to a wrongful act.

Similarly, in Darab Kuar v. State of Bihar,\(^{86}\) for collection of ferry and bridge tools, the plaintiff took a lease for three years. But in fact the lease was not executed under S. 175(3) of the Government of India Act, 1935. However, the lease for bridge tools was cancelled. Till such cancellation the plaintiff had collected bridge tools for some months in pursuance of the lease. A claim for Rs. 45,000/- was made by the plaintiff as estimated earning for three years and also for damages under S.70 of the Indian Contract Act, 1872. It was held by the Court that S. 70 of the Indian Contract Act, 1872 was not applicable as it was not a claim for something done or given and accepted by the Government. The claim was really for breach of contract and future

\(^{85}\) A.I.R. 1962 Raj. 86.  
\(^{86}\) A.I.R. 1962 Pat. 485.
profits. The judgment of this case establishes that S. 70 of the Act is applicable to accept the claim of plaintiff for reimbursement only when something lawfully is done by him or some service is rendered for the benefit of another person who enjoys benefits thereof. In the present case it cannot be said that something was done by the plaintiff nor some service was delivered by him in favour of the Government and also that the element of enjoyment of the act or service by the Government was missing.

It is pertinent to mention that the letter and spirit of provision S. 70 of the Indian Contract Act, 1872 indicates that the act done or service rendered must be some positive act or positive service: it must not be a negative act or negative service. That is to say, where a person refrains from doing something or refrains from rendering some service for the benefit of another person, he cannot claim compensation under S. 70 of the Act because such refraining act or refraining service cannot enable him to claim for compensation within the meaning of S. 70 of the Act. For example, in *Kirori Lal v. State of Madhya Pradesh* a lease was granted to the plaintiff by an officer of the Government of Rajasthan to extract sand. As the concerned officer of the Government was not authorised to grant lease, it was void and cancelled by the Government. Consequently, the plaintiff was restrained by mining engineer from interfering with the Madhya Pradesh Government and extracting sand. The plaintiff’s claim for compensation under S. 70 of the Indian Contract Act, 1872 against the Government of Rajasthan and M.P. was not allowed because no service by the plaintiff was rendered at all in favour of the Government. The plaintiff did no positive act which could give

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rise to a claim for compensation under S. 70 of the Indian Contract Act, 1872. It is therefore, obvious from this section that only a positive act done by the plaintiff in favour of the defendant lawfully and voluntarily can give rise to a claim for compensation.

4.1.6 **NOT INTENDING TO DO SO GRATUITOUSLY**

The second condition which has to be fulfilled for application of S. 70 of the Indian Contract Act, 1872 is that the plaintiff must have done some lawful act or delivered goods lawfully not gratuitously. It simply means that he should do such act or deliver goods intending to receive some compensation in lieu of it. It is because if he has done such act with gratuitously intention, he cannot hold the defendant liable to pay him compensation under S. 70 of the Act even though the defendant has enjoyed benefit thereof. What is therefore necessarily required to enable the plaintiff claim compensation under S. 70 of the Act is obviously that he must have done the act with intention to receive something in lieu of it from the defendant.

Contrary to it, the term **gratuitous** means without intention of receiving compensation. That is to say, where act is done or something is delivered lawfully and voluntarily by the plaintiff to the defendant intending to do so gratuitously, the plaintiff is not entitled to claim compensation for such act or delivery of thing from the defendant under S. 70 of the Indian Contract Act, 1872. The reason lies in the logic that when he has done the act or delivered the thing gratuitously i.e. without an expectation of compensation to be paid by the defendant, how can he claim compensation for such act or delivery of goods later on in the light of S. 70 of the Indian Contract Act, 1872. To illustrate, it can be
submitted that in *Lala Manmohan Das v. Janki Prasad*\(^{88}\) the Privy Council has laid down that where the claimant has done the act without any expectation of compensation, the defendant has no obligation to repay the claimant for such act of the claimant. So, it appears from this judgment that in order to claim compensation under S. 70 of the Indian Contract Act, 1872 the plaintiff must have done the act with intention to receive some remuneration or compensation for such act. The intention of the plaintiff that he has done the act not gratuitously can be inferred from the surrounding circumstances relating to the doing of something or delivery of something. But such intention which is at the time of doing some act or rendering some service or delivering something is relevant for application of S. 70 of the Act. An ‘impression’ or ‘expectation’ of the plaintiff of receiving some compensation for the act done or thing delivered to the defendant may indicate that he intended to do such act or deliver such thing non gratuitously. In *A. V. Palanivelu Mudaliar v. Neelavathi Ammal*\(^{89}\) the Privy Council observed that where the plaintiff was under an impression that he would receive remuneration for the services rendered by him, it cannot be predicated that he intended to act gratuitously. In the present case the estate of wife and sister-in-law was managed by the plaintiff. While managing the estate and taking care of it the plaintiff was under impression that he would receive some compensation for the services rendered by him in that regard. When he was refused the compensation, he brought an action under S. 70 of the Indian Contract Act, 1872. The action of the plaintiff for compensation of S. 70 of the Act for his services was allowed by the Privy Council. Thus, in order to satisfy the element of ‘not intending to do so

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\(^{88}\) A.I.R. 1945 P.C. 23.  
\(^{89}\) A.I.R. 1937 P.C. 50.
gratuitously’ for application of S. 70 of the Act, it is necessary that there must be some element of self-interest in the act done by the plaintiff for the defendant. That is to say, while doing the act of delivering the thing, the plaintiff must have motive that he will surely receive some compensation for such act from the defendant. For instance, in **Panna Lal v. Mahachandi Sawaldas** a decree by compromise made with the defendant was obtained by the plaintiff. According to terms of the compromise, the defendant had to build a wall but he did not build it. The concerned wall was built by the plaintiff with intention that he will receive compensation for it from the defendant. The claim of plaintiff to receive compensation under S. 70 of the Indian Contract Act, 1872 was allowed by the Court as the work of constructing of wall was done by him not gratuitously. Again, in

For example, in **Damodara Mudaliar v. Secretary of State for India in Council** the Government, non gratuitously, completed repairing of a tank which was meant for irrigation of the lands belonging to 11 villages. Some of the villagers were under tenancy (kastkari) of zamindars and lands of remaining villagers belonged to the Government. The Government claimed compensation from the zamindars for a part of expenditures incurred in repairing the tank. The claim of the Government for compensation under S. 70 of the Indian Contract Act, 1872 was held maintainable. The Court observed that as the act of repairing of tank done by the Government was non gratuitous, the zamindars were liable to compensate the Government for a part of expenditures. Thus, the zamindars were held liable to give proportionate contribution in respect

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90 Babu Bhagwati Saran Singh v. Maiyan Murat Mati Kuer, A.I.R. 1931 Pat. 394 may be seen.
92 (1894) I.L.R. 18-19 Mad. 410.
of expenditure incurred by the Government. Similarly, in \textit{Jarao Kumari v. Basanta Kumar Roy}\textsuperscript{93} there was an apprehension of cancellation of license in the mind of shop’s owners in a market. In order to prevent probable cancellation of license, one shop owner got all the shops repaired. He repaired shops of other co-owners non gratuitously. He was held entitled to receive proportionate compensation from other co-owners under S. 70 of the Indian Contract Act, 1872. Again, in \textit{V. R. Subramanyam v. B. Thayappa}\textsuperscript{94} the plaintiff (respondent) had done some additional work regarding a building. The said building was to be constructed by the plaintiff for the defendant under a contract. But there was no express contract for additional work. The plaintiff’s argument was that he did the additional work in pursuance of an oral contract. But he could not prove the oral agreement. The suit brought by the plaintiff to get compensation for the additional work was allowed under S. 70 of the Indian Contract Act, 1872. The Supreme Court observed that even though he failed to prove the existence of an oral agreement for the additional work related to the building but the plaintiff was entitled to receive compensation from the defendant as he did the additional work non gratuitously.

Likewise, \textit{Patel Engineering Co. Ltd. v. Indian Oil Corporation Ltd.}\textsuperscript{95} is another case where the Court laid down that compensation can be claimed by the plaintiff for work done by him non gratuitously for the benefit of another person. Some goods were supplied by the plaintiff to the Government at the direction of an officer. But the concerned officer did not possess an authority to issue such direction.

\textsuperscript{93} (1904) 32 Cal. 374.

\textsuperscript{94} A.I.R. 1966 S.C. 1034.

\textsuperscript{95} A.I.R. 1975 Pat. 212 at 219.
The goods were used by the Government. The claim of the plaintiff against the Government to seek compensation under S. 70 of the Indian Contract Act, 1872 was allowed by the Court on the ground of plaintiff did the work with non gratuitous intention. Again, in *Haji Abdulla Haji Adam Sait Dharamsthapanam v. V. T. Hameed*\(^96\) with consent of the landlord the tenant started certain work on a building. But on account of some reasons the landlord filed a suit making prayer with the Court to grant an injunction against the tenant to restraining him for carrying on the work. However, after some span of time the dispute was settled between them after enhancement of rent. Consequently, the suit was withdrawn by the landlord. The Court held that as the work by the tenant was done non gratuitously therefore, his claim for compensation under S. 70 of the Indian Contract Act, 1872 can be allowed.

In *M/s Hansraj Gupta & Co. v. Union of India*\(^97\) the Supreme Court laid down that S. 70 of the Indian Contract Act, 1872 enables the person who supplies goods or renders some services not intending to do gratuitously, to claim compensation from the person who enjoys the benefit of the supply made or services rendered. The Court further observed that the liability which is quasi contractual arise on equitable grounds even though an express agreement or a contract may not be proved.

The same view of the Supreme Court as expressed in *M/s Hansraj Gupta’s case* was reiterated in *Jadvendra Narayan Chowdhury v. State of West Bengal*\(^98\) where goods was supplied

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\(^{96}\) A.I.R. 1985 Ker. 93.  
without any contract and it was used by the Government. The goods was supplied non gratuitously. Government was held liable to make compensation to supplier of goods (i.e. the plaintiff) under S. 70 of the Indian Contract Act, 1872.

In Food Corporation of India v. Vikas Majdoor Kamdar Sahkari Mandi Ltd.\textsuperscript{99} the Supreme Court, explaining at length the essence and application of the principle of quantum meruit with regard to S. 70 of the Indian Contract Act, 1872 also held that where a party to a contract has done some additional work without request of the other party not gratuitously, the party who has done the work is entitled to receive compensation from the other party under S. 70 of the Indian Contract Act, 1872 for such additional work.

S. 70 extends to cover repayment of loan also especially when the loan is lent under an oral agreement which can’t be proved by him. But at the time of lending the loan he intended to receive it from the borrower. For example, in Narayan Venkatesh Pandit v. Syed Nuroddin Khadri,\textsuperscript{100} the defendant borrowed certain money from the plaintiff under an oral agreement. Such agreement was based on confidence and trust reposed by lender in borrower. Upon refusal of the defendant, the plaintiff sued him under S. 70 for recovery of the loan. The argument of the defendant was that since the agreement was not on a stamped paper therefore he is not bound to repay the loan. However, the Karnataka High Court held that the plaintiff was entitled to receive loan from defendant with appropriate interest under S. 70 of the Indian Contract Act, 1872 because the loan was not given gratuitously.

\textsuperscript{100} (1999) 2 Knt. L. J. 449.
Similarly, in *Nanna Paneni Venkata Rao Cooperative Sugars Ltd. v. State Bank of India*,\(^{101}\) under a share deposit scheme, the plaintiff company left certain amount of money with the bank. The direction of Reserve Bank of India (RBI) was that interest would not be paid on saving bank accounts. The plaintiff claimed interest on the money left with the bank. The plea of the plaintiff was that as such money deposited by the plaintiff cannot be said to be deposited under saving bank accounts therefore it did not come within directive issued by RBI. On the other hand, the contention of the defendant bank was that the money should be considered within saving bank accounts scheme and therefore RBI direction would govern such deposit and thus the interest cannot be paid on it. However, the Court observed that the money left with the bank by the plaintiff does not come within saving bank accounts scheme. Therefore, the plaintiff is entitled to receive interest on it within the scope of S. 70 of the Indian Contract Act, 1872.

It is thus obvious that the plaintiff seeking compensation on the basis of the principle incorporated under S. 70 of the Indian Contract Act, 1872 must prove the existence of the second element also in addition to the first element. That is to say, he has to also prove that he has done the work voluntarily and lawfully or he has delivered something voluntarily and lawfully to the defendant without his request with intention that he would receive some compensation in lieu of the work so done or the thing so delivered.

4.1.7 **ENJOYED THE BENEFIT**

Despite proving the two essential elements as discussed above for application of S. 70 of the Indian Contract Act, 1872, the plaintiff has to also establish the existence of third element of enjoyment of benefit by the defendant. In other words, the plaintiff while seeking compensation under S. 70 of the Indian Contract Act, 1872 proves the existence of the two elements- 1) Lawfully does something or lawfully delivers something to the defendant, and 2) He does so not intending to do so gratuitously, he is further required to prove the third element i.e. he has to prove that the defendant has enjoyed benefit of such act done or thing delivered. Further, it can be explained that unless the defendant enjoys benefit of the act done by the plaintiff, or some services rendered by him or something delivered by him, the plaintiff cannot seek compensation from him under S. 70 of the Indian Contract Act, 1872. Consequently, where the defendant refuses to accept benefit of the act done, or services rendered or something delivered by him the plaintiff, he cannot be held liable to compensate the plaintiff under S. 70 of the Act.

This third element that ‘the other person for whom something is done or to whom something is delivered must enjoy the benefit thereof’ was stated by Hon’ble Mr. Justice Gajendragadkar (afterwards C.J. of India) in the leading case of **State of West Bengal v. B. K. Mondal & Sons**\(^{102}\). This element was emphasized in addition to the first two elements as discussed above. This element i.e. the element of enjoyment of benefit is so important and significant that unless the benefit derived

by the person for whom some act is done or something is delivered, a claim for compensation cannot be made under S. 70 of the Act.\footnote{Jaleshar Singh v. Mahadeo Bux, A.I.R. 1931 Oudh 242 may be seen.}

For instance, in \textbf{Damodara Mudaliar v. Secretary of State for India in Council}\footnote{(1894) I.L.R. 18-19 Mad. 410: (1895) 18 Mad. 88.} the defendants (villagers who were under zamindars) were held liable to compensate the Government because they enjoyed the benefit of tank which was repaired by the Government for irrigation of both villagers under Government and villagers under zamindars. The Government completed the repairs of tank with intention to realise some compensation from the villagers under zamindars. Further, in \textbf{Rang Lal v. Kali Shanker}\footnote{A.I.R. 1924 Pat. 235.}, the plaintiff was a purchaser of a tenure (kashtkari) and he paid money to prevent sale of it in execution of rent decree. The payment was made to a third person on behalf of the defendant. He could not recovered compensation under S. 70 of The Indian Contract Act. The Court laid down that the plaintiff cannot succeed unless the defendant has actually been benefited. In the present case the defendant did not enjoy direct benefit, therefore he cannot be held liable. But, in \textbf{Governor-General In Council v. Madura Municipality}\footnote{A.I.R. 1949 P.C. 391.} the Provincial Government wrongly exercising its power under the Indian Railways Act, 1890 directed the Railway Company to widen a culvert. Due to widening of the culvert adjoining lands were developed and consequently the municipality received more taxes. The Railway Company stated that the Government had no power to require the Railway Company to widen the culvert even though it completed the work of widening of culvert. The Railway Company did
the work under impression to receive charge of the work either for the government or for municipality. Ultimately, the Railway Company brought an action against municipality. It was held that as the municipality did not enjoy benefit of the work directly (though it can be said that it enjoyed the benefit in an indirect sense), it cannot be held liable under S. 70 of The Indian Contract Act to make compensation to the Railway Company even though the Railway Company did not intend to act gratuitously. The Division Bench of the Madras High Court further observed that this is a very indirect benefit, and S. 70 of the Act can in our opinion only have application where there is direct benefit to the person for whom the work is done. The person who are enjoying the benefit of this work are the owners and occupiers of the building in the locality. It would be doing violence to the Section to say that in these circumstances the work was done for the benefit of municipality. Again, in *Srinivas & Co. v. Inden Biselem,*\(^{107}\) the defendant received some indirect benefit due to change in the import policy of the Government and not due to act of the plaintiff. The claim of the plaintiff for compensation against the defendant for deriving such benefit was not allowed. The S.C. observed that S. 70 of The Indian Contract Act will only apply when benefit has resulted to a party from any act of the other party, and not when he benefited because of the change in the import policy of the Government. Likewise, in *State of Mysore v. Tarachand,*\(^ {108}\) it was observed by the Court that where a surety for the original promisor has not received any benefit under the transaction he cannot be held liable by the creditor under S. 70 of the Act.

On the basis of above mentioned judgments on direct benefit enjoyed by defendant, it can be submitted that S. 70 of The Indian Contract Act can be sought to be applied by the plaintiff against the defendant, when the defendant has enjoyed the direct benefit of the voluntary unlawful act done by the plaintiff or something is delivered by him voluntarily and lawfully to the defendant.

In *Lakshmi Ratan Cotton Mills v. J. K. Jute Mills*\(^{109}\), the agent of the company was not authorised to borrow money but, he borrowed some money. such money was deposited in company’s fund. The suit of the creditor to receive compensation from the company under S. 70 of The Indian Contract Act was held maintainable. The Court observed that receipt of a money is itself a benefit to the company and therefore the company is liable to compensate the creditor under S. 70 of the Act.

Similarly, in *Union of India v. M/S J.K. Gas Plant*\(^{110}\) a part of unused steel was delivered by the plaintiff to G. Bros. under the direction of the Government. G. Bros. held such steel on behalf of the Government of India. The Supreme Court held that the Government was liable under S. 70 of the Indian Contract Act, 1827 as it had enjoyed full and direct benefit of such part of steel which the plaintiff delivered to G. Bros. at Government’s direction. The benefit enjoyed by the Government of a part of steel delivered to G. Bros. cannot be said to be indirect benefit.

The observation of the Supreme Court in the present case clearly establishes that it is the enjoyment of direct benefit by the defendant of the act done or things delivered by the plaintiff lawfully which holds the

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\(^{109}\) A.I.R. 1957 All. 311.

defendant liable to make compensation to the plaintiff for such act or things under S. 70 of the Indian Contract Act, 1827. Contrary to it, if the defendant enjoys only indirect benefit of such act or things, he cannot seek help of S. 70 of the Act for realising compensation from the plaintiff.

In *Pillo Dhunji Shaw v. Pune Municipality*,111 after receiving spare parts of motor, the Corporation may refer to avoid its liability. The ground of the Corporation was that the contract was not made according to provisions of Bombay Municipal Corporation Act, 1949. Rejecting the plea of the Corporation, the Supreme Court held the Corporation liable under S. 70 of The Indian Contract Act at the rate which was mentioned by the plaintiff in the bill. The S.C. observed that as the Corporation has accepted and enjoyed the benefits of spare parts, it was liable to pay compensation to the plaintiff under S. 70 of the Act. Similarly, in *Panna Lal v. Deputy Commissioner Bhandara*,112 the Government was held liable to pay compensation under S. 70 of The Indian Contract Act of a hospital constructed by the plaintiff though the contract was not valid according to provisions of the Art. 299 of The Constitution of India. The S.C. was of the opinion that as the act of construction of hospital was done with intention to do it non gratuitously and the Government enjoyed its benefit, S. 70 of the Act will apply. Again, in *V.R. Subramanyam v. B. Thayappa*,113 it was held that the contractor was entitled to receive compensation for his work under S. 70 of The Indian Contract Act even though he failed to prove existence of a contract because the contract was made orally. In another case of *Bhagvandas*

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**Krishnadas v. P.S. Soma Aiyer,**114 the seller of a property was allowed by its purchaser to reside in the property until he secure some accommodation. Compensation was sought by the purchaser under S. 70 from the seller for using and occupying the accommodation. The claim of the purchaser was allowed as the seller enjoyed the benefit of the property. The Court observed that until the seller proves that he was allowed to stay free in the property he cannot escape from the liability to pay compensation to the seller.

S. 70 of the Act applies to provide compensation even in those cases of contract which are illegal or not completed on account of non fulfilment of Constitutional or Statutory formalities. In **Secretary of State v. Sarin & Co.**115 it was observed by the Court that where a Corporation of the Secretary of State receives benefit which is ultra vires or illegal for want of authority in the person entering into it, a party receiving a benefit is bound to return the benefit or to make compensation under the implied contract to this effect. But my submission is that a claim of compensation under S. 70 is not based on an implied contract but it is based on the concept of prevention of an unjust enrichment. It is because this Section does not justify the officious interference (i.e. an unjustifiable interference) by one person against the affaires or property of another person. Similarly, in **Anil Harish v. Gov. of Maharashtra,**116 the Secretary of the State was not authorised to make a lease deed on behalf of the Government. The lease was also not in writing. Thus, the lease was not according to formalities of Art. 299 of the Constitution. The contract was thus void even though the

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114 A.I.R. 1969 Ker. 263.
115 A.I.R. 1930 Lah. 364.
Government was allowed to recover compensation from the lessee for the benefit derived by the lessee. Such claim was allowed under S. 70 of The Indian Contract Act, 1872. It is worth mentioning that in New Marine Coal Co. (Bengal) Pvt. Ltd. v. Union of India,\(^{117}\) the S. C. observed that though a contract with Government cannot be enforced under Art. 299 (1) of the Constitution yet, if requirement of S. 70 of the Contract Act have been fulfilled, it can still be enforced under S. 70 of the Act because the Government cannot be allowed to enrich itself unjustly at the cost of people. This view was reiterated by the S. C. in Mulamchand v. State of M.P.\(^{118}\) With the support of these cases it can be submitted that benefit enjoyed by the defendant of the work done or anything delivered by the plaintiff voluntarily is one of the essentially required elements for application of S. 70. This element is in addition to other two elements discussed above.

The benefit of the work done or thing delivered should be accepted voluntarily by the defendant. It is only then he can be held liable under S. 70 of the Indian Contract Act to make compensation to the plaintiff. In State of West Bengal v. B. K. Mondal & Sons,\(^{119}\) the S. C. laid down that nobody has right to force a benefit upon another. So, it is necessary that the defendant should enjoyed the benefit voluntarily. That is to say he must have option either to refuse the benefit or accept the benefit. It is pertinent to mention that the defendant may be held liable to compensate the plaintiff under S. 70 of the Act where the act done is for the benefit of both the plaintiff and the defendant. For instance in Meenakshi Sundara Nachiar v. A. L. V. R. P. Veerappa

\(^{117}\) A.I.R. 1964 S.C. 150.  
\(^{118}\) A.I.R. 1968 S.C. 1218.  
the irrigation channel was not in good condition. There were two owners. One of them after receiving notice repair the channel. He sought contribution from the other owner for incurred expenditure in repairing of such channel. He was allowed. The Court observed that the application of the S. 70 is not excluded merely because the thing done was for the plaintiff’s benefit has realised the defendant’s benefit. Further, it is not so material that act done or thing delivered should provide benefit to the defendant. What is material is that the benefit must have been derived by the defendant. Where the benefit of such act or thing is accepted by the defendant it is presume that he has enjoyed benefit thereof. For example in Haji Abdulla Haji Adam Sait Dharam Sthapanam v. T. V. Hameed\textsuperscript{121} the tenant started to make an authorised construction in the building of landlord. He was sued by the landlord seeking injunction against him. But, the compromise was made between them whereby the tenant agreed to pay increased rent. After such compromise the suit was withdrawn by the landlord. The tenant brought an action against the landlord for compensation under S. 70 of the Indian Contract Act for expenditure incurred in such construction. The action was allowed. The Court observed that the withdrawal of the suit showed acceptance of the landlord of benefit of the work done by the tenant and therefore, the tenant could claim compensation for the work done. In M/s Hansraj Gupta & Co. v. Union of India\textsuperscript{122} the S. C. recognised enjoyment of the benefit of the supply of the goods as one of the basic elements of S. 70 of The Indian Contract Act. It observed that

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{120} A.I.R. 1927 Mad. 122.
\item \textsuperscript{121} A.I.R. 1985 Ker. 93.
\item \textsuperscript{122} A.I.R. 1973 S.C. 272.
\end{itemize}
\end{footnotesize}
compensation can be claimed only from a person who enjoys the benefit of the supply of goods made or services rendered by another person.

Where some service is rendered to a person who is incompetent to contract (such as a minor) and he has enjoys benefit of such service, no compensation can be sought from him by the provider of the service under S. 70 of the Indian Contract Act because this Section does not apply to cover such cases.\textsuperscript{123} In order to cover the cases like the present one S. 68 of The Indian Contract Act is helpful.

Summarising the discussion on S. 70 of The Indian Contract Act, 1872, it is submitted that compensation can be claimed by plaintiff from the defendant under S. 70 of the Act by proving that- (1). He has done some act for defendant lawfully or he has delivered something to him, (2). He has done the act or delivered the thing non gratuitously, and (3). The defendant has enjoyed benefit of such act done or thing delivered. Further, the act must be done or thing must be delivered by the plaintiff voluntarily. That is the plaintiff must have done the act or delivered the thing without any request of the defendant. Again, the defendant must have option either to accept or reject the benefit arising out of such act done or thing delivered. It is because no one can thrust upon the defendant a liability to accept benefit. Where the defendant is bound to accept the benefit under some Statute or other law, S. 70 does not apply to enable the plaintiff claim compensation under S. 70 of the Act. The expression “does anything” includes some work or act or service or it even includes payment of some money for benefit of defendant. Similarly, the expression “delivers anything” as used under S. 70 of the

\textsuperscript{123} Re, Ambika Textile Ltd., A.I.R. 1950 Cal. 491 may be seen.
Act includes any goods delivered or supplied by the plaintiff to the defendant. S. 70 of the Act applies where an agreement is void or unlawful or incomplete on account of non fulfilment of Statutory formalities or formalities prescribed by other Rules, Regulations and so on for providing compensation to a party aggrieved by such agreement. The principle of this Section may also covers the contribution sought by a co-owner or co-tenants etc. in respect of money paid by him from the remaining co-owners or co-tenants. It is therefore evident that the fundamental spirit under S. 70 of The Indian Contract Act is to prevent an unjust enrichment by the defendant at the cost of the plaintiff.

1.2 **SECTION 71 OF THE ACT (RESPONSIBILITY OF FINDER OF GOODS)** -

Section 71 of The Indian Contract Act, 1872 provides for responsibility of finder of goods of some other person. It enumerates as follows:

“A person who finds goods belonging to another and takes them into his custody, is subject to the same responsibility as bailee.”

Section 71 of the Indian Contract Act, 1872 incorporates principle relating to responsibility of finder of goods. It provides 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- (1). He finds some goods, (2). The goods belongs to some
other person and it does not belong to him, and (3). He picks up goods and takes it into his custody.

If the aforementioned three elements are present in a case a quasi contract comes into existence between finder of goods and owner of goods. As soon as the finder of goods takes the goods into his custody, he becomes quasi contractually liable under S. 71 of the Act to restore the goods to its owner. As mentioned under S. 71 of the Act the responsibility of finder of the goods is just like the responsibility of the bailee under a contract of bailment.

4.2.1 SOME SUPPORTIVE PROVISIONS-

It would not be beyond point to mention here briefly certain other provisions of the Indian Contract Act, 1872 especially related to bailment which support S. 71 of the Act. In this stride, S. 148 of the Indian Contract Act can be first stated as follows-

“A ‘bailment’ is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the ‘bailor’. The person to whom they are delivered is called, the ‘bailee’.

Explanation- If a person already in possession of the goods of another contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor of such goods, although they may not have been delivered by way of bailment.”
It is clear from S. 148 of the Act that a bailment is a contract whereby some goods is delivered by one person to another for some purpose. There is a term in contract of bailment to the effect that when the purpose is accomplished, goods shall be returned by the bailee to the bailment or it will be dealt with by the bailee according to directions of the bailor. Like other contracts, a contract of bailment may also be express or implied. A case may be quoted here to illustrate an implied bailment. In Governor General in Council v. Jubilee Mills Ltd.\textsuperscript{124} due to non availability of wagons, goods were stored on the platform of railway company with consent of station master. On account of a spark emitted by engine of a passing train, fire incident occurred and goods were damaged. The Court held that the railway company was liable to pay damages to the plaintiff as there was an implied contract of bailment between them. Consequently, the railway company was bound to take reasonable precaution to preserve the goods and that the railway company failed to take reasonable care in preservation of goods. There may be Sub-bailment. A sub-bailment comes into existence when a bailee who is in rightful possession of goods, bails the goods to another person. The person to whom the bailee delivers possession of goods is called a sub-bailee.\textsuperscript{125} When sub-bailment is made with consent (express or implied) of owner (first bailor), it is valid and the sub-bailee becomes bailee of the owner but where sub-bailment is made by the bailee, without consent of the owner (first bailor), the sub-bailment cannot be valid. Consequently, the owner can bring an action against the sub-bailee for the tort of conversion. He may also sue the bailee for breach of

\begin{footnote}
124 & A.I.R. 1953 Bom. 46. \\
125 & Halsbury’s Laws of England 5\textsuperscript{th} ed. Vol. 4 para 110, Pollock & Mulla, Indian Contract & Specific Relief Acts, 14\textsuperscript{th} ed., Vol. II, p. 1486-1488 may also be seen.
\end{footnote}
contract. The relationship between owner and sub-bailee exists without any contract. It is because acceptance of possession of goods by sub-bailee holds sub-bailee as a bailee of the original bailor and bailee can be held liable to the original bailor for any breach of his duty including loss or damage to goods.\footnote{N. R. Srinivas Iyer v. New India Assurance Co. Ltd. A.I.R. 1983 S.C. 899 may be seen.}

Further, bailment may be \textit{gratuitous} or \textit{non gratuitous}. A \textit{gratuitous bailment} is such a kind of bailment where the bailor does not give any remuneration or compensation to the bailee for act done by the bailee in accordance with terms of contract. For example, A delivers his motor cycle for keeping it and return it after four days. He does not promise to give B any remuneration for such work nor B demands any remuneration. The bailment of motor cycle so made between A and B is a gratuitous bailment. The duty of B is to take care for preservation of motor cycle and after expiry of four days he has an obligation to return it to A. A gratuitous bailment may also be made for using the goods by bailee. In the present example, while delivering the motor cycle if A says to B that he can use the motor cycle for his purpose during specified time of four days, the contract of bailment between A and B will still be a gratuitous bailment. Where a gratuitous bailment is made for a fixed time, the return of goods can be demanded by the bailor even before expiry of fixed time.\footnote{S. 159 of Indian Contract Act, 1872- “Restoration of goods lent gratuitously.-The lender of a thing for use may at any time require its return, if the loan was gratuitous, even though he lent it for a specified time or purpose. But, if, on the faith of such loan made for a specified time or purpose, the borrower has acted in such a manner that the return of the thing lent before the time agreed upon would cause him loss exceeding the benefit actually derived by him from the loan, the lender must, if he compels the return, indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived.”}
However, the **Law Commission** of India has recommended that S. 159 of the Act should not be treated as a bar to a contract made between the parties not to demand return of goods before expiry of the term. Again, S. 162 of the Act provides that gratuitous bailment is terminated by the death either of the bailor or of the bailee. But after death of the bailee his property may be held liable. In **Municipal Board of Revenue v. Abdul Razzak**\(^\text{128}\) 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. A gratuitous bailment is generally made in friendly or domestic relationship. It is not much common in commercial field. On the other hand, where bailment is non gratuitous when the bailor agrees to pay the bailee some remuneration for preservation and return of goods. A non gratuitous bailment may also be called as a bailment for consideration. In such a kind of bailment the bailee has right to claim agreed remuneration from the bailor for keeping goods with care and returning it or otherwise disposing of it according to directions of bailor. S. 160 of the Act\(^\text{129}\) **imposes a statutory duty on the bailee to return the goods to bailor upon expiration of time or accomplishment of purpose.** If the bailee fails to return the goods at agreed time he is liable under S. 161 of the Act\(^\text{130}\) for any loss or

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\(^{128}\) A.I.R. 1931 Oudh 15.

\(^{129}\) S. 160 of Indian Contract Act, 1872- “Return of goods bailed on expiration of time or accomplishment of purpose.-It is the duty of the bailee to return, or deliver according to the bailor’s directions, the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished.”

\(^{130}\) S. 161 of Indian Contract Act, 1872- “If, by the default of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time.”
destruction of the goods from that time. In Untzen v. Nicols\textsuperscript{131} a customer went into a restaurant for having dinner. The customer was known to the restaurant’s owner and waiters because he was regular visitor of the restaurant. The waiter took his coat voluntarily and hanged it on hook behind the customer. After having dinner, when the customer wanted to go out of the restaurant he found that the coat was stolen. The owner of the restaurant was held liable to compensate the customer as there was delivery of possession of the coat and an implied contract of bailment.

It is worth mentioning that bailment is created by a contract. That is to say, delivery of goods by bailor to bailee under a bailment is made in pursuance of a contract. So, in ordinary course of law a contract may be treated as an edifice of bailment. Nevertheless, a bailment may also be made even without a contract. To explain, it can be submitted that a bailment may be created by seizer of goods by the Government. For example in State of Gujarat v. Memon Mahomed Haji Hasan\textsuperscript{132} some vehicles and goods of the plaintiff (respondent) were seizes by the Government in the exercise of power conferred on it by Customs Act. Later on it was found that a seizer of goods by the custom officials was not valid. However, when the goods were in custody of the Government, no care was taken for their safety. The goods were sold by the Government after an order passed by a Magistrate as being unclaimed property. But, when the seizer was found invalid, the plaintiff demanded return of the goods or damages equal to the price of goods on the ground of bailment. On the other hand the Government pleaded that as there was

\textsuperscript{131} (1894) 1 Q.B. 92.
\textsuperscript{132} A.I.R. 1967 S.C. 1885.
no contract, there cannot be a bailment and the Government was not liable to take care and return the goods to the plaintiff. The S.C. held the Government liable as a bailee. It was laid down by the S.C. that there could be a bailment and a relationship of bailor and bailee without there being an enforceable contract, and that consent was not necessary for such a relationship.

Again, a question naturally arises as to whether a bailment can be created by mistake. The answer is very simple and it is that where delivery of goods is made by one person to another, no bailment is created. For example, where A delivers to B, X goods under a mistake of believing it to be Y goods as a subject matter of bailment, there can be no contract of bailment between them. The reason is that A never intended to deliver Y goods to B as a subject matter of bailment. In Appa Rao v. Salem Motors & Salem Radios & Electricals,\(^{133}\) briefly the facts were that some vans and chassis were placed by an agent of owner and huge amount of money borrowed. Later on the fresh contract was made whereby a van with different engine number was delivered to the pledgee. As the pledgee was being unpaid, he sold engine in good faith. Upon a suit brought by the owner against pledgee, an agent, and the buyer, the Court held that the pledge was not valid as there was mistake of engine number of the van on the part of the agent. The Court observed that as there was a mistake regarding engine number on the part of bailee (or pledgee), the possession of a van to him in legal sense. In the present case, it is to be noted that guidance was taken by the Court of the decision given in an English case of R v. Ashwell\(^{134}\) where a

\(^{133}\) A.I.R. 1955 Mad. 505.

\(^{134}\) (1886) 16 Q.B.D. 190.
transferor by mistake delivered goods which were more valuable than those which were intended to be delivered and due to such mistake no bailment was declared to be created.

It is thus clear that where delivery of goods is made under a mistake by one person to another, a bailment cannot be said to come into existence.

By virtue of S. 149 of the Act, delivery of goods may be actual or constructive or symbolic. In actual delivery of goods, physical possession of the goods is actually transferred by one person to another. While in case of constructive delivery, the physical possession is not changed. Bailee is already in possession of the goods which is subject matter of bailment. Only a contract is entered into between bailor and the bailee which authorises a bailee to retain the goods as a bailee. Further, in the symbolic delivery of goods, the delivery of goods is ensure through some symbol. For example, a hotel owner by giving key of a room allotted to a tourist enters into a contract of bailment. In such a contract of bailment, the key is symbol of delivery of goods kept inside the room to the tourist. The hotel owner becomes bailor and the tourist becomes bailee in respect of goods of the hotel owner kept inside the

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135 S. 149 of Indian Contract Act, 1872. “The delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorise to hold them on his behalf.”

136 Morvi Mercantile Bank Ltd. v. Union of India, A.I.R. 1965 S.C. 1954 may be seen. It was held that delivery of railway receipt amounts to delivery of goods carried on by railway. In Bank of Chittoor Ltd. v. P. Narasihulu Naidu, A.I.R. 1966 A.P. 163, the defendant borrowed loan from the plaintiff bank. He could not repay it and therefore pledged to the bank the projector machinery of a cinema in a constructive way. The bank allowed him under a contract to retain the machinery for running cinema business. The Court held that there was a constructive delivery of projector machinery to the bank. There was change in the legal character of the possession of the goods though not in the actual and physical custody. Even though the bailor continued to remain in possession, it was the possession of the bailor.
room. Again, when the tourist after keeping his goods inside the room, locks it and hands over the key to the hotel owner and goes out of the room for some time, he becomes bailor and the hotel owner becomes bailee in respect of the goods of the tourist. Delivery of key of the locked room by the tourist to the hotel owner is a symbol of delivery of goods. Thus, in such a case both hotel owner and the tourist are bailor and bailee in respect of goods of each other. The goods which becomes the subject matter of bailment are not delivered actually by either person but, these are delivered in a constructive sense or symbolic sense. So, in a contract of bailment actual delivery of goods is not always necessary even constructive and symbolic delivery is also sufficient to completes the contract of bailment.

The purpose of bailment is manifold. For example, it may be made for carrying goods by bailee to bailor’s destination or to a third person, it may be made authorising the bailee to sell the goods or pledge the goods or to make gift of the goods. Similarly, it may be made to keep the goods preserved for some time and return it to the bailor after fulfilment of specified purpose. Further, it may also be made authorising the bailee to destroy the goods or it can be made authorising the bailee even to use the goods and return it to the bailor after purpose is fulfilled or time mentioned in it expires. Sometimes, question may arise regarding nature of a transaction i.e. whether a transaction is bailment or sale. Replying such question in **State of Maharashtra v. Britannia Biscuits Co. Ltd.** the S.C. laid down that such question is not a pure question of law but it is mixed question of law and fact and has to determined on the precise term of the transaction between the parties to the transaction.

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In the present case money was deposited for tins. It was refundable on return of tins. Specific time was fixed for return of tins, but the tins were not returned and time expired. The Court held that non return of tins after expiry of fixed time would be deemed to be sale of tins. Similarly, a deposit of money with a bank cannot be treated as bailment because neither same coins and notes are returned by the bank nor coins and notes can be subject matter of bailment. The subject matter of bailment is always some goods. Similarly, an exchange or barter cannot be equated with bailment because in exchange or barter some goods is exchanged with some other goods. But, in bailment, the same goods is returned by the bailee to the bailor which the bailor had delivered to the bailee or such goods is disposed of according to direction of the bailor.

**Standard of care to be taken by the bailee should be uniform. S. 151** of the Act provides for such standard of care. It says that ‘in all cases of bailment the bailee is bound to take as much care of the goods bailed to him, as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed’. Thus, the standard of care to be taken by bailee should be equivalent to the care taken by a person of average diligence. In other words, bailee is required to take reasonable care to preserve the goods. Originally under the English Law the liability of bailee to take care of goods was absolute. He had no excuse in any case. However, in modern age the concept of absolute liability of bailee has been abolished and at the place of absolute care now the bailee


139 Southcot v. Bennet, 78 E.R. 1041: 1601 Cro. Eliz. 815 (the bailee was held liable because goods were robbed of him) may be seen. Avtar Singh, Contract and Specific Relief, 11th ed., p. 656 may also be seen.
is required to take reasonable care\textsuperscript{140}. In the light of S. 151 the bailee is also under a duty not to convert the goods bailed to him. If the goods is bound to suffer any loss, the bailee is under a duty to make reasonable efforts to minimise the loss\textsuperscript{141}.

Further, S. 152 of the Act provides that ‘the bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in S. 151’. Consequently, S. 152 read with S. 151 of the Act makes it clear that a bailee cannot be held liable for loss or destruction of bailed goods provided he has taken reasonable care in preservation and safety of goods. The reasonable care or the quantum of care varies from one case to another and it depends on quality, nature, bulk etc. of the goods\textsuperscript{142}. For example, in \textit{Union of India v. Udha Ram & Sons}\textsuperscript{143} bailed goods stored in godown were damaged by unprecedented flood. The S.C. held that the bailee was not liable for loss of such goods as the loss occurred due to such event which was beyond his control. It is pertinent to mention that the burden of proof that the reasonable care has been taken for safety of goods lies on shoulders of the bailee. That is to say, it is the bailee who has to prove that he has taken reasonable care in preservation and safety of the goods bailed to him.

\textsuperscript{140} Morris v. C.W. Martin & Sons Ltd., (1965) 2. All E.R. 725 : (1966) 1 Q.B. 716 may be seen. Pollock & Mulla, Indian Contract & Specific Relief Acts, 14\textsuperscript{th} ed., Vol. II, p. 1502 may also be seen.
\textsuperscript{143} A.I.R. 1963 S.C. 422.
In pursuance of S. 154 of the Contract Act, the bailee is under a duty not to make any unauthorised use of bailed goods. Further, in the light of provisions of Ss. 155, 156 & 157 of the Contract Act, the bailee owes a duty not to mix the goods bailed with his own goods. In case he mixes them with his own goods he will be liable to the bailor for giving him compensation for any loss to the bailor. While ascertaining the loss the Court will take into account the fact as to whether goods have been mixed with or without consent of the bailor. Again, under S. 163 of the Act, the bailee is bound to deliver goods to the bailor with any increase or profit which may have accrued from the goods bailed during subsistence of contract of bailment. For example, in Standard Chartered Bank v. Custodian shares and securities were placed with the bank by the plaintiff. The bank received bonus, dividends and interests in respect of such shares and securities. The Supreme Court

144 S. 154 of Indian Contract Act, 1872- “Liability of bailee making unauthorized use of goods bailed.- If the bailee makes any use of the goods bailed, which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.”
145 S. 155 of Indian Contract Act, 1872- “Effect of mixture, with bailor’s consent, of his goods with bailee’s. If the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced.
146 S. 156 of Indian Contract Act, 1872- “Effect of mixture without bailor’s consent, when the goods can be separated.-If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, and the goods can be separated or divided, the property in the goods remains in the parties respectively ; but the bailee is bound to bear the expense of separation or division, and any damage arising from the mixture.
147 S. 157 of Indian Contract Act, 1872- “Effect of mixture, without bailor’s consent, when the goods cannot be separated.-If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.
148 S. 163 of Indian Contract Act, 1872- “Bailor entitled to increase or profit from goods bailed.-In the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed.
observed that such increment can be given by the bank only when the securities were redeemed.

As discussed above a bailee is under a duty to return the goods to bailor according to terms of the contract or he can dispose of the goods in accordance with directions of the bailor. Thus, especially the provisions of Sections 151, 152, 159, 160, and 161 of the Act are relevant specially to strengthen the concept of quasi contractual liability of a finder of goods at par with that of a bailee.

4.2.2 LIABILITY (OR RESPONSIBILITY) OF THE FINDER OF GOODS-

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. Therefore, when we focus our study on the principle incorporated under S. 71 of the Indian Contract Act, 1872, it can be submitted that a finder of goods has been placed on the same footing on which the bailee stands. In other words, when a person finds some lost goods of another and takes it into his custody, he is under the same liability as bailee in a contract of bailment. For example, when A, for example, finds while going on road the lost mobile of B and keeps it with him a quasi contract is made between A and B under S. 71 of the Act. Consequently, A is a finder of goods and automatically becomes liable to take care for keeping the mobile safe and discover the true owner. When the true owner B discovered, A has to return the mobile to B.
The finder of goods is thus responsible to take reasonable care for safety and preservation of found goods, discover owner of goods and return the goods when the owner is found. He is under no higher duty to take care than the reasonable care. It means the quantum or standard of care which is required from the finder of goods is a reasonable care. Such liability of finder of goods can be said to exist under S. 71 read with S. 151 and 159 of the Indian Contract Act, 1872. The liability of finder of goods is that of a gratuitous bailee. It is to be noted that the liability of gratuitous bailee has been mentioned under Ss. 151 and 159 of the Act. So, under S. 71 of the Act, the finder of goods becomes just like a gratuitous bailee because he voluntarily picks up the lost goods and takes it into his custody. Nobody compels him to do so, neither there is any other provision under the Indian Contract Act to impose upon him a duty to pick up and take into his custody the lost goods.

Where goods is not taken into custody by a person he cannot be held liable to the owner for any damage to the goods. In Union of India v. Mahommad Khan some land was leased out to the defendant. On such land, plaintiff’s timber was lying. The defendant gave notice to the owner of the timber for its removal but the owner did not remove it. Thereafter, during removal of timber to clear the land, the timber was damaged. The plaintiff (owner) sued the defendant for seeking compensation in lieu of damage caused to the timber under S. 71 of the Contract Act. But his claim was rejected. The Court held that as the defendant did not take timber into his custody, therefore the claim of plaintiff under S. 71 is not maintainable.

150 Isaack v. Clark, (1615) 2 Bulstr 306. Avtar Singh, Contract and Specific Relief, 11th ed., p. 671 may also be seen.
151 A.I.R. 1959 Ori. 103.
The scope of S. 70 should not unnecessarily be extended to cover any kind of situation under it. The section should be restricted only to the goods lost and liability of finder of such goods. For example, in *Union of India v. Amar Singh* the Supreme Court laid down that scope of creation of an implied contract of bailment between finder of goods and its owner should not be enlarged by analogy or otherwise under S. 71. In the instant case, just after partition of India certain goods were booked from Quetta Railway Station by the respondent to New Delhi. The East Punjab Railway was handling the goods from border to New Delhi via Amritsar. At New Delhi Railway Station when the wagon containing the goods was received, the goods were found missing. The suit was filed by the owner against East Punjab Railway which was in charge of wagon from border of India and Pakistan. It was held that the East Punjab Railway was an agent of the Railway under S. 194 of the Contract Act and with an implied authority of the consignor it was also a bailee. The Court further held that S. 71 of the Contract Act is also applicable because when the Pakistan Railway Administration left the wagon containing goods within the borders of India and the forwarding Railway administration took them into its custody, it could not deny liability under S. 71 of the Contract Act because East Punjab Railway can be equated with finder of goods within the meaning of S. 71 of the Contract Act. However, the Court observed that it was not necessary to regard the Railway administration as finder of goods within the meaning of S. 71 of the Contract Act.

It is pertinent to point out that a finder of goods is not supposed to misappropriate the goods. That is to say, as soon as he takes the lost
goods into his custody he becomes duty bound to keep and preserve the goods with reasonable care and he should not make any use of the goods. It is because if he makes any improper use of the goods he can be held guilty of even an offence of misappropriation under S. 403 (Explanation II\textsuperscript{153}) of the Indian Penal Code, 1860. According to this section, he becomes guilty of committing an offence of dishonest misappropriation provided- 1) The owner is known to him or 2) He has means to discover the owner or 3) He has used the goods before using the reasonable means to discover and give to the owner or 4) He appropriates it even though he has kept the goods for a reasonable time to enable the owner to claim it. But it is to be noted that he cannot be held guilty of committing an offence of dishonest misappropriation under this section if he takes the goods with a view to protecting it or with a view to restore it to the owner.

4.2.3 RIGHTS OF FINDER OF GOODS-

The finder of goods has right of lien over the goods for trouble and expenditures incurred by him in preservation of such goods. That is to say, he is 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. He cannot sue for such expenses because his act is

\textsuperscript{153} S. 403 Explanation II of Indian Penal Code 1860- “A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting if for, or of restoring it to, the owner does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence above defined, if he appropriates it to his own use, when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner and has kept the property a reasonable time to enable the owner to claim it. What are reasonable means or what is a reasonable time in such a case, is a question of fact. It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it; it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believe that the real owner cannot be found.”
gratuitous and he acquires a status just like that of a gratuitous bailee under S. 159 of the Act. But he can exercise lien over the goods until he receives compensation for such expenses from the owner. 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{154} of the Indian Contract Act, 1872. Upon refusal of the owner to pay the reward, the finder of goods has even right to sue the owner for such reward under this Section.

By virtue of S. 169\textsuperscript{155} of the Indian Contract Act, 1872, a finder of goods can sell the goods in two circumstances. These are- 1) When the thing is in danger of perishing or of losing the greater part of its value, and 2) When the lawful charges of the finder, in respect of the thing found, amount to two-thirds of its value. Therefore, on the strength of Ss. 71 & 169 of the Act a finder of goods under S. 71 like a bailee is entitled to sell the goods when the goods is of perishable nature or when expenditures incurred by him in preserving the goods are equivalent to two-thirds of value of the goods.

\textsuperscript{154} 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{155} S. 169 of Indian Contract Act, 1872. “When finder of thing commonly on sale may sell it.-When a thing which is commonly the subject of sale is lost, if the owner cannot with reasonable diligence be found, or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it-
(1) when the thing is in danger of perishing or of losing the greater part of its value, or,
(2) when the lawful charges of the finder, in respect of the thing found, amount to two-thirds of its value.”
It is thus submitted that a finder of goods enjoys all the rights which a bailee under a contract of bailment can enjoy in the light of statutory provisions and judicial pronouncements.

4.3 SECTION 72 OF THE ACT (LIABILITY OF PERSON TO WHOM MONEY IS PAID, OR THING DELIVERED, BY MISTAKE OR UNDER COERCION)-

S. 72 of the Indian Contract Act, 1872 provides for liability of a person to whom money is paid or something is delivered by mistake or under coercion. It posits as under-

“A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it.

Illustrations

(a) A and B jointly owe 100 rupees to C, A alone pays the amount to C, and B, not knowing this fact, pays 100 rupees over again to C. C is bound to repay the amount to B.

(b) A railway company refuses to deliver up certain goods to the consignee except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegal and excessive."

Liability under S. 72 of the Act exists not because of a contract but because of a quasi contract. It is because it depends on 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. That is to say, 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. The principle of law incorporated under S. 72 of the Act implies an obligation or debt and not a promise or contract. In *Thomas Abraham v. National Tyre & Rubbder Co. of India Ltd.*\(^{156}\) 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. Thus, liability under this Section arises in one way or the other due to an unjust enrichment which the person to whom money is paid or goods is delivered by mistake or coercion can derive. However, it is to be noted that each and every kind of enrichment cannot be said to be unlawful for which quasi contractual remedy under this Section can be sought by the aggrieved party. For example, in *Mahabir Kishore v. State of Madhya Pradesh*\(^{157}\) the Supreme Court laid down that though the Law Commission of India\(^{158}\) made recommendation that this Section be extended to cover also the cases of payment of money or delivery of goods due to fraud, misrepresentation or undue influence. But till date the Section stands in its original form. The money paid or anything delivered by mistake or under coercion can be said to be an unlawful gain or an unjust enrichment only when- 1) The defendant has been enriched by the receipt of benefit; 2) Such benefit has been at the

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\(^{156}\) A.I.R. 1974 S.C. 602
\(^{158}\) The 13\(^{th}\) Report of The Law Commission of India, 1958, Paras. 95-100.
plaintiff’s expenses; and 3) It would be unjust to allow the defendant to keep the benefit.

Para 3 of S. 73 of the Indian Contract Act, 1872 is worth to be quoted here. It provides for compensation for failure to discharge obligation resembling those created by a contract. It says that-

“When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.”

The principle under Para 3 of S. 73 of the Act enables a person to sue for compensation against the person who has incurred an obligation resembling those created by a contract and has not discharged it. Upon failure to discharge such obligation any person who is injured is entitled to receive the same compensation from the defaulting party as if the defaulting party had contracted to discharge such obligation but had not discharged it. But in Jammu & Kashmir Bank v. Attarul-Nisa159 the Supreme Court held that this section will not apply where a person pays some money to a bank with instructions to deposit the same in the account of a third person, who is a constituent of a bank. As soon as such money is credited, it becomes money of the third person and without his consent the bank cannot reverse the credit entry and pay it back to the payer on the ground that it was paid by him under mistake. This section applies only when there is dealing between two persons where one

person pays the money and the other person who receives the money on behalf of the person paying such money.

For the sake of convenience of study, the principle of law underlying S. 72 of the Act may be examined into two subheads - 1) Payment of money or delivery of anything by mistake, and 2) Payment of money and delivery of anything under coercion.

4.3.1 PAYMENT OF MONEY OR DELIVERY OF ANYTHING BY MISTAKE-

At the outset it is pertinent to mention that for the purpose of application of S. 72 of the Act there is no difference whether mistake is of fact under S. 22 of the Act or mistake is of law under S. 21 of the Act. In other words, the normal difference between Ss. 21 & 22 of the Act does not come in the way of enforcement of provision of S. 72. What is important is that money has been paid or anything is delivered by one person to another is under mistake. The person who has received the money or thing was not entitled to receive it legally and similarly, the person who has paid money or delivered the thing was not bound by law to pay it or deliver it. In Sri Sri Shiba Prasad Singh v. Maharaja Sris Chandra Nandi160 it was observed by the Privy Council that where the money is paid by the plaintiff to the defendant under a mistaken belief that it was legally due though in fact it was not due, the plaintiff has sufficient ground to bring the case for recovery of such money under S. 72 of the Act. It is because S. 72 of the Act refers to a payment which is not legally due and which cannot be enforced. The letter and spirit of the provision of S. 72 of the Act suggests that unilateral mistakes of fact and

160 (1949) 52 Bom. L.R. 17.
law are ordinarily covered by S. 72. But mutual mistakes of fact and law have not been excluded by this section. What is further necessary is that the mistake must be as to the existence of some obligation i.e. regarding extra payment. For example, in Sales Tax Officer v. Kanhaiya Lal Mukund Lal Saraf\textsuperscript{161} it was held by the Supreme Court that no question of estoppel can ever arise where both the parties are labouring under mistake of law and one party is not more to blame than the other. It was further observed in this case that where a person pays tax to the Government under mistake of law, he is entitled to recover such tax under S. 72 of the Act. In the instant case, under U.P. Sales Tax Law, certain sum of sales tax was paid by a firm. The sales tax was paid on forward transactions made by the firm. However, the Allahabad High Court held that imposition of sales tax on such transaction is ultra vires. The Supreme Court also upheld the decision of Allahabad High Court and allowed the recovery of tax which was paid by the plaintiff under mistake of law. It did not make any difference between mistake of fact and mistake of law so far as the application of S. 72 of the Act is concerned.

It is inevitable to point out that voluntary payment made by a person (i.e. without any mistake or coercion) cannot be recovered under this section. Similarly, where a person fulfils his natural obligation such as time barred debt, he cannot bring an action to recover for such obligation. The money paid under mistake is recoverable irrespective of the fact that the person making the payment of money does not avail all

\textsuperscript{161} A.I.R. 1959 S.C. 135.
the means by which mistake could be discovered.\textsuperscript{162} When payment is affected by mistake as to identity of a person, the payment so made can be recovered under this section. In Anrudh Kumar v. Lachmichand\textsuperscript{163} it was held that where payment of money was made by the plaintiff to a person under supposition that he was legal representative of the defendant though in reality he was not the legal representative, the plaintiff was entitled to recover such money under S. 72 of the Act.

But where money has been paid committing deliberate disrespect of law, it cannot be said that it has been paid under mistake of law and therefore, S. 72 cannot be applied to enable the plaintiff recover such money. This section also does not apply where money is paid by one person to another as a result of some compromise reached between them. Where money has been paid under mistake of fact, it must be proved that the money so paid was not legally due for payment. The Privy Council held that under this section to establish a cause of action to recover money paid by mistake, it has to be established that mistake was as to some fact causing a liability to pay.\textsuperscript{164} The restitutionary remedy under this section for recovery of money paid under mistake is based on wider and liberal policy than that which is based on a contract. It is because in a contract everything is settled but under S. 72 a quasi contract is inferred from conduct of the parties and the party who has received money for which he is not entitled from the other party who has paid such money, is bound to repay such money to the person who had paid it under mistake of fact or mistake of law. The section may be

\begin{footnotesize}
\textsuperscript{163} A.I.R. 1928 All. 500.
\textsuperscript{164} OAPRMAE Adaiappan Chettiar v. Thomas Cook & Son (Banker’s) Ltd., A.I.R. 1933 P.C. 78.
\end{footnotesize}
applied in wider perspective to cover the payment under mathematical mistake, under mistake of identity of a person, under mistake caused due to fraud committed by another person.

Where a person pays extra taxes under mistake of fact or mistake of law, he is entitled to refund of such extra tax money from the Government. For instance, in Newabganj Sugar Mills Co. Ltd. v. Union of India\textsuperscript{165} extra taxes were paid by the firm under mistake to the Government. The Supreme Court allowed the claim of the plaintiff for refund of money under S. 72 of the Act subject to a condition that such tax money will be refunded to those persons who had paid the tax to the plaintiff firm. Thus, S. 72 was obviously was applied in this case and extra money was refunded.

However, for refund of extra taxes or money, the plaintiff must establish that he has suffered loss or injury. To explain this point Mafatlal Industries Ltd. v. Union of India\textsuperscript{166} may be quoted. The assessee has passed on the tax burden to third person. A payment was made by mistake. The assessee claimed the refund of such extra payment made under mistake of law under S. 72 of the Contract Act. The Supreme Court observed that the plaintiff has not suffered any loss in the present case, therefore the plaintiff firm is not entitled to refund of extra taxes.

However, where payment is made by purchaser of some imported goods for release of such goods which are confiscated by the custom officers can be refunded provided the payment so made is not

\textsuperscript{165} A.I.R. 1976 S.C. 1152.
\textsuperscript{166} (1997) 5 S.C.C. 536.
towards any customs duty. For example, in Commissioner of Customs (Import), Raigad v. M/s. Finacord Chemicals (P.) Ltd. & Ors. respondents imported alcohol. The goods were confiscated by custom officers because less value was shown by the importers. The difference of value alongwith fine was ordered to be paid by the importers. In the meantime, the purchaser of goods deposited certain amount of money at an interim order of the Bombay High Court for release of the goods purchased by him. Later on, the purchaser demanded refund of such money deposited by him which was refused by the Government. The Supreme Court held that the purchaser had no concern with import of goods. He deposited money only as a purchaser which did not mean for payment of custom duty. Therefore, the money paid by him to the Government is refundable with interest of 13% per annum under S. 72 of the Contract Act as it was money for release of confiscated goods and not the money as a custom duty. Such payment does not amount to an unjust enrichment.

It is therefore to be noted that where the defendant has transferred the *burden of payment of money to third persons* like purchasers of goods, etc., he cannot seek refund of money from the Government. The reason is he cannot take benefit from two ends- one from the purchasers and other from the Government. In *State of Madhya Pradesh v. Vyankatlal*, by Madhya Bharat Sugar Control Order, 1949 the supply price of sugar was fixed by the Government. It was higher than the ex-factory price. Sugar fund was created and the sugar factories were directed to credit the difference to such fund. The

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Supreme Court did not upheld the validity of such notification but the refund was not allowed to the respondents as it was found that the burden of payment of money was transferred to the purchasers. It was further observed that the persons on whom the ultimate burden to pay the amount was transferred by the respondents, could only be entitled to get refund of the money.

Payment of **extra tax or tax paid illegally** has to be refunded by the Government even though such refund unjustly enriches the plaintiff. To illustrate, it can be said that in **Deputy Commissioner Andaman v. Consumer Co-operative Stores Ltd.**\(^{169}\) excise duty was paid to the Government illegally because it was not legally due. The plaintiff (i.e. the tax payer) sought for refund of such tax money. The Supreme Court allowed the claim of the plaintiff. It observed that the State should not resist the demand for refund of tax money on the ground of unjust enrichment, where the money has been illegally collected from the tax payer. In this case refund of illegal tax collected by Government was allowed prospectively from the date of judgment declaring the levy of such tax to be unconstitutional. But where burden of tax has passed on to the customers, refund cannot be allowed. It was observed by the Supreme Court in **Sri Digvijay Cement Co. Ltd. v. Union of India**\(^{170}\) that no refund of tax can be allowed to the plaintiff where it has been proved that the burden of tax had already been passed on to the customers. Similarly, where tax money has been collected from others its refund cannot be allowed. Moreover, if extra tax paid has been collected from third persons, its refund may not be allowed if the tax payer does

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not pay them back to third person. In **N. V. Ramaiah v. State of Andhra Pradesh**\(^{171}\) fee was collected from consumers on the sale of denatured spirit and was paid to the Government. The collection of fee was illegal but the Court did not allow the recovery of such fee in favour of the plaintiff on the ground that such refund would enrich the seller at the cost of the various buyers whom he would not be able to pay back.

In **Chandi Prasad Uniyal v. State of Uttarakhand**,\(^ {172}\) by mistake of the Government who was employed, wrong pay fixation was made and the employee (appellant) got surplus money. It was held by the Supreme Court that whereby the mistake of the employer an amount of money was paid to the employee and on a later date it was discovered by the Government that surplus money was paid to the employee under such mistake, the excess payment was refundable. The Supreme Court observed that any amount paid or received without the authority of law can always be recovered on the ground of unjust enrichment.

The decision of Chandi Prasad Uniyal’s case as discussed above was affirmed by the Supreme Court of its Full Bench comprising three Judges in **State of Punjab & Ors. v. Rafiq Masih (White Washer)**\(^ {173}\). The Supreme Court observed in this case also that excess money paid by mistake can be recovered by the person who paid it. In the instant case, the respondent was a white washer in Government of Punjab. On account of wrong fixation of pay by the petitioner, excess money regarding pensionary benefit was given to the respondent. The Petitioner No. 4 who was an Executive Engineer issued a notice to the respondent

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to refund the excess money. Upon his refusal, the Government including Petitioner No. 4 approached the High Court for recovery of such excess money. But the claim of the petitioners was rejected by the High Court. Thereupon, the present appeal to the Supreme Court was made. The Full Bench of the Supreme Court comprising Mr. Justice H. L. Dattu (C.J.I.), Mr. Justice R. K. Agarwal and Mr. Justice Arun Mishra held that excess pensionary benefit paid by the employer to the employee by mistake is recoverable irrespective of the fact as to whether such payment is or is not made due to misrepresentation or fraud.

When proceedings for refund is brought after expiry of limitation time, it is not necessary that it will positively be rejected by the Court. It is worth mentioning that recover proceedings are generally brought to the Court of law by way of filing writ petition. Where after expiry of time of limitation a writ petition has been brought by the plaintiff for refund of extra tax money paid by him to the Government, the Court may condone the delay if it deems fit. The condonation of delay is granted by the Court on some genuine ground. In case of mistake the limitation period begins from the time when mistake has been discovered by the plaintiff. In Chrisine Hoden Pvt. India Ltd. v. N. D. Gadag\textsuperscript{174} the claim for refund of tax was made within one month of discovery of mistake of law. The Court held that the claim could not be defeated on the ground of limitation period. The Court further observed that the period of limitation would not begin to run until the plaintiff has discovered the mistake or could have discovered it with reasonable diligence. However, where there is unreasonable delay and

\textsuperscript{174} (1993) 2 Bom. C.R. 169. Avtar Singh, Contract and Specific Relief, 11\textsuperscript{th} ed., p. 559 may also be seen.
latches in bringing the claim for refund of tax in the Court of law and such delay is unjustified, the Court may reject the claim. In *Maruthy Enterprises v. Corporation of City of Bangalore*\(^\text{175}\) it was observed by the Court that even though the tax money was utilised by the Municipal Corporation for welfare of the people, it cannot be treated as defence. The Court allowed the recovery of over payment only for 3 preceding years and not for the whole period during which the payment was made. Thus, if it appears to the Court reasonable and just, the delay and latches in bringing the claim for recovery of extra tax may be allowed.

**Mistake may also be committed as to credit.** Where by mistake some money is credited to the account of a person and such person in whose account the money is credited by mistake withdraws the amount, he is bound to refund the money so withdrawn. In *S. Kotrabarsappa v. Indian Bank*,\(^\text{176}\) in plaintiff’s account certain amount of money was credited by the bank under mistaken belief that the money belonged to the plaintiff. The plaintiff withdrew the amount. It was held by the Court that the plaintiff was bound to refund the money withdrawn by him along with interest prescribed under the Interest Act, 1978. Similarly, in *Grindlays Bank P. L. C. v. Centre for Development of Instructional Technology*\(^\text{177}\) under mistake foreign remittance was credited by the bank into the account of defendant. In a suit by bank the defendant was directed by the Court to refund the amount withdrawn by him under S. 72 of the Indian Contract Act, 1872. Again, in *Associated Cement Co.*

\(^{175}\) A.I.R. 1999 Kant. 41.

\(^{176}\) A.I.R. 1987 Knt. 236.

\(^{177}\) A.I.R. 1997 Del. 164. Union of India v. S.A.I.L., A.I.R. 1997 Ori. 77. may also be seen where extra fare for carrying goods was charged for longer route but goods were carried on by shorter route. The extra fare was directed to be refunded under S. 72 of the Indian Contract Act, 1872.
extra fare was charged by the Railway authority under mistaken belief that plaintiff’s goods would have to be carried on by some longer route. But the goods were in fact carried on by some shorter route. The plaintiff brought an action under S. 72 of the Contract Act for refund of extra fare paid by it. The claim of the plaintiff was allowed and it was held that the Government was bound to refund the extra fare charged from the plaintiff under S. 72 of the Act.

Where mistake is discovered after a very long period, the Court may or may not direct for refund of extra money paid by the plaintiff with interest. For example, in *Radha Flour Mills Pvt. Ltd. v. Bihar State Financial Corporation* some loan was borrowed by the plaintiff from the defendant Corporation. The loan was realised by the Corporation but an error was committed by the Corporation in calculation of total amount of loan with interest at the time of realisation of such loan. The mistake committed by the Corporation was discovered by the plaintiff after about 10 years. The plaintiff claimed for refund of extra payment with interest from the Corporation. The claim of the plaintiff was allowed for extra money but not with interest. The Court observed that if the interest is also allowed, it would be unjust enrichment at the cost of other and penalty for the fault of creditor i.e. the Corporation.

However, in *State of Gujrat and Others v. Essar Oil Ltd. and Another*, the S.C. laid down that it is the plaintiff who has to establish that the defendant has received unjust benefits or unjust enrichment at
the plaintiff’s cost. In the instant case, the plaintiffs’ claimed benefit of exemption in tax liability under the governmental scheme when the period of scheme expired. The S.C. held that plaintiffs claim on the basis of unjust enrichment was not maintainable as the government did not receive any unjust enrichment in pursuance of the concerned scheme.

It is pertinent to mention that S. 72 of the Contract Act makes provision for recovery of money paid as well as any other thing delivered by one person to another by mistake. Therefore, where some goods is delivered by one person to another under mistake, the person delivering the goods entitled to get it back in the light of provision of S. 72 of the Contract Act. For example, A delivers a diamond ring to B under mistake of identity because he wanted to deliver it to C. That is to say, A mistook B for C and delivered the diamond ring to B. A is entitled to get back the ring from B under S. 72 of the Indian Contract Act, 1872. On the other hand, B is under quasi contractual obligation to restore the ring to A upon discovery of mistake committed by A.

4.3.2 PAYMENT OF MONEY OR DELIVERY OF ANYTHING BY COERCION-

S. 72 of the Indian Contract Act, 1872 also provides remedy to the plaintiff for recovery of such money or thing which he has pays or delivers to the defendant under coercion committed by the defendant. To illustrate, the opinion of the Supreme Court is worth quoting here. In Trilok Chandra Moti Chandra v. H. B. Munshi\(^\text{181}\) extra money of Rs. 26,000 was paid by a firm as sales tax to consumers to the State

Government. The sales tax was collected by the firm from its consumers. The consumers included also the consumers outside the State of Bombay. The consumers outside the State of Bombay were not liable to pay sales tax to the firm. The amount collected from the consumers outside the State of Bombay was ordered to be refunded to them. So, a cheque was given by the Government to the firm with the condition that within one month the firm will refund the tax money to the concerned consumers and submit receipts to this effect to the Government. But the firm did not refund the tax money to the consumers. Thereupon, the firm was informed by the Government to return the tax money to the State failing which the Government will recover it as arrears of land revenue. Against such order the firm filed a petition in the Bombay High Court which could not be allowed. An attachment order was issued by the Government against the firm. It was only then the firm paid back the tax money to the Government. However, in the meantime the Act under which such money was paid was declared by the Supreme Court to be ultra vires. But this state of law was not known to the firm at the time when it refunded the money. Afterwards, the firm filed a petition seeking recovery of money paid to the Government. The contention of the firm was that it refunded the money to the Government either under mistake of law or coercion, therefore under S. 72 it is entitled to recover the tax money from the Government. The Supreme Court held that there was no mistake of law because until declaration of statute as ultra vires, the firm knew that the tax was, in fact, due. However, the Court observed that the payment of tax money by the firm was made under coercion and it would have been recoverable under S. 72 of the Indian Contract Act, 1872. Had it not been for the expiry of period of limitation. The three years of period of limitation for filing suit by the firm began from the date on
which the Act came into force. But the petition was filed after expiry of such three years time. However, Hon’ble Mr. Justice Hegde dissented from the majority opinion and was of the view that time of limitation should begin to run from the date on which the concerned Act was declared to be void.

In the present case, the delay in filing the petition was not condoned by the Court nor can the Court be compelled for it. The reason is condonation of delay in filing a petition depends on discretionary power of the Court and consequently the Court may or may not condone such delay. Therefore, it is logical to appreciate the majority view.

It does not necessarily mean that the term coercion used in S. 72 of the Contract Act should 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. For example, in Seth Kanhaiya Lal v. National Bank of India Ltd.\textsuperscript{182} the decree against property was obtained by the defendant. The plaintiff was interested in payment of such money so that the execution of decree could be prevented. Therefore, under pressure of prevention of execution of the decree, the money was paid by the plaintiff. It was held by the Court that such money could be recovered under S. 72 of the Act as it was paid under pressure of circumstances which amounted to coercion even though the plaintiff could not establish the coercion which has been defined under S. 15 of the Contract Act.

\textsuperscript{182}(1912-13) 40 I.A. 56.
It is to be noted that previously the view on the ‘coercion’ mentioned under S. 72 of the Contract Act was that the ‘coercion’ means the same as it is meant to signify under S. 15 of the Act. That is to say, initially, the plaintiff claiming for refund of money paid under coercion to the defendant on the basis of S. 72 of the Act had to establish the commission of coercion by the defendant against him according to S. 15 of the Act\textsuperscript{183}. But this view was overruled by the Privy Council in Seth Kanhaiya Lal’s case as discussed above. Thus, the present view is that coercion under S. 72 of the Indian Contract Act, 1872 does not necessarily mean the coercion as defined under S. 15 of the Act.

Again, in \textit{Punjab State Electricity Board Ltd. v. Zora Singh},\textsuperscript{184} the respondent, an agriculturist made an application to the Electricity Board for getting supply of electricity. He deposited such security money as was demanded by the Board. But the electricity connection was not given to him. It was held by the Supreme Court that the money so deposited can be treated to be deposited under coercion in the present situation under S. 72 of the Contract Act, so it was refundable. The Court directed the Board to provide connection, pay compensation of Rs. 5000/- and interest at the rate of 9% deposited by him.

Similarly, in \textit{Ajay Kumar Agarwal v. O.S.F.C. & Ors.}\textsuperscript{185} the simplified facts are that the petitioner was a subsequent purchaser of certain property from Orissa State Financial Corporation (O.S.F.C.) at an auction sale. Such property previously belonged to M/s Maa Bhawani

\textsuperscript{183} Jugdeo Narain Singh v. Raja Singh, (1888) I.L.R. 15 Cal. 656. Where payment was made under the force of execution proceedings.

\textsuperscript{184} (2005) 6 S.C.C. 776.

\textsuperscript{185} A.I.R. 2007 Ori. 37.
Rice Industries which did not clear the electricity bill. The WESCO (Western Electricity Supply Company of Orissa Limited) sent a notice to the petitioner for paying arrears of electricity bill which could not be paid by the previous consumer. Mentioning there in that upon failure to pay the arrears, electricity would not be supplied. The petitioner paid the arrears of earlier consumer under pressure of not getting the supply of electricity. The payment was against the statute. Thereafter, he brought the petition to recover such payment on the ground of coercion under S. 72 of the Act. The Court held that such payment was an unjust enrichment as it deprived the petitioner of his money without authority of law.

Undoubtedly, **money paid under legal compulsion cannot be recovered under S. 72 of the Act** as it does not amount to coercion unless it is proved that such receipt of money by the defendant is an unjust enrichment. For instance, in *State of Bihar v. Jhawarmal*\(^{186}\) it was held that where cess was paid under compulsion of legal process, it could not be recovered under S. 72 of the Act unless the plaintiff could prove that the dealing was unconscionable or payment was made under fraud or mistake. Again, in *Secretary of State v. Tatya Saheb Yeshwantrao Holkar*,\(^{187}\) adjudication proceeding was concluded in the High Court in the matter of compulsory accusation of land by the Government. As a result of such proceedings, the Government paid some money to the defendant. It was observed by the Court that the Government could not recover the amount paid by it after adjudication proceeding even though the Government came to know that land already

\(^{186}\) A.I.R. 1958 Pat. 310.

\(^{187}\) A.I.R. 1932 Bom. 386.
belonged to the Government. On the other hand, in the case of Shyam Lal v. State of U. P.\textsuperscript{188} the Allahabad High Court held that money paid under legal compulsion can be refunded by way of quasi contract due to unjust enrichment.

However, it is submitted that the money paid by the plaintiff to the defendant under legal compulsion is not refundable unless it is proved that the legal compulsion. For example, if the order of the Court in pursuance of which money is paid was erroneous, the money can be refunded because such erroneous order of the Court would amount an unjust enrichment in favour of the defendant at the cost of the plaintiff. Therefore, where order is not erroneous, the money paid in compliance of such order by the plaintiff to the defendant cannot be sought to be refunded.

The recommendation of Law Commission of India on coercion is worth quoting here. In Para 96 of its 13\textsuperscript{th} Report submitted in 1958, the Law Commission of India made a recommendation to the effect that for making suitable amendment in S. 72 of the Indian Contract Act, 1872 specifying that the word ‘coercion’ as defined in S. 15 of the Act was only for the purposes of the Chapter II of the Indian Contract Act, 1872 in which it is contained.

\footnote{\textsuperscript{188} A.I.R. 1968 All. 139.}