CHAPTER VII

CONCLUSION
CONCLUSION

1.1 | Conclusionary resume of Section 68:

As stipulated under Section 10, one of the essentials of a valid contract is the competency of the parties. Section 11 of the Indian Contract Act, postulates that in order to be competent to enter into a contract, a person need to have attained the age of majority and is possessed with sound mind and not being otherwise disqualified in law.

Section 68 is rather a refuse to this general principle of law comes to the aid of incapable persons. An incapable person may have occasions of dying in need of food, shelter, clothing, medication and why not education. Section 68 provides a relief to a stranger who comes in aid for such a person by providing necessaries of life, though not gratuitously. A person of unsound mind or an infant being incapable, his contract is voidable under Section 10 read with Section 11, providing thereby a rule for the benefit of the infant or unsound mind to free him from impious contracts. An infant or a person of unsound mind can enforce a contract against an adult, but he can escape a liability by pleading infancy. He is, however, liable in quasi contracts as under Section 68, as against self enrichment resulting out of necessaries supplied to him.

Liability for necessaries supplied to a minor is not personal in India as it obtains under English Law. Under Section 68, liability is not attributed to an incapable person for his own; rather it is extended to his estate only and is limited within his estate/property. Section 68 postulates when a person who has furnished such supplies is entitled to be reimbursed
from the property of such incapable person.

Judicial interpretation of the terms 'necessaries' has settled its scope and application, which by and large means supply of things for infant's subsistence suitable to his station in life; and does not extend to the things with which the infant is well possessed.

Section 65 contains a broad principle of compensation for having received an advantage even under a void agreement. This inheres a bare principle of equity, if the agreement is for lawful purpose. Section 68 leads a passage to quasi contracts Chapter V. Section 68 to 72, which provides a relief even in absence of a contract or when an agreement suffers from formalities.

Principles of equity is normally applicable to both the parties in a contract. Accordingly, when a minor enters into a contract, though the contract is void, his estate is liable as he receives a pecuniary benefit out of such contract. Section 68 recognises a proprietary liability, though not a personal liability, to the party who supplies the necessaries for life. But the Section has not disclosed whether a monetary consideration obtained by a minor under a (void) contract can be reimbursed. Judicial pronouncements, of course, have largely settled the position of law, that where a contract is declared void due to incapacity of a person, any benefit received there under need be restored. In other words, an obligation to restore an unjust benefit should not be confined to the property; rather, it should also be extended to monetary consideration obtained under a contract—say for example, money received by a minor through a promissory note, or through any such instrument from a private
party, or a money lender or the Government.

The word 'necessaries' includes money urgently needed for the requirements and is not restricted for elementary requirements such as food and clothing. Payments or charges connected with legal matters in which minors are concerned may come under necessaries. Judicial pronouncements have interpreted the term 'necessaries' quite liberally and have widened the scope and application of Section 68 and thereby doing justice to both the minor as well as the genuine suppliers of necessaries.

1.2. Conclusionary Resume Section 69

Judicial pronouncements have developed a nicety under Section 69, that it is applicable only to cases where the plaintiff is not only interested in the payment of money but is also actuated by the motive protecting his own interest. Therefore, in order to attract the section, it must be proved that the person making the payment does so on behalf of another person who is bound by law to make that payment and that the payer is interested in the payment. When these two conditions are satisfied the person making the payment can ask for reimbursement under Section 69 of the Indian Contract Act 1872.¹

The word ‘reimbursement’ used in Section 69 is different from principle of ‘contribution’. The person who is interested in the payment of money which another is bound by law to pay must be a person who is himself not bound by law to pay the whole or any portion of the money. In other words, being interested in the payment of money connotes an idea different from being bound by law to pay.

On the other hand Section 43 of the Indian Contract Act, 1872, provides for contribution in between the joint promisors, Section 146 and 147 inheres the principle of contribution intense among the Co-sureties. Section 82 of the Transfer of Property Act, 1882, also used the word ‘contribution’ in cases of contribution to mortgage debt.

Contribution in its simplest meaning signifies payment by each of the parties interested of his share in any common liability. Mutuality is thus the test of contribution. It is therefore the result of general equity on the ground of equality of burden and obligation, and thus, the principle is one of *quasi contractual liability.* But in fine, contribution is not the crux of Section 69. Law Commission in its thirteenth Report has also suggested that Section 69 is applicable only to cases of reimbursement with a contract distinction from the principle of contribution.

1.3 Conclusionary Resume Section 70

Section 70 does not contemplate a pre-existing legal obligation on the part of the claimant to supply or to serve. Only it be not an officious over-bearance or a gratuitous act on the part of the plaintiff. Plaintiffs act has to be lawful and the defendant must have derived benefit. Unjust enrichment be restituted closely to the principle of equitable relief of *quantum meruit.*

Section 70 is not comparable with Section 69, because both the Section deal with entirely different conditions and hence applicable on different sets of facts. Even the basis of compensation under Section 70 is not the same as it happens in other contractual rights. Because the obligation/relationship between the parties is quasi-contractual in nature and hence

---

2. Winfield in “Province of the law of Torts” at p.163
3. (1958) at pp. 40, 41
5. Sudhansu v. Banamali, AIR 1946 Cal.63
claim of compensation depends upon the benefit enjoyed by the party for whom an act was done or things delivered. Under Section 70, the law will presume a contract though in reality there does not exist any contract because of legal restriction. Therefore, application of Section 70 is confined to cases where there is no existence of subsisting or valid contract and the other party is liable only on the principle of equity for unjust enrichment.

Under Section 70, it is not essential that the act shall have been done, or the things delivered, under circumstances of pressing emergency, or even that it shall have been an act necessary to be done at sometime. It is not limited to person standing in particular relations to one another as contractual parties under a regular or orderly or valid contracts.

Under Section 70, no condition has been prescribed as to the circumstances under which the act or the delivery of the thing shall be done. A discretion has been provided to the Courts for application of Section 70 with a view to do substantial justice in cases where it would be difficult to impute to the persons concerned relations actually created by contract. The circumstances and the conduct of parties, rather an expressed or implied contract and apply its judicial discretion to grant the equitable relief provided under Section 70.

No general line can be drawn to define the term ‘lawful’ act. It simply requires the act or services to be free from illegalities; no matter it may be irregular or improcedural. Acts immoral, act fraudulent or malafide or unjust, however are not lawful acts. It should be considered in each individual case, whether the person who did anything for another person,

7. Suchand v. Balaram, ILR 38 Cal.1
or delivered anything to him did it lawfully or had a lawful interest in doing or delivering the thing. A thing done or delivered fraudulently, or unlawfully, is not lawful within the meaning of Section 70 of the Contract Act 1872. By interpretation, a minor has been excluded from liability under Section 70, because he can not be said to have voluntarily accepted the benefit. Of course, Section 68 shall govern the contemplated situations in respect of supply of necessaries and Section 11 shall give in to this extent provided in Section 68.

The judicial interpretation, thus made, excluding a minor from the liability under Section 70, and rather limiting the liability of a minor only to the extent of necessaries and chargeable to his estate under Section 68, appears to have served the purpose of law.

Section 70 contemplates a personal liability not charged upon estate only; and if liability under Section 70 could perchance be extended to cover minors then intermeddlers would turn promotes defeating the protection of contractual incapacity attributed to minors.

Indian law appear to be wider and liberal and more on the line of equity. Past consideration, repairs undertaken by one of the many joint tenants, performance of a contract abandoned after a part performance are instances where English Law refuses a relief; Whereas, Indian law, in Section 70, recognizes them as quasi-contracts. Section 69 and 70 contain a wider flexibility than the English limitations in respect of quantum meruit or unjust enrichment. English Law however, governs the idea of 'money had and received' or 'goods sold and delivered' Indian Law recognizes all forms of restitution. Only an express or implied request

shall entail a relief for a voluntary act even if gratuitous, under English Law. Under Indian Law, request is not necessary and gratuitous acts entail no claim under Section 70.

1.4 Conclusionary Resume of Section 71

Section 151 of the Indian Contract Act, 1872, prescribes the amount of care to be taken by a bailee. It does not lay down the consequences, if the bailee fails or neglects to take the statutory amount of care. Section 152 rather enacts that the bailee is not responsible for the loss, destruction or deterioration, if he has taken the amount of care as described under Section 151.

Provisions contained in the Indian Contract Act, 1872 in respect of rights and obligations of a bailee have been amply simplified through judicial pronouncements. In India, the rule of ordinary prudence is applied in case of the goods bailed. In England, however, it turns on the purpose. Section 156 and 157 provide the situations where without the consent of the bailer, the bailee makes a mixture of the goods bailed with his own. But Section 155 deals with cases where there is bailer's consent. If the goods can be separated, it is well and good; but if they cannot be so distinguished they become tenants in common as in a mixture resulting from consent.  

Section 168 allows the finder to retain the goods against the owner until he receives compensation for trouble and expenses. Further, where the owner has offered a specific reward, for the return of the goods lost, the finder may sue for such reward, and may retain the goods until he receives it. But the section does not say that the finder of goods is a bailee except...
in the case of a deposit. If he takes charge of the goods he stands in the shoe of a gratuitous bailee. He can only institute where a reward is announced and not paid. Therefore, he who finds the goods is not bound to preserve them from putrefaction. No law compels the finder to keep the thing safely. If he is not negligent in keeping the thing, the finder cannot be held responsible. Unlike in English Law, in India, the finder has the right to sell the goods if the conditions provided in Section 169 are fulfilled. He can recoup his costs and compensation out of the sale proceeds.

1.5 Conclusionary Resume of Section 72

The legislative intention in Section 72 does not restrict the meaning of the word 'mistake' to be construed only as a mistake of fact. The judicial pronouncements rather have cleared the position, interpreting the meaning of the word 'mistake' to be understood to be both, mistake of fact as well as mistake of law.

The meaning of the word 'coercion' used in Section 72 is not in the same sense as has been used in Section 15 of the Contract Act. Meaning of 'coercion' under Section 72 is far wider. It connotes an ordinary coinage of the word as obtains in English Language, as held by the Privy Council in *Kanhaya Lal v. Union of India*. Subsequently, in *P.B.Mills v. Union of India*, the pronouncement has been refined to the extent that any feeling of compulsion can be read into the meaning of coercion. Section 15, on the other hand, defines coercion with reference to physical strain or threat. So, where money paid under coercion has been used in Section 72, it should also be extended to the circumstances of the cases where a payment or delivery of things has


14. *ILR 40 Cal.598*

15. *AIR 1970 Guj.35*
Section 72 does not speak on the term ‘fraud’, but it infers from the fraudulent act or conduct of the parties, in case of payment of money or delivery of property for illegal purposes. So, the purpose of fraud cannot simply be overthrown, while deciding a case under Section 72. As there is no definite provision enumerated on the topic of ‘fraud’ or ‘fraudulent act’ in the Contract Act, Section 72 may be enlarged to the extent to the cases where the payment of money or delivery of property will be made for illegal purpose.

The provision underlying in Section 84 of the Trusts Act has no difference as under Quasi Contract. Section 72 may be interpreted in the light of Section 84 of the Trust Act. A like provision that a payee be deemed to be in trust for the payer, for the overpayment or thing delivered by mistake. Section 84 of the Trust Act, 1882 postulates;

"Transfer for illegal purpose – where the owner of property transfers it to another for an illegal purpose and (i) such purpose is not carried into execution, or (ii) the transfer or is not as guilty as the transferee, or (iii) the effect of permitting the transferee to retain the property might be to defeat the provisions of any law, the transferee must hold the property for the benefit of the transferor”.

Here, if Section 84 will be considered in the contractual aspect of Section 72, it may result in the advantage of having a comprehensive provision relating to the subject of frustration of an illegal purpose. So also a similarity will arise with the quasi contract and there will be two parallel
provisions in two separate enactments. In this regard, the Law Commission has rightly observed in its report\textsuperscript{16} in 1958 about the similarity of the two parallel enactments and suggested for the inclusion of the word ‘fraud’, ‘misrepresentation’ or ‘undue influence’ after the word ‘coercion’ in Section 72 where remedies for repayment.

Lastly, the provision under ‘Quasi-contract’ do not say about the concept of ‘unjust enrichment’ or ‘unjust benefit’. Rather the concept has been gradually developed and clarified through judicial pronouncements in a number of cases by the Indian Courts. So, the principles of ‘unjust enrichment’ is absolutely essential in the application of the section under ‘quasi contract’, as it maintains the general concept of equity, justice and good conscience. In line, it can be said that where there is no contract, but a person is unjustly enriched due to mistake or otherwise but not in the \textit{malafides} with full voluntariness having knowledge of the nature of the transaction at the expense of another person, the former must be legally hound to restore the benefit to the latter or to make compensation therefor.

\section*{General Observation:}

Judicial pronouncements on the law of constructive contractual obligation, both English law and Indian law, have been extensively discussed in previous chapters. It could be studied as ‘\textit{quasi contract}’ and ‘\textit{quantum meruit}’—as suggested by Pollock and Mulla.\textsuperscript{17} But it has been preferred in this thesis to take them up together. Rather, the authors have reservation to accept the coinage quasi contract because this branch of obligations does not stem out of regular agreements and they arise only out of fiction. Perhaps, that is precisely the logic behind development of equitable

\textsuperscript{16} pp. 83, 84
\textsuperscript{17} Pollock & Mulla on Indian Control and Specific Relief Act, 10th Edition by Kapur J.L. at p.563.
principles around this branch of obligations, because otherwise agreements have their own rules, tools of interpretation and defined promises or considerations or terms of mutuality or privity. Succinctly, in case of quasi contracts the Courts do not take into account the intention of the parties, even sometimes they act in disregard of known intentions of the parties on the equitable doctrine of unjust enrichment. To use the term Quasi contract as a generic term, we may mention that Lord Denning too in his article Quantum meruit 55 LQR 54 has rather largely dealt with quasi contract.

Quasi contract (A) and Quantum meruit (B) have been discussed by Pullock and Mulla, thus:

(A)

(i) In the absence of express contract, there must be established an implied contract to pay reasonable remuneration for services rendered by the plaintiff or to reimburse the plaintiff for money paid by him i.e., a genuine contract is established by inference. In such cases the obligation is consensual. It does not arise quasi ex contractu.

(ii) If the mutual consent develops to vary or rescind the express contract, parties can dwell on quantum meruit.

(iii) Even under a void contract, quantum meruit is to be applied for work already done.

(iv) In case a party fails to perform further, reasonably so, he can seek quantum meruit for the work already done.

(v) An unenforceable contract also entertains quantum meruit principles for the work done already of course it should have been not unlawful.
Although, no particular remuneration has been stipulated the law will infer a promise to pay a reasonable sum or quantum meriut for service rendered. Even if a services or work in defective or different from express terms by the contract and if the defendant accepts it, the defendant ought to pay quantum meriut.

Distinction so thought of by the authors, apart, Indian Courts and English Courts have by an large developed these principles almost coextensively.

Chapter V of the Indian Contract Act, 1872, is ordinarily referred as quasi contracts, largely meaning constructive obligations arising by fiction as if contractually.

2.1 Observation on Section 68:

This section deals with supply of necessaries to persons incapable of contracting. It includes children, lunatics and persons otherwise statutorily debarred to enter into contract.

Besides the general tone, few principles emerge out of judicial pronouncements.

(i) Indian law accepts a wider spectrum of the term necessaries. English Law propounded in Ryder v. Wombwell, clearly brings out the meaning of necessary with an example that clothes may require buttons but not pearls as buttons. Under English law necessaries for the wife or children of minor are also necessaries for the child.

---

18. ILR (1976) 2 All 658
19. (1968) LR4 Ex32
20. Chitty on Contract, Vol.1, Para 486; (Indian Law would be the same: Pollack & Mulla, 10th Edn.p.130)
Performance of ‘Sraddha’ of parents comes within necessaries.\textsuperscript{21}

In *Chapple v. Cooper*,\textsuperscript{22} Anderson has discussed the principles for determination of necessaries. Indian law too is close to it-so viewed by law commission of India in 1958.\textsuperscript{23}

(ii) Under English Law, the provider by necessaries may sue the beneficiary with latters personal obligations, besides the benefit to be charged on the estate. Whereas, in Indian Law, Section II read with Section 68 enjoins that the benefits (necessaries) so received by the minor could be charged only on the estate\textsuperscript{24} of the minor and there shall be no personal obligation on the part of the minor. In English Law, it is a liability not on express provision of a contract but it is an obligation *quasi ex contractu*.

(iii) Section 68 is applicable also to persons of unsound mind.\textsuperscript{25} Though lunatics cannot enter into a contract, his estate can be charged for necessaries supplied to him.\textsuperscript{26}

(iv) Cost incurred in defending a suit on behalf of minor in which the property of the minor is in jeopardy,\textsuperscript{27} shall be construed to be within necessaries. So also expenses of marriage of minor girl child under personal law.\textsuperscript{28}

(v) Both English Law and Indian Law hold that supplies whether or not necessaries are a mixed question of fact and law. But Court must be convinced of the *bona fides* of the creditors.\textsuperscript{29}

\textsuperscript{21} Mst. Toorom Kumar, (1831) 16 WR 52.
\textsuperscript{22} (1844) 13 M & W 252
\textsuperscript{23} 13\textsuperscript{th} Report.
\textsuperscript{24} Ajodhya v. Chandan Lal, 1937 All.
\textsuperscript{25} If personal obligation of minor is recognised it will mean conferring contractual capacity on minor.
\textsuperscript{26} Mohori Bibee v. Dharmodas Ghose, (1903) 30. Cal.539
\textsuperscript{27} Jhori v. Draupati, AIR 1991 MP 340.
\textsuperscript{28} Kedarnath v. Ajudha, (1883) Pujj. Rec.No.185.
\textsuperscript{29} Tikial v. Kamal Chand, (1940) Nag.632
\textsuperscript{29} Sadaslieo Balaji v. Hiralal Gupta, (1938) Nag.65
\textsuperscript{28} Anummaallai v. S.Muthuswami, AIR 1935 Mad.358.
275

(vi) In *R. Leslie Ltd. v. Sheill,* the law lay down is clear that when a minor misrepresents his age as major he can not be made to pay the money in equity or in Common Law. The position of minor’s liability, in such misrepresentation, is same in India as in England.

(vii) Section 68 uses the word reimbursement. It means compensation. Compensation covers an wider range than restitution.

2.2 Observations on Section 69:

(i) Pollock & Mulla hold that Section 69 lays down, in one respect, a wider rule that appears to be supported by English authority. The words “interested in payment of money which another in bound by law to pay”, might include the apprehension of any kind of loss or inconvenience, or at any rate of any detriment capable of being assessed in money. This view was accepted by Stanley J. In *Tulsa Kunwar v. Jogeswar Prasad* and later by Madras High Court in *Subramaniam Iyer v. Rangappa.* Authoritative statements in English Law is much well guarded, for example, “If A is compellable to pay B damages which C, is also compellable to pay B, then A, having been compelled to pay to B, can maintain an action against C for money so paid, for the circumstances raise an implied request by C to A to make such payment. In other words, A can call upon to indemnity him.*

(ii) English Law does not cover a case where the plaintiff has made a payment operating for defendant’s benefits, but was not any direct legal duties to do so, nor where the defendant was not bound to pay, though the payment was to his advantage.

(iii) Section 69 applies only when the plaintiff is motivated with
protection of his interest bona fide not otherwise voluntary, A railway executive who paid the freight because the contract with the railways was drawn up in his name, can not claim relief under Section 69.

(iv) High Courts are of opinion that no entitlement would flow in favour of plaintiff when he himself is bound to pay. If two persons liable to pay and one of them pays the hole, he is entitled to contribution under Section 43, not under Section 69. But, in fact, if ten persons are liable to pay jointly and one of them pays, he should entitled to be indemnified. In Md.Kasim Ali Khan v. Md.Sadiq Ali Khan, The Privy Council held that duty of contribution does not depend on contract, rather it is founded on equity.

(v) Section 69 does not apply in case the purchaser of land pays the charges on the land which the seller should have paid.

(vi) Indian Courts have been more liberal in application of Section 69. In India, un like in Britain, if a person with bonafides believes that he has a right to a property and makes certain payment on behalf of the person who must pay under law, he is entitled to reimbursement.

(vii) Peculiarly in Indian Society expenses of marriage of a daughter are incurred from joint family property where, father is a co-parcener in case the mother incurs a loan for such marriage the loan provider has a right to reimburse from joint family property on the assumption that the father has requested therefor. Under

34 Dasai Himatangji v. Bhavabhai (1880) 4 Bom. 643.
35 Gopinath v. Raghuadas Kumar, 1949 AP 522
37 This is a view of Pollock & Mulla. The researcher finds logic in this interpretation.
39 Ram sarat Das v. Chetilal, AIR 1928, All.668
40 Vaikuntan Ayyangar v. Kalliparan Ayyangar, (1900) ILR Mad.512
English Law request is a requirement of law, whereas, under Indian law request is not a condition.

(viii) “another is bound by law to pay” occurring in Section 69 would mean both bound personally or bound by property interest.

(ix) In India mere existence of interest on the part of the plaintiff who paid for the defendant, is enough to take recourse to Section 69.

(x) The liability for which payment may be made need not be statutory. Calcutta High Court held that if this liability is construed to be only statutory liability it would be ‘too narrow a construction’, because the section ‘no doubt intended to include such a case as a lessee paying rent to the superior landlord for which the immediate lessee was liable under a covenant’. The Privy Council also held that the words ‘bound by law’ extend to any obligation which is an effective bond in law, just as the common law gives a right of indemnity to one who has paid under compulsion of law against the true obligor without limiting the circumstances in which the defendant’s liability has arisen. Bound by law to pay should be given widest possible scope of construction to include cases of ‘ultimate’ or ‘remotely’ bound by law to pay. ‘Bound by law’ includes bound by torts or contract besides statutory obligations.

(xi) ‘Interested in the payment of money’ includes apprehensions on the part of the plaintiff that the property / payment in which he is interested might be in jeopardy. Such apprehension may come to be not justifiable at law, but it is sufficient if he apprehends that his interest will be adversely affected. In this respect, Indian

41. Mathooranath v. Kristo Kumar, (1878) 4 Cal. 369
43. ibid..
Law appears to be wider than English Law.

2.2 Observations on Section 70

(i) In *Jarao Kumari v. Basant Kumar Roy*, 44 The Calcutta High Court held that Section 70 goes far beyond English Law. At Common Law during course of business if things are delivered by way of business, not gift the acceptance of those goods is itself evidence of an agreement, though not expressed agreement – it is not fictitious but a real agreement.

(ii) A man is not bound to pay for that which he has not the option of refusing.

(iii) Once the defendant accepted the goods he has no option to say that the goods were not intended for him; and he is bound by Section 70 to pay for the goods. Under Indian Law the defendant can not take the plea that he received the goods with a belief that the goods had come from X and not Y. But in Common Law if the defendant has accepted the goods from Y thinking that the same has come from X it will be a good plea and he need not pay for it. 45 Indian Law is rather more equitable in this respect.

(iv) In *West Bengal v. B.K. Mandal* 46 Sarkar.- J. has opined that Section 70 has been framed in the present form with a view to avoid niceties of English Law on the subject of Quasi Contract.

(v) Section is 70 is not founded on Contract but embodies the equitable principle of restitution and unjust enrichment 47 – consent or no consent; but in English Law a consent or implied consent is necessary.

(vi) Government Departments as well as Corporation are also bound.

---

44. *(1905) 32 Cal.304*
45. *Boulton v. Jones*, (1857) 2 H. & N. 564
47. *Dominion of India v. Preati Kumar Ghose*, (1958) A.P.203
by Section 70, i.e., they too can not take advantage of unjust
enrichment and restitute. 48

(vii) A contract violative of constitution can not be enforced, but
benefits received there under has to be restituted. 49 But if the
contract is unlawful purpose, Section 70 is not applicable. Say,
iron ore supplied and received in violation of iron & steel control
order, Court will refuse to implement Section 70 even if part
payment had been made. 50 Let it be explained here that violative
of the constitution means violative of any provision as
fundamental rights or directive principles or interstate Trade and
Commerce, which can not be implemented by Courts; but
agreements with unlawful purpose are per se void; there is a
distinction between ultra vires the constitution and unlawful
purpose. Benefits derived under illegal agreements do not attract
Section 70 and do not constitute quasi contract in such events. 51

(viii) Compensation can be claimed for work without request when
the defendant received benefit, provided the plaintiff did it without
gratuitous motive. 52

(ix) This principle applies in maritime law of salvage, i.e., saving as
ship from wreck or piracy. 53

(x) The term ‘extras’ added at the end of an agreement for supply of
goods brings in Section 70 provided that particular goods or
services could be read ancilliary and implied to the main ones. 54

(xi) The reasoning is clear in Section 70 i.e., not because the plaintiff

51. Ibid...
52. Union of India v. Kehal Kumar Goswami, (1974) 4 Cal. 231
53. In the Troilus, (1950) 1 All. ER 103
did a thing or supply a goods but because the defendant received the benefit.\(^{55}\)

(xii) Minors are not liable under Section 70.\(^{56}\)

(xiii) Doctrine of *quantum meruit* is applicable in India even under an invalid contract.\(^{57}\)

(xiv) In *Suchanand v. Balaram* \(^{58}\), the High Court concluded the wide language but favoured the interpretation to do substantial justice. The Court ruled that their could no condition as to delivery of things, whether emergency existed or not, but circumstances and conduct of the parties have to be taken into account.

(xv) Indian law is more liberal. It addresses to situations where a contract is even abandoned; or where one of the many tenants undertakes the repair of a building. It is not because of loss suffered by plaintiff but because defendant received benefit. The compensation shall have to be reasonable at the time when the work was done or the things were delivered.\(^{59}\)

2.3 Observation on Section 71

(i) Till the finder intends to return the goods to the owner he is not guilty of any offence; but if he misappropriates he is guilty of criminal misappropriation under Section 403 I.P.C.

(ii) In case of finder of goods, in civil liability, he is a bailee.\(^{60}\)

(iii) If the owner could not be found the finder has a right to property.\(^{61}\) Similarly if a person if in possession of a house or land, he is in direct control of the goods therein and has a special rights to goods found therein. (however these two cases are cases of

---

\(^{55}\) *Haji Abdulla v. Hameed*, AIR 1985, Ker. 93

\(^{56}\) *State of West Bengal v. B.K. Mandal*, AIR 1962 SC 779

\(^{57}\) *ibid.*

\(^{58}\) *Suchanand v. Balaram*, (1910) 38 Cal.1

\(^{59}\) *Great Eastern Shipping Co. v. Union of India*, 1971 Cal. 150

\(^{60}\) *Digges v. Howkesworlh*, 21 LJ & D 75

\(^{61}\) *South Staffordshire water Co. v. Sharman*, (1896) 2 Q.B. 44
possession. Section 70 will apply the moment the owner is traceable).

(iv) Standard care to be taken by the finder means the care of a man of ordinary prudence where the finder by legal fiction becomes the bailee. It would depend upon the facts and circumstances of each case as to the expectation of standard care. 62

(v) There is no difference of expectation in respect of standard care expected from a bailee on payment and a gratuitous bailee. 63 This is also the law in India and the Houghland case is regarded as precedent in India.

(vi) A joint reading of Section 168 and Section 71 would mean that if the finder of goods consciously has spent money to protect the goods - a standard care as a bailee - he is entitled to reimbursement.

In case a salvage lien the person who spends money to save a ship from wreck or piracy can even retain some property of the other until his expenses are defrayed. This principle has been recognized in India. 64 Section 168 in fact allows the finder against the owner to retain the goods until he receives compensation and expenses, Unlike English Law, in India, the finder of goods even has a right to sell the goods. He can recoup the expenses out of sale proceeds, which he is bound to pay to real owner under Section 70.

2.4 Observation on Section 72

(i) Doctrine of 'money had and received' the action is founded on simple contract, which has been called quasi contract or

62 Shantilal v. Tarachand, AIR 1933, All.158
63 Houghland v. R.Row (luxury) Coaches ltd., (1962) 1 QB 694
64 Nagendra Chander v. Kaminee, 11 MIA 241
(ii) In England, America and Australia the law is that, money paid voluntarily without compulsion or extortion or undue influence and with knowledge of all the facts can not be recovered although paid without consideration. On the other hand, Section 72 overrides the English provision – it protects a payment under mistake or under coercion.

(iii) In England money paid under mistake of law can not be recovered; but in India money paid under mistake of law, just like money paid under mistake of fact, is recoverable. If payment is made with supposition that a fact is true, whereas in reality the supposition is wrong, still the payment can be recovered.

(iv) Money paid under pressure of circumstances is coercion (though definition of coercion under Section 15 is not satisfied). The Court clearly spelt out that the term ‘coercion’ used in Section 72 has to be understood in general and ordinary sense without limiting it to definition of coercion as under Section 15.

(v) Even a person’s forgetfulness and ignorance can be excused only when the payment has been made bona fide.

(vi) Money paid by mistake to a wrong man can be recovered.

(vii) If one party under a mistake of law or of fact, pays to another, which is not due, that money must be refunded – subject, however to questions of estoppel, weaver, limitation or the like. It is not only equitable principle; it is also a duty at law.

65. Chesworth v. Farron, (1966) 2 All. ER 107
66. Ref. Pullock & Mulla, 10th Edn., p.600
67. Sales Tax Officer v. Kanheialal, 1959 SCR 1350
68. Sowdia Baid v. Saraswati Ammal, AIR 1942 Mad.590
70. Kanhayalal v. National Bank of India, 40 IA 56
71. Lloyds Banks Ltd. v. Administrator General, AIR 1934 Rang.66
73. Dy.Commissioner v. Harnarayanlal, AIR 1956 All.205
(viii) Both English and Indian Law are same on the point of money paid under compulsion – it is recoverable.

(ix) Section 72 does not apply if money is paid voluntarily but under an illegal agreement or for an illegal purpose.

(x) Threat of criminal prosecution is a coercion.\(^{74}\)

(xi) Section 72 speaks of a principle of equity and to restitute unjust enrichment, not just a refund of money paid by mistake. In *Roplas case*\(^{74}\) the Bombay High Court refused to apply Section 72. In this case Roplas Company paid excise duty by mistake but realized that money from customers and still went to Court for relief of refund under Section 72. Court held that a refund would mean unjust enrichment, just contrary to the objective of Section 72.

(xii) 'Coercion' used in Section 72 should be interpreted to include misrepresentation, undue advantage and fraud for application of principle of restitution.\(^{76}\)

3. Conclusion and Suggestions:

3.1 In previous chapters, judicial pronouncements on the law of constructive contractual obligations have been dealt with quite at length. Both the Indian law and the English law and judgments of the respective Courts have been discussed.

It is a matter of English legal history that equity principle developed to do complete or substantive justice under Common Law. While ordinary Courts dealt with Common Law applications, the Court of Chancery also recognized principle of equity and developed them. The sanction of equity jurisdiction was on the promise that the king’s power of doing

\(^{74}\) *Swarna Singh v. State of Orissa*, AIR (1962) Or. 136

\(^{75}\) *Roplas (India) Ltd. v. Union of India*, 1989 Bom. 1983.

\(^{76}\) So is the recommendation of law commission of India its 13th Report.
justice in an extraordinary way where ordinance of means failed – the Chancellor acting on behalf of the king undertook to make good the defects of Common Law principles. Once a precedent, the judgment of Chancery Court also became law of the land; and gradually the equity principles got sanctioned of the Court for regular reference as precedents. It is a case of about four centuries back during which equity jurisdiction and equity principle developed, and finally in 1873 by the Judicature Act the jurisdiction of Common Law Courts and Chancery Court got fused into one – two streams merged into one without losing their independent identity.

It was clearly an advantage to the law of contract in India that the Indian Contract Act was enacted in 1872 i.e., by that time equity principles had already been received by English Courts along side the Common Law rules, to do substantial justice. Needless to mention, in 1872 (the year preceding the English Judicature Act 1873), for all law drafting and final assent by the Governor-General-in-Council were a British legal creativity.

There existed Hindu Personal Law and Muslim Personal Law in respect of contract. Courts did give effect to them; but judges carried with them English legal tradition (as mostly the judges – particularly the judges in three High Courts in three presidencies of co-equal states – were all British), British judges in India upto 1872, and than upto India’s Independence or till establishment of Indian Judiciary on the line of constitution of India 1950 with one Supreme Court and as many High Court as provinces, obviously grafted equity principles to complement Indian Law.
Law of contract is a civil matter; no personal law would place a hindrance on a common (civil) law. Indian Contract Act, 1872 so quite smoothly, could address to all points at contract, irrespective of the personal law of the parties. The second half of 19th century for India was a period of brilliant legal craftsmanship. The Indian Penal Code 1860, the Indian Evidence Act 1872 and Specific Relief Act, 1977 are the three-enactment exhibiting legislative skill on matters of criminal law and civil law. A process of clear cut law passed with British craftsmanship covered the field of Indian law.

The contribution of Court and their judicial pronouncement in matter of contract law are discernable. Judges have been carrying and creative, cautious and critical restrained yet liberal.

Studying law of contract through the past one and half century *ipso facto* includes studying law of England *parimateria*. Principle of equity developed in England got either codified or recognized in India. It is precisely for this reason that the present thesis traverses the fields of both English law and Indian law on the matter. Indian law, its interpretations, by and large has been more liberal than its counterparts English law and interpretations. The Indian Contract Act 1872, is a wholesome enactment, rich with experience of British legal system including both Common Law rules and equity principles.

3.2 A good number of judgments have been referred in sub-chapter I of this chapter under the heading resume of sections. sub-chapter II of this Chapter is devoted to signifies the trend of the judgments, the creativity of the Courts and the adoptability of the provisions of Chapter V of the Indian Contract Act, into innumerable fact situations par-taking the
Chapter of Quasi Contract or constructive contractual liability. It has been largely observed while scanning through the jurisprudential pronouncement of Courts that the Courts have been rather proficient and functional than perfunctory and non-respective.

3.3 When the constitution of India has been emerged 90 times in 55 years other enactments having amended every now and than the Indian contract act, 1872, has received no jolt. No propulsion from the legislature. With all candour it can be vouchsafed that the hypothesis has been established that, 'the Courts in India have immensely and infallibly developed the law of quasi-contractual obligations, based on the provisions in Chapter V of the Indian Contract Act. 1872 and have exhibited rare judicial intellectualism'.

3.4 Having already agreed as discussed in forgoing Chapters that the judicial pronouncement quasi contractual obligations have been of high order, the research would crave to submit the following situations for judicious consideration.

(i) The principle of quantum meruit should not be confined to Section 70 only. Rather this principle need be extended to all quasi contract, because recompense is calculated only in terms of money. The point is more clear if we take an example that a person provided food to a minor for 10 years and plaintiff comes under Section 68. No flat rate but only a quantum meruit would answer the problem.

(ii) While granting relief under Section 70, the Court views the quantum of compensation – as would be reasonable on the date of thing done or delivery made. But, in majority of cases particularly where Government / Railways / Corporation are
parties the cases linger for decades. Quantum of compensation therefore should be fixed also keeping the present price/present utility of those goods with a bias for the bona fide plaintiffs.

(iii) Coercion under Section 72 be either defined with a view to include fraud, misrepresentation or pressure within the term coercion so that the wronged can get relief under Section 72; or fraud, misrepresentation, pressure be added as ground to attract Section 72.

(iv) The law is silent as to what would be the relief for the plaintiff who spent on necessaries for the child/unsound mind where the child has no property enough to recompense. If an obligation, under Section 68, becomes personal, it may defeat the purpose of law that a child shall have no liability under contract. Even if law is made that this service provides would get compensation after the minor attains majority - it would go against the very principle that liability at contract can not be enforced against a child and this provision for payment in future would only defer the (non legal) liability to a future date making thus the same non maintainable liability a contingent liability.

(v) The words 'not intending to do so gratuitously' in Section 70, appears undirected because any body who expends he also intents recompense. Even under Section 68 anybody who supplies necessaries to minor or lunatic also does so within intent to be reimburse, otherwise why should he come to Court for reimbursement.

(vi) An inquisitiveness develops, in respect of Section 68. A minor shall not be liable; how can then his assets be liable, when can a
suit be filed before / after minor gets majority, who would defend the case, should Court expenses of plaintiff be also paid from assets of the minor ?

(vii) Following Australial law *Nixon v. Furphy* every specis of duress, a conduct analogous to duress, actual or threatened by or on behalf of the payee to the payer or any other in whom payer is interested, would be read into the word ‘coercion’ used in Section. 72.

(viii) Section 70 inheres ‘reasonableness’ of the compensation; and the whole liability is based on implied contract. Could some basic principles the thought of to define this reasonableness ? in case of total failure of consideration (in *Goss v. Chilcott* House of Lords have recognized difference of change of position) it should be introduced to the act that in such cases the defendant be paid by the plaintiff – under simple contract for the benefit unjustly received.

(ix) Just as principle against unjust enrichment can not availed in case of benefits derived from unlawful contracts, no person be allow to avail section 69 or Section 70 for reimbursement while acting under an agreement *ultra vires* the provision of the constitution of India on the principle that ignorance of law is no excuse.