TOPIC OF THE Ph.D THESIS

"JURISPRUDENTIAL PRONOUNCEMENTS ON THE LAW OF CONSTRUCTIVE CONTRACTUAL OBLIGATIONS"

CHAPTER I

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INTRODUCTION

1.1 Application of English Law

The object and reason statement of the Indian Contract Act, 1872, clearly denotes that the Act was intended to define and amend certain parts of the law relating to contracts. There existed separate law of contract for Hindu and Muslims in India prior to 1872.

Though the Regulation Act, 1726, establishing Mayor's Court and through the statutes of 1781 and 1797 with the establishment of Supreme Court at Calcutta and Supreme Courts (Recorders' Courts) at Madras and Bombay, English Common Law and statutes Law existing in Britain then got introduced into presidency towns in British India. However, for convenience Hindus and Muslims still continued to be governed under their respective law(s) of contract. High Courts Act, 1862 (superseding the Supreme Courts with Presidency Jurisdiction only) also did not interfere into personal law of Hindus and Muslims, including their law(s) of contract. The High Courts so established in 1862 was to administer English Law and Equity subject to the legislative power of the Governor-General-in-Council (so provided in Charter Acts of 1862 and 1865. Of course, the term equity referred in Charter Acts of 1862 and 1865 was of limited significance, meaning that Hindus and Muslims would be governed by their law and equity. This position was reinforced both in Government of India Act, 1915 and Government of India Act, 1935.
Outside the Presidency jurisdictions, in Muffusils, Courts were directed to decide cases according to "Justice, equity and good conscience" in case there existed no specific rules. The expression "justice equity and good conscience" was judicially settled to mean rules of English Law so far as they were applicable to Indian Society. However, after enactment of the Act, the respective laws of contract for Hindus and for Muslims have to give way to the present Act.

The rule of interpretation precisely forbids influence of other laws if the language of the Act is clear and unambiguous. Thus, if the Act is clear, no English law would govern it. In general, in respect of interpretation of law of contract, the Courts in India have been "generally guided by the Common Law of England where no statutory provision to the contrary is in existence." The Courts in India are ordained to interpret Indian statute uninfluenced by English Law upon the subject. However, the law of England so far as it is consistent with the principles of justice, equity and good conscience has generally prevailed in Indian Courts unless it conflicts within Hindu or Muslim Law. The settled principle of applicability of English into Indian judicial system, particularly the Act, is that English Law cannot be introduced where the subject is dealt with by that Act, but the aid of English Law can be pressed into service if it is so necessary to interpret the Act.

1.2 General Provisions of Indian Contract Act, 1872.

Chapter I to Chapter VI of the Indian Contract Act, 1872 deal with contracts generally. Chapter VII and Chapter XI dealing with sales of goods and partnership respectively have since been omitted. Chapter VIII, Chapter IX and Chapter X deal with specific contracts respectively relating to indemnity guarantee, bailment and agency.

Chapter I deals with Communication, Acceptance and Revocation of proposals/promises. Chapter II deals with Contracts, Voidable Contracts and Void Agreements *inter alia* Free Consent, Coercion, Undue influence, Fraud, Misrepresentation, Mistake of fact/law, and persons competent to contract.

Section 10 defines all agreements are contracts if they are made by the free consent of parties competent to contract for a lawful consideration and with a lawful object and (if) they are not (nearly) expressly declared to be void. Section 11 excludes minors and persons of unsound mind and persons not legally disqualified otherwise from persons competent to contract. A joint reading of Section 10 and Section 11 would obviate any agreement with a minor/ person of unsound mind/persons otherwise legally disqualified. But situation may exist when they need be helped, though not absolutely gratuitously.

Chapter VI spells out compensation for loss or damage caused by Breach of Contract (Section 73) stipulated penalty (Section 74) and compensation for rightfully rescinding contract.
Section of Constructive Contractual Obligations:

Chapter V have five section, independently addressing five situations where formalities of contract can not be expected/where agreement were premature or defective but acts have been done / where parties could be incompetent due to minority or unsound mind / where trust of bailment could be inferred in respect of lost goods (where one party can not take advantage of mistake of delivery or of coercion / where someone helps due payment in which the latter is interested.

Sections 68 to 72 thus, have been carved out to address to, contractually, not routinary situations. The act simply address to non-gratuitous helps/implied bailment / delivery by mistake or coercion. Even if a party acts voluntarily, he need be reimbursed on the principle of assumpsit or the principle of unjust enrichment or the principle quantum meruit.

Since these Sections 68 to 72 do not expect a formal contract because of the exigencies, they are statutorily describe as of Certain relations resembling those created by contract (heading of Chapter V). The terms Quasi Contract, Implied Contract, Constructive Contract are ordinarily indiscriminately used in respect of signifying these situations, obviously due to the legal fiction created by these Sections conferring contractual compensatory benefit without there being a regular formal contract.
1.4 Quasi Contract has come to stay

Admittedly there could be many more situations beyond so provided in Sections 68 to 72; but the fact remains that these situations need be addressed.

Even eminent judges have found it difficult to accept the coinage of "Implied Contract" rather Shah J. has rightly termed Quasi Contracts or restitution as a category of law not founded upon contract or tort. The term Quasi Contract is *sui generis* belonging entirely to a different category. The obligations under such contracts have little or no affinity with a regular formal contract. Rather the description Quasi Contractual liability serves only to emphasise its remoteness from any genuine conception of contract.

Rather, quasi contract has been so classified to defy a definition whereas appreciating situation closely resembling contractual obligations – in Roman Language it is described "*obligations quasi ex contractu*" - in Roman Law it is described as "*misfits*" but "*resembling a debt*" as "*an out come of an agreement*". Justinian refers to those obligation which do not originate, properly speaking, in contract, but which, as they do not arise from a delict, seem to be quasi contractual.

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1. Law Commission of India, in their 13th Report at page 11 have commented this chapter V to be an inadequate provision for the obligation resembling those created by contract.

2. *Cotton L.J.Rhodes V. Rhodes* (1890) 44 Ch.D.94


5. Just., Inst III, tit XXVII, pr.
In America this branch of law has been recognized as law of Restitution. As formal principles of law of contract, or as principle of equity, on the failure of formal regular contracts being possible in varied situation, quasi contract have come to stay creating a special category of constructive contractual obligations independent of contract, trusts or torts.

Chapter V as ordinarily referred, as quasi contract might appear to be an anathema in a statute book of contract. But justly it is not so; it forms an integral part of the philosophy of law of contract. Quite remarkably, provisions of Chapter V have not only made the Indian Contract Act, 1872 complete; rather judicial pronouncements of English Courts, British Law Courts and Independent India Courts have made the law as quasi contract richer, luxuriant and more equitable than its English counter part. A condense questions about justification of inclusion of Chapter V (quasi contract or constructive contractual liability) in this Act have been resolved in the affirmative by judicial pronouncement. It is a matter of conscience law making that the (English) Judicature Act, 1873 (fusing jurisdiction of common law courts and Court of Chancery) and the Indian Contract Act, are contemporaneous.

Connotations & Quasi Contract:

Chapter V of the Indian Contract Act, 1872, deals with “Certain relations resembling those created by contract”. The short title itself
indicates that these relations do not create a contract between the parties, rather they do impose certain obligations of payment on equitable considerations. Therefore, the entire Chapter is designated as 'Quasi Contacts' or 'contracts implied in law' and 'constructive contracts'. Law Commission of India thus commented that it is an inadequate provision for the obligations resembling those created by contract.\textsuperscript{1}

Basically, the general concept of this Chapter and more so, its inception in the Indian Contract Act is a mixed pattern of English Law and New York Code. For example, the phrase 'standard of care' used in Section 71 and 151 has been derived from the English Law. A bailee is enjoined to exercise the standard of care as an ordinary man with due diligence. Similarly, the rights of the finder of goods has been designed on the basis of the New York Code.

Judicial pronouncement, subsequently have played an important role in interpreting the words and phrases used in the Act. Discussing on the concerned chapter the English Rule is quite different. For example, if one party has performed his part, the other party can only discharge his obligation by performing his part. But this principle is not applicable in India. Indian Law recognizes a wider filed on the subject matter of quasi contract for claims than in English Law.

The phrase quasi contract is of Roman origin. In Rome is has been explained as misfits. Roman Law recognises the quasi contracts as a resemble debt, which is an outcome of an agreement. In Roman

\textsuperscript{1} 13\textsuperscript{th} Report at p.11
Language it is "obligations quasi ex contractu" as if arising by contract. Justinian refers to "those obligations which do not originate, properly speaking, in contract, but which, as they do not arise from a delict, seem to be quasi-contractual".¹

In America, this branch of law has been styled as the "Law of Restitution".

The prefix "quasi" has been classified and used in the sense of extenuate the conflicts and is not supported by any logic. So, it has been so coined to defy a definite definition to such class of cases through judicial pronouncements.

In India, the term 'quasi' is a prefix used ordinarily to noun.² Although the things signified by the combination of quasi with the noun does not comply in strictness with the definition of the noun, it shares its qualities, falls philosophically under the same head, and is best marked by its approximation thereto.

In its dictionary meaning, it seems apparent and having some resemblance to the contract but lacking some requisites.

Quasi contracts are sui generis, entirely different category. The obligations under such contract have little or no affinity with contract. A simple illustration to such class of cases can be cited by the action to recover money paid by mistake. If a plaintiff, on an erroneous interpretation of the facts, pays to the defendant a sum of money, which he does not owe, law, no less than justice, will require the

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¹. Just. Inst. III. Tit. XXVII, pr.
². Mahendra Kumar v. Omprakash & Others, 1981 MP 190
defendant to restore it. But his obligation is manifestly not based upon consent, even in the extended meaning borne by the word in the English Law. The description ‘quasi contractual liability’ serves only to emphasise its remoteness from any genuine conception of contract.

2.1 Concept of quasi contract as developed in England & accepted in India.

The term ‘quasi-contract’ developed in England for the interest of justice and equity. The ancient writ of accounts and debts in English Law appeared to resemble to quasi-contractual claims. In Moses v. Macferlan. Mansfield, rationalized the law of quasi contract and stated:

“If the defendant be under an obligation from the ties of natural justice to refund, the law implies a debt and gives this action founded in the equity of the plaintiff’s case, as it were, under a contract. It lies for money paid by mistake, or upon a consideration, which happens to fail; or for money got through imposition (express or implied) or extortion or oppression or an undue advantage taken of the plaintiff’s situation. In on word, the gist of this kind of action is, that the defendant, upon the circumstances of the case, is obliged by the ties of natural justice and equity to refund the money.”

2. (1760) 2 Burr. 1005.
The aforesaid pronouncement by Mansfield is remarkable on the principle of natural justice and equity and does sub-serve the difficulties arising in a quasi contract. On a plain reading of Mansfield's observation it can be analysed thus, firstly, that the word 'refund' signifies money only. It is a debt to be reimbursed or recompensed as the law implies. Secondly, the word 'contract' has not been used, rather it is an obligation to refund the money in which the person has unjustly benefited or unjustly enriched. Thirdly, the phrase payment of money made by mistake does not contemplate a distinction between mistake of law or mistake of fact. So, an interpretation to the word 'mistake' should not be confined to the mistake of fact only, as it happens in the English Law. Rather, it should be extended to the mistake of law as well, as has been recognized in India. Fourthly, the word 'extortion', 'oppression', 'undue advantage' used by Mansfield should be included after the word 'coercion'. Because the unjust benefit received by a person may be under extortion or oppression or undue advantage.

The phrase 'unjust benefit' originally coined by Winfield, suggests an appropriate basis of quasi contract, which deals with the principles of unjust enrichment. The root of this phrase has been derived from the Roman maxim: Nemo debet locupletari ex eliena jactura which means (no man should grow rich out of another person's loss). Therefore, it is an obligation to pay a sum of money to another person, by way of restitution or recompense, which is imposed by law, in
justice to that other person on the occurrence of a certain state of facts.

The obligation arises independently of the consent of parties, though the state of facts on which the obligation is founded may include a void or abortive contract or may have resulted from the commission of a tort.

Under quasi contract, the only object is to recover money and hence, it is termed 'restitution'. It does not depend upon an agreement or promise, supply of necessaries, delivery of goods are essential ingredients of quasi contract. Similarly, reimbursement of money can be made when the purpose for which it was paid will not be fructified. In such cases, though there exist no contract, the defendant is bound to reimburse for the failure of consideration. Because the unjust benefit received should be reimbursed.

Mansfield, suggested that quasi contractual obligations are based upon the principles of equity, justice and good conscience and the liability to reimburse or recompense is a kind of equitable action. In his words:

"The kind of equitable action; to recover back money which ought not in justice to be kept lies... Only for money which ex oequo et bono the defendant ought to refund... it lies for money paid by mistake; or upon a consideration which happens to fail; or for money got through imposition (express or implied), or extortion or oppression; or an undue advantage taken of the plaintiff's situation, contrary to laws made for the protection of persons and those circumstances... the gist of this kind of action is that the defendant, upon the

1. *The Law of Quasi contract by John H.Munkman* at p.19
circumstances of the case, is obliged by ties of natural justice and equity to refund the money."

In *Fibrosa Soplka Ackcyjna v. Fairbairn Lawson Combe Barbour Ltd.*, Wright observed that the legal basis for an action under quasi contract was restitution and said:

"Any civilized system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that it to prevent a man from retaining the money of, or some benefit derived from, another, which it is against conscience that he should keep. Such remedies in British Law are generally different from remedies in contract or in tort, and are now recognized to fall within a third category of Common Law which has been called quasi contract or restitution."

This view of Wright was supported by Denning:

"The proper way to formulate the claim is on a request implied in law or on a claim for restitution. The conception of restitution is the prevention of unjust enrichment."

He further observed in *Nelson v. Larholt*:

"It is no longer appropriate to draw distinction between law and equity. Principles have now to be stated in the light of their combined effect. Nor it is necessary to canvass the niceties of the old terms of action. Remedies now depend on the substance of the right, not on whether they can be fitted into a particular framework. The right here is not peculiar to equity or contract or tort, but falls naturally within the important category of cases where the Court orders restitution if the justice of the case so requires."

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1. (1943) A.C.32 at p.64
3. Changing Law, Alfred Denning, p.655
4. (1948) 1 KB 339 at p.343 : (1947) 2 All. ER 751 at p.752
The British Common Law is a law developed through Courts. Common Law actions permit the redressal of so many different types of grievances but are confined to the legal boundaries. The action for money had and received was an instrument to prevent unjust enrichment. When the Courts went straight jackets, the Court of Chancery adopted equitable principle to provide relief. Ultimately, the jurisdiction of the Common Law Courts and Court of Chancery fused, and the whole field of Contract Law developed through Courts in Britain. Consequently, the concept of quasi contract developed which recognized the principle of equity justice and good conscience. Where the law lacks a remedy, equity supplies it, as it is a rule against unjust enrichment.

2.2 English Legal History on Quasi-Contract: Common Law and Equity

2.2.1. English Legal History reveals that in the twelfth century, contract law was of very minor importance in England. Disputes relating to land were decided by the King’s officers while contract cases were left to the local Courts and Church Courts. The King’s Court subsequently intervened to decide the contract cases due to its complex circumstances and recognized the sanctity of an agreement and gave protection for their enforcement. But such writ of covenant could not continue for a long period due to mandatory provision of sealing in the document. Further, if it was a sum of money due only a writ on debt could be restored to while ‘covenant’ was restricted to claims of unliquidated damages.

\[1\] Scott, in Morgan v. Ascheroff, (1938) 1 Ks. 49 at p.74
In the thirteenth century the Writ of account emerged in Common Law. It was used against a guardian for on account of his stewardship; or against a bailiff or estate agent; or against an agent who has received money on behalf of his principal, by a process of construction the same writ was used in later years for an action to recover money, which had been paid for a particular purpose but not used for that purpose. It was also used for money received by defendant for plaintiff's use. The defendant in such a case was deemed as a bailiff or receiver though not appointed as such. Later in 16th century the concept of writ was used to recover money paid by mistake.

2.2.2. The writ of account was of great significance for commercial growth of English Society. But due to absence of moral and ethical values, it was confined for the application of certain contracts. In 15th and 16th centuries, moral consideration was added to the remedy of writ of account. When a promisor by his deceit failed to carry out his promise and caused injury to the promise is immoral, hence the promisee can recover damages for breach of contract.

2.2.3. To the Common Law writ, Court of Chancery stepped to think of the moral theory and the action in Assumpsit got successfully launched which made Mansfield to observe in Atkins v. Hill. “It is a promise made upon a good and valuable consideration which in all cases is sufficient ground to support an action. It is so in cases of obligations which would otherwise only bind a man's conscience and which, without such promise, he could not be compelled to pay.”

3. Atkins v. Hill (1775) 1 coup. 248 : 288
In Hawkes v. Sanders, Mansfield further observed:

“Where a man is under a moral obligation which no Court of law or equity can enforce any promises, the honesty and rectitude of the thing is consideration”.

2.2.4. The theory of Assumpsit got subsequently extended to cases where existed an implied undertaking to pay a ‘reasonable sum’, Sir Sheppard, clearly pronounced that if one bid me do work for him and do not promise anything for it, the law implied a promise and I may sue for the wages.

2.2.5. Finally the interpretation to the word Assumpsit was extended to cases where no contract existed. For example, in the recovery of judgement debts and sums imposed by statute or bye law or custom, Court termed to the action as quasi ex contractu. Another example arises when the plaint was for recovery of money had and received from the defendant to his use which includes money paid by mistake, or received by the defendant on a consideration which had wholly failed. In both the instances, the liability did not arise on any consent. So, the term quasi contract came to be used. Though this was tortious in origin, it became a contractual remedy out of practical necessity.

2.2.6. In the 15th century it was required that Equity jurisdiction be invoked to circumvent the rigours and technicalities of the Common Law. In the 17th and 18th Century the Equity Courts declined to assist those persons who enter into the contract dishonestly; contrarily there remained no scope to prevent frauds on innocent persons by manipulated oral evidence.

1. Hawkes v. Sanders (1782) 1 coup. 289
2.2.7 Later the word 'implied' was used in a contract, when the terms were not specifically stated and hence it was designated as 'implied contract'. It is a kind of action in Common Law in which all rights would be enforced by the contractual actions of assumpsit, covenant and debt. Some of these rights were created not by any primose or mutual assent of the parties but were imposed by law on the defendant irrespective of and sometime violation of his intention. Such obligations were called implied contracts or quasi contracts.¹ Therefore quasi contractual obligations are imposed by law for the purpose of giving justice without reference to the intention of the parties. As the law imposes an obligation for that justice requires, the only limit is that the obligation in question more closely resemble those created by contract than those created by tort.

2.2.8 The obligations under quasi contract were often confined with the payment of money only, which was enforceable under Common Law Procedure. It is obvious that a true contract cannot exist unless there is a manifestation of assent to the making of a promise. Under a quasi contract, however, these obligations are imposed by law without reference to the mutual assent and enforceable only in special assumpsit as if they were actual contracts. Thus accuracy of reasoning requires a recognition of such obligations under quasi contract. Quasi contractual obligations are normally based on the principle of unjust enrichment or unjust benefit.²

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2. *Union of India v. Bhawan Industries*, AIR 1957 All. 799 at p.801
Section 68 Introductorily:

3.1 The section provides:

"Claim for necessaries supplied to person incapable of contracting, or on his account - If a person, incapable of entering into a contract, or any one whom he is legally bound to support is supplied by another person with a necessaries suited by his condition in his life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person".

3.1.1 It is a settled principle of law that a contract made by a minor is void and unenforceable. He cannot even confirm it on attaining majority. But Section 68 of the Indian Contract Act, 1872 is an exception to this general principle. So, the intention behind Section 68 into protect the incapable persons such as the minors or lunatics, to enable to thrive in life and not suffer for want of necessaries.

Section 68 clearly indicates, the intention of the person supplying the necessaries for which he should be repaid.1 If necessaries supplied out of mere kindness and without any intention, a claim against the estate cannot be entertained. So, where necessaries have been supplied to and for the minor, reimbursement can be made from the estate of the minor. The obligation here are certainly not contractual, rather resembles to those created by contract.2 To invoke the aid of Section 68, the person must have supplied necessaries to the incompetent person or to some one to whom such person is bound to support.

Minors, as because they have not attained the age of understanding, are declared in law to be persons incompetent to contract. Valid assent

1. Kunhayilal v. Inderchandelji, AIR 1947 Nag. 84
2. Ten Bing Taim v. Collector of Bombay, AIR 1946 Bom.216
can only be given by a person who has attained the age of majority and is of sound mind. In India, there is no disability attached to a female, whether a Hindu or a Mohammadan, married or unmarried, to preclude her from entering into a contract, either on the ground of sex or conversion.\(^1\)

3.1.2. Supply of necessaries to a minor is a question of fact and law. In order to render an infant's contract for necessaries enforceable, the plaintiff must prove the contract was for goods reasonably necessary for supporting a person in his position and the infant had not already a sufficient supply of these necessaries.

In England, the term 'necessaries' means goods suitable to the condition in life of such infant and to his actual requirements at the time of sale and delivery.\(^2\) Thus, 'necessaries' are those things which an infant actually needs. The standard therefore, varies according to the class of society to which the infant belongs.

In India, the term 'necessaries' however, is not confined to the minor himself, but extends to necessaries provided for the members of his family. It also includes services rendered either to a minor personally or to the benefit of his estate. Thus, Section 68 creates a statutory claim against the property of the person who is incapable of entering into a contract and has been supplied with necessaries to his conditions in life.\(^3\) The person who supplies the necessaries must do it with the mind of creditor. If it is made of mere kindness and without any intention of constituting a debt, the minor's estate cannot be liable.\(^4\)

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1. *Kanhaylal v. Indarchanji*, AIR 1947 Nag 84
3. *ILR (1976) All. 658*
As 'necessaries' depends upon the facts and circumstances of each case, it should be marked that the same thing may be necessary to one person under certain circumstances and unnecessary to another person under other circumstances. The judicial interpretation to the term 'necessaries' used under Section 68, recognizes that the necessaries should be suited to the minor’s condition in life with actual requirements.

3.1.3 Under English Law, the liability of an infant for goods that are necessary arises with his position and station in life. Where the infant received the benefit, an obligation is imposed under law and hence, he is liable for repayment. The law implies the promise to pay because of the necessity of his situation. So, its real foundation is an obligation which the law imposes on the infant to make a fair payment in respect of needs satisfied. In other words, the obligation arises from the things supplied and not contract. An infant is liable when he is able to understand the nature of the contract.

Under English Law, a contract for necessaries can be executed from both sides. Under the principle, an infant is liable quasi contractually for necessaries. He can avoid a contract to pay for necessaries. He can also rescind and recover for money paid to any excess reasonable value. When he entered into a contract, he cannot escape from the liability imposed by the law. Thus, supply of necessaries must be a

1. Kanwarlal v. Surajmal, AIR 1963 MP 58; See also Sadasheo Balaji v. Hiralal Ramgopal, AIR 1938 Nag. 68
4. Nash v. Inman, (1908) 2Kb 1 at p.8
5. Roberts v. Gray, (1913) 1 KB 520.
necessary at the time of their delivery. If the infant had an adequate supply of necessaries from other sources, it is fatal to the claim of the other.¹

In India, the liability of a minor for supply of necessaries is confined to his estate only.² It is again essential that the necessaries must be suitable to the condition in life and actual requirement.

3.1.4 Section 68 is an exception to the general rule for the minors or the incapable persons to free them from improvident contract. Any contract with a minor is voidable. This is a privilege rather than a disability. A minor can enforce a contract against an adult, but he can wriggle out of it by pleading infancy. He is only liable in quasi contract for enrichment of necessaries supplied. Thus, under Section 68; any transaction with a minor for supply of necessaries is a quasi contractual and hence, a reimbursement can be claimed from the estate of a minor.³

Insanity is another aspect of incapacity to contract like that of a minor and hence liable for supply of necessaries to such persons. To invoke the aid of this section, the person who had supplied the necessaries must have acted in good faith and fair dealing. Position of a drunken person is also similar to that of an insane person and the person who supplied the necessaries is similarly entitled to reimbursement.⁴

3.1.5 In Leslie v. Sheil², the Court held that one can not make an infant liable for the breach of contract by changing the form of action to

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¹ Nash v. Inman, (1908) 2 KB 1.
² Bhawal Sahu v. Bajnath, 35 Cal. 32; See also AIR 1936 All. 172.
³ Padma Vithoba Chakyaya v. Md. Multani, AIR 1963, SC 73; See also Ramchandra V. Hari, AIR 1936 Nag 12.
⁴ Simson's Law of Contract, p.295
⁵ (1914) 3 KB at p.612
one *ex delicto*,[1] this protection is to be used as a shield but not as a sword. An infant who has obtained the benefit, is liable in tort, but not on an improvident contract.\(^2\)

Where an infant obtained an advantage by fairly stating himself to be of age, equity required him to restore his ill-gotten gains or to release the party deceived from obligations or acts in law induced by the fraud. But equity would require to stop short of enforcing against him a contractual obligation entered into while he was an infant, even by means of his fraud.

Under English law, the liability of an infant arises, when the necessaries supplied, considering to his position and station in life. Normally, the liability arises from the promise of the infant; and consequently, the obligation to reimburse is one of quasi contractual in nature. He is liable to the extent of his promise subject to the value of necessaries.\(^3\) Where the necessaries supplied are on the credit of someone other than the infant, the infant of course is not liable.

In India, the equity principle propounded in *Leslie's* case largely holds the field. Presently, the principle is well recognized and granting of equitable reliefs have been made more comprehensive than in England. The scope and the use of this equitable doctrine contained in Section 68 is wider than the scope provided in the English Law.

3.1.6. The term 'obligation' in Section 68 is wide enough in its juristic sense covering duties arising either *ex contracting* or *ex delicto*. The relief under this section does not depend on any contract but is

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1. *Burnard v. Haggis*, 32 LJCP 189
2. *Jennings v. Rundall*, 3 TR 335
independent of it. It is not necessary that there should be any agreement between the parties. Section 68 creates a statutory claim against the property of the person who is incapable of entering into a contract and has been supplied with necessaries suited to his condition in life.¹

Quasi contractual obligations are obligations imposed by law. It is an exceptional kind of contract by which one party is bound to pay money in consideration of something done or suffered by the other party and the Court comes forward to help such persons on the ground of equity. When a person receives benefit, he must make compensation to the other. Though no contract is made here by the parties law makes out a contract for them and recognizes quasi-contractual obligations.

In India, a refund by a minor arises only where there is a fraudulent misrepresentation as to the age of contracting parties at the time of contract.² If there is no fraud, there can be no refund.³ In case of a transfer of immovable property by or to the minor, restitution can be ordered and the minor is liable to refund the consideration. Section 65 can not be invoked to order restitution as it appears *obiter dictum.*⁴ Its application should be confined to cases where the person dealing with the minor had prior knowledge of the minority. Restitution of benefit can be ordered where a fraud is made out.⁵ But an order of restitution can not be made against the minor when the agreement is not enforceable at law.⁶

¹. Viswanath v. Shiam Krishna, (1936) 34 All. L.J. 1120
³. Vaikuntharama Pelloi v. Athimoolam Chettiar, ILR 38 Mad.1071 at p.1074
⁴. Mohori Bibi v. Dharmodas Ghose, ILR 30 Cal.539 at p.545
⁶. Appasami v. Narayanaswami, AIR 1930 Mad.945 at p.952, 954
Thus, in all cases, it is required to be seen that the minor should not be deprived of the advantage under law. The liability to refund the benefit received by him does not arise *ex contractu* but on equitable consideration and the other party cannot in any event claim interest on the loan, because the liability to pay interest would arise on one of the stipulation of the contract.\(^1\)

3.2. Section 69 Introductory:

3.2.1. The section provides:

"Reimbursement of person paying money due by another in payment of which he is interested - A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other"\(^1\)

3.2.2. Section 69 of the Indian Contract Act, 1872, postulates another class of *quasi contractual* obligations. The Section provides that where a person has paid money to which another person in bound by law to pay has to be compensated. It is further necessary that the person must be interested in the payment of money and this interest may create some loss or to protect some interest which ultimately a loss to the person.\(^2\) The section covers where a person who is bound by law to make payment is a person who is interested in the payment. Thus, the payment made by a person must be in good faith belief honestly.\(^3\)

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1. *Appasami v. Narayanaswami*, AIR 1930 Mad. 945 at p.952, 954
The word 'reimbursement' used in Section 69 is confined with the person who is interested in the payment and hence bound by law to pay. In contrast, under Section 70 a person is bound to make compensation if he has enjoyed the benefit. So, in both the section a compelling situation arises for which a person is ultimately liable to make some payment.

The principle laid under Section 69 and 70 is that if a person is compelled to make some payment by the legal default of another, he is entitled to recover from the person by whose default the payment had to be made, the sum so paid.

Section 69 is applicable where one person is bound by law to pay money and another is interested in the payment. Here, the 'interest' referred confers a 'pecuniary interest'. The person making the payment need not necessarily be compelled to pay it enough, if he was interested in the payment.

3.2.3 In normal circumstances, parties are not allowed to claim reimbursement in respect of money expended for others without a request under English Law, this request derives a liability to pay. It may be express or implied. It is an obligation to recover a reasonable compensation incurred by him in the performance of that duty which he ought to have discharged. On failure, the law obliges him to recoup the reasonable expenses of the person who performs it for him, as money paid to his use.2

1 Vaikuntham Ayyangar v. Kaliparan Ayyangar, (1900) ILR 32 Mad.512.
2 Keener on quasi contract, PP.314-344.
In India, mere existence of an interest can invoke the aid of Section 69. Whereas, the English Law recognises 'for money had and received for the benefit'. Thus, in both laws, this obligation, which confers a liability to reimburse being an aspect of constructive contractual, it is consistent with the general principle of equity and good conscience. Those who pay legitimate demands which they are bound in some way or other to meet and have had the benefit of other people's money advanced to them for that purpose, shall not retain that benefit so as in substance, to make those other people pay their debts.\(^1\)

The phrase 'bound by law to pay' used in Section 69 contemplates a liability to the property also. It does not limit to the personal liability. Rather, it extends to all liabilities to pay for which persons are indirectly liable. This liability can be imposed upon the land to which they are the owners.\(^2\)

The word 'benefit' is quite synonym to the word 'advantage', which implies any loss or gain. But Section 69 is concerned only with the money paid in an impugned sale ended in a profit or loss, is of no consequences to a third person. He can neither claim any benefit nor be bound by the loss resulting there from.\(^3\) Similarly, if a person seeks the consequences of a voidable contract, he seeks equity. Therefore, he must do equity in reimbursing the money as he has spent the money for his own benefit.\(^4\)

3.2.4. The principle of equity in English Common Law has influenced Indian Law remarkably even prior to the enforcement of the Indian Contract

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2. *Nandan Sahu v. Fatch Bahadur Singh*, AIR 1940 All : 104
Act, 1872. Courts in India have shown great inclination to pronounce decisions basing on the principles of equity. Law of quasi-contract is an outcome of such approach.

Quasi-contractual obligations are enforceable on equitable principles. Both in Roman Law and English Law, there are certain obligations which are not in truth contractual, but the law treats as if they were. They are contractual in law even though formally not so. The Romans termed them obligations quasi ex contractu, while English lawyers called them quasi contracts or implied contracts. It is a fictitious extension of the sphere of contract to cover obligations, which do not in reality fall within it. Most of these quasi contracts or obligations quasi ex contractu fall in either of the two following classes:

(i) All debts in general are contractual in origin and most debts are obligations ex contractu in fact, but some have a different source. The liability of a judgment debtor to the judgment creditor is held to be contractual. A judgment creates a debt, although it is non-contractual, yet the law treats it as falling within the sphere of contract. Similarly where a person pays money to another person under a mistake, the other person is liable to pay back the money. Here although there is no promise by both the parties to pay the money, yet law implies a promise.

(ii) All these cases in which a person injured by a tort is allowed by the law to waive the tort and sue in contract instead. Such obligation being in truth delictal are allowed to be treated as contractual at the plaintiff’s option. Thus, if a person obtains money from another person by fraudulent misappropriation, the other person may sue him either in tort for damages for deceit, or may waive the tort and sue a fictitious contract for the return money.
The English Common Law appears to have applied the provisions contained in Section 69 of the Indian Contract Act, 1872. Section 69 clearly speaks actions 'for money payable by the defendant for money paid by the plaintiff for the defendant at his request'. This request may be express or implied. It is implied when the law compels the plaintiff to pay a sum, which the defendant in legally bound to pay. Therefore, it is consistent with the general principle of equity, that those who pay legitimate demands which they are bound in someway or other to meet and have had the benefit of other people's money advanced to them for that purpose, shall not retain that benefit so as in substance, to make other people pay their debts.

Equity in its broad and popular sense signifies equality, justice and fairness. A man shall do unto others as he would be done by. It is synonym for natural justice. It is, however, neither possible nor convenient for equity to cover the whole field of natural justice. A large portion of natural justice cannot be judicially enforced. Again, it does not also include nearly that portion of natural justice, which is capable of being enforced by legal sanctions and administered by legal tribunals. The greater part of natural justice is embodied in the rules of common law and in the statute law. Equity may then be defined, in the words of Snell, as a portion of natural justice, which although of a nature suitable for judicial enforcement was for historical reasons not enforced by the Common law Courts an omission, which was supplied by the Court of Chancery. By the enactment of Judicature

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1. Paunal v. Ferrand, (1827) 6 B & C 439; see also 33 Mad.189.
Act, 1873, however, the Courts of common law and Chancery were merged into one Supreme Court of Judicature where the same judges began to administer both law and equity. In case of conflict, it has been provided that the rules of equity shall prevail over the rules of common law. Equity, in England therefore, played the role of an addendum to the Common Law.

3.2.6. In India, the provisions contained in Section 69 of the Contract Act, 1872, rests on the foundation of the principle of justice, equity and good conscience. It does not arise out of a contract, rather an implied promise exist for which parties are jointly and severally liable. Where several persons are indebted and one makes the payment, in conscience, he puts the party paying the debt upon the same footing with those who are equally bound. Therefore, a proportionate liability can be imposed according as the provision of this section, which is based on the basic principle of equity and equality. Indian Courts have now widely adopted this principle of equality and equity while deciding quasi-contractual obligations.

3.3. Section 70 Introductorily:

3.3.1. The section provides -

“Obligation of person enjoying benefit of non-gratuitous act. - 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 to restore the thing so done or delivered”. 
3.3.2 | Section 70 deals with 'certain relations resembling those created by contract'. It clearly speaks 'where a person lawfully does any thing 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 to restore the thing so done or delivered.' Thus, a claim for compensation is made by one person against another depends on the fact that something must be done by a party for another and the said work so done should be voluntarily accepted by the other party. An obligation derives here is without any reference to mutual ascent of the parties and this obligation is enforceable only in special assumpsit, as if it is the result of an actual contract. Where obligation is not based on any mutual consent of the parties, it has to be found out whether that obligation can be inferred from an express contract between the parties. Therefore, the section in applicable even while there exists an express or implied contract and also where a contract becomes unenforceable due to non-confirmity with certain statutory provision.

In state of West Bengal v. B.K. Mandal, the Supreme Court has postulated three conditions to invoke the aid of this section.

(a) A person should lawfully do something for another person or deliver something to him.

(b) In doing the said thing or delivering the said thing, he must not intend to act gratuitously.

(c) The other person for whom something is done or to whom something is delivered must enjoy the benefit thereof.

2. State of West Bengal v. B.K. Mandal, AIR 1962 S.C. 779
3. Ibid..
Thus the application of Section 70 is made to those cases where irrespective of any contract or agreement, a person lawfully does something for another persons or delivers anything to him, which was never meant to be gratuitous and the other person has enjoyed the benefit, the latter is bound to make compensation to the former.

3.3.3. Section 70 embodies the principle of *quantum meruit*. The principle of *quantum meruit* is often applied where for some technical reason a contract is held to be invalid. Under such circumstances an implied contract is assumed by which a person for whom the work is to be done contracts to pay the person who does the work reasonably for the work done. But no implied contract can be inferred where there exists an express contract.

In England money paid at the defendant’s request is the commonest form of quasi-contract actionable. It is immaterial whether the defendant is relived from the liability by the payment or not. It is necessary that the money sought to be recovered should have been paid to the use of the defendant.

3.3.4. Under English Law, past consideration gives rise to no legal obligation. The defendant’s express or implied request to the plaintiff to pay the money for his use, should be shown by the plaintiff. Where no request exist, he must show that the payment was made under circumstances from which a request would be implied, and it often becomes a matter of some nicety to determine when such circumstances really exist.

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3. Sleigh v. Sleigh, (1850) 5 Exch. 514, 516
4. Stockes v. Lewis, (1750) ER ITR 20; Liggott (Liverpool) Ltd. v. Barelays Bank, (1928) 1 KB 48
Indian law does not recognize the request of the defendant but past consideration is perfectly valid. It is concerned only whether the plaintiff has lawfully done anything for the defendant, or delivering anything to him. If the plaintiff has lawfully done something for the defendant and if the defendant had the benefit of it and if it was the plaintiff’s intention not to do it gratuitously, then a liability arises on the part of the defendant to reimburse.

3.3.5. The foundation for the claim made under Section 70 is not a contract express or implied. The liability is quasi contractual. It may resemble as being that of contract but in reality it does not rest upon contractual obligation. It is immaterial therefore, that there is no contract executed in such a case or that the alleged contract is found *ab initio void* or rendered void subsequently for any reason. Conversely, therefore, the person who seeks restitution has also a duty to account to the defendant for what he has received in the transaction, which his right arises.

The liability under Section 70 exists independent of any agreement, and rests upon the equitable doctrine of unjust enrichment. If services are rendered or goods supplied lawfully and not gratuitously, the party at the receiving end is required by law to recompense the benefit so received. The obligation rests upon law of natural justice and equity.

3.3.6. Section 70 provides theoretical foundation for the law governing restitution. The principle of restitution under Section 70 is not primarily based on loss suffered by the plaintiff but on the benefit.

2. Bihar Nurses Registration Council v. Harendra Prasad Sinha, 1991(2) BLJR 1222 at p.1226
which is enjoyed by the defendant at the cost of the plaintiff. Therefore, one cannot unjustly enrich himself, by retaining anything delivered to him which does not belong to him and he must return it to the person from whom he has received it.

3.4. Section 71 introductorily:

3.4.1. The Section provides -

"Responsibility of a finder of goods - A person who finds goods belonging to another and takes them into his custody, is subject to the same responsibility as a bailee".

3.4.2. Section 71 creates another class of quasi contractual obligations, If a person finds goods of another and takes them into his custody is in the position of a bailee with all responsibility. Here, though no contract exists between the parties yet an obligation alongwith a responsibility arises in the eyes of law to keep the goods in a safe custody. Therefore in each case, it is required to prove the possession of the goods and then the liability. When a finder of goods accept the responsibility of the goods, he is the owner of the goods and hence stands on the same positions as that of a bailee.

As the position of the finder of goods is similar to that of a bailee, Section 71 extends an obligation on the part of the person who finds lost goods and takes them into his custody, such person becomes in effect a bailee as regards the duties incumbent on him. Having assumed custody he must take care of the goods as a man of ordinary

prudence. If he makes use of the goods, he may become liable to pay compensation for any damage to the goods from or during such use. He should not also mix the goods found by him with his own goods. He can retain the goods until he receives such compensation.

Section 169 however, authorizes a finder of goods to sell the goods found by him. But if he convert it, he is liable under Section 403 I.P.C. (Section 403 of the Indian Penal Code has fixed the punishment on a person with Criminal misappropriation of property if a finder of goods converts them to his own use dishonestly).

English Law recognizes the liability of a finder of goods with that of a bailee as in India.

3.4.3. Section 151 of the Indian Contract Act, 1872 defines the extent of care to be taken by a bailee. The bailee must take reasonable care of the entrusted goods as a man of ordinary prudence. So Section 151 provides an obligation as well as a liability of a bailee to take a reasonable care to the goods entrusted to him. It declares a uniform standard of care without recognizing any distinction between gratuitous and non-gratuitous bailment. Hence, the standard of care depends upon the circumstances of each case.

Section 151 provides a rule general to all kinds of bailment whether gratuitous or for hire. The duty of a bailee for hire is not greater than the duty of a gratuitous bailee. Both are to take the same care of goods entrusted to them as a reasonably prudent and careful man may fairly be expected to take of his own property of the same bulk,

1. Section 151 and 152
2. Section 151
3. Section 156, 157 and 168
4. Secretary of State v. Ramadhan Das Dwarka Das, AIR 1934 Cal.151
quality and value. A sanctioning right has been allowed to the bailor to claim damages from the bailee for wrongful detention of the goods bailed or for their loss, destruction, deterioration, if the bailee will not take reasonable care of the goods. Therefore, the obligation of the bailee starts as soon as the bailee accepts delivery or receives property for a certain purpose.

3.4.4. Section 72 of the Railways Act also provides a liability of the goods consigned to the Railways which is similar to the position of a bailee. In this case also the obligation of the bailee starts when he accepts delivery or receives the goods for a certain purpose and hence liable for any loss or damage caused to the goods. The bailee should take a reasonable to the bailed goods as a man of ordinary prudence. So, the possession is the essence of a bailment which arises even when the owner of the goods has not consented to their possession by the bailee.

3.4.5. Where a bailee has taken reasonable care and diligence to the bailed goods he is exempted from the liability. Section 152 of the contract Act postulates the degree of care. When the goods entrusted to the bailee are lost or damaged, there is an initial presumption of negligence or failure to take reasonable care by the bailee. The care required by a bailee under Section 151 is a finding of fact only, and hence, it cannot be opened to question in reversion.

1. Secretary of State v. Ramadhan Das Dwarka Das, AIR 1934 Cal. 151
3. The Dhanlakshmi Bank Ltd. v. K.K.Josh @ Josh Mohan and others, AIR 1991 Ker. 388
The standard of care required by a bailee is that of a man of ordinary prudence, who would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed. Where the care required under Section 151 is not proved, it is no defence for a bailee. A gratuitous bailee is also bound to take the same care as a prudent man would take in respect of his own goods.

Misdelivery is also a loss under certain circumstances and therefore, the defendants are held liable for the cost of the goods which the plaintiff had lost. But where misdelivery has taken place in spite of due care and caution, the defendants would not be responsible or the resulting loss to the plaintiff. The application of Section 151 for claiming damages by the plaintiff to take care may succeed in discharging his onus in two ways.

(a) He may show that the defendant has failed to place before the Court all the materials available to him, as required under Section 106 of the Evidence Act, and ask the Court to presume that if produced such materials would have gone against the defendant.

(b) He may also show, on such materials as have been produced by the defendant, that he has not taken as much care as is required of him under Section 151 of the Contract Act.

Thus the above two conditions are essential to establish whether the bailee has used all reasonable care and diligence to the goods bailed to him.

3.4.6. In case of a sudden emergency, the standard of care is different from the ordinary circumstances. Where the damage is caused

2. Ibid., Governor General in Council v. Kaliram, AIR, 1948, Pat.345; AIR 1957 Cat.573
unprecedentedly, it can not be attributed to any negligence. In law, the loss being the effect of vis major and hence compensation cannot be awarded.\(^1\) If a man who encounters a sudden emergency does something, which he might reasonably think under these circumstances, he should be held liable for negligence.\(^4\)

The measure of damages to the property is the price of the goods. The word 'loss' appears in the sense of something that happens to the goods as distinct from any loss or injury sustained by the owner. Therefore, the bailee in an emergency should act in a particular manner like a man of ordinary prudence under similar circumstances. Otherwise, he will be saddled with liability. Moreover, it is a question of fact and circumstances in each case for determining whether proper care has been taken or not.

English Law postulates different grades of care to different kinds of bailment whether gratuitous or for reward.\(^3\) In a gratuitous bailment, the bailee is liable for loss of or damage to, goods only if he is guilty of gross negligence.

The standard of care expected of a paid bailee has been expressed in almost similar terms. The degree of negligence must be measured by the apparent value of the article. But if an involuntary bailee, without negligence, does something, which results in loss of the property, he will not be liable for conversion.\(^4\)

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A gratuitous bailee is a bailee for reward only and his liability comes only at his gross negligence. In case of mandate, a reasonable care has enjoined, while in deposit, liability existed only for gross negligence. So, a gratuitous bailment is for the benefit of the bailee and the bailment for valuable consideration may be received either by the bailee or for the bailor. Hence, a standard of care is required and the bailee must take reasonable care in a bailment whether gratuitous or for reward, according to the circumstances of a particular case.

In India, the pronouncement in Hougland's case continues to be the governing precedent. An uniform standard of care has been provided under Section 151 in all cases of bailment. A degree of care has been provided by a bailee like a man of ordinary prudence. If the care devoted by the bailee falls below the standard, he will be liable for the loss or damage to the goods bailed.

So, the section is concerned only with the scope and extent of care to be taken by a bailee. It has not provided any degree of care and negligence. It declares a uniform standard of care without recognizing any distinction between gratuitous and non-gratuitous bailments.

Section 152, however, provides that in the absence of a special contract, the bailee is not responsible for any loss, destruction or deterioration of the things bailed, he has to exhibit the standard of care as provided in Section 151. Therefore, by a special contract, the bailee can enlarge his liability. It the bailer requires a complete

1. *Shiells v. Blackburne*, 1 HBI 158 (Mandate) and III ER 99 (Deposit).
2. (1703) 2 Lord Raym 909, 918, *Cogss v. Bernard*.
protection, he has to insure the goods. If the bailee took reasonable care, he is not liable for any loss, destruction or deterioration to the things bailed. ¹

The House of Lord ² has interpreted the duty of a bailee taking reasonable care by two directions;

(a) The duty to take all reasonable precaution to obviate the risks, which may be reasonably apprehended.

(b) The duty to take all proper measures for the protection of the goods when such risks are imminent or had actually happened.

It is quite synonymous to the words used in Section 151 of the Indian Contract Act, 1872. So, a standard care must be taken by the bailee like a prudent man. The more dangerous the act, the greater is the care.³ The standard of care being imposed on the bailee, an obligation implies, for which he is bound to use due care and diligence in keeping and preserving the things entrusted to him.

3.5. Section 72 introductorily:

3.5.1. The section provides:

"Liability of a person to whom money is paid, or things delivered by mistake or under coercion - A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it".

3.5.2. Section 72 of the Indian Contract Act, 1872, provides another category of quasi contractual obligations. It contemplates only those cases

¹ Volkart Brothers v. vettivelu, (1887) 11 Mad.459.
² Brabant & Co. v. The King, (1875) AC 632 at p.640.
³ Calcutta Credit Corporation Ltd. v. Prince Peter, AIR 1964 Cal. 374, 379.
where money is paid under a belief that it is legally due and this belief is mistaken. It is either under a mistake of law or of fact that the money is paid. The section does not speak of a contract void or invalid. Even if there is a valid contract but a payment is made on a misconstruction of one of its terms under a misunderstanding or with a mistaken belief, Section 72 will come for rescue. So, the person entitled to recover must have acted upon a mistake, whether of fact or of law.

3.5.3. Section 21 of the Contract Act, provides that if a mistake of law has been the basis of formation of contract, that contract will not be voidable for that reason. Section 22 makes a similar provision in case of a contract made under mistake as to a matter of fact. So, if any payment is made either under Section 21 or under Section 22, it can not be said that the payment was made under mistake of law or fact. It was paid because it was due under a valid contract. If it had not been paid, the payment could have been enforced. Therefore, both the section make a distinction from Section 72, but it is only with reference to the formation of a contract. Section can be invoked when it is established that the payment made through mistake was not in fact due. It is immaterial whether there was a contract between the parties under which some other sum was due.

3.5.4. Under English Law, payment made under a mistake must be one of fact but not of law. So, it is sometimes difficult to draw a distinction and for this reason this rule has been criticised, but still it is the law.

2. Kaju Colleries Ltd. v. Jharkhand Mines Ltd.; AIR 1967 Pat.72 at pp.73, 74
Where money is paid under the influence of a mistake, there is upon the supposition that a specific fact is true which would entitle the other to the money but which fact is untrue; and the money would not have been paid if it had been known to the payer that the fact was untrue, an action will lie to recover it back. It is against conscience to retain it, though a demand may be necessary in those cases in which the party receiving may have been ignorant of the mistake.¹

3.5.5. Quasi contractual remedies arise when there a total failure of consideration. This remedies is not available if failure of passing consideration is partial. Where one of the parties has paid money in the performance of his part, but the other party fails to do his part, the former has an option either to sue the other for the breach of contract or to treat the contract as at an end and he may claim to recover back his money under quasi contract. So, the Court has to see whether the party relying on such failure has received any part of the consideration or is it a total failure of consideration.² The same principle also applies to cases of hire purchase and the buyer will have to return them to the true owner if total failure of consideration is establish.³

Thus, the mistake must be as to the existence of an obligation and not merely as to some collateral matter which may form a motive for the payment. Money paid in fulfillment of a natural obligation is not recoverable. Repayment of a time barred debt is an example of this nature. The mistake under which money has been paid may be one of

2. Films Rover International v. Cannon Film Sales, Financial Times, June 10, 1988 C.A.
law or fact in India. In England, however, it is necessary that it should be one of fact only.

3.5.6] The term ‘mistake’ has been used without any qualification or limitation whatsoever. It comprises within its scope a mistake of law as well as a mistake of fact. Therein no conflict of opinion to the term ‘mistake’ under Section 72 and Section 21 and 22 of the Indian Contract Act. The principle enunciated is that if one party under a mistake whether of fact or of law, pays to another party money which is not due by contract or otherwise, that must be repaid. The mistake lies in misconception that the money paid was due when in fact it was not due and that mistake, if established, entitles the party to recover it back.

3.5.7] A payment under coercion has to be treated in the same way for the purpose of a claim to refund as a payment under a mistake. A payment under a mistake of law may be questioned only when the mistake discovered but a person who is under no misapprehension as to his legal rights and complains about the illegality or ultra vires nature of the order passed against him can immediately after payment formulate his cause of action as one of payment under coercion.

The word ‘coercion’ under Section 72 has to be interpreted in its general and ordinary sense as under English law and its meaning is not controlled by the definition used in Section 15. The definition under Section 15 is expressly inserted for the special object of applying

to Section 14 that it is to define a valid agreement that the consent to an agreement should not have been extorted by 'coercion'. This limited concept of 'coercion' is not the exact interpretation as used in Section 72. It is far wider in scope and meaning.\(^1\) Thus, money paid under pressure of circumstances, in which the party paying is interpreted, may be recovered even though 'coercion' is not established as defined in Section 15. Similarly, a transaction signed by a person while under definition at a police station was held to be the result of 'coercion'.\(^2\)

Therefore, the word 'coercion' used in Section 72 is to be interpreted in the ordinary sense as it includes every kind of compulsion even if it does not measure up to the definition contained in Section 15. It means, doing of a wrongful act producing liability by way of restitution. This liability is absolute and does not come to an end if person compelling payment parts with amount received by him.\(^3\) The word 'coercion' in Section 72 has been used in the general sense as 'under pressure' as so accepted in English language. In English law such coerced payments are called payments made involuntarily, that is, without free consent.

3.5.8. The principle of equity or rule against unjust enrichment has been imbedded into the law of contract with its full import, through Section 72 of the Indian Contract Act, 1872.\(^4\) The terminology of equitable restitution has been fully developed by the Indian judiciary.

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\(^1\) Kanhaylal v. National Bank of India Ltd., 40 IA 56.
In essence, an equitable restitution arises where money is paid or anything is delivered by mistake or under coercion. To claim for restitution, it is essential to plead and prove the loss or injury. If a person failed to prove, he is not entitled to the equitable relief as provided under Section 72."

Therefore, the section contains the doctrine of equitable restitution. The money paid by mistake or under compulsion can be recovered only in cases where the rights of the payee in relation to third parties are not prejudicially affected."

Normally, law implies an obligation to repay the money, which is an unjust benefit. So, under this contractual obligation, a person cannot be permitted to enrich himself at the expenses of other but is required to make restitution of benefits received."

In other words, a person who is unjustly enriched must disgorge or vomit it out.

The principle of unjust enrichment requires, firstly, that the defendant has been enriched on receipt of a benefit, secondly, that this enrichment in at the expenses of the plaintiff and thirdly, that the retention of such enrichment be unjust. This justifies restitution. Enrichment may take the form of direct advantage to the recipient’s wealth by receipt of money, or indirect one where inevitable expense has been saved.

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Chapter 5th of the Act – Constructive contractual obligations

Chapter V of the Indian Contract Act, 1872, deals with human relations, which closely resemble contractual obligations, but fall far short of a formal contract.

Section 68 deals with claims for necessaries supplied to persons incapable of contracting, or on their account. Section 69 deals with reimbursement to a person paying money due by another in payment of which he is interested. Section 70 deals with obligations of persons enjoying benefits of non-gratuitous act, Section 71 deals with responsibilities of finders of goods. Section 72 deals with liability of a person to whom money is paid, or things delivered, by mistake or under coercion.

It is often said that Chapter V is an anathema in the law of contract, because it does not fit into the ordinary concept of promisor and promisee entering upon into an agreement with full consent on stipulated consideration for a lawful purpose.

The chief end of law of contract is to facilitate the working of the social forces of the nation in respect of that mode of co-operative action by which wills of two or more persons are economically disposed towards certain harmonious courses of action. The formal imperatives of documenting – attesting – registering a contract, on the other hand, remain impracticable in certain situations, where out of necessities a constructive contract germinates. And in the host of cases, non-gratuitous acts are performed the benefit of which is
enjoyed by the counterparts. Obviously, a human expectation on the part of the doer would grow, that he be reimbursed or restituted or compensated by the person so benefited. It is an equity content; and it lacks observance of formalities of a regular contract.

4.4 The law of equity in English Common Law has grown as a distinct branch of law covering questions not adequately answered in statute laws. It was a legal history spreading over centuries and developed consistently by the Courts of England, Chiefly, the Courts of Chancery, founded upon the terminology of equity, justice and good conscience. Provisions under Chapter V deals with such matters of contractual nature which were not hitherto recognized as principles under the law of contract prior to 1872; but those principles did enjoy recognition as principles of justice and equity, which eventually got codified into the law of contract in 1872. The Law of Contract, 1872, is both an amending as well as consolidating law. Thus, Chapter V has full justification to be included in the Indian Contract Act, 1872.

4.5 Quite remarkably, the Indian Courts and the Privy Council in pre-independence period had systematically developed these equitable principles, incorporated into the Indian Contract Act, through the process of interpretation. So much so, the Indian judicial pronouncements assumed wider field on Quasi-contract matters and consistently developed an academic intellectualism. Presently, Indian law is far more liberal in application of principle of equity to the Quasi-contract matters than its British forerunner. Illustratively, the
British Law would not entertain a suit for restitution if the defendant was 'not bound by law' to pay an amount to someone which the plaintiff did pay; whereas the Indian Law would not require that the defendant should have the statutory liability to pay which the plaintiff did pay. Indian Law thus recognizes constructive liabilities even if upon obligations of non-statutory nature.

4.6 Courts in India after establishment of Supreme Court and High Courts under the Constitution of India, have also enlarged the scope and applicability of the provisions of Chapter V with far more progressive approach.

4.7 Academic question have been raised in the past about the justification of accepting these equitable obligations within the law of contract; and as it ought to be, the same have been judicially resolved in the affirmative. Rather, some jurists have gone to say that, the word "quasi" should not have been prefixed to the word "contract".

The doer not doing an act gratuitously, inheres a deemed obligations for restitution on the part of the beneficiary, because would not tolerate an unjust enrichment. A mistake on the part of the deliverer also would cast an obligation upon the receiver to be accountable as a trustee. So also, a finder of goods would remain in the position of a bailee. Each of these principles believes in reciprocity with pure societal concern. Doctrine of unjust enrichment apart, this principle registers society's satisfaction upon restitution.
By recognizing these principles of equity into the law of contract, a constructive contract is recognized. This does convince all persons at large to help gratuitously to some in distress. Upon the idea of compensation for someone’s monetary help, concepts of suits for contribution among co-shares if a payment is made by any one of them, suits for reimbursement to the payers for legal necessaries, suits by tenants for the cost of repair made to the house of the landlord, insurer’s right to indemnify for the amount he paid for clearing up the liability of the first mortgagee have been all possible under the Chapter V. Even an arroneous contract based on common mistake by both the parties would be legally accepted to imply an obligation. All these monetary mutualities were of course recognized as constructive obligations through interpretative process of law.

The Indian Contract Act, 1872, is a splendid handmaiden of legal craftsmanship, perfectly worded to encompass varieties of new situations. By far, the whole law under Chapter V has been a judge-made law. The contents of the Section 68 to 72 are broad kinds. The Courts have evolved regulatory conditions and legal syllogisms for the application of the provisions. Courts have amplified the concept of liability, why and whether it is personal liability or it attached to the property to be passed on to the heirs. Courts have qualified the term non-gratuitous act and have added to it, concepts like ‘intention’, ‘interest’. ‘bound by law’, ‘essence of expectations’ and ‘bonafide’. Courts have tried to ascertain the
meaning of necessities and ultimately include legal necessities in defending a civil or criminal or revenue proceeding or about payment of taxes. Courts in India in this aspect have referred to Scotish Law, French Law and Roman Law besides English Law and have rather accepted wider dimensions and have given better reliefs. Courts in India have given relief to a party at whose cost someone has received enrichment even under contracts violative of the constitution. Courts in India have propounded a theory 'to the proportion of benefit derived' which is far wider than the doctrine of quantum meruit visualized under ordinary formal contract. Courts have applied the provisions to cases of saving someone from suicidal and cases of saving i.e., saving a ship from peril.

In a number of cases the Supreme Court of India has laid down the distinction between obligation out of a formal contract and obligation under Chapter V; and have thus given meaning and scope to the provisions of Chapter V. The Supreme Court has qualified the obligation under Chapter V i.e., the Chapter of Quasi-contract, as a third category of law not founded upon contract or tort. And quite in justness of judicial interpretation, Courts have drawn reasoning from law of torts, law of contract and law of equity and trust while amplifying the principles under Chapter V which are inherently based on equity jurisprudence.

An analytical study of the law developed on Chapter V of Indian Contract Act, 1872, down the years, would immensely imprint judicial
craftsmanship of high order and capable of answering to varieties of relations conceivable as constructive contractual obligations.

4.2| Proposition, Hypothesis, Methodology and Chapterisation

4.2.1 The present research proposes to examine the judicial creativity upon the concept of Quasi-contract and to bring fore the jurisprudential pronouncements of the Courts through the interpretative process.

4.2.2 The present research has single hypothesis: “Courts in India have immensely and infalliably 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.”

4.2.3 This is a doctrinaire research. The whole range of study is academic in pursuit and in methodology. Judgments of various Courts in India and the exposition of law from the date of operation of Indian Contract Act, 1872, will be scanned. Legal position in other legal systems, Common law as well as Civil Law will be referred to. Views and commentaries on Indian and Britain Laws on the subject matter will be discussed. And those expositions shall be the data, say, informations for the purpose of this study.

The research study shall be divided into seven chapters.

4.2.4 Chapter I will deal with the basic principles of law of contracts of law of torts and law of equity and trust which contribute to construct the justification for quasi-contractual obligations. Law of other comparative legal systems will also be discussed in this chapter. The
position of law in India prior to 1872, will be referred to examine the justification of inclusion of such a chapter in Indian Contract.

Chapter II will deal with exposition and analysis of judicial pronouncements over Section 68 i.e., claims for compensation for necessaries supplied to persons incapable of contracting, or on their account.

Chapter III will deal with exposition and analysis of judicial pronouncements over Section 69 i.e., reimbursement of persons paying money due by another in payment of which he is interested.

Chapter IV will deal with exposition and analysis of judicial pronouncements over Section 70 i.e., obligation of persons enjoying benefit of non-gratuitous acts.

Chapter V will deal with exposition and analysis of Section 71 i.e., responsibilities of finder of goods. In this chapter, section 151, 154 to 157, 168, 169 of the Indian Contract Act, dealing with the rights and obligations of a finder of goods, will also be discussed.

Chapter VI will deal with exposition and analysis of judicial pronouncements over Section 72 i.e., equitable restitution i.e., liability of a person to whom money is paid, or things delivered by mistake or under coercion.

Chapter VII will be the concluding chapter. Expositions and analysis made in previous chapters will be scanned to test the hypothesis. The researcher will propose his view points and indicate new areas in respect of the law of Quasi-contract.
The work will be a pioneer work in consolidating the jurisprudential pronouncements on quasi-contractual obligations. The endeavour is justified since no scholar has yet developed an integrated approach on the subject matter covering a judicial care and caution for over one century and a quarter.