
Quasi-Contracts In India

*K. Mihira Chakravarthy, Damodaram Sanjivayya National Law University.**

Abstract

Quasi-contracts are the fictional contracts identified by the courts. This concept was present in the Roman law which was later opted in the English law and the Indian courts have adopted this concept by making a few changes to apply it in the country. The basic grounds of the quasi-contracts to prevent people from taking the benefit of other's expense. These contracts are also known as implied contracts. The offer and agreement between parties is not required for a party to be held liable for taking advantage of another party's expense. The provisions present in Indian Contract Act 1872, contains quasi-contracts in Chapter V, from Section 68 to Section 72 i.e., Claim for necessities supplied to person incapable of contracting, or on his account; Reimbursement of person paying money due by another, in payment of which he is interested; Obligation of person enjoying benefit of non-gratuitous act; Responsibility of finder of goods and Liability of person to whom money is paid, or thing delivered, by mistake or under coercion. Though there are many dissimilarities between the contracts and quasi-contracts. However, Section 73 of the Indian Contract Act, 1872 offers remedies for the breach of quasi-contracts in the same way as the Indian Contract Act, 1872 enables remedies for the breach of express contracts in other sections, the claim for damages is quite similar to that of contracts. Under the Indian Contract Act of 1872, remedies are available under a quasi-contract.

Keywords: *Quasi Contracts, Indian Contract Act 1872, Unjust Enrichment, Implied in-fact Contracts, Quantum Meruit, Implied Assumpsit.*

* K. Mihira Chakravarthy is a 1st year B.A. L.L.B. (Hons.) student at Damodaram Sanjivayya National Law University, Visakhapatnam.

I. Introduction:

Quasi-Contracts is defined as a voluntary act that results in obligations that are subject to a regime that is similar to that of a contract, imposing on the author of the act and a third party who is not bound by the contract. The term "quasi-contract" refers to rights or liabilities that arise from relationships that are similar to those created by a contract. It is a non-consensual contract because it is not a real contract based on the parties' agreement. The doctrine of Quantum Meruit is the one that has earned or deserved on implied assumpsit, is used to make quasi-contracts feasible.

According to *Black's law Dictionary*, Quasi-Contracts is defined as "A contractual relation arising out of transactions between the parties which give them mutual rights and obligations, but do not involve a specific and express convention or agreement between them. Legal fiction invented by common law courts to permit recovery by contractual remedy of assumpsit in cases where, in fact, there is no contract, but where circumstances are such that justice warrants a recovery as though there had been a promise."

The Chapter V of Indian Contract Act, 1872 deals with quasi- contractual situations under the heading "Of certain relations resembling those created by contract". The term 'quasi- contract' is avoided due to the unambiguous statutory authorization, Indian courts are not impeded in granting relief under various parts of the Act due to theoretical considerations about quasi-contracts. However, English precedents offer useful guidance not just on the extent of relief, but also on how the rules should be interpreted to maintain them in line with evolving concepts of justice. Five kinds of quasi-contractual obligations are provided i.e., from Section 68 to 72¹. Quasi contracts are those in which the law imposes legal obligations without requiring an offer and acceptance. The quasi-contractual obligations are based on premise that law and justice should strive to avoid unfair enrichment, i.e., enrichment of one person at the expense of another, and the preservation of such enrichment must be unjust as well. The following elements must be proven in a lawsuit for unjust enrichment²:

¹ DR. AVTAR SINGH, *CONTRACT AND SPECIFIC RELIEF* 558 (12th edn, EBC 2019).

² Harshitha Gulati, *What are Contracts under Indian Contracts Act?* Clatalogue (May 20, 2022) <https://lawctopus.com/clatalogue/quasi-contracts-indian-contract-act/> .

- i. The defendant has been 'enriched' by the receipt of a 'benefit'
- ii. The enrichment should be at the expense of the plaintiff
- iii. The retention of the enrichment should be unjust³.

II. Historical Background:

The history of quasi contract may be traced all the way back to the Middle Ages, when it was known as *indebitatus assumpsit*. At the time, the law required a plaintiff to receive a sum of money from a defendant in an amount determined by courts, like the defendant always had promised to pay the plaintiff for his services and goods⁴.

Indebitatus assumpsit was a procedure employed by the courts to force one party to pay another as though the two parties had entered into a contract. The law implied the defendant's acceptance to be committed by a contract that required compensation. Early in the origins of quasi contract, such contracts were utilised to enforce restitution obligations⁵.

III. Rationale:

Theory of Unjust Enrichment:

The theory that underpins quasi-contractual responsibilities is still being worked out. Lord Mansfield, widely regarded as the real founder of such obligations, justified them based on the premise that law and justice should strive to prevent "unjust enrichment," or the enrichment of one person at the expense of another. An explanation was given by his lordship in *Moses v. Macferlan*⁶: Jacob issued four promissory notes to Moses and Moses endorsed them to Macferlan, excluding,

³ Id.

⁴ Raveesha, *Quasi Contracts*, Legal Service India (May 22, 2022) <https://www.legalserviceindia.com/legal/article-4072-quasi-contracts.html>.

⁵ Ibid.

⁶ *Moses v Macferlan.*, (1760) 2 Bur 1005.

by a written agreement, his personal liability on the endorsement. Even so Macferlan sued Moses on the endorsement and he was held liable despite the agreement. Moses was thus compelled to discharge a liability which he had excluded and, therefore, sued to recover back his money from Macferlan. " He was allowed to do so. After stating that such money cannot be recovered where the person to whom it is given can "retain it with a safe con science", Lord Mansfield continued: "But it lies for money paid by mistake; or upon a consideration which happens to fail; or for money got through imposition; or extortion; or oppression; or for an undue advantage taken of the plaintiff's situation, contrary to laws made for the protection of persons under those circumstances. In one word, the gist of this kind of action is, that the defendant, upon the circumstances of the case, is obliged by ties of natural justice and equity to refund the money." He also said "Liability of this kind is hard to classify. Since it partly resembles liabilities under the law of tort and partly it resembles contract since it owed to only a party and not a person or individual generally. Therefore, it comes within the ambit of an implied contract or even natural justice and equity for the prevention of unjust enrichment."

The theory of implicit contracts came later, which gained a lot of traction in the courts, and Lord Mansfield's theory was frequently invalidated.

Theory of Implied in-fact Contracts:

After the decision by the House of Lords in *Sinclair v. Brougham* case⁷, Lord Mansfield's theory was not considered and the Implied In-fact Contract theory gained a lot of attention. It was declared in that case that liabilities were taken under the premise of a quasi-contract that were against and not within the ambit of the law. It was mentioned that common law recognises just two types of personal actions: those based on contract and tort and that quasi ex-contractu only refers to a hypothetical class of action that is attributed to the defendant by a legal fiction⁸.

⁷ *Sinclair v Brougham.*, [1914] AC 398.

⁸ *Ibid.*

This approach has dominated the judgements for very long time, making the quasi contracts the implied, fictional and notional contract for which there will be no liability since it is made against the law⁹.

Restoration of theory of Unjust Enrichment:

After a long time, it was observed that the implied in-fact contract theory was going against the law and justice and there was a restoration of theory of unjust enrichment. This was due to the decision taken in the case *Fibrosa Spolka Akeyjna v. Fairbairn Lawson combe Barbour Ltd*¹⁰. It was observed that the remedies resulting from such obligations are neither contracts nor torts. They belong to a separate category than these two: 'quasi contract or restitution.' The precious notion was also found to be against public policy and in violation of the law.

Unjust enrichment demands that the defendant be "enriched" by receiving a "benefit," that this enrichment be "at the expense of the plaintiff," and "that the retention of the enrichment be unjust".¹¹

IV. Provisions Under Indian Contract Act, 1872:

Sections from 68 to 72 consist the types of Quasi- contracts in the Chapter V of Indian Contracts Act, "Of certain relations resembling those created by contract".

“Section 68 - Claim for necessities supplied to person incapable of contracting, or on his account.¹²-If someone takes care of the "necessities" for a person who is incapable of contracting (for example, a mentally challenged person or a minor) or anybody who is a dependent of such a

⁹ DR. AVTAR SINGH, *supra note 1*, at 560.

¹⁰ Vikesh Kumar, *Contracts and Quasi-Contracts*, Lawctopus (May 22, 2022) https://www.lawctopus.com/academike/contracts-and-quasi-contracts/#_edn12.

¹¹ *Ibid.*

¹² Indian Contract Act 1872, § 68, No. 9, Acts of Parliament, 1872 (India).

person, that person has the right to be compensated from the incompetent person's property. The phrase "necessities" is not defined in the Act, but it refers to goods that are necessary to maintain life, such as food, education, and clothing¹³.”

“Section 69- Reimbursement of person paying money due by another, in payment of which he is interested¹⁴. — 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 other¹⁵.”

Conditions of Liability:

The conditions of liability are stated under this section.

- i. *The plaintiff must be interested to make the payment*
- ii. *It is necessary that the plaintiff should not be bound to pay. He should only be interested in making payment for the property to rescue it on his own interest. When a person is jointly liable to pay with the others, he has no right to recover the paid amount*
- iii. *The defendant should have been legally bound to pay the money. After some contention, the term "bound by law" has come to signify "bound by law or by contract." It is not required to be limited to statutory liability*
- iv. *The final condition is that the plaintiff should have made payment and not to himself¹⁶.*

For example, A is a landlord and M stays on A’s land on lease. The revenue of A’s land is in arrears, payable to the Government. The land unfortunately, is advertised for sale by the Government. If the land is sold, then M’s lease would be annulled according to the revenue act. To stop this M pays A’s dues to stop the sale. In such case, A is bound to pay M back. Similarly, the English law also permits these actions, as an action reimbursed by the plaintiff to the defendant.

- **Making of payment where one party has interest in it:**

When one party makes payment and claims for compensation or reimbursement, they must show that he/ she has their own interest in making the payment. The payment should be bona fide which made by the defendant or genuine protection of the interest by the plaintiff.

¹³ Mohammad Shuja Uzair, *Quasi Contracts Under the Indian Contracts Act*, Lex Forti (May 22, 2022) <https://lexforti.com/legal-news/quasi-contracts-under-the-indian-contract-act/> .

¹⁴ Indian Contract Act 1872, § 69, No. 9, Acts of Parliament, 1872 (India).

¹⁵ *Id.*

¹⁶ Raveesha, *supra note 4*.

As per English law, the individual making the payment should have been legally obligated to discharge the debt in favour of the other party.

In the case of *Brook's Wharf v. Goodman Brothers*¹⁷, “the defendants imported goods from Russia and stored them at plaintiff’s place. The customs duty on the products could be claimed from the owners or the warehouseman, according to customary laws. Unfortunately, the products were stolen, and the warehouseman (plaintiff) was required to pay the customs duty that the owners (defendant) were obligated to pay. The plaintiff sought reimbursement from the defendant for the sum paid. The court held that the plaintiff could recover the amount that they have paid.”

- **Another person bound by law to pay:**

If this section needs to be applicable, plaintiff should have some interest to make payment and defendant is bound by the law to pay back the plaintiff. If there is no interest in making the payment, but is bound by the law to make the payment then he can’t have any action towards the defendant. In *Port Trust, Madras v. Bombay Company*¹⁸ case, “an employee of the Port Trust was injured when he was on duty. Under the Workmen Compensation Act of 1923, his employers (plaintiff) granted him the compensation amount. Following the payment to the workman, the plaintiff filed a lawsuit against the defendant, claiming that the accident occurred as a result of the defendant's negligence. The claim was dismissed under the Section 69 of Indian Contracts Act 1872 for the reasons given below:

- i. Under the Workmen Compensation Act of 1923, the plaintiff was not only interested in the payment, but was also required by law to make the payment (an unavoidable duty).
- ii. When the plaintiff made payment, the defendant's tort liability had not yet been determined.”

“Section 70- Obligation of person enjoying benefit of non-gratuitous act¹⁹—Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so

¹⁷ *Brooks Wharf & Bull Wharf, Ltd. v Goodman Bros.*, (1936) 56 Ll. L.Rep. 71.

¹⁸ *The Trustees of The Port of Madras v Bombay Company (P.) Ltd*, (1966) 2 MLJ 226.

¹⁹ Indian Contract Act 1872, § 70, No. 9, Acts of Parliament, 1872 (India).

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 delivered²⁰.”

For example: A salesman visited B’s place with an intent to sell some products. However, he left a product by mistake at B’s place and B uses it. B is bound by law to pay the salesman.

The following conditions are required to be satisfied for this section to be applicable:

- i. The act must be carried out in accordance with the law.
- ii. The act performed by the person should not have been done gratuitously.
- iii. The other person for whom the act is done, should have enjoyed the benefit of it.

• **Doing an act of delivering something to another person:**

When an act is done non-gratuitously by a person for another person, he is entitled to claim the compensation. In *Indu Mehta v. State of Uttar Pradesh*²¹, “Ms. Indu is a practicing lawyer in District Court of Kanpur and she was appointed as Assistant District Government Council where, she performed her services. Later, it was found out that her appointment violated Section 24(2) of Code of Criminal Procedure 1973. Her appointment was declared void while, it was declared that the government can’t recover the fees paid as she has rendered services.”

• **The performed act must be positive:**

If the plaintiff abstains from doing something or does not perform the act which isn’t positive, he / she cannot claim anything under section 70. In *Kirori Lal v. State of Madhya Pradesh*²², “an incompetent mining engineer signed a lease in favour of the plaintiff that was later declared unconstitutional due to a constitutional violation. For a collaborative project between states of Rajasthan and M.P., a large amount of sand was required. The plaintiff was disallowed permission to take the sand and filed a lawsuit against both states seeking reimbursement for the sand he was denied. The plaintiff’s claim was dismissed since he had done nothing to aid the other party.”

²⁰ Id.

²¹ *Indu Mehta v. State of Uttar Pradesh*, AIR 1987 All 309.

²² *Kirori Lal v. State of Madhya Pradesh*, AIR 1977 Raj 101.

- **Unjust benefit of the defendant at the cost of another:**

This is one of the most essential conditions for the application of Section 70. In the *C.I. Abraham v. K. A. Cheriyan*²³ case, “it was decided that if an individual buys a property for a close relative who lives in another country and agrees to collect rent and deposit the money into the relative's account, and there is no non-gratuitous intent, that is, no expectation of payment for the services rendered, then nothing can be claimed for reimbursement of the services performed.”

- **Application of Section 70 against the government:**

The government can nevertheless be held accountable for compensation if the services given result in unjust enrichment of the government or some other organisation. In *State of West Bengal v. B. K. Mondal and sons*²⁴, “the plaintiff constructed structures on request of the government. The plaintiff demanded payment from the government but the government refused to pay on the ground that the contract is invalid. The court held that since, the government received a benefit at the plaintiff's expense, they were obligated to pay for it.”

“**Section 71- Responsibility of finder of goods**²⁵—A person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee²⁶. As a result, a finder is viewed the same as a bailee in terms of obligations and liabilities. As a result, the position of the finder has been considered, as well as bailment.”

For example: A woman visited a shopkeeper to buy some groceries. Her ring fell on the ground in that shop, she didn't notice that and left. The shopkeeper finds the ring and it would become his responsibility to return that ring to that woman.

In *Union of India v Amar Singh*²⁷, “the Supreme Court held that the statutory fiction by which a contract of bailment is inferred between a finder of goods and the real owner should not be enlarged by analogy or otherwise, and that, as a result, a railway authority that took into its custody wagons

²³ *C.I. Abraham v. K. A. Cheriyan*, AIR 1986 Ker 60.

²⁴ *State of West Bengal v. B. K. Mondal and sons*, 1962 AIR 779.

²⁵ Indian Contract Act 1872, § 71, No. 9, Acts of Parliament, 1872 (India).

²⁶ *Id.*

²⁷ *Union of India v Amar Singh*, (1969) 1 MLJ 514.

containing the plaintiff's goods and left them across the border in Pakistan became contractual bailees of goods, and that it was not necessary to regard them as finders²⁸.”

“**Section 72- Liability of person to whom money is paid, or thing delivered, by mistake or under coercion**²⁹—A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it³⁰. For instance, If M and N jointly owe 5000 rupees to O, M alone pays the whole amount to O and N not knowing the fact, pays 2500. O is bound to repay N.”

- **Unjust benefit under mistake:** If a person by mistake or under coercion receives anything, it must be returned to that person who paid the amount by mistake or under coercion. In the case of *Sales Tax Officer, Banaras v. Kanhaiya Lal*³¹, “the plaintiff paid the sales tax on transactions of bullion. This tax was found ultra vires by the court, and X was able to recover the money. Under Section 72, there is no distinction made between a mistake of law and a mistake of fact.”

- **Unjust benefit under coercion:**

Anything paid under mistake or coercion can be recovered back. Coercion term simply means any kind of compulsion.

In the case of *T.G.M. Asadi v. Coffee Board*³², “The plaintiff purchased coffee from the coffee board and paid the price as well as the applicable sales tax. Following that, the Coffee Board demanded further taxes from the plaintiff firm, stating that if payment was not made, the Coffee Board would deduct such taxes from the firm's deposit to the Board, which would be used for the same reason. The Madras General Sales Tax Act, however, did not support such a demand. The

²⁸ Dr. AVTAR SINGH, *supra note 1*, at 574.

²⁹ Indian Contract Act 1872, § 72, No. 9, Acts of Parliament, 1872 (India).

³⁰ *Id.*

³¹ *Sales Tax Officer, Banaras v. Kanhaiya Lal*, 1959 AIR 135.

³² *T.G.M. Asadi v. Coffee Board*, AIR 1969 Kant 230.

plaintiff firm denied the demand but paid the money to the Board under protest, reserving the right to sue to recover the money.

In a lawsuit brought by the plaintiff firm, it was determined that the firm was forced to pay more taxes under duress, and the Coffee Board was ordered to refund the money.”

V. **Conclusion:**

The Quasi contracts are the legal fiction created by the common law courts to protect people from the unjust enrichment. This concept has been helpful to maintain the justice and equity prevalent in many cases and works as a helping hand for the courts. Though it doesn't belong to the two main branches of the common law i.e., contracts and torts, there can be seen characteristics of both in some circumstances.

However, the result of both the quasi contracts and contracts are similar. As Section 73 of the Indian Contract Act, 1872 offers remedies for the breach of quasi-contracts in the same way as the Indian Contract Act, 1872 enables remedies for the breach of express contracts in other sections, the claim for damages is quite similar to that of contracts. Under the Indian Contract Act of 1872, remedies are available under a quasi-contract.