**Quasi Contract : A Critical Analysis**

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**Introduction**

**Quasi contract**

A quasi-contract' is a legal substitute for a contract[[1]](#footnote-1). A quasi-contract is a contract that should have been formed, even though in actuality it was not. It is used when a court wishes to create an obligation upon a no contracting party to avoid injustice and to ensure fairness. It is invoked in circumstances of unjust enrichment.

Quasi-contracts are defined to be "the lawful and purely voluntary acts of a man, from which there results any obligation whatever to a third person, a reciprocal obligation between the parties." It "is not legitimately done, but the terms are accepted and followed as if there is a legitimate contract. ‘Quasi Contracts’ are so-called because the obligations associated with such transactions could neither be referred as tortious nor contractual, but are still recognized as enforceable, like contracts, in Courts.

**Rationale and Principles:-**

The rationale behind “quasicontract” is based on the theory of Unjust Enrichment. Lord Mansfield is considered to be the founder of this theory. In Moses v. Macferlan[[2]](#footnote-2) he explained the principle that law as well as justice should try to prevent “unjust enrichment”, i.e., enrichment at the cost of others. A 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 principle underlying a quasi-contract is that no one shall be allowed unjustly to enrich himself at the expense of another, and the claim based on an quasi-contract is generally for money.

**History of Quasi Contract**

The history of quasi contract can be followed back to the Middle Ages, under a practice that was referred to back then as indebitatus [assumpsit](https://legaldictionary.net/assumpsit/). In that period, the law dictated that a [plaintiff](https://legaldictionary.net/plaintiff/) would receive a sum of money from the [defendant](https://legaldictionary.net/defendant/), in an amount dictated by the courts, as if the defendant had always agreed to pay the plaintiff for his goods or services.

Indebitatus assumpsit was a method used by the courts to make one party pay another as if a contract had been created between the two parties. The defendant’s agreement to be bound by a contract that required compensation was implied by the law. The early days in the history of quasi contract saw such contracts being used to enforce obligations related to [restitution](https://legaldictionary.net/restitution/).

**Quasi Contracts as per Indian contract Act:-**

In Indian context ,the quasi-contracts are put under chapter V of the Indian Contract Act as  “**OF CERTAIN RELATIONS RESEMBLING THOSE CREATED BY CONTRACTS**”. The framers avoided the direct term “quasi-contract” in order to avoid the theoretical confusion regarding the same.

Sections 68 to 72 provide for five kinds of quasi-contractual obligations:

 Kinds of quasi contract

The same are discussed as under:

**1. Supply of necessities[[3]](#footnote-3): -**

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 necessaries suited to his condition in life, the person who furnished such supplies is entitled to be reimbursed from the property of such incapable person. The above Section covers the case of necessaries supplied to a person incapable of contracting (say, a minor, lunatic, etc.) and to persons whom the incapable person is bound to support (e.g., his wife and minor children).

However, following points should be carefully noted:

The goods supplied must be necessaries. What will constitute necessaries shall vary from person to person depending upon the social status he enjoys.

It is only the property of the incapable person that shall be liable. He cannot be held liable personally. Thus, where he doesn’t own any property, nothing shall be payable.

Example: -

A supplies B, a lunatic, with necessaries suitable to his condition in life. A is entitled to be reimbursed from B’s property

Case:

**Mohari bibee v Dhamodardas Ghose [[4]](#footnote-4):-**

In this case it was held that this section applies to minors as well as to persons of unsound mind and others. It was also held that this section will not apply where necessaries have been supplied to someone, who a person competent to contract is bound to support.

**Benaras Ban Ltd v Dip Chand[[5]](#footnote-5):-**

In this case it was held that a creditor can recover moneys advanced to a minor for necessaries. Necessaries have included money urgently needed for the requirement of the minor to save his property from being sold for arrears of revenue, money advanced for repair of houses or for saving minors property being sold for arrears.

**2. Payment by interested persons[[6]](#footnote-6): -**

Reimbursement of person paying money due by another, in payment of which he is interested. This Section provides that a person, being interested in the payment of money, which another is bound by law to pay, is entitled to be reimbursed by the latter, if he has paid it. 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.

The following are Conditions of liability under this section:-

Firstly Payer must is interested in Making Payment.

Secondly but should not be bound to pay.

Thirdly should be under Legal Compulsion to pay

**Case:-**

**Govindram Gordhandas Seksaria V State Of Gondal[[7]](#footnote-7):-**

In this case the company had contracted to buy the mills of a Maharaja, and they were imminently threatened with a forced sale which would defeat its purchase. Maharaja had sold certain mills without paying over due municipal taxes, was sued by the buyer who had to pay to save the property from being sold. The Maharaja (Seller) showed no signs of paying the taxes to municipality so the company paid. The court held that the general purport of the section is to afford to a person who pays money is furtherance of some existing interest, an indemnity in respect of the payment against any other person, who rather than he, could have been made liable by law to make payment.

**3. Liability to pay for non-gratuitous acts[[8]](#footnote-8): -**

Obligation of person enjoying of non-gratuitous act. This section creates liability to pay for the benefits of an act which the doer did not intend to do gratuitously – It states, “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.

Case:-

**In State of W.B. Vs B.K. Mondal & sons[[9]](#footnote-9):-**

Laid three conditions must be fulfilled before this section can be invoked

A person should lawfully do something for another person or deliver things to him

In doing the said things or delivering the said thing he must not intend to act gratuitously and

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

In the case of **Neha Bhasin V Anand Raj anand[[10]](#footnote-10),** the plaintiff was singing for the firm of defendants, her song were recorded, by them, During the process of recording she did not seem to have acted gratuitously, when the defendant marketed the cassettes and CDs of her song recordings, the court said because they did make business use of her work a quasi contract arose under Section 70 making the defendants liable to pay for her services.

**4.Responsibility of finder of goods[[11]](#footnote-11): -**

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

**Rights of the finder:-**

(i)Entitled to retain the goods until he receives the lawful charges and compensation for retaining the goods and taking care of the goods.

(ii)He can not sue for such compensation unless a specified reward has been advertised.(iii)Can sell the goods if goods are perishable

**Liabilities of the finder:-**

(i)Responsibility of the finder to take care of the goods as if they were his own.

(ii)Must with reasonableness diligence trace the true owner of thegoods.

**Case:-**

**Union of India v Amar singh[[12]](#footnote-12):-**

In this case goods booked for Quetta before the partition of the country were found to be missing when the wagon containing the goods was received at New Delhi railway Station. The owner sued the East Punjab Railway which was handling the wagon from Indo- Pakistan border into India. The East Punjab Railway was held to be an agent of the receiving railway and a bailed with the implied authority of the consignor under section 194 of contract Act. Section71 was also applicable, in that when railway administration in Pakistan left the wagon containing goods within the borders of India and the forwarding railway administration took them into their custody; it could not deny liability under section 71

**Union of India v Mahommad Khan[[13]](#footnote-13):-**

Taking of the goods under custody is important, in this case the plaintiff timber was lying on the piece of land which was subsequently leased out to the defendant. The latter gave notice to the owners of the timber to remove it, but it was not removed. The defendant than cleared the site and the timber was damaged or removed. The plaintiff claim under section 71 of the contract Act was dismissed as the defendant had not taken the goods into his custody.

**5. Mistake of coercion[[14]](#footnote-14):-**

.Liability of person to whom money is paid ,or thing delivered, by mistake or under coercion, must repay or return it. A person to whom money has been paid, or anything delivered by mistake or under coercion, must repay or return it. The term mistake as used in Section 72 includes not only a mistake of fact but also a mistake of law. There is no conflict between the provisions of Section 72 on the one hand, and Sections 21 and 22 on the other, and the true principle is that if one party under mistake, whether of fact or law, pays to another party money which is not due by contract or otherwise, that money must be repaid

Illustration :-

A and B jointly owe 100 rupees to C. a alone pays the amount to C and B no knowing this fact pays 100 rupees over again to C. C is bound to repay the amount to B.

**Case: -**

**Rakruti Manikyam v Medidi Satyanarayyana[[15]](#footnote-15)** –

The contract was for sale of paddy in contravention of the Andhra Pradesh Paddy Maximum Price control Order. The acceptance of such a delivery could not create a lawful relationship between the contractors. It can not therefore be said that the plaintiff lawfully delivered the paddy to the defendant so as to attract the provisions of section 70 of the contract Act.

**Sales Tax Officer, Banaras v Kanhaiya lal Mukund Lal Saraf and:-[[16]](#footnote-16)**

A certain amount of sales tax was paid by affirm under the UP sales Tax law on its forward transactions and subsequently to the payment; the Allahabad High court rules the levy of sales tax on such transactions to be ultra vires. The firm sought to recover back the lax money. Initially the tax authorities, rejected the contention based on English, American and Australian laws which do not allow payments made under mistake of laws to be recovered, the Supreme Court allowed the recovery by

7 the appellant. Supreme Court stated this section in terms does not make any distinction between a mistake of law and a mistake of fact.

**New India Industries Ltd v. Union of India[[17]](#footnote-17)-**

Payment towards tax or duty which is without authority of law is a payment made under mistake within the meaning of section 72 of the Indian contract Act. Section 72 is based on equitable principles. Therefore by claiming to retain the tax which has been collected without authority of law, the government cannot enrich itself and it is liable to make restitution to the person who mad made payment under mistake or under coercion. In this judgment it was held that when tax has been collected without authority of law, the state is bound to refund the same.

**Quasi-Contract Requirements**

There are several requirements that must be met in order for a quasi-contract to be imposed:

The plaintiff must have provided a service or given an item with value to the defendant, with the implied promise that they would receive payment in exchange.

The defendant must have agreed to this promise and received the item or service, but failed to pay.

The plaintiff must explain to the court why it is unfair that the defendant received the service or item of value without paying the plaintiff. Therefore, unjust enrichment on the defendant's part took place.

**Conclusion**

The principle of quasi-contract is often ignored but still it holds a very important place, since the principle is grounded on the principles of justice and equity. Despite the fact that quasi contract are moulded in the Indian Contract Act under a new name. However, the basic nature and essence of the principle remains same without any drastic change. Thus, quasi-contracts form an integral part of the contracts act and it definitely comes to an aid of the victim when a person is enriched unjustly over the former.

2. Discuss the modes of performance of contract. How a contract may be discharged.

A contract places a legal obligation upon the contracting parties to perform their mutual promises, and it carries on until the discharge or termination of the contract. The most natural and usual mode of discharging a contract is to perform it. A person who performs a contract in accordance with its terms is discharged from any further obligations. As a rule, such performance entitles him to receive the other party’s performance.

Exact and complete performance by both the parties puts an end to the contract. In expecting exact performance, the courts mean that, **performance must match contractual obligations**. In requiring a contract to be complete, the law is merely saying that any work undertaken must be carried out to the end of the obligations.

A contract should be **performed at the time specified and at the place agreed upon**. When this has been accomplished, the parties are discharged automatically and the contract is discharged eventually. There are, however, many other ways in which a discharge may be brought about. For example, it may result from an excuse for non-performance. In certain cases attempted performance may also operate as a substitute for actual performance, and can result in complete discharge of the contract.

**What is Performance of Contract?**

The term ‘Performance of contract‘ means that both, the promisor, and the promisee have fulfilled their respective obligations, which the contract placed upon them. For instance, A visits a stationery shop to buy a calculator[[18]](#footnote-18). The shopkeeper delivers the calculator and A pays the price. The contract is said to have been discharged by mutual performance.

**Section 27 of Indian contract Act** says that Promises bind the representatives of the promisor in case of the death of the latter before performance, unless a contrary intention appears in the contract.

Thus, it is the primary duty of each contracting party to either perform or offer to perform its promise. For performance to be effective, the courts expect it to be exact and complete, i.e., the same must match the contractual obligations. However, where under the provisions of the Contract Act or any other law, the performance can be dispensed with or excused, a party is absolved from such a responsibility.

**Example**

A promises to deliver goods to B on a certain day on payment of Rs 1,000. Aexpires before the contracted date. A‘s representatives are bound to deliver the goods to B, and B is bound to pay Rs 1,000 to A‘s representatives.

Types of Performance

Performance, as an action of the performing may be actual or attempted. Actual Performance

When a promisor to a contract has fulfilled his obligation in accordance with the terms of the contract, the promise is said to have been actually performed. Actual performance gives a discharge to the contract and the liability of the promisor ceases to exist. For example, A agrees to deliver10 bags of cement at B’s factory and B promises to pay the price on delivery. A delivers the cement on the due date and B makes the payment. This is actual performance.

Actual performance can further be subdivided into substantial performance, and partial Performance

**Substantial Performance**

This is where the work agreed upon is almost finished. The court then orders that the money must be paid, but deducts the amount needed to correct minor existing defect[[19]](#footnote-19). Substantial performance is applicable only if the contract is not an entire contract and is severable. The rationale behind creating the doctrine of substantial performance is to avoid the possibility of one party evading his liabilities by claiming that the contract has not been completely performed. However, what is deemed to be substantial performance is a question of fact to be decided in both the case. It will largely depend on what remains undone and its value in comparison to the contract as a whole.

**Partial Performance**

This is where one of the parties has performed the contract, but not completely, and the other side has shown willingness to accept the part performed[[20]](#footnote-20). Partial performance may occur where there is shortfall on delivery of goods or where a service is not fully carried out.

There is a thin line of difference between substantial and partial performance. The two following points would help in distinguishing the two types of performance.

**Partial performance must be accepted by the other party.** In other words, the party who is at the receiving end of the partial performance has a genuine choice whether to accept or reject. Substantial performance, on the other hand, is legally enforceable against the other party.

**Payment is made on a different basis from that for substantial performance.** It is made on quantum meruit, which literally means as much as is deserved. So, for example, if half of the work has been completed, half of the negotiated money would be payable. In case of substantial performance, the party that has performed can recover the amount appropriate to what has been done under the contract, provided that the contract is not an entire contract. The price is thus, often payable in such circumstances, and the sum deducted represents the cost of repairing defective workmanship.

**Attempted Performance**

When the performance has become due, it is sometimes sufficient if the promisor offers to perform his obligation under the contract. This offer is known as attempted performance or more commonly as tender. Thus, tender is an offer of performance, which of course, complies with the terms of the contract. If goods are tendered by the seller but refused by the buyer, the seller is discharged from further liability, given that the goods are in accordance with the contract as to quantity and quality, and he may sue the buyer for. Breach of contract if he so desires. The rationale being that when a person offers to perform, he is ready, willing and capable to perform. Accordingly, a tender of performance may operate as a substitute for actual performance, and can affect a complete discharge.

In this regard, **Section 38 of Indian Contract Act** says:

‘Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract. For example, **A** contracts to deliver to **B**, 100 tons of basmati rice at his warehouse, on 6 December 2015. **A** takes the goods to **B**‘s place on the due date during business hours, but **B**, without assigning any good reason, refuses to take the delivery. Here, **A** has performed what he was required to perform under the contract. It is a case of attempted performance and **A** is not responsible for non-performance of **B**, nor does he thereby lose his rights under the contract.’

**Discharge of contract[[21]](#footnote-21):**

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A Contract is said to be discharged when the rights and obligations created by it come to an end. A contract may be discharged in the following modes:-

1.  Discharge by performance[[22]](#footnote-22) – Discharge by performance takes place when the parties to a contract fulfill their obligations arising under the contract within the time and in the manner prescribed. Performance may be actual performance or attempted performance.

2.  Discharge by Agreement or Consent – A Contract comes into existence by an agreement and it may be discharged also by an agreement. The following are modes of discharge of a contract by an agreement –

a)  By Waiver – Waiver takes place when the parties to a contract agree that they shall no longer be bound by the contract. For eg. A an actor promised to make a guest performance in the film made by B. Later B forbids A from making the guest appearance. B is discharged of his obligation.

b)  By Novation – If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed. The process to substitute an existing contract by a new contract is known as Novation.

c)  By Rescission – Rescission of a contract takes place when all or some of the terms of the contract are cancelled. It may  occur by mutual consent or where one party fails in the performance of his obligations, the other party may rescind the contract.

d)  By alteration – Alteration of a contract may take place when one or more of the terms of the contract is/are altered by mutual consent of the parties to the contract.

e)  By Remission – Remission means acceptance of a lesser fulfillment of the promise made, Eg.

Acceptance of a lesser sum than what was contracted for, in discharge of the whole of the debt.

f)   By Merger – Merger takes place when an inferior right accruing to a party under a contract merges into a superior right accruing to the same party under the same or some other contract. For eg. P holds a property under a lease. He later buys the property. His rights as a lessee merge into his rights as an owner.

3.  Discharge by impossibility of performance[[23]](#footnote-23) – If a contract contains an undertaking to perform an impossibility, it is *void ab initio*. As per Section 56, impossibility of performance may fall into either of the following categories –

(i)  Impossibility existing at the time formation of the contract – This is know as pre-contractual impossibility. The fact of impossibility may be –

a) known to the parties – Both the parties are aware or know that the contract is to perform an impossible act. For eg. A agrees with B to put life into dead wife of B, the agreement is void.

b) unknown to the parties – Both the parties are unaware of the impossibility. The contract could be on the ground of mutual mistake of fact. For eg.A contract to sell his house at Andaman to B. Both the parties are in Mumbai and are unknown to the fact that the house is actually washed away due to Tsunami.

(ii)     Impossibility arising subsequent to the formation of the contract – Where impossibility of performance of the contract is caused by circumstances beyond the control of the parties, the parties are discharged from further performance of the obligation arising under the contract.

4.  Discharge by lapse of time – The Limitation Act, 1963 lays down certain specified periods within which different contracts  are to be performed and be enforceable. If a party to a contract does not perform, action can be taken only within the time specified by the Act. Failing which the contract is terminated by lapse of time.

For eg. A sold a gold chain to B on credit without any period of credit, the payment must be made or the suit to recover it, must be instituted within three years from the date of delivery of the instrument.

5.  Discharge by Operation of Law – A contract may be discharged independently of the wished of the parties i.e. by operation of law. This includes discharge –

a)  By death – In contract involving personal skill or ability, the contract is terminated on the death of the promisor. In other contracts the rights and liabilities of a deceased person pass on to the legal representatives of the deceased person.

b)  By insolvency – When a person is declared insolvent, he is discharged from all liabilities incurred prior to such declaration.

c)  By  unauthorized  material  alteration  of  the  terms  of  a  written  agreement  –  Any  material alteration made by  a party to the contract, without the prior permission of the other party, the innocent party is discharged.

 d)  By rights and liabilities becoming vested in the same person – When the rights and liabilities under a contract vests in the same person.

6.  Discharge by Breach of Contract – A breach of contract occurs when a party thereto without lawful excuse does not fulfill his contractual obligation or by his own act makes it impossible that he should perform his obligation under it. A breach to a contract occurs in two ways :-

a)  Actual Breach – When a party fails, or neglects or refuses or does not attempt to perform his obligation at the time fixed for performance, it results in actual breach of contract. For eg. A promises to deliver 100 packs of ice-cream to B on his wedding day. A does not deliver the packs on that day. A has committed actual breach of the contract.

b)  Anticipatory Breach – Anticipatory Breach is a breach before the time of the performance of the contract has  arrived.    This may take place either by the promisor doing an act which makes the performance of  his promise impossible or by the promisor , in way showing his intention not to perform it.

**Conclusion:**

From performance of contract we conclude that Performance of Contract means the fulfillment of legal obligations created under the contract by both the promisor and the promise. When a Contract is duly performed by both the parties to the contract, the contract comes to an end. There are various rules regarding the performance of contracts and there are also various kind of modes for performance of contract. **Discharge of a contract** implies termination of contractual obligations. This is because when the parties originally entered into the contract, the rights and duties in terms of **contractual obligations** were set up. Consequently when those rights and duties are put out then the contract is said to have been discharged.

1. Sec 68 , ICA ,1872 [↑](#footnote-ref-1)
2. { 1760 } 2 Bur 1005 [↑](#footnote-ref-2)
3. Sec – 68 , Indian Contract Act , 1872 [↑](#footnote-ref-3)
4. 114,1903 ILR 30 Cal 539 [↑](#footnote-ref-4)
5. AIR 1936 All 172 [↑](#footnote-ref-5)
6. Sec 69 , Indian Contract Act ,1872 [↑](#footnote-ref-6)
7. AIR 1950 PC99 77IA 156 [↑](#footnote-ref-7)
8. Sec 70 , Indian Contract Act , 1872 [↑](#footnote-ref-8)
9. ( Air 1962 Sc 779 ( 1962)1scr 876 [↑](#footnote-ref-9)
10. (2006) 132, DLT 196 [↑](#footnote-ref-10)
11. Sec 71 , Indian Contract Act , 1872 [↑](#footnote-ref-11)
12. (1960) 2 SCR 75, AIR,1960 SC 233 [↑](#footnote-ref-12)
13. AIR 1959 Ori 103 [↑](#footnote-ref-13)
14. Sec 72 , Indian Contract Act , 1872 [↑](#footnote-ref-14)
15. Air 1972 Ap 367 [↑](#footnote-ref-15)
16. Others1959 Scr Air 1959 Sc 135 [↑](#footnote-ref-16)
17. Air 1990 Bom 239 [↑](#footnote-ref-17)
18. Sec 38 , Indian Contract Act , 1872 [↑](#footnote-ref-18)
19. Sec 12 , Specific Relief Act ,1963 [↑](#footnote-ref-19)
20. Sec 21 , SRA , 1963 [↑](#footnote-ref-20)
21. Sec 63 , Indian Contract Act , 1872 [↑](#footnote-ref-21)
22. Sec 73 , Indian Contract Act 1872 [↑](#footnote-ref-22)
23. Section 56 , Indian Contract Act ,1872 [↑](#footnote-ref-23)