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Contract Law in India

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Quasi-Contracts or areas where Promissory Liability is Superimposed for Reasons of Social Policy

By

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Introduction

The Law relating to Quasi Contracts is embodied in the Indian Contract Act in Chapter V under the Caption "Of Certain Relations resembling those created by Contract" (Sections 68 to 72). It is a common place that the provisions are based on English law. Therefore, it is desirable that the origin, definition, development, rationale of Quasi-Contract in English law is looked into, before reference to the provisions of the Indian Law is made.

Origin

"Consensus of mind" is an essential ingredient of contract. This is absent in Quasi-Contracts or Constructive contracts, so styled in the Halsbury's Laws of England (3rd edition) volume 8, part 8, page 225. The action of debt and the action of accounts in medieval times in England could not afford relief in cases where services were rendered or goods delivered by one man to another without any agreement as to the amount of compensation. Therefore, in course of time two species of Assumpit - a form of action - developed in common law i.e., Special Assumpit, where the undertaking was express and Indebitatus Assumpit where it might be implied from the mere existence of a debt. A tailor who made a suit or an innkeeper who supplied food could resort to the latter species of Assumpit and could thus get relief to which he was entitled on the principles of natural justice or the jus naturale of Roman Law. The writ of indebitatus Assumpit involved at least two averments, the debt or obligation and the assumpit. The former was the basis of the claim and was the real cause of action. The latter was merely fictitious and could not be traversed, but was necessary to enable the convenient and liberal form of action to be used in such cases. Assumpsit super se means to do something and it was said that the defendant had taken upon himself to do something.

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The absence of consensual element in Quasi-Contract was overcome by resort to this form of action which developed after medieval times as stated above.

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Anson on page 539 in 21st edition defines the nature of Quasi-Contract thus, "Circumstances must occur under any aysstem of law in which it becomes necessary to hold one person to be accountable to another, without any agreement on the part of the former to be so accountable on the ground that otherwise he would be retaining money or some other benefit which has come into his hands to which the law regards the other person as better entitled or on the ground that without such accountability the other would unjustly suffer loss. The law of quasi-contract exists to provide remedies in circumstances of this kind." An obligation in quasi-contract is non-consensual i.e. one imposed by law without regard to the intention of the parties whereas obligation in contract is consensual imposed by law according to actual or presumed intention of the parties. Where a benefit has been received by the defendant from the plaintiff under such circumstances that in equity and good conscience, the Defendant should compensate the plaintiff, the law imposes upon the defendant consensual obligation usually called today quasi-contractual to pay to the plaintiff a reasonable value thereof. Here the law does not require an actual agreement between the parties, but implies a contract from the cirdumstances. In fact, the law makes the contract for the parties. These contracts are not true contracts at all since the element of consent is absent but by fiction of law, invented for the purpose of pleading, they are regarded as contracts. There are three distinctive marks of a quasi-contractual right. In the first place, such a right is always a right to money and generally though not always, to a liquidated sum of money. Secondly, it does not arise from any agreement to the parties concerned but is imposed by law, so that in this respect a quasi-contract resembles a tort. Thirdly, it is a right which is available not, like the rights protected by the law of torts, against all the world, but against a particular person or persons only, so that in this respect it resembles a contractual right. Professor Winfield in his book "Province of the Law of Tort" page 119 has defined quasi-contract as liability not exclusively referable to any other head of the law, imposed upon a particular person to pay money to another particular person on the ground of unjust benefit. Three elements are particularly stressed (i) A special relationship between two persons, analogous to contract rather than to tort, (ii) a resultant duty to pay money and (iii) an underlying aim of making restitution for a benefit unjustly received.

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The modern law of quasi-contract was formulated by Lord Mansfield in Moses v. Macferlan 1760 (2 Burr 1005). "This kind of equitable action to recover back money which ought

not in justice be kept is very beneficial and, therefore, much encouraged. On the basis of natural justice and equity, the money must be refunded, since the defendant cannot retain the money with safe conscience, since there is unjust enrichment or unjust benefit.

Lord Mansfield does not say that the law implies a promise. The law implies a debt or obligation which is a different thing. In fact, he denies that there is a contract. The obligation is as efficatious as it were upon a contract. The obligation is a creation of law, just as much as an obligation in tort. The obligation belongs to a third class, distinct either from contract or tort though it resembles contract rather than tort.

The principle of unjust benefit or enrichment has been invoked in various matters to give relief to parties such as money paid by the plaintiff to the defendants' use, money paid under a mistake of fact, money paid in pursuance of an ineffective contract (a) where there is a total failure of consideration, (b) where there is a void contract or (c) when there is illegal contract, money had an received from a third party to the plaintiffs' use, claims against wrongdoers, claims on quantum meruit, claims for necessaries supplied to persons under incapacity. The law of quasi-contract has developed in England under the various heads noted above and a question has arisen what is the juridical basis of quasi-contract?

Rationale of quasi-contract

The contract is an agreement enforceable at law. One of the essential element in it is consensus. This is absent in quasi-contract. This has given rise to the controversy relating to the basis of liability in quasi-contract. Lord Mansfield in Moses v. Macferlan, above referred to, said that the defendant is liable because has been unjustly benefited at the expense of the plaintiff. The obligation arose from the ties of natural justice. He conceived the indebitatus assumpsit- a form of action - as something distinct from contract and possibly distinct from any implied notional promise to pay.

But this basis of Lord Mansfield, though it held sway for a considerable time, was attacked in the 19th century when the forms of action were abolished by the Common Law Procedure Act 1852, when it could be conceived that the liability in quasi-contract could be based on a contract implied by law and the fiction of implied promise to pay need not be resorted to. The basis shifted from the principles of natural justice to the principle of implied contract. The equity of Moses v. Macferlan has been generally condemned on the ground that in that case Lord Mansfield definitely crossed the all too narrow bridge which leads from sound soil of implied contract to the shifting quick sands of natural equity. Therefore, the juridical basis in Sinclair v. Brougham 1914 A.C. 398 was that the defendant

is liable only on the basis of a fictitious or imputed promise to pay. Lord Wright in Fibrosa Spolka Akcyjna v. Fairbarn Lawsone Combe Barbour Ltd. 1943 A.C. 32 at page 64, commenting upon Moses v. Manferlan says that Mansfield does not say that the law imports a promise. The law implies a debt or obligation which is a different thing. In fact, he denies that there is a contract. The obligation is a creation of the law, just as much as an obligation in tort. He conceived of indebitatus assumpsit as something distinct from contract and distinct from any notional or implied promise to pay. The juridical basis in 1750 was unjust benefit. In 1914, it was imputed promise to pay. As present, it appears the situation is reverting back to 1750. Lord Wright and Lord Justice Denning have been resuscitating the equity in Moses v. Macferlan along with Sir Percy Winfield. Lord Wright (1936) 6 Camb. L.J. 305 and in Brooks Wharp v. Goodman 1937 1 K.B. 534 at page 545 Lord Justice Denning (Nelson v. Lorholt 1948 1 K.B. at page 343 and Sir Percy Winfield in 64 L.Q.R. 46 may be numbered among the converts to ex aequoet bono. It has been said that today law is moving in the field of quasi-contract to a concept of unjust enrichment namely he who is unjustly enriched must disgorge. The fiction of implied contract has long throttled the law of quasi-contract and its interrment will enable the English lawyer to meet quasi-contractual problems with a clearer understanding.

Sir C.K. Allens' solution in 54 L.Q.R. at pages 206-207 is a compromise. The English quasi-contract may be couched in contractual language but its substantial criterion is the idea of unjust benefit.

A further problem in the matter of unjust benefit has been referred to in (1957) 73 L.Q.R. by Mr. Gareth H.Jones at page 48 whether a person who has received unjust benefit can plead in action for money had and received a change of circumstances viz. that the benefit is terminated or diminished. The American law has taken the view that the party who has received an unjust benefit and who has changed his position to his detriment is relieved of the obligation, to restore the benefit. But this doctrine is not applied in England. A reference is invited to 65 L.Q.R. 37 at page 49 (Lord Denning).

Lastly the principle of Restitution is also in the field. It enables actions at common law and in equity to be resorted to.

In passing, a reference be made to the doctrine of privity of contract in relation to claims of money had and received. B intending to discharge a debt of £ 100 owing to A, mistakenly sent the £ 100 to C. C agreed with B to hold the £ 100 for A and informed A of the fact. This communication was held sufficient to enable A to sue C on a count for money had and received. The facts here show that the defendant C was the agent of the plaintiff A, that agency supplies the consideration. The notion of C's assent and his promise to pay constituted sufficient privity. This matter is discussed at length in 75 L.Q.R at page 220, under the heading "A forgotten chapter in quasi-contract by Mr. J.D. Davies."

Indian Law

The liability under the Indian law in quasi-contract arises under section 68 to 72 of the Indian Contract Act.

Section 68 deals with necessaries supplied to persons incapable of entering into a contract. Two conflicting theories have been advanced as the basis of infant's liability for necessaries in English law. First, he is liable ex contractu just as a contracting party of full capacity is liable. He is sued on the fotting that the contract was such, as the infant, not withstanding infancy, could make. Secondly, the infant is liable re, not consensu. He is bound not because he has agreed but because he has been supplied.

Section 69 deals with payment by a person in a matter which another is bound by law to pay when he is entitled to be reimbursed. The section lays down wider rule in one respect than appears to be supported by English authority. The words "interested in the payment of money which another is bound by law to pay" is a phraseology wider in its connotation.

Section 70 deals with obligation of person enjoying benefit of non-gratuituous act. Three conditions are necessary, (a) the thing must be done lawfully, (b) it must be done by a person not intending to act gratutitously and (c) the person for whom the thing is done must enjoy the benefit of it.

Section 71 deals with the responsibility of the finder of goods.

Section 72 deals with the liability of a person to whom money is paid or thing delivered by mistake or under coercion. The distinction between mistake of law or mistake of fact is not to be found in this section so in the case of English law.

In India, apart from the above sections, which provide for the compensation in respect of quasi-contractual type of relations, there are sections such as Section 65, where the restitution is provided for. The right to recover money paid, goods delivered or property conveyed under illegal contracts is not contractual but is either a quasi-contractual or a proprietory right in English law. Where money has been paid under an illegal contract it may be an action for money had and received as far as English law is concerned. In India section 65 can be pressed into service and compensation received unless the purpose of the contract is not grossly immoral and the illegality of the transaction is not the basis of the action or the suit is brought even when the contract is executory or when the parties are not equally to blame and the less guilty party seeks relief.

20th century conditions

There is a great disparity in the contract law outlined above and the modern contract as it functions today in society. Progressive societies developed from status to contract. This

was true of the 18th and 19th centuries. The economoc correlate of common law contract was a free enterprise society, ensuring mobility of labour and freedom to hire and fire. But the social welfare responsibilities of the state have corroded into the framework of a free enterprise society and laissez faire has gone by the board. The idea that the state on behalf of the community should intervene to dictate the common law theory of contract. Social changes, brought in developing capitalist society have widened the gap between the legal reality and the traditional textbook approach. Here we find that promissory liability is superimposed for reasons for social policy.

In a planned economy, there is a minimum wage legislation, the rent restriction Acts, Workmen's Compensation Legislation, which provide for a statutory obligation. Sometimes, legislation of this type imposes statutory duties of a quasi-contractual type, added to a contract proper for example between a landlord and a tenant that he cannot recover a rent from the tenant above a particular maximum as stated in the law.

The function and substance of contract in the present century has to be reviewed from the following points of view: (1) Standardization of contracts, (2) Public Control over terms of contracts, (3) Public Authorities as parties, and (4) Collective Bargaining.

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The standardisation of contract is an inevitable aspect of the mechanisation of modern life. Social security rather requires status than contract. We travel under standard terms, Standardisation of terms affect the freedom and equality of bargaining. The absence of competition has more or less necessitated the acceptance of terms irrespective of consent.

blic Control er Terms

A State Act, a ministerial order imposes terms on private contracts. Minimum wage, National Insurance (Industries Injuries)Act, providing for a statutory obligation, regardless of fault for compensation in the case of accidents suffered in the course of employment are examples of public control over terms.

blic thorities Parties

In common law systems, the public h law has crept in gradually and by stealth. But in civil law systems, the science of public law has controlled the relations between the public authority and the citizen for many decades. So far as the conditions imposing social and economic policies are concerned, no bargaining takes place. The contract clauses embodying those policies are printed and prescribed in advance. To a large extent,,accordingly the Government contract is an instrument of power relationship

and only vaguely resembles consensual agreement extolled by Maine and relied upon by Adam Smith.

Collective Bargaining

Collective bargaining has substituted individual bargaining with the result that there is a collective contract between the management and labour with a varying degree of state interference.

From the above it is clear that public law has vitally affected and modified the law of contract as was available in the classicial era, when people could bargain freely with each other.

In India we have also welfare type of legislation such as legislation relating to Industrial Disputes, Minimum Wage etc. Section 96 of the Motor Vehicle Act, 1930 imposes an obligation on a Motorist to have his car insured against third-party risk. This and other provisions in different acts impose promissory liability on persons for reasons of social policy.

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