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"Rationale behind Quasi Contract"

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Introduction:

In many circumstances it is required by the law that a certain person conforms to an obligation, although he has neither broken any contract nor committed any tort such obligations are termed as quasi-contractual obligations. For example, if some goods have been left by mistake in someone's house then the owner of the house is bound to restore them. Quasi contract has been formed to prevent unjust enrichment i.e. the benefit gained by one person at the cost of other. Quasi contracts do not arise out of usual transactions but out of rights and obligations similar to those created by a contract. These are fictional contract created by courts mainly for equitable purposes and are mainly based on the doctrines of unjust enrichment and quantum meruit.

History and the Rationale:

The concept of quasi contract came from common law actions of general assumpsit. Before the development of assumpsit contractual obligations were enforced through the personal actions of debts and covenant. Debt was the most common device for the enforcement of promises. In the cases of debt the defendant was held liable not because he had made a promise and failed to perform it but because he had benefitted from it and had not returned the value which was agreed.[1]

Although there were many cases in which obligations which are now termed as quasi-contractual obligations were recognized. But Lord Mansfield's opinion in the case of *Moses v. Macferlan*[2] may be termed as the emergence of the concept of quasi-contract:

"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."

The abolition of the forms of action which for so long had been the skeleton of law led to the demise of quasi-contractual claim which were enforceable at all in indebitatus assumpsit. It also

[1] Patterson, Edwin W. "Columbia Law Review." *Columbia Law Review*, vol. 37, no. 4, 1937, pp. 694–695. *JSTOR*, JSTOR, www.jstor.org/stable/1116893.
[2] (1760) 2 Burr 1005

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forced lawyers to find some new methods of classifying claims. The common law continued to be classified into contract and tort and the affirmation that requirement of implied contract leads to certainty is not clearly understood. Judgements of many cases show that emphasis on implied contracts and the spurious connection with the contract which it implies did in the past inhibit discussion of substantive issues. In the case of *Sinclair v. Brougham*[3], it was held by the House of Lords that money deposited under contracts of deposit which were ultra vires the banking company could not be recovered in an action for money had and received because, inter alia,

"the law cannot de jure impute promises to repay, whether for money had and received or otherwise, which, if made de facto, it would inexorably avoid."

Implied contract theory became a subject of criticism. It was criticized by the judges and the jurists such as Lord Atkin described it as 'one of the ghosts of past.' In the case of *Westdeutsche Landesbank Girozentrale V. Islington London Borough Council*[4], Lord Browne-Wilkinson and the other judges came to the conclusion that the decision of Sinclair v. Brougham should be overturned and were of the opinion:

"Subsequent development in the law of restitution demonstrate that this reasoning is no longer sound. The common law restitutive claim is based not on implied contract but on unjust enrichment; in the circumstances the law imposes an obligation to repay rather than implying an entirely fictitious agreement to repay… In my Judgement, your Lordships should how unequivocally and finally reject the concept that the claim for moneys had and, received is based on an implied contract, I would overrule Sinclair V. Brougham on this point It follows that in Sinclair V. Brougham the depositors should have had a personal claim to recover themoneys at law based on a total failure of consideration."

So now the implied contract theory has in a real sense become 'a ghost of the past.'

English lawyers were always against the concept of quasi contract. Until recently, the obiters of appreciated judges such as Lord Mansfield and Lord Wright tended to fall on deaf ears. In the case of *Fibrosa Spolka Akeyjna Vs Fairburn Lawson Combe Barbour Ltd*[5], Lord Wright said:

"It is clear that any civilized system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit that is to prevent a man from retaining the money of or pome benefit derived from another which it is against conscience that he should keep. Such remedies in English law are generically different from remedies in contract or tort, and are now recognized, to fail within a third category of the common law which has been called quasi-contract or restitution.

[3] (1914) AC 392 (HL)
[4] (1996) UKHL 12
[5] (1943) AC 32 (HL)

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Due to the increased judicial references to the concept of unjust enrichment and restitution led to the authoritative blessing was finally given to it by the House of Lords in the judgement of *Lipkin Gorman V. Karpnale Ltd*[6]. After that judgement it is no longer necessary to become tangled in the long running but arid debate as to whether the subject exists.

In India, also the concept of quasi contract came from the English law. In India the first step away from implied contract was taken in 1860 only in the case of *Rambux Chittangeo v. Modhoosoodun Paul Chawdhry*[7], it was held in the case with reference to Pothier and Austin jurisprudence that a claim for contribution from a co surety was not a contractual claim, that the use of the language of implied contracts was something forced on the common law and the system like Indian was not dependent on the forms of action could profitably abandon all the talks of implied contracts. Although the term quasi contract is nowhere mentioned in the Indian contract Act, it deals with all the quasi-contractual obligations which have been recognized by the way of English cases in part V (sec 68-72) of the act. By avoiding using the term quasi contract, the framers of the act have put it in a different way as "OF CERTAIN RELATIONS RESEMBLING THOSE CREATED BY CONTRACTS".

Doctrine of Unjust Enrichment:

A person who has unjustly enriched himself at the expense of other is required by the law to restitute the other person. It means that if a person has gained benefit from some person and thus causing him loss then the person gaining benefit is required to reimburse the person for the loss caused.

The doctrine of "unjust enrichment" has been defined in various books in different term. In Encyclopaedic Law Dictionary, it has been defined as:

"Unjust enrichment is where a person unjustly obtains a benefit at the expense of another. In certain cases where money is obtained by mistake or through fraud or for a consideration which has wholly failed, the law implies a promise to repay it."[8]

In Oxford Law Dictionary, it has been defined as:

"A cause of action developed at the common law and equity, whereby, roughly, a person who is unjustly enriched, either by receipt of value from the plaintiff in circumstances where he or she ought to return it, or by profiting from a wrong done to the plaintiff, is required to pay over the value of that enrichment to the plaintiff."[9]

In Merriam Webster's Dictionary of Law, unjust enrichment has been defined as:

[6] [1991] 2 AC 548
[7](1867) 7 W.R. 377, F.B.
[8] Encyclopaedic Law Dictionary, Dr. AR Biswas ed. 3rd (2008) p.1486.
[9] Oxford law student dictionary, J.E. Penner, p.302

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"The retaining of a benefit (as money) conferred by another when principles of equity and justice calls for restitution to the other party; also: the retaining of property acquired especially by fraud from another in circumstances that demand the judicial imposition of a constructive trust on behalf of those who in equity ought to receive it. It is a doctrine that requires an equitable remedy on the behalf of one who has been injured by the unjust enrichment of another."[10]

Lord Mansfield is considered to be the real founder of this doctrine. As discussed above he had talked about this theory way before in many cases including the case of *Moses v. Macferlan*. For many years his views were accepted but with the change of time implied contract theory came into existence which also led to criticism of the principal of unjust enrichment. However, such remarks are merely pejorative. Hamilton L.J. had said that:

"Whatever may have been the case 146 years ago we are not now free in the twentieth century to administer that vague jurisprudence which is sometimes attractively styled justice as between man and man."

Lord Sumner's opinion that the scope of the action for money had and received was fixed by the decided cases was expressed at a time when the legacy of the forms faction inhibited the development of the law of restitution. Few if any, English judges would now endorse it. The insistence on any notional promise no longer closes 'the door to any theory of unjust enrichment in English law.' The old common law courts should be seen as a practical and useful if not complete or ideally perfect instrument to prevent unjust enrichment aided by the various methods of technical equity which are also available. The case law now establishes that the courts recognize that the principle of unjust enrichment unites restitutive claims, and that the law is not decried to no further growth in this field.

In the case of *Challenge Air Transport, Inc. v. Transportes Aereos Nacionales*[11], it was held by the court that in order to constitute unjust enrichment the following elements must be proved:

a) Lack of an adequate remedy at law.

b) A benefit conferred upon the defendant by the plaintiff coupled with the defendant's appreciation of the benefit i.e. an "enrichment".

c) Acceptance and retention of the benefit under circumstances that make it inequitable for him or her to do so without paying the value of it. Each of these elements can present complicated problems for the innocent persons.

[10] Merriam Webster's Dictionary of Law, ed. 1st (2005) p.515
[11] (1988) S.A., 520 So. 2d 323

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Doctrine of Quantum Meruit:

Quantum meruit is another equitable form of relief that is somewhat similar but different from unjust enrichment. The basic difference between the both of them is that in unjust enrichment there may be no agreement ever to begin with while in quantum meruit, there is an agreement but it never specified a price.

The theory of quantum meruit is based on the idea that one party should be able to recover from another the value of their services when the other party was unfairly and unjustly enriched. Quantum meruit actually means asking the court to award damages based on the value of the work performed. This theory seeks to maintain reasonableness and fairness. It requires that the equity is maintained and helps to ensure that if a person provides goods or services then he/she receives the benefit of such contract.

Its definition according to the black law dictionary:

"Quantum meruit means, "as much as he deserves". It is an expression that describes the extent of liability in a contract implied by law. It is an equitable doctrine, based on the concept that no one who benefits by the labor and materials of another should be unjustly enriched thereby. The law implies a promise to pay a reasonable amount for the labor and materials furnished, even when there is absence of a specific contract."[12]

In case of quasi contracts, action for quantum meruit is based in general, upon one-person providing services to another who has requested for such services or freely accepted them with the knowledge that the services are not provided gratuitously. A person could only be compelled to payfor benefits, in general, where he has requested or freely accepted such services with the opportunity to reject. The plea that the plaintiffs have provided the service mistakenly is not sufficient to claim damages. He must prove that the services were requested by the defendant or was freely accepted by him.

In the case *of Pavey & Matthews Pty Ltd. v Paul*[13], it was held that an action could be brought on a quantum meruit basis to recover reasonable remuneration for work done under an otherwise unenforceable contract.

A claim for quantum meruit is for reasonable remuneration for the services rendered, the worth of the service. Quantum meruit involves consideration of the amount and value of the services rendered, not actual profit. The amount to which a plaintiff is entitled on the basis of unjust enrichment is the value of the benefit obtained by the defendant, and not the loss to the plaintiff assessed as if the contract were fulfilled.

[12] Black Law Dictionary, ed. 8th, 2012. p.1573
[13] (1987) 162 CLR 221

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It was held in a case[14] that the recovery in quantum meruit is said to be based upon the "assent" of the parties and, being contractual in nature, it sounds in law. Thus, in *Hermanowski v. Naranja Lakes Condominium No. Five, Inc.*,[15] it was held that in order to recover under quantum meruit it must be proved that the recipient:

a) Acquiesced in the provision of services.
b) Was aware that the provider expected to be compensated.
c) Was unjustly enriched thereby.
The doctrine of quantum meruit applies in the following situations:

a) When a person is hired for doing some work and the contract is either not completed or is rendered unperformed, the person hired for performing may sue for the services rendered to the defendant as according to theory of quantum meruit the employer will have to pay the workman as much as he deserve.
b) When there is an express contract for mode of compensation for services and for a stipulated amount, the plaintiff cannot abandon the contract and resort to an action for a quantum meruit on an implied contract. However, if there is a total failure of consideration, the plaintiff can repudiate the contract and can also seek compensation on the basis of doctrine of quantum meruit.

In Indian Contract Act, the doctrine of quantum meruit is implied in sec 70 of the act which provides for compensation in cases where a person does something lawfully for the benefit of some other person without any intention to do such act gratuitously. However, in order to come under the ambit of sec 70, two essential points need to be satisfied: firstly, that the person did not do the act gratuitously i.e. without intending to receive anything as remuneration and secondly, that the other person was benefitted from such act.

Conclusion:

Although the concept of quasi contract dates back to 18th century, it has not become obsolete. However, many a times this principal was criticized but still it holds an important place since it is based on the principals of justice and equity. The concept of quasi contract is based wholly on the doctrines of unjust enrichment and quantum meruit. The main rationale behind this principal is that no one should gain benefit at the expense of others. Despite the fact that in Indian Contract Act quasi contracts are included under a different name the essence and the fundamentals remain the same without any change. So, quasi contract form an integral part of the contract act.

[14]Rite-way Painting & Plastering, Inc. v. Tetor 582 So. 2d 15 (Fla. 2d DCA 1991), rev. dismissed, 587 So. 2d 1329 (Fla.1991)
[15] 421 So. 2d 558 (Fla. 3d DCA 1982), rev. denied, 430 So. 2d 451 (Fla. 1983).