
UNJUST ENRICHMENT: AN INORDINATE MISERY CAUSED AND ITS ESSENCE UNDER INDIAN CONTRACT LAW

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ABSTRACT

The concept of unjust enrichment was founded in English law on the principle of assumpsit, or "had and received," The doctrine of unjust enrichment is general equitable principle which states that no person should be allowed to profit at another's expense without making restitution for the reasonable value of any property, services, or other benefits that have been unfairly received and retained. The law restrains a person from being benefitted at the expense of another and this principle has been invoked to rationalise the right to restitution in a number of cases which fall outside the provinces of contract obligation. The Unjust enrichment and its undeserved misery led to economic imbalanced situation, and it is both independent and related to each other. The former connotes a helpless condition originating from a lack of access to resources without justifications, whereas the latter connotes a helpless situation arising from a lack of access to resources without justifications. The Lord Mansfield has stated it in a well-known case that the gist of this type of action is that the defendant is obligated to restore the money depending on the facts of the case. Many Scholars and Authors have endeavoured to explain and understand the essence of unjust enrichment which owes an obligation on the person who has been enriched at the expense of another¹. Despite its relatively recent origins, it is one of the most widely contested private law topics in today's world.

KEYWORDS: unjust enrichment, restitution, consideration, misery, and legal obligation.

¹ SWETA MADHU, Unjust Enrichment in India – An Introspection, S&P, (Aug 22, 2017), <https://singhania.in/blog/unjust-enrichment-in-india-an-introspection>

INTRODUCTION

The word unjust enrichment can be defined as a benefit obtained from another, not intended as a gift and nor it is legally justifiable and for which the beneficiary must make restitution or reparation. Basically, the term unjust means something that is not in conformity with established principles of justice or fairness, and which is also unjust in accordance with law and the word enrichment is defined as a person gets enriched when they gain something from another, and an enrichment can be both beneficial and detrimental in nature. This principle of unjust enrichment is when one individual benefit himself at the expense of another and this is usually against civil society standards. As a result, unjust enrichment is described as the retention of money, property, or services and leads to a violation of the fundamental principles of justice or equity, as well as moral conscience.

The principle of Unjust enrichment is mainly based on the maxim of 'Nemo Debet Locupletari ex Aliena Jactura.' which means no one should grow rich out of another person's loss. The law of unjust enrichment simply states that if person derives benefits from other person causing him loss, he shall be liable to reimburse or resituating a reasonable value of those services and money which he received unfairly availed by the person. Basically, the beneficiary shall make a good loss to plaintiff by giving him reasonable money in proportion to the loss caused to plaintiff. The doctrine of Unjust enrichment also states that it would be wrong against the plaintiff if the beneficiary retains the benefit without reimbursing the loss that is caused to the plaintiff and then it will go against the spirit of equity and justice.

The concept of Unjust Enrichment has been explained in a myriad of contexts in numerous works by various authors and scholars:

According to Black Law Dictionary, unjust enrichment is the in conditions where reimbursement is reasonably expected, the retention of a benefit conferred by another without paying remuneration, a benefit received from another that was not meant as a gift and was not legally justified, for which the beneficiary must provide restitution or compensation, this is the area of law that deals with unreasonable advantages.

According to the Encyclopaedic Law Dictionary, "unjust enrichment" occurs when one person gains an advantage at the expense of another. When money is taken by accident, by deception, or for a completely unsatisfactory consideration, the law implies a promise to repay it.

According to the Oxford Law Student Dictionary, an unjust enrichment is a cause of action developed at common law and equity in which a person who is unjustly enriched, either by receiving value from the plaintiff in circumstances where he or she should return it, or by profiting from a wrong done to the plaintiff, is required to pay more than the value of that enrichment to the plaintiff.

According to the Capital Legal and Medical Dictionary, anyone who takes advantage of an ambiguous legal situation while leis are pending will be subject to the doctrine of unjust enrichment and will be required to repay the money received.

According to the Encyclopaedic Law Lexicon, the principle of unjust benefit implied that the person who, directly or indirectly, passed on the burden of tax to another would not be entitled to a refund, even if such a refund is permissible. After passing on the burden of tax to another person, whether directly or indirectly, it would clearly be a case of unjust enrichment if the importer seller is then able to obtain a refund of the duty paid from the government, despite the incidence of tax having already been passed on to the purchaser.

The retaining of a benefit (as money) conferred by another when principles of equity and justice call for restitution to the other party; also, the retaining of property acquired especially by fraud from another in circumstances that require the judicial imposition of a constructive trust on behalf of those who in equity ought to receive it, according to Merriam Webster's Dictionary of Law. It is a notion that mandates an equitable remedy for someone who has been harmed by another's unjust enrichment.

Further, it can be deduced from all the above definition provided by different authors and scholars which denotes the basic principle of unjust enrichment which conveys that “no one should be enriched at the cost of another”. Hence if there is an unjust enrichment, the law as per the provision of Indian Contract Act provides remedies for such unjust enrichments caused.

ESSENTIAL OF UNJUST ENRICHMENT

The doctrine of unjust enrichment consists of three essential components which are as follows:

A Benefit Bestowed Upon the Defendant by the Plaintiff: The theory of unjust enrichment focuses on the value of the benefit conferred that is the benefit which the defendant had received at the loss of another person.

The Defendant's Appreciation of the benefit: When the plaintiff has incurred loss or damages then the plaintiff has to prove that the defendant appreciated or knew of the benefit and was in fact "enriched" by it. The plaintiff can claim the reimbursement of such loss.

The Defendant's unfair acceptance and retention of the benefit: The defendant is liable to make good the loss to the plaintiff by reimbursing or restitution him.

Wherever these elements are present, the same circumstances shall constitute unjust enrichment. The plaintiff is entitled to reimbursement if there is a case of fraud, mistake, or consideration. Even if a person tries to take advantage of his higher position and as a result cause another to lose, the person will compensate the other. Thus, it is a general rule that one can't grow out of loss of another person.

HISTORICAL BACKGROUND & DEVELOPMENT OF THE DOCTRINE OF UNJUST ENRICHMENT

The historical background of unjust enrichment can be divided into three stages basically the first phase lasted from the mid-eighteenth century to the second part of the eighteenth century. Although there are clear traces of remedies being granted in the cases that would later merge into unjust enrichment, there was no awareness of any commonality linking them. Even though mediaeval English jurists and attorneys were unaware of the idea of unjust enrichment or profits. However, it was seen that a number of remedies were provided in cases afterwards labelled as unjust enrichment cases. Besides in 16th Century² from that, there were several statutory writs in place to deal with such specific circumstances, and the majority of these claims were considered in the common writs of debt and account. The principle of unjust enrichment has its origins in English law, when the norm of "Assumpsit," or "had and received," was established. Other than the English legal System the Roman civil law system had also recognised the concept of unjust enrichment. In Roman legal system basically two actions which considered the principle of unjustified enrichment—the *condictio* and the *actio de in-rem verso*. When any enrichment arises from a transfer made for illegal or immoral purpose it leads to the *condictio* and in an action *de in-rem verso*, the plaintiff should show that enrichment was bestowed, that the enrichment caused an impoverishment, that there is no justification for the or the enrichment and impoverishment, and that the plaintiff has no other adequate remedy

²Elise Bant and James Edelman, *Unjust Enrichment*, pg. 59-78, 2006

at law, including no remedy under an express or implied contract. These were the two principles which mainly constituted to unjust enrichment.

The English law principle of 'Assumpsit' was first defined in the cases of **Moses v. Mcfarlon**³, Lord Mansfield declared that the defendant is bound by natural justice and equity to return the money or profit to the plaintiff. Following that, from the 18th century onwards, courts of equity began to exercise a broad jurisdiction to give relief where it is unjust for a property recipient to keep the property himself. The law that resulted was founded on the conviction that no one should be allowed to profit themselves at the expense of others. The Natural laws and equity were created to emphasise moral fairness to the innocent party, which was later formalised in the Indian Contract Act, 1872, with Sections 68 to 72 dealing with restoration of money or services in cases of unjust enrichment. The notion of unjust enrichment is codified in India's Contract Act of 1872 (Sections 68-72) as well as the Central Excise and Customs Law (Amendment) Act of 1991. The many court judgments aided in the development of this.

In **Rambux Chittangeo v. Modhoosoodun Paul Chowdhry**⁴, a case from the 1860s in India, the notion of Unjust Enrichment took its first steps. In this instance, the decision was founded on Robert Joseph Pothier and John Austin's jurisprudence. The principle was refined over the years and later defined in the Indian Contract Act, 1872, and the Central Excise and Customs Law (Amendment) Act, 1991. In the recent past, the most remarkable development in the doctrine was brought by the landmark judgment of the **Indian Council for Enviro-Legal Action vs. Union of India and others**⁵, where few environmentalists brought the matter into light how enterprises are polluting or harming the fertility of the soil and contaminating the water body by dropping hazardous waste into them and not disposing of them in an appropriate manner. The Hon'ble Court, in this case, defined unjust enrichment and its relationship with restitution and benefited considering the enterprises guilty, which would be further elucidated in the article.

The notion of unjust enrichment has gradually evolved with the court's interpretation and has been the foundation of the 'Restitution.' Unfair enrichment might be referred to as a ground for

³ Moses v. Mcfarlon 1760, 97 Eng. Rep. 676 (2 Burr. 1005)

⁴ Rambux Chittangeo v. Modhoosoodun Paul Chowdhry 1867 7 W.R. 377, F.B.

⁵ Indian Council for Enviro-Legal Action vs. Union of India and others, 1996 AIR 1446,

restitution, according to the courts, because there can never be reparation with any unjust enrichment or unjust profit.

ANALYSING THE CONCEPT OF UNJUST ENRICHMENT AND RESTITUTION

The concept of unjust enrichment is central to the subject of restitution, and it is addressed as such. The definition of restitution has been broadened to encompass not only the restoration or return of property to its rightful owner, but also compensation, reimbursement, indemnification, or reparation for benefits obtained from, or for loss or injury incurred. Although unjust enrichment is frequently mentioned or viewed as a basis for restitution, it is likely more appropriate to regard it as a requirement, because restitution is rarely possible without it.

The expressions "unjust enrichment" and "restitution," according to the Court, are like two shades of green, one leaning toward yellow and the other toward blue. When it comes to restitution, as long as one party's deprivation has not been entirely repaid, there is still an element of injustice. The two stages of restitution and unjust enrichment must be considered, respectively, pre-suit and post-suit⁶. In the former case, it becomes a substantive law (or common law) right that the Court will consider; however, in the latter case, when the parties are before the Court and any act/omission, or simply the passage of time, results in deprivation of one or unjust enrichment of the other, the Court's jurisdiction to level and do justice is independent and must be readily exercised, it will be allowing the Court's own process, along with time & delay, to do injustice.

The Hon'ble Court, while dealing with the matter also referred to cases where the Courts have exercised their inherent powers and applied the principles of justice and equity in matters of unjust enrichment. The Court referred to the findings in **Padmawati v. Harijan Sewak Sangh**⁷, wherein the Delhi High Court held that, "The case at hand shows that frivolous defences and frivolous litigation is a calculated venture involving no risks situation. You have only to engage professionals to prolong the litigation so as to deprive the rights of a person and enjoy the fruits of illegalities. In such cases where the Court finds that using the Courts as a tool, any litigant has perpetuated illegalities or has perpetuated an illegal possession, the Court must impose costs on such litigants which should be equal to the benefits derived by the litigant and harm and deprivation suffered by the rightful person so as to check the frivolous litigation and prevent

⁶ RAI RUCHIR, The Principle of Unjust Enrichment (April 16, 2012). Available at SSRN <http://dx.doi.org/10.2139/ssrn.2353502>

⁷ Padmawati v. Harijan Sewak Sangh, CM(M) No.449/2002

the people from reaping a rich harvest of illegal acts through the Court. One of the aims of every judicial system has to be to discourage unjust enrichment using Courts as a tool. The costs imposed by the Courts in all cases should be the real costs equal to deprivation suffered by the rightful person.”

The Hon’ble Court while summing up the judgment stated that while adjudicating, the Court must keep in view that ‘it is the bounden duty and obligation of the Court to neutralize any unjust enrichment and undeserved gain made by any party by invoking the jurisdiction of the Court. The doctrine of unjust enrichment is evolving through interpretations by the Courts and is considered to be an independent source of rights and obligations, ranked next to the law of contract and tort, as part of the law of obligations. It is an independent source of rights and obligations⁸.

DIFFERENTIATING QUANTUM MERUIT VS UNJUST ENRICHMENT

The legal components are something that distinguish quantum meruit from unjust enrichment. When comparing unjust enrichment and quantum meruit, they are strikingly similar in that both are equitable remedies for unfair transactions⁹ – but they are vastly distinct concepts beyond that. Generally, both theories aim to prevent one party from taking advantage of the other, but they differ in terms of the cause for recovery and the scope of the recovery.

The unjust enrichment means one party unfairly benefiting or profiting at the expense of another whereas the in quantum meruit is a Latin word which means “as much as deserved,” it is basically a cause of action that is intended to allow a party to recover the reasonable value of goods or services provided, when compensation was expected but not provided. The Unjust enrichment is applicable in situations when there is a contractual obligation or when one party fulfils the terms of the contract and the other does not or the unjust enrichment may be also applicable even if there is no actual or implied contract exists whereas the a party may bring a quantum meruit claim if a contract exists, but the parties did not agree on essential terms, or if the contract was terminated before one or more parties fulfilled their obligations, indicating a breach of contract. In unjust enrichment the parties make the claim on the basis of the loss suffered by the parties whereas the quantum meruit in contrast to unjust enrichment, quantum

⁸ VATS JYOTI, The Restoration Theory of Unjust Enrichment, LatestLaws.com., (Aug 9,2020) <https://www.latestlaws.com/articles/the-restoration-theory-of-unjust-enrichment/>

⁹ Cueto Law Group, P.L, Quantum Meruit vs Unjust Enrichment Claims: Difference Between Elements & Defences, 2021, <https://cuetolawgroup.com/quantum-meruit-vs-unjust-enrichment/>

meruit damages are measured based on the fair market value of the goods or services, rather than the value to the defendant.

LEGAL PROVISION FOR UNJUST ENRICHMENT UNDER INDIAN CONTRACT ACT

There are various remedies available under Sections 68 to 72 of the Indian Contract Act¹⁰, 1872, which deal with various conditions of unjust enrichment. The following are the remedies:

Section 68 of Indian Contract Act

According to section 68 of the Act, if a person is not capable of entering into a contract or anyone whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

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

In the case of **Jai Indra Bahadur Singh v. Dilraj Kaur**¹¹, it was decided that money advanced by a minor for his sister's wedding is required and can be recovered from the minor's property.

Section 69 of Indian Contract Act

According to section 69 it states that 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.

Govindram Gordhandas Seksari vs State of Gondal¹² in this case a Maharaja having sold certain means without paying overdue municipal taxes, were sued by the buyers who had to pay to save the property from being sold. The Lord in this case said that "the Maharaja was bound to pay this money in the sense that he made a legal enforceable contract with the buyers to pay it unless the word "bound by law to pay" where they occurs in the section, exclude those obligation of law which arises inter parties, whether by contract or by tort and embrace no more than those public duties which are imposed by statutes or general law, the Maharaja was

¹⁰ 20th Edition, Avtar Singh, Contract & Specific relief Act, 2017

¹¹ Jai Indra Bahadur Singh v. Dilraj Kaur AIR 1921 Oudh 14

¹² Govindram Gordhandas Seksari vs State of Gondal AIR 1950 PC 99

a person from whom reimbursement could be claimed under the section. But the lordships think that the word extend to any obligation which is effective bond in law. certainly, the common law of England afforded a right of indemnity to one who had paid under compulsion of law against the two obliger without limiting the circumstance in which the latter's liability had arisen. Certainly, too, there is authority in court of India for the proposition that bound by law covers obligation of contract or tort". Hence, in this case the Maharaja was bound to pay the buyers.

Section 70 of Contract Act

According to Section 70, if a person, by mistake or somehow, not gratuitously, does any act or delivers something to other and the other person uses or gains some benefit out of that service or gift, the former shall be entitled for compensation to the extent of the benefit he derives. Thus, it simply says if any person gains something out of the act or service of another, he shall make restitution the same. For example, if A, a delivery boy, unknowing leaves some gifts to the house of B. B uses those gifts. B is liable to pay reasonable number of gifts to A.

In a very famous case of **Great Eastern Shipping Company Limited v. Union of India**¹³, the plaintiff lawfully carried a cargo of coal and delivered it to the defendant's union. Plaintiff didn't do it gratuitously and defendant also accepted the same. So, the defendant was held liable to make compensation to plaintiff.

Section 71 of Indian Contract Act

According to Section 71 of Act, a person who finds goods belonging to another and takes them into his custody is subject to the same responsibilities as that of bailee. He will also a duty to return the goods after the true owner is find. He is supposed to take reasonable care of goods and not to make unauthorized use etc. He shall be liable to make compensation if he has not taken reasonable care of goods or, if he makes unauthorized use of the goods or, if he doesn't return the good within a specified time after the owner is found. He shall be liable for any loss or destruction of the goods. He is supposed to take care of the goods like a prudent man. If he fails, he will make compensation. Let take a case law to understand in a better way:

¹³ Great Eastern Shipping Company Limited v. Union of India AIR 1985 (4) ECC 303

In the case of **Newman v. Bourne and Hollingsworth**¹⁴, A, a customer of B's shop, forgot his ring in B's shop. One of B's servant took that ring and placed in an almirah. When A came to the shop of B to ask for the ring. The ring was stolen. B was held liable to not to take care the things.

Section 72 of Contract Act

According to Section 72 of the Act, if someone gets money or receives something from another, by mistake, or by coercion, the former must repay or return it. For an instance, A and B jointly owe 100 rupees to C, A alone pays the amount to C and B not knowing of this fact, pays 100 rupees over again to C. Then C is bound to repay the amount to B.

There was a situation in which Indian railway asked the passenger for extra fare, under mistakenly beliefs that the train would go through a long route. The court asked the railway to return the extra-money received from the passenger

DEFENCES FOR THE DOCTERINE OF UNJUST ENRICHMENT

Where a ground of restitution is established, relief will nevertheless be denied if a recognized defence or bar is applicable. Restitution will be denied where the defendant cannot be restored to his original position, the claimant is estopped, or where public policy precludes restitution. It is also denied where the benefit was conferred as a valid gift or pursuant to valid common law or an equitable or statutory obligation owed by the claimant to the defendant or by the claimant while performing an obligation owed to a third party or in submission to an honest claim or under process of law or a compromise of a disputed claim or by the claimant acting "voluntarily" or "officiously".

THE APPLICABILITY OF UNJUST ENRICHMENT AND FRUSTATION OF CONTRACTS AFFECTED BY THE COVID CRISIS

In this Covid Situation there has been a growing risk of both Unjust enrichment and frustration of contract, therefore one must first while entering into a contractual obligation see whether it has a force majeure clause or not as because the force majeure acts as a guarantee for refund and reimbursement of anything that has been advanced to the defendant for performance of the contract can potentially be achieved, depending upon the scenarios the clause covers.

¹⁴ Newman v. Bourne and Hollingsworth, P (1915) 31 TLR 209.

But in case if the force majeure clause is absent or if there is a provision for any risk related to COVID-19 in the contractual obligation entered by the parties then the doctrine of frustration helps in such situation. Basically, the restitution for frustration is headed by The Law Reform (Frustrated Contracts) Act 1943 and seeks to assist parties to a contract when performance has become impossible. For example, a party has entered into contractual obligation for booking a wedding venue for a wedding to take place on 4th April 2020, but due to the recent government lockdown this contract is now impossible and thus likely to be deemed as such a contract covered under the above Act and if any payments made under the contract are returnable. This can be subject to expenses incurred by the other party in or for the purpose of performing the contract and this is at the discretion of the court.

When a claim is brought only under the aforementioned Act, the courts are generally stringent in giving reimbursement for frustration. Requesting the restitution under the aforesaid Act to reverse wrongful enrichment may, nevertheless, be of assistance. Where the contract has been frustrated, a broader restitution claim through unjust enrichment can be brought for total failure of consideration which covers frustrated contracts. As a result, understanding "restitution" in the preceding Act as allowing for an action in unjust enrichment could perhaps help avoid the frustration doctrine's harsher application. For those who are unfamiliar, restitution entails the return to the claimant of the value conferred on the defendant.

The following is a general outline as to how the unjust enrichment claim would be built. Firstly, the defendant has been enriched, the defendant has benefited financially, such as by keeping the claimant's money for the now-cancelled flight. Second, because the defendant acquired the enrichment directly from the claimant, the enrichment is at the expense of the claimant. Third, there is justification for reparation because there has been a complete lack of consideration as a result of the contract's dissatisfaction. Finally, the defendant may raise any defences that apply.

Nonetheless, a claim for unjust enrichment is far from straightforward and it is still a relatively new area of law. However, unjust enrichment's potential applicability here could be an interesting one to follow, with many individuals and companies in England and Wales dealing with contracts that can no longer be performed.

CONCLUSION

After considering the aforementioned examples, it is evident that providing remedies for unfair enrichment is critical for any civilised legal system. Such remedies are not covered by Contract or Tort law, but rather by a third category known as Quasi-Contract or Restitution. The objective of the Quasi-Contract appears to be to obligate the defendant to make good on the benefit he receives from others, causing him loss. The Law Commission of India deemed these sections of the Contract Act insufficient because they do not cover all situations or conditions involving unfair enrichment. There are a variety of instances that do not fit neatly into the enactment's categories. As a result, it is suggested that a residuary Section be added, where all of the remaining conditions originating from unjust enrichment can be grouped together.

As a result, the principle of Unjust Enrichment prohibits a person from profiting from the loss of another person by requiring the latter to restitution him and compensate him for the loss. When a court is satisfied that one party has benefitted himself at the expense of another party and the beneficiary has not provided anything in return, the court may order the person who benefits from another's loss to pay compensation or return the services or money. This principle also prohibits someone from taking advantage of another person's position.

This article is an attempt to comprehend the Indian courts' perspectives on unjust enrichment. In most cases, the court renders a decision in favour of the plaintiff. Our legal system has always acted in a highly systematic manner in every scenario. The law has attempted to impose a duty on the defendant to return property that belongs to another person in justice, equity, and good conscience. The Indian Contract Act, Sections 68 to 72, offer for remedies for unfair enrichment, which is a basis for restitution. However, as time passes, things will need to be changed or amended. Section 71 deals with items given solely by accident or coercion. There are many more ways that goods might be given or obtained, such as fraud, deceit, and undue influence. As a result, it is proposed that provisions relating to fraud, misrepresentation, and undue influence be included in the legislation.