

The Principle of Unjust Enrichment

Introduction: The American Law Institute's *Restatement of the Law of Restitution, Quasi-Contracts and Constructive Trust* concisely states that "a person who has been unjustly enriched at the expense of another is required to make restitution to the other"¹. There has not been a general cause of action as per the English Law for unjust enrichment, it has been explicitly recognized by the House of Lords in *Lipkin Gorman v. Karpnale Ltd*² that the concept of unjust enrichment lies at the heart of and is the principle underlying instances in which the law does give a right of recovery in restitution.

The 13th Report of the Law Commission of India³ considered the principle of unjust enrichment or as Prof. Winfield would like to call it, "unjust benefit", as the best theoretical basis of such type of relations which can be termed as quasi contracts. This is derived from the old maxim of Roman law: "*Nemo debet locupletari ex aliena jactura*", which means no man should grow rich out of another person's loss. Denning LJ, as he then was, was another exponent of the doctrine. In *Brewer Street Investments Ltd. v. Barclays' Woollen Co. Ltd.*⁴, he said: "The proper way to formulate the claim is on a request implied in law or, as I would prefer to put it, on a claim for restitution."

1 As quoted in *Chitty on Contracts*, 30th Ed., Vol. I, General Principles, p.1638.

2 [1991] 2 A.C. 548

3 <http://lawcommissionofindia.nic.in/1-50/Report13.pdf>, accessed on 6th April, 2012.

4 (1954) 1 QB 428

In the general field of contracts unjust enrichment will usually take form of a benefit accruing to one party which for some reason may be regarded as belonging to another and the purpose of a restitutionary remedy would be restore the benefit to its rightful owner-either on the basis that there has been a total failure of consideration or via a *quantum meruit* payment for the reasonable value of the performance. Such cases are often referred to as instances of enrichment by subtraction from the claimant. In this context, restitutionary remedies do not provide a response to one party's failure to satisfy other party's expectation under the contract. Rather they seek to restore money paid or the value of a benefit conferred in circumstances in which no contract exists, or in which there is no longer any obligation to perform under an admitted contract. Thus, their availability does not solely depend upon the existence of a breach of contract, although where there is a breach the plaintiff will have to decide whether a claim for expectation loss or a restitutionary remedy would provide a better level of compensation.

On the other hand there may be an enrichment, which in some circumstances might be considered unjust, where one party receives a benefit as a result of a wrong done to the other party, without there being a subtraction from that party and the question then posed is whether a restitutionary damage will be available in such cases or not.

The reason for providing remedies in such cases can be rightly seen in the views of Lord Wright:

"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 money of, or some benefit derived from, another which it is against the conscience that he should keep. Such remedies in English Law are generically different from remedies in tort or contract, and are now recognized to fall within a third category of the common law which has been called quasi-contract or restitution."

Under Indian law the provisions for unjust enrichment are laid under section 68 to 72 with five basic principles where the claimant can ask for the benefit that the defendant had enjoyed on his property or some other benefit that was due to him that has been enjoyed by the defendant.

The Doctrine Of Unjust Enrichment

These provisions although not expressly titled unjust enrichment as in the American *Restatement* or as under English law of Restitution, but bear the spirit of the same.

The project will cover the following aspects related to unjust enrichment:

- How the principle of unjust enrichment is applied and what are its contents so as to prove that one party has unjustly enriched itself on the property of another.
- How these provisions were developed in English Law and have been incorporated under the Indian Law.
- The various defenses that are available against the application of the doctrine.

Content of Unjust Enrichment Principle: The elements of Unjust Enrichment: The principle of unjust enrichment require the following elements to come into effect-Firstly that the defendant has been enriched by the receipt of a benefit, secondly that this benefit is at the expense of the claimant, thirdly that the retention of the enrichment be unjust and finally that there is no defence or bar to the claim. The doctrine of unjust enrichment has developed not as a principle to claim back the money received or benefits received that were not due but rather where the court can order restitution or to put it in other words where the courts can reasonably grant restitution. In *Moses v. Macferlen* Lord Mansfield stated that the action for the money had and received “lies for the money paid by mistake; or upon a consideration which happens to fail; or for money got through imposition (express or implied); or extortion; or an undue advantage taken of the claimant’s situation, contrary to the laws made for the protection of persons under those circumstances”⁵. In case where a sum has been paid which is not due but the payer cannot establish a ground for recovery it is not recoverable.⁶ But the non- recognition of the principle of unjust enrichment in the past has meant that the concept of the “benefit”, “at the

5 (1760) 2 Burr, 1005, 1007.

expense of the claimant” and “unjustness” of retention have tended to develop in a fragmented way within the substantive categories in which relief has been given and sometimes as in the former rules that only mistake as to liability gave rise to restitution and that in general a payment under a mistake of law was not recoverable. Firstly we will deal with the principles related to unjust enrichment in the English Law and subsequently the same under the Indian Contract Act shall be covered.

Enrichment: Nature of enrichment: This may take the form of a direct addition to the receipt’s wealth, such as by the receipt of money, or an indirect one, for instance where an inevitable expense has been saved. The most common example of the second type of benefit is the discharge of an obligation of the defendant whether by paying his creditors or abating a nuisance or performing some other service for which he is primarily responsible.

At the expense of the claimant: Birks originally identified two basic situations to be considered here, representing two different senses in which a gain can be said to be ‘at the expense of another’⁷:

- i. Enrichment by subtraction
- ii. Enrichment by wrong to claimant

In many cases the increase in the defendant’s wealth is the direct result of, and is matched by, a corresponding diminution in the claimant’s wealth. Sometimes this direct correspondence does not exist but restitution is still awarded. This will usually be by virtue of a principle other than unjust enrichment, such as the commission of a wrong where the defendant has been saved an expense by using claimant’s property, or where the defendant has indirectly obtained property in which the claimant has a proprietary interest.

The grounds of restitution: There are number of different grounds of restitution which operate to determine whether the defendant’s receipt of enrichment can be considered to be unjust.

⁶ Woolwich Equitable B.S. v. I.R.C. [1993] A.C 70, 165, 172 (Lord Goff)

⁷ Birks(a) at pp. 23-5, 39-44, 132-9

These grounds of restitution have a number of rationales- some operate on the basis that the claimant's intention to benefit the defendant can be treated as absent, vitiated or qualified in some way. Others operate by virtue of the defendant's unconscionable conduct. Still others exist by virtue of policy justifications. The grounds of restitution are not closed. The burden is placed on the claimant to establish the factor which renders it unjust for the defendant to retain enrichment, rather than a burden being placed on the defendant to establish that it was unjust for a liability to be imposed on him.

Provisions under the Indian Law: The theory of unjust enrichment is a foundation for quasi-contractual obligations. As already stated as per Lord Mansfield, the principle that the law as well as justice should try to prevent the enrichment of one person at the cost of another. The explanation of the same was offered by His Lordship in *Moses v. Macferlan*⁸ of which the facts were:

Jacob issued four promissory notes to Moses and Moses endorsed them to Macferlan, excluding, 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 the 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 conscience", His Lordship continued:

"But it lieth for money paid by mistake; or upon a consideration which happens to fail; or money got through imposition; or extortion; or oppression; or for an undue advantage taken of the plaintiff's situation; contrary to the 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."

This kind of the liability is hard to classify. Partly it resembles liability under the law of torts. Partly it resembles contract inasmuch as it is owed only to one party and not to the world at

⁸ (1760) 2 Burr 1005, 1012

large. Thus it can be accounted for either under an implied contract or under natural justice and equity for the prevention of unjust enrichment. Lord Mansfield preferred the latter theory.

Chapter V of the Indian Contract Act deals with such situations under the heading “Of Certain Relations Resembling Those Created by Contract”. S. 68-72 provide for five kind of quasi-contractual obligations:

1. **S.68⁹ Claim for necessaries supplied to person incapable of contracting, or on his account:** The present section is applicable to persons of unsound mind and minors and other, if any, disqualified from contracting by any law to which they are subject.

“**Necessaries**”: This section is applicable only in cases where necessity of life has been provided to such an incapable person. Necessaries include articles required to maintain a particular person in the state, degree and station in life in which he is.¹⁰ It must be determined with reference to the fortune and circumstance of the particular person. Therefore it is not enough that they be of a kind which the person may reasonably want for ordinary use; they will not be necessaries if he is already sufficiently supplied with things of that kind, and it is immaterial whether the other party knows this or not.¹¹

Therefore whenever a person who is incapable of entering into a contract enters into one and enjoys the necessities due to that contract so arisen will be under law bound to restore such

⁹ Indian Contract Act, 1872

¹⁰ *Johnstone v Marks*, (1887) 19 QBD 509

¹¹ *Jagon Ram v. Mahadeo Prasad* (1909) 36 Cal 768

benefits enjoyed back to the claimant. The application of this section is subject to the condition that necessities of life should be provided and not otherwise.

2. **S.69¹² Reimbursement of person paying money due by another in payment of which he is interested:** This section lays down a wider rule than appears to be supported by any English authority. The section reads as: “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 principle of this section is that when a person is bound to make a payment and another person, though not bound is interested in the payment being made and pays up to safeguard his interest, he is entitled to reimbursement who was initially liable to pay. The conditions of liability under this section may be thus stated.

Firstly, the plaintiff should be interested in making the payment. The interest which the plaintiff seeks to protect must, of course, be legally recognizable. His honest belief that he has an interest to protect is enough.¹³ Secondly, it is necessary that the plaintiff himself should not be bound to pay. Thirdly, the defendant should have been bound by law to pay the money. Where a person is only morally bound is and not legally compellable to pay he will not be bound to reimburse the party discharging his moral obligation. Lastly, the plaintiff should have made the payment to another person and not to himself.

Thus the principle of unjust enrichment prevents the defendant from unjustly enriching himself in a way that he will be bound to pay back the claimant the amount which has been paid on his behalf although not on his direction.

¹² Ibid 8

¹³ Govind Ram Gordhandas Seksariya v. State of Gondal AIR 1950 PC 99

3. **S.70¹⁴ Obligation of person enjoying benefit of non-gratuitous act:** This section creates a liability to pay for the benefits of an act which the doer did not intend to do gratuitously. One of the conditions is that the person doing the act should have done it without having any intention of doing it gratuitously. He should have contemplated being paid from the very beginning.¹⁵ Secondly the person for whom the act is done is not bound to pay unless he had the choice to reject the services. The services so rendered should be without request. Another important point in this regard is that the services should be lawfully rendered. It has been a point of emphasis that between the person claiming for compensation and the person against whom it is claimed, some lawful relationship must exist and it should arise by reason of the fact that what has been done by the former has been accepted and enjoyed by the latter.

Most important of all is that the person rendering services should not have intended to act gratuitously. In *Damodra Mudaliar v Secy State for India*¹⁶ the defendants were held liable to make proportionate contribution towards the expenses of the repair of the tank.

Lastly, the defendant should have enjoyed or derived direct benefit from the payment or services. Where the work done by a railway co. developed the adjoining lands and consequently the municipality received more taxes, this was held not to be a sufficient benefit to enable the railway company to recover compensation from the municipality.¹⁷

14 Supra note 8

15 Govt. of A.P v. K. Bramhanandam, (2008) 5 SCC 241

16 ILR (1894-96) 18 Mad 88, 91

17 Governor- General- in- Nouncil v. Municipal Council Madura, AIR 1949 PC 39

4. **S. 71¹⁸ Finder of goods:** This section lays down the responsibility of a finder of goods. The section reads as follows, “a person who finds goods belonging to another takes them into his custody, is subject to the same responsibility as a bailee.” It basically means that if a person finds any good belonging to another person he would be required by law to take care of that good as a bailee of the same. In other words to treat it as his own and return it to its owner whenever it is asked for. In this way the doctrine of unjust enrichment is applied when a person finds someone’s goods.
5. **S. 72¹⁹ Liability of a person to whom money is paid, or thing delivered, by mistake or under coercion:** If money is paid or a thing delivered to a person under coercion or mistake, he must repay or return it. Thus if A and B jointly owe a sum of money C, and A pays it, and thereafter, not being aware of payment by A, B also pays the same amount to C, C must repay the amount to B. In *Sri Shiba Prasad Singh v. Maharaja Srish Chandra Nandi*²⁰ it was made clear that money paid under mistake is recoverable whether the mistake is of fact or of law. If a mistake either of law or of fact is established, the assessee is entitled to recover the money and the party receiving it is bound to return it irrespective of any other consideration. The scope of the word “mistake” has been clarified by the Supreme Court in *Tilokchand Motichand v.*

18 Supra note 8

19 Supra note 8

20 (1949) 76 IA 44 PC

The Doctrine Of Unjust Enrichment

*Commissioner of Sales Tax*²¹. “The Payment by Mistake” in section 72 must refer to a payment which was not legally due and which could not have been enforced: the “Mistake” is on thinking that the money paid was due when in fact, it was not due.

“Coercion”: The Judicial Committee had laid down that the word “coercion” in this section is used in its general and ordinary sense and its meaning is not controlled by the definition of “coercion” in S. 15. Accordingly, where A who had obtained a decree against B, obtained an attachment against C’s property and took possession of it to obtain satisfaction for the amount of decree and C on being ousted from his property paid the sum claimed under protest, C was held entitled to recover the sum as money paid under coercion within the meaning of this section.²²

Where a person who is charged with a non-compoundable offence is induced to pay money to the complainant to stifle the prosecution he may recover the money so paid under this section.²³

Defenses to the Doctrine of Unjust Enrichment: Where a ground of restitution is established, relief will nevertheless be denied if a recognized defense or bar is applicable. Restitution will be denied where the defendant cannot be restored to his original position²⁴, the claimant is estopped, or where public policy precludes restitution. It is also denied where the benefit was conferred:

21 (1969) 1 SCC 110

22 *Seth Kanhayalal v National Bank of India* (1913) 40 IA 56

23 *Mutthuveerappa v Ramaswami* (1917) 40 Mad 285

- a) as a valid gift;
- b) pursuant to valid common law, equitable or statutory obligation owed by the claimant to the defendant;
- c) by the claimant while performing an obligation owed to a third party.
- d) in submission to an honest claim, under process of law or a compromise of a disputed claim.
- e) by the claimant acting “voluntarily” or “officially”.

Conclusion: Unjust enrichment is not based on an express contract. Instead, litigants normally resort to the remedy of unjust enrichment when they have no written or verbal contract to support their claim for relief. In such instances litigants ask a court to find a contractual relationship that is implied in law, a fictitious relationship created by courts to do justice in a particular case. Unjust enrichment is a highly charged idea, capable of accommodating many contestable views of corrective and distributive justice.

In other circumstances unjust enrichment is the apt remedy for parties who have entered into a legally enforceable contract but where performance by one party exceeds the precise requirements for the agreement. It also governs many situations where the litigants have no contractual relationship.

Thus unjust enrichment is a flexible remedy that allows courts great latitude in shifting the gains and losses between the parties as equity, fairness and justice demand.

²⁴ This includes change of position by the defendant and inability to make *restitution in integrum* of any benefits received by the claimant seeking restitution.