

## Unjust Enrichment in India - An Introspection

Contributed by: Madhu Sweta

Unjust enrichment has been defined as: "A benefit obtained from another, not intended as a gift and not legally justifiable, for which the beneficiary must make restitution or recompense." A claim for unjust enrichment arises where there has been an "unjust retention of a benefit to the loss of another or the retention of money or property of another against the fundamental principles of justice or equity and good conscience."

It is a general equitable principle that a person should not profit at another's expense and therefore should make restitution for the reasonable value of any property, services, or other benefits that have been unfairly received and retained.

In India, the doctrine of unjust enrichment is codified in enactments such as the Contract Act, 1872 (Sections 68-72), the Central Excise and Customs Law (Amendment) Act, 1991. The law has been further developed by various judgments.

The present article focusses on one of the most important judgments of the Supreme Court of India. In Indian Council for Enviro-Legal Action v. Union of India, the Court had ordered certain industries to pay a large sum to clean up land and water bodies polluted by their activity

The Supreme Court on 13th February, 1996 in the Writ Petition No. 967 of 1989 ordered certain chemical industries situated in Bichhri, Udaipur District of Rajasthan to pay Rs.373.85 million to the residents of Bichhri. Certain environment protection organizations had brought to the notice of the Court how the chemical industries were polluting soil and water from the hazardous waste generated by their activities. These toxic hazardous wastes were not disposed off in a proper manner but allowed to pollute the land and water supply. The Court had given various orders, one of them being that the polluters were required to pay for the remedial measures required to restore and purify the water and land. By the judgment dated 13.02.1996 the Court fixed the liability (the specific amount was to be determined by an appointed body). On 4.11.1997 the Court, based on the recommendations of the assigned body, fixed the amount at Rs.373.85 million.

The Court noted that the litigation was kept alive for more than fifteen years, by filing a number of petitions, interim applications. The Court while deciding the matter chose to analyse the law of unjust enrichment on the basis that no one can take advantage of his own wrong.

### **Unjust Enrichment or Unjust Benefit**

The concept of unjust enrichment was defined by the Court as the unjust retention of a benefit to the loss of another or the retention of money or property of another against the fundamental principles of justice or equity and good conscience. A person is enriched if he has received a benefit, and he is unjustly enriched if retention of the benefit would be unjust. Unjust enrichment of a person occurs when he has and retains money or benefits which in justice and equity belong to another.

While explaining the concept, the Court referred to the case of Fibrosa v Fairbairn wherein Lord Wright, stated 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 some benefit derived from another which is against conscience that he should keep".

### **Restitution and Unjust Enrichment**

The concept of unjust enrichment is basic to the subject of restitution, and is approached as a fundamental principle. The meaning of the term 'restitution' has been extended to include not only the restoration or giving back of something to its rightful owner, but also compensation, reimbursement, indemnification, or reparation for benefits derived from, or for loss or injury caused.

Although unjust enrichment is often referred to or regarded as a ground for restitution, it is perhaps more accurate to regard it as a prerequisite, for usually there can be no restitution without unjust enrichment.

The Court categorically stated that the terms 'unjust enrichment' and 'restitution' are like the two shades of green - one leaning towards yellow and the other towards blue. With restitution, so long as the deprivation of the other has not been fully compensated for, injustice to that extent remains. Restitution and unjust enrichment has to be considered with reference to the two stages, i.e., pre-suit and post-suit. In the former case, it becomes a substantive law (or common law) right that the Court will consider; but in the latter case, when the parties are before the Court and any act/omission, or simply passage of time, results in deprivation of one, or unjust enrichment of the other, the jurisdiction of the Court to levelise and do justice is independent and must be readily exercised, otherwise 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*, wherein the Delhi High Court held that, "The case at hand shows that frivolous defenses 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 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 Courts 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 concept of unjust enrichment has gradually become wider in application and the Courts have started applying the concept of unjust enrichment to various issues such as erroneously collected tax.

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 obligations.



**Madhu Sweta**

Partner

[madhu@singhania.in](mailto:madhu@singhania.in)