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With this thought, we hereby present to you

# **FROM PRINCIPLES TO PRACTICE:** **ENFORCING UNJUST ENRICHMENT** **THROUGH QUASI CONTRACTS IN INDIA**

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## **ABSTRACT**

*The article explores the efficacy of Indian contract law in encompassing the principle of unjust enrichment through the concept of quasi contracts. Quasi contracts are fictitious agreements created by the court to enforce obligations on parties who have accrued benefits without entering into intentional contracts. The principle of unjust enrichment is rooted in the idea that no party should retain undue benefit at the expense of another. The paper delves into the understanding of quasi contracts and the principle of unjust enrichment, examining their features and the nature of quasi contractual obligations. Furthermore, the article discusses the doctrine of restitution under Indian contract law, outlining the remedies provided in cases of payments made involuntarily, voluntarily, or under non-gratuitous acts, as well as obligations arising in ineffective contracts. Sections 68 to 72 of the Indian Contract Act of 1872 are analyzed to elucidate the conditions under which restitution is required. The article also touches upon the contentious issue of whether minors should be made to compensate for undue benefits under void agreements. The conclusion highlights the importance of quasi contracts and the provisions within Indian contract law in addressing situations of unjust enrichment. It suggests that while the existing provisions have been effective in most cases, there is a need to consider circumstances involving undue influence, misrepresentation, and fraud to further enhance the law's ability to address unjust enrichment comprehensively. Overall, the article presents a comprehensive overview of the efficacy of Indian contract law in encompassing the principle of unjust enrichment through the utilization of quasi contracts.*

# INTRODUCTION

An agreement which is enforceable by law is known as a contract.<sup>1</sup> Therefore, it can be implied that contracts are agreements which are intentionally entered into by the parties.<sup>2</sup> However, there are certain circumstances where the parties do not have an intention to enter into a contract. Such circumstances arise when one party accrues benefit at the expense of another party. Consequently, certain obligations arise on the part of the benefit accruing party. The Indian Contract Act envisages that no person must derive undue benefit at the cost of another. In order to abide by this principle the court terms such a circumstance as a quasi-contract. Thus, the reasoning behind such a contract lies on the principle of unjust enrichment.

In order to better understand the restitution and remedies provided in such a circumstance, it is pertinent to understand the concept of quasi contract and the principle of unjust enrichment.

## **Quasi contract**

This is a fictitious agreement that exists by an order of a court and not by way of agreement by the parties. These are also known as constructive contract or implied in law contract.

## **Principle of Unjust enrichment**

Unjust enrichment is when one party accrues benefit at the cost of another. The principle envisages that no party shall retain any benefit at the loss of another party. If a party retains such benefit, then it is bound by the law to restore such benefit to the aggrieved party.

# UNDERSTANDING QUASI CONTRACT

## **Meaning**

Sometimes even when there is no contract yet certain circumstances induce certain specific obligations which are to be performed by certain persons. These are known as known as Quasi contract because they also create the same obligations as created in case of a regular contract. Such contracts are based upon the principle of '*Nemo debet locupletari ex aliena jactura*' which implies that 'no man should grow rich out of another person's loss'. Therefore, a Quasi contractual liability is based on the principle of unjust enrichment.

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<sup>1</sup> The Indian Contract Act, 1872 § 2(h), No. 9 of 1872, Acts of Parliament, 1872 (India)

<sup>2</sup> Black's Law Dictionary, 9<sup>th</sup> Edition, p.365



## **Features**

- This is a right of money which has been unjustly retained by the beneficiary or is basically a value of the goods retained. Therefore such damage is not predetermined or is not in the form of liquidated sum of money.
- It is not an agreement intentionally entered into by the parties the parties but it is an agreement which is imposed by the law. It can be said to be a fictitious agreement.
- It is a right in personam and not in rem.
- It is based on the principles of equity, natural justice and good conscience.

# **THE CONCEPT OF UNJUST ENRICHMENT**

## **Meaning and definition**

In literal terms, unjust enrichment is when an individual or a party accrues benefit from the other and does not compensate in return i.e. A person unjustly enriches oneself at the cost of another person. According to the definition, unjust enrichment means retention of a benefit by a party which is conferred by another without reimbursement of the same in incidents where it is reasonably anticipated. Such a benefit obtained is not intended as a gift intended as a gift as a gift nor is it legally justifiable. This benefit unjustly obtained must be restituted by the beneficiary to the aggrieved party.<sup>3</sup>

## **Principle**

It basically implies that it is unfair to allow a person to keep possession of a benefit obtained at the cost of another person. Therefore, the principle of undue benefit implies that a person who has passed on the burden of tax to another person either indirectly or directly would not be entitled to get a refund even if it is permissible. With the passage of the tax burden to the purchaser, it would be a clear case of unjust benefit if the importer manages to get refund of the duty paid from the government.<sup>4</sup> Originally, in English law, this doctrine was based upon the principle of assumpsit and was declared by Lord Mansfield in the case of *Moses v. McFarlon*.<sup>5</sup>

The doctrine of undue benefit is embodied in the Indian Contract Act under the sections 68-72. To apply this doctrine there must be three ingredients namely:

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<sup>3</sup> Black Law dictionary, 1573 ( 8th edn)

<sup>4</sup> C.K. Thakkar, Enclopediac Law Lexicon, Justice Volume 4 Ashoka Law House

<sup>5</sup> (1760) 2 Burr 1005 at 1012

- That the defendant gets enriched by obtaining benefit.
- The benefit should have been obtained at the expense of the plaintiff
- Allowing the retention of such benefit would be unjust.

## **NATURE OF QUASI CONTRACTUAL OBLIGATIONS**

Quasi contractual obligations were first recognised in the English common law. However the the persons who framed the Indian Contract Act made some changes and identified these obligations as ‘certain relations resembling those created by contracts’.

### **Payments involuntary made to the defendant's use**

There are two principles under this:

1. Payment should not have been voluntarily made but should have been made under pressure.
2. The defendant must have been under the pressure to make payment and must have been relieved of liability to make payment made by plaintiff.

In *Exall v. Partridge*<sup>6</sup>, the plaintiff had left his carriage in the premises where the defendant was living as a tenant. The landlord by lawful means seized all the goods that were on the premises including the carriage for non payment of the rent by the defendant. The plaintiff made the payment off rent in order to retrieve back the carriage and sued the defendant for the amount to which he was adjudged to be entitled.

### **Payments made voluntarily**

In cases where the payments are made due to mistake of fact the person having made such payment is entitled to retrieve if it is proved that such mistake made was of fact and that the person was liable to reimburse the amount. In *Kelly v. Solary*<sup>7</sup> the company had made payment under Life Insurance policy Insurance policy which it had forgotten to be lapsed. Therefore the company was entitled to recover the amount.

### **Quantum Meruit**

There are circumstances where a party while in performance of a contract does some work and further performance has been rendered ineffective by the other party. In such a case the party who

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<sup>6</sup> (1799) 8 Term Rep 308

<sup>7</sup> (1841) 9 M &W 54

did the work may recover reasonable compensation for the same. The case of *Plinche v. Colburn*<sup>8</sup> holds this principle. The plaintiff was engaged by the defendants to write for their work called 'The Juvenile Library', for which he was to be paid 100 guineas. However the defendants withdrew the work and thus the plaintiff claimed a portion of amount for the part which he prepared. The plaintiff was held to be entitled to it.

## **DOCTRINE OF RESTITUTION UNDER INDIAN CONTRACT LAW**

Restitution means restoring anything which has been unjustly taken from another.<sup>9</sup> The remedies against undue benefit are mentioned in sections 68 to 72 of chapter V of the Act of 1872.

### **Supply of necessities**

Section 68 states that any person who supplies the necessities of life to the persons who are incompetent to enter into contract, is entitled to claim money from such person's property.

Incompetence to contract implies that the parties are not fit to enter into contract under section 10 of the act under the following conditions

- Minors
- Persons of unsound mind
- Persons disqualified by law

In the case of *Benaras Bank Limited v. Dip Chand*<sup>10</sup>, the court held that the creditor is entitled to recover for the money advanced to a minor for the necessary out of the minor's estate. In *Jai Indra Bahadur Singh v. Dilraj Kaur*<sup>11</sup>, it was held that since the minor was bound to support his sister for marriage the money advanced to the minor. The amount was recoverable from the property.

### **Payments made by interested party**

According to Section 69,

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<sup>8</sup> 1831) 5 C & P 58: 1 Moo & S 51

<sup>9</sup> Whaton's *Law of Lexicon* rep. edn. (1976) at p. 877.

<sup>10</sup> AIR 1936 ALL 172

<sup>11</sup> AIR 1921 Oudh 14

*“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.”*

There are some specific conditions which the Section is subject to:

- The plaintiff should have an interest (which it seeks to protect) in making payment. Such an interest must be legal.
- The plaintiff himself must not be obliged to pay but should be interested in making payment so as to protect his own interest.
- The defendant should be bound by law to make payment
- The plaintiff must have made such payment.

In the case of *Govindram Gordhandas v. State of Gondal*<sup>12</sup>, the party purchased certain Mills in order to save the property from being sold at an auction because of overdue of municipal of municipal taxes. The party was allowed to recover such amount from the seller. In *Dakshina Mohun Roy v. Saroda Mohin Roy Chowdhry*<sup>13</sup>, a party who was in possession of an estate was made to pay as per the decree of the court in order to prevent the sale of estate for covering arrears of government revenue. The party was allowed to recover the amount under the section.

### **Obligation arising in case of a non gratuitous act**

As per Section 70, when an individual does something for another but without intending to do it gratuitously and such other person enjoys such benefit, the latter is then bound to pay compensation for such work done.

This section creates a liability to pay for benefit in a case where the person did not intend to do it gratuitously. The purpose of this provision is to make payment to a person who has performed an act voluntarily but without the thought of being paid.

In the case of *Great Eastern Shipping Company Limited v. Union of India*<sup>14</sup>, the plaintiff delivered a cargo to the defendant but did not intend to do so gratuitously. Therefore the defendant was liable to make payment to the plaintiff under the provision.

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<sup>12</sup> AIR 1950 PC 99

<sup>13</sup> 1893 21 Cal 142

<sup>14</sup> AIR 1971 Cal 150

In *State of Rajasthan v. Raghunath Singh*<sup>15</sup>, the person who granted a lease was entitled to recover the amount deposited by him by way of compensation due to cancellation of lease.

### **Obligation of finder of goods**

Section 71 states,

*“A person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee.”*

The finder of the good has:

- The responsibility to take proper care of the property just as an ordinary prudent man would do.
- No right of appropriating the goods
- To restore back the goods in case the owner is found.

In case of *Newman v. Bourne and Hollingsworth*<sup>16</sup>, the plaintiff forgot her coat in the shop. The defendant's assistant found it and kept in a drawer. It was found to be missing thus, the defendant was held liable to make compensation for the same.

### **Mistake or coercion**

As per Section 72,

*“A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it.”*

In *S. Ketrabarsappa v. Indian Bank*<sup>17</sup>, the bank by mistake credited some amount in the customer's account which he withdrew. The customer was made liable to pay back the money along with interest.

In the case of *Associated Cement Company Ltd. V. Union of India*<sup>18</sup>, the railway authorities charged extra fare as it was under the impression that the goods would be carried via a longer route. The railway authorities as per the provisions were made bound to pay back the extra fare.

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<sup>15</sup> AIR 1974 Raj 4.

<sup>16</sup> (1915) 31 TLR 209

<sup>17</sup> (1988) 1 Andh LT 930

<sup>18</sup> AIR 1987 Kant 236.

# RESTITUTION IN CASE OF PAYMENTS MADE IN AN INEFFECTIVE CONTRACT

Restitution as under Section 65 of the Act aims to prevent a party to a void agreement to retain benefits received under it.<sup>19</sup>

Section 65 states that when a contract is rendered to be void, any person who has obtained benefit under such agreement is bound to restore it.

This Section envisages the doctrine of restitution *in integrum* and it simply provides for restoration of benefit after the contract has been rendered void. However this section is not applicable in cases where the contract is illegal or tainted with fraud.<sup>20</sup>

In case of a minor having entered into contract which is later declared to be void, the question arises whether minor can be made to compensate the other party and as to how far can a minor be asked to restore such undue benefit.

- **Compensation under Indian Contract act**

In *Mohori Bibee v. Dharmodas Ghose*<sup>21</sup>, the Privy Council adjudged that Section 64 and 65 does not apply in case of an agreement with a minor. However, the Law Commission of India<sup>22</sup> disagreed with the Privy Council's interpretation of the provisions and was of the view that Section 65 be permitted even in case of invalid agreement because of the party's incompetency to contract. However there was no amendment made with this regard. Section 70 of the Act also cannot be invoked against a minor.<sup>23</sup>

- **Compensation under Specific Relief Act 1877**

Section 39 states

*“Any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious Injury, may sue to have it adjudged void or voidable; and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.”*

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<sup>19</sup> *N. Purkayastha v. Union of India*, AIR 1953 Assam 33

<sup>20</sup> *Nihal Singh v. Rambai*, AIR 1987 MP 126.

<sup>21</sup> (1903) ILR 30 Cal 539

<sup>22</sup> Law Commission of India 13th Report (contract Act, 1872), 1958

<sup>23</sup> *Bankay Behari Prasad v. Mahendra Prasad*, AIR 1940 Pat. 324

## Section 41

*“On adjudging the cancellation of an instrument, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.”*

There are two different views with regard to the above provisions.

### View of Lahore High court

The court in *Khan Gul v. Lakha Singh*<sup>24</sup> adjudged that the fraudulent minor must restore the benefit irrespective of whether he is a minor or defendant. As per this decision, asking minor to restore undue benefit does not imply enforcement of a contract but restoring the pre-contract position.

### View of Allahabad High Court

The Allahabad High Court in the case *Ajudhia Prasad v. Chandan Lal*<sup>25</sup> with respect to section 41 adjudged that a minor cannot be asked to give compensation if he/she is a defendant in the case as it is against the provision and it would amount to enforcing a contract which is void. However, the court agreed with the principle laid down in *Leslie v. Sheill*<sup>26</sup> that a minor may be asked to restore the property if the same can be traced back.

The Law Commission in its Reports<sup>27</sup> agreed with the views of the Lahore High Court. It was in favour of allowing an action against a fraudulent minor to restore to original position irrespective of whether the minor is a plaintiff or a defendant. The Commission was also of the view that requiring a minor to restore unjust benefit did not imply enforcement of contract. Thus, it made recommendations of a suitable amendment of the Specific Relief Act 1877 to clarify the position.

## CONCLUSION

The Indian Contract Law envisages the concept of quasi contract which is basically an agreement not made by parties but by the court of law in order to restore the benefit unjustly gained. Therefore, the quasi contracts are based on the underlying principle of unjust enrichment. The Act of 1872 provides for provisions (Sections 68-72) that deals with the remedies against unjust enrichment in various cases like, obligation of finder of goods, or when a person provides necessaries to another, etc. the courts have also in most cases ruled in favour of plaintiff for

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<sup>24</sup> AIR 1928 Lahore 609

<sup>25</sup> AIR 1937 All 610

<sup>26</sup> (1914) 3 KB. 607

<sup>27</sup> 9th Report, Specific Relief Act, (1877), at p. 46: 13th Report, Indian Contract Act, (1872), at p.20.

restoration of undue benefit so obtained. However Section 72 takes into account situations wherein a thing is delivered by mistake or coercion. It does not deal with circumstances under undue influence, misrepresentation or fraud, by ways of which undue advantage can be taken of. Thus, the contract law must provide for such provisions also.