ABSTRACT

Literally speaking ‘Unjust Enrichment’ means when a person takes benefit from other person and does not give anything in return i.e. the person unjustly enriches himself at the expense of another.

Unjust Enrichment is:

- the retention of a benefit conferred by another, without offering compensation, in circumstances where compensation is reasonably expected;
- a benefit obtained from another, not intended as a gift and not legally justifiable for which the beneficiary must make restitution or recompense;
- the area of law dealing with unjustifiable benefits.

The principle of unjust benefit implies that the person having passed on the burden of tax to another, directly or indirectly, would not be entitled to get the refund, even if such refund is permissible. Having passed on the burden of tax to another person, directly or indirectly, it would be clearly a case of unjust enrichment.

A principle 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.

Person taking advantage of unclear legal position would be subjected to the doctrine of unjust enrichment and will be liable to refund back the money so received.

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. The rule against unjust enrichment is embodied in Section 70 of Indian Contract Act, 1872 and founded not upon any contract or tort but upon a third category of law, namely quasi contract or restitution.

The retaining of a benefit (as money) conferred by another when principles of equity and justice calls for restitution to the other party and 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.

Thus the basic meaning is that it would be unjust to allow one person to retain a benefit received at the expense of another person. There is a legal maxim also that *Nemo Debet Locupletari ex Aliena Jactura* which means that no one should grow rich out of another person’s loss. The unjust enrichment has been stated to have three things namely; that the defendant has been enriched by the receipt of benefit; he must have been enriched at the expense of plaintiff and allowing defendant to keep the benefit will be unjust.

The present study examines about the doctrine of unjust enrichment under contractual obligations which can be defined as something which is not in accordance with the accepted standards of fairness or justice and which is also unfair.

When a person gains something from another, then it is said that the person is enriched. This enrichment can be both just and unjust. A student receives graduation present from his parents it is also an enrichment which is just. When a person wrongfully uses others property at the expense of other, then it is unjust.

The principle of unjust enrichment is simply stated as: A person who has been
unjustly enriched at the expense of another is required to make restitution to
the other. The meaning of this line is that if a person has gained benefit from
other person and thereby causing loss to the other person, then the person who
has gained is required to reimburse the plaintiff equal to the amount of benefit
received by the defendant.

The principle of unjust enrichment can be understood in three ways:

- Unjust enrichment can be interpreted as a principle of Aristotelian
equity, providing correction when normally sound rules produce
unjust results in particular cases.
- Unjust enrichment can be characterized as a principle
incorporating a broad ideal for justice, from which courts can
deduce solutions to particular restitution problems.
- Unjust enrichment can be understood simply as expressing a
common theme of restitution cases.

Objectives of Study:

Where a person does or delivers something to another without intending to do
so gratuitously, he is entitled to received compensation for the thing or
restoration of the thing delivered if the either party has enjoyed the benefit of
the thing done are delivered.

There are many situations in which law as well as justice required that certain
person be required to conform to an obligation, although he has neither
broken any contract nor committed any tort. For instance, a person in whose
home certain goods have been left by mistake is bound to restore them. If any
person is unjustly benefited at the expense of another person, the former is
bound to restore the benefit to the latter or to make compensation thereof.

Where a person has paid or delivered anything to another by mistake or
coercion, he is entitled to get repayment of it from the other. The obligation to
pay reasonable remuneration for the work done when there is no binding
contract between the parties is imposed by a rule of law, and not by an inference of fact arising from the acceptance of services or goods. There was a need to explore the issue of unjust enrichment in full fledge way and the researcher has discussed the thrust area in wider perspective.

Following are the main objectives of the present research work:

- to critically analyze the concept of Unjust Enrichment in the Indian scenario as well as the position of the concept in other legal systems also.
- to analyze the role of judiciary towards the concept of Unjust Enrichment.
- to review the remedial approach in existing Indian legal scenario and to discuss the therapeutic measures.

**Hypothesis:**

At the outset of the study the researcher has formulated some important assumptions to be tested throughout the study, these are given as under:

- Unjust enrichment is a unifying legal concept which explain why the law recognizes, in a variety of distinct categories of case, an obligation on the part of defendant to make fair and just restitution for a benefit derived at the expense of a plaintiff and which assists in the determination, by ordinary processes of legal reasoning. This research work demonstrates these premises; they remain valid despite pressures and tendencies to follow a trend evident in some other jurisdiction towards more loosely structured action and more general concepts of what may be deemed equitable at a philosophical level.
- Due to lack of knowledge and effective implementation of laws dealing with contractual obligations the unjust enrichment are taking place. It requires an equitable remedy on the behalf that who has been injured by the unjust enrichment of another.
The law of restitution is not fully developed in India that is why an exhaustive statute is presumed to be passed by the competent legislature.

The future of unjust enrichment may well be concerned with broader definitions and some degree of exchange of concepts in Indian law, common law and equity as exploration of this possibility is itself a major study. This assumption in this work is confined to necessary comparative observations.

Research Methodology:

The present research study is mainly a doctrinal and analytical. Critical analysis of statutory enactments on doctrine of unjust enrichment as well as analysis of various statutes operating in the field have been discussed. Keeping this in view the researcher has gone through different books, journals, case laws, proceedings of conferences, symposia, seminars, reports of Commissions and Committees, web references, E-journals etc. The relevant material is also collected from the secondary sources.

Review of the Literature:

Several books, journals, articles, judicial decisions and juristic works which are available in different libraries on the topic have been reviewed and studied and conclusion has been drawn in this regard.


The Modern law of Unjust Enrichment and Restitution by Gerard Mc Meel (2003). There are six chapters in the book that cover a treatment of
"Defences". Even though Indian law has had a statutory basis since 1872, the law is comparatively underdeveloped in India. This book, by making available all the latest developments in English law in this area in the 1990s, precisely, simply and in a small volume, has greatly influenced the development of the law in India also.

Atiyah's *Introduction the Law of Contract* (2007) is a well-known volume. This edition provides with an introduction to the theories, policies, and ideas that underlie the law, placing an equal emphasis on the law and critical analysis. The edition has analyzed the law of contract in a modern context and to account for recent development in the Law as well as those in academic thinking and writing. Addressing European influence and including perspectives from comparative law, this remains a stimulating and authoritative exposition of the concept of unjust enrichment.

*Chitty on Contracts* (1977), this book highlights about the formation of contract, capacity of parties, the terms of the contract, legality and public policy, joint obligations, privity and assignment, performance and discharge, remedies for breach of contract, restitutions and conflict of law and obviously Unjust Enrichment in details.

*Cases on contract* by Patterson and Goble (1949), in this edition a considerable number of judicial decisions have been discussed on unjust enrichment. Various pronouncements are added by the author in a systematic order.

*The Law of Contract* by P.C. Markanda (2008), this book contains exhaustive commentary and case law references on formation of contract, principle for interpretation of contracts, contracts which are legal and enforceable, performance of contracts, enforcement of Contract, frustration of Contract, novation of Contract, breach of contract and damages, law of guarantee, law of agency, law of bailment, law relating to government contracts, tenders and blacklisting etc.
Contract Act Cases And materials by V. Kesava Rao (2014), this book has focused on the general principles of the law of Contract codified in sections 1 to 75 of the Indian Contract Act, 1872. The fundamental of the Law of contract are presented by a judicial mixture of judicial comments, legal provisions, law reforms reports in seven segments comprising of eighteen chapter. The conceptual frame work of contract and law of Contract is the realm of the first segments, while the second deals with the formations of a contract, the third and fourth segments respectively deal the contract imposed on consumers while discharge from contractual obligations and breach of contract and its attendant consequences are deals in segments six and seven. The unique feature of the books is an exclusive focus on decisions of courts in India. Leading English cases are provided at the end of every chapter for a better understanding of the concepts and to facilitate comparisons. This endeavour is with the objects of fastening the development of Indian contractual jurisprudence and the concept of unjust enrichment as well.

Smith and Thomas: A casebook on contract by J.C Smith (2001) this book has discussed in detail about the formation of a contract, consideration, privity of contract, obligation arising from the contract and its formation, rights and remedies of the injured party and unjust enrichment in a detailed manner.

Law of contract Authored by Sir William Anson (2010), has comprised in seven parts under which first part indicates about the formation of contract, part second deals with the factors tending to defect contractual liability, part third examines about the limits of the contractual obligation, part fourth analyzed performance and discharge, part fifth deals with remedies and breach of contract while part six discusses about the agency and part seven examines about the quasi-contract.

Indian contract Act and Specific Relief Act written by Pollock & Mulla (2010) is one of the classics in legal literature. This edition has discussed the details of the Contract Act, section wise as well as concept wise. The recent
development in the Law of contracts in other commonwealth jurisdiction has also been included in the book. The learned author has made it more intellectually inspiring the concept of unjust enrichment.

*Laws of Contract* by Cheshire, Fifoot and Furmston’s (1991), this well known text provides a clear account in narrative form of the principles of the English laws of contract. It provides recent developments in case law and legislations The doctrine of consideration, the relief available in respect of inchoate contracts, letters of comforts, exemption clauses non-disclosure under influence, illegality, termination and self induced frustration, including the doctrine of Unjust Enrichment and Restitution.

*Contract and Specific Relief* by Avtar Singh (2013) is a popular and classic work. The work deals with the intricacies of the contract law in a straightforward and lucid style. The book covers many new developing areas in contract law which are of practical and academic importance. The revised book covers recent Supreme Court and High Courts decisions on issues including Unjust Enrichment arising of modern day trade and commerce which have been contributed to the development of the law on the subject.

*The Indian Contract Act* by R.K. Bangia (2013), this book deals with the principles of the Law of Contract. This volume narrates the legal frameworks for formulation of trade business and commercial translation. The book deals with much significant development on the issues like Unjust Enrichment which has taken place in the fields of contractual transaction.

*Business law Authored* by Avtar Singh (2011) the present book is comprised of the salient and important branches of the subject of mercantile law containing amalgamated versions of statutory provisions and judicial pronouncement. Till the preceding edition, the statutory coverage was comprised of the Contract Act, Partnership Act, Sale of Goods Act, Negotiable Instruments Act and the Companies Act. The book has also been enriched with copious references to judicial decisions particularly in the field
of unjust enrichment.

*Restitution and equity: An Analysis the principal of Unjust Enrichments* written by Emily L. Sherwin published in Texas Law Reviews vol. 79, no.7 June 2001 discussed about the law of restitution and to embody a principle against unjust enrichments: This article is based upon the study of the principle against unjust enrichments and its connection, if any, to equity. The article concludes that restitution should not be confused with Aristotelian equity, because there is nothing both unique to restitution and common to all instances of restitution that justifies courts in according less respect to rules than they would in other areas of law.

*The Scope of Restitution and Unjust Enrichments* by Edwin W. Patterson published in Missouri Law Review vol. I issue 3 June (1936). This article gives emphasis on “Restatement of Restitution and Unjust Enrichment”. Its scope and context have revealed that far from being esoteric it deals with some rather simple and basic notions of justice, that it has many applications to situation which arise in the ordinary affairs of life and that its doctrines cut across almost the whole field of private law.

*The scope and structure of Unjust Enrichments* by klim Chuk, Dennis published in University of Toronto Law Journal vol. 57, no.4 (2007). This article reviews about the history of unjust enrichments its definition, structure and scope of restitution law.

*Unjust Enrichments and Unjust Sacrifice* by S.J. Stoljar (1987), 50 Modern Law Review this particular article deals with the theory of unjust enrichments, its concept and instances of restitutionary liability as being based on a proprietary theory.

*The Emergence of Unjust Enrichments as a cause of Action and the remedy of constructive Trust* by M.M Litman (1988) 26 Alberta Law Review deals with the historical survey regarding emergence evolution and subsequent
developments of the theory of Unjust enrichments. Moreover this article examines about the judicial interpretation on the theory of restitution.

*The juridical nature of Unjust Enrichments* Authored by G.B. Kuppert (1980), 30 University of Toronto Law Journal deals with the judicial pronouncements in evolving the doctrine of unjust enrichments and the concept of restitution.

**Chapter Plan**

The instant research venture is captioned: “ Doctrine of Unjust Enrichment under Contractual Obligations: A Critical Appraisal”. To facilitate the study the research is designed to have nine chapters.

Chapter I deals with “Unjust Enrichment and Restitution: A conceptual Framework”. In this chapter Unjust Enrichment is analyzed in its historical perspective. It also means that no one should be unjustly enriched at the expense of another. In other words it means that no should take some the advantage of possession of another person which causes some loss to one party and gain to another party is analyzed in this chapter.

Chapter II is devoted for the study of “Restitutionary Techniques under Common Law and Specific Relief Act”. This Chapter divided into two parts. Part A deals with “Restitutionary Techniques under Common Law”. In this part common Law and Equity, quasi-contract, rescission, tracing and claiming, restitutionary claims and restitution on ground of failure of consideration are analyzed critically. In part B entitled “Restitutionary Techniques under Specific Relief Act”, development of Law under Specific Relief Act is discussed and analyzed.

Under chapter III, a study is made regarding “Defective Transfers” such as mistake, misrepresentation, duress, undue influence, inequality and unconscionability and necessitous intervention thoroughly and analyzed critically.
Chapter IV deals with “Unjust Enrichment under Indian Contract Act, 1872: An Analysis”. In this chapter it is analyzed that what are the remedies available under Indian Contract Act if the payment is made under mistake of fact or under ineffective Contract or under compulsion.

Under Chapter V entitled “Unjust Enrichment under the Constitution of India”, applicability of Sections 65 and 70 of the Indian Contract Act, 1872 and vis-a-vis Article 299(1) of the Constitution of India are analyzed analytically.

Chapter VI deals with “Restitution from Public Authorities”. Restitution past, restitution present and restitution future are discussed in this chapter thoroughly.

Chapter VII deals with “Enrichment by Wrongdoing”. In this chapter issues like fiduciary relationship, the obligation of the fiduciary, remedies for breach and diversion of opportunity are discussed analytically.

Chapter VIII deals with “Illegality and Public Policy as Defences”. The Consequence of illegality, proof of illegality, agreements opposed to public, defences and public policy precluding a restitutionary claim are analyzed thoroughly in this chapter.

The last chapter of this research work i.e. Conclusion and Suggestions deals with concluding remarks and strong suggestions on the thrust area of the research work.