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## The Doctrine of Unjust Enrichment under Contract Act in Pakistan: A Critical Analysis

Samza Fatima<sup>1</sup>

Nadir Hussain<sup>2</sup>

<sup>1</sup>Associate Professor/Principal University Gillani Law College Bahauddin Zakariya University, Multan. Email: [samza.fatima@bzu.edu.pk](mailto:samza.fatima@bzu.edu.pk)

<sup>2</sup>Ph.D. Law Scholar, University Gillani Law College, Bahauddin Zakariya University, Multan. Email: [Nadarhussainada0102@gmail.com](mailto:Nadarhussainada0102@gmail.com)

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### ABSTRACT

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The notion of unjust enrichment (UE) initially appears in English law under the assumpsit principle, known as “had and received”. The UE doctrine is a broad equitable concept in nature that no individual should be permitted to benefit at another’s cost without compensating for the reasonable worth of any service, property, or other advantages that have been unlawfully gained and held. The law prevents one person from benefiting at another’s expense. This concept has been applied to justify a right to restitution in various cases that fall beyond the bounds of contractual obligation. In a well-known case, Lord Mansfield observed that the basic concept of this form of action is that the respondent is obliged to refund the money based on the circumstances of the case. Various authors and scholars have attempted to explain and grasp the nature of unjust enrichment, which owes a responsibility to the person enriched at the expense of another. However, the contractual provisions in the Contract Act (CA) still need to be improved. In this paper, doctrinal methodology is applied.



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Corresponding Author’s E-Mail: [Nadarhussainada0102@gmail.com](mailto:Nadarhussainada0102@gmail.com)

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## **1. Introduction**

UE is defined as when a party gets some benefit from another without giving something in return to that person from whom the benefit is received, i.e., the person unfairly receives the benefit himself at the other's expense. It means the retaining of a benefit conferred by another, without granting recompense, in such situations where recompense or something in return is equitably expected a benefit obtained from another, not legally justifiable and not intended as a gift for which the recipient must make restitution or return (Charlie, 2009).

According to Syed Mansoor Ali Shah, J. UE was defined as a person's unfair or inequitable retention of a benefit. To recover under the idea of UE, a thing must have been provided, whether services, goods, or money; the object supplied must have been received and held by the respondent, and the keeping of it must be without legal basis (*Sui Northern Gas Pipelines v Deputy Commissioner Inland Revenue and Others*, 2014). According to Aziz-ur-Rehman, J., unjust enrichment (no one can gain from an unfair advantage to unjustifiably enrich themselves at the expense of another). The plaintiff was required to demonstrate that the defendant was enriched by the reception of an advantage, that such enrichment was at the plaintiff's expense, that such enrichment and retention of benefit was unfair, and that the defendant may legally be compelled to compensate the plaintiff. Such allegations alone would not entitle the plaintiff to damages unless he fulfilled his legal requirements to prove them (*Arabian Sea Enterprises Limited v. Abid Amin Bhatti*, 2013).

The UE, as a principle under Equity and Common Law, is established whereby somebody that is unfairly benefitted, either through receiving money or property from the claimant in such a way where he or she must return it or by benefitting from doing some wrong to the claimant, is required to hand over the proceeds of that benefit to the applicant or claimant. A man taking benefit of an unclear legal position would be liable to reimburse money or property received from the plaintiff without justification (Rajiv & Bansal, 2006). Where money is obtained through fraud, mistake, or for want of consideration or consideration where it entirely failed, the law entails an undertaking to return it to the plaintiff. The rule of unjust enrichment finds its place in Sections 68-72 of the CA, which is not based on any tort or express contract but on the third legal category, "quasi-contract or restitution" (Encyclopedic Biswas, 2008).

Retention of value as money or property given by some other where principles of equity and justice require restoration to the aggrieved party (Merriam Webster, 2005). In this regard, a legal maxim also highlights unjust enrichment "Nemo Debit Locupletari ex Aliena Jactur" means no one should profit from another person's loss. This notion of UE elaborates on three points: that the defendant has taken some benefit, these benefits have been received from the plaintiff's side, and holding these benefits with the defendant will be unjust and unfair (Pollock & Mulla, 2010).

## **2. Development and Historical Background of UE**

The background history of UE theory is separated into three parts. The first one continued until the second half of the 18th century. While there are obvious signs that redressals were applied in the circumstances that would eventually come together to form unjust enrichment, why was there no awareness of a characteristic connecting them? Even though English medieval lawyers were generally ignorant about the unjust enrichment principle, they provided remedies in various circumstances that would later be expressly categorized in this manner. In addition, various statutory writs existed to address such instances, and most claims were filed as debt and account common writs. The legal capacity was a fundamental notion of contract responsibility. It was recognized in the 15th century that infants would be held responsible for necessities like food, clothes, and educational expenses, even if they are not often considered liable under a contract. Before the end of the sixteenth century, there was no such indication of such kind of liability. However, the refined investigation would want to distinguish between responsibility for the price of goods and responsibility for a price.

Although it replaced the more traditional redressal of "debt and account," the creation of the assumpsit action did not immediately lead to changes in the substance of these kinds of rules. Therefore, the person

who released another person from liability could only file an assumpsit to request an indemnity if the payment was made at the respondent's demand. The emergence of quantum meruit, or what one has earned, is the best example of assumpsit in action. Here, the plaintiff often claimed that the defendant had promised to pay him the fair value of the service in exchange for some service provided at his request. There are probably situations when such an express agreement is not there, but in those cases, it may be derived from the circumstances and facts of each case. If someone brings a piece of cloth to a tailor to make a shirt, it is easy to assume that on delivery of the shirt, a person has agreed to pay for it. Before the mid-18th century, "quantum meruit claims" were accepted even though there was far less certainty about a true commitment to pay a fair amount.

Lord Mansfield, in the latter half of the 18th century, introduced the concept of UE, which stated that in some circumstances, it was acceptable to take action even though the promise and request were not expressed but were fictitious. The circumstances in medieval law had gathered around the primary core of contractual responsibility, which essentially took over and was broadened by the "quantum meruit and indebitatus assumpsit" for money. The activity of indebitatus assumpsit for something as benefit or money had and received was concurrent with these, assuming and extending those circumstances gathering around property concepts in the Middle Ages.

The UE principle was founded as assumpsit in English law or a contract in which *Moses v. McFarlon* (1760) Lord Mansfield declared as 'had and received' that the purpose of this kind of action is the ties of equity and natural justice require the respondent, given the facts of the case, to return the money. In *Sadler v. Evans* (1766), he observed that the case for money possessed and obtained was a liberal action founded upon significant principles of equity because the respondent cannot legitimately keep the money.

Since the initial years of the 20th century, the judges departed from the logic that quasi-contracts are implied promises. In *Sinclair vs. Brougham* (1914), the House of Lords discarded Lord Mansfield's invention and trusted upon an implied contract. The similarity of quasi-contract as implied contract restricted the scope of remedy available to the aggrieved based on equity and natural justice.

The House of Lord felt the suffocation in *Fibrosa vs Fairbain* (1943). Lord Wright relied on Lord Mansfield's theory of UE. He contended that any system of law in civilized society provides remedies to cases where any person has received any unfair advantage or unjust enrichment benefit, which discourages a person from keeping any benefit which he has taken from another person and conscience blame on retaining such benefits. Such sorts of redressals are independent of tort or contract. They are classified under the common law as a third category of the contract, which is called a quasi-contract or restitution in the modern approach.

In the 1860s, India abandoned the implied contract technique in *Rambux Chittangeo v Modhoosoodun Paul Chawdhary* (1867) to justify Lord Mansfield's doctrine of UE. According to Pothier and Austin jurisprudence, Peacock CJ observed That taking something as a contribution from co-surety is not a contractual claim, and application of implied contract is purely accidental on the common law framed based on assumpsit. The CA, chapter 5 was initially written along these lines: as the caption that "certain relations resembling those created by contract," it comprised supplies of necessities granted to those who lack contractual capacity, demands repayment made by the interested person, services provided not as a gift, claims against the finder of commodities, money or something paid after inserting coercion or delivery of something by mistake.

### **3. The Principle of UE under the Contractual Provisions:**

The principle of UE finds its place under Sections 68-72 of the Contract Act 1872 (*Govindram Dordhandas Seksaria v State of Gondal*, 1949). The overarching goal of these provisions is to give an indemnification about a contribution made in pursuance of an existing interest to the individual who, instead of compensating him, could have been held responsible by law for the payment (*Nath Prasad v Baj Nath*, 1880).

These provisions turn a natural obligation into an enforceable responsibility to make repayment on the

part of the individual who benefitted from the other individual's payment for which he was required to pay (*Subbakke Shettithi v Anthamma Shetihi*, 1934). If the parties already have contractual ties, applying these provisions is not applicable (*Tulsa Kunwar v Jageshar Prasad*, 1906). These provisions impose a larger norm than the English Authority had previously demanded. The expression "interested in making payments of money which someone has a responsibility by law to pay" can relate to the fear of any loss or hardship, not only monetary loss. In common law, showing a claim to repayment by others interested was insufficient if he paid the money personally. For instance, it was stated: Where A is compelled to pay damages to B, similarly, C is also obliged to pay money or damages to B, so A is compelled to pay B on behalf of C. Where A is paid on Behalf of C, it will be considered an implied request on behalf of C to pay B. Here, A may file a suit against C to compensate A for the money paid by A (*Edmunds v Wallingford*, 1885).

For applying the rule 'common law pleading,' responsibilities for this case category are called a fictitious or quasi-contract. The inference was that C, who did not ask A to pay, was treated as if he did. Such a reimbursement right arose, for example, when one man's things were legally captured for another's debt, e.g., as being responsible to distress, and were redeemed; the proprietor would be able to obtain reimbursement from the debtor, though he may have exposed his property to a danger of distress through an act of will performed at the debtor's demand or for his benefit (*Chitty*, 1977). These claims would now be classified as restitution or UE under English law (*Eastern Mortgage and Agency Co. Ltd. v Mohammad Fazluikarim*, 1925).

However, the fiction is excessive under these provisions, and the duty may be conveyed in simple and straightforward language without mentioning an implied request (*Moule v Gerett*, 1872). It has been declared authoritatively and has received court sanction: When the plaintiff pays money that the defendant was ultimately obligated by law to pay, or when the plaintiff pays money after being legally required to do so, and the defendant benefits from the payment by being released from his obligation, the defendant is considered to be indebted to the plaintiff in that amount.

### 3.1 Fundamental Prerequisites for UE

The following requirements must be met in order to take reimbursement:

- I. The plaintiff must have made a monetary payment, whether actual or virtual.
- II. The plaintiff had to be forced to give this money to the defendant/ respondent
- III. The respondent has to be legally bound to compensate the third party.

Though the plaintiff often has some contact with those for whom he has paid, no personal relationship is necessary to grant a right of action.

### 3.2 Contracts Implied in Law or Constructive Contracts

Any civilized legal system must offer redressal for situations of what has been referred to as UE or unfair advantage, that is, to prohibit a person from keeping the amount or some advantage gained from others that it is morally wrong for him to keep. There are several sorts of contract or tort remedies. They are now classified as a third type of restitution under English law.

A quasi-contract is a completely separate legal categorization with no connection with actual implied or express contracts. These instances are different, and the only thing they have in common is that one party has the right to collect property or money from the other to achieve an equitable outcome. This right exists independently of any promise or agreement.

A contract implied by law, also known as a quasi-contract but not the same as a real one, is also known as a contract by consent. In a quasi-contract, the cause of action includes a fictitious commitment to pay. This guarantee is imposed by implication of law, regardless of the parties' likely purpose, and sometimes even in the face of evident disagreement. These types of constructive contracts are not similar to actual contracts; in these contracts, the basic essential element of consent is missing. The quasi-contractual term is like a misnomer but does not have a relationship with the genuine contract. Misfits, according to Rome's

lawyers. Justinian refers to responsibilities that do not technically originate in contract but, since they do not emerge from a delict, appear to be quasi-contractual. In Pakistan, the Contract Act of 1872 avoids the phrase and merely refers to these relationships as “certain relations resembling those created by contract.” Such quasi-contracts have no resemblance to conditions implied in contracts by law (Jamshed et al., 2021).

In comparable instances, responsibility is deemed to exist independently of the contract and is founded on the equitable notion of UE. In quasi-contracts, a scenario is created in which the parties are bound by law, not by the contractual provisions to which they have agreed (*State of Punjab v. Hindustan Development Board Ltd*, (1960). Restitution or quasi-contracts have been classified as a third form of law not established on tort or contract (*Mulamchand v. State of Madhya Pradesh*, 1968).

#### **4. Contractual Provisions and Courts' Natural Inclination to Award Restitution against Unjust Enrichment to the Distressed Persons**

The judiciary is influenced involuntarily by the primary unspoken committed, in this regard that no one should be allowed to profit himself at the cost of others dishonestly (Jamshed et al., 2022). The law defines responsibilities to defeat UE or unexpected acquisition by their position as set by judicial conscience. The natural tendency of courts is to order restitution anywhere they find UE.

According to Section 68, if another person supplied necessities suited to a person incapable of executing a contract or anyone he is required by law to support, the person who supplied such supplies has a right to remuneration from the incapable person's property. For example, A gives B, a lunatic, the things he needs to survive. A is owed reimbursement from the B properties. In *Jai Indra Bahadur Singh v. Dilraj Kaur* (1921), money provided to a minor for his sister's wedding has been held to constitute necessary under this law and receivable from the real estate of a minor. In *Benaras Bank Limited v. Dip Chand* (1938), it was stated that a creditor may recover money granted to a minor for his requirements from the minor's property. In *Tikki Lal v Komal Chand* (1940), where the money was given to the minor for the marriage of a female in the family of the minor, in such a situation, the money shall be recovered from the minor's property.

Section 69 indicates that where someone is interested in the law in making the payment on behalf of another who is legally obligated to make, gives money on the other's behalf is entitled to recover it on whose behalf money was paid. In *Messrs American Orient Lines Inc. and another v Messrs New Jubilee Insurance Co. Ltd. and another* (1990) to invoke the application of Section 69 of the CA, first, there must be a person who is legally obligated to make a specific payment; second, there must be another person who is interested in making such payment; and third, the last stated person must make the payment. Section 69 embodies the equitable principle of unjust enrichment in English law, which states that when one person makes a payment of money with an interest in such payment, which another person is required to make by law, the former acquires a right of indemnity for reimbursement against the latter. In such cases, there is no requirement for privity of contract between the person making the payment and the person on whose behalf the payment is made. In this situation, a hypothetical inferred request from the person whose behalf the payment is made to the person making the payment may be imported.

In the case of *Nuruddin v Kaimuddin and others* (1997), the defendant (wife) filed a claim for the completion of the kitchen and finishing work as well as the money paid to the House Building Finance Corporation, where the husband had obtained a loan for the construction of the house. The plaintiff admitted the claim, so the wife was entitled to reimbursement for the money. However, due to a lack of supporting documentation, the wife's claim for a specific sum allegedly spent on repairs was rejected, while in a similar it was ruled that money given by someone while in custody of an estate under a court ruling to prohibit the sale of the property to clear the arrears of the government's revenue may be collected by him using this provision of law (*Dakshina et al. v Saroda Mohun Roy Chowdhry*, 1893).

According to Section 70, if a person legitimately does something for another person or gives something to him without gratuity, and that other individual benefits from it, the latter must compensate the former

or return the thing done or provided. For instance, A is a trader who mistakenly leaves goods at D's workplace during the motorbike repair. D unintentionally used the goods as those goods were his own. In such a situation, D must pay money for the goods consumed to A. In the case of *Messrs Ahmed Constructions Through Sole Proprietor v Messrs Neptune Textile Mills and Another* (1990), plaintiffs and defendants reach an understanding regarding the defendants' construction. Mill, Textile: After a dispute between the parties arose, the defendants disputed whether any written agreement had been signed to develop their project. Nevertheless, the defendants acknowledged that the plaintiffs verbally accepted the building work. Impact of a written agreement not existing Even if it were assumed that the agreement was verbal or unwritten, defendants would still be required to pay plaintiffs for the building work they performed. Even though there was no written agreement between them, the party receiving the benefit of a non-gratuitous act was nevertheless obligated to pay the person who performed it. So, the law presumes against free rides. Hence, it was a legal presumption in jurisprudence that unless explicitly expressed, no advantage or privilege could be assumed to be granted to a person gratuitously. This justification can be found in Section 70 of the CA, which outlines the legal doctrine of non-gratuitous advantages in quasi-contractual relationships (*Sarah Jewellery (Pvt.) Ltd Through Chief Executive v Federation of Pakistan Through Secretary Ministry of Commerce, Islamabad and another*, 2007).

In the case of *Messrs Awais Law Associates, Lahore V Secretary, Revenue Division, Islamabad* (2002), the Commissioner of Income Tax awarded the claimant (receiver) a certificate of praise for their services. Such a certificate was not given out in response to any person's ineffectual service or contribution to the collection of debts. If the Rules did not permit payment to the claimant as the Receiver, then under general principles of law, a person who had lawfully provided service and not voluntarily or gratuitously was entitled to compensation for the services he provided. Section 70 of the CA said that when a person properly performed something for someone else, without aiming to do so free of charge, and the other party benefitted from it, the latter was bound to provide remuneration. In *Bhicoobai v. Hariba Raghuj* (1917), it was established that a member of the caste is entitled to reimbursement from caste property when he pays to the holder of the decree the money owing to him under the court decree to prevent the estate from being sold in performance of decree while it is attached as part of the execution of a decree. In this case, the villagers used water from the bund to pay for its construction; under Section 70, the communities were accountable for their building portion (*Kashi Nath Singh v Nawab Alam Ara*, 1934).

In the case of *Manhattan Pakistan (Pvt.) Ltd v Government of Pakistan and another* (2000) before applying the provisions of S.70 of the CA, three requisites must be satisfied: (1) the act of doing something for another person or delivering something to him must be done lawfully; (2) the act of doing so must not be done to act gratuitously; and (3) the recipient of the act must receive the benefit of it. If it was determined that Section 70 of the CA applied and there was no clause in the contract stipulating the payment for the labor completed or services performed, the court could award compensation "quantum meruit."

In the case of *Mirza Altaf Hussain Defendant v Municipal Committee Jalalpur Jattan, Tehsil and District Gujrat* (1954), it was held that even though a contract between a Municipal Committee and a third party had not been reduced to writing accordance with section 47 of the Punjab Municipal Act, if the Committee had fulfilled its portion of the contract and the other party had benefitted thereby, he was still required to pay for what he had received and enjoyed as if there had been an implied contract between the two for payment, and a lawsuit by the Municipal Committee for the unpaid amount was allowed.

Section 71 specifies that somebody who finds things associated with someone else and puts them into his possession carries the same obligation as a bailee. When the wagon transporting the cargo landed in New Delhi, it was discovered that the shipment booked for Quetta before the country's split had gone missing. The owner sued the East Punjab Railway, which was moving the wagon across the Indo-Pakistan boundary into India. It was concluded that the Pakistan railway authority successfully transmitted and delivered the goods to the railway authority in India, and the railway management took custody of them. The railway authority in India could not deny the responsibility provided in section 71 (*Union of India v. Amar Singh*, 1960). In this case, P, a client at D's shop, misplaced a brooch with her winter coat and failed

to retrieve it. Over the past few days, one of the D's subordinates found it and stored it in a drawer. When it was found stolen on Monday, D was held liable to P for the lack of ordinary care that a reasonable man would have undertaken under the circumstances (*Newman v. Bourne and Hollingsworth*, 1915). The plaintiff's wood was situated on land later rented to the defendant. The latter warned timber owners to remove it, but it was not removed. The defendant then cleaned up the area and damaged or removed the timbers. The plaintiff's section 71 claim was refused because the defendant did not take ownership of the objects (*Union of India v. Mahommed Khan*, 1959).

Section 72 requires a person who obtained money or other property by mistake or compulsion to compensate or return it. For example, A and B are both partners in a firm that owes C a thousand rupees, but A himself pays the whole amount to C. without knowing the fact that A has paid the amount to B, too, paid the thousand rupees. In such a situation, C is obliged to pay B the amount received.

Section 72 of CA is the composite of the two principles: mistake and coercion. Where a defendant receives a benefit based on mistake or coercion, he shall be compelled to restore it to the plaintiff. The cases involving the mistakes are as follows: In the case of *Shahtaj Sugar Mills Ltd. Through Chief Executive v Addl. Secretary Government of Pakistan, Ministry of Finance, Karachi and others* (2009) excise duty, tax, and other fees that the taxpayer unknowingly, unknowingly under duress, or unknowingly constructed may be repaid to him. A period within which a claim for a refund of a deposit of a duty, other taxes, or charges is allowed, starting when the deposit of such duty or charge was made.

In the case of *Messrs Novatex Limited v Messrs Sardar Muhammad Ashraf d. Baloch, Octroi Contractor, k. M. C.* (2002), the owner of the commodities at the time of the Octroi payment, had no choice but to submit to the illegal demand of the Octroi contractor, who was the person in charge. The incorrect classification of the commodities first gave the impression that there had been a mistake. However, it had a coercive impact and result, attracting the word "coercion" from Section 72 of the Contract Act of 1872. The case did not constitute a calculation error or miscalculation within the meaning of R.218 of the 1964 Municipal Committee Octroi Rules.

In the case of *Kohinoor Industries Ltd v Government of Pakistan and Others* (1994), the order rejecting the claim for refund was a quasi-judicial order, and its validity could be contested in writ jurisdiction. Where the Authorities retained the money illegally realized, the petitioner could ask in a constitutional petition for the refund of the money collected by duty or otherwise without being subject to any specific statutory prohibition. When tax and some duty are paid to the government departments due to some mistake of law or by the mistake of fact which is not payable under any contract, law, or other means, that amount of money paid due to mistake is refundable under the provisions of section 72 of the CA to the aggrieved party (plaintiff) (*Messrs Mekotex (Ptv) Ltd., Karachi v Chairman, Appellate Tribunal, Custom, Federal Excise and Sales Tax, Karachi and 2 others* 2009). In some special circumstances, the duty and tax mistakenly paid to the government authorities which is outside the preview of statutory recognition that is recoverable by the plaintiff even beyond the period of six months under the provisions of section 72 of the CA (*Pfizer Laboratories Ltd v Federation of Pakistan*, 1998). The agent of the plaintiff paid money considering that the shares that he was going to purchase were genuine based on forms issued by the company, it was held that the recipient of the price of the share is liable to pay under section 72 of the CA and restitution of money is allowed to the aggrieved party (*Asraf Ali v Bank of India*, 1981). Where the money is paid by the mistake of the plaintiff and defendants, including the K.D.A., the appellate court ordered the refund of money paid by mistake and the deceptive practice of the respondent's side (*Mumtaz Ahmad v Karachi Development Authority and others*, 1976).

### **5. Quantum Meruit and Quantum Valebat Distinction**

The contract act provides remedies to the person aggrieved independently of the contract, whereas other remedies are not adequate under the head of the quasi-contract. The principle quantum meruit means as much as he has earned (*Mehboob Ali Bhao v Junaid Ahmad Soomro*, 1986). Where the party has done some work on his part but for some reason further performance is not possible in such a situation, the

person who has rendered services and work done may recover reasonable compensation for work done or services rendered. The principle of quantum meruit provides that where no scale of payment was specified in the agreement for work to be done, the law would impose a duty to pay a fair sum to pay as quantum meruit (*Hasnain Brother v Pakistan National Shipping Corporation, Karachi, 1986*). The quantum Valebat is the delivery of some goods, things, articles, and tangible, valuable things to a person who has received them and nothing has been returned from his side. In such a situation, the person can receive a reasonable price for the delivered property. Delivery of something not intended gratuitously to the person to whom such delivery is made is bound to return a reasonable price (*Manhattan Pakistan v Government of Pakistan, 2000*).

## **6. Defences for the UE Doctrine**

Following are the Defences which pleaded by the respondent/ defendants to defeat the claims of the plaintiffs/ applicants:

**Contracts:** One of the most defensive juristic reasons for the defense of restitution of unjust enrichment where a legal tie unites the parties according to the law to which they are subjects are terms and conditions stipulated in the contract in the forms of terms to avail the remedies in case of breach of any term of the contract. So, this is the defense of unjust enrichment against the plaintiff.

**Obligations:** Where the parties from whom the benefit is to recover are under collateral obligation to pay or discharge their liabilities or provide services which they are bound to provide, but the claimant/ applicant is under an obligation or duty to discharge his liability or provide services but remained undischarged, in such a case the claimant cannot receive any money due on another person. For example, the wife and husband are both in a state to earn their livelihood, and both are salaried persons. The husband bears some expenses to maintain their children and provides services to them while his wife is also in a secure job, earning revenue. In this case, if a husband claims the money from her wife for the expenses made for the maintenance of the children or services provided by the husband to the children. In this situation, the husband cannot claim any money from his wife because he must provide services and care for his children.

**Set Off:** In a case where the good, property, and services are provided by one party and the other party has also delivered some services, commodities, and property to the plaintiff. On the complaint of the plaintiff/applicant, the respondent may raise the plea of set-off that he has also provided some services, commodities, and property to the plaintiff in the past. For instance, A and B are partners in an enterprise while A has given money to some third person, which B owes. Later, A claims against B, in which B can assert that he has provided money similar to A when setting up the enterprise. So, in this case, the claim of A may fail because B has also set up the set-off claim against A. The claim will be considered set off in which the restitution of unjust enrichment may be declined.

**Gift:** Restitution can be refused where the advantage was given as a gift or in response to common law or an equitable or legal responsibility owed by the applicant to the respondent or by the applicant, whereas performing a responsibility owed to a third party (*Mian Asghar Ali v Province of Punjab through District Collector, 2006*). Restitutionary claims are only admissible where one party has provided services, commodities, and property to the other with the condition to perform a collateral promise or under quasi-contractual obligations. Where something is given as a gift, then recovery of such benefit cannot be claimed, which comes under the head of general defenses to the unjust enrichment. For example, in ordinary life pursuits, A provided a motorbike to B as a gift without any reward for obtaining the highest marks in the exam. A week later, A demanded money for a motorbike from B. So, the claim of A will be declined because he has given the motorbike to B as a gift and will be a defense under the head of unjust



enrichment.

**Unrequested Benefit:** Unrequested benefits are also a defense to the unjust enrichment because no one has requested or ordered to provide the services to the plaintiff, where the plaintiff/applicant himself provided services, goods, and property without the formal request, i.e., express or implies, without any express or implied conduct, visible representations to the defendant with his/her free consent. The plaintiff/ applicant cannot benefit from unrequested services or commodities. For instance, Mr. Abul Hassan got Mr. Babar's stolen dog and handed it over after serving and maintaining the dog for five days. He incurred Rs. 5000 for the maintenance of the dog. Here, Mr. Abul Hassan took the dog and incurred expenses for its maintenance with his free consent without Mr. Babar's request. He cannot claim the benefit provided without request. Such benefit does not fall under the ambit of the unjust enrichment principle and will be treated as a defense to unjust enrichment.

**Retention of Benefit with Court Orders and Support:** Where the dispute arises between the parties concerning the restitution of unjust benefits and after the hearing of the suit pleaded by the parties on the production of evidence finally, the court declined the version of the plaintiff in such a situation the restitution cannot be made to the plaintiff/applicant. A plaintiff filed a suit to recover the income tax paid to the government revenue department and filed a suit to recover it, but his plea was declined that his tax was paid legally and he was not entitled to recover. Similarly, his claim by the appellate court was declined (*Jamia Industries Ltd v Karachi Municipal Corporation, 1975*).

**Statutory Support as Defence:** Where the enacted laws prohibit the restitution of unjust enrichment, then the plaintiff's claim may fail. For example, section 23 of the Contract Act provides that no one is allowed to make a contract against public policy in which the consideration and object are unlawful, and the contract is against morality. Where the contract is made against morality and the consideration and object are unlawful, it cannot be enforced against the defendant. Even if a cause of recompense is proven, the remedy will be refused if a recognized defense applies restitution will be rejected, the plaintiff cannot be returned to his prior position, and the claimant is estopped where public policy prohibits repayment (Priyanka, 2001).

Some other defenses of equitable nature include restitution, which is a remedy in its nature as equitable and contemplates the two principles further. Firstly, a delay means that if someone wants to take any action against the defendant, he must come within a stipulated time; otherwise, his claim may fail. 'Delay defeat equity.' Secondly, the person claiming any benefit against the defendant must have no tainted hands, which means that 'who comes to equity must come with clean hands.' So, to recover any restitution benefits, the party approaching the legal forum must come within the limitation period where there is no such limitation period within a reasonable time; reasonable time depends on the facts and circumstances of each case and must be of clean hand. The court will refuse his relief if the plaintiff/ applicant comes with unclean hands.

## **7. Conclusion**

After careful examination, it seems clear that providing remedies for unjust enrichment is fundamental to any civilized legal system. Such remedies are not covered by Contract or Tort law but by a third type known as Restitution or Quasi Contract (Sections 68–72). It also applies in many cases where the litigants have no contractual tie. The Quasi-Contract appears to force the defendant to make good on the advantage he obtains from others, resulting in loss. When a court is convinced that one party has benefited himself at the expense of another and the receiver has not offered something in return, the person may be compelled by the court who benefits from the loss of another to pay recompense or return the services, money, or property. This paper attempts to grasp the Pakistani court's viewpoints on unjust enrichment. However, as time passes, certain changes or amendments will be required. Section 72 is concerned with

things delivered simply by mistake or coercion. There are numerous ways that things, goods, and services might be offered or received, such as fraud, misrepresentation, and undue influence. Therefore, it is recommended that the scope of section 72 of the Act be enlarged by including provisions about fraud, misrepresentation, and undue influence to broaden the scope of unjust enrichment.

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