

A comparative study of the rule of unjustified enrichment in Egypt and Iran

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Abstract: An unfair acquisition or using without any reason has been accepted as a new source of commitment. In foreign law and in the Romeo- Germanic system it was positioned beside contract and civil responsibility of fault. This rule that nobody can be prosperous on another's loss had been a moral rule that find its way in the legal system. The entrance of this rule into the legal system was due to the lack of specific solution in the quarrels that occurs between demanding and demanded. And the demanded hasn't done any fault but it was unfairly on the loss of wealthy demanding. The moral and fair foundation of this rule caused this rule to be accepted in most of the legal systems. Although In Egyptian and Iranian law there is no source for accepting this rule but for confirmation of this law some lawyers have used the foreign and Islamic Law. By studying and applying a comparative analysis of this rule in Iran and Egypt in a historical framework and also of its foundation which is an independent organization and the consequences of this rule we can understand that it has been coined for the sake of bridging the gap of legal rights in the Romeo- Germanic system.

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1. Introduction

The discussion of unjustified enrichment (Katuzian, 2003, 2006) is one of most important and complicated issues in law especially in the private law. The above mentioned rule is one of rules which have been accepted in most of countries as a foundation of responsibility¹. Then, the base of this rule is justice and fairness and it demands that no one has to be prosperous on the expense of another's loss². In Islam it has been confirmed that "do not consume one another's wealth unjustly" (Al nisa, verse 29).

Base on other existing organization, this rule varies in one country to another one. The varied application of this rule in different legal systems is in a way that it is ambiguous. Some experts have referred to it as being ambiguous. (The collection of view of Iranian jury, volume 6, p 242),

According to the issues raised above the main questions of this paper are:

1. How much should pay the one who has been prosperous?
2. Whether in Iranian law or Egyptian law, withdrawal of a case can include the passage of time?

3. Whether the withdrawal of a case is a cautious quarrel or a cardinal quarrel?

In Egyptian law and Iranian law the unjustified property has been divided into two specific form of this principle that is undue performance and Benevolent Intervention in Another's Affairs. The using of the property with the satisfaction of owner and the other acts can be included in using without any reason (Safae 1996, p 372). In Egyptian law and Iranian law because of using and applying Islamic and foreign law and the lack of Expurgate of the above-mentioned foundation and the verdicts which are drawn from them we see dispersion. Moreover, the written books and academic papers concerning this subject are limited and far from being enough (rah payk, 2008, p7).

Our purpose in this paper is to survey Egyptian Law in the field of unjustified enrichment and then to examine domestic laws of Iran and compare them to of Egyptians'.

The researching method of this paper is a comparative method and based on some documents. And the resources are the books and papers which are related to the subject. Also we have used law doctrines.

1 . Detler chl., Dickr, unjust Enrichment and compensation, P 270 of foreigh Investment in the present and a new Intepnation al Economic ordey, edited by Detlerchv. Dickeuniversity press friborgswitzer Land, 1987.

2 . jurenaturaeaequum et neminem cam alterius detriment to et injuriafierilocupletioremn.

2. Unjustified enrichment (L' Enrichissement sans cause)³

Unjustified enrichment (L' Enrichissement sans cause), is one of the old sources of commitment in Egypt. Anyone who has been prosperous on the expense of someone else has to pay back in compatible with the amount of loss he has made. So, when someone gains control on someone else property without any reason, and append it to its own property even if he doesn't mean it, he has to pay the least from the amount he has added to his own property and the amount of which he has reduced from the other. With this definition, the rule of unjustified enrichment is one of the first rules of law which has a deep and direct connection with the rules of justice and natural rights. This rule don't need for any justification. It can be said that the first source which came into existence in history for obligation was this rule and at the same degree it has Legal improvisation. (Girard, a summary of roman law, paris 1924, p 642 onwards).

Islamic Jurisprudence (sanhour, p 69-71 number 67) has accepted the rule of unjustified enrichment as a source of obligation but in a limited area in comparison with that of Roman law and Germanic and Latin rules. In this field, it is the undue performance which has been accepted widely in Islam jurisprudence. What comes from the interpretation of Islamic inscriptions is that undue performance has been accepted as a obligation (Alhayran, p 194)

Although you can find some certain situation in which the rule of unjustified enrichment forces the rich one to pay back. Also, it has to be mentioned that the Islamic jurisprudence has not accepted the rule of being rich as a general rule. Then, in Islamic jurisprudence, unjustified enrichment is not a source of obligation except in few cases.

The Egyptian precedent, let behind the first stage without any separation between Benevolent Intervention in another's Affairs and unjustified enrichment and while he was speaking of one but it mean another. In the second stage, distinguished between these two rules and took the rule of unjustified enrichment as an independent rule. The Egyptian precedent in the second stage, in facing the complicated interpretation that existed between Benevolent Intervention in another's Affairs and unjustified enrichment was wandering. (M, 144/205). In the third stage, it was not content with the distinction between Benevolent Intervention in

another's Affairs and unjustified enrichment, but they were referred to a right legal record.

The law and precedent of Egypt during the third stage and by shadow of the old law distinguished between these two rules and returned any one of them to their own origin. But they were always influenced by the France law and consequently the quarrel of unjustified enrichment considered as precautionary quarrel which at the time of initiating a proceeding the act of being rich had happened. (Walton, v 2, p 190 & 191; number 705)

For entering Egyptian law into the fourth stage, the rule of unjustified enrichment released from two mentioned limitation. The rule of unjustified enrichment was distinguished from the other rules by the following features:

1. It made it an independent rule and as a source of obligation.

2. It corrected the previous massive situation and a Benevolent Intervention in Another's Affairs and undue performance two conformation of unjustified enrichment. It did it in a way that this rule became the original and the two mentioned law as its Corollary.

3. This principle was released from the traditional limitations and the precautionary qualification was taken from it. It also was confirmed that at the time of initiating proceedings the existence of property is not the term.

The provision of 179 is the same legal interpretation that establishes general rule. In this provision it has been written "whoever, even if he/she is in discerning, and has been rich on the expense of someone else, he/she is committed to pay the loss to the loser about the amount which was added to his property. The mentioned obligation is stable even if his/her property decreases later on.

The incident that establishes the obligation on the rich is the incident of unjustified enrichment on the expense of someone else. This incident is a fait juridique not an acte juridique.

3. The pillars of unjustified enrichment

3.1. Three pillars

The rule of unjustified enrichment has three pillars: 1. Debtor enrichment, 2. Reduction from the property of creditor, 3. the lack of legal cause. Whenever, the pillar of rule is provided, we can initiate proceedings. This first pillar of this rule is that the addition of debtor happens. In the case of no addition, there won't be any obligation.

If someone fulfill the debt of another person and later on it would be known that this debt was fulfilled previously, in this case that person has not been rich and the debtor cannot refer to him. But if the condition of fulfillment were unfair or unjustified this

³. This expression has been used in some of books in Iran as using without any cause. The word cause in the title of the second book of civil law is used. And cause in provision 319 of commercial law has been used too.

reference could happen.⁴ This principle is that the enrichment should be positive not negative, direct but not indirect, material not spiritual.

4. The casual link between enrichment and poorness (Appaurvissementducreancier)

The second pillar of unjustified enrichment is the poorness of creditor that the being prosperous of debtor is related to it. Then, it's necessary to exist a direct casual link between richness of debtor and the poorness of creditor.⁵

The property which belongs to the rich is required to pay the least amount of enrichment and the amount which was reduced from the property, but it not always necessary that an integrated incident make them. For the existence of this casual and direct link it would be enough to prove that if the creditor didn't lost his property the debtor won't be prosperous. (Maravan, journal of Egyptians al-Asreye, pp 91-93)

It's possible to prefer the theory of equivalence des causes and the theory of cause efficient to each other and for the sake of accepting the theory of direct causation between losing the property and being rich, accept the theory of effective causation.

For initiating proceedings it's necessary that the being enrichment should be pure of Absncede cause.

The new Egyptian law has acted determinably in defining the meaning of cause. (mojmoue al-amal al-jahzareye, volume 2, p 44). The rich, has the right of gaining the property which he has lost by the help of law. The law has two sources which every law is driven from it and these are contract and law.

5. The contract of being rich

In some cases the cause or reason by which the rich add to his property is contract. In this situation it's impossible to refund the property. In most of the cases the contract by which makes someone prosperous is signed between the rich and the loser.

In other cases, the contract which is signed between the rich and the third party is the cause of being prosperous without any indulgence of loser. Taking this matter into consideration, it's this contract that makes the rich prosperous legally and prohibits the loser from initiating a proceeding.

Sometimes the contract which brings prosperity is signed between the loser and the third party with indulgence of the rich. And the contract is the legal cause for being prosperous.

⁴ . This expression referred to the judgment of Supreme Court. Number 22/4/45.

⁵ . It's necessary to examine the entire instruments which are good to be the sources of being rich before initiating a proceeding. He/she can initiate a claim of being rich when none of them were qualified.

6. The cause of being prosperous is a verdict of law

In some cases the cause of being prosperous is not contract, but it is one of legal verdicts which have qualification to be the source of being rich. The existence of such a reason prohibits the loser in hope of being prosperous to initiate a proceeding against the rich. It's because the rich has added to his property by the law. Another case is the passage of time which prevents to refund the increase of property. Whenever the observer of pious endowment confirms a debt on the expense of endowed property, his/her confirmation is of no value. Also, the verdict which has ended based on this cause prevents any initiation of proceedings that led to being prosperous.

7. No urgency causation in quarrel on being prosperous

The juridical process and the legal theory in Egypt considered the quarrel of unjustified enrichment is a precautionary quarrel (subsidiary, extra) that can be referred to in the case of a lack of any other legal method.

The legal theory in Egypt started to eradicate the limitations which were originated from being common but the juridical process and the legal theory couldn't release themselves from the second limitation. However, the new constitution of Egypt escaped from both of these limitations. This law named the quarrel of being rich a pre-cautious quarrel and in the provision of 179 confirmed it clearly that although the value which was gained unfairly has been diminished but the rich would remain committed. (majmoueh al-amalaltahzareye, v 2, p 442)

At first the juridical process and the legal theory in Egypt in giving this quarrel the attribute of precaution passed the same road which the juridical process and the legal theory of France went. (Walton, v 2, p 190- 191: number 705 and onwards; heshmataboostit, number 522, p 389)

The new Egyptian law is a positive reflection of the law in Egypt in the last stage of its progress. It did it in a way that the quarrel of being rich was accepted as a cardinal quarrel and its independency was confirmed. It was also highlighted and eradicated from its cautious and subsidiary and its rank became at the same level as the quarrel based on contract was and a claim of Enforcement responsibilities.

But whenever another claim would be initiated beside the claim of being rich, the cautious feature shows itself. Based on this feature, prosecutor cannot initiate the proceeding of being rich. It's because this claim is a cautious claim that could not be referred to if there was another legal method and consequently he/she has to initiate another claim. Being rich is not a cautious claim unless it has been real not legal.

The quarrel of being rich is a cardinal quarrel and if there would be the possibility of initiating another claim beside it, the prosecutor has the right of choosing between that claim and the claim of being rich.

The thing that remains from the theory is that the prosecutor protest against the legal instruments, one after another, and when none of them led to being rich by the defendant he/she can refer to the defender y the claim of being rich.

8. No urgent existence of an increase in property to the time of initiating a proceeding

the new civil code confirms in the provision 179 that the commitment of person who has added to his property still remain even if the increase of property go away later on. This sentence means whatever is of importance is the property. Then, whenever this increase happens a commitment would be on the rich's shoulders. And it's not necessary to remain this increase till the time of initiating a claim. The time for the increase of property is the time in which it was received not the time of initiating a claim.

This is the same wise logic of law. The logic that is clear in all of the other commitments. The subject of commitment this is originated from contact determines at the time of its assignment. The subject of commitment which is originated from an illegal act determined at the time of loss. And the subject of commitment originated from the law determine at the time of occurring the legal incident. So, taking into account that in all of the sources of commitment its subject determine at the time of establishing commitment there would be no reason to except from this cardinal and fair and logical rule unjustified enrichment.

Whenever the pillars of the rule of unjustified enrichment occur, the verdicts of rule would be trustable. And the rich would be force to pay the loss. So, compensation of loss, retribution of unjustified enrichment and the claim of being rich are the ways we could reach to it.

Demanding can initiate for compensation of a loss to an amount which that has been added to the defendant. The difference between the claim of being rich and the claim of unfair withdrawal of the case and Benevolent Intervention in Another's Affairs is that the late two claim are two faces of the first claim. But every one of these claims is independent from each other. The result is that if the loser couldn't fulfill his wishes by initiating a Benevolent Intervention in another's Affairs or withdraw claim there would be no obstacle in front of initiating a claim about unjustified enrichment from his side. And this claim would not include adjudicated case (Res Judicata), for the reason of the first claim that is Benevolent Intervention in

another's Affairs or unfair fulfillment of an obligation, is different from the reason of the second claim which is unjustified enrichment.

9. The passage of time

The new civil code has established a fundamental adjustment concerning it and when it was settled that the claim of being rich include the passage of time after 15 years it has settled also that under some condition the passage of three year is possible. In provision 180 of new civil code it has mentioned "the claim of compensation ensue from unjustified enrichment, after the passage of 15 years from the time of establishment of this right can include the passage of time".

The passage of time starts from the moment that the loser became aware of his right to loss or withdrawing what has missed. It has to be mentioned that this provision has named a long term passage of time beside the short term passage of time. The starting day of long term passage of time is the day of establishing it." (majmooatalamal al jahzareye, v 2, p 44. Provision 67 Sweden commitment law)

We can conclude from the previous provision that the claim of unjustified enrichment comes to an end by coming one of these two following times:

1. The passage of three years from the day loser became aware about demanding compensation about his loss. And that day is the day in which he/ she became aware a reduction of his property that led to increase in property of another person and knows the person whose property has been increased.

2. The passage of 15 years from the day they signed the contract. In most of the cases the claim ends after the passage of a short time. But it's possible to find some examples that the loser became aware of his loss and the enrichment of the rich after passage of a long time. In this case if we suppose the duration more than 12 years, this claim with a long passage of time- 15 years from the day of establishing commitment- includes the passage of time.

10. Two different example of unjustified enrichment

There are two different category of unjustified enrichment which is unfair fulfillment of an obligation and Benevolent Intervention in another's Affairs. The reason by which unfair fulfillment of an obligation seems to be a distinctive kind of enrichment is that the loser to pays the debt which is not obligatory for him/her. He/she pays the dept because he/she though it's necessary to pay. In ordinary situation, he/she by initiating a claim refers to the cardinal debtor. Or by initiating an unfair claim of fulfillment refers to a creditor who has paid his debts. But the late claim is a distinctive kind for unfair enrichment. It's because the

creditor who has claimed his rights has become rich by the same law which is the fulfillment of an obligation.

Unfair fulfillment of an obligation (Execution-payment) establishes a commitment at the interest of payer on receiver's responsibility on the rejection he/she has received.

11. The pillars of unfair fulfillment of an obligation

In the provision 181 of the new civil code has come:

1. In the process of fulfillment anyone who has got anything which he/she didn't deserve it has to give it back.

2. Where the payer knew that there is no obligation for the payment, there would be no subject to withdraw unless his/her qualification is incomplete or unsuitable for the payment". In the provision 182 it has been said "the unfair fulfillment of an obligation is correct when the fulfillment happened in doing the commitment that its causation has been occurred or it has been diminished after its causation occurred. And in the provision 183 it has said:

"1. Also, the unfair withdrawing is correct whenever the fulfillment be in direction of doing a commitment that its deadline has not come and the payer is not aware of the time which he had;

2. Moreover, the creditor can be content with the rejection of what he/ she have used about in time fulfillment and about the loss of debtor."

It can be concluded from the discussed issues above two different situations for undue performance: 1. Fulfillment of an obligation which didn't need an affirmation from the very first 2. it can also be understood fulfillment of an obligation that needed an affirmation at first, but didn't need affirmation later on.

According to provision 185 of new civil code it is clear that we have to separate an assumption in which the receiver is honest from an assumption which is not honest. An in this separation this matter that how much the payer demands from the receiver plays an important role.

12. The Extinction of an unfair withdrawal

The Extinction of an unfair withdrawal of a case follows a general rule, but there are two kind of withdrawal of the case, that is especially for this kind of quarrel. 1. Whenever the receiver of property be honest and be deprived of dept's Document and 2. Leave the quarrel to include the rule of passage of time (m 184).

The quarrel of withdrawing a case extinct when the minimum duration of the following durations comes to an end:

1. The passage of three year from the day in which the payer becomes aware of refunding what he has paid unjustly.

2. The passage of 15 years from the establishment of commitment. The commitment will establish from the even day of undue performance. Sometimes this period becomes much longer than past and the quarrel with passage of the first period becomes drafter of passage of time before it include the second period (AL-vasit, v2).

13. The legal element of being rich

13.1. Unjustified enrichment

The cause justifies the property of other person. It's a kind of scale that shows whether the other person is rich is fair or unfair. It can be said the causes are some factors that explains the interaction between two properties. By having a short look to the civil code they can be explained as the follow: contract, the agreement of owner or a legal rule that explain it. Then, in order to make legal the enrichment of a person there have to be a source or document otherwise it would be considered unjustified. While all of this matters is determined and expressed by the legislator, it can be said enrichment is unfair whenever is illegal.

13.2. The foundation of unjustified enrichment

Iranian lawyers have expressed some ideas for justification of unjustified enrichment. We'll discuss them here: some of them base of the reason of commitment have justified this rule and explained "it's an independent rule in civil code but according to the theory of non- commitment has stationed its bases. That is without any legal cause no one is allowed to be rich" (emami, 1996, 251) some other lawyers have said" using without any cause is a simile of contract and somehow its synonym. (safaei, ibid, 371) some of them have ratiocinated firstly civil responsibility and prevention of loss to others (qasemzade, ibid 201) but by criticizing the theory have deviated from it.

14. The territory of rule

According to the provisions of civil code we have to say we can refer to the unjustified enrichment rule in Iranian civil code when there are no legal contracts to refer to like exchange liability, termination of contract, destruction of the object of sale before delivery, delictual liability like usurpation, destruction, causation or vindication and this point proves the lack of Subsidiary rule in Iranian law.

14.1. The consequences of rule

While unjustified enrichment or taking another one's property without his/her permission is forbidden, and someone who has been rich in this way is responsible in front of the loser, the loser has the right of taking back what has been taken from him. The

reaction of legislator in preventing unjustified enrichment is varied from one case to another. If unjustified enrichment is because of an existing contract the legislator can avoid unjustified enrichment by attending to general laws of contracts. But if there is no contract, the legislator has used mostly the rules of prior possession and usurpation in order to avoid unfair enrichment. The existence of provision 303 and 311 of civil code proves this.

15. Conclusion and suggestion

The rule of unjustified enrichment has been accepted as a law in new Egyptian law and is considered as one of the cardinal sources of commitment. And this rule is divided into two special forms of undue performance and Benevolent Intervention in another's Affairs and is like subsidiary quarrel of unjustified enrichment which has common features. Also, in Egyptian law the quarrel of unjustified enrichment is a cardinal quarrel and consequently the label of being precautionous has taken from it in the new law.

The passage of time in the quarrel of refunding property is another distinctive feature of civil code of Egypt (the provision 180- 187) and civil code of Iran. It's because in Iranian law the passage of time doesn't exist. The lack of qualification in Egyptian civil code makes to take only the amount that unjustified actually has become rich by it. It's the provision 186 not the thing that he/she would benefit by order.

In Iran's law, the rule of unfair enrichment has been mentioned directly, but by pondering on provision 305 of civil code and Benevolent Intervention in another's Affairs contract and usurpation this conclusion can be drawn that the Iranian legislator have accepted the rule of unfair enrichment and this is presented in provision 301 of civil code. Due to the legislator has obtained it from France law it has got its literal translation from the France law. Consequently the definition which is presented in provision 310 of civil code is closer to legal issues. Then, Iranian lawmakers for interpretation of this provision have referred to the rule of unjustified enrichment to a small degree. Actually they have referred to the rule of prior possession for interpreting of this provision of later provisions.

In Iran's law, the rule of unjustified enrichment considered a subsidiary rule and it can be referred to when none of legal titles are referable. But the point that the rule is subsidiary it doesn't mean there is no rule or there is no need for it.

The following reformation is suggested to Iran's law.

1. The rule of unfair enrichment should be placed beside the other organizations and sources of

responsibility and this need reformation of civil code. In reviewing the civil code its pillars should be clearly determined and its verdicts and consequences should be clearly expressed. So, the first chapter (from the responsibilities which comes without contract) and is too general should be corrected. In this chapter it's better the legislator instead of saying several irrelevant provisions at first count the reason of enforcement responsibly:

1. Unjustified enrichment, 2. civil responsibility, 3. Usurpation and whatever has the verdict of usurpation and instead of counting the examples, present some general rules which encompass all the examples.

2. Concerning the unjustified enrichment the following definition is suggested "whoever has been rich without a legal cause and also on the loss of the others should pay back whatever he/she has gain unfair" and this provision should be replaced by 310 provision of civil code. About the civil responsibility the lawmaker provide a definition that includes all examples of civil responsibilities. With this description the examples of loss to others would be under the title of civil responsibility. And the examples of illegitimate domination over others property would be considered a kind of usurpation and the examples of unjustified enrichment which is not usurpation would be considered under the title of unfair enrichment.

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