

In this PDF we will deal with the introduction, objective, basic division of sections and bar of limitation under Limitation Act,1963.

LIMITATION ACT, 1963

Limitation generally means restriction and under the Limitation Act, 1963, it implies restriction on taking legal actions beyond a certain prescribed time limit. This law prescribes certain time for different suits & proceedings within which an aggrieved person can approach the court for redressal or justice. **Section 2 (j) of the Limitation Act, 1963** says: “period of limitation” means the period of limitation prescribed for any suit, appeal or application by the Schedule, and “prescribed period” means the period of limitation computed in accordance with the provisions of this Act.

I. OBJECTIVE

The **objective** of the Act is to limit legal action and consequently to give effect to the legal maxim *interest reipublicae ut sit finis litium* which means that it is in the interest of the State that there is an end to litigation. Such limitation is also imposed so as to prevent any kind of disturbance or deprivation of what may have been acquired in equity and justice or by way of long enjoyment or what may have been lost by a party’s own inaction or negligence. The basis of law of limitations in general is based on the following points:

- Long dormant claim has more of cruelty than justice in them.
- A defendant might have lost the evidence to dispute the State claim.
- A person with only good cause of actions should pursue them with.
- There are two major considerations on which the Doctrine of Limitation and Prescription are based on- firstly, the rights which are not exercised for a long time are said to be as non-existent and secondly, the rights which are related to property and rights which are in general should not be in a state of constant uncertainty, doubt and suspense.

Law of limitation is accepted because “controversies are restricted to a fixed period of time, lest they should become immortal while men are mortal.” This law neither creates any right in favor of any person nor does it define or create any cause of action against the particular person, but it prescribes the remedy. The purpose of the statute is to serve public in a better way and to save

time. This statute is basically based on public policy and therefore a time is fixed for availing or pursuing a legal remedy. It prevents party from living in a continuous state of doubt and also prevents him from any kind of harassment which may be caused due to long delay in filing of the claim.

II. POINTS TO REMEMBER

- The Law of Limitation is an adjective Law. It is *lex fori*. Thus, it can be said that the rules of the Law of Limitation are generally concerned with the rules of procedure and which do not create any rights in favor of any particular person nor do they define or create any cause of action. They are meant to see that the plaintiff seeks remedy within the period stipulated by the legislature.
- The rules of limitation thus will only bar the remedy but does not extinguish the right. The right continues to exist even through remedy is barred by limitation. Therefore, a debtor may pay the time barred debt and cannot claim it back on the plea that it was barred by limitation.
- The Limitation Act is applicable to the suits brought by the plaintiff; they do not apply to a right setup by the defendant in defense. A defendant will not be precluded from setting up a right by way in defense, even if he could not have done so as plaintiff by way of substantive claim.
- But the principle that limitation ordinarily does not bar the defense is not applicable in the case of set off and counter claim. Any claim by way of set off or a counter claim shall be treated as a separate suit and shall be deemed to have been instituted in the case of set off, on the same day that as the suit in which the set off is claimed and in the case of counter-claim on date on which the counter claim is made in court.

III. SCHEME OF THE ACT

The Limitation Act contains 32 Sections (Sections 28 and 32 repealed) and 137 Articles. The Articles have been divided into 10 parts.

- Part I: Suits relating to accounts (Articles 1-5)
- Part II: Suits relating to contracts (Articles 6-55)
- Part III: Suits relating to declarations (Articles 56-58)

- Part IV: Suits relating to decrees and instruments (Articles 59-60)
- Part V: Suits relating to immovable property (Articles 61-67)
- Part VI: Suits relating to movable property (63-71)
- Part VII: Suits relating to tort (Articles 72-91)
- Part VIII: Suits relating to trusts and trust property (Articles 92-96)
- Part IX: Suits relating to miscellaneous matters (Articles 97-112)
- Part X: Suits for which there is no prescribed period (Article 113)
- Articles 1 to 113 deal with suits
- Articles 114 to 117 deal with Appeals
- Articles 118 to 137 deal with Applications

IV. BAR OF LIMITATION

Section 3: Bar of limitation- (1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defense.

(2) For the purposes of this Act,

(a) a suit is instituted-

- i. in an ordinary case, when the plaint is presented to the proper officer,
- ii. in the case of a pauper, when his application for leave to sue as a pauper is made; and
- iii. in the case of a claim against a company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator;

(b) any claim by way of a set off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted-

- i. in the case of a set off, on the same date as the suit in which the set off is pleaded;
- ii. in the case of a counter claim, on the date on which the counter claim is made in court;

(c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that court.

In the case of *Noharlal Verma v. District Co-op Central Bank Ltd*¹, court held that bare reading of Section 3 of the Limitation Act, 1963, makes it certain that if a suit is instituted, or an appeal is preferred or an application is made after the prescribed period, then it has to be dismissed even though no such plea has been raised or defense has been set up. It simply means that a court must dismiss a suit/appeal/application, if it is satisfied that it is barred by limitation, even though there is no such plea taken by the defendant/respondent/opponent.

Section 3 bars the legal remedy, the enforceability of the right accrued whether under a contract or under any other situation. Section 3 only bars the remedy but does not destroy the right to which the remedy relates. Section 3 requires that every suit filed after the period of limitation shall be dismissed, and the same for application also.

V. DECREE NOT A NULLITY

Even if it is true that it is the duty of the court to take note of the provisions of S. 3 of the Limitation Act and to dismiss a suit when it is found that it is barred by limitation, if the court without taking note of the said provisions decides a suit on merits, the decree is not a nullity. It is merely an error of law which can be rectified in the manner provided by the code of Civil Procedure. The decree or order cannot be held to be a nullity².

Section 3 limits the time after which a suit or other proceeding would be barred. The right to sue and the commencement of the running of time for purpose of the limitation depend on the date when the cause of action arose. In a case of *Bombay Dyeing & Mfg. Co. Ltd. v. State of Bombay*³, it was held by the Supreme Court that, when a debt becomes time-barred, it does not become extinguished but only unenforceable in a court of law.

The following passages in Anson's Law of Contract are directly in point:

“At Common Law lapse of time does not affect contractual rights. Such a right is of a permanent and indestructible character, unless either from the nature of the contract, or from its terms, it be limited in point of duration. But though the right possesses this permanent character, the remedies arising from its violation are withdrawn after a certain lapse of time; *interest reipublicae ut sit finis*

¹ CIVIL APPEAL NO. 6161 of 2008.

² *Ittyavira Mathai v. Varkey Varkey*, AIR 1964 SC 907.

³ AIR 1958 SC 328.

litium. The remedies are barred, though the right is not extinguished. And if the law requires that a debtor should get a discharge before he can be compelled to pay, that requirement is not satisfied if he is merely told that in the normal course he is not likely to be exposed to action by the creditor”

It is not open to the parties to waive or contract themselves the period of limitation. It is however open to the defendant to give consent even in respect of a time-barred claim. In considering whether a suit or proceeding is barred by limitation, the court will be entitled to look into admission of the parties. In the case of *Shrimant Shamrao Suryavanshi v. Pralhad Bhairoba Suryavanshi*⁴, it was held that, the Limitation Act does not extinguish a defense, but only bars the remedy. Since the period of limitation bars a suit for specific performance of a contract, if brought after the period of limitation, it is open to a defendant in a suit for recovery of possession brought by a transferor to take a plea in defense of part-performance of the contract to protect his possession, though he may not be able to enforce that right through a suit or action.

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Reference: Material uploaded by Judicial Academy, Jharkhand.

⁴ (2002) 3 SCC 676.