



Study Notes

The Limitation Act, 1963

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Introduction

- The law of limitation finds its root in the maxims –
- **“Interest Reipublicae Ut Sit Finis Litium”** -which means that in the interest of the state as a whole there should be a limit to litigation and
- **“Vigilantibus non dormientibus Jura subveniunt”**- which means the law will assist only those who are vigilant with their rights and not those who sleep upon it.
- The law of limitation **specifies the statutory time** frame within which a person may initiate a legal proceeding or a legal action can be brought. **If a suit is filed after the expiry of the time prescribed it will be barred by the Limitation.**
- It means that a suit brought before the Court after the expiry of the time within which a legal proceeding should've been initiated will be restricted.
- It is a procedural law hence it is **retrospective in operation.**

Object of the Act

- The Law of limitation prescribes a time period within which a right can be enforced in a Court of Law.
- The time period for various suits has been provided in the schedule of the Act.
- The main purpose of this Act is to prevent litigation from being dragged for a long time and quick disposal of cases which leads to effective litigation.
- To secure quiet of the community, to suppress fraud and perjury.
- To quicken diligence and prevent oppression
- To ensure that claims are extinguished or ought to be held extinguished whether they are not litigated in the proper forum (court) within the prescribed period.
- That long dormant claims have more of cruelty than justice in them; That a defendant might have lost the evidence to dispute the state claim;
- That the right not exercised for a long time is non-existence; That the rights in property and rights in general should not be in a state of constant uncertainty, doubt and suspense.

Scheme of the Act

- It consists of **5 Parts** divided into **32 Sections** and **one Schedule.**
- The Schedule is divided into-
 - a. First Division deals with **Suits** (Articles 1 – 113)
 - b. Second Division deals with **Appeals** (Articles 114 – 117)
 - c. Third Division deals with **Applications** (Articles 118 – 137)

Important definitions

- S.2

(f)- “**easement**”-

- ✓ includes a right not arising from contract, by which one person is entitled to remove
- ✓ and appropriate for his own profit any part of the soil belonging to another
- ✓ or anything growing in, or attached to, or subsisting upon, the land of another;

(j) “**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.

Limitation Bars Remedy

- Section 3

- It lays down the general rule that if any suit, appeal or application is brought before the Court after the expiry of the prescribed time then the court shall dismiss such suit, appeal or application as time-barred.
- **The law of limitation only bars the judicial remedy and does not extinguish the right.**
- **S.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 defence.
 - (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.

- **S.4. Expiry of prescribed period when court is closed—**

- ✓ Where the prescribed period for any suit, appeal or application **expires on a day** when the **court is closed**, the suit, appeal or application may be instituted, preferred or made on the day when the court re-opens.

- ✓ Explanation—A court shall be deemed to be closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day.

Condonation of Delay

- **Section 5**

- Condonation of delay means that extension of time given in certain cases provided there is sufficient cause for such delay.

- Section 5 talks about the extension of the prescribed period in certain cases.

- It provides that if the appellant or the applicant satisfies the court that he had sufficient cause to not prefer the appeal or application within that period, such appeal or application can be admitted after the prescribed time.

- **S.5. Extension of prescribed period in certain cases—**

- ✓ Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908),

- ✓ may be admitted after the prescribed period **if the appellant or the applicant satisfies the court that he had sufficient cause for** not preferring the appeal or making the application within such period.

- ✓ Explanation—The fact that the appellant or the applicant was missed by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.
- **Sufficient cause means –**
that there should be adequate reasons or reasonable ground for the court to believe that the applicant was prevented from being proceeding with the application in a Court of Law.

Exclusion of Time

Section 12 to Section 15 deals with the exclusion of time under the Limitation Act.

- **Section 12**

It talks about the time that has to be excluded for computing time of limitation in legal proceedings.

Sub-section (1) says that the day on which the cause of action arises that day shall be excluded while computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned.

Following time has to be excluded from computing the period of limitation:

The day on which the period of limitation for any suit, appeal or application has been reckoned.

In case of an appeal or an application for leave to appeal/revision/review of a judgment:

i) The day on which the judgment complained of was pronounced.

ii) Necessary time taken for obtaining a copy of the decree, sentence, order appealed from or sought to be revised or reviewed.

In case of decree or order is appealed from or sought to be revised or reviewed or an application for leave to appeal from a decree:

i) Time requisite for obtaining a copy of the judgment

In case of application to set aside an award:

i) Time requisite for obtaining a copy of the award

- **S.12. Exclusion of time in legal proceedings—**

- (1) In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded.
- (2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded.
- (3) Where a decree or order is appealed from or sought to be revised or reviewed, or where an application is made for leave to appeal from a decree or order, the time requisite for obtaining a copy of the judgment shall also be excluded.
- (4) In computing the period of limitation for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

Explanation—In computing under this section the time requisite for obtaining a copy of a decree or an order, any time taken by the court to prepare the decree or order before an application for a copy thereof is made shall not be excluded.

- **Section 13**

- ✓ where an application for leave to sue or appeal as a pauper (indigent) has been made and rejected, the time spent by the applicant in prosecuting in good faith shall be excluded.

- **Section 14**

- ✓ if a party is proceeding in good faith in a court without jurisdiction any suit or application the time spent by the party should be prosecuting another civil proceeding with due diligence and that prosecution shall be in good faith shall be excluded.

- **Section 15**

- ✓ the following time shall be excluded:
- ✓ The day of the issuance and withdrawal of the stay order or injunction.
- ✓ In case where a previous consent or sanction of the government is required – the time spent on obtaining the consent or sanction.
- ✓ In case of proceedings for winding up of a company- the time during which the receiver or liquidator was appointed.
- ✓ In case of a suit for possession by a purchaser at a sale in execution of decree- the time during which proceeding to set aside sale has been prosecuted.

- ✓ The time during which the defendant is absent from India and under territory outside India under the administration of the Central Government.

Postponement of Limitation

- Postponement of limitation means extending the period of limitation.
- **Section 16 to 23 of the Act deals with the postponement of limitation.**
- **Note: That in all these cases, period of limitation will not begin to run.**

- **Section 16**
 - ✓ Firstly, where a person having the right to sue or make an application has died before the right accrues or right accrues only on the death of that person-
 - ✓ the period of limitation will be computed from the time **when there is a legal representative who is capable of instituting.**
 - ✓ Secondly, where a person against whom the right to sue or make an application would have accrued dies or would have accrued on his death, limitation will start when there will be a legal representative of the deceased.

- **Section 17**
 - ✓ Where the suit or application is based upon fraud, mistake or concealment by fraud-
 - ✓ the period of limitation will **not start unless the plaintiff or applicant has discovered the fraud, concealment or mistake.**

- **Section 18**
 - ✓ In case of an acknowledgment of liability in respect of any property or right-
 - ✓ a-fresh period of limitation will be computed **from the time acknowledgment was signed.**

- **Section 19**
 - ✓ where payment on account of a debt or of interest on legacy-
 - ✓ a fresh period of limitation will be **computed when payment was made.**

- **Section 20**
 - ✓ Section 20 is only a **further explanation of section 18 and section 19.**
 - ✓ It says that under a disability the expression 'agent duly authorised' will include the lawful guardian, committee, manager or agent duly authorised by such guardian, committee or manager.

- **Section 21**
 - ✓ Where a new plaintiff or defendant is added or substituted after the institution of suit-
 - ✓ **the suit will be deemed to be instituted when he was so made the party.**

- ✓ However, if the new plaintiff or defendant was added due to a mistake in good faith and the Court is satisfied, the suit shall be deemed to have been instituted on an earlier date.
- **Section 22**
 - ✓ Where there is a continuing breach of contract or tort –
 - ✓ a fresh period of limitation **will start at the moment when the breach or tort continues.**
- **Section 23**
 - ✓ In case of suits for compensation for acts not actionable without special damage-
 - ✓ limitation period will start **from the time when the injury occurs.**

Acquisition of Ownership by Possession

- **Prescription-**
 - ✓ It may be defined as the effect of lapse of time in the creation and extinction of a legal right. It has two aspects, namely, positive or acquisitive and negative or extinctive.
 - ✓ The creation of a right by the lapse of time is called the positive or acquisitive prescription, whereas the extinction of a right by the lapse of time is called extinctive or negative prescription.
- **S. 25. Acquisition of easements by prescription—**
 - (1) Where the access and use of light or air to and for any building have been peaceably enjoyed therewith as an easement, and as of right,
 - ✓ Without interruption, and for **twenty years**, and where any way or watercourse or the use of any water or any other easement (whether affirmative or negative) has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right without interruption and for twenty years,
 - ✓ the right to such access and use of light or air, way, watercourse, use of water, or other easement shall be absolute and indefeasible.
 - (2) Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.
 - (3) Where the property over which a right is claimed under sub-section (1) belongs to the

Government that sub-section shall be read as if for the words “twenty years” the words “thirty years” were substituted.

Explanation—Nothing is an interruption within the meaning of this section, unless where there is an actual discontinuance of the possession or enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorising the same to be made.

Extinguishment of Right

- **General Rule that the law of limitation only bars the remedy but does not bar the right itself. Section 27 is an exception to this rule.**
- It talks about adverse possession. Adverse possession means someone who is in the possession of another’s land for an extended period of time can claim a legal title over it.
- In other words, the title of the property will vest with the person who resides in or is in possession of the land or property for a long period.
- If the rightful owner sleeps over his right, then the right of the owner will be extinguished and the possessor of the property will confer a good title over it.
- Section 27 is not limited to physical possession but also includes de jure possession. As per the wordings of this Section, it applies and is limited only to suits for possession of the property.
- **S.27. Extinguishment of right to property—**
 - ✓ At the determination of the period hereby limited to any person for instituting a suit for possession of any property,
 - ✓ his right to such property shall be extinguished.