

CHAPTER 4**LIMITATION ACT, 1963****Q: Limitation Bars Remedy, But Does Not Extinguish Rights. Comment**

The Law of limitation bars the remedy in a Court of law only when the period of limitation has expired, but it does not extinguish the right that it cannot be enforced by judicial process (*Bombay Dying & Mfg. Co. Ltd. v. State of Bombay*). Thus if a claim is satisfied outside the Court of law after the expiry of period of limitation, that is not illegal as the right to cause of action always remains. Similarly, even if the defence of limitation is not set by the other party, the Court cannot accept any suit, appeal or application beyond the period of limitation.

For example, where the recovery of a debt has become time barred by lapse of the prescribed period of limitation, the right to the debt is not extinguished. If the debtors, without being aware of the bar of time, pays the debt he cannot sue the creditor to refund the money to him on the ground that his claims for recovery of the debt had become time barred.

Section 3

- Section 3 of the Act provides that any suit, appeal or application must be made within the period of limitation as specified in Limitation Act.
- If any suit, appeal or application made beyond the prescribed period of limitation, it is the duty of the Court not to proceed with such suits irrespective of the fact whether the plea of limitation has been set up in defence or not.
- The provisions of Section 3 are mandatory.
- The Court can suo motu take note of question of limitation. The question whether a suit is barred by limitation should be decided on the facts as they stood on the date of presentation of the plaint.
- It is a vital section upon which the whole limitation Act depends for its efficacy.
- The effect of Section 3 is not to deprive the Court of its jurisdiction.
- Therefore, decision of a Court allowing a suit which had been instituted after the period prescribed is not vitiated for want of jurisdiction. A decree passed in a time barred suit is not a nullity.

Q: Limitation Act is the statue of Repose, Peace and Justice. Comment

The Limitation Act 1963 prescribes different periods of limitation for filing suits, petitions or applications. The Act applies to all civil proceedings and some special criminal proceedings which can be taken in a Court of law unless its application is excluded by any enactment. The statutes of limitation are statutes of repose because they extinguish stale demands and quiet titles. They lay, at rest, claims which might otherwise have disturbed the peace of community. They secure peace by ensuring security of rights and secure justice as by lapse of time, evidence may have been destroyed. In **S. C. Parashar v.**

Vasant Sen, the Supreme Court has rightly observed that the statute of limitation is a statute of repose, peace and justice. The intension of the law of limitation is not to give a right where there is not one, but to interpose a bar after certain period to a suit to impose an existing right. The object is to compel the litigant to be diligent in seeking remedies in courts of law.

Q: Write a short note on Doctrine of sufficient cause

Doctrine of sufficient cause

Section 5 allows the extension of prescribed period in certain cases on sufficient cause being shown for the delay. This is known as doctrine of “sufficient cause” for condonation of delay which is embodied in Section 5 of the Limitation Act, 1963. Section 5 provides that any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 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.

The Section is not applicable to applications made under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 and also to suits. The Court has no power to admit a time barred suit even if there is a sufficient cause for the delay. It applies only to appeals or applications as specified therein. The reason for non-applicability of the Section to suits is that, the period of limitation allowed in most of the suits extends from 3 to 12 years whereas in appeals and application it does not exceed 6 months.

The party applying for condonation of delay should satisfy the Court for not making an appeal or application within the prescribed period for sufficient cause. The term sufficient cause has not been defined in the Limitation Act. It depends on the circumstances of each case. However, it must be a cause which is beyond the control of the party. In *Ramlal v. Rewa Coal Fields Ltd.*, the Supreme Court held that once the period of limitation expires then the appellant has to explain the delay made thereafter for day by day and if he is unable to explain the delay even for a single day, it would be deemed that the party did not have sufficient cause for delay. It is the Court’s discretion to extend or not to extend the period of limitation even after the sufficient cause has been shown and other conditions are also specified. However, the Court should exercise its discretion judicially and not arbitrarily.

Following events *inter alia* amounts to sufficient cause:

1. Wrong practice of High Court which misled the appellant or his counsel in not filing the appeal should be regarded as sufficient cause under Section 5;
2. In certain cases, mistake of counsel may be taken into consideration in condonation of delay. But such mistake must be *bona fide*;
3. Wrong advice given by advocate can give rise to sufficient cause in certain cases;

4. Mistake of law in establishing or exercising the right given by law may be considered as sufficient cause. However, ignorance of law is not excuse, nor the negligence of the party or the legal adviser constitutes a sufficient cause;
5. Imprisonment of the party or serious illness of the party may be considered for condonation of delay;
6. Time taken for obtaining certified copies of the decree of the judgment necessary to accompany the appeal or application was considered for condoning the delay.
7. Ailment of father during which period the defendant was looking after him has been held to be a sufficient and genuine cause (Mahendra Yadav v. Ratna Devi & others).

The quasi-judicial tribunals, labour courts or executive authorities have no power to extend the period under this Section.

The test of “sufficient cause” is purely an individualistic test. It is not an objective test. Therefore, no two cases can be treated alike. The statute of limitation has left the concept of sufficient cause” delightfully undefined thereby leaving to the court a well-intended discretion to decide the individual cases whether circumstances exist establishing sufficient cause. There are no categories of sufficient cause. The categories of sufficient cause are never exhausted. Each case spells out a unique experience to be dealt with by the Court as such.

Q: Discuss the law of limitation in relation to legally disabled person

Persons under legal disability

- Section 6 is an enabling section to enable persons under disability to exercise their legal rights within a certain time. Section 7 supplements Section 6, Section 8 controls these sections, which serves as an exception to Sections 6 and 7.
- The combined effect of Sections 6 and 8 is that where the prescribed period of limitation expires before the cessation of disability, for instance, before the attainment of majority, the minor will no doubt be entitled to a fresh period of limitation from the attainment of his majority subject to the condition that in no case the period extended by Section 6 shall by virtue of Section 8 exceeds three years from cessation of disability, i.e. attainment of majority.
- Sections 6, 7 and 8 must be read together. Section 8 imposes a limitation on concession provided under Sections 6 and 7 to a person under disability up to a maximum of three years after the cessation of disability.
- The period of three years under Section 6 of this Act has to be counted, not from the date of attainment of majority by the person under disability, but from the date of cessation of minority or disability.
- Both Sections 6 and 7 go together. Section 7 is an extension of Section 6, where the point of time at which the existence of disability is to be recognized i.e. “the time from which the period of limitation is to be reckoned”.
- To apply Section 7, disability must exist when the right to apply accrued, i.e., at the time from which period of limitation is to be reckoned.

- Section 7 is only an application of the principle in Section 6 to a joint-right inherited by a group of persons wherein some or all of whom are under the disability. The disability of all except one does not prevent the running of time, if the discharge can be given without the concurrence of the other. Otherwise the time will run only when the disability is removed.
- Section 8 provides that in those cases where the application of Section 6 or 7 of the Act results in an extension of the period prescribed by Schedule, that extension is not to be more than three years after the cessation of the disability.

Q: “Where once time has begun to run, no subsequent disability or inability to institute a suit or make an application can stop it”. Explain

Continuous running of time

- According to Section 9 of the Act where once time has begun to run, no subsequent disability or inability to institute a suit or make an application can stop it provided that where letters of administration to the estate of a creditor have been granted to his debtor, the running of the period of limitation for a suit to recover debt shall be suspended while the administration continues.
- The rule of this Section is based on the English dictum. “Time when once it has commenced to run in any case will not cease to be so by reason of any subsequent event”. Thus, when any of the statutes of limitation is begun to run, no subsequent disability or inability will stop this running.
- The applicability of this Section is limited to suits and applications only and does not apply to appeals unless the case fell within any of the exceptions provided in the Act itself.
- Thus, time runs when the cause of action accrues.

Q: Mention in brief the provisions relating to computation of period of limitation under the Limitation Act, 1963

1. *Exclusion of certain days or exclusion of time in legal proceedings*

- The day which is to be excluded in computing period of limitation is the day from which the period of limitation is to be reckoned. In case of any suit, appeal or application, the period of limitation is to be computed exclusive of the day on which the time begins to run [Section 12(1)].
- The day on which the judgement 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 [Section 12(2)].
- The time requisite for obtaining a copy of the judgement shall also be excluded [Section 12(3)].
- The time required for obtaining a copy of the award shall be excluded [Section 12(4)].

2. Exclusion of time during which leave to sue or appeal as a pauper is applied for (Section 13).

3. Exclusion of time bona fide taken in a court without jurisdiction. (Section 14)

The relief to a person is given by Section 14 of the Act when the period of limitation is over, because another civil proceedings relating to the matter in issue had been initiated in a court which is unable to entertain it, by lack of jurisdiction or by any other like cause.

The following conditions must co-exist for the applicability of this Section:

- that the plaintiff or the applicant was prosecuting another civil proceedings against the defendant with due diligence;
- that the previous suit or application related to the same matter in issue;
- that the plaintiff or the applicant prosecuted in good-faith in that court; and
- that the court was unable to entertain a suit or application on account of defect of jurisdiction or other like cause.

4. Exclusion of time in certain other cases

- When a suit or application for the execution of a decree has been stayed by an injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made and the day on which it was withdrawn shall be excluded. [Section 15(1)]
- The time required to obtain the sanction or consent of the Govt. required, or a notice period shall also be excluded in case of suits. [Section 15(2)]
- In a suit or an application for execution of a decree by any receiver or interim receiver or any liquidator, the period beginning with the date of institution of such proceeding and ending with the expiry of 3 months from the date of their appointment shall be excluded. [Section 15(3)]
- The time during which the defendant has been absent from India and from the territories outside India administered by the Central Government, shall also be excluded. [Section 15(5)]
- In case of death of a person before the right to institute a suit accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting such suit or making such application. The same rule applies in case if defendant dies. [Sections 16(1) and (2)]
- Where the suit or application is based upon the fraud or mistake of the defendant or respondent or his agent or in other cases as mentioned in Section 17, the period of limitation shall not begin to run until the plaintiff or applicant has discovered fraud or mistake subject to certain exceptions. (Section 17)

Q: What is a valid acknowledgement under the Limitation Act, 1963

Section 18 of the Limitation Act deal with the effect of acknowledgement of liability in respect of property or right on the period of limitation. The following requirements should be present for a valid acknowledgement as per Section 18:

1. There must be an admission or acknowledgement;
2. Such acknowledgement must be in respect of any property or right;
3. It must be made before the expiry of period of limitation; and
4. It must be in writing and signed by the party against whom such property or right is claimed.

If all the above requirements are satisfied, a fresh period of limitation shall be computed from the time when the acknowledgement was signed.

Q: When does the payment of interest or part-payment of principal amount by the debtor extend the period of limitation? Discuss

As per Section 19 of the Act where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorized in this behalf, a fresh period of limitation shall be computed from the time when the payment was made.

Thus, according to this section a fresh period of limitation becomes available to the creditor from the date of part payment when part-payment of debt is made by the debtor before the expiration of the period of limitation.

Q: Discuss the rules in relation to the acquisition of ownership by possession.

Acquisition of ownership by possession

- Section 25 applies to acquisition of easements. It provides that the right to access and use of light or air, way, watercourse, use of water, or any other easement which have been peaceably enjoyed without interruption and for twenty years (thirty years if property belongs to Government) shall be absolute and indefeasible.
- Such period of twenty years shall be a period ending within two years next before the institution of the suit.

Q: Does the Limitation Act apply to a proceeding under Articles 232 and 226 of the Constitution?

Limitation and Writs under the Constitution

The Limitation Act does not in terms apply to a proceeding under Article 32 or Article 226 of the Constitution. But the Courts act on the analogy of the statute of limitation and refuse relief if the delay is more than the statutory period of limitation (*State of M.P. v. Bhai Lal Bhai*). Where the remedy in a writ petition corresponds to a remedy in an ordinary suit and latter remedy is subject to bar of a statute of limitation, the Court in its writ jurisdiction adopts in the statute its own rule of procedure and in absence of special circumstances imposes the same limitation in the writ jurisdiction. If the right to property is extinguished by prescription under Section 27 of the Limitation Act, 1963, there is no subsisting right to be enforced under Article 32 of the Constitution. In other case where the remedy only, not the right, is extinguished by limitation the Court will refuse to entertain stale claims on the ground of public policy.

Q: Discuss the classification of period of limitation under the Limitation Act, 1963

THE SCHEDULE

Classification of period of limitation

Depending upon the duration, period of limitation for different purposes may be classified as follows:

Description of Suit	Period of Limitation	Time from which period begins
SUITS RELATING TO CONTRACTS		
For the balance of money advanced in payment of goods to be delivered.	Three years	When the goods ought to be delivered.
For compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency.	Three years	When the time specified arrives or the contingency happens.
For compensation for the breach of any contract, express or implied not herein specially provided for.	Three years	When the contract is broken or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs or (where the breach is continuing) when it ceases.
SUITS RELATING TO DECLARATIONS		
To declare the forgery of an instrument issued or registered.	Three years	When the issue or registration becomes known to the plaintiff.
To obtain a declaration that an alleged adoption is invalid, or never, in fact, took place.	Three years	When the alleged adoption becomes known to the plaintiff.
To obtain any other declaration.	Three years	When the right to sue first accrues.
SUITS RELATING TO IMMOVABLE PROPERTY		
By a mortgagor —		
(a) to redeem or recover the possession of immovable property mortgaged	Thirty years	When the right to redeem or to recover possession accrues.
(b) to recover possession of immovable property mortgaged and afterwards transferred by the mortgagee for a valuable consideration.	Twelve years	When the transfer becomes known to the plaintiff.
(c) to recover surplus collection received by the mortgagee after the mortgage has been satisfied.	Three years	When the mortgagor re-enters on the mortgaged property.
To enforce payment of money secured by a mortgage or otherwise charged upon immovable property.	Twelve years	When the money sued for becomes due.
By a mortgagee:		
(a) for foreclosure	Thirty years	When the money secured by the mortgagee becomes due.
(b) for possession of immovable property mortgaged.	Twelve years	When the mortgagee becomes entitled to possession.

For possession of immovable property based on previous possession and not on title, when the plaintiff while in possession of the property has been dispossessed.	Twelve years	The date of dispossession.
For possession of immovable property or any interest herein based on title.	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.
For possession of immovable property when the plaintiff has become entitled to possession by reason of any forfeiture or breach of condition.	Twelve years	When the forfeiture is incurred or the condition is broken.
By a landlord to recover possession from a tenant.	Twelve years	When the tenancy is determined.
SUITS RELATING TO MOVABLE PROPERTY		
For specific movable property lost, or acquired by theft, or dishonest misappropriation or conversion.	Three years	When the person having the right to the possession of the property first learns in whose possession it is.
For other specific movable property.	Three years	When the property is wrongfully taken.
To recover movable property deposited or pawned from a depository or pawnee.	Three years	The date of refusal after demand.
To recover movable property deposited or pawned, and afterwards bought from the depository or pawnee for a valuable consideration.	Three years	When the sale becomes known to the plaintiff.
SUITS RELATING TO MISCELLANEOUS MATTERS		
To set aside a sale by a Civil or Revenue Court or a sale for arrears of Government revenue or for any demand recoverable as such arrears.	One year	The date of the final order.
Any suit (except a suit before the Supreme Court in the exercise of its original jurisdiction) by or on behalf of the Central Government or any State Government, including the Government of the State of Jammu & Kashmir.	Thirty years	When the period of limitation would begin to run under this Act against a like suit by a private person.
SUITS FOR WHICH THERE IS NO PRESCRIBED PERIOD		
Any suit for which no period of limitation is provided elsewhere in this Schedule.	Three years	When the right to sue accrues.

CLASSIFICATION OF PERIOD OF LIMITATION

Depending upon the duration, period of limitation for different purposes may be classified as follows:

Period of 30 years: The maximum period of limitation prescribed by the Limitation Act is 30 years and it is provided only for three kinds of suits:

1. Suits by mortgagors for the redemption or recovery of possession of immovable property mortgaged;
2. Suits by mortgagee for foreclosure;
3. Suits by or on behalf of the Central Government or any State Government including the State of Jammu and Kashmir.

Period of 12 years: A period of 12 years is prescribed as a limitation period for various kinds of suits relating to immovable property, trusts and endowments.

Period of 3 years: A period of three years has been prescribed for suits relating to accounts, contracts, declaratory suits, suits relating to decrees and instruments and suits relating to movable property.

Period varying between 1 to 3 years: The period from 1 to 3 years has been prescribed for suits relating to torts and other miscellaneous matters and suits for which no period of limitation is provided in the schedule to the Act.

Period in days varying between 90 to 10 days: The minimum period of limitation of 10 days is prescribed for application for leave to appear and defend a suit under summary procedure from the date of service of the summons. For appeals against a sentence of death passed by a court of session or a High Court in the exercise of its original jurisdiction the limitation period is 30 days. For appeal against any sentence other than a sentence of death or any other not being an order of acquittal, the period of 60 days for the appeal to High Court and 30 days for appeal to any other Court is prescribed. Period of leave to appeal as a pauper from the date of the decree is 60 days when application for leave to appeal is made to the High Court and 30 days to any other Court.

LIMITATION AND WRITS UNDER THE CONSTITUTION

The Limitation Act does not in terms apply to a proceeding under Article 32 or Article 226 of the Constitution. But the Courts act on the analogy of the statute of limitation and refuse relief if the delay is more than the statutory period of limitation (State of M.P. v. Bhai Lal Bhai, AIR 1964 SC 1006). Where the remedy in a writ petition corresponds to a remedy in an ordinary suit and latter remedy is subject to bar of a statute of limitation, the Court in its writ jurisdiction adopts in the statute its own rule of procedure and in absence of special circumstances imposes the same limitation in the writ jurisdiction.