

LIMITATION ACT, 1963

When your right is violated, in how many periods of time, in which you went to the court, it is called limitation.

Law of Limitation is a Procedural Law. It is *Lex Fori*. The law of Limitation is founded on Public Policy. It prescribes certain periods after the expiry of which the suit and the proceedings cannot be maintained. Law of Limitation ensures that the parties do not resort to dilatory tactics and avail the remedy promptly.

NATURE OF LAW OF LIMITATION: Law of Limitation is a procedural law and it does not create or extinguish the rights except as provided under Section 25 & Section 27 of the Act. The Supreme Court in *Bombay Dyeing and Manufacturing Co. v. State of Bombay*¹ held that limitation bars the remedy but does not extinguish the rights.

HISTORY: Regulating Act for the first time British India as British possession of superfluous Highness. India became a perennial headache and a common law. Limitation Act prevail in England. Doctrine of Limitation is well entrenched in the common law. In 1793, the birth of Limitation cannot be ascribed. As such in the presidency towns of Calcutta, Madras and Bombay, the courts followed the English Law and in the Mofussils the courts administered the law as laid down by the regulations which were passed from time to time. In 1859, for the first time Limitation Act was passed in India and tried to applicable under the Civil Procedure Code. This Act came into operation in 1862.

This Act was replaced by new Act of 1871 which provided for the Limitation of suits, appeals and certain applications to courts and it also provided for the acquisition of easement and the extinguishment of rights to land and hereditary office at the determination of a specified period.

The Act of 1871 was replaced by Act of 1877. The Act provided for the extinguishment of rights not only to lands and hereditary office but also to any property includes movable property.

After that in 1908, it was repealed and replaced by Act IX of 1908. It had been in force for 50 years, and the need for reform of the law of limitation rationally and in tune with the changed conditions had been felt for some time.

¹ AIR 1958 SC 328

The law commission was made to repeal the previous act and the Law Commission (3rd Report) submitted his report in 1956, however the Bill lapses. But later on after the house come again into session, it is immediately passed and received the assent of President on 5th of October 1963. This Act came into force from January 1, 1964.

SCHEMATIC REPRESENTATION OF THE LIMITATION ACT, 1963

There are 32 sections in total out of which two are repealed i.e. Sections 28 & 32.

Articles- 137 in total, divided into 3 parts-

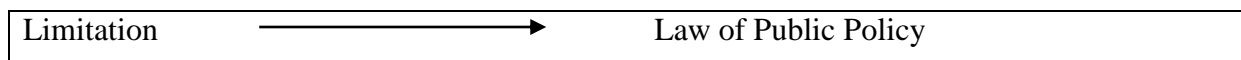
1. Description of Suits (Article 1-113)
2. Appeals (Articles 114-117)
3. Applications (Articles 118-137).

PURPOSE OF THE ACT

Before dealing with the purpose it is incumbent (important) to deal with two legal maxim which are of immense importance.

- 1) *Interest Republicae ut sit finis litium*- in the interest of society as a whole, there should be an end to litigation.
- 2) *Vigilantibus non dormientibus jura subveniunt*- law serve the vigilant, not those who sleep.

Justice Abbot says those who understand these two maxim clearly understand the Limitation Law.



State is a biggest litigator, otherwise it is a perennial threat. Justice Abbot says if these two maxims are not followed, then there is a serious threat.

Doctrine of Clean Hand —————→ Legal Character

[Document of Suppress, Wrongful affidavit, Wrong valuation, etc.]

It is very important to note that the purpose of Limitation Act is not to destroy the rights but it is an Act focus for the Public Policy fixing a life span for the legal remedy for the general welfare. The Limitation Act bars the remedy but not the rights. That means your right service. For instance, A lends B 3,000 rupees. 3 years ended. Money gone but no controversy. Advocate said You can't do anything after 3 years. However A has certain benefits:

I. Outside Court settlement. II. Revival by acknowledgement (time barred debt).

In *Beteley v. Faulkner*, Justice Abdot famously opined that the prime purpose of any limitation statutes is to be prevent persons from being harassed. The entire law of limitation rest on two maxims.

The Supreme Court in *Rajinder Singh v. Santa Singh* has pointed out that the parties in action among negligence or laches is what will be looked into the law of limitation.

The statutes of limitation are labelled as statutes of repose, peace and justice. It is one of repose because it extinguishes stale (too old) demands. It secures peace as it assures secured rights. It secures justice as by lapse of time, rights also may gets destroy.

LIMITATION: PROCEDURAL OR SUBSTANTIVE

The statutes of limitation may be prescribed as procedural or substantive. In English Law as well as Indian Law the statutes of Limitation only takes away the remedy by legal action. It leaves the claimant right otherwise untouched in theory. So that in case of debt, if the statutes bar, creditor has any means of enforcing his claim other than by action of set-off. **Before largely limitation is procedure whereas partially it is substantive as well.** In the case of A.S. Krishnappa Chettair v. Nahiappa Chettiar, AIR 1964 SC, it was held that the Limitation Act is basically a piece of adjective or procedural law and not substantive law.

For Prelims:- Limitation is a Procedural Law.

LIMITATION: EXHAUSTIVE OR NOT?

[A.S. KRISHNAPPA CHETTIAR V. NAHIAPPA CHETTIAR AIR 1964 SC]

The Limitation Act is a consolidating and amending statutes relating to the limitation of the suits, appeals and certain types of the applications to the courts and must therefore be regarding as an exhaustive code. The Indian Courts are not permitted to travel beyond its provision to add or to supplement them.

For instance, 3 Years- Limitation filed. Whether Indian Court can negate? No as Section 5 come up with “sufficient cause”. Thus if the applicant show the sufficient cause, then any courts may allow for them.

Rules of Interpretation

1. The purpose of the Limitation Act is not to destroy the rights but is founded on public policy. Fixing a life span for legal remedy.
2. The courts cannot bypass the mandatory provision of the Limitation Act. For e.g. Time framing and it is lapsed. Show them sufficient cause.
3. Where the statutes fixes no limitation period, it is not open to the court to import, fix and inflexible period of time.
4. Limitation statutes are given a fair and a liberal rather than a technical construction.
5. If the provision is susceptible of two interpretation (construction) it is not obligatory to the court to adopt harsh construction.

RETROSPECTIVE OPERATION OF THE LIMITATION ACT

A Statute is regarded as retrospective it operates on cases or facts which came into existence before its commencement in the sense that it effects, even if for the future only, the character or consequence of transactions previously entered into or of other past conduct. Thus, a statute of limitation, being a law of procedure, is retrospective in operation.

Law of limitation is Lex Fori and why it is so?

The law of limitation is part of *Lex Fori* because remedies on contracts are to be regulated and pursued according to the law of place where the action is instituted and not by the law of place of the contract.

LIMITATION BARS THE REMEDY BUT NOT THE RIGHT

The Limitation Act, with regard to personal actions, bars the remedy without extinguishing the rights. In all personal actions, the right subsists although the remedy is no longer available. In the case of *L.S. Synthetics Limited v. Fairgrowth Financial Services Limited* 2004 SCC, it was held that a defence can be raised even though a remedy is barred. A statute of limitation bars a remedy and not a right.

SCOPE

The Limitation Act, 1963 is exhaustive law i.e. a complete code in itself having the concept of substantive law.

The Doctrine of *Vigilantibus Non Dormientibus Jura Subveniunt* and the Law of Limitation

The law of Limitation is based on the doctrine of *Vigilantibus Non Dormientibus Jura Subveniunt*. It means laws come to the assistance of the vigilant and not of the sleepy. This view has been observed by Salmond: In order to avoid the difficulty that necessarily results from lapse of time, the presumption of the coincidence of fact and right is rightly accepted as final after number of years. Whoever wishes to dispute this presumption must do so within the period; otherwise his right if he has one, will be forfeited as a penalty for his neglect.

It is true that the maxim “*Vigilantibus Non Dormientibus Jura Subveniunt*” i.e. it means laws come to the assistance of the vigilant and not those who sleep over their rights. But even a vigilant litigant is prone to commit mistakes. As the aphorism to err is human is more a practical notion of human behaviour than an abstract philosophy, the unintentional lapse on the part of a litigant should not normally cause the doors of the judicature permanently closed before him. The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also while considering its nature, its design and the consequences which would follow from construing it the one way or the other.

It is apposite to point out that the said passage has been quoted with approval by the Hon’ble Court in *Govind Lal Chagga Lal Patel v. The Agriculture Product Market Committee and Ors.* AIR 1976 SC 263.

Law of Limitation is Statute of Repose, Peace and Justice

The statutes of limitation are statute of repose because they extinguish stale (too old) demands and quit 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 which may have been destroyed.

In *S.C. Parashar v. Vasant Sen*², the Supreme Court observed that the statute of limitation is a statute of repose, peace and justice. The intention 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 the courts of law.

The courts have expressed at least three different reason supporting the existing of the statutes of limitation namely:

- i. That long dormant claim have more of cruelty than justice in them.
- ii. That a defendant might have lost the evidence to dispute the stated claims.
- iii. That person with good cause of action should pursue them with reasonable diligence.

The Supreme Court in *Balakrishnan v. M.A. Krishnamurthy*³ held that the principle is based in the maxim “*Interest republicae ut sit finis litium*” which means that the interest of the state requires that there should be an end to litigation.

In *Motichand v. Munshi*⁴, it was held that the law of limitation are a means of ensuring private justice, suppressing fraud and perjury, quickening diligence and preventing oppression.

The Full Bench of Kerala High Court observed in *M.P.Raghvan Nair v. State Insurance Officer*⁵ that principles underlying the provisions of the Limitation Act are based on public policy aiming at justice, the principle of repose and peace and that long dormant claim have often caused more of cruelty than of justice in them.

The Full Bench of Rajasthan High Court held in *State of Rajasthan v. Rikhab Chand*⁶ held that the fundamental principle of law of limitation is that the rules of limitation are intended to induce claimants to be prompt in claiming relief without unexplained delay and laches. Therefore it can be said that the object of Limitation Act is to allow quiet long possession and extinguish stale demands.

² AIR 1963 SC 1356

³ (1908) 7 SCC 123

⁴ AIR 1970 SC 898

⁵ 1971 Ker LJ 583 (FB)

⁶ AIR 1966 Raj 213

A statute of limitation being a statute of peace and justice cannot be used to induce injustice. The law of limitation is not meant to be an aid to unconscionable conduct, though if a claim is clearly barred, the court must unhesitatingly dismiss the suit.

Limitation & Defence

The established rule of limitation is that law of limitation is not applicable to plea taken in defence unless expressly a provision is made in the statute. The Law of Limitation applies to suits and applications. The Law of Limitation bars only an action in a court of law. In fact what the Limitation Act does is, to take away the remedy of a plaintiff to enforce his rights by bringing an action in the court of law, but it does not place any restriction on a defendant to put forward any defence though such defence as a claim made by him may be barred by the limitation and cannot be enforced in a court of law. On the same principle, a defendant in a suit can put forward any defence though such defence may not be enforceable through a court of law, being barred by limitation.

Prevention of disturbance or deprivation v. Law of Limitation

In the case of *Rajinder Singh v. Santa Singh*, AIR 1973 SC, it was observed by the Court that the object of the law of limitation is to prevent disturbance or deprivation of what may have been lost by a party's own inaction, negligence or laches.

Limitation Act and Criminal Proceeding

The Limitation Act, 1963 is not applicable to criminal proceedings except Article 114 and 115 i.e. in case of appeal from the order of acquittal and Article 131 regarding Revision. The reason of non-applicability of this Act to Criminal proceeding is that "it is undesirable that persons who have been guilty of serious crimes should be free from the clutches of the long arms of the law after a few years time".

Period of Limitation as provided under Section 468(2) of CrPC, 1973:

- A. Six months, if the offence is punishable with fine only;
- B. One year if the offence is punishable with imprisonment for a term not exceeding one year but not exceeding three years.

SUIT	—→ 3 YEARS
APPEAL	—→ 30-90 DAYS
EXECUTION	—→ 12 YEARS

Limitation Act and Writs

The Limitation Act not applies over the writs because it is not a suit, not an application or a petition. In the case of *Rajmata V.R. Scindia v. State of Uttar Pradesh*⁷, it was held that period of limitation prescribed by Limitation Act do not strictly apply to application under Article 226 & 32 of the Constitution of India.

Burden of Proof of Limitation

The element of burden of proof is implicit in Section 3 Para 1 where in Section itself declares that the dismissal is subject to Sections 4-24.

If the defendant raises the bar of limitation that the burden initially lies upon him and there upon it will shift to the plaintiff. The burden of plaintiff will be strict so as to prove exclusion if any so that they can prove and get the period of limitation extended.

The question of limitation has to be raised before the Trial Court. However the issue of limitation can be raised in revision.

If the ground of bar of limitation has not been raised before the Trial Court and the revision be made before the High Court, the question of limitation cannot be raised for the first time made.

It is proper and expected that the objection of limitation shall be raised by the party in the Trial Court itself. However if the parties has sufficient explanation then it may be raised for the first time even in an appeal. However in order to raise it for a first time in second appeal it has to be substantial question of law and it shall be proved that the Second Appellate Court would not be require to additional evidence to decide the said issues.

Burden of Proof lies to whom? In *F.C.I. v. Babulal Aggarwal*, the Supreme Court pointed out that a suit filed beyond limitation is liable to be dismissed even though limitation may not

⁷ AIR 1986 SC 756

set up as a defence. It is always desirable that the defendant raises the issue of limitation in the pleadings.

ISSUE RELATED TO LIMITATION

When can Court grant longer period of limitation?

In the case of *Jethmal v. Amb Singh*, AIR 1955 Raj 37, it was held that where two interpretations are found to be equally possible, the court must impute a reasonable intention to the legislature and hold the suit not to be falling within a shorter period of limitation.

Where Statutes fixes no Limitation period then limitation by implication-

Any law or stipulation prescribing a period of limitation to do or not to do a thing after the expiry of period so stipulated has the consequence of creation and destruction of rights and therefore must be specially enacted. It is not for the court to import any specific period of limitation by implication where there is really none.

Order against Limitation Act- It is now settled law that any law passed by the court contrary to the mandatory provision of the statute of limitation is an invalid and void ab initio [*Swapan Kumar v. Subhash Chandra*, AIR 1998 Cal 271].

When can the Court refuse to entertain the plea of Limitation?

1. When the issues have been fixed.
2. When fresh issues of fact have arisen.
3. When the court has taken additional period.
4. When proceedings of taking evidence gone to some length of time

When plea of limitation can be raised?

1. It can be raised at the hearing of the suit before the issues are framed.
2. It can be raised in second appeal.
3. It can be raised in an appeal.

Certain Important Points

- Application of limitation should be to the institution of proceeding not to their continuance. The bar of limitation applies when a proceeding has to be instituted. Bar

of limitation does not apply when an application has to be filed in a pending suit or proceeding.

- Plea of limitation cannot be waived.
- Agreement not to plead limitation will be void.
- An agreement for the extension of the period of limitation will be void.
- The plea as to non-applicability of the provisions of the Limitation Act cannot be allowed to be raised for the first time before the Supreme Court.
- If there is a conflict between various provisions of the rule, harmonious construction should be applied. (*Jagdish Singh v. Lt. Governor Delhi* AIR 1997 AII 376).

Limitation versus Prescription

1. The Law of Limitation limits the time after which a suits, appeal or other proceedings cannot be maintained in a court of law. The Law of Prescription on the other hand prescribes a period at the expiry of which substantive rights are either acquired or extinguished. (Limitation only bars the remedy and Prescription extinguishes the right of action, limitation is considered to be a species of prescription).
2. Limitation bars the judicial remedy but it does not bar the extra judicial remedies whereas a right extinguished by prescription is barred judicially and extra-judicially both.
3. Limitation is concerned only with judicial remedy of one whose right has been infringed and as such it is a matter of procedural law whereas Prescription affects the substance of the conflicting right between rival claimants and comes under the category of substantive law.
4. Limitation is negative in an operation depriving the person of the power which is possessed before. Prescription on the other hand is positive in nature conferring on a person a right to that which he hitherto enjoyed in fact but not as a right.
5. Limitation is founded on public policy whereas Prescription is founded on usage.

Difference between Limitation and Laches

1. In the case of limitation, a suit is dismissed if not instituted within the period of limitation prescribed by the Limitation Act and no other matter is taken into consideration whereas in cases of laches, there is no fixed period of time. The court

will look into the fact and circumstance of each case in order to determine whether there is any laches.

2. Laches is like limitation deprives the plaintiff of his legal remedy but it depends on general principle of justice and fairplay whereas limitation depends on express law.
3. In case of limitation, the ignorance and the knowledge of the plaintiff with regard to his right is immaterial. It is not in the case of laches.
4. The doctrine of limitation is based on public policy whereas laches is based on equity.

Difference between Limitation and Acquiescence

1. In the case of limitation, a suit is dismissed if not instituted within the period of limitation and no other matter is taken into consideration whereas acquiescence implies almost active consent. Acquiescence is a constant inferred from silence; a tacit encouragement.
2. In case of limitation, the ignorance and the knowledge of the plaintiff with regard to his right is immaterial. Acquiescence imports full knowledge.

Laches and acquiescence are based upon general principles while limitation is a matter of express and inflexible rule of law and applies independently of the existence of laches and acquiescence.

LACHES

Laches means slackness or negligence or not doing. It also means laziness or lack of promptitude in pursuing a legal remedy. The Doctrine of Laches has been given legal recognition in the Limitation Act (Section 3 of L.A. 1963). It would not be incorrect to say that the Limitation Act has its essential existence in the very doctrine of laches which provides that if a judicial proceedings is initiated with undue delay, then the court shall not allow such proceedings if the delay is unexplained.

QUESTION OF LIMITATION DEPENDS ON QUESTION OF FACTS OR NOT?

It has been observed in *Ahamadar Rahaman Choudhuri v. Jaminiranjan Barua*⁸, that “The plea of limitation was not taken in any of the courts below, nor does it find a place in the memorandum of appeal to this court. Of course, limitation, as a pure point of law, can always

⁸ AIR 1930 Cal 385

be agreed in defence in a suit at any stage, but then a question of limitation of this character will certainly depend upon an investigation of facts”.

Application of Period of Limitation to Facts: It is the date of filing of the suit and not the date of the accrual of cause of action, which determines the law of limitation applicable in a particular suit.

Limitation and Final Decree: There is no limitation for the preparation of the final decree, for the reason that preliminary decree produces a final decree. The law does not require a separate application by the decree-holder for drawing up the final decree.

Amended (2013) Section 28 of Indian Contract Act, 1872 and Limitation Act: There is an amendment made in Section 28 of I.C.A which hitherto struck down provisions of a contract eliminating right to enforce after a stipulated period. And this amendment correlates with the limitation period.