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CHAPTER - I

INTRODUCTION

The "Law of Limitation" prescribes the time-limit for different suits within, which an aggrieved person can approach the court for redress or justice. Suit filed after the period of limitation shall be stuck down. The very first Limitation Act was enacted for all courts in India in 1859. And finally took the form of Limitation Act in 1963. Prior to 1859, there was no law of limitation applicable to the whole of India. It was only in 1859 that a law relating to limitation (Act XIV of 1859) was enacted that was applicable to all the Courts. The Limitation Act was subsequently repealed in the years 1871, 1877, 1908. The Limitation Act, 1908 was repealed by the Third Law Commission and the Limitation Act of 1963 came into force.

POLICY OF INDIAN LIMITATION ACT,

The Limitation Act contains 32 Sections (Section 32 repealed) and 137 Articles. Scheme of the

Articles are as follows:

- Articles 1 to 113 Suits
- Articles 114 to 117 Appeals
- Articles 118 to 137 Applications.

Suits are also divided into 10 classes:

1. Suits relating to accounts (Art. 1 to 5)
2. Suits relating to Contracts (Art. 6 to 55)
3. Suits relating to declarations (Art. 56 to 58)
4. Suits relating to decrees and instruments (Art. 59 to 60)
5. Suits relating to immovable property (Art. 61 to 67)
6. Suits relating to movable property (Art. 63 to 71)
7. Suits relating to tort (Art. 72 to 91)
8. Suits relating to trusts and trust property (Art. 92 to 96)
9. Suits relating to miscellaneous matters (Art. 97 to 112)
10. Suits for which there is no prescribed period (Art. 113)

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 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.

APPLICATION OF THE ACT

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. As per the Jammu and Kashmir Reorganisation Act, 2019, provisions of the Limitation Act will now apply to the whole of India.

Section 1- Short title, extent and commencement

- (1) This Act may be called the Limitation Act, 1963.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Section 11 also says that Suits instituted in the territories to which this Act extends on contracts entered into in the State of Jammu and Kashmir or in a foreign country shall be subject to the rules of limitation contained in this Act.

Tilokchand Motichand v. H.P. Munshi- Supreme Court held that the Statute of Limitation is not unconstitutional. It is applicable on suits, appeals, applications but not upon writs, because a writ petition filed before the Supreme Court is neither a suit and nor petition or application to which the Limitation Act applies, Hence Limitation Act does not applicable upon writs.

EXHAUSTIVE OR NOT

The Limitation Act is exhaustive with respect to all matters expressly dealt in it. The Limitation Act is an exhaustive code governing the law of limitation in India in respect of all matters specifically dealt with by it and the Indian Courts are not permitted to travel beyond its provisions to add or to supplement them.

RETROSPECTIVE OR PROSPECTIVE

As a general rule all procedural laws have prospective effect. But **In BK Education Services Private Limited v. Parag Gupta and Associates**, the Supreme Court clarified that since the law of limitation is procedural in nature, it will be applied retrospectively.

Excise and Taxation v. M/S Frigoglass India Private Ltd, 13 May, 2019, the Punjab and Haryana High Court ruled that it is well-settled that the law of limitation is a procedural law and operates retrospectively unless it has been provided differently in the amending statute.

In other words, unless there is a contrary intention manifested by express or necessary implication of the legislation itself, procedural law is generally retrospective law.

Section 2 is Definition clause and requires following definitions in this Act:-

(a) “Applicant” includes-

1. a petitioner;

2. any person from or through whom an applicant derives his right to apply;
 3. any person whose estate is represented by the applicant as executor, administrator or other representative;
- (b) **“Application”** includes a petition; comment
- (c) **“Bill of exchange”** includes a hundi and a cheque;
- (d) **“Bond”** includes any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;
- (e) **“Defendant”** includes-
1. any person from or through whom a defendant derives his liability to be sued;
 2. any person whose estate is represented by the defendant as executor, administrator or other representative;
- (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;
- (g) **“Foreign country”** means any country other than India;
- (h) **“Good faith”**- nothing shall be deemed to be done in good faith which is not done with due care and attention;
- (i) **“Plaintiff”** includes-
1. any person from or through whom a plaintiff derives his right to sue;
 2. any person whose estate is represented by the plaintiff as executor, administrator or other representative;
- (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;
- (k) **“Promissory note”** means any instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand, or at sight;
- (l) **“Suit”** does not include an appeal or an application;
- (m) **“Tort”** means a civil wrong which is not exclusively the breach of a contract or the breach of a trust;
- (n) **“Trustee”** does not include a benamidar, a mortgagee remaining in possession after the mortgage has been satisfied or a person in wrongful possession without title.

CONCLUSION

The Courts in India are bound by the specific provisions of the Limitation Act and are not permitted to move outside the ambit of these provisions. The Act prescribes the period of limitation in Articles in Schedule to the Act. In the Articles of the Schedule to the Limitation Act, Columns 1, 2, and 3 must be read together to give harmonious meaning and construction.

The Schedule containing the table showing the relevant Articles prescribing limitation period for a specified suit and also time from which such period commences are given at the end of this Lesson.

CHAPTER – II

BAR ON LIMITATION OF SUITS, APPEALS AND APPLICATIONS

INTRODUCTION

“Vigilantibus non dormientibus ius subveniunt” law of limitation is based on this maxim. It is a general principle of law that law is made to protect only diligent and vigilant people. Equity aids the vigilant and not the indolent. Law will not protect people who are careless about their rights. Moreover, there should be certainty in law and matters cannot be kept in suspense indefinitely. It is, therefore, provided that Courts of Law cannot be approached beyond fixed period. In civil matters, the limit is provided in Limitation Act, 1963.

The 'Law of Limitation' prescribes the time-limit for different suits within, which an aggrieved person can approach the court for redress or justice. The suit, if filed after the expiration of time-limit, is struck by the law of limitation.

BAR OF LIMITATION

Section 3 of the Act provides that any suit, appeal or application if 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.

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 defence.
- (2) For the purposes of this Act-
 - (a) A suit is instituted-
 - II. in an ordinary case, when the plaint is presented to the proper officer;
 - III. in the case of a pauper, when his application for leave to sue as a pauper is made; and
 - IV. 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-