BY PJCJ, KURNOOL

1st DISTRICT LEVEL WORKSHOP, KURNOOL

FOR THE YEAR, 2025

ON

"LAW ON LIMITATION"

TOPICS ON CIVIL SIDE

Subject: Law on limitation

(a) Limitation-Suits, Appeal Suits and applications

(b) Computation of period of limitation

(c) Conditions as to time and limitation under different statutes

(d) Different reliefs with different period of limitation

(e) Amendment of pleadings - the aspect of limitation

(f) Limitation in criminal cases in respect of offences under IPC/BNS and other Special Laws

PREPARED BY:

1. Smt T. Jyothsna Devi, Principal Civil Judge (Junior Division), Kurnool

PRESENTATION ON

"LAW ON LIMITATION"

1. *Limitation-Suits, Appeal Suits and applications*
2. *Computation of period of limitation*
3. *Conditions as to time and limitation under different statutes*
4. *Different reliefs with different period of limitation*
5. *Amendment of pleadings - the aspect of limitation*
6. *Limitation in criminal cases in respect of offences under IPC/BNS and other Special Laws*

BY

Smt T. Jyothsna Devi,

PRINCIPAL CIVIL JUDGE (JUNIOR DIVISION), KURNOOL

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- **The Limitation Act,1963**

The Limitation Act is exhaustive with respect to all matters expressly dealt with respect to all matters expressly dealth with in it. It cannot be extended by analogy. Ordinarily, the act applies only to civil cases except in the matter expressly and specifically provided for that purpose.

- **Period of Limitation**

Section 2(j) of the Act defines the period of limitation and prescribed period.

- Period of limitation refers to the time period which is prescribed for any suit, appeal or application by the Schedule of the Limitation Act, 1963.
- The prescribed period is the period of limitation computed in accordance with the provisions of this Act.

Section 3 of the Act describes the **Bar of limitation** as 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 defense.

When Period of Limitation Starts

- The time from which the **period of limitation begins depends** on the **case's subject matter, and a specific starting point of such period** is provided extensively by the **Schedule in the Act.**

- It generally **starts from the date** when the **summons or notice is served, or the date on which the decree or judgment is passed, or the date on which the event that forms the basis of the suit takes place.**

Purpose of the Limitation Act,1963

Interest Republicae ut sit finis litium- In the interest of society as a whole, there should be an end to litigation.

Vigilantibus non dormientibus jura subveniunt - Law will assist those who are vigilant with their rights and not those who sleep there upon. In simpler words, the law will not help those who sleep on their rights.

•The structure of the Limitation Act is as follows

- ❒ The Limitation Act came into force on **1st January 1964.**
- ❒ **It extends** to the **whole of India.**
- ❒ It contains a total of 5 parts.
- ❒ There are in total 32 sections in the act.
- ❒ It contains 137 Articles in the act which provide for periods of limitation.

Session -1 :

(a) Limitation- Suits,Appeal Suits and Applications.

Articles - 137 in total contains **three divisions** namely:

- First Division - Suits (Article 1-113)
- Second Division - Appeals (Articles 114-117)
- Third Division - Applications (Articles 118-137).

Division I-Suits

Covers Article 1 to 113,divided in to sub groups such as :

- Accounts (Art. 1 - 5)

- Contracts (Art. 6 - 55)
- Suits relating to Declarations (Art. 56 – 58)
- Suits relating to Decrees and instruments (Art 59- 60)
- Suits relating to Immovable Property (Art.61 -67)
- Suits relating to Movable Property (Art.68-71)
- Suits relating to Torts (Art. 72 to 91)
- Suits relating to Trusts and Mortgages (Art. 92-96)
- Suits relating to Miscellaneous matters (Art. 97-112)
- Suits For which there is no prescribed period (Art 113)

Important Articles : -

Part II - Contacts (Articles 6-55)

Articles	Type of Suit	Period	Starts From
14	Price of goods sold and delivered	3 years	Date of delivery
19	Money Lent	3 years	When the loan is made
20	Like suit when the lender has given a cheque for the money	3 years	When the cheque is paid
21	For money lent under an agreement that it shall be payable on demand	3 years	When the loan is made
27	For Compensation for breach of a promise to do anything at a specified time,or upon the happening of a specified contingency	3 years	When the time specified arrives or the contingency happens
28	On a single bond,where a day is specified for payment	3 Years	The day so specified
29	On a single bond,where no such day is specified	3 years	The date of executing the bond
30	On a bond subject to a condition	3 years	When the condition is broken
31	On a bill of exchange or promissory note payable at a	3 years	When the bill or note falls due

	fixed time after date		
32	On a bill of exchange payable at sight,or after sight,but not at a fixed time	3 years	When the bill is presented
34	Bill of exchange or promissory note payable at a fixed time,after sight or after demand	3 years	When the fixed time expires
35	Bill of exchange or promissory note payable on demand and not accompanied by any writing restraining postponing the right to sue	3 years	The date of the bill or note
42	By a surety against the principle debtor	3 years	When the surety pays the creditor
43	By a surety against co-surety	3 years	When the surety pays anything in excess of his own share
52	For arrears of rent	3 years	Where the arrears become due
54	For Specific performance of a contract	3 years	The date fixed for the performance,or,if no such date is fixed,when the plaintiff has notice that performance is refused
55	For compensation for the breach of any contract	3 years	When the contract is broken

Part III - Suits Relating to Declarations (Articles 56 – 58)

Article	Type of Suit	Period	Starts From
56	To declare the forgery of an instrument issued or registered	3 Years	When the issue or registration becomes known to the plaintiff
58	To obtain any other declaration	3 Years	When the right to sue first accrues

Part V- Suits Relating to Immovable Property (Art. 61 – 67)

Article	Type of Suit	Period	Starts From
61	By a mortgagor – (a) to redeem or recover possession of immovable property mortgaged	30 years	When the right to redeem or to recover possession accrues
63	By a mortgagee- (a)for foreclosure (b)for possession of immovable property mortgaged	 30 years 12 years	When the money secured by the mortgage becomes due When the mortgagee becomes entitled to possession
64	Possession after wrongful Dispossession	12 Years	Date Of dispossess
65	Possession based on title(ownership)	12 Years	When Possession of defendant becomes adverse
67	By a landlord to recover possession from a tenent	12 years	When the tenancy is determined

- **PART VI – Suits relating to Movable property**

Article	Type of suit	Period of Limitation	Starts From
69	Specific Movable Property	3 years	When property wrongfully taken

- **PART VII – Suits Relating To Tort**

Articles	Type of suits	Period Of Limitation	Time Stars from
73	For Compensation for false Imprisonment	1 year	When Imprisonment Ends
85	For obstructing a way or a water course	3 years	The date of obstruction
87	For Compensation for trespass upon immovable property	3 years	The date of trespass

PART IX – Suits Relating to Miscellaneous Matters

Articles	Type of Suit	Period of Limitation	Time Starts From

105	By a Hindu for arrears of maintenance	3 years	When the arrears are payable
109	By a Hindu to set aside his father's alienation of ancestral property	12 years	When alienee takes possession of the property

- **Part X - Miscellaneous and residual (Art. 106-113)**

Article	Type of Suit	Period	Time Starts from
113	Any Suit not Covered by other Articles	3 Years	When the Right to sue accrues

- **DIVISION II : APPEALS (Covers Articles from 114 to 117)**

Articles	Description of Appeal	Period Of Limitation	Time Begins from
114	Appeal from an order of acquittal - (a) under sec417(1) and (2) (b) Under 417(3) cr.p.c	 90 days 30 days	 The Date of the order Appeal from The Date of the grant of special leave
115	(a) From a sentence of death passed by a Court of Session or by a High Court in the exercise of its original jurisdiction	30 days	The Date of the sentence
	(b) from any other sentence or any order not being an order of acquittal to the high court	60 days	The date of sentence or order
	(c) to any other court	30 days	The date of decree or order
116	Under the Code of civil Procedure, 1908- (a) to a High Court from any Decree or order	 90 days	 The date of decree or order
	(b) to any other court from any decree or order	30 days	The date of decree or order
117	From a decree or order of any High Court to the supreme court	30 days	The date of Decree or order

- **Third Division - Applications (Articles 118-137).**

Articles	Type Of Applications	Period Of Limitation	Time Begins from
118	For leave to appear and defend a suit under summary procedure.	10 days	When the summons is served.
120	Under the Code of Civil Procedure, 1908 (5 of 1908) to have the legal representative of a deceased plaintiff or appellant, or of a deceased defendant or respondent, made a party.	90 days	The date of death of the plaintiff, appellant, defendant or respondent as the case may be.
121	Under the same Code for an order to set aside an abatement	60 days	The date of abatement.
122	To restore a suit or appeal or application for review or revision dismissed for default of appearance or for want of prosecution or for failure to pay costs of service of process or to furnish security for costs.	30 days	The date of dismissal.
123	To set aside a decree passed ex parte or to re-hear an appeal decreed or heard ex parte. **Explanation:-** For the purpose of this article, substituted service under Rule 20 of Order V of the Code of Civil Procedure, 1908 (5 of 1908) shall not be deemed to be due service.	30 days	The date of the decree or where the summons or notice was not duly served, when the applicant had knowledge of the decree.
124	For a review of judgment by a Court other than the Supreme	30 days	The date of the decree

	Court.		or order.
125	To record an adjustment or satisfaction of a decree.	30 days	When the payment or adjustment is made.
127	To set aside a sale in execution of a decree, including any such application by a judgment-debtor.	60 days	The date of the sale.
128	For possession by one dispossessed of immovable property and disputing the right of the decree-holder or purchaser at a sale in execution of a decree.	30 days	The date of the dispossession.
129	For possession after removing resistance or obstruction to delivery of possession of immovable property decreed or sold in execution of a decree.	30 days	The date of resistance or obstruction.
131	To any Court for the exercise of its powers of revision under the Code of Civil Procedure, 1908 (5 of 1908), or the Code of Criminal Procedure, 1898 (5 of 1898).	90 days	The date of the decree or order or sentence sought to be revised.
134	For delivery of possession by a purchaser of immovable property at a sale in execution of a decree.	1 year	When the sale becomes absolute.
135	For the enforcement of a decree granting a mandatory injunction.	3 years	The date of the decree or where a date is fixed for performance, such date.

136	For the execution of any decree (other than decree granting a mandatory injunction) or order of any civil Court.	12 years	When the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought, takes place: Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.
137	Any other application for which no period of limitation is provided elsewhere in this division.	3 years	When the right to apply accrues.

Computation of Limitation Period

•General Rule (Section 12)

The limitation period starts from the date when the cause of action arises. The computation of the period follows these principles:

1. **Exclusion of the First Day:** The day on which the cause of action arose is excluded from the computation.
2. **Court Holidays:** If the limitation period expires on a day when the court is closed, the suit or application can be filed on the next working day.

Example: If a cause of action arises on 1st January and the limitation period is 30 days, the deadline will be 31st January, excluding court holidays.

•Starting Point of Limitation Period

The starting point depends on the type of legal action:

- **Contracts:** From the date of the breach.
- **Tort Cases:** From the date of the wrongful act.
- **Property Disputes:** From the date of dispossession or when the right to possession accrues.
- **Recovery of Debt:** From the date the debt becomes due.

Extension and Condonation of Delay (Section 5)

•Condonation of Delay:

Under Section 5, the court may condone the delay in filing an appeal or application if “sufficient cause” is shown.

- **Sufficient Cause:** The applicant must present a reasonable and genuine explanation for the delay.
- **Judicial Discretion:** The court evaluates the explanation based on facts and circumstances.

Key Case Law:

- **Balwant Singh (Dead) Vs Jagdish Singh & Ors (2010):**

  The Supreme Court emphasized that the applicant must show a bona fide reason for the delay.

- **Ornate Traders Pvt. Ltd. Vs Income Tax Officer (2008):**

  The Bombay High Court held that negligence or inadequate explanations are grounds for rejection of condonation.

- **Lingeswaran V. Thirunagalingam, 2022 Livelaw (SC) 227**

  When it is found that the delay is not properly explained, the application to condone delay is required to be dismissed, the court has no power to extend the period of limitation on equitable grounds.

Exclusions in Limitation Period

•Time Taken for Essential Court Procedures (Section 12)

The following periods are excluded from the computation:

- Time taken to obtain a certified copy of the judgment, decree, or order.
- Time during which the plaintiff was prevented from filing the suit due to fraud or force by the defendant.

Fraud and Concealment (Section 17)

If fraud or concealment of material facts is involved, the limitation period begins from the date the fraud is discovered or could have been discovered with due diligence.

Key Case Law:

Lakshmi Rattan Engineering Works V. State Of U.P. (1957) : The court held that the limitation period starts only from the discovery of fraud.

Exclusion of Time Spent in Wrong Forum (Section 14)

If a case is filed in a court that lacks jurisdiction or a wrong forum, the time spent in such proceedings is excluded.

Key Case Law:

- **Consolidated Engineering Enterprises VS Principal Secretary (2008)** : The Supreme Court ruled that time spent in pursuing a case in a wrong forum should not penalize a diligent litigant.

Special Provisions for Legal Disabilities (Section 6)

If a person is under a legal disability (e.g., minority, insanity, or idiocy), the limitation period begins after the disability ceases.

- **Example:** If a person is a minor when the cause of action arises, the limitation period starts when they attain majority.

Fraud, Mistake, and Concealment

The Limitation Act provides safeguards against fraud or mistakes. Section 17 allows litigants to compute the limitation period from the time fraud is discovered.

Practical Importance of Limitation Period

- **Judicial Efficiency:** Encourages timely resolution of disputes.
- **Prevents Stale Claims:** Ensures that legal disputes are fresh and evidence is intact.
- **Balances Interests:** Protects defendants from perpetual legal threats while giving plaintiffs sufficient time to seek legal remedies.

Acknowledgment of Debt or Liability (Section 18)

If a person acknowledges a debt or liability in writing before the expiration of the limitation period, a fresh limitation period starts from the date of such acknowledgment. This provision ensures that genuine debts are not barred by limitation.

Key Case Law:

- **L.C. Mills vs Aluminum Corporation Of India (1971)**: The court held that a valid acknowledgment under Section 18 resets the limitation period for filing a suit.

Effect of Payment on account of debt or interest (Section 19)

If payment is made towards a debt(including interest) **before** the expiry of the limitation period,a fresh period begins from the date of payment.

Case Law :

Sant Lal Mahton V. Kamla Prasad, AIR 1951 SC 477: Payment must be voluntary and with in limitation period.

K.V.Satyamurthy V. State of Karnataka,(2022) : Payment of interest constituted acknowledgment under Section 19.

Agents Acknowledgment or Payment (Section 20)

Key Points :

- Acknowledgment or payment by an agent duly authorised in writing has the same effect as if made by the party himself.
- In the case of a Hindu undivided family (HUF), the mananger (Karta) can bind others.

Conditions as to time and limitation under different statutes

SECTION 29 – SAVINGS

1. Nothing in this Act shall affect Section 25 of the Indian Contract Act 1872.

2. Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provision contained in Sections 4 to 24 apply only insofar as , and to, the extent which, they are not expressly excluded by such special or local law.

3. Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law.

4. Sections 25 and 26 and the definition of "easement" in section 2 shall not apply to cases arising in the territories to which the Indian Easements Act,1882 may for the time being extend In case of Special Laws the limitation as provided under the special law shall have application and not the limitation as provided under the Limitation Act. Another important point that has been made is that the provisions of the limitation Act Sections 4 to 24 shall stand excluded only when the Special Act excludes its operation.

1. An appeal under Section 125 Electricity Act 2003 filed after 120 days cannot be entertained by the Supreme Court. The Appellant is not even entitled to the benefit of the principle under Section 4 of the Limitation Act for exclusion of the period when the Court is closed.

2. Section 5 of the Limitation Act cannot be invoked for entertaining an appeal filed against the decision of the Tribunal beyond the period of 120 days specified in Section 125 of the Electricity Act and its proviso.

3. Section 14 of the Limitation Act can be applied even when Section 5 of the Act is not applicable. For availing benefit of Section 14 the party should be prosecuting another civil proceeding with due diligence, and the prosecution should be in good faith. Both due diligence and good faith must be established. Sunil Krishna Ghosh v. Calcutta Improvement Trust [AIR 2001 Cal 199] It was contended in the case that Article 55 of the Limitation Act will be applicable in the case since there was no fixed time to execute the conveyance sought to be performed in the agreement and when there is no fixed time, the suit has to be brought within three years from the date of the refusal to perform the agreement. The Court held in this case that the plaintiff had performed his part of the contract but the defendant had not and there was no stipulated date for the performance of the contract. The defendant had not in writing refused either to execute their conveyance or to perform their part. Thus there was a continuous breach on the part of the defendant to perform by not handing over the physical possession of the property. It is therefore a case where not only Art 55 of the Limitation Act but also Section 22 of the Limitation Act was applicable as this was a continuing cause of action because in each and every day, the breach was being committed by the defendant. Consequently, the suit was not held to be barred.

ARTICLE 136 OF THE SCHEDULE OF THE LIMITATION ACT

Article 136 of the Limitation Act 1963 provides for a 12 year for any limitation for the execution of any decree or order of court. The period of limitation to commence from the time when the decree or order becomes enforceable or decree or order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making payment or delivery in respect of which execution is sought takes place: provided an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation. The test to be applied for determining whether the decree was capable of immediate execution is whether the performance of condition was entirely dependent on the will of the decree holder. If the execution was not within the power of the decree-holder but dependent on some extraneous

circumstance then the period of limitation shall not commence till the presence that external circumstance.

Chandi Prasad v. Jagdish Prasad [2004(8) SCC 724] – Issue involved in the Case – "What would be the date from which a decree becomes enforceable for execution thereof within the meaning of Article 136 of the Limitation Act, 1963?" According to the doctrine of merger, when an appeal is prescribed under the statute and an appeal is preferred before a higher forum and passes a decree, the decree of the trial court merges with the decree of the decree of the appellate court and even if subject to the modification that may be made in appellate decree, the decree of the appellate court supersedes the decree of the trial court. In other words merger of the decree takes place irrespective of the fact whether appellate court affirms, modifies, or reverses the decree of the trial court. It was held that once a decree is sought to be enforced for the purpose of execution thereof irrespective of being original or appellate, the date of the decree or any subsequent order would be considered to be the starting period for limitation. In this case, the final decree was prepared in a partition suit by the trial court on 07.05 1968. After appeal, the High Court decided the second appeal on 18.04.85 and drew up a formal decree pursuant thereto on 30.10.86. Thus the decree of the High Court merged with that of the trial court. In view thereof the execution application filed on 26.03.97 was held not to be time barred because when an appellate forum is invoked and entertained, for all intent and purpose the suit continues. Mangra Dhobi v. KheduaBaraik [2005(2) JCR 491 (Jhr)] The sale deed which had been sought to be cancelled was dated 10.11.1979 and on the basis of the said sale deed, the purchaser defendant had filed Mutation Case and in that Mutation Proceeding, the Plaintiffs had appeared and filed objection and that objection was rejected and the Mutation Proceeding was allowed in favour of the Defendant No. 2 by order dated 11.2.1980. The plaintiffs had thus knowledge of the said deed at least on the date of the objection made by them on 11.2.1980. The suit was filed on 14.5.1986, admittedly, much beyond the prescribed period of limitation seeking the relief of cancellation of the sale deed. It was held that unless the 1st claim for

cancellation of the sale deed is decreed in favour of the plaintiff, their right, title cannot be declared in respect of the suit land and second relief prayed for by them cannot be granted. In that view, the Hon'ble High Court held that the suit was barred by law of limitation. Regard being had to the nature of the suit, the provision of Article 59 of the Limitation Act has been correctly referred to and applied by the learned lower appellate Court in deciding the question of limitation.

SECTION 21-- EFFECT OF SUBSTITUTING OR ADDING NEW PLAINTIFF OR DEFENDANT

(1) Where after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was made a party: Provided that where the court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date. (2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff. If some of them institute a suit within time and the other plaintiffs are added after the period of limitation, the claim of the original plaintiffs, would be barred. Order I Rule 10(2) CPC provides for the addition of (1) necessary parties(2) proper parties. In adding necessary parties Section 21 of the Limitation Act has to be taken into account, but in adding proper party Section 21 has no application. The proviso to sub-section (1) of Section 21 provides a direction to the court to condone the delay in filing the application for addition of parties after the period of limitation provided the same is made bona-fide and good cause is shown therefore.

Limitation Bars Remedy but doesn't Extinguish Right

The law of limitation only bars the remedy by way of the suit i.e., if the period of limitation expires, the party entitled to file a suit for the enforcement of a right is debarred from doing so. However, the original right on which the suit was to base is

not barred. Thus, limitation only bars the judicial remedy, but it does not extinguish the right.

For example, where the recovery of a debt has become time barred by the lapse of the prescribed period, the right to the debt is not extinguished.

If the debtor, without being aware of the bar of time, pays the debt, he cannot sue the creditor to refund the money to him on the grounds that his claims for the recovery of the debt had become time barred.

- There is one exception to the aforesaid rule contained in Section 27 of the Limitation Act, 1963.

It provides that where a person's right to institute the suit for the possession of any property has become barred by limitation his right to the property itself shall be extinguished.

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 has possession over another's land for a long 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 rights, then the rights 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.

Limitation in criminal cases in respect of offences under IPC/BNS and other Special Law

Chapter XXXVI of the Code comprising Sections 467-473 of Cr.P.C was introduced in the CrPC of 1973.

- The period of limitation, like a relay race, has a start and a finish point.

Section 467 of CrPC:

- Section 467 states that the “period of limitation” is the period prescribed in Section 468 for taking cognizance of an offence.

Section 468 of CrPC:

- Clause (2) of Section 468 CrPC prescribes a graded period of limitation shall be—
    - six months, if the offence is punishable with fine only;
    - one year, if the offence is punishable with imprisonment for a term not exceeding one year;
    - three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.
    -

Section 469 of CrPC

- Section 469 CrPC is crucial for reckoning the starting point of the period of limitation.
- Section 469 (a) spells out the general rule that the limitation shall run from the date of the offence (excluding the first day under Clause (2) of Section 469).
- Section 469 (b) and (c) are **exceptions to the general rule** providing for deferment of running of limitation in cases where (a) the commission of the offence is not known or (b) the offender is not known.
- In such cases the limitation would commence as follows:

Nature of the Case	**Period from which Limitation Commences**
Where the commission of the offence	The first day on which the offence comes to

is not known to the person aggrieved or to any police officer [Section 469(b)]	the knowledge of such person or police officer, whichever is earlier;
Where it is not known by whom the offence is committed [Section 469(c)]	The first day on which the identity of the offender is known to the person aggrieved by such offence or the police officer, whichever is earlier.

Sections 470 to 473 of CrPC:

- Sections 470 and 471 provide for the **exclusion of time** in certain cases.

- Section 472 CrPC incorporates the well-known rule that in case of a **continuing offence**, a fresh period of limitation begins to run at every moment of the time during which the offence continues.

- Section 473 CrPC empowers the **Court to condone the delay** and take cognizance beyond the period prescribed in Section 468 CrPC if it is satisfied that the delay has been properly explained or that it is necessary to do so in the interests of justice.

<u>Special Criminal Laws with Specific Limitation Periods:</u>

Some special statutes override CrPC's limitation provisions through non-obstante clauses(e.g "Not withstanding anything contained in the Cr.P.C…" Examples:

1. Protection of children from Sexual Offences Act(POCSO),2012

- No limitation for filing complaints.
- Section 19 read with Cr.P.C provisions,but Section 473 Cr.P.C(extension in interest of justice) can apply.

2. Prevention Of Corruption Act,1988

- No specific limitation,but governed by CrPC
- Courts generally apply Section 468 CrPC unless case falls under exceptions.

3. Prevention Of Money Laundering Act(PMLA),2002

- Cognizance taken based on complaint filed by authorised authority,often outside usual CrPC Limitations.

- Effectively no time bar due to nature of continuimg offence.

4. Customs Act,1962/ NDPS Act,1985/ FERA / FEMA

- Often considered continuing offences,hence limitation doesn't apply strictly.
- NDPS Act does not prescribe any limitation period.

5. Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act,1989

- No specific limitation mentioned; CrPC applies unless overridden by special procedures.

DISTRICT JUDICIARY KURNOOL

WORKSHOP-I OF THE

YEAR 2025

TOPIC FOR PAPER PRESENTATION:

LAW ON LIMITATION

By

G.Aparna

I ADDITIONAL CIVIL JUDGE

(JUNIOR DIVISION), KURNOOL.

(A) LIMITATION-SUITS, APPEALS, APPLICATIONS:

INTRODUCTION:

The word limitation in its literal term means a restriction or the rule or circumstances which are limited. The law of limitation has been prescribed as the time limit which is given for different suits & proceedings to the aggrieved person within which they can approach the court for redress or justice. The basic concept of limitation is relating to fixing or prescribing of the time period for barring legal actions. According to Section 2 (j) of the Limitation Act, 1963, '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.

Statutes on Limitation are based on two well-known legal maxims:

1. Interest republicae ut sit finis litium (In the interest of the State there must be an end to litigation)

2. Vigilantibus non dormientibus jura subveniunt (The law assists the vigilant and not one who sleeps over his rights)

The object of the Statutes of Limitations is to compel a person to exercise his rights of action within a reasonable time as also to discourage and suppress stale, fake or fraudulent claims. The Statutes of Limitation concerns with the extinguishment of the right if a claim or action is not commenced within a particular time and the other merely bars the claim without affecting the right which either remains merely as a moral obligation or can be availed of to furnish the consideration for a fresh enforceable obligation.

The Limitation Act merely puts bar on the filing of Suit, Appeal or Application but not upon Substantive Legal Right that is to say if a party has a Cause of Action, if

the suit is barred by limitation, the Cause of Action does not die rather the right to file a suit on that Cause of Action is lost.

CAN THE PARTIES MUTUALLY AGREE TO EXPAND OR LIMIT LIMITATION PERIOD?

No. As per Sec28 of Indian Contract Act Agreements in restraint of legal proceeding void.

- The suit will be deemed to be instituted on the day when it was actually filed in the Court and even if there were some defects like improper documents, undervaluation of the suit, improper court fees etc., it will be deemed to be filed on that date only and any corrections made will relate back to the date when it was filed before the Court.

When once time has began to run no subsequent disability or inability to institute a suit or make an application stops it.(Sec.9 Limitation Act)

When Period of Limitation Starts

- The time from which the period of limitation begins depends on the case's subject matter, and a specific starting point of such period is provided extensively by the Schedule in the Act.
- It generally starts from the date when the summons or notice is served, or the date on which the decree or judgment is passed, or the date on which the event that forms the basis of the suit takes place.

Section 6 of the imitation Act deals with the extension of the prescribed period of limitation for instituting Suits or Applications in cases where the person entitled to commence such proceeding is under disability. This Section applies only when the person is already under disability when the right to sue accrues. Such

person can file suit or make an application once the disability ends and he may institute the suit or make application within the same period as would otherwise have been allowed from the time specified in the schedule.

Section 7 of the Limitation Act states that where one of the several persons are jointly entitle to institute a suit or make an application for the execution of a decree is under any disability, and a discharge can be given without the concurrence of such person, time will run against them all. However, where no such discharge can be given, time will not run as against them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased.

As per section 29 of The Limitation Act ,1963

(1)This Act shall not affect section 25 of the Indian Contract Act, 1872 (9 of 1872).

(2)Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule.

(3)Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law.

(4)Sections 25 and 26 and the definition of “easement” in section 2 shall not apply to cases arising in the territories to which the Indian Easements Act, 1882 (5 of 1882), may for the time being extend.

Bar of Limitation Under Section 3

Section 3 of the Act provides that any suit, appeal, or application must be made within the limitation period specified in the Limitation Act.

- If any suit, appeal or application is made beyond the prescribed period of limitation, it is the duty of the Court not to proceed with such suits,

appeals, irrespective of the fact whether the plea of limitation has been set up as a defence or not.

- The provisions of Section 3 are mandatory, and 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.

Limitation Bars Remedy but doesn't Extinguish Right

The law of limitation only bars the remedy by way of the suit i.e., if the period of limitation expires, the party entitled to file a suit for the enforcement of a right is debarred from doing so.

However, the original right on which the suit was to base is not barred. Thus, limitation only bars the judicial remedy, but it does not extinguish the right.

For example, where the recovery of a debt has become time barred by the lapse of the prescribed period, the right to the debt is not extinguished.

If the debtor, without being aware of the bar of time, pays the debt, he cannot sue the creditor to refund the money to him on the grounds that his claims for the recovery of the debt had become time barred.

There is one exception to the aforesaid rule contained in Section 27 of the Limitation Act, 1963.

It provides that where a person’s right to institute the suit for the possession of any property has become barred by limitation his right to the property itself shall be extinguished.

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 has possession over another's land for a long 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 rights, then the rights 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.

Doctrine of Sufficient Cause:

Sufficient cause means there should be adequate reasons or reasonable ground for the court to believe the applicant was prevented from proceeding with the application in a Court of Law.

- 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 this section.
- Condonation of delay means that extension of time given in certain cases provided there is sufficient cause for such delay.
- Section 5 of the Act 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.

- In State of West Bengal v. Administrator (1972), the Supreme Court held that the extension of time is a matter of concession and can not be claimed by the party as a matter of right.
- It is difficult and undesirable to precisely define the meaning of sufficient cause. It must be determined by the facts and circumstances of each case. However, a sufficient cause should fulfill the following essentials:
- It must be a cause which was beyond the control of the party invoking it.
- He must not be guilty of negligence.
- His diligence and care must be shown.
- His intention must be bonafide.

Exception

Section 5 is not applicable to applications made under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (states that the decree must be signed by the judge, and then the decree must be entered in the register of decrees and further states that the decree should be dated and authenticated by the judge's signature) and 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.

Plea of limitation: Duty of Court

The Court is under an obligation to dismiss a suit if it is filed beyond the time prescribed by the Limitation Act. The provisions of Section 3 are mandatory, and the Court will not proceed with the suit if it is barred by time.

➢ Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaint shall show the ground upon which exemption from such law is claimed. Provided that the court may permit the plaintiff to claim exemption

from the law of limitation on any ground not set out in the plaint, if such ground is not inconsistent with the grounds set out in the plaint.(Order VII Rule 6)

(B) COMPUTATION OF PERIOD OF LIMITATION:

Part-III of The Limitation Act,1963 containing sections 12 to 24 deals with computation of period of limitation. The rules as to computation of period of limitation are not intended to apply only to periods of limitation prescribed by the Schedule but apply also to periods of limitation provided for by other enactments.

Sec.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

i. for an appeal or an application for leave to appeal or

1.for revision or

2. for review of a judgement the day on which 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.

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 judgement 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.

IN COMPUTING THE PERIOD FOR

12(1) any suit, appeal or application

12(2) an appeal or an application for leave to appeal, revision, review

12(3) Where a decree or order is appealed, revised or reviewed, an application is made for leave to appeal

12(4) an application to set aside an award

TIME TO BE EXCLUDED

- the day from which such period is to be reckoned
- day on which judgement complained of was pronounced,
- time requisite for obtaining a copy of the decree, sentence or order
- the time requisite for obtaining a copy of the judgment
- the time requisite for obtaining a copy of the award

In computing the period of limitation prescribed for any suit, the date shown in the column III of the Schedule as the day from which the period of limitation begins to run shall be excluded.

Thus, if a pronote is executed on 5th June, 1945, the last day for filing the suit will be 5th June, 1948 and not 4th June, 1948, because the 1st day, - i.e., 5th June, 1945 will not be taken into account in computing the period of limitation which is three years in the case of a pronote.

In M/S. Saketb India Ltd v M/s. India Securities Ltd. (AIR 1999 SC 1090), held that ordinarily in computing the time, the rule observed is to exclude the first day and to include the In computing the period of limitation prescribed for an appeal , an review, an application for leave to appeal last day. application for revision or for the following periods shall be excluded: — i. the day on which the period begins to run; ii. the day on which the judgment was pronounced; iii. the time requisite for obtaining a

copy of the decree, sentence or order; iv. the time requisite for obtaining a copy of the judgment.

Sec.13 EXCLUSION OF TIME IN CASES WHERE LEAVE TO SUE OR APPEAL AS A PAUPER IS APPLIED FOR: —

According to Section 13 of the Act, a suit is instituted in the case of pauper, when his application for leave to sue as a pauper is made. Section 13 of the Act expressly provides that where leave to sue or appeal as a pauper is applied for but is not granted, the time during which the applicant has been prosecuting in good faith, his application for such leave shall be excluded in computing the period of limitation prescribed for such suit or appeal and the Court may, on payment of the Court-fee, treat the suit or appeal as having the same force and effect as if the Court-fees had been paid in the first instance.

Sec.14 EXCLUSION OF TIME OF PROCEEDING BONA FIDE IN COURT WITHOUT JURISDICTION:-

1. In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

2. In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith

in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

3. Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

EXPLANATION: For the purposes of this section-

a. in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

b. a plaintiff or an applicant resisting an appeal shall be deemed to proceeding;

c. misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.

SEC.15- EXCLUSION OF TIME IN CERTAIN OTHER CASES:-

Section 15 provides for exclusion of time where there has been an injunction, or notice has to be given, or the previous sanction of the Government has to be obtained, or where a liquidator has been appointed. Five rules are laid down in this connection, as under:

a. When a suit or execution proceedings are stayed by injunction or order: Sec. 15(1)

b. When notice to Government or any other authority is necessary, the period of notice: Sec. 15(2)

c. When receiver in insolvency or liquidator in winding up is appointed: Sec. 15(3)

d. When proceedings to set aside sale has been prosecuted: Sec. 15(4)

e. When the defendant has been absent from India: Sec. 15(5)

Sec.16 EFFECT OF DEATH ON OR BEFORE THE ACCRUAL OF THE RIGHT TO SUE:-

1. Where a person who would, if he were living, have a right to institute a suit or make an application dies before the right accrues, or where a right to institute a suit or make an application accrues only on the death of a person, 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.

2. Where a person against whom, if he were living, a right to institute a suit or make an application would have accrued dies before the right accrues, or where a right to institute a suit or make an application against any person accrues on the death of such person, the period of limitation shall be computed from the time when there is a legal representative of the deceased against whom the plaintiff may institute such suit or making such application.

3. Nothing in sub-section (1) or sub-section (2) applies to suits to enforce rights of pre emption or to suits for the possession of immovable property or of a hereditary office.

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Sec.17 EFFECT OF FRAUD OR MISTAKE:-

1. Where, in the case of any suit or application for which a period of limitation is prescribed by this Act- the suit or application is based upon the fraud of the defendant or respondent or his agent; or the knowledge of the right or title on which suit or application is founded is concealed by the fraud of any such person as aforesaid; or the suit or application is for relief from the consequences of a mistake; or where any document necessary to establish the right of the plaintiff or applicant

has been fraudulently concealed from him; the period of limitation shall not begin to run

I. until the plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or

II. in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production:

PROVIDED that nothing in this section shall enable any suit to be instituted or application to be made to recover or enforce any charge against, or set aside any transaction affecting, any property which- in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know, or have reason to believe, that any fraud had been committed, or in the case of mistake, has been purchased for valuable consideration subsequently to the transaction in which the mistake was made, by a person who did not know, or have reason to believe, that the mistake had been made, or in the case of concealed document, has been purchased for valuable consideration by a person who was not a party to the concealment and did not at the time of purchase know, or have reason to believe, that the document had been concealed.

3. Where a judgement-debtor has, by fraud or force, prevented the execution of a decree or order within the period of limitation, the court may, on the application of the judgement-creditor made after the expiry of the said period extend the period for execution of the decree or order:

PROVIDED that such application is made within one year from the date of the discovery of the fraud or the cessation of force, as the case may be.

Sec.18 EFFECT OF ACKNOWLEDGEMENT IN WRITING:-

1. Where before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgement of liability in respect of such

property or right has been made writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed.

2. Where the writing containing the acknowledgement is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

Explanation: For the purposes of this section

(a) An acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right;

(b) The word "signed" means signed either personally or by an agent duly Authorised in this behalf ; and

(c) An application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.

➢ Acknowledgement only renews the Prescribed Period and does not create a new Cause of Action.

➢ It is not essential that the acknowledgement should be done by the liable party himself rather his authorised agent can also make the acknowlegement.

Sec.19 EFFECT OF PAYMENT ON ACCOUNT OF DEBT OR OF INTEREST ON LEGACY:-

Sec.20 Effect of acknowledgment or payment by another person:—

(1)The expression "agent duly authorised in this behalf" in sections 18 and 19 shall, in the case of a person under disability, include his lawful guardian, committee or

manager or an agent duly authorised by such guardian, committee or manager to sign the acknowledgment or make the payment.

(2)Nothing in the said sections renders one of several joint contractors, partners, executors or mortgagees chargeable by reason only of a written acknowledgment signed by, or of a payment made by, or by the agent, of, any other or others of them.(3)For the purposes of the said sections,—

(a)an acknowledgment signed or a payment made in respect of any liability by or by the duly authorised agent of, any limited owner of property who is governed by Hindu law, shall be a valid acknowledgment or payment, as the case may be, against a reversioner succeeding to such liability; and

(b)where a liability has been incurred by or on behalf of a Hindu undivided family as such, an acknowledgment or payment made by, or by the duly authorised agent of, the manager of the family for the time being shall be deemed to have been made on behalf of the whole family.

Sec.21 Effect of substituting or adding new plaintiff or defendant:—

(1)Where after the institution of a suit, a new plaintiff or, defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party:

Provided that where the court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.

(2)Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.

➢ Karuppaswamy And Others vs C. Ramamurthy on 14 July, 1993 (AIR1993SC2324)

Whenever a party is impleaded in the course of the proceeding as per Sec.21(1) he will be deemed to be made a party i.e., Suit in his respect will be deemed to have been instituted on the day when he was added as a party. A question arises as to if such addition has been after the expiry of Prescribed Period then the party who has been can always raise the objection that the Suit against him is barred by limitation. In such cases proviso to Sec21(1) will be applicable and the Burden of Proof would lie upon the applicant to prove the mistake and his good faith.

Sec.22 CONTINUING BREACHES AND TORTS:—

In the case of a continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be, continues.

(A)CONDITIONS AS TO TIME AND LIMITATION UNDER DIFFERENT STATUTES:

- Section 6 of the Specific Relief Act, 1963, provides a remedy for individuals dispossessed of immovable property without their consent and without due process of law. It allows the dispossessed person to recover possession through a suit, regardless of any other claim to the property. The suit must be filed within six months of the dispossession.
- Section 69 of The Consumer Protection Act, 2019 : Limitation Period: (1) The District Commission, the State Commission or the National

Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen.

(2) Notwithstanding anything contained in sub-section (1), a complaint may be entertained after the period specified in sub-section (1), if the complainant satisfies the District Commission, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period: Provided that no such complaint shall be entertained unless the District Commission or the State Commission or the National Commission, as the case may be, records its reasons for condoning such delay.

- Section 65 in The Chit Funds Act, 1982

65. Period of limitation.—

(1)Notwithstanding anything contained in the Limitation Act, 1963 (36 of 1963), but subject to the specific provisions contained in this Act, the period of limitation in the case of a dispute referred to the Registrar under section 64, shall—

(a)if the dispute relates to the recovery of any sum, including interest thereon, due to a foreman from a deceased subscriber, be three years, computed from the date on which such subscriber dies or ceases to be a subscriber; or

(b)if the dispute is between a foreman and a subscriber or a past subscriber, or the nominee, heir or legal representative of a deceased subscriber, and the dispute relates to any act or omission on the part of either party to the dispute, be three years from the date on which the act or omission with reference to which the dispute arose, took place.

(2)The period of limitation in the case of any dispute other than those referred to in sub-section (1) which are required to be referred to the Registrar under section 64

shall be regulated by the provisions of the Limitation Act, 1963 (36 of 1963), as if the dispute were a suit, and the Registrar, a civil court.

(3)Notwithstanding anything contained in sub-sections (1) and (2), the Registrar may admit a dispute after the expiry of the period of limitation specified therein, if the applicant satisfies the Registrar that he had sufficient cause for not referring the dispute within such period.

- The general limitation period for filing an application under Section 11 of the Arbitration and Conciliation Act, 1996, for the appointment of an arbitrator, is three years from the date the right to apply accrues. This is governed by Article 137 of the Limitation Act, 1963. The right to apply accrues upon the failure to appoint an arbitrator within 30 days from the notice of invocation of arbitration under Section 21 of the Act.
- **Order 8 Rule 1 Written Statement—**

The Defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence: Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall

forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.

- Order 8 Rule 6A(1). Counter-claim by defendant:-

A defendant in a suit may, in addition to his right of pleading a set-off under rule 6, set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not :

- Section 148 of Code of Civil Procedure: Enlargement of Time-

Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, not exceeding thirty days in total, even though the period originally fixed or granted may have expired.

- Order 21 Rule 68 No sale shall take place until after the expiration of at least 15 days in the case of immovable property, and at least 7 days in the case of movable property calculated from the date of proclamation.

Order 21 Rule 84 On every sale of immovable property the person declared to be the purchaser shall pay immediately after such declaration a deposit of 25% on the amount of his purchase money and in default of the same the property shall forthwith be re-sold.

Order 21 Rule 85 The full amount of the purchase money payable shall be paid by the purchaser into the Court before the Court closes on the fifteenth day from the sale of the property.

(B) DIFFERENT RELIEFS WITH DIFFERENT PERIOD OF LIMITATION:

In cases where multiple reliefs are sought in a legal proceeding, the limitation period applicable to each relief can differ based on the nature of the claims and the relevant provisions of the Limitation Act, 1963. Ancillary reliefs cannot be enforced in a situation where the primary relief claimed have been declared to be time-barred and the ancillary reliefs depend on the primary relief.

The expression "main relief takes in almost every relief for which the suit is solely laid for. However, the expression "ancillary relief has to be read in conjunction with the main relief i.e., it should be aiding or auxiliary to the main relief. An ancillary relief can in a given circumstance be the main relief but not vice versa.

In a simpliciter suit for injuction, the relief of injunction comprises the main relief but when a relief which is of a substantial nature viz., possession or declaration is added to it, the relief of injunction which was hitherto the main relief scales down to the position of a consequential relief.

(C)AMENDMENT OF PLEADINGS- THE ASPECT OF LIMITATION:

Order 6 Rule 17 Amendment of pleadings:-

The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that inspite of due

diligence, the party could not have raised the matter before the commencement of trial.

A bare perusal of this provision, it is clear that Order 6 Rule 17 of the Code of Civil Procedure consists of two parts. The first part is that the Court may at any stage of the proceedings allow either party to amend his pleadings and the second part is that such amendment shall be made for the purpose of determining the real controversies raised between the parties. Therefore, in view of the provisions made under Order 6 Rule 17 of the Civil Procedure Code it cannot be doubted that wide power and unfettered discretion has been conferred on the Court to allow amendment of the pleadings to a party in such manner and on such terms as it appears to the Court just and proper. While dealing with the prayer for amendment, it would also be necessary to keep in mind that the Court shall allow amendment of pleadings if it finds that delay in disposal of Suit can be avoided and that the suit can be disposed of expeditiously.

By the Code of Civil Procedure (Amendment) Act, 2002 a proviso has been added to Order 6 Rule 17 which restricts the Courts from permitting an amendment to be allowed in the pleadings either of the parties, if at the time of filing an application for amendment, the trial has already commenced. However, Court may allow amendment if it is satisfied that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

Object:

The object of the rule is that the courts should try the cases on merits and should consequently allow all amendments that may be necessary for determining the real

question in contraversy between the parties provided it does not cause injustice or prejudice to the other side.

Limitation:

No period of limitation is prescribed either in the Code of Civil Procedure or in the Limitation Act for making an application for amendment. It may be granted at or after the trial, in 1st Appeal or in second Appeal or in Revision, or in the Execution Proceedings.

Successive applications:

As a general rule, once an application for amendment is rejected on merits a second application on the same averments is not maintainable. But, if there is change of circumstances, an application for amendment may be filed provided not prejudice is caused to the other side. Similarly a fresh application would also lie if earlier one is withdrawn or dismissed for default or not decided on merits.

- In M/S. Revajeetu Builders & Developers vs M/S. Narayanaswamy & Sons & Ors on 9 October, 2009 (CIVIL APPEAL NO.6921 OF 2009. (Arising out of SLP (c) No.1552 OF 2007)) FACTORS TO BE TAKEN INTO CONSIDERATION WHILE DEALING WITH APPLICATIONS FOR AMENDMENTS are given by the Hon'ble Supreme Court: On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment. (1) Whether the

amendment sought is imperative for proper and effective adjudication of the case?

(2) Whether the application for amendment is bona fide or mala fide?

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? and

(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application?

- Courts, as a rule, decline to allow amendments if a fresh suit on the amended claim would be barred by limitation on the date of the application and when the pleadings itself reveal that the claim raised is time-barred (Ashok Kumar Kalra v. Wing Cdr. Surendra Agnihotri and Ors., 2 SCC 394 (2020); South Konkan Distilleries and Anr. v. Prabhakar Gajanan Naik and Ors.,14 SCC 632 (2008)).
- In Sampath Kumar v. Ayyakannu & Anr. reported in (2002) 7 SCC 559, it has been held as follows: “An amendment once incorporated relates back to the date of the suit. However, the doctrine of relation back in the context of amendment of pleadings is not one of universal application and in appropriate cases the Court is competent while permitting an amendment to direct that the amendment permitted by it shall not relate back to the date of the suit and to the extent permitted by it shall be deemed to have been brought

before the Court on the date of which the application seeking the amendment was filed."

- **Failure to Amend within Prescribed Time:**

According to Order VI, Rule 18 of the Civil Procedure Code:

If a party obtains an order for leave to amend but fails to amend within the time specified in the order, or if no specific time is provided, within fourteen days from the date of the order, they will not be allowed to amend after this prescribed time unless the court extends the time.

- According to Rule 28 of A.P Civil Rules of Practice,1980:-

An application to amendment made under Order I Rule 10, Order VI Rule 17 or Order XXII of CPC, shall also contain a prayer for all consequential amendments. The Court shall reject the application if it is not in accordance with the law or these Rules. The verbal corrections may at any time be made in pleadings with permission of the Court.

- It is a settled proposition of law that if a fact comes to the knowledge of the opposite party after the filing of the principal written objection, it can still be incorporated under Order 6 Rule 17 of the CPC, provided the amendment is relevant, and it does not introduce new pleas that could surprise the other party. The Court's discretion plays a crucial role in determining whether such amendments will be allowed, with a focus on ensuring justice and fair play in the proceedings.

- **Doctrine of Relation Back**:

The doctrine of relation back is a legal principle that, when an amendment to a pleading (such as a plaint or written statement) is allowed, the amendment is treated as if it had been included from the date of the original filing. This means that the amended claims relate back to the date of the original suit, preventing issues of

limitation from arising due to the timing of the amendment. However, courts have discretion to limit the applicability of this doctrine if necessary to prevent injustice.

LIMITATION IN CRIMINAL CASES IN RESPECT TO OFFENCES UNDER IPC/BNS AND OTHER SPECIAL LAWS

I. The law of limitation is a procedural law. It is ***Lex Fori*** (the law of the court in which a proceeding is brought) and is founded on public policy. The word “limitation” in its literal term means a restriction or the rule or circumstances which are limited. The law of limitation specifies the statutory time frame within which a person may initiate a legal proceedings or a legal action can be brought.

II. Purpose of the Limitation:

> *Interest republicae ut sit finis litium* – In the interest of society as a whole, there should be an end to litigation.

> *Vigilantibus non dormientibus jura subveniunt* – Law will assist those who are vigilant with thier rights and not those who sleep there upon. In simpler words, the law will not help those who sleep on thier rights.

III. A general principle of criminal law is that a crime never dies. This is expressed in the *maxim nullum tempus qut locus occurritregi* meaning that the lapse of time is no bar to the Crown for the purpose of initiating proceedings against offenders. The maxim is a reflection of the principle of common law that a criminal offence is considered a wrong against the State and also the society as a whole, even though the same may have been committed against an individual.

IV. When the Code of Criminal Procedure, 1898 was in vogue the legal position was that a Court could not dismiss a complaint on the ground that it was belated. Dealing with a complaint under the Customs Act, 1962, a Constitution Bench of the Hon-ble Supreme Court in Asstt. Collector of Customs v. L.R. Melwani, reported in AIR 1970 SC 962, had observed as follows:

> "The question of delay in filing a complaint may be a circumstance to be taken into consideration in arriving at the final verdict. But by itself it affords no ground for dismissing the complaint. Hence we see no substance in the contention that the prosecution should be quashed on the ground that there was delay in instituting the complaint."

Taking note of the aforesaid position, the Law Commission of India in its 42nd Report proposed the introduction of limitation for less serious offences. The following was the recommendation made by the Commission:

> **24.14. Recommendation to introduce principle of limitation:**
> We, therefore, recommend that the principle of limitation should be introduced for less serious offences under the Code. We suggest that, for the present, offences punishable with fine only or with imprisonment up to three years should be made subject to the law of limitation. The question of extending the law to graver offences may be taken up later on in the light of the experience actually gained.

V. It is in the light of the aforesaid recommendation, Chapter XXXVI of the Code comprising Sections 467 to 473 Cr.P.C was introduced in the Code of Criminal Procedure, 1973. Chapter XXXVIII in the Corresponding Chapter in the Bharatiya Nyaya Suraksha Sanhita comprising Sections 513 to 519.

VI. The period of limitation, like a relay race, has a start and a finish point. Sections 467 Cr.P.C / Sec.513 BNSS states that the “period of limitation” is the period prescribed in Section 468 Cr.P.C / Sec.514 BNSS for taking cognizance of an offence. Clause (2) of Section 468 Cr.P.C / Sec.514 BNSS prescribes a graded period of limitation ranging from six months to three years for offences ranging from punishments of fine upto punishment for a period not exceeding three years.

Section 468 (2) Cr.P.C / Sec.514 (2) BNSS: Bars taking of cognizance after lapse of the period of limitation.

Limitation period	Offence punishable with
6 Months	Fine only
1 Year	Less than 1 year
3 Years	1-3 years
No Limitation	More than 3 years

As per the explanation of Section 514 BNSS, the relevant date for the purpose of computing the period of limitation shall be the date of filing complaint U/Sec.223 BNSS (Sec.200 Cr.P.C) or the date of recording of information under Section 173 BNSS (Sec.154 Cr.P.C).

- When offences are to be tried together: Limitation Period shall be determined with reference to the offence which is punishable with more severe punishment (Sec.468(3) Cr.P.C / 514(3) BNSS)
- "**Taking Cognizance is of the offence and not the offender**"
  If during the pendency of the criminal proceedings, but after the

expiry of the period of limitation, if the court is opinion that some other person is involved in the offence and decides to proceed against such person under section 319 Cr.P.C/sec.358 BNSS, limitation would not apply because in sec319(4) Cr.P.C/Sec.358(4) BNSS it is said that the case is to proceed against such persons as if they had been accused persons when the court took cognizance of the offence upon which the inquiry or trail was commenced.

- According to section 198(6) Cr.P.C/Sec.219(6)BNSS, a complaint against sexual intercourse by a man with his own wife (under the age of 18 years) shall be made within **1year from the date commission of the offence.**

- According to section 199(5) Cr.P.C/Sec.222 BNSS, Session court shall take cognizance of offence u/s.199(2) /Sec.222(2) BNSS when the complaint in writing was filed by the Public Prosecutor with in **6 months** from the date on which the alleged offence is said to have been committed.

Section 469 Cr.P.C / Sec.515 BNSS: Commencement of period of limitation:

Section 469 Cr.P.C / Sec.515 BNSS is crucial for reckoning the starting point of the period of limitation. Section 469(a) Cr.P.C / Sec.515(a) BNSS spells out the general rule that the limitation shall run from the date of the offence (excluding the first day under Clause (2) of Section 469 Cr.P.C / Sec.515 BNSS). Section 469 (b) and (c) Cr.P.C / Section 515 (b) and (c) are exceptions to the general rule providing for deferment of running of limitation in cases where (a) the commission of the offence is not known or (b) the offender is not known. In such cases the limitation would commence as follows:

Nature of Case	Period from which limitation commences
Where the commission of the offence is not known to the person aggrieved or to any police officer [Section 469(b)	The first day on which the offence comes to the knowledge of such person or police officer, whichever is earlier;

Cr.P.C / Sec.515(b) BNSS]	
Where it is not known by whom the offence is committed [Section 469(c) Cr.P.C / Sec.515(c) BNSS]	The first day on which the identity of the offender is known to the person aggrieved by such offence or the police officer, whichever is earlier.

In computing the said period, the day from which such period is to be computed shall be excluded (sec.469(2) Cr.P.C /Sec.515(2) BNSS).

Sections 470 Cr.P.C / Sec.516 BNSS and 471 Cr.P.C / Sec.517 BNSS provides for the exclusion of time in certain cases. Section 472 Cr.P.C / Sec.518 BNSS incorporates the well-known rule that in case of a continuing offence, a fresh period of limitation begins to run at every moment of the time during which the offence continues. Section 473 Cr.P.C / Sec.519 BNSS empowers the Court to condone the delay and take cognizance beyond the period prescribed in Section 468 Cr.PC / Sec.514 BNSS if it is satisfied that the delay has been properly explained or that it is necessary to do so in the interests of justice. This is broadly the scheme of Chapter XXXVI Cr.P.C / Chapter XXXVIII BNSS.

VII. Limitation for taking cognizance of any offence by the Magistrate/Court upon receiving a complaint U/Sec.190 (1) (a) Cr.P.C / Sec.210 (1) (a) BNSS or upon information received from any person other than a police officer under Section 190 (1) (c) Cr.P.C / Sec.210 (1) (c) BNSS :

(a) Krishna Pillai v T. A Rajendran reported in (1990 Supp SCC 121) a three-judge bench of the Hon'ble Supreme Court

While dealing with a case under Section 9 of the Child Marriage Restraint Act, 1929 which prescribed one year as the limitation for taking cognizance of an offence under the Act. In that case, a complaint had been filed within one year of the offence but by the time cognizance had been taken the period of one year had expired. The Court quashed the prosecution and opined that filing of a complaint would not amount to taking of cognizance.

(b) *Bharath Damodar Kale.v. State of A.P* reported in (2003) 8 SCC 559.

While dealing with a case under the Drugs and Cosmetics Act 1940 where a prosecution is commenced upon a complaint under Section 32 of the said Act, the Hon'ble Apex Court held that:

> "All these provisions indicate that the court taking cognizance can take cognizance of an offence the complaint of which is filed before it within the period of limitation prescribed and if need be after excluding such time which is legally excludable. This in our opinion clearly indicates that the limitation prescribed is not for taking cognizance within the period of limitation, but for taking cognizance of an offence in regard to which a complaint is filed or prosecution is initiated beyond the period of limitation prescribed under the Code. Apart from the statutory indication of this view of ours, we find support for this view from the fact that taking of cognizance is an act of the court over which the prosecuting agency or the complainant has no control. Therefore, a complaint filed within the period of limitation under the Code cannot be made infructuous by an act of court."

(c) *Japani Sahoo .v. Chandrasekhar Mohanti* reported in (2007) 7 SCC 394.

In this case, the offence had taken place on 02-02-1996 and the complaint was filed before the court of the Sub Divisional Magistrate on 05-02-1996 for the offence under Section 294 and 323 IPC. The court ought to have taken cognizance within one year. However, cognizance was taken by the

court on 08-08-1997. While refering *Bharath Damodar Kale .v. State of A.P* reported in **(2003) 8 SCC 559**, the Hon'ble Apex Court held that as the complaint was filed within two days, the subsequent delay in taking cognizance caused by the court couldnot be put against the complaint applying the principle of *actus curiae neminemgravabit*.

There being conflict in the views taken in two-Judge E Bench decisions in Bharat Kale' and Japani Sahoo on the one hand, and a three-Judge Bench decision in Krishna Pillai, on the other, on the question whether for the purpose of computing the period of limitation u/s 468 of the Code of Criminal Procedure, 1973 (CrPC), the relevant date would be the date of filing of the complaint or the date of institution of prosecution or whether the relevant date would be the date on which the Magistrate took cognizance of the offence, the mater was ultimately referred to the Constitution Bench.

Sarah Mathew .v. Institute of Cardio Vascular Diseases **reported in (2014) 2 SCC 62.**

This case arises out of a private complaint filed U/Sec.190 (1) (a) Cr.P.C and the Constitution Bench of the Hon'ble Apex Court held that to invoke Sec.468 Cr.P.C the relevant date in complaint cases is the date of filing complaint.

From the above decisions, it is manifestly clear that in the context of cases arising out of private complaints, the date for reckoning the cut-off is the date on which the complaint is filed in court. To invoke Sec.468 Cr.P.C the relevant date in complaint cases is the date of filing complaint in court.

VIII. Limitation for taking cognizance of any offence by the Magistrate/Court upon a police report under Section 173 (2) Cr.P.C / Sec.193 BNSS (U/Sec.190 (1) (b) Cr.P.C / Sec.210 (1) (b) BNSS :

Limitation in the context of a case instituted on a police report was considered by the Hon-ble Supreme Court in ***Arun Vyas v Anita Vyas reported in*** **(1999) 4 SCC 690**. The Court held as follows:

> "13.The essence of the offence in Section 498-A is cruelty as defined in the explanation appended to that section. It is a continuing offence and on each occasion on which the respondent was subjected to cruelty, she would have a new starting point of limitation. The last act of cruelty was committed against the respondent, within the meaning of the explanation, on 13-10-1988 when, on the allegation made by the respondent in the complaint to the Additional Chief Judicial Magistrate, she was forced to leave the matrimonial home. Having regard to the provisions of Sections 469 and 472 the period of limitation commenced for the offences under Sections 406 and 498-A from 13-10-1988 and ended on 12-10-1991. But the charge-sheet was filed on 22-12-1995, therefore, it was clearly barred by limitation under Section 468(2)(c) CrPC."

This decision makes it clear that the relevant date for reckoning the cut-off is the date on which the final report / charge-sheet is filed and not the date on which the FIR was registered. The aforesaid conclusion was referred to and affirmed by a three-judge bench in ***State of H.P. v. Tara Dutt,*** **(2000) 1 SCC 230**, and followed by another two-judge bench in ***Ramesh v. State of T.N., reported in*** **(2005) 3 SCC 507**. Therefore, to invoke Sec.468 Cr.P.C the

relevant date in cases instituted on a police report is the date of filing final report / charge-sheet in court subject to the exclusion of time under Sections 470 Cr.P.C / Sec.516 BNSS and 471 Cr.P.C / Sec.517 BNSS.

IX. Now, a conflict existed between the above decision and the explanation given to Section 514 of BNSS.

Explanation to Section 514 BNSS:

For the purpose of computing the period of limitaton, the relevant date shall be the date of filing complaint under section 223 or the date of recording of information under section 173.

As per the law in ***Arun Vyas v Anita Vyas reported in*** **(1999) 4 SCC 690**, for the purpose of computing the period of limitaton in cases instituted on a police report, the relevant date is the date of filing final report / charge-sheet in court but not the date on which the FIR was registered. But as per the explanation to Section 514 BNSS, for the purpose of computing the period of limitaton in cases instituted on a police report, the relevant date shall be the date of recording of information (FIR) under section 173 BNSS.

X. R.Aghoramurthy, Registrar of Companies, Bombay –Vs- Bombay Dyeing and Manufacturing Company Limited, 1991-JT-S-432, decided on the 7th March, 1991 was a prosecution for offences under Section 205 of the Companies Act, 1956. The principal question there was the date of knowledge of the offence of the complainant under Section 469(1)(b) of the Code. The Registrar of Companies issued notice to the company and on receipt of the

reply sent a Report to the Department of Company Affairs, Govt. of India who ordered an Enquiry. Question was whether the date of knowledge would be the date of receipt of the Report. The Supreme Court agreed with the concurrent findings of the two Courts below and held that limitation is to be counted from the date of knowledge of the complainant that is when the notice was issued specially when the complaint did not approach the Court under Section 473 of the Code.

XI. *Vanka Radhamanohari (Smt) -vs- Vanka Venkata Reddy and Others,* **(1993) 3 SCC 4** decided on the 20th April 1993 was a case where the Magistrate took cognizance of the offences under Section 498-A and 494 of the Penal Code. The High Court quashed the criminal proceedings on the ground of the bar under Section 468 of the Code since Section 498- A I.P.C prescribes punishment only upto three years imprisonment. The High Court did not notice that for offence under Section 494 I.P.C punishable with imprisonment upto seven years no bar of limitation is applicable. The Supreme Court referred to SARWAN SINGH (Supra) and BHAGIRATH KANORIA (Supra) and held that the High Court should have considered the provisions of Section 473 of the Code, specially in a case of cruelty against women. The crux of the judgment is the highlighting of the difference between the provisions of Section 5 of the Limitation Act, 1963 and those of Section 473 of the Code covering the same ground but with considerable difference in application. The Supreme Court applied Section 473 and condoned the delay. The order of the Magistrate was restored.

XII. ***State of Maharashtra -vs- Sharadchandra Vinayak Dongre and Others*****, AIR 1995 S.C. 231** decided on the 7th October, 1994 marks a watershed in the exposition of the law of limitation in criminal cases. This is a Three Judge unaminous decision of the Supreme Court. The police alongwith the charge-sheet filed two applications, one for condonation of the delay and the other seeking permission for further investigation and filing of additional charge-sheet. The Chief Judicial Magistrate kept the application for further investigation pending but allowed the application for condoning the delay and issued process against the accused persons. In the High Court, moved by the accused for quashing under Section 482 of the Code, the two-fold challenge to the order of the Chief Judicial Magistrate was (1) that cognizance could not have been taken on an incomplete charge-sheet and (2) that the delay could not have been condoned without notice to the affected party and without recording any reason. The High Court accepted both the contentions and quashed the proceeding. The State reached the Hon'ble Supreme Court via Article 136 of the Constitution. The Hon'ble Supreme Court disagreed with the High Court on the first contention by observing that the Magistrate's "power is not fettered by the label which the investigating agency chooses to give to the report submitted by it under Section 173(2) of Cr.P.C". For the purpose of this essay the more important of the two contentions is the second one and on it in para 5 of the Judgment the Three Judge Bench spoke thus :- "In our view, the High Court was perfectly justified in holding that delay, if any, for launching the prosecution, could not have been condoned without notice to the respondents and behind their back and without recording any reasons for condonation of the delay."

XIII. ***Arun Vyas -vs- Anita Vyas*****, (1999)4 SCC 690** decided on the 4th May 1999 is a decision where the Magistrate took cognizance of offences under Section 498-A and 406 of the Penal Code on a charge-sheet submitted on 22.12.1995. On the day fixed for framing of the charge, however, the

Magistrate discharged the accused husband on the ground of limitation as because the complaint specifically gave the date of occurrence to be 13.10.1988. The High Court set aside the order of discharge directed him to decide the case in accordance with law. The Supreme Court in so far as the offence under Section 406 is concerned upheld the order of discharge passed by the Magistrate on the ground of bar of limitation in the absence of any explanation of the inordinate delay of about 4 years in filing the charge-sheet. But for the other offence that is one under section 498-A the Supreme Court followed VANKA RADHA MONOHARI (Supra) and remitted the matter to the trial court for consideration of "the question of limitation taking note of Section 473 Cr.P.C.". it was specifically held that any finding recorded by a Magistrate holding the complaint to be barred by limitation without considering the provisions of Section 473 of the Code will be a deficient and defective finding. The mandate for liberal construction of Section 473 of the Code in favour of the wife, a victim of cruelty was emphasized in this decision.

XIV. LIMITATION OF PROSECUTION FOR OFFENCES UNDER LOCAL OR SPECIAL LAWS:

It has already been indicated that Section 4 and 5 of the Code have to be applied in understanding any enactment creating a bar of prosecution by reason of limitation. Special laws in this regard may be of three categories. Some statutes like the copyright Act, 1957 the Dowry Prohibition Act 1961, the Patent Act, 1970 the Wild Life (Protection) Act, 1972 and the Environment and

Pollution Laws etc simply create the offence and prescribe the punishment and say nothing else. The provisions of Chapter XXXVI of the Code will determine the limitation for prosecution in such cases. In the second category will be statutes like the Indian Police Act 1861 the Trade Marks Act 1999, and the Geographical Indication of Goods (Registration and Protection) Act 1999. In cases under those Acts limitation will be governed by the period prescribed there and not under the Code. In the third category will be statutes like the Negotiable Instruments Act 1881 where the special law not only creates the offence prescribes the period of limitation but also prescribes special provision for extension of limitation. In such cases also the provisions of the Code will not apply. Though the Child Marriage Restraint Act, 1929 has been replaced by the Prohibition of Child Marriage Act, 2006 with effect from 01.11.2007 there may still be some statutes adopting the model in Section 198(6) of the Code. In such cases neither Chapter XXXVI of the Code nor decisions like *Bharat Damodar Kale (Supra) and Japani Shahoo* (Supra) will apply.

XV. <u>Limitation period for filing Appeal in criminal cases</u>:

In criminal cases, the limitation period for filing an appeal against a conviction or order of acquittal varies depending on the court and the specific circumstances, generally ranging from 30 to 90 days, with exceptions for certain cases like appeals against death sentence.

Chapter XXIX comprising Sections 372 to 394 Cr.P.C deals with appeals in criminal cases. Chapter XXXI comprising Sections 413 to 435 is the

corresponding chapter in the Bharatiya Nyaya Suraksha Sanhita which deals with criminal appeals.

XVI. <u>Criminal Appeals – Limitation Act</u>:

The Limitation Act has no application to criminal proceedings, except to the extent where there are express provisions in the Schedule of the Limitation Act, such as-

(A) Art.114: Appeal from an order of Acquittal – **90 Days**

(B) Art.115: (a) Appeal from a sentence of death passed by Court of Session or by the High Court in exercise of its original criminal jurisdiction **– 30 Days**

(b) Appeal from any other sentence or any other order not being an order of acquittal – (i) to the High Court – **60 Days**

(ii) to any other Court – **30 Days.**

Article 114	Appeal from an order of acquittal - (a)under sub-section (1) or sub section (2) of section 417 of the Code of Criminal Procedure, 1898 (5 of 1898); (b)under sub-section (3) of section 417 of that Code.	Ninety days Thirty days	The date of the order appealed from. The date of the grant of special leave.
Article 115	Under the Code of Criminal Procedure, 1898 (5 of 1898)— (a) from a sentence of death passed by a court of session or by a High Court in the exercise of its original criminal jurisdiction; (b) from any other sentence or any order	Thirty days	The date of the sentence.

	not being an order of acquittal— (i) to the High Court (ii) to any other court	Sixty days Thirty days	The date of the sentence or order. The date of the sentence or order.
Article 131	To any court for the exercise of its powers of revision under the Code of Civil Procedure, 1908 (5 of 1908), or the Code of Criminal Procedure, 1898 (5 of 1898)	Ninety days	The date of the decree or order or sentence sought to be revised.
Article 132	To the High Court for a certificate of fitness to appeal to the Supreme Court under clause (1) of article 132, article 133 or sub-clause (c) of clause (1) of article 134 of the Constitution or under any other law for the time being in force.	Sixty days	The date of the decree, order or sentence.
Article 133	To the Supreme Court for special leave to appeal,— (a) in a case involving death sentence; (b) in a case where leave to appeal was refused by High Court (c) in any other case	Sixty days Sixty days Ninety days	The date of the judgment final order or sentence The date of order of refusal The date of Judgement or Order

Conclusion:

The Limitation law is no assurance as to time of trial and its conclusion but only by when the criminal law can be set in motion. This is where the constitutional right to a speedy trial therefore comes into picture as an aid. The reason behind the time limits is to protect the accused from the burden of defending himself against charges of long completed act. This is primarily because, over a period of time, witnesses upon whom the accused (or the

victim) may have to rely either die or move away and records are lost especially if the occurrence of the event seemed insignificant at the time of happening, and hence the need of limitation period in criminal cases. Observing the long investigations and procedures that are required to be followed while dealing with criminal offences as well as fear in the minds of victims and their vested interests hinder the investigation and prosecution. A proper balance is therefore sought to be maintained under Indian law including by providing for a reasonable limitation period (distinct limitation periods for taking cognizance of various offences depending upon the gravity of those offences interlinked with the punishments), not applying limitation period to serious offences, making provisions for the commencement of the limitation period from the date of knowledge, exclusion of time in certain cases, making special provisions with respect to continuing offences by providing for a fresh limitation period at every moment of the time during which the offence continues and laying down a material provision concerning extension of the limitation period in certain cases. The law in India, it is believed, is clearly in consonance with the concept of fairness of trial, as enshrined in Article 21 of the Constitution of India, as it aims to strike a balance between the interests of the complainant/state and the interests of the accused.

Sri P. Pandu Ranga Reddy	VI Additional District and Sessions Judge, Kurnool
Smt. T. Malleswari	Principal Civil Judge (Senior Division), Kurnool
Ms. G. Aparna	I Additional Civil Judge (Junior Division), Kurnool

FIRST DISTRICT LEVEL WORKSHOP OF THE YEAR 2025

KURNOOL DISTRICT JUDICIARY

SUBJECT :- **LAW ON LIMITATION**

TOPICS FOR PAPER PRESENTATION

TOPIC-I

(a) Limitation – Suits, Appeal Suits and Applications
(b) Computation of period of limitation.

TOPIC-II

(a) Conditions as to time and limitation under different statutes
(b) Different reliefs with different period of limitations
(c) Amendment of pleadings- the aspect of limitation

TOPIC-III

Limitation in Criminals cases in respect of offences under IPC/BNS and other Special Laws

BY
SMT. M. SAROJANAMMA,
IV ADDITIONAL CIVIL JUDGE (JUNIOR DIVISION) CUM-SPL.JMFC FOR PROH. & EXCISE, KURNOOL.

INTRODUCTION:

Indian legal system is based on the English legal system. English law is dependent on Roman Law. Under the Roman Civil Law, there was no time-limit for certain actions which could be filed at any time. They were known as 'actiones perpetuoe'. The other kind of actions known as 'actiones temporolis' were to be instituted within a definite time-limit. Emperor Theodosius introduced a statute of limitation in 1424. The object of the statute was to fix a period within which all sorts of actions were to be instituted.

In England there was no specific law of limitation before James Statute of 1523. In 1540, during the time of Henry VIII, fixed periods of limitation for real actions were introduced. James I extended the same to personal actions. Before 1834, limitations was recognized as a judicial bar only. Williams recognized the principle of extinctive limitation.

In ancient India, there was only a law of prescription and no Law of Limitation as such. For the acquisition of title by prescription, a period of 20 years was laid down by certain Smriti writers, though others differed regarding the length of period. As the main occupation of the people being agriculture, the prescription was concentrated more on land and the rights therein. This was the position not only in ancient India but also in other countries of those times.

In British India, from 1793, Regulations were passed from time to time for fixing the period of limitation for institution of actions. For the first time a law of limitation was passed by Act XIV of 1859 which came into operation in 1862. Before 1859, the Courts of Presidency towns of Calcutta, Madras and Bombay followed the English law and the Muffusil Courts followed the law laid down by

the Regulations. The Act of 1859 was followed by the Act XIX of 1871 and the same was followed by the Act XV of 1877 with some alterations.

Finally, the Limitation Act of 1908 (IX of 1908) consolidated the law relating to limitation for suits, appeals and applications. The Act of 1908 consisted of 30 Sections and 183 Articles. For applications, there were 9 parts ranging from 10 days to 12 years and for appeals, there were six parts of limitation ranging from 7th day to 30th month.

The present 'Limitation Act, 1963' has been passed seeking to implement the Third Report of the Law Commission on the Indian Limitation Act, 1908 dated 27th July, 1956 with one important modification. The Law Commission felt that the law of limitation should be simple, certain and rational. It also felt that the periods of limitation should neither be too long nor too short. It recommended that the provision should be modernised in the light of the judicial decisions and should avoid the possibility of conflicts between various articles.

The Law Commission recommended the following:

(i) The Articles should be classified according to their subject matter;

(ii) A fixed period of limitation should be provided for as far as possible; and

(iii) The starting point of limitation should be from the date of accrual of the cause of action.

While giving effect to the recommendations of the Commission as respects the re-arrangements of the Articles contained in the First Schedule in accordance with the subject matter of the rationalisation of the periods of limitation as far as

possible, it is felt that it would be more advantageous to adhere to the existing scheme which in almost all cases indicates the specific points of time from which the period of limitation begins to run.

The Limitation Act, 1963 is an Act to consolidate and amend the law for the limitation of suits and other proceedings and for purposes connected therewith.

The Limitation Act, 1963 (The Act 36 of 1963) received the assent of the President on the 5th October 1963 and was published on the same data in the Gazette of India Extraordinare Part II S1 and the same has been amended in 1964, 1969, 1974, 1976 and 1999.

Though the Limitation Act, 1963 has come into force from 1st January, 1964, the case laws relating to different Sections and Articles of the Limitation Acts, 1859 and 1908 which are similar or near to the Sections and Articles of the Limitation Act, 1963 have been presented in this volume under the relevant Sections and Articles of the Present Limitation Act, 1963 as the Law of Limitation is a continuous one.

2. **Object of the Law of Limitation:**

The concept of limitation is related with the fixing or prescribing of period for barring legal actions. According to Section 2(j) of the Limitation Act, 1963, '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.

The laws of limitation are founded on public policy. Andrew Mc Gee, in his book 'Limitation Periods' has observed that:

"Arguments with regard to the policy underlying statutes of limitation fall into three main types. The first relates to the position of the defendant. It is said to be unfair that a defendant should have a claim hanging over him for an indefinite period and it is in this context that such enactments are sometimes described as 'statutes of peace'. The second looks at the manner from a more objective point of view. It suggests that a time limit is necessary because with the lapse of time, proof of a claim becomes more difficulty documentary evidence is likely to have been destroyed and memories of witnesses will fade. The third relates to the conduct of the plaintiff, it being thought right that a person who does not promptly act to enforce his rights should lose them. All these justifications have been considered by the Courts."

In Halsbury's Laws of England, the objects of the Limitation Acts have been presented as follows:

"The Courts have expressed at least three different reasons supporting the existence of statutes of limitation, namely,-

(i) that long dormant claims have more of cruelty than justice in them;

(ii) that a defendant might have lost the evidence to dispute the State claim; do

(iii) that persons with good causes of actions should pursue them with

The doctrine of limitation and prescription is based on two broad considerations, namely-

(i) that the right not exercised for a long time is non-existence;

(ii) that the rights in property and rights in general should not be in a state of constant uncertainty, doubt and suspense.

The object of limit in legal actions is to give effect to the maxim 'interest reipublicae ut sit finis litium' i.e. the interest of the State requires that there should be limit to litigation and to prevent disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches.

The intention in accepting the concept of limitation is that "controversies are restricted to a fixed period of time, lest they should become immortal while men are moral."

Wood, in his 'Limitation' says "The Statutes of limitation are known as statutes of repose or peace."

Abbott C.J. in Battley v. Faulkner, [(1820) 3 B & Ald 288] has said: "The Statute of limitation was intended for relief and quiet of the defendant and to prevent persons from being harassed at a distant period of time after the committing of the injury complained of."

"Delay defeats equity and 'visilantibus non dormientibus jura subveniunt i.e. Courts help those who are vigilant and do not slumber over their rights are the reasons for accepting the concept of limitation.

Miraglia in his 'Comparative Legal Philosophy' has stated that all statutes of limitation have their object the prevention of the rearing up of claims at great distance of time when evidence are lost.

Limitation to litigation interposes a statutory bar after a certain period and gives a status to enforce an existing right. It does not create any right in favour of any person nor does it define or create cause of action but simply prescribes that the remedy could be exercised only upto a certain period and not subsequently. The object of the statute of limitation is preventive and not to interpose a statutory bar after a certain period and gives a quietus to suits to enforce an existing right.

The purpose of the statute of limitation is not to destroy the rights but it is founded on public policy fixing a life span for the legal remedy for the general welfare. (AIR 2001 Orissa 158). The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Redress of the legal injury so suffered.

The statutes of limitation are statutes of repose, to quiet title, to suppress frauds and to supply the deficiency of proofs arising from the ambiguity, obscurity or the antiquity or transactions. They proceed upon the presumption that claims are extinguished or ought to be held extinguished whenever they are not litigated within the prescribed period. They quicken diligence by making it in some measure equivalent to right. They discourage litigation by buying some common receptacle all the accumulations of past times which are unexplained and have now from lapse of time become inexplicable. The statute of limitation is a law of repose, peace and justice which bars the remedy after lapse of a particular period by way of public policy and expediency without extinguishing the right in certain cases.

The Supreme Court of India and different High Courts have discussed the objects of the Law of Limitation. In State of Rajasthan v. Rikhob Chand, (AIR

1966 Raj. 213), the Rajasthan High Court has observed that the rules of limitation are intended to induce the claimant to be prompt in claiming relief and in avoiding unexplained delay and latches.

In M.P. Raghavan Nair v. State Insurance Officer, [1971 Ker.L.J. 583 (DB)], the Kerala High Court has also observed that the Limitation Act is based on public policy aiming at justice, repose and peace.

In Rajender Singh v. Santa Singh, (AIR 1973 SC 2537), the Supreme Court of India has held "The object of the law of limitation is to prevent disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or latches."

In B.B. & D. Mfg. Co. v. ESI Corpn., (AIR 1972 SC 1935), the Supreme Court has observed that:

"The object of the Statutes of limitations to compel a person to exercise his rights of action within a reasonable time as also to discourage and suppress stale, fake or fraudulent claims. While this is so, there are two aspects of the Statutes of limitation the one concerns with the extinguishment of the right if a claim or action is not commenced within a particular time and the other merely bars the claim without affecting the right which either remains merely as a moral obligation or can be availed of to furnish the consideration for a fresh enforceable obligation. Where a statute prescribing the limitation extinguishes the right if affects substantive right while that which purely pertains to the commencement of action without touching the right is said to be procedural."

In Balakrishnan v. M.A. Krishnamurthy, [(1998) 7 SCC 123], the Supreme Court has held that the law of limitation is based on public policy fixing a life span for legal remedy for the purpose of general welfare. It is pointed out that the rules of limitation are not meant to destroy the rights of the parties but are meant to see that the parties do not resort to dilatory tactics but seek third remedy promptly and the law of limitation fixes a life span for legal injury suffered and that is enshrined in the maxim 'interest reipublicae ut sit finis litum' i.e. it is for the general welfare that a period be put to litigation and that it is not meant to destroy the rights of the parties but they are meant to see that the party do not resort to dilatory tactics but seek their remedy promptly because the idea is that every legal remedy must be alive for a legislatively fixed period of time.

Rules of limitation are prima facie rules of procedure and do not create any rights in favour of any person nor do they define or create cause of action but simply prescribe that the remedy could be exercised only upto a certain period and not subsequently. The Law of Limitation is an adjective law. It is lexi fori.

• The code of Civil Procedure confers a right to appeal, but does not prescribe a period of limitation for filling an appeal. The limitation Act 1963, however, provides the period of filling up appeals. It states that the appeals against a decree or order can be filed in a high court within 90 days and in any other court in 30 days from the date of the decree or order appealed against.

• It is for the general welfare that a period be put on litigation. Further, 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 indefinably. 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 exploration of time limit, is struck by the law of limitation. It’s basically meant to protect the long and established user and to indirectly punish persons who go into longer slumber over their right.

• The statutory law was established in stages. The very first Limitation Act was enacted for all the courts in India in 1859. And finally took the form of Limitation Act in 1963.

• A citizen is not expected to master the various provisions which provide for limitation in different matters but certain basic knowledge in this regard is necessary. For instance, Section 12 of the Limitation Act lays down certain guidelines regarding computation of limitation period. It says that 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.

• Further, 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 shall be excluded. However, 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 14 of the Act, similarly, says that in computing the period of limitation, for any suit, the time during for which the plaintiff has been prosecuting in civil proceedings, whether in a court of first instance or of appeal or revision against

the defendant shall be excluded where the proceedings relate to the same matter in a court which is unable to entertain it on account of defect of jurisdiction or other cause of a like nature.

Salient Features of Limitation Act, 1963

- The **Law of Limitation is a Procedural Law.**
- It is ***Lex Fori*** (the law of the court in which a proceeding is brought) and is founded on Public Policy.
- The word limitation in its literal terms means **a restriction** or the rule or circumstances which are limited. The law of limitation is prescribed as the time limit given for different suits to the aggrieved person within which they can approach the court for redress or justice.
- The Law of Limitation ensures that the parties do not resort to dilatory tactics and avail the remedy promptly.

The structure of the Limitation Act is as follows

- The Limitation Act came into force on **1st January 1964.**
- **It extends** to the **whole of India.**
- It contains a total of 5 parts.
- There are in total 32 sections in the act.
- It contains 137 Articles in the act which provide for periods of limitation.

Articles - 137 in total contains **three divisions**namely:

- First Division - Suits (Article 1-113)
- Second Division - Appeals (Articles 114-117)
- Third Division - Applications (Articles 118-137).

Exhaustive Law

The **Limitation Act is exhaustive** with respect to all matters expressly dealt with in it. It cannot be extended by analogy. Ordinarily, the act applies only to civil cases except in the matter expressly and specifically provided for that purpose.

Adjective Law

- The Limitation Act is majorly an adjective law, but it provides for **both the substantial and procedural features of any statute.**
- In the case of **A.S. Krishnappa Chettair v. Nahiappa Chettiar (1964)**, it was held by Supreme Court of India that the 'Limitation Act' is basically a piece of adjective or procedural law and not substantive law.

Prospective as well as a retrospective effect

- Section 31 of the 'Limitation Act' provides for the **retrospective and prospective effect of the act.**
- The **Supreme Court in Thirumalai Chemicals Ltd v. Union of India (2011)** observed that statutes of limitation are retrospective so far as they apply to all legal proceedings brought after their operations for enforcing causes of action accrued earlier.

Purpose of the Limitation Act

- ***Interest Republicae ut sit finis litium*-**In the interest of society as a whole, there should be an end to litigation.
- ***Vigilantibus non dormientibus jura subveniunt*** - Law will assist those who are vigilant with their rights and not those who sleep there upon. In simpler words, the law will not help those who sleep on their rights.

Period of Limitation

- 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.**
- According to **Section 2 (j) of the Limitation Act, 1963, '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.
- 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 have been initiated will be restricted.

The starting point of limitation

- The time from which the limitation begins depends on the **facts and circumstances** of the case.
- It usually starts from the date once the **summons or notice is served**, or the date on that the decree or judgment is passed, or the date on that the event that forms the idea of the suit takes place.
- The Supreme Court in **Trustee's Port Bombay v. The Premier Automobile (1971)** held that the starting point of limitation is the accrual of the cause of action.

Limitation Bars Remedy

- Section 3 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. In other words, the statute of limitation prescribes only the period within which legal proceedings must be initiated.
- In the case of **Punjab National Bank and Ors v. Surendra Prasad Sinha (1992)** the Supreme Court held that the rules of limitation are not meant to destroy the rights of the parties. Section 3 only bars the remedy but does not destroy the right which the remedy relates to.

Extinguishment of Right

- The 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 has another's land for a long time can claim a legal title over it.

- **Bombay Dyeing and Manufacturing Company v. the State of Bombay (1957):** The Supreme Court held that the limitation bars the remedy and does not extinguish the right. Thus, the lapse of time does not extinguish the person's right.

Condonation of Delay

- **'Condonation of delay'** means that extension of time given in certain cases provided there is sufficient cause for such delay.
- Section 5 of the act 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.

Sufficient Cause

- 'Sufficient cause' means there should be **adequate reasons or reasonable grounds** for the court to believe the applicant was prevented from proceeding with the application in a Court of law.

Period of Limitation-When Court is Closed

- When a court is closed on a certain day and the period of limitation expires on that day, then any suit, appeal or application **shall be taken up to the court** on the day on which it reopens.

Limitation act does not apply to writs

- The Limitation act does not apply to 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 (1984)**, it was held by the Supreme Court that the period of limitation prescribed by 'Limitation Act' does not strictly apply to application under Article 226 & 32 of the Constitution of India.
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WHAT DOES LIMITATION PERIOD MEAN?

• The law prescribes different periods within which a person who has a grievance should go to court. For example, if somebody has borrowed your money and not returned it, you should approach the court within three years from the date you lent the money. If you don't go to the court within that time, the courts will not be of help to recover your money. This is called the Limitation period. After the limitation period, you cannot enforce your rights in a court. The Limitation Act, 1963 prescribes different limitation periods for different kinds of claims.

BAR OF LIMITATION:

According to Section 3 of the Limitation Act, 1963:

(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 purpose 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.

2. Limitation Act, 1963 and special or local laws:-

Section 3 of the Limitation Act, 1963 was made applicable to special or local laws. The general principle of limitation is that the Court should dismiss any suit instituted, appeal preferred, and application made after the prescribed period of limitation, although limitation has not been set up as a defence. In Nagappa v. Fakirappa, (AIR 1970 Mys. 73), the Court has dismissed an election petition as time barred even the limitation is not pleaded.

In K.B. Agarwala v. Chandravati, (AIR 1976 All. 15), the Court has rejected the application under Rule 25 of the U.P. Urban Buildings etc. Rules, 1972 for bringing on record the legal representatives of the deceased respondent filed beyond the prescribed period of limitation under Section 3(1) of the Limitation Act, 1963.

According to Section 29(2) of the Limitation Act, 1963, where any special or local law prescribed for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law..

In Thumbu Devi v. Director of Consolidation of Holdings. (AIR 1968 Pun. 282), it has been declared that if in the second column of the Schedule of the Limitation Act, the period given in different from the period mentioned in the special or local law the latter shall prevail for the purpose of Section 3 of the Limitation Act, 1963.

In P.H. Muhemmed v. Canara Bank, (AIR 1992 Ker. 85), it has been held that when the special or local law provides for a mode of computing the period of limitation then Section 29(2) of the Limitation Act is not attracted. hol

The effect of sub-section (2) of Section 29 is that Section 3 attracted to special or local law which but for Section 29(2) would not come within the purview of Section 3. The only object of Section 29(2) is to make Sections 4 to 24 applicable when computing the period of limitation under a special or local law exactly in the same manner as they would be applicable when computing the period of limitation under the similar circumstances under the general law contained in the Limitation Act.

In Lata v. Vilas, (AIR 1989 SC 1477), it has been held that when Hindu Marriage Act does not exclude the operation of Sections 4 to 24 of the Limitation

Act, 1963 and when the limitation for filing appeal in terms of Section 28(4) of the Hindu Marriage Act, 1955 is different from the Schedule of the Limitation Act, then according to Section 29(2) of the Limitation Act, the said Act will attract to such appeal and appellant will get the benefit of Section 12(2) of the Limitation Act.

The Representation of People Act, 1951 being a complete Code, Section 3 of the Limitation Act cannot apply to proceedings like election petition of their trail. In Vidyacharan Sukla v. Khub Chand. (AIR 1964 SC 1099), it has been held that when the Representation of People Act, 1951 provides for a period of limitation different from that prescribed in the Limitation Act, Section 29(2) of the Limitation Act is attracted.

In order to attract Section 29(2) the proceedings initiated under the special or local law must be initiated in a Court only [See Chapter 8 also].

3. Limitation Act 1963 and Arbitration Proceedings:_

Section 3 of the Limitation Act, 1963 is applicable to arbitration proceeding by reason of Section 40 of the Arbitration Act, 1940 and even if the question of limitation is not taken or set up by any party the Arbitrator is duty bound to examine the question of limitation.

In State of Bihar v. Gobind Prasad Agrawal. (AIR 2001 Pat. 151), and application under Section 20 of the Arbitration Act, 1940 was filed by the respondent claimant before the Court but the petition was filed more than three years after the lodging of the claims before the appellant State. In such a case the application should not have been entertained by the Court. The Arbitrator without going into the question of limitation and the award had been made. The High

Court set aside the award of the arbitrator on the ground that the claim is barred by limitation.

However, the Arbitration Act, 1940 has been repealed by enacting the Arbitration and Conciliation Act, 1996.

As the period of condonation of delay is limited by the Act itself, the Section 5 of the Limitation Act, 1963 is not applicable.

4. Contract curtailing the period of limitation:-

The parties cannot by consent or agreement extend or alter the period of limitation. In Harshad Cooperative v. United India F&G Insurance. (AIR 1992 Bom. 341), the Bombay High Court held that the validity of a clause in a contract which cuts the period of limitation prescribed by the statute is doubtful. The clause which cuts the limitation period would be hit by Section 23 of the Contract Act. Therefore such a stipulation in a contract curtailing the period of limitation is inoperative and even if such stipulation is there the legal proceedings can be instituted within a period of limitation prescribed by the Limitation Act. The parties cannot by consent or agreement extend or alter the period of limitation.

5. Limitation Act, 1963 and the Government:

In Appayya v. Collector, (4 Mad. 155) it has been held that even the Government is not entitled to an exemption from the provisions of the Act. In T. Laxman v. State of Madras, (AIR 1968 SC 1489), it has been decided that there is no period of limitation prescribed by any law within which alone the

Government should exercise its prerogative of imposing Even though the effect of applying Section 3 would have the fact of violating the principle of natural justice in a particular case, the section has to be applied by the Court. The question of limitation once decided cannot be reopened at a later stage of the same proceeding nor can it be reagitated in any subsequent proceedings

In Premananda v Syndicate Bank, (AIR 1999 Kant. 23), it has been held that it is clear that if the trial Court without deciding the question of limitation decrees the suit, the High Court in appeal is justified in setting aside the decree and to decide the question of limitation before taking up the appeal on merits. In State of Orissa v. Adikanta Patra, (AIR 1999 Ori. 113) it has been held that a suit filed after the expiry of limitation is hable to be dismissed being barred by limitation and the Court cannot decree the barred suit on the ground that the plea of limitation was not pressed.

Limitation does not bar a defence. In Ali Mohammed v. Ramniwas, (AIR 1967 Raj. 258), it is held that in defence the mortgagee can set up a mortgage deed recovery on the basis of which is barred by limitation.

Limitation bars the claim but not the right. For example even when a creditor is unable to recover a barred debt because of bar of limitation, yet the right under the said claim still subsists and can be exercised in any other way, except where because of Section 27 of the Limitation Act, 1963, the right is also extinguished.

In Food Corporation of India v. Babulal Agrawal, [2004 (2) ICC 274 (SC)], it is observed by the Supreme Court that in all fairness it is always desirable that if the defendant would like to raise such an issue he would better raise it in pleadings so that the other party may also note the basis and the facts by reason

of which the suit is sought to be dismissed being barred by limitation. Plea of limitation can also be raised at any stage of trial. Onus of proof lies on the plaintiff. The plaintiff must on his own allegations be able to show that his suit is within time; he cannot be allowed to adopt this and that allegation of the defendant in order to show that his claim is not barred.

The word 'suit' has been explained in Section 2(1) of the Limitation Act, 1963 as "Suit does not include an appeal or an application." The term 'suit must be taken to signify the civil proceedings instituted by the presentation of a plaint. In Ramji Kumar Roy v. Kabiraj. (AIR 1940 Cal. 401) it has been held that where a suit comprises various reliefs or claims they should be treated as a separate suit in regard to each such relief to claim and the rule of limitation must be applied to each claim or relief separately.

As per Section 3(c) of the Limitation Act, 1963, a suit is instituted in an ordinary case, when the plaint is presented to the proper officer. This necessarily implies that the mere presentation of the plaint is sufficient to constitute the institution of a suit, but it must be presented to the officer authorised to receive it; otherwise there is no proper presentation and the suit is not instituted. The registration of the plaint is not necessary even when there is a defect in the verification.

If the suit is instituted within the period prescribed by the Limitation Act, it cannot be thrown out because of any amount of laches or delay.

The expression "in an ordinary case" in sub-section (2)(a)(i) of Section 3 of the Limitation Act can only mean that the plaintiff must present in Court a duly-stamped plaint to the proper officer which as regards limitation will be effective only from the date on which it is presented.

The general rule is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit on new cause or cause of action is barred.

It is also well recognised principle that where the amendment does not constitute the addition of a new cause of action or arises a different cause, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation.

In Lala Guru Prasad v. Laxmi Devi, (AIR 1968 All. 201), it has been held that no amendment can be allowed after expiry of period of limitation to include the name of the party who has not been impleaded as defendant originally. Courts would, as a rule, decline to allow amendment if a fresh suit on the amended claim would be barred by limitation on the date of application. But that amendment does not affect the power of the Court to order amendment if that is required in the interest of justice.

However, question of refusal of the amendment on the plea that the claim is barred by limitation does not arise when a cause comes within the purview of the proviso to Section 40(2) of the Specific Relief Act.

The Apex Court is of the opinion that granting of amendment of plaint seeking to introduce alternative relief of mandatory injunction for payment of specified amount is bad in law. The alternative relief was available to be asked for when the suit was filed but not made. The party cannot be permitted to amend the plaint after the suit was barred by the limitation during the pendency of the proceeding in the appellate Court or the second appellate Court.

When a Court having jurisdiction over the subject-matter and parties passes a decree, even if the suit was barred by time, such decree cannot be treated as a nullity and be ignored, although the Court is bound to decide right, may decide wrong and even though it decides wrong, it would not be doing something which it had no jurisdiction to do.

Where a writ petition is filed after the expiry of the prescribed period, limitation for the suit it would be regarded and unduly delayed unless there are exceptional circumstances which would justify the entertainment of such a petition after so much delay.

In Sitharama v. Krishnamurty, (38 Mad. 374), it is declared that a plea of limitation can be taken even though the defendants have on a previous occasion acknowledged their liability. When the plea of limitation was neither raised in trial Court nor in Appeal Court it cannot for the first time be raised in a petition for review.

In Deowaki Nandan v. Makhanlal, (AIR 1961 All. 336), it has been held that the doctrine of res judicata applies equally to the decision as a question of limitation as in the case of a decision on any other point. Hence, the decision on a question of limitation may be concluded in particular way by reason of the operation of the above doctrine.

In Madras Port Trust v. Hymanshu International, (AIR 1979 SC 1144), the Supreme Court has held that the resort of plea of limitation by Government or a public servant to defeat a just claim of a party is reprehensible. In Benode Behari Singh v. Union of India, (AIR 1993 SC 1245), it has been held that it may not be desirable for the Government or the public authority to take shelter under the

plea of limitation to defeat a just cause of a citizen. But if a claim is barred by limitation such plea is ignored.

In State of Orissa v. Prativa Prakash Bhavan, (AIR 1995 Ori. 62), Orissa High Court has held that when a suit for recovery of consideration money was brought against the State Government seven years after the submission of the bill, the State should not raise the question of limitation when in the facts of the case the suit was not barred by limitation.

In Section 3(2)(a)(ii) of the Limitation Act, it is provided that for the purpose of the Limitation Act a suit by a pauper must be deemed to be instituted on the date on which his application for leave to sue as a pauper is made. In Premier Insurance v. Vidyavati, (AIR 1978 All. 264), it has been held that a suit by indigent person (i.e. by a pauper) commences for the purpose of limitation on the day the petition to sue as an indigent person is presented to Court under Order 33, Rule 3 of Civil Procedure Code and not the day, when the application being granted is numbered and registered as a suit under Order 33 Rule 8 of Civil Procedure Code.

Section 3(2)(a)(iii) is not concerned with the question as to what is a suit but it assumes the existence of a suit which has been instituted by the presumption of a plaint and is concerned only with the point of time at which that suit is for the purpose of Section 3 to be treated as being instituted. In Abdul Muthalip v. Mohammed, (AIR 1962 Mad. 506), it has been held that the provision in Section 3(2)(a)(iii) can apply only in relation to a suit instituted in a regular Civil Court where previous to the institution of such suit the plaintiff has put a claim to the official liquidator but not to a claim against the Insolvent Company in Liquidation in which case the time will run from the date of application for the winding up and not of adjudication.

Section 3(2)(b) specifically provides that a claim by way of set-off or a counter claim shall be treated as a cross-suit and shall be deemed to have been instituted in case of set-off on the same date as the suit in which set-off is pleaded has been filed and in the case of counter-claim, on the date on which the counter-claim is made.

In Govindji Jevat Co. v. Cannanore Spinning and Weaving Mills Ltd., (AIR 1968 Ker. 310), it has been held that in the case of set-off the date with reference to which the test of limitation is to be applied is the date of institution of the suit wherein the set-off is claimed. But, in the case of counter-claim it is the date on which the written statement making the counter-claim has been filed.

The meaning of the concept 'time-barred' is that a particular remedy, called a suit, appeal or application of the enforcement of a right is no longer available. But the right is not extinguished and all other lawful means of enforcing the claim are not affected by limitation. The concept 'time-barred' cannot be extended to proceedings outside the law Courts.

Where the suit is clearly time-barred and when it cannot be decreed in the teeth of Section 3 of the Limitation Act, 1963, the Court is bound to dismiss the suit even though no injustice has been done in the case, because hardship and injustice are out of place in construing the provisions of the statute of limitation and they can only be avoided by the Act of Legislation.

7. Expiry of prescribed period when Court is closed:-

Another general rule of limitation is that, as per Section 4 of the Limitation Act, 1963, where the prescribed period for any suit, appeal or ourt is closed, the suit, appeal or application expires on a day when the Court application may be instituted, preferred or made on the day when the Court reopens. As per the explanation of Section 4 of the Limitation Act, 1963, 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.

The principle of law is that when a party is prevented from doing a thing in Court on a particular day, by the act of the Court itself, as for instance, on account of the closing of the Court, and not by any act of his own, he is entitled to do it at the first subsequent opportunity.

This Section 4 of the Act gives expression of the maxims: (1) lex non cogit ad impossibilia i.e. the law does not compel a man to do that which he cannot possibly perform and (ii) actus curiae neminem gravabit i.e. an act of the Court shall not prejudice any party.

(a) Scope and Applicability: The Section 4 of the Act would apply to suits, appeal or applications, civil or criminal.

In regard to matters other than instituting, preferring or making of suits, appeals or applications, Section 4 shall not apply but principle laid down in Section 10 of the General Clauses Act, 1897 will apply.

The Section 4 of the Act does not apply to applications before any authority other than Courts.

In S.S.N. Rao v. M.B. Prasad, (1994 Supp. (1) SCC 449) it has been held that Section 4 does not apply to election petition but the general principles of Section 10 of the General Clauses Act apply to proceeding like an election petition.

In Kannaiah Lal v. Ram Kishen, (AIR 1966 MP 340), it has been held that when no period of limitation is prescribed for filing of an application for certified copy of Judgment and decree by a party and the party can do it at any time, then Section 4 of the Limitation Act is not attracted to the filing of such application.

Section 4 applies although the case is governed by special or local laws. Section 29(2) of the Limitation Act, by which the provisions of Section 4 have been made expressly applicable "for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law". For example, an application under Section 22 of the Provincial Insolvency Act, 1907 may be made on the reopening day if the 21 days from the decision complained of expire on a holiday.

Section 4 of the Act applies where a certain period has been prescribed by a statute, and has no application to a case where a certain date has been fixed for payment by agreement of parties.

In Kanakala v. Dama Patra, (AIR 1984 Ori. 173), it is held that Court in Section 4 of the Limitation Act, 1963 means proper Court in which the suit, appeal or application against ought to have been filed or made. In Amar Chand v. Union of India, (AIR 1973 SC 313), it has been held that where the Court is closed on the day in which the period of limitation expires is not the proper Court, the filing of the suit, appeal or application on that Court does not attract Section 4.

Section 4 has nothing to do with period of limitation. It does not add to the period of limitation. In Ram Chandra v. Annamalai, (AIR 1968 Mad. 103), it has been held that it only extends the concession that is, notwithstanding that the period of limitation expires on the day when the Court is closed, suit, appeal or application may be filed on the day on which the Court reopens. It merely permits the filing of the suit etc. on a date beyond the period of limitation.

Section 3 of the Act subject to Sections 4 to 24. Therefore Section 4 of the Act is not controlled by Section 3. Section 4 of the Act is one of the exceptions to the general rule of Section 3.

The provisions of Section 4 of the Act is a privilege given to the plaintiff or appellant or the applicant to institute suit or prefer appeal or make application on the reopening day of a Court, if the prescribed period of limitation expires on a day when the Court is closed and he is prevented thereby from instituting his suit, preferring his appeal or making his application on that day.

For the application of the provisions of Section 4 all that is requisite is (i) that there should be a period prescribed, and (ii) that period should expire on a holiday.

When the period of limitation expires on a gazetted holiday, and the plaint is presented on the day the Court reopens, it is not necessary to state that fact in the plaint.

The following are the case laws relating to closing of Court while applying the provisions of Section 4 of the Limitation Act.

(i) A Court is said to be closed even though the Judge holds Court on a gazetted holiday (Boyamma v. Balajee, 20 Mad. 4697).

(ii) A Court will be held to be closed for the purpose of Section 4 of the Act, if there is no one lawfully required to be present for the purpose of receiving plaint or petition of appeal or application though the Court offices may be actually open during the vacation for other work. (Akhtari Bibi v. Rajalakshmi Debi, (59 CWN 634).

(iii) If the offices of the Court are open during the holidays and there is also a Judge or an officer or clerk of the Court at hand for the purpose of attending to plaints, appeals and applications, the Court cannot be said to be closed (Jagputh v. Krishnaji, (1957) 2 An.WR 217).

(iv) A Court is not said to be closed if the Presiding Officer is on tour. The plaint, in such cases, is to be presented to such officer in his camp. [Receiver v. Surapparazu, AIR 38 Mad. 295 (FB)].

(v) When there was no other officer competent to receive the application, the Court must be held to be closed for the purpose of Section 4 of the Act during that time. (Badri Narayana v Kalyan Prasad, AIR 1956 Pat. 522).

(vi) The Court is considered to be closed when the staff of the Court go on strike. (Ram v. Sumitra Bai, AIR 1979 Bom. 14).

(vii) When due to picketing neither the Presiding Officer of the Court nor any other officer authorised to receive plaint was present in the Court on the specified days over which the person concerned had no control the Court would be

deemed to be closed for the purpose of Limitation Act. (Basanta Kumar v. Laksha Mani, AIR 1968 Ass. 57).

(viii) It should be noted that Saturday is a Court working day although the Judges are not sitting on that day and even in the vacation, the Court is not closed. It has been held by the Supreme Court that considering the Saturday to be a half working day, the delay in not filing the suit on that day is covered by the Explanation to Section 4 of the Act. (Gopal v. Ranu Bala, (1994) X SCC 258).

(ix) Mere absence of Presiding Officer on leave is not tantamount to the Court being closed within the meaning of the Section 4 of the Act, when office is open. (Bajranjlal v. Suraj, 1966 Raj.LW 614).

(x) In order to attract Section 4 of the Limitation Act it is sufficient that the Court is, in fact, closed. Whether the Court is closed on an authorised holiday or not is immaterial. (Venkataswami v. Anna Malai, AIR 1964 Mad. 474).

(xi) When the Court was partially closed for certain hours on the last day of the presentation of the appeal then Explanation to Section 4 is attracted. Filing of the appeal on the next hearing only is within time. [Arunachala v. Kalavathi, AIR 1989 NOC 185 (Mad.)].

Explanation to Section 4 of the Act takes note of circumstances in which when the Court is not officially declared closed but when during any part of its normal working day, it remains closed.

In Akhtari Bibi v. Rajalakshmi Debi, 59 CWN 684), it has been expressed that offices of the Court are not the same thing as the Court. So an application filed

on the day when the Court as a whole reopened was held not to be barred by limitation though the office remained open earlier by an order of the Registrar.

8. Computation of time mentioned in instruments:-

As per Section 24 of the Limitation Act, 1963 all instruments shall for the purposes of limitation be deemed to be made with reference to the Gregorian Calendar.

Section 24 of the Act lays down an absolute rule. There is no saving of cases in which it appears on the face of the instrument that Lunar months and years were intended by the parties. Section 24 is unconditional. Therefore, if a question of limitation arises the concerned instrument must be deemed to have been made with reference to the Gregorian Calendar. The instruction of the parties is irrelevant.

In Achutan v. Achutan, (AIR 1941 Mad. 587), it has been held that Section 24 of the Limitation Act, 1963 creates no presumption as to the date of a document but merely provides that period of limitation shall be worked out according to the Gregorian Calendar.

In Pulai Ram v. Sanchit, (AIR 1931 Oudh 357), a registered bond dated 16th April, 1924 provided for payment in six months, the date of payment is fixed as Kuar Sudhi Puran Mashi 1332 Fasli which corresponded to 13th October, 1930. It was held that the date of payment should be calculated as six months from 16th April, 1924, i.e. it would fall on 16th October, 1924; and therefore a suit filed on 15th October, 1930 was within time.

In Roshal Lal v. Chowdhury Bashir Ahmed, (AIR 1925 All. 138), it has been held that if a starting point is to be calculated as so many months or so many years from a particular date, that print must be calculated according to the Gregorian Calendar. But if the starting point is otherwise fixed by the stipulation itself, as for instance, where the intention was that the interest should be payable at the expiry of six months according to the Hindu Calendar (that is to say, on a particular date and not at the expiry of six months) and that the cause of action should arise on default, this section is not applicable.

When a promissory note bore two dates, one according to English Calendar and the other according to Indian Calendar, the period of limitation has to be calculated according to Gergorian Calendar. The actual date can be ascertained by taking evidence.

EXTENSION SUFFICIENT CAUSE

1. Extension of prescribed period in certain cases:

As per Section 5 of the Limitation Act, 1963, 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. As per explanation to the Section 5 of the Act, the fact that the appellant or the applicant was mislead 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.

Section 5 of the Limitation Act, 1963 does not apply to suits i.e. the original cause of action. In Md. Ismail v. Anwar Ali, (AIR 1991 Cal. 391) it has been held that Section 3(1) of the Act does not extend the operation of Section 5 to suits.

As whole Order XXI of the Civil Procedure Code relating to execution has been specifically excluded from the purview of the Section 5 of Limitation Act, 1963, none of the applications contemplated under any rule of Order XXI of the Civil Procedure Code attracts Section 5 of the Limitation Act, 1963. So Section 5 of the Limitation Act does not apply to a petition for setting aside sale under Order XXI, Rule 89 or Rule 90 of the Civil Procedure Code, or to an application filed by the auction purchaser to set aside auction sale under Order XXI, Rule 91 of the Civil Procedure Code. In Md. Gulam Rabbani v. Bankipur Hari Sabha, (AIR 1973 Pat. 358), it has been held that delay in filing the application under Order XXI, Rule 97 of the Civil Procedure Code cannot be condoned under Section 5 of the Limitation Act. If the same is not filed within 30 days of the resistance the application is barred by limitation.

In Krishna Kumar v. T.N. Bhan, (AIR 1971 Cal. 322), it has been held that the proceedings under the Original Side of the High Court attracts Section 5 of the Limitation Act.

In Patel v. Shamshu Bhai, (AIR 1990 SC 1335), it has been held that Section 5 of the Limitation Act, 1963 is attracted to an application under Section 30 of the Arbitration Act, 1940 for setting aside the award and delay in filing such petition under Section 30 of the Arbitration Act, 1940 may be condoned under Section 5 of the Limitation Act, 1963.

In Kaushalya Rani v. Gopal Singh, (AIR 1964 SC 260), it has been held that Section 5 of the Limitation Act, 1963 is attracted to appeals filed under

Section 417 of the Criminal Procedure Code of 1898 in view of the fact that the said Code did not specifically exclude the operation of Section 5 of the Limitation Act, 1963.

In Ajit v. State, (AIR 1981 SC 733), it is held that under the Criminal Procedure Code, 1973, the delay in filing appeal against acquittal can be condoned by invoking Section 5 of the Limitation Act. But sufficient cause must be established to condone the delay by the appellate Court. The delay in filing appeal against acquittal by the Government or by the de facto complainant may also be condoned under Section 5 of the Limitation Act, 1963.

In Janardan v. Government Pleader, (1971 MPJL 1046), it is held that as the petition of complaint to be filed before the Magistrate is not an application, Section 5 of the Limitation Act cannot be invoked to condone the delay in filing a complaint of defamation against an accused after the expiry of six months from the date when the cause of action arose.

In Janata Cycle & Auto Mart v. Asst. Commissioner, (AIR 1969 All. 200), it was held that Section 5 of the Limitation Act, 1963 cannot be invoked in condoning the delay in depositing the amount of tax which is condition precedent to the filing of the appeal against such imposition of tax.

The provisions of Section 5 of the Limitation Act apply to Courts only but not appeals or applications to be presented to any tribunals or other authorities. But relevant statute may confer power upon the tribunal to condone the delay. In such an event such tribunal can condone such delay in presenting applications or appeals before it.

Section 5 of the Limitation Act provides that an appeal may be admitted after the prescribed period if the appellant satisfies the Court that he had sufficient cause for not preferring it within limitation. In fact, Section 5 is in the nature of a proviso to Section 3 and would dilute the rigour of Section 3.

In State of West Bengal v. Administrator, Howrah Municipality, (AIR 1972 SC 749), it has been held that the words 'sufficient causes' in Section 5 cannot be liberally construed only because the party in default is the Government and Section 5 makes no distinction between the State and private individual or an institution when it has the need to establish sufficient cause. But at the same time the consideration that will be shown to a private party under the Section 5 of the Act should also be available to the State.

In State of Tamil Nadu v. A. Ashokam, (AIR 1995 Mad. 99), the Division Bench of Madras High Court has condoned the delay in filing Letters Patent Appeal filed by the State Government under clause 15 of the Letters Patent when the ground for delay was the failure of Legal Officer to note the disposal of the writ petition to docket it and it is found that the office of the Advocate General is adopting that procedure to take stock of the writ petitions disposed of the Single Bench.

It is the duty of the Court to record the reasons for extending the time under Section 5 of the Act. When an application for condonation of delay has been filed in a petition for leave to file an appeal, the Court has to find out whether the persons who filed the petition to condone the delay has established sufficient cause for not filing the appeal within time.

In the matter of condonation of delay in extension of prescribed period, the duration of delay is insignificant. The Court has to take into account whether

there is acceptable explanation or pardonable explanation as sufficient cause for not preferring an appeal. Court has no power to extend the period of limitation on equitable grounds.

When the applicant can show sufficient cause for not presenting the application within the period specified for filing the application for setting aside the ex parte decree, the delay in filing such application may be condoned by invoking Section 5 of the Limitation Act, 1963. In Yallawwa v. Santava, (AIR 1997 SC 35), it has been held that when an ex parte divorce decree is sought to be set aside on the ground that summons had not been served and summons had been served by substituted service and the wife is an illiterate lady the delay should be condoned. When after service of summons upon an illiterate lady in a matrimonial suit the ex parte decree was passed, the wife's delay in filing application under Order IX, Rule 13 of the Civil Procedure Code should be condoned under Section 5 of the Limitation Act, 1963.

The special leave petition, if not presented before the Supreme Court within the prescribed period may be accepted by the Supreme Court on condoning the delay in filing such application provided the applicant could prove sufficient cause to make the delay.

Section 5 of the Limitation Act does not provide that an application in writing must be filed before relief under the said provision can be granted. Delay can be condoned even when no written application is filed. In Mahabir Singh v. Chief Army Staff, (1990 SCC (Crl.) 625), the Supreme Court has accepted oral prayer of the counsel for condonation of delay under Section 5 of the Limitation Act. However, as the petitioner has to satisfy the Court as regards the sufficient cause it is desirable that he would file a formal application. But only on the

ground that written application has not been filed the prayer for condoning the delay should not be refused.

In Munsur Ali v. Osman, (AIR 1973 Pat. 178), it is held that the party seeking the condonation of the delay has to satisfy the Court that he has sufficient cause for not preferring the appeal etc. within the prescribed time and the explanation has to cover the entire period of delay because the litigant should not be permitted to take away the right which has accrued to his opponent by lapse of time. The applicant has to prove that he was diligent and has to explain each day's delay from the last date of limitation.

(a) Application to Special or Local Laws:- Section 5 of the Limitation Act is specially made applicable by Section 29(2) of the Limitation Act which states, "where any special or local law prescribed for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

In Manguram v. Municipal Corporation, Delhi, (AIR 1976 SC 105), it has been held that it can be availed of for the purpose of extending the period of limitation prescribed by such special or local law, if sufficient cause for making the delay can be made. It is only if the special or local law expressly excludes the applicability of Section 5 of the Limitation Act that it would be displaced.

In Settlement officer v. Krishna Iyer, [(1974) 2 MLJ 328], it has been held that to such special period of limitation prescribed, in view of Section 29(2), Section 5 is attracted unless specifically excluded by the special or local Act. When the application of Section 5 has been specially excluded by rules, then it cannot be applied.

For example, the Orissa Land Reform Act excluded the application of Section 5 of the Limitation Act, 1963 and hence, the Land Tribunal has no jurisdiction to condone the delay in making application by a party beyond the period of limitation prescribed under the Orissa Reform Act.

Section 5 of the Limitation Act applies to applications made under the provisions of Income Tax Act.

In Gunwantlal v. Atul Kumar & Co., (AIR 1992 Guj. 54) it has been held that when Section 38 of the Presidency Small Causes Courts Act, 1882 does not specifically exclude the applicability of Section 5 of the Limitation Act, 1963, then the delay in filing of an application for new trial under Section 38 of the Presidency Small Causes Courts Act, 1882 may be condoned under Section 5 of the Limitation Act, 1963 if the applicant can satisfy the Court that he has sufficient cause for making the delay in moving the Court.

In Nand Kishore v. Munnibai, (AIR 1979 MP 45), it has been held that Section 29(3) of the Hindu Marriage Act, 1955 provides that save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceedings under such law. Therefore, Section 5 of the Limitation Act is not applicable to a petition filed under the Hindu Marriage Act, 1955. In Sipra Dey v. Ajit Kumar Dey, (AIR 1988 Cal. 28), it has been held that Section 5 of the Limitation Act, 1963, applies

to an appeal under Section 28 of the Hindu Marriage Act, 1955. In Lata . Vilash, (AIR 1989 SC 1477), the Supreme Court has also held that as limitation providing Section 28(4) of the Hindu Marriage Act for preferring appeal is different from that provided in the Limitation Act and when the provisions of Sections 4 to 24 of the Limitation Act have not been specifically excluded by Section 28(4) of the Hindu Marriage Act, then Section 29(2) of the Limitation Act is attracted.

In Gidda Naga Nallaiah v Kothuri Laxmayya, (AIR 1970 AP 284), it has been held that Section 5 of the Limitation Act to an application under Section 68 of the Provincial Insolvency Act, 1920 as its Section 78 declared that Section 5 of the Limitation Act is applicable to all applications and appeals under the said Act.

In Laxmi Chand v. State of Rajasthan, (AIR 1976 Raj. 197), it has been held that under Motor Vehicle Act, the Regional Transport Authority not being a Court, for filing an application for renewal of the permit, the delay cannot be condoned under Section 5 of the Limitation Act.

In Union of India v. Nav Bharat Construction, (2002 (1) CHN 226), it has been held that under Section 34 of the Arbitration and Conciliation Act, 1996 a petition for setting aside the award has to be filed within three months of the making of the award by the Arbitral Tribunal and the Civil Court has the limited power to condone the delay in filing the application for setting aside the award for one more month only. As the period of condonation of delay is limited by the Act itself, the Section 5 of the Limitation Act, 1963 is not applicable.

2. Sufficient cause for extension of limitation:

In the matter of condonation of delay two important matters are relevant, namely:-

(a) the right to the respondent accrued to him by lapse of time should not be disturbed light-heartedly, and

(b) that if sufficient cause is proved by the appellant or the applicant he does not acquire automatically the right to have the delay condoned but Section 5 of the Act vests in the Court with the discretion to condone the delay.

It is well-settled that 'sufficient-cause' means some cause beyond the control of the party though acted with due care and attention.

The expression 'sufficient cause' should be interpreted in the light of the definition of 'good faith' given in Section 2(h) of the Limitation Act, 1963 i.e. "nothing shall be deemed to be done in good faith which is not done with due care and attention."

The sufficient cause has to be considered with pragmatism and of course with justice-oriented approach but 'any cause' cannot be construed as 'sufficient cause'. The words 'sufficient cause' must generally receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fides is mutable to appellant.

At the stage of considering the question of sufficient cause, the scope of enquiry naturally introduces the considerations of all relevant facts including the question of diligence on the part of its bona fides. Although it is true that a party is entitled to wait until the last date of limitation for filing an appeal or application. But when it allows limitation to expire and pleads sufficient cause for not filing the

appeal or application earlier the sufficient cause must establish that because of some event or circumstance arising before limitation expired it was not possible to file the appeal or application within time. No events or circumstances arising after the expiry of limitation can constitute such sufficient cause. There may be events or circumstances subsequent to the expiry of limitation which may further delay the filing of appeal or application. But that the limitation has been allowed to expire without the appeal being filed must be treated to a cause arising within the period of limitation.

What constitutes sufficient cause cannot be laid down by hard and fast rules. Obviously this must depend upon the facts and circumstances of each case. The Court exercises the discretion to condone the delay in favour of the appellant where no negligence or inaction or want of bona fides is imputable to the appellant.

The words 'sufficient cause' used in the provision are wide enough and are adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice and refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause justice being defeated.

3. Sufficient cause how to be determined?

The following guidelines should be kept while determining the sufficient cause of condonation:

(1) Ordinarily a litigant does not stand to benefit by dodging an appeal.

(2) If the party is not vigilant about his right he must explain every day's delay. The doctrine of 'every day's delay must be condoned' must be applied in a rational, common sense and pragmatic manner.

(3) The cause would be decided on merits after hearing the parties.

(4) The acceptability of the explanation is the criteria for deciding whether the delay should be condoned or not, but not the length of the delay.

(5) The reason for the delay should be given and considered and there should be no prejudice to be caused to the other side because the bar of limitation which is available to a party cannot be permitted to be defeated.

(6) When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred.

(7) There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of other way mala fides. The presumption would be just the round.

(8) Any explanation sought to be given for the delay in filing the appeal or application beyond the period of limitation would have to be considered on the fact of each case.wo

(9) The approach of a school master using his rod to discipline the student should not be adopted and the attitude must be one informed with greatest awareness for the cause of justice.

(10) The fact that the judiciary is capable of removing injustice is to be respected.

(11) Liberal approach of granting condonation of delay has to be followed in view of the fact that the right of one appeal should always be available to the litigant especially when the delay is not extraordinary and satisfactory explanation has been tendered.

(12) The conduct of the party seeking condonational is a relevant factor to be considered by Court in allowing or refusing condonation.

When the litigant satisfies the Court about the sufficient cause for his not filing the appeal within due time and the application furnished by the litigant is satisfactory, then the delay is to be condoned. Where the delay has not been satisfactorily explained and there was no sufficient cause of delay, then the application for condonation of delay is to stand dismissed. In Satyajit Guha v. Rati Sengupta, [(2003) 1 Cal.LT (HC) 415], it is held that in an application preferred under Section 5 of the Limitation Act, a litigant is obliged to prove to the satisfaction of the Court that there was sufficient cause for which the delay occurred and then only the Court after being satisfied about the proof of sufficient cause can condone the delay.

(a) Liberal interpretation of 'Sufficient Cause': The words 'sufficient cause' should receive liberal construction. The Supreme Court and High Courts have repeatedly considered liberal interpretation of 'sufficient cause' in several decisions. In Sandhya Rani v. Sudharani, (AIR 1978 SC 537), it is observed that the expression 'sufficient cause' should receive liberal construction so as to advance substantial justice and ordinary delay in filing the appeal should be condoned when no negligence, inaction or want of bona fide is imputable to the appellants and that in an application for condonation of delay 'sufficient cause'

should receive liberal construction so as to advance substantial justice. The expression cannot be construed as a cause beyond the control of the party.

The Supreme Court has made it clear that the existence of 'sufficient cause' should receive a liberal construction whether it is a Government or a private party.

In Ramegowda v. Land Acquisition Officer, (AIR 1988 SC 897), the Supreme Court states that "Each case will have to be considered on the particularities of its own special facts. However, the expression 'sufficient cause' in Section 5 must receive a liberal construction so as to advance substantial justice and generally delays in bringing the appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of delay."

Even on taking liberal view the delay of 565 days in filing the first appeal was not approved by the Supreme Court. When no explanation much less reasonable or satisfactory explanation was given by the respondent State to condone the delay the High Court was not justified in condoning the delay.

In Radhakirshna Rai v. Allahabad Bank. [(2000) 9 SCC 733], even when there was delay of 1418 days in filing appeal before the Division Bench and the appellant took the plea that he was kept under a wrong impression by his counsel that the appeal was pending in High Court even though no appeal was actually filed and the Supreme Court has held that though delay was extraordinarily long cause shown by the appellant was sufficient to condone the delay.

In N. Bala Krishnan v. M. Krishnamurthy, [(1998) 7 SCC 123]. it has been held that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not lay down that such discretion can be exercised only when the delay is within a certain limit. Length of delay is not matter. The acceptability of explanation is the only criterion.

Taking liberal approach does not mean that in all cases delay is to be condoned on taking the liberal view. It depends on the facts and circumstances of each case.

In General Manager (W). BCCL v. Minoti Engineering Works. (2002 (1) CHN 549), it is held that in the matter of condonation of delay, the approach that should be adopted by the Court must be pragmatic and justice oriented in order to render justice between the parties. The Court has, however, to assess the due diligence of the parties craving for condonation.

In Lal Singh v. State of Haryana, [(2003 (1) ICC 535 (P&H)], it has been held that while condoning the delay it must be remembered by the Court that in every case of delay there can be some lapses on the part of the litigant concerned but that alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fide nor is it put forth as a part of dilatory strategy the Court must show utmost consideration to the suitor to condone the delay.

The words 'sufficient cause' is an elastic expression for which no hard and fast guidelines can be prescribed. The Courts have a wide discretion in deciding sufficient cause keeping in view the peculiar facts and circumstances of each case.

4. Some Decisions relating to Sufficient Cause

The following are some of the decisions relating to sufficient causes:

(1) Illness may be sufficient cause, but it must be proved that the man was utterly disabled to attend to any duty (Gouri Shankar v. Kashinath, AIR 1934 All. 367).

(2) Imprisonment in a criminal case may be a sufficient cause and the time spent in jail may be deducted. (Maharaj Narain v. Banoji, 21 PR 1904).

(3) A bona fide mistake of fact on the part of the party will be sufficient cause within the meaning of Section 5 of the Limitation Act. (Birbal v. Harilal, AIR 1953 Punj. 252).

(4) Mistaken advice given by a legal practitioner may, in the circumstances of a particular case give rise to sufficient cause. (Kunwar Rajendra v. Rai Rajeswar, (AIR 1937 PC 278). If the mistake of the legal adviser is the result of negligence, delay cannot be condoned. Mistake of a junior counsel is not a sufficient cause, nor is advice of a counsel's clerk.

(5) A mistake or ignorance of law is not a sufficient cause. But, if the mistake be bona fide, it will be considered as sufficient cause. (State of Maharashtra v. Hirachand, 1976 Cr.L.J 1850). Delay due to conflicting decisions misleading the party in filing appeal is a good ground for condoning delay. (Krishnappa v. Ramachandra, AIR 1973 Mys. 234). When an illiterate farmer made delay in filing the appeal by being mislead with respect to the date of hearing of his case, it should be excused. [Chameli v. Financial Corporation, Delhi, AIR 1988 NOC 35 (Del.)].

(6) Where a person bona fide thinking that it was the proper course filed a suit instead of appealing from a decree, and soon after found out the error and preferred the appeal, it was a 'sufficient cause'. (Ghulam v. Shahbaz, 162 PR 1888). Where the assessee instead of preferring an appeal files a writ petition, the delay caused by the petition may be condoned.

(7) Where an appellant preferred an appeal to a wrong Court, believing bona fide that the appeal lay there, the appellant is entitled to deduct the time during which the appeal was pending in the wrong Court. (Balbir Singh v. Bhogsingh, AIR 1974 SC 650).

(8) Where a decree which is wrongly drawn up is amended by the Court after the expiration of the time prescribed for appeal against the original decree, the party affected by the amendment can appeal against the decree as amended, and the delay will be excused under the Section 5 of the Limitation Act. (Viswanathan v. Ramanathan, 24 Mad, 646).

(9) Ignorance of the fact of the death of a party whose legal representative have to be brought on record constitutes a 'sufficient cause' within the meaning of the Section 5 of the Limitation Act, for excusing the delay in seeking to set aside abatement.

(10) Delay in filing an appeal due to inability to get stamps was excusable. (Kesho Prosad v. Barbans, 37 IC 211).

(11) Where the period of filing the appeal expired during the vacation, but the appeal was filed seven days after the opening of the Court, and the delay was due to the fact that the Court fee paid on the application for copy of the decree was deficient, but the appellant received the information of deficiency later and as soon as he knew it he took necessary steps in all haste, it was held that the

delay should be condoned. (Heemanshu Traders v. Delhi Electricals, (1976) 78 Punj.LR 113).

(12) The poverty of the appellant in consequence of which he was not able to pay Court fees in time is not a sufficient cause for admitting an appeal out of time. (Krishnaswamy v. Ramaswamy, 19 MLJ 209). Hardship is no ground for condonation.

(13) Where the pleader's name is not mentioned in the vakalatnama by pure mistake and the mistake is due to pure inadvertence and accident and do not proceed from any dishonest intention, there is sufficient cause for accepting a fresh vakalatnama complete in every respect after the expiry of the period of limitation for the appeal. (Lokenath v. Sheo Saran. AIR 1927 All. 816).

(14) There is no general principle saving the party from all mistakes of its counsel. Mistaken advice given by a lawyer negligently and without due care is not sufficient cause for condonation of delay in filing appeal or application. (Badrinath v. Hari Bhagat, AIR 1971 J&K 41). But it is held by Delhi High Court that the plaintiff cannot be made to suffer because of the negligence of his lawyer when it is proved that he was diligently prosecuting the suit. So the delay was condoned. (Yogesh Prosad Seti v. Ram Narayan, AIR 2003 NOC 546 (Del.)].

(15) Where the appeal is not presented in time owing to a deliberate fraud of the counsel's clerk, there is sufficient reason for an extension of time. (Allah Wadhaya v. Haji Mahammad, AIR 1934 Lah. 986).

(16) Delay in filing appeal due to negligence in not taking necessary steps which he could have or should have taken cannot be condoned. (State of W.B. v. Administrator. Howrah Municipality, AIR 1972 SC 749) when a party is negligent

it shows that the cause of delay was not beyond his control. So there is no sufficient cause for the delay and the same could have been avoided. (Raj Kumar v. Union of India, AIR 1969 All. 472).

(17) Negligence of servants or an unqualified man, who is authorised with the filing an appeal is not a sufficient cause. (Krishnaswami v Ramaswami, 19 MLJ 209).

(18) Delay cannot be condoned on the ground that the judgment is delivered nearly a month after the arguments have been heard. (Habibullah v. Banarasi Das, 22 OC 379).

(19) Basing on the decisions of different Courts, the following are also considered as grounds to condone delay under sufficient cause:

(i) Illness of appellant's mother, husband/wife or sister-in-law is sufficient cause under the exceptional circumstances.

(1) Remained confined under medical advice, to bed being a patient of heart disease is sufficient cause for condonation of delay in appeal.

(iii) Prevention of the appellant from filing the appeal on account of her having had abortion and consequent haemorrhage is sufficient cause to condone delay in appeal.

(iv) Delay due to accident was accepted as sufficient cause.

(v) Delay due to non-supply of information to party by counsel in ex parte decree is sufficient cause for condonation of delay.

(vi) Delay in getting certified copy of the judgment and decree is sufficient cause to condone the delay in appeal.

(vii) Exigencies of military service is considered as sufficient cause.

(viii) Mistake of Court is sufficient cause to condone the delay.

(ix) Wrong entry in lawyer's diary is sufficient cause.

5. Illustrations of not-sufficient cause:

Basing on the decisions of different Courts, the following are the illustrations of not sufficient cause:

(i) Absence of counsel is not a sufficient cause.

(ii) Allegation of ignorance of law is not sufficient cause.

(iii) Delay on the part of State Government due to lack of fund cannot be considered as sufficient cause.

(iv) Late discovery of evidence is not a sufficient cause.

(v) Moving file from one section to another, is not sufficient cause.

(vi) Non-availability of warrant is not the sufficient cause.

(vii) Lack of reasonable skill of legal practitioner is not sufficient cause.

(viii) Illiteracy by itself is not a ground for condonation of delay.

(ix) Correspondence is not sufficient to condone delay.

(x) The business of a party in itself is not a sufficient ground to condone the delay in appeal.

(xi) The mere fact of appellant being a pardanashin lady could not file the appeal in time is not sufficient cause.

6. Condonation of delay in filing appeal when not to be granted:

(i) When no reason was assigned as to why the appeal was filed beyond time, the delay in filing is not condoned.

(ii) When delay is made in filing the appeal due to gross negligence and deliberate inaction, the delay is not condoned.

(iii) A party who is negligent in complying with the orders of the Court is not entitled to get condonation of delay in filing an appeal.

(iv) Delay in filing appeal was due to routine and leisurely interdepartmental consultations of the appellant is not condoned.

7. Non-applicability of Section 5 of the Limitation Act, 1963:

I. Reading of Section 5 of the Limitation Act, 1963 itself reveals it does not apply to the suits and the proceedings under Order XXI of the Code of Civil Procedure.

II. As per sub-section (1) of Section 29 of the Limitation Act, 1963, the provisions of Section 5 shall not affect Section 25 of the Indian Contract Act, 1872.

III. According to Section 29(2) of the Limitation Act, 1963, where any special or local law prescribed for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent which, they are not expressly excluded by such special or local law.

In State of Assam v. Naresh Chandra, AIR 1983 Gau. 24), it is held that a general law applies to the whole community. But, special law means a law which is not applicable generally but which applies to a particular or specified subject or subjects.

If the special or local law is a complete Code in the matter of limitation then Section 29(2) is not applicable.

Section 29(2) of Limitation Act makes Sections 4 to 24 of he Limitation Act applicable when computing limitation under a special or local law exactly in the same manner as they would be applicable when computing limitation under the Limitation Act, 1963. In Vidya Charan Shukla v. Khubchand, AIR 1964 SC 1099), it has been held that unless the period of limitation prescribed by any special or local law is different from the period prescribed in the Schedule, Sections 4 to 24 shall not apply to any proceeding under a special or local law.

Section 29(2) of the Limitation Act does not prohibit the making of a provision in the Local Act for the applicability of the entire Limitation Act.

IV. Section 29(3) of the Limitation Act, 1963 states that save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in the Limitation Act shall apply to any suit or other proceedings under any such law. Hence, Section 5 of the Limitation Act is not applicable to a petition under Section 12(1)(d) of Hindu Marriage Act. However, Section 5 of the Limitation Act would apply to any appeal presented to High Court under the Hindu Marriage Act, 1955.

In Lata v. Vilas, (AIR 1989 SC 1477), the Supreme Court has held that to an appeal under Section 28 of the Hindu Marriage Act, 1955, Section 12(2) of the Limitation Act, 1963 would be applicable as the limitation for preferring appeal under Section 28(4) of the Hindu Marriage Act, 1955 is different from that provided under the Schedule of the Limitation Act, 1963 and the Hindu Marriage Act in Section 28 has not expressly excluded the applicability either of the provisions from Sections 4 to 24 of the Limitation Act, 1963.

In Ratan Mall v. Sefali Malla, [AIR 2004 Gau. 36 (DB)], it is held that the delay in filing the appeal under Hindu Marriage Act, 1955 may be condoned by invoking Section 5 of the Limitation Act, 1963.

V. As per Section 29(4) of the Limitation Act, 1963, Sections 25 and 26 and the definition of easement in Section 2 shall not apply to cases arising in the territories to which the Indian Easement Act, 1882 may for the time being extend.

LEGAL DISABILITY CONDITIONS - WHERE COMES TO AN END

1. Legal Disability

Section 6 of the Limitation Act, 1963 provides that:

1. Where a person entitled to institute a suit or make an application for the execution of a decree is, at the time from which the prescribed period is to be reckoned, a minor including a child in the womb (as per explanation of the Section) or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time specified therefor in the third column of the schedule.

2. Where such person is, at the time from which the prescribed period is to be reckoned, affected by two such disabilities, or where, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period after both disabilities have ceased, as would otherwise have been allowed from the time so specified.

3. Where the disability continues upto the death of that person, the legal representative may institute the suit or make the application within the same period after the death, as would otherwise have been allowed from the time so specified.

4. Where the legal representative referred to in sub-section(3) is, at the date of the death of the person whom he represents, affected by, any such disability, the rules contained in sub-section(1) and (2) shall apply.

5. Where a person under disability dies after the disability ceases but within the period allowed to him under this Section, his legal representative may institute the suit or make the application within the same period after the death as would otherwise have been available to that person had he not died.

2. Disability of one of several persons

According to Section 7 of the Limitation Act, 1963, Where one of several persons jointly entitled to institute a suit or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, time will run against them all; but, where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased.

As per Explanation-1, this section applies to a discharge from every kind of liability, including a liability in respect of any immovable property. Explanation-II provides that for the purposes of this section, the manager of a Hindu Undivided Family governed by the Mitakshara Law shall be deemed to be capable of giving a discharge without the concurrence of the other members of the family only if he is in management of the joint family properly.

3. Special Exception

According to Section 8 of the Limitation Act, 1963, nothing in Section 6 or in Section 7 applies to suits to enforce rights to pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period of limitation for any suit or application.

4. Continuous running of time

As per Section 9 of the Limitation Act, 1963, where once time has been to run, no subsequent disability or inability to institute a suit or make an application stop it. However, where letters of administration to the estate of a creditor have been granted to his debt, the running of the period of limitation for a suit to recover the debt shall be suspended while the administration continues.

In Bailochan Karan v. Basant Kumari Naik, (AIR 1999 SC 876), the Supreme Court has expressed the view that Section 6, 7 and 8 of the Limitation Act, 1963 have to be read together and that Section 6 is controlled by Section 8 which serves as exception to Sections 6 and 7.

Section 6 should be read specially with Section 8 which controls it and lays down that Section 6 does not apply to suits to enforce rights of pre-emption and that the maximum extension of the period of limitation under Section 6 is three years.

Section 6 has been made applicable to special and local laws, unless expressly excluded.

In Sirul v. Mythili, (1931 (61) MLJ 688), it has been held that only disabilities covered by Section 6 are minority, lunacy and idiocy of the person entitled to sue or file an application for execution. The insolvency of the party does not attract Section 6.

Section 6 applies to all suits except suits to exercise a right of pre-emption, to a suit for recovery of possession based on title. It also applies to applications

for execution of decrees. But Section 6 will not grant an indulgence to a minor entitled to prefer an appeal.

According to decisions of Courts, Section 6 does not cover:

(i) a case of an application under order 21, rule 90 of the Civil Procedure Code to set aside a sale held in execution of a decree.

[Govinda v. Sankaralinga. (AIR 1943 Mad.55)].

(ii) an application for the readmission of an appeal under Order 41, Rule 10 of the Civil Procedure Code. [Sonubai v. Shivaji Rao, (45 Bom. 648)].

(iii) an application for bringing on record legal representatives of a deceased party. [Shilawanti P&H 369)]. V Kishore Chand, (AIR 1977

(iv) an application for a supplementary decree under Order 34 Rule 6 [Khondkar Mahommed v. Chandra Kumar, (49 CLJ 362)].

(v) an application to obtain a final decree for sale in a mortgage suit. [Govindnaik v. Basawannewa, (AIR 1941 Bom. 203)].

In Navrangi v. Ram Charan, [AIR 1930 Pat. 455 (471)] it has been held that the only disabilities which save the operation of the Limitation Act are those mentioned in Section 6, which recognizes only three classes of persons as being under legal disability, namely, a minor, an insane person and an idiot, and does not include in idol or a muth.

5. Minor

The general principle of law is that time does not run against a minor. As per Section 3 of the Majority Act, 1975, 'minor' means a person who has not attained the age of majority. He is deemed to have attained his majority when he shall have completed his age of twenty-one years and not before. If the minor claims the benefit of the Section 6 of the Limitation Act, it is for him to establish affirmatively and clearly that he is under the age of 21 at the time of the institution of the suit. An age of a person must be calculated from the date of birth and not from his conception. This is also true even if the child in womb is treated as minor and can get the benefit of Section 6 of the Limitation Act. In its case also his age shall be calculated from the date of birth of the child in womb.

In Kochamahammad v. Jacob, (1963 Ker. LJ 560) it has been held that the Section 6 gives only a personal privilege to the minor, it applies to the minor himself or his legal representatives but not to his assignees.

A minor in whose favour a decree is assigned is not entitled to the benefit to the Section 6 of the Limitation Act.

In Jai Kisan v. Kalicharan, (ILR 1957) MP 3) it is stated that the general principle is that time does not run against a minor, and the circumstances that he has been represented by a guardian does not affect the question. Similarly, the fact that a guardian or next friend might have maintained a suit on behalf of a minor does not take away from the minor the privilege of the Section 6 of the Limitation Act.

The rights of minors including a child in womb were specially protected, and time did not run against minors. They were allowed to institute a suit within

three years of his attaining majority or within the usual period of time ordinarily allowed to a major whichever is longer.

Under Section 6(1) of the Limitation Act, a suit for recovery of possession could be filed within 12 years from the date when minor attained the age of majority in case where the transaction was void by reason of Section 8 of the Act, such a suit will have to be filed within three years of attaining of the age of majority and the minor could not claim the extended period of 12 years.

The protection which was extended to the minors, did not prevent a minor from instituting a suit through his next friend during minority. The minor has two rights:

(i) he can bring a suit within a specified time after the terminal of his minority;

(ii) that even during the subsistence of his minority, he can institute a suit through his next friend.

This personal privilege to the minor which can be availed of either by his or by his legal representative but not by his assignees.

Idol is, no doubt in position of an infant as it cannot act himself but has to act through a shebait or manager. However, an idol is as much subject to the Law of Limitation as a natural person and cannot claim exemption on the grounds that he is a perpetual infant. Nor a Hindu deity to be regarded as a minor for all purposes as it is open to the shebait, or any other person interested in an endowment, to bring a suit to recover the idol's property for devotees' purpose. An idol cannot, therefore, claim exemption from the Law of Limitation.

6. Insanity and Idiocy

Insanity is the unsoundness of mind as a consequence of brain disease; madness, mental derangement. An insane or lunatic or an idiot is protected under Section 6 of the Limitation Act, 1963 so long as he does not regain his sanity. An idiot is a person so mentally deficient by birth as to be incapable of ordinary reasoning or rational conduct.

An idiot is one who is destitute of the ordinary intellectual powers of man. He is a born fool, the mental condition being commonly accompanied by some defect in the physical wisdom. An idiot is one that is "a fool natural from his birth and knoweth not how to account or number twenty pence, or cannot name his father or mother, nor of what age himself is, or such like easy and common matters; so that it appeareth he hath no manner of understanding, of reason, or Government of himself, what is for his profit or disprofit, etc." (Terms de la Ley).

The Section 6 of the Limitation Act so long as he does not regain his sanity. The Section 6 is not applicable when disability due to lunacy is not proved. The burden of proving the disability is on the plaintiff.

In Abdulla v. Abdulla, AIR 1924 Bom. 290, it has been held that a state of great mental weakness on account of serious bodily injury caused by aninhuman assault (throwing sulphuric acid on the face resulting in loss of one eye) is not a state of insanity within the meaning of Section 6 of the Limitation Act. When insanity is once proved to have existed, it is presumed to continue until it is proved to have ceased; and a very strict burden of proof lies on the party who alleges recovery.

A lucid interval is a temporary cessation of lunacy and it cannot be treated as a recovery unless it is of sufficient length of time to enable the person to do an intended rational act.

If an insane person is affected by one disability and before the cessation of this disability, he is affected by another disability, the time will not commence to run till the last of the disabilities has ceased.

As per Section 6 of the Limitation Act, in the case of disabled persons time begins to run from the cessation of their disabilities and the period of limitation is the same as provided in the second column of the Schedule; but with this reservation that by reason of Section 8, the period of the limitation after the cessation of their disability is not more than three years.

Section 6 and 7 of the Limitation Act do not give a fresh period of limitation. Section 6 contemplates cases where there is only one minor decree-holder or where all the decree-holders are minors. But, Section 7 of the Limitation Act extends the period of limitation to some cases where there is a joint decree in favour of persons some of whom are minors. Extension of Limitation under Section 7 does not take place with reference to the person under disability alone but with reference to the entire body of persons jointly entitled to sue or apply Section 7 applies only if the disability at the time when the limitation is to be reckoned.

In Abdulla v. Ravuny, (1973 Ker. LR 350), it has been held that the principle of Section 7 is that when one of the several persons jointly entitled to sue is under a disability if any other person can validly give discharge without the concurrence of the person under disability, the time will begin to run when the person competent to give a discharge can institute the suit.

The Explanation-1 of Section 7 states that Section 7 of the Limitation Act applies to a discharge from every kind of liability, including a liability in respect of any immovable property.

The word 'discharge' in Section 7 of the Limitation Act does not mean merely a discharge of pecuniary liability but has a wider significance and includes release of rights in immovable property such as equity or redemption or a release of other rights as for example a right to file a suit. The word 'discharge' is not limited to discharge of monetary claim alone but also to discharge or satisfaction of all other liabilities as well. The word 'discharge' has reference to transactions which are required to be avoided and has no application to void transactions.

Section 7 of the Limitation Act is an extension to the general principle enunciated by Section 6. It lays down that if more than one person are jointly entitled to institute a suit and if one of them is disabled, time will not run against any of them until the disability ceases to exist. But if one of the persons entitled to institute the suit competent to give discharge without the concurrent of the other, then time will run against both. In such an eventuality, benefit of Section 6 will not be available. The time shall run against all those persons if any one of them has a capacity to give a discharge without the concurrence of the person under disability.

The Explanation-II of Section 7 of the Limitation Act makes it clear that for the purpose of this Section, the manager of a Hindu Undivided Family governed by the Mitakshara Law shall be deemed to be capable of giving a discharge without the concurrence of the other members of the family if he is in management of the joint family property.

Section 8 of the Limitation Act imposes a limitation on the concession provided under Section 6 or 7 to a maximum of three years from the cessation of the disability. Under Section 8, the period can be extended upto an extent of three years if under the ordinary law out of the period of limitation prescribed there remains a period of less than three years for bringing a suit. But if the period remaining is more than three years, no extension can be granted.

In Darshan Singh v. Gurdev Singh, (AIR 1995 SC 75), the respondent was a minor at the time of his father's death. He attained majority on 17th April, 1977 and thereafter a suit for possession of the property was filed on 4th November 1982 which was within 12 years under third column of Art.65 of the Limitation Act, but was after expiry of the period of three years of his attaining majority. The plea was made by the appellant that the suit ought to have been filed within three years of his attaining majority. The Supreme Court has held that the period of limitation as provided in Article 65 expired when the respondent was 16 years of age and consequently he ought to have filed the suit within three years of his attaining majority and his suit is barred by limitation.

The period of limitation shall be computed from cessation of disability or death of the person affected by the disability. The plaintiff has to prove that he attained majority within three years of the filing of the suit. The benefit of Section 6 and 8 cannot be availed of by the partner or assignee of the person in disability. Section 8 of Limitation Act applies to special or local laws, unless expressly excluded.

Limitation cannot run unless the cause of action or right to action arises. The test to determine when the cause of action has arisen is to ascertain the time when the plaintiff could first have maintained his action to a successful result. However, Section 9 can apply only where the cause of action continues to exist

and not when it is subsequently cancelled by subsequent events or where it disappears or is otherwise discharged. Section 9 of the Limitation Act applies not only to suits but to applications as well.

Section 9 of the Act lays down that where once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it. In other words, when once limitation has commenced to run, it will continue to do so unless it is stopped by virtue of any express statutory provision.

In State of Punjab v. Surjit Kaur, (AIR 2002 P&H 68), it has been held that the Section 9 of the Limitation Act, 1963, enumerates a very important principle of the Law of Limitation and that is that where once time has begun to run, no subsequent disability or inability to sue, stops it. Therefore, an intervening disability cannot be availed of under Section 9. It is only where the legal disability is at its inception of the time when a person becomes entitled to file a suit that he can avail himself of the provisions of Section 6.091 Jonori

Time runs when the cause of action accrues, and the cause of action accrues when there is in existence a person who can sue and another who can be sued, and when all the facts have happened which are material to be proved to entitle the plaintiff to succeed. The cause of action arises when and only when the aggrieved party has the right to apply to the proper tribunals for relief. It is only when the cause of action is complete that the bar of time begins to run.

Disability is want of legal qualification to act; inability is want of physical power to act. For the purpose of limitation, a disability is the state of being a minor, insane or an idiot; whereas illness, poverty etc. are instances of inability.

The disability or inability contemplated in Section 9 is confined to such cases as are mentioned in the Limitation Act itself, a new exemptions cannot be recognized.

The inability referred to in Section 9 must be held to be a personal inability affecting the plaintiff himself. In Hanmatram v. Bowles, (8 Bom. 561), it has been held that absence from India would not constitute an 'inability' under Section 9. Lack of absence of cause of action is neither disability nor inability. It is a personal disability or inability to sue due to some personal fact and not due to absence of cause of action. In Balkrishan v. Dhanraj, (AIR 1956 Nag. 200), it has been held that inability does not cover the case of obstacles, such as, stay of execution by the order of the Court. In Tekait v. C.N. Banking Corporation, (AIR 1920 Pat. 105) it has been held that pendency of insolvency proceedings would not save a claim from being time-barred.

Section 9 contemplates cases where the cause of action continues to exist. It cannot apply to cases where the cause of action is cancelled by reason of subsequent events. The principle laid down in this section is subject to certain exceptions. Even where time has begun to run, it can be stopped provided the cause of action which has given the right to sue is discharged or in anyway disappears. The period of limitation can be extended in three classes of cases, viz.,

(i) where injustice has been caused by an act of court;

(ii) where the cause of action was satisfied, and

(iii) where the cause of action was cancelled.

7. No limitation in Suits against trustees and their representatives

Section 10 of the Limitation Act, 1963 provides that notwithstanding anything contained in the foregoing provisions of this Act, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property, or the proceeds thereof, or for an account of such property, or proceeds shall be barred by any length of time. As per the explanation to the Section 10, any property comprised in a Hindu, Muslim or Buddhist religious or charitable endowment shall be deemed to be property vested in trust for a specific purpose and the manager of the property shall be deemed to be the trustee thereof.

Section 10 of the Limitation Act, 1963 can be invoked against any person in whom the property has become vested for a specific purpose or his legal representative or assigns not being assigns for valuable consideration. It applies to three categories of relief, namely, to follow the trust property or its proceeds or for account of the trust property or its proceeds. Such suits shall not be barred by any length of time.

According to Section 3 of the Trusts Act, 1882, a trustee is the legal owner of the trust property and before a trust can be created there must be a transfer of the property to the trust.

Section 2(n) of the Limitation Act, 1963 states that 'trustee' does not include a benamidar, a mortgage remaining in possession after the mortgage has been satisfied or a person in a wrongful possession without title.

In Khairul v. Thannu Lal, (AIR 1957 All 553), it has been held that the mere fact that a person is holding the property in custody of another cannot constitute him trustee unless the ownership of the property is also vested in him. The word 'vested in Section 10 is to be taken not in the sense of 'owned' but in the sense of 'held in possession'. The words 'vested in trust' are equivalent to the words 'conveyed or bequeathed in trust'.

<u>The following are not considered as trustees in relation to Section 10 as decided by different courts.</u>

(i) The Government and the secretary of State cannot be trustees. [Kinloch v. Secretary of State, (LR 15 Ch. D1(9)].

(ii) The directors of a company are not trustees Kathiawar Trading Co. v. Virchand, 18 Bom. 119.

(iii) The liquidator of a company is not a trustee for the creditors, but merely an agent of the company. [Knowles v. Scott, (1891 (1) Ch. 717)].

(iv) The Karta of a Joint Hindu Family is not a trustee. [Benoy v Amarendra, (AIR 1940, Cal. 51)].

(v) A guardian appointed under the guardians and wards Act is not a person in whom the property is vested for a specific purpo [Mirabai v. Kausholyabai, (AIR 1949 Nag. 235)].

(vi) An agent is not a trustee in relation to his principal. [Bhaiyalal v. Rai Beharilal, (81 IC 505)].

(vii) A binamidar is not a trustee [Lala Krishnalal v. Lala Shashamkar (ILR 1950, Nag. 877)].

(viii) A person merely asked to manage and control minors' business is not a trustee. [Khem Chand v. Girdhari, (AIR 1947, Sind 187)].

(ix) A depository, or banker, or agent, or a debtor to whom a loan is made and who promises to return the loan, is not an express trustee within the meaning of Section 10. [Someswara v. Rama Arya, (1968) 1 Andh. WR. 456)].

(x) A surviving partner is not a trustee for the representative of the deceased partner. [Brijmohan v. Gita Devi. (AIR 1992 Cal. 67)].

All persons holding a fiduciary relation are not necessarily trustees within the meaning of Section 10. Thus, the position of agents, managers, factors and benamidars may be and generally a fiduciary one, but none of them are necessarily trustees.

In R.T. Thatachariar v. A.M. Jearswamy, (AIR 1978 Mad. 210).

it is held that a suit by a beneficiary against a trustee for the enforcement of a beneficial right is never barred by limitation.

Section 10 of the Limitation Act does not apply to resulting or constructive trusts or to trusts created by operation of law or to implied trusts.

In Abdor Rarim v. Narain Das, (AIR 1923 PC 44), it has been held that neither the Sajjadanashin nor the muttawalli had any right in the property belonging to the wakf, the property was not vested in him, and he was not a

trustee in the technical sense. Under the Mohammedan Law, the moment a wakf was created, all rights of property vested in God almighty.

Explanation of Section 10 signifies that though under the general law there may be no trust for a specific purpose, yet in the case of religious and charitable endowment of the Hindus and Muslims the endowed property should be treated as property vested in trust for a specific purpose and the manager thereof as trustee for the purpose of Section 10. In Sri Sri Baidgunathji v. Smt. Urmila Devi, (AIR 1941 PC 130), it has been held that a high priest appointed under a decree as trustee for the temple God is to be treated as trustee for the purpose of Section 10.

In A. Islamia v. N. Ali, (AIR 1982 MP 17) it is held that in a suit for declaration that the property in the possession of the mutawalli is wakf property, no question of limitation can arise in respect of the property if it is found that the property comprises the wakf estate.

Properties of religious institutions in India are not vested in the hands of the institution, but belong to the idols and that, therefore, the heads of the institutions could not be trustees. Hence, Section 10 becomes inapplicable to suits filed against the trustees of temples and other religious institutions. However, trusts formed for the conducting of puja and ceremonies and the upkeep of the temple are sufficiently specific to satisfy the requirement of Section 10.

In Subramania v. Subba Naidu, (25 MLJ 452) it is held that Section 10 applies to a suit against a trustee whether the trustee's right to the office is legally valid or otherwise, and the defendant cannot plead the bar of limitation.

In Sethu v. Subramanya, (11 Mad 274 (280)) has held that a suit by the present manager of a Hindu temple against the former manager for recovering the money which was misappropriated by the latter while in office falls under Section 10 of the Limitation Act.

8. Suits on contracts entered into outside the territories to which the Act extends

Section 11 of the Limitation Act, 1963 provides that

(1) 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.

(2) No rule of limitation in force in the State of Jammu and Kashmir or in a foreign country shall be a defence to a suit instituted in the said territories on a contract entered into in that State or in a foreign country unless

(a) the rule has extinguished the contracts; and

(b) the parties were domiciled in that state or in the foreign country during the period prescribed by such rule.

Foreign Law of Limitation is not applicable. The laws of limitation and the law of procedure are not personal laws. They do not move with and follow the person. A foreigner cannot by virtue of the laws of his own country, enjoy in this country greater advantages than other litigants nor can he be deprived of the advantages which the lex fori confers upon other suitors with regard to matters of procedure and limitation.

An action on a contract entered into in a foreign country is not barred under the law of that country, cannot enable the person entitled to any right there under to sue in any other country, if in respect of a claim under such a contract the right of suit had become barred under the law of the country where the suit laid.

Section 11(1) of the Limitation Act has been based on the rule of international jurisprudence that "all suits must be brought within the period prescribed by the local law of the country where the suit is brought, otherwise the suit will be barred", Although this section speaks of suits on contract only, yet the principle of this section applies to all suits and proceedings.

Section 11(2) of the Limitation Act follows the English Common Law according to which a foreign law of limitation is preferred to the lex fori on two conditions: (i) that the foreign law extinguishes the right or the obligation itself; and (ii) that both the parties have resided in the country where such law prevails for the whole of the prescribed time.

In Huber v. Stainer, (3 Bring NS 202), it has been held that the foreign law does not extinguish the right under the contract, no effect can be given to such law.

In Nallatambi v. Ponnusami, (2 Mad. 400), it is held that where the remedy only is barred by the foreign law, but the right is not extinguished, suit may be instituted in the Court of India if it is not barred according to the Indian Law of Limitation.

Section 11 of the Limitation Act, 1963 applies to suits. It also applies to execution petition.

In Sreenivas v. Narayana, (ILR 1922 45 Mad. 1014), It is held that the limitation for the execution of a decree transferred to an Indian Court for execution from a native state was governed by the Indian Laws of Limitation for execution of such decree by Indian Courts.

Section 11 of the Limitation Act is applicable where cause of action for a suit based on contract arose in any foreign country or in Jammu and Kashmir where the Limitation Act 1963 does not apply, the action started in Indian Court on such contract will be governed by Lex Fori i.e. the Indian limitation statutes. Only exception is where the parties were domiciled in Jammu and Kashmir or in the foreign country during the period prescribed by such rule of limitation.

EXCLUSIONS IN COMPUTATION OF PERIOD OF LIMITATION

1. Exclusion of time in legal proceedings

Section 12 of the Limitation Act, 1963 provides that:

(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 on which the decree or order is founded 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. sl

As per explanation given under Section 10, 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.

The Limitation Act, 1963 prescribes periods of limitation for suits, appeals or applications. The rules as to computation of period of limitation (Sections 12 to 24) not intended to apply only to periods of limitation prescribed by the Schedule but apply also to periods of limitation provided for by other enactments.

Section 12 of the Limitation Act is first of the sections providing for exclusion of time in computing the period of limitation. The Section 12 of the Act excludes from reckoning the day from which the period is to be reckoned and time requisite for obtaining copies of documents referred to in sub-sections (2) to

(4). The true effect of Section 12 is that the periods referred to in the various sub-sections have to be added to the period of limitation. It mo beverage biome elog

There need not be any prayer or application by a party for the time to be excluded under Section 12 of the Limitation Act. This Section 12 confers a substantive right upon a party and it is the duty of the Court to exclude the time when the case comes under the purview of any of the sub-sections of Section 12.

According to sub-section (1) of Section 12 of the Limitation Act, the first day i.e. the day from which a period of limitation is to be computed, must be excluded. And the last day i.e. the day on which the suit is instituted must be included in the calculation. This rule is applicable whenever time has to be computed from a day specified whenever such time is fixed performance of contract or is prescribed by law for the doing of an act or for the institution of the proceedings in a Court of Law.

In Webb v. Fairmaner, [(1838) 3 M&W 473], when goods were sold on 5th October to be paid for in two months from the date of sale it was held that in computing the period of two months 5th day of October shall be excluded and action for price of goods cannot be started until and after expiration of 5th December.

In Krishna Bilas v. Sonadhan, (AIR 1961 Tripura 16), it is held that in a suit of recovery of possession under Section 9 of the Specific Relief Act, the day of dispossession is to be excluded.

In Sita Ram v. State, (AIR 1961 All. 151), it has been held that for an offence under Section 106 of the Factories Act the date on which the offence came to the notice of the Inspector is to be excluded. In Ram Nandan v.

Ramadhar, [AIR 1966 Pt. 297 (FB)], it has been held that in computing the limitation for filing appeal against the Panchayat election, the date of declaration of the result of the election is to be excluded.

In R. Hamira v. Bani Mani, [(1976) 17 Guj.L.R. 729], it is held that the day on which the judgment is pronounced should be excluded in computing the period of limitation for an appeal. The limitation for filing an appeal commences from the date of the judgment and not from the date of decree is signed.

In State of Bihar v. Rameshwar Prosad, (AIR 1994 SC 501), the Supreme Court has held that in the matter of setting aside the award the date on which the filing of the award was made known to the advocate of the applicant has to be excluded under Section 12(1) of the Limitation Act.

In Saketh India Ltd. v. India Securities Lt., (AIR 1999 SC 1090), the notice of returning of the cheque as unpaid was served on the drawer on 29th September, 1995. The period of 15 days for making payment by the drawer under the proviso (c) to Section 138 of the Negotiable Instruments Act is expired on 14th October, 1995. Therefore, the cause of action to file a complaint under Section 138 of the Negotiable Instruments Act arose on 15th October, 1995. In computing the one month limitation period under Section 142(b) for filing a complaint against the drawer the date of 15th October, 1995 is to be excluded. The Court has held that the complaint filed on 15th November, 1995 is within time as it has been filed on the 30th day excluding 15th October, 1995. This rule has been consistently followed and has been adopted in General Clauses Act and in the Limitation Act.

Sub-section (2) of Section 12 of the Limitation Act applies to appeals, an application for leave to appeal, an application for the review judgment and also to

an application or a petition for revision. Section 12(2) is not of general application but only applies to specific categories mentioned therein.

In India House v. Kishan N. Lalwani, (AIR 2003 SC 2084), the Supreme Court has held that no application seeking benefit of Section 12(2) is required and Court is bound by statute to extend the benefit where applicable and no formal application is required to be made.

In Commissioner of Sales Tax v. Madanlal, (AIR 1977 SC 523), it has been held that it would be impermissible to read in Section 12(2) a proviso that the time for obtaining the copy shall be excluded only if such copy has to be filed along with the memorandum of appeal or application for leave to appeal or for revision or for review of judgment.

In Punni v. State, (AIR 1971 All. 387), it has been held, following the decision of the Supreme Court in S.A. Gaffore v. Ayesha Begum, (1970 UJ (SC) 784), that exclusion of time is allowed even when copy is not required to be filed along with the memorandum.

In Krishnji v. N.R. Malti, (AIR 1972 Mys. 274), it is held that when the appeal against the date of signing the decree has to be excluded.

In Jagiri v. Doulat, (AIR 1928 Lah. 755), it has been held that an appellant is entitled to deduct the time spent in obtaining a copy of the first judgment of the trial Court as well as of the judgment passed on review.

In Udayan Chinubhai v. R.C. Bali, (AIR 1977 SC 2319), it has been held by the Supreme Court that under Section 12(2) of the Limitation Act read with the Explanation, the appellant is not entitled to exclude the time that had elapsed

from the date of the judgment till signing of the decree prior to his application for a copy thereof in computing the period of limitation prescribed for filing the appeal.

In India Home v. Kishan N. Lalwani, (AIR 2003 SC 2084), the Supreme Court has modified earlier stand and has overruled all the contrary decisions of different High Courts and has held that Section 12(2) of the Limitation Act says that it is time requisite for obtaining the copy being excluded from computing the period of limitation or the time requisite for obtaining the copy being added to the prescribed period of limitation and treating the result of addition as the period prescribed and that in adopting methodology it does not make any difference whether the application for certified copy was made within prescribed period of limitation or beyond it. The Supreme Court upheld the decision of the Madras High Court which has held that though the application for certified copy of judgment and decree was made after the prescribed period of limitation the period was liable to be excluded in all cases and not depending on whether there is sufficient cause or not.

In State of U.P. v. Maharaja Narain, (AIR 1968 SC 960), it has been held that the expression "time requisite" in sub-section (2) of Section 12 cannot be understood as the time absolutely necessary for obtaining the copy of the order and that what is deductible under sub-section (2) of Section 12 is not the minimum time within which a copy of the order appealed against could have been obtained. The section does not permit the exclusion of the period required for obtaining a certified copy of the decree for the purpose of exclusion.

The question whether the appeal preferred was in time or not should be considered on the basis of information available from the copy of the judgment and decree filed along with the Memorandum of Appeal and not from the other

copies which the party might have got and used for other purposes with which the Court has nothing to do it loo

The time spent in obtaining a copy of the judgment also will be excluded under sub-section (3) of Section 12, because it is generally necessary that the judgment on which the decree of the High Court is based should be obtained in order that the parties may ascertain what its terms are, and further filed with the application for leave to appeal.

In computing the period of limitation for an application for leave to appeal the time requisite for obtaining a copy of the judgment complained of must be excluded. (Baldeo Pershad v. Dwarika, AIR 1957 All. 334). In applying for leave to appeal to the Supreme Court the applicant was not entitled to get any time spent in obtaining a copy of the judgment deducted in computing the period of limitation. (Deep Chand v. Bhago. AIR 1965 Punj. 115).

In Biswapati v. Kenington Store, (AIR 1972 Cal. 172), it has been held that Section 12(3) of the Limitation Act does not apply to an application for execution of a decree. The period of limitation for an execution application therefore runs under Article 136 (old 182) from the date of the judgment and not from the date on which the decree is signed.

According to sub-section (4) of Section 12 of the Limitation Act, the period for obtaining copy of the award to be excluded in computing the period of limitation for an application to set aside an award.

An appeal for execution does not fall in any of the categories of legal proceedings mentioned in Section 12 of the Limitation Act. It, therefore, follows that this section is not applicable to an application for execution.

In Shahjahan Begum v. Zahirul Hasan, (AIR 1972 All. 511), the Allahabad High Court has held that the Explanation in Section 12 implies that the time requisite for obtaining copy is the time taken by the Court in preparing the decree or order before the application for copy is made as also the time taken in preparing the copy after the application therefor has been made.

In Udayam Chinubhai v. R.C. Bali, (AIR 1977 SC 2319), the Supreme Court has held that under Section 12(2) read with the Explanation a person cannot get exclusion of the period that elapsed between the pronouncement of the judgment and the signing of the decree if he made the application for copy only the preparation of the decree. The Supreme Court has pointed out that the time requisite for obtaining a copy under Section 12(2) must be that time which is required for getting a copy of the decree.

In State of Assam v. Govinda Chandra Patel, (AIR 1991 Gau. 104), the Gauhati High Court has held that in view of Section 12(2) read with the Explanation the appellant is not entitled to exclude the time that had elapsed from the date of judgment till the signing of the decree prior to the application for a copy thereof in computing the period of limitation prescribed for filing the appeal.

2. Exclusion of time in cases where leave to sue or appeal as a pauper is applied for

According to Section 13 of the Limitation Act, 1963, in computing the period of limitation prescribed for any suit or appeal in any case where 30 an

application for leave to sue or appeal as a pauper has been made and rejected, the time during which the applicant has been prosecuting in good faith his application for such leave shall be excluded, and the Court may, on payment of the Court fees prescribed for such suit or appeal, treat the suit or appeal as having the same force and effect as if the Court fees had been paid in the first instance.

Section 13 of the Limitation Act specifically excludes the time during which application in forma pauperis is bona fide prosecuted till its rejection from computing the limitation of suit or appeal and it also provides that on plaintiff's paying Court-fee the suit or appeal would be treated as if the Court fee had been paid in the first instance. Such payment of Court-fee should be within such time as was available between the initial filing of the suit and the application and the initial expiry of the period of limitation.

Where the matter is at the stage of suit and an application for permission to sue as a pauper has been made it is competent for the plaintiff to pay the Court fees during the pendency of that proceeding with the permission of the Court and upon the payment of such Court fees the suit is deemed to have been prescribed on the day when the application was first made.

In Bashir Ahmad v. Rashida Khatoon, (AIR 1975 All. 286), it has been held that in such an event on payment of Court fee by an applicant who has been made an application for leave to sue or appeal as a pauper, on payment of Court fee the suit or appeal will not be treated as having the same force and effect as if the Court fee had been paid in the first instance, unless the time for payment of Court fee is extended by the Court. If, however, the Court fee had been paid before the expiry of the period of limitation fixed to which would be added the time during which the applicant had been prosecuting in good faith his application

for leave to sue or appeal as a pauper or within such time as may have been extended by the Court the suit or appeal will be treated as having the same force and effect as having the same force and effect as if the Court fee had been paid in the first instance.

In P. Sreedevi v. P. Appu, (AIR 1991 Ker. 76), it has been held that no time-limit has been set out in Section 13 and the Court can extend time at its discretion to whatever extent it thinks fit. But it must be proved that the applicant acted in good faith when he presented the application as pauper.

In the same case, it has been held that an application to sue as an indigent person was rejected with a time to pay the Court fee, but instead of paying Court-fee and converting the suit filed alongwith application into regular suit, the plaintiff filing suit as a fresh suit on payment of Court-fee, which happened to be beyond limitation the fresh suit could not be saved by invoking Section 13 of the Limitation Act and the suit is liable to be dismissed as time-barred.

3. Exclusion of time of proceeding bonafide in Court without jurisdiction

Section 14 of the Limitation Act, 1963 provides that:

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and

is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in Rule 2 of Order XXIII of the Code of Civil Procedure, 1908, the provision of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the Court under Rule 1 of the Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the Court or other cause of a like nature.

As per Explanation, for the purpose of this section:-

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.

In order to attract the application of Section 14 of the Limitation Act, the following conditions have to be satisfied:

(i) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;

(ii) the prior proceedings had been prosecuted with due diligence and good faith;

(iii) the failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature nature;

(iv) the earlier proceeding and the later proceeding must relate to the same matter in issue; and

(v) both the proceedings are in a Court.

In Vijay v. Diwan, (AIR 1985 SC 1669), it has been expressed that Section 14 has to be liberally construed and unless there is sufficient material to come to the finding that plaintiff had acted dishonestly and with lack of good faith he cannot be denied the benefit of Section 14 of the Limitation Act.

Section 14 of the Limitation Act contains general principle based on justice, equity and good conscience and the principle may be applied liberally but not in disregard of the express words of the section.

The main factor which would influence the Court in extending the benefit of Section 14 of the Limitation Act to a litigant would be whether the applicant's conduct would satisfy the test of prosecuting the suit in good faith and due

diligence. Section 2(h) of the Limitation Act, 1963 explains the term 'good faith' stating that 'nothing shall be deemed to be done in good faith which is not done with due care and attention'. The expression 'good faith' qualifies prosecuting the proceeding in the Court which ultimately is found to have no jurisdiction. Failure to pay the requisite Court fee found deficient on a contention being raised or the error of judgment in valuing a suit filed before a Court which was ultimately found to have no jurisdiction has absolutely nothing to do with the question of good faith in prosecuting the suit as provided in Section 14 of the Limitation Act.

In Globe Transport v. Triveni, [(1983) 4 SCC 755], it has been held by the Supreme Court that the party prosecuting the suit in good faith in a Court having no jurisdiction is entitled to exclusion of that period.

Section 14 of the Limitation Act in terms applies to suits and application only. Section 14 and Section 5 of the Limitation Act, though independent. are not mutually exclusive. Even in case where Section 14 applies, Section 5 is not excluded.

Though Section 14 does not in terms apply to an appeal, the principle underlying the section can be invoked in aid of sufficient cause contemplated by Section 5. But one of the basic requirement of Section 14 is that the remedy pursued must fail on the ground of defect of jurisdiction or like cause.

Section 14 of the Limitation Act provides for exclusion of time or proceeding bona fide in Court without jurisdiction. In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding against the defendant shall be excluded where the proceeding relates to the same matter in issue and is prosecuted in a good faith in a Court which from a defect of jurisdiction is unable to entertain it.

Section 14 of the Limitation Act is mandatory as if the Court has to exclude the time spent in prosecuting a case in good faith, the Court must determine whether the prosecution was in fact in good faith or not and it appears to be necessary corollary that if the prosecution time of the suit is divided into stages, it must, in order to arrive at the period which is to be excluded, also determine how much time must be excluded whether by reason of prosecution in bad faith or owing to any other reason.

The object of Section 14 of Limitation Act is to afford protection to a litigant against the bar of limitation when he institutes a proceeding which by reason of some technical defect cannot be decided on merits and is dismissed.

Section 14 of the Limitation Act will not be attracted when the plaint is filed in a wrong Court out of time.

When a party has been bona fide pursuing a wrong remedy, it would be a fit case for applying the principle embodied in Section 14 of the Limitation Act.

In Ch. Anjaneyulu v. Alapati Hari Prasad, (1996 (4) ALT 798), it has been held that in order to attract the Section 14, it is essential that the Court, in which the prior proceeding was prosecuted, must have been unable to entertain it for the reasons specified, namely, defect of jurisdiction or other cause of a like nature. Thus, the benefit of the Section 14 cannot be obtained where the prior proceedings were dismissed on merits.

The benefit of the provision of Section 14 is not available to criminal proceedings. In Union of India v. Abdul Khadir, (ILR (1964) 1 Ker. 355), it has been held when the suit was rightly filed in the Munsif's Court but subsequently

there was change of forum resulting in the plaint being returned for presentation to District Court then no question of invocation of Section 14 arises and the suit should be deemed to be continuing from its first presentation.

Section 14 of the Limitation Act applies to proceeding before Court. In P. Kaur v. S. Singh, (AIR 1983 P&H 363), it is held that Section 14 is applicable to a suit for possession by way of redemption before the Collector as the Collector acts as Court and proceeding is a civil proceeding In R.R. Shah v J.C. Co., (AIR 1988 Bom. 193), it is held that Section 14 as applicable to the proceedings before the Registrar of Small Causes Court, Bombay adjudicating disputes under Maharashtra Cooperative Societies Act acts as Court. In Commissioner of Sales Tax (The) v. Parson Tools & Plants, [(1976) 1 SCJ 242], that Sections 5 to 14 of the Limitation Act cannot be made to apply for the proceedings under U.P. Sales Tax Act as the appellate authority and Judge (Revision) Sales Tax exercising jurisdiction under U.P. Sales Tax Act are merely administrative tribunals.

In W.K. Deshmukh v. P.B. Deshmukh, [(1998) 7 SCC 447], it has been held that when the writ-petition has been filed by the plaintiff to decide contractual obligation and High Court directed the matter to be decided by Civil Court then the plaintiff in filing civil suit shall get the benefit of Section 14 of the Limitation Act to exclude the time taken for prosecuting the writ petition.

In Union of India v. Orissa State Electricity Board, (AIR 2001 Ori. 109), the claim was wrongly filed in Civil Court though the same should have been filed before the Railway Claims Tribunal. The Civil suit was dismissed for want of jurisdiction. Thereafter claim was filed before the Railway Claims Tribunal. It is held that the time taken before Civil Court in pursuing the civil remedy has to be excluded for computing the period of limitation on the ground that the petitioner

had sufficient cause for delay should be condoned under Section 17 of the Railway Claims Tribunal Act, 1987.

A plaintiff can claim the benefit of the Section 14 of the Limitation Act only where the previous proceedings had been brought by himself or by some person through whom he derives title to sue. If the former proceedings had been instituted by a wrong plaintiff, no deduction can be made.

A plaintiff is entitled to claim the benefit of the provision of Section 14 whether he comes up on the second occasion with the original plaint or a new plaint.

It is not necessary that plaintiff must have been prosecuting the previous proceeding as a plaintiff. He is entitled to a deduction of the period of pendency of a former suit in which he as defendant was urging the same claim as he afterwards prefers as plaintiff. All that is required of a plaintiff or applicant to prove is that he prosecuted the previous civil proceedings in good faith, and if he proves that he may avail himself on Section 14, even though he was not described as a plaintiff or as an applicant in the previous proceedings.

The Section 14 of the Limitation Act is in terms restricted to civil proceedings. A civil proceedings is one in which a person vindicates his civil right. In Narayana Rao v. Kshwarlal, (AIR 1965 SC 1818), the Supreme Court observes that a civil proceeding is one in which a person seeks to enforce by appropriate relief the alleged infringement of his civil rights against another person or the State, and which if claim is proved would result in the declaration of the right claimed and also specific relief such as payment of debt, delivery of specific property, damages, compensation, enforcement of personal rights, determination of status etc. Civil proceedings would include not only appeal but

also civil revision. Some examples of civil proceedings are: (i) a proceeding which seeks relief against the enforcement of a taxation statute; (ii) execution proceedings; (iii) proceedings before revenue Courts; (iv) an insolvency proceeding before an Official Assignee; (v) a suit to recover on a pronote in a Panchayati Adalat. Some examples of non-civil proceedings are: (i) The proceedings before authority appointed under Section 15(1) of the Payment of Wags Act, (ii) The proceedings before Railway authority; (iii) The proceedings under the Child Marriage Restraint Act; (iv) The proceedings under Cattle Trespass Act.

The term 'defect of jurisdiction' in Section 14(2) do not cover such mistakes as the presentation and prosecution of an appeal which did not lie in any Court. The benefit of this section can be availed of only where there is initial want of jurisdiction. If the Court in fact has no jurisdiction but assumes jurisdiction, the Section 14 applies. This section does not require any order of the Court which had no jurisdiction recognising the fact. All it requires is that the Court which has to decide the question of limitation must find that the other Court was unable to entertain the proceeding because it had no jurisdiction.

The words "or other cause of like nature in Section 14(1) of the Limitation Act should be liberally construed. In Gurdit v. Munsha, (AIR 1977 SC 640), it has been expressed that the words "or other cause of like nature" must be construed ejusdem generis with defect of jurisdiction, that is to say, the defect must be of such a character as to make it impossible for the Court to entertain the suit or application and to decide it on merits.

In Johrimal v. Surjan Singh, [(1970) 72 Punj.L.R. 385], it is held that the expression "other cause of like nature" of howsoever wide amplitude, has to be read ejusdem generis to and along with earlier part of the same provision, which

relates to the defect of jurisdiction of the Court. It is not possible to lay down an exhaustive list of all causes showing defect of jurisdiction and each case will depend on its own facts and circumstances.

The legislature in clause (c) of the explanation has provided that misjoinder of parties or of cause of action shall be deemed to be cause of a like nature with defect of jurisdiction. But, Res judicata does not constitute a "cause of a like nature".

Section 14 of the Limitation Act does not apply where the previous proceeding was dismissed after adjudication on its merits, and not because the Court was unable to entertain it. Where the Court which is not in a position to decree the suit as framed permits the plaintiff to withdraw and file a fresh suit, the plaintiff is entitled to the benefit under Section 14(1)

Section 14 of the Limitation Act does not apply where the previous suit was voluntarily abandoned or withdrawn by the plaintiff and then he brings a fresh suit after the expiry of the period of limitation. If the Court was not competent to entertain the suit, and the suit was withdrawn with the leave of Court, the order of withdrawal might be treated as an order returning the plaint, and the provisions of Section 14 would apply to the suit when re-instituted.

There is no real conflict between Rule 2 of Order XXIII of the CPC and the Section 14 of the Limitation Act. In Rabindra Nath v. Sivakami, (AIR 1972 SC 730), one S filed a suit without impleading the Government. The suit was ultimately dismissed by the High Court on the ground that the State was a necessary party. A subsequent suit by S impleading the State was dismissed on the ground of limitation. It was held that S was not entitled to the benefit of Section 14 of the Limitation Act.

Where there is ground for excluding certain periods under Section 14, in order to ascertain what is the date of the expiration of the prescribed period, the days excluded have to be added to what is primarily the prescribed period. Only the period during which the provisions suit was pending in the wrong Court can be deducted. If a plaint presented on the last date or limitation is returned for presentation within a week to the proper Court, the suit will be barred even if the plaint is refiled within a week.

In sub-section (2) of Section 14 of the Limitation Act, the words 'civil proceeding' includes a suit. Section 14(2) is applicable to execution case also. Section 14(2) can be availed of only when there was initial want of jurisdiction.

The words 'the same relief in Section 14(2), have reference to the precise relief sought and cannot be construed in a liberal sense so as to look, to the ultimate object with which that relief is sought. There can be no exclusion, under Section 14(2), of time occupied by the insolvency proceedings against the judgment-debtor, in computing the period of limitation for a decree against him as the proceedings are not for obtaining the same relief.

The sub-section (3) of Section 14 is in the nature of a proviso to Order XXIII, Rule 2 of CPC. The expression 'other cause of the like nature' has to be read ejusdem generis (of the same kind); it does not include res judicata.

Where a plaint is ordered to be returned for presentation to the proper Court but is actually returned several days later, the suit in the wrong Court is said to terminate on the day on which the plaint is actually returned and not on the day on which it is ordered to be returned. The plaintiff is not entitled to any deduction after the date of the endorsement on the plaint required by Rule 10(2)

of Order VII of CPC except perhaps where he can show that the Court delayed the return of the plaint in spite of his endeavour to take it back.

In Brij Mohandas v. Narasinghdas, (AIR 1971 MP 243), it has been held that where an application for execution is returned for filing in proper Court and the same is filed on the next day to the proper Court, no question of limitation arises.

In V.S Managaraja Shetty v. V.C.K. Subbaiah, [(1969) 17 LR 274), it has been held that if the order returning the plaint is passed on the 4th May and the plaintiff is given time till the 30th June for presentation in the proper Court, the period between 4th May and 29th June is to be excluded under Section 14 of the Limitation Act.

According to Section 29(2) of the Limitation Act, Section 14 applies although the case is governed by a special or local law of limitation, unless it expressly excludes by the special or local law. Hence Section 14 of the Limitation Act does not apply to adjudication under Section 9 of the Provincial Insolvency Act.

4. Exclusion of time in certain other cases

Section 15 of the Limitation Act, 1963 provides that:

(1) In computing the period of limitation any suit or application for the execution of a decree, the institution or execution of which has been stayed by 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.

(2) In computing the period of limitation for any suit of which notice has been given, or for which the previous consent or sanction of the Government or any other authority is required, in accordance with the requirements of any law for the time being in force, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded. As per explanation, in excluding the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be counted.

(3) In computing the period of limitation for any suit or application for execution of a decree by any receiver or interim receiver appointed in proceedings for the adjudication of a person as an insolvent or by any liquidator or provisional liquidator appointed in proceedings for the winding up of a company, the period beginning with the date of institution of such proceeding and ending with the expiry of three months from the date of appointment of such receiver or liquidator, as the case may be, shall be excluded.

(4) In computing the period of limitation for a suit for possession by a purchaser at a sale in execution of a decree, the time during which a proceeding to set aside the sale has been prosecuted shall be excluded.

(5) In computing the period of limitation for any suit the time during which the defendant has been absent from India and from the territories outside India under the administration of the Central Government, shall be excluded.

Section 15 of the Limitation Act applies to a special or local law unless expressly excluded as per Section 29(2) of the Limitation Act, 1963. In Trustees of the Port of Madras v. Mettur Chemical & Industries Lid.. Salem, (AIR 1967 Mad. 109), it

has been held that in a suit against the Port Trust the period of notice can be excluded in computing limitation prescribed in Section 110 of the Port Trust Act.

The object of Section 15(1) is to safeguard the interest of the person who is precluded by an injunction or order of Court from exercising a right of suit or execution of a decree passed in his favour against his being injured or damnified on that account.

As Section 15 refers to a suit or an application for execution, Section 15(1) does not apply to appeals or applications other than the application for execution. Section 15(1) is attracted for excluding the period of stay for any suit institution of which has been stayed by an injunction or order issued by Court. In order to invoke Section 15(1), there must be a decree which is operative.

A party seeking to take advantage of Section 15(1) must show that he was earlier restrained by an order from making the prayer which he is now making. But if he could have done earlier what he is trying to do now, Section 15(1) will not be attracted to his case.

In Ganpat Singh v. Kailash Shankar, (AIR 1987 SC 1443), the Supreme Court has held that an application under Order XXI, Rule 95 of the CPC cannot be construed as an application for execution.

The principle of Section 15(1) has been applied when the suit is stayed under Order XXXII, Rule 10 of CPC, in Govind Naik v. Basavanneva, (AIR 1941 Bom. 203).

Section 15(1) comes into play only where the institution of a suit or execution of decree has been stayed by an injunction or order. In such a case

the whole period during which the injunction or order is in force must be excluded in computing the period of limitation for such suit or application. It is immaterial whether the stay is direct or indirect. Consequence of the order of the Court, but the period of injunction is a period of time which has to be fully cut out, removed out of reckoning and excluded in the computation of limitation for execution.

The expression "stayed by injunction or order" in Section 15(1), has reference to order of the Court and not to disability to sue or apply for execution. Section 15(1) applies only to injunction or order judicially made by the Courts but do not extend to administrative instructions issued to Courts to keep execution cases pending until further orders. In order to attract Section 15(1), it is only the order of stay passed by the Court is necessary and not that the order is proper or valid. In Jurawan v. Mahabir, (40 All. 198), it has been held that an order merely giving time to the judgment-debtor for payment is not an order staying execution or an injunction, and Section 15 does not apply.

In B. Singh v. S. Singh, (AIR 1983 P&H 174), it has been held that Section 15(1) of the Limitation Act applies also to cases of a partial stay, but only so as to allow exclusion of the period of the stay in the computation of time for a further execution against the person or the property as against whom or which execution was previously stayed and not so as to allow exclusion of that period for the purposes of a future execution against persons or properties not affected by the stay order.

Section 15(1) is not confined to cases of direct stay or injunction, but can be executed to orders which indirectly but very affirmatively and effectually cause a stay.

The period of exclusion under Section 15(1) starts from the date on which the injunction or order staying the suit or execution is passed and continues till the date of its withdrawal. For that purpose both the starting and closing days as well as the period intervening them should be excluded.

As per Section 15(2), the period of notice given in accordance with the requirement of any enactment for the time being in force shall be excluded.

In IPS Trading Co. v. Union of India, (AIR 1973 Cal. 74), it has been held that where a plaintiff is required to give notice to the Government under Section 80 of the CPC, he is entitled to exclude the period of notice in computing the period of limitation prescribed for the suit as per Section 15(2) of the Limitation Act.

Section 15(2) expressly provides for the exclusion of the period required for obtaining the previous consent or sanction of the Government or any other authority in computing limitation.

In Premlata v. Lakshman, (AIR 1970 SC 1525), it is held that under sub-section (2) of the Section 15, the notice must be a notice of suit and the enactment requiring the notice to be given must prescribe the period of notice before the expiry on which the claimant cannot institute a suit.

In TPK Nair v. Union of India, (AIR 199 Ker. 80), it has been held that even if notice under Section 80 of the CPC was not strictly needed to be served upon the Government but when such a notice was served and the suit was instituted two months of the last date of limitation, then it is within time in view of Section 15(2) of the Limitation Act.

Section 15(2) will not be attracted where the plaintiff has no cause of action against the Union of India.

Where the notice under Section 80 of the CPC was issued before the accrual of cause of action the period of notice will not be excluded under Section 15(2).

Under Section 15(3) of the Limitation Act, a receiver including an interim receiver or a liquidator including a provisional liquidator appointed in a proceeding for adjudication of a person as an insolvent or in proceeding for the winding up of a company as the case may be is entitled for the exclusion of the period between the date of application and the date of appointment and also additional period of three months thereafter in computing the period of limitation for filing suit or execution as such receiver of liquidator. Section 15(3) has specifically provided for giving him a period of three months after his appointment to file a suit or a petition for executions as he requires time to acquaint himself with the affairs of the estate or of the company, as the case may be.

To obtain the benefit of Section 15(4), the following conditions have to be fulfilled:

(1) The suit should be one for possession by the purchaser at a sale in execution of the decree; and

(ii) It should be a suit and not an application.

If the above conditions are fulfilled then the time during which a proceeding for setting aside the sale had been prosecuted shall be excluded. As Section

15(4) only attracts a suit and not an application, the application under Order XXI, Rules 95 and 96 of the CPC will not attract Section 15(4) of the Limitation Act.

Section 15(5) of the Limitation Act has reference only to the absence of the defendant from the realm, not to that of the plaintiff. A plaintiff out of the realm may prosecute a suit by his attorney, but when the defendant is out of the realm it is very hard to call upon the plaintiff to institute a suit.

The plaintiffs voluntary absence in a foreign country cannot bar the operation of limitation. Section 15(5) is equally inapplicable even if the plaintiff's absence may be involuntary through transportation.

In sub-section (5) of Section 15, the defendant is one who was at one time present in India and later has been absent from India. A person who has never been in India cannot be considered as having been 'absent from India'. The onus is upon the plaintiff to prove that the defendant has been absent from India or from the territories under the administration of Government of India.

In P.J. Johnson v. Astrofied Armadorn, [AIR 1989 Ker. 53 (FB)], the Court has held that in a suit for recovery of money for goods and services supplied to the ship of a foreign Corporation the foreign corporation was never present in India and necessarily, therefore, was never absent from India and Section 15(5) cannot, therefore, be attracted while computing the period of limitation for a suit filed in India against such corporation to recover the price of goods and services.

In Jivanraj v. Babaji, [29 Bom. 68 (70)], it has been held that the period of defendant's absence would be deducted from computation, no matter whether such absence took place before or after the accrual of the cause of action.

In Muthukanni v. Andappa, [AIR 1955 Mad. 96 (FB)], it has been held that in a suit against partners, where one of the partners is absent from India, it has been held that the fact of his absence entitles the plaintiff to deduct the time not against all the defendants, but against the absentee defendant only; and the fact that the plaintiff has allowed the suit to be barred against the other partners who are present in India during the absence of the absentee is not a ground for holding that the claim against the absentee is also barred by limitation.

Section 15(5) of the Limitation Act applies even where to the knowledge of the plaintiffs, the defendants (partners in a firm) are during the period of their absence carrying on business in India through an agent, who is empowered to institute and defend suits.

According to Section 2(e) of the Limitation Act, 'defendant' includes (i) any person from or through whom a defendant derives his liability to be sued; (ii) any person whose estate is represented by the defendant as executor, administrator or other representative. So the expression 'the time during which the defendant has been absent from India' must be read as 'time during which the defendant or any person from or through whom the defendant derives his liability to be sued has been absent from India'.

• Section 16: Effect of death on or before the accrual of the right to sue:

• Section 16 deals with how death affects start of limitation period when (1). The person who has the right to sue dies before the right accrues, or (2). The person against whom the right lies dies before the right accrues.

• Section 16(1): If a person who would have had the right to sue dies before the right accrues, the limitation period begins when there is legal representative capable of suing.

• Section 16(2): If a person against whom the right to sue exists dies before the right accrues, limitation begins when there is legal representative of the deceased who could be sued.

• Section 16(3): This section does not apply to suits to enforce rights of pre-emption, or for possession of immovable property.

• Case laws:

1. (1). Shiv Dayal v. Sant Ram AIR 1951 All 791: If the plaintiff dies before the right to sue accrues, limitation start only when a
legal representative becomes capable of suing.

2. (2). T. Kaliamurthi v. Five Gori Thaikal Wakf (2008) 9 SCC 306: Section 16(3) was discussed—it bars the application of section
16 to suits for possession of immovable property, reaffirming that limitation still runs even if death occurs.• Section 17: Effect of fraud or mistake:

• When a suit or application is based on fraud or mistake the limitation period doesn't begin until the fraud is discovered or the mistake is known or could have been discovered with reasonable diligence.

• The fraud/ mistake must directly relate to the cause of action.

• Plaintiff must prove they were kept from knowledge despite reasonable diligence.

• Once discovered, the limitation starts running.

• Case laws:

1. (1). P.S. Sadasivaswamy v. State of Tamil Nadu (1975) 1 SCC 152: Limitation does not automatically extend merely because a person

alleges fraud there must be a clear proof of it and that it prevented earlier action.

2. (2). Ramesh B Desai v. Bipin Vadilal Mehta (2006) 5 SCC 638: Section 17 is applicable only when the plaintiff could not have
discovered the fraud/ mistake despite reasonable diligence.

3. (3). Raja Harish Chandra Raj Singh v. Dy. Land Acquisition Officer AIR 1961 SC 1500: Limitation start when the party first becomes
aware of the cause of action—-used as a guiding principle even before Section 17 was codified.

• Section 18: Effect of acknowledgment in writing:

• If, before the expiration of the prescribed limitation period, a person acknowledges a liability in writing and signs it, a fresh limit
period begins from the date of acknowledgment.

• Acknowledgment must be in writing.

• It must be signed by the party against whom the right is claimed.• It must be made before the original limitation period expires.

• It need not contain a promise to pay, but must admit the existence of a legal relationship.

• It must relate to an existing liability.

• Case laws:

1. (1). Shapoor Freedom Mazda v. Durga Prasad Chamaria AIR 1961 SC 1236: Acknowledgement under section 18 must
be conscious and voluntary and should show a clear admission of liability.

2. (2). Sampuran Singh v. Niranjan Kaur (1999) 2 SCC 679: A mere reference to a past debt is not enough. There must be
a clear admission of the subsisting liability.

3. (3). Food corporation of India v. Assam state Coop. Marketing (2004) 12 SCC 360: An acknowledgment in a balance

sheet or a statement of account can extend limitation, if it meets the conditions under Section 18.

• **Section 19**: Effect of payment on account of debt or on interest of legacy:
• If any part payment of a debt or interest on a legacy is made before the expiration of limitation period and it is acknowledged
in writing by the debt, a fresh limitation period start from the date of that payment.
• Payment must be payed within the original limitation period.
• It must be a part payment of a debt or interest of legacy.
• The payment must be acknowledged in writing.
• The acknowledgment must be signed by the person making the payment or their agent.• Case laws:
1. (1). Seth Talakchand v. Moolchand AIR 1925 Nag 218: Part payment restarts limitation only when accompanied by a
written acknowledgement, not just oral payment.
2. (2). Sant Lal Mahton v. Kamla Prasad AIR 1951 SC 477: Payment by a third party can extend limitation only if authorised
by the debtor.

• Suo moto writ petition No.3/2020 in the pandemic period of COVID 19 (specifically between march 15, 2020, February 28, 2022) the limitation period for legal actions was extended. Regardless of the original limitation period, all persons were given a new 90 days period from march 1, 2022 to file their cases. The Indian government extended the limitation period for various legal actions to address the challenges caused by the covid 19 pandemic. The extension applied to the period between march 15,2020, and February 28,2022 according to the Supreme Court of India ruling.

SUIT ON PRONOTE:

The limitation for such suits is 3 years from the date of pronote as per Art.35 of the Limitation Act, 1963. Where a payment is made before the expiration of three years by the person liable to pay the debt and endorses on the document or otherwise acknowledges the debt, a fresh period of limitation shall be computed from the time when the payment was so made or the debt so acknowledged as per Sec. 19 of the Limitation Act, 1963.

SUIT ON MORTGAGE DEEDS:

Suit to enforce payment of money secured by mortgage of immoveable property shall be filed within 12 years of the mortgage as per Art.62 of the Limitation Act, 1963.

However, where a payment is made before the expiration of limitation by the mortgagor and endorses on the document or otherwise acknowledges the debt, a fresh period of limitation shall be computed from such payment or acknowledgment as per Sec. 19 of the Limitation Act, 1963.

SUIT ON ACCOUNTS:

Suit for maintenance will be generally for recovery of past and future maintenance. Such suits shall be filed within three years from the date when the arrears are payable as per Art. 105 of the Limitation Act, 1963. To be more specific, arrears of maintenance can be claimed for three years immediately prior to presentation of plaint.

SUIT FOR PERMANENT/MANDATORY INJUNCTION:

Limitation for such suits is 3 years from the date when right to sue accrues as per Art. 113 of the Limitation Act, 1963.

SUIT FOR DECLARATION:

Limitation for such suits is 3 years from the day when the right to sue first accrues as per Art.58 of the Limitation Act, 1963.

SUIT FOR DECLARATION AND POSSESSION:

Limitation for such suits is 12 years from the day from which the possession of the defendant becomes adverse to the plaintiff under Article 65 of the Limitation Act, 1963.

SUIT FOR PARTITION:

Limitation for such suits is twelve years from the date the plaintiff has knowledge that his share is denied as per Art. 110 of the Limitation Act, 1963.

SUIT FOR CANCELLATION OF DECREES AND OTHER DOCUMENTS:

Limitation for such suits is three years from the date when the facts entitling the plaintiff to have the instrument or decree cancelled as per Art.59 of the Limitation Act, 1963.

SUIT TO SET ASIDE A TRANSFER OF THE PROPERTY MADE BY THE GUARDIAN OF WARD.

If such suit is brought by the ward himself after attaining the majority, the limitation shall be three years from the date when he attained majority as per Art.60 (a) of Limitation Act, 1963.

If the ward dies after attaining the majority and his legal representative intends to bring a suit, he shall file the suit within three years from the date when the ward attains majority. If the ward dies even before attaining majority and his legal representative intends to bring a suit, he shall do it within three years of death of the ward.

SUIT FOR SPECIFIC PERFORMANCE OF CONTRACT:

Limitation for such suits is three years from the date fixed for the performance or if no such date is fixed, when the plaintiff has notice that performance is refused as per Art.54 of the Limitation Act, 1963.
Court fee on such suits shall be paid on the amount of consideration mentioned in the document U/s 39(a) of A.P. Court Fee & Suits Valuation Act, 1956.

SUIT FOR EASEMENTARY RIGHTS:

Limitation for such suits is three years from the date when the right to sue first accrues as per Art.58 of Limitation Act.

Coming to Original Petitions:-Besides the above general requirements, for

Land Acquisition Petitions-it is to be verified whether the claim is in time to mean for Sec 18 reference protest raised with in the prescribed time, for that to see whether Sec. 9&12 notices served properly or not and whether the Person or Institution or Organization for whose benefit land acquired by Government, is impleaded in the reference or not. Service of notice on the party for whose benefit land acquired is necessary.

Further the High Court's Circular ROC No 488/SO-1-2000 dated 17-10-2002 has to be brought to the notice of the PO at the time of enquiry of the LA OPs in order to ascertain from the LAOs whether there are any other OPs pending from the same award for taking steps to transfer all such OPs for common disposal or separate disposal by only one Court.

Succession Petitions: It is to be verified whether the pleadings contain facts

specifically as to the deceased did not execute any will for the debt in question and thereby the petitioners are only the persons entitled as nearest heirs of the deceased to the debt and that there are no other nearest heirs than the petitioners. It is also to be stated that no similar or previous succession O.P. proceedings pending or disposed off in any court or other authority and if there was any previous succession O.P. disposed off it must stated as to the O.P. filed is a continuation to that by giving the details of the previous matter. Death certificate and other documents in proof of death of
deceased and existence of debt must be clearly stated in the pleadings and enclosed to the petition with list.

Pauper petitions: Along with plaint to be referred as petition, a schedule showing the properties of the petitioner to be filed by showing therein what are the properties that are exempt from means under Section 60 C.P.C.The subject

matter of the suit property unless it is in the possession and enjoyment of the petitioner, can not be considered as means.

Matrimonial Matters: - In the case of Muslims - it is by way of suit for dissolution or restitution of conjugal rights or annulment of marriage etc. reliefs. They are governed by personal law and dissolution of Muslim Marriage Act 1939 and Muslim Marriage and Divorce Registration Rules1975. (For checking- see-Sections 2 to 5 of the Act 1939, 1975 Rules and Mohammedan Law- Mulla-Chapters xiv to xvi).

In the case of Christians it is by original petition for dissolution or nullity of marriage and restitution of conjugal rights etc. and they are governed by Indian Divorce Act, 1869 and Indian Christian Marriage Act, 1872. (Both Amended in 2001).(For checking see-Sections 5,9 to11,25,27,51,60,61&80 of the Act 1872 and Sections-10,10A,11,19,22,26,27,32,36,37,40,41,43,45 to50 of the Act1869).

In the case of the couple belonging to different religions and/or if the marriage is registered under Special Marriage Act, they are governed by Special Marriage Act, 1954. (For checking-see-Sections-4,12,13,21,22 to32,35 to 38& 40-C).

In the case of one of the spouses at least is an Indian citizen and when the marriage between the couple took place in a foreign country before a marriage officer they are governed by Foreign Marriage Act, 1969 as per Chapter III of the Act registration of the marriage is required besides certificate by marriage officer about performance of the marriage (As per Chapter VI Sec.23. the Central Government has to recognize the marriage performed in a Foreign country as per foreign law by notification in the official gazette). For matrimonial reliefs they

are governed by Special Marriage Act, 1954 R/W Sec. 18 (Chapter IV) of The Foreign Marriage Act.

• **Conclusion:**

• The computation of limitation period under the Limitation Act,1963 is guided by the combination of general principles and specific exceptions provided across Sections 12 to 24.

These provisions aim to balance the interests of both parties —ensuring timely assertion of rights while also protecting those who may have been prevented from acting due to valid reasons such as fraud, mistake or legal restrictions.

Section 27 of Limitation act applies only to persons who are out of possession and seeks to recover possession, but not to the case of person who is still in possession of the property.

- **CONDITIONS AS TO TIME AND LIMITATION UNDER DIFFERENT STATUTES:**

- **PERIOD OF LIMITATION UNDER CODE OF CIVIL PROCEDURE:**

- **Order 8 Rule 1 Written Statement**—

"The Defendant **shall, within thirty days from the date of service of summons on him, present a written statement of his defence**: Provided that where the defendant fails to file the written statement within the said period of thirty days, **he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons**.
Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.

- **Order 22 rule 2** Procedure where one of several plaintiffs or defendants dies and right to sue survives. — Where there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to the effect to be made on the record,. and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

- **Article 120 of The Limitation Act**, 1963- Under the Code of Civil Procedure, 1908 (5 of 1908) to have the legal representative of a deceased plaintiff or appellant, or of a deceased defendant or respondent, made a party- Ninety days. The date of death of the plaintiff, appellant, defendant or respondent as the case may be.
- **Order 23 rule 1A -** When transposition of defendants as plaintiffs may be permitted.—Where a suit is withdrawn or abandoned by a plaintiff under rule 1, and a defendant applies to be transposed as a plaintiff under rule 10 of Order I the Court shall, in considering such application, have due regard to the question

whether the applicant has a substantial question to be decided as against any of the other defendants.

2. Limitation law not affected by first suit.—**In any fresh suit instituted on permission granted under the last preceding rule, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted.**

- **Order 22 Rule 9(2)** of CPC - The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee or the receiver in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal; and if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

Article 120 - Under the Code of Civil Procedure, 1908 (5 of 1908) within ninety days date of death of the plaintiff, appellant, defendant or respondent as the case may be, the legal representative of a deceased plaintiff or appellant, or of a deceased defendant or respondent should be made a party to the suit and also in the interim application.

Order 21 rule 92(2): Where such application is made and allowed, and where, in the case of an application under rule 89, the deposit required by that rule is made within **thirty days** from the date of sale, or in cases where the amount deposited under rule 89 is found to be deficient owing to any clerical or arithmetical mistake on the part of the depositor and such deficiency has been made good within such time as may be fixed by the Court, the Court shall make an order setting aside the sale: **Provided** that no order shall be made unless notice of the application has been given to all persons affected thereby.

Order 21 Rule 85: Time for payment in full of purchase-money.

The full amount of purchase-money payable shall be paid by the purchaser into Court before the Court closes on the fifteenth day from the sale of the property: **Provided** that, in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any set-off to which he may be entitled under rule 72.

- **LIMITATION ACT, 1963:**

- **Sec. 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."

- **Sec 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 reopens. 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."

The Schedule annexed to the Limitation Act lays down limitation period to various provisions of law and few are extracted herewith:

- Article 32 states that a claim on a bill of exchange payable at sight, or after sight but not at a fixed time is **3 years** from the date when the bill is presented.
- Article 42, a claim by a surety against the principal debtor can be applied within 3 years from the date when the surety pays the credit.
- A claim for Mense profit under Article 51 for the profits of immovable property belonging to the plaintiff which have been wrongfully received by the defendant can be made within **3 years** when the profits are received.
- Article 54 specifies that a suit for Specific Performance of a contract can be made within **3 years** from the date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.
- Article 59 states suit to cancel or set aside an instrument or decree or for the rescission of a contract can be filed within 3 years from the day when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.
- Article 67, by a landlord to recover possession from a tenant within 12 years from the date when the tenancy is terminated.

- Article 73-For compensation for false imprisonment within 1 year from the date When the imprisonment ends.
- Article 74-For compensation for a malicious prosecution within 1 year from the date ends When the plaintiff is acquitted or the prosecution is otherwise terminated.
- Article 100- To alter or set aside any decision or order of a civil court in any proceeding other than a suit or any act or order of an officer of Government in his official capacity within 1 year from the date of final decree.
- Article 109- By a Hindu governed by Mitakshara law to set aside his father's alienation of ancestral property, Twelve years when the alienee takes possession of the property.
- Article 113- Any suit for which no period of limitation is provided elsewhere in this Schedule, the limitation period of three years shall apply from the date when the right to sue accrues.
- Article 122- To restore a suit or appeal or application for review or revision dismissed for default of appearance or for want of prosecution or for failure to pay costs of service of process or to furnish security for costs- 30 days from the date of dismissal.
- Article 123- To set aside a decree passed ex-parte or to re-hear an appeal decreed or heard ex-parte- 30 days from the date of the decree or where the summons or notice was not duly served, when the applicant had knowledge of the decree.
- Article 137- Any other application for which no period of limitation is provided elsewhere in this division-3 years from the date when the right to apply accrues.

- **Section 25 of Limitation Act: 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.

- **Sec. 30-**Provision for suits, etc., for which the prescribed period is shorter than the period prescribed by the Indian Limitation Act, 1908. —

Notwithstanding anything contained in this Act,—(a)any suit for which the period of limitation is shorter than the period of limitation prescribed by the Indian Limitation Act, 1908 (9 of 1908), may be instituted within a period of seven years next after the commencement of this Act or within the period prescribed for such suit by the Indian Limitation Act, 1908 (9 of 1908), whichever period expires earlier: Provided that if in respect of any such suit, the said period of seven years expires earlier than period of limitation prescribed therefore under the Indian Limitation Act, 1908 (9 of 1908) and the said period of seven years together with so much of the period of limitation in respect of such suit under the Indian Limitation Act, 1908 (9 of 1908), as has already expired before the commencement of this Act is shorter than the period prescribed for such suit under this Act, then, the suit may be instituted within the period of limitation prescribed therefore under this Act;

(b)any appeal or application for which the period of limitation is shorter than the period of limitation prescribed by the Indian Limitation Act, 1908 (9 of 1908), may be preferred or made within a period of ninety days next after the commencement of this Act or within the period prescribed for such appeal or application by the Indian Limitation Act, 1908, whichever period expires earlier.

- **Specific Relief Act, 1963:**

- The occupant of the land who has been dispossessed from such land without following the due process of law only when such occupant is not the owner of the property. Then such an occupier can file a suit under Sec. 6 of the SRA, 1963.

- Sec. 6(2) (a) lays down the period of 6 months limitation within which a suit under Sec. 6 of SRA "shall" be filed and makes it clear that no such person or anyone through him can claim for recovery of possession after expiry of 6 months starting from the day of the dispossession.

Article 64 of the Limitation Act mentions that 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 the claim can be made within 12 years from the date of such dispossession.

"**Section 6 of Specific Relief Act, 1963** –

Suit by person dispossessed of immovable property.—

(1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.

(2) No suit under this section shall be brought—
(a) After the expiry of six months from the date of dispossession; or
(b) Against the Government.

(3) No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.
(4) Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof."

- **Sec. 21**of Specific Relief Act, 1963-

The bare reading of the section 21(5) says that the plaintiff can claim compensation in his plaint claiming Specific Performance of a contract and even if he fails to do so the **court shall at any stage of proceedings allow the plaintiff to amend the plaint by imposing such terms which the court feels just for allowing to include such claim for compensation.**

"21. Power to award compensation in certain cases.—

(1)In a suit for specific performance of a contract, the plaintiff may also claim compensation for its breach, either in addition to, or in substitution of, such performance.

(2)If, in any such suit, the court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him such compensation accordingly.

(3)If, in any such suit, the court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

(4)In determining the amount of any compensation awarded under this section, the court shall be guided by the principles specified in section 73 of the Indian Contract Act, 1872 (9 of 1872).

(5)No compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint: Provided that where the plaintiff has not claimed any such compensation in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just, for including a claim for such compensation.

Explanation.—The circumstance that the contract has become incapable of specific performance does not preclude the court from exercising the jurisdiction conferred by this section.

In the case of Ragu Thilak D. John v. S. Rayappan[1] the Hon'ble apex court held that the issue of limitation in an application for amendment varies from case to case. In some instances, the issue of limitation becomes a matter of dispute in the suit itself. In such cases, the application for amendment may be allowed to help resolve the case.

- Limitation to file claim petitions: Relevant provisions are Section 47, Order XXXVIII Rules 8, 10 and 11, Order XXI Rules 58, 59 and 97 to 104 Code of Civil Procedure. Rule 246 of Civil Rules of Practice. Articles 128 and 129 of Limitation Act. Article 137 of the limitation Act states that the claim petition shall be filed within a period of 3 years.

IV. INSOLVENCY AND BANKRUPTCY ACT

[1]AIR 2001 SUPREME COURT 699

- **238A. Limitation.** --The provisions of the Limitation Act, 1963 shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be.

- Since the Limitation Act is applicable to applications filed under Sections 7 and 9 of IBC from the inception of IBC, Article 137 of the Limitation Act gets attracted. Article 137 of the Limitation Act provides the period of limitation in case of "any other application for which no period of limitation is provided elsewhere" as three years from the time when the right to apply accrues. "The right to sue", therefore, accrues when a default occurs.

If the default has occurred over three years prior to the date of filing of application under IBC, the application would be barred under Article 137 of the Limitation Act, except in those cases where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such application.

B. **<u>DIFFERENT RELIEFS WITH DIFFERENT PERIOD OF LIMITATIONS:</u>**

- **INHERENT POWERS OF THE CODE UNDER CPC:**

- **Section 148 of Code of Civil Procedure: Enlargement of Time-**

Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, not exceeding thirty days in total, even though the period originally fixed or granted may have expired.

- "**Order 7 rule 6 CPC** Grounds of exemption from limitation law.—Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaint shall show the ground upon which exemption from such law is claimed: **Provided that the Court may permit the plaintiff to claim exemption from the law of limitation on any ground not set out in the plaint, if such ground is not inconsistent with the grounds set out in the plaint**."

- "**Order 22 Rule 4 (4) of CPC** The Court whenever it thinks fit, **may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have**

the same force and effect as if it has been pronounced before death took place.
(5) Where— (a) the plaintiff was ignorant of the death of a defendant, and could not, for that reason, make an application for the substitution of the legal representative of the defendant under this rule within the period specified in the Limitation Act, 1963 (36 of 1963), and the suit has, in consequence, abated, and

(b) the plaintiff applies after the expiry of the period specified therefore in the Limitation Act, 1963 (36 of 1963), for setting aside the abatement and also for the admission of that application under section 5 of that Act on the ground that he had, by reason of such ignorance, sufficient cause for not making the application with the period specified in the said Act, **the Court shall, in considering the application under the said section 5, have due regard to the fact of such ignorance, if proved.**

- **Article 120** - Under the Code of Civil Procedure, 1908 (5 of 1908) to have the legal representative of a deceased plaintiff or appellant, or of a deceased defendant or respondent, made a party the limitation period is **Ninety days** from the date of death of the plaintiff, appellant, defendant or respondent as the case may be.

- **Article 121** of the Limitation Act, 1963- the **Limitation period to apply for setting aside an abatement order is 60 days from the date of abatement.**

- **SECTION 5 OF THE LIMITATION ACT, 1963- 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 misled 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.

- Article 131 of the Limitation Act specifies the limitation period to prefer the revision under Sec 115 of CPC is **90 days from the date of order** under challenge or from the date of knowledge of the order by the revision petitioner. Section 5 of the Limitation Act is applicable to the civil revisions and if the delay is explained with the sufficient cause then the same can be condoned.

- **In the case of L.J. Leach & Co. Ltd. v. Jardine Skinner & Co.[2],** the Hon'ble Supreme Court has stated that if an application for amending pleadings is debarred by the Limitation Act, it can be a ground for rejecting the application. However, the court also has discretionary power to allow the amendment if it deems it necessary to secure the ends of justice.

- **In South Konkan Distilleries & Anr v. Prabhakar Gajanan Naik & Ors[3],** the hon'ble apex court ruled that **-** It is a settled principle that the court can disallow an application for amendment if, on the date of filing the application, it is barred by limitation. Nevertheless, this does not mean the court cannot grant the application. The court retains discretionary power to allow the amendment if it believes it is necessary to serve the interests of justice.

- **AMENDMENT OF PLEADINGS- THE ASPECT OF LIMITATION:**

- **Definition of Amendment of Pleadings:**

Any paper filed in the court of law becomes the record of the court in which it is filed and to meet the ends of justice, change in the facts and circumstances of a case must be informed to the court through filing a petition to amend the plaint as per the requirements of the new facts or change in the old facts, subject to limitation period.

The proviso to Order VI Rule 17 of the Code of Civil Procedure (CPC) is that an amendment shall not be allowed after the commencement of trial, unless the Court concludes that the party could not have raised the matter before the commencement of trial, despite due diligence.

"Order 6 Rule 17 Amendment of pleadings.—The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties: Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter **before the commencement of trial."**

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2 1957 AIR 357

3 AIR 2009 SUPREME COURT 1177

- **Rule 28 of Civil Rules of Practice** states the procedure for Amendment in pleadings**:**

An application for amendment made under Order1 Rule 103, Order 6 Rule 17, or Order 22 of the Code, shall also contain a prayer for all consequential amendments. The Presiding Officer shall reject the application if it is not in accordance with the law or these rules: Provided that verbal corrections may at any time be made in pleadings with permission of the Court.

For example, in a suit for partition, if any one of the plaintiffs or the defendants dies during the pendency of the suit, then the plaintiff has a remedy to file the petition under Order 1 Rule 10 of the Code of Civil Procedure within 90 days of such death, the limitation counting from the day on which the information of such death came to the notice of the plaintiff, to seek the permission of the court to allow the plaintiff to bring on record the legal representatives of such deceased party to the suit for representing on behalf of the deceased party for the better adjudication of the suit.

- Question: can the amendment of plaint allowed when the cause of action for amendment arises after the institution of suit or trial?
- Amendment of plaint is not a matter of right, but is matter of wide powers of the court provided by the statue itself under Sec. 148 and 151 of CPC. court has discretion to allow or dismiss the amendment petition filed even after commencement if trial but such discretion is to be acted upon very consciously after the examination of various factors **such as whether the petition is barred by limitation, what is the extent of negligence of party and whether it is matter of inadvertence, whether such whether the amendment changes the nature of the suit, whether any prejudice is caused to the respondents by such amendment**, etc.
- For example-Plaintiff files a suit for recovery of possession of property but later amends to include additional reliefs.

- ***In Mohinder Kumar V/s Roop Rani Mehta***[4] *the apex court has held that "if an amendment application, within the meaning of the provisions of Order VI Rule 17 CPC if filed after commencement of trial, it has to be shown that in spite of due diligence such amendment could not have been sought earlier, for preventing frivolous applications, which is filed to delay the trial".*

[4](2018) 2 SCC 132

- The plaint can be amended only with the permission of the court and after hearing both parties. The Petition filed U/O 6 rule 17 of CPC can be filed to amend both the written statement as well as the plaint and are subject to limitation period.

- If the amendment is allowed then the amendment in the plaint has to be carried out within the time prescribed by the court or within 14 days of order, when the court has not set the time to amend the plaint. If the petitioner fails to amend the plaint within time prescribed then the court **shall not allow** petitioner to carry out the amendment of plaint at a later stage.

"Order 6 rule 18 Failure to amend after Order.—If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited then within fourteen days from the date of the order, **he shall not be permitted to amend after the expiration of such limited time** as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court."

- **Question** - If the new reliefs are time-barred, can they be allowed?
- Answer- The Courts have to analyze whether the amendment is connected to the original claim or introduces a fresh cause of action. Amendments introducing new, time-barred claims are not permitted unless they relate back to the original claim.

- An amendment withdrawing the admission of fact cannot be allowed.
- The power under Order 6 Rule 17 of CPC cannot be exercised Suo motu.

- **In Muddada Apparao died and anr v/s M.Nagender prasad rao**[5] *the Hon'ble Supreme court ruled that:*

"9. Before parting with the case, it is necessary to advert to one more aspect urged by the learned senior counsel for the revision petitioners. He would submit that without prejudice to the submission that Order VI Rule 18 of the Code has no application to the present context and assuming for a moment that the said provision is applicable still the said provision is only procedural in nature and hence, shall not come in the way of doing substantial justice. The Supreme Court in a number of decisions had held that rules of procedure are intended to be a handmaid to the administration of justice and a party cannot be refused just relief

[5] 1016 (5) ALD 14

merely because of mistake, negligence, inadvertence or even infraction of the rules of procedure. That apart, it is cardinal principle of law that merely on the ground of technicalities, justice should not be thwarted at the threshold. In Bamungachi Rising Club v. Shayamal Kumar Ghosh , the Calcutta High Court having regard to the ratio in the decision of the Supreme Court in Jai Ram Manohar Lal v. National Building Material Supply, Gurgaon [AIR 1969 SC 1267] held inter alia as follows:

'Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure.' In the case on hand, if the revision petitioners' application to implead them as plaintiffs 2 to 6 though is already allowed was to be dismissed for not carrying out the amendment within a time frame of 14 days, it would lead to denial of substantial justice at the threshold even without providing them an opportunity to have their cause decided on merits. Further, in the decision in ***Banwari lal v/s Balbir Singh*** *(2016 (1) 607) the Supreme Court held as follows:*

Provisions of Order XXII Code of Civil Procedure are not penal in nature. It is a rule of procedure and substantial rights of the parties cannot be defeated by pedantic approach by observing strict adherence to the procedural aspects of law."

- The 2 judge bench of the Hon'ble apex court comprising of Justice Anirudha Bose and Justice J.B Pardiwala in the case of ***Life Insurance Corporation of India v. Sanjeev Builders Pvt. Ltd. and Anr***[6]. has laid down guidelines to be followed by the civil courts with respect to applications filed under Order VI Rule 17 of the Code of Civil Procedure, 1908("**CPC**") for amendment of pleadings and how to deal with aspect of limitation in such applications.

The Supreme Court formulated the guidelines in an appeal against the judgment of Bombay High Court dated December 13, 2021 allowing amendment of pleadings in a suit for specific performance of a contract. The guidelines are as follows:

"70. Our final conclusions may be summed up thus:

(d) *Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of*

[6]2022 LiveLaw (SC) 729

amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived. (ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC. (iii) The prayer for amendment is to be allowed (i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and (ii) to avoid multiplicity of proceedings, provided (a) the amendment does not result in injustice to the other side, (b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and (c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations). (iv) A prayer for amendment is generally required to be allowed unless:

(i) *By the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,*

(ii) *The amendment changes the nature of the suit,*

(iii) *The prayer for amendment is malafide, or*

(iv) *By the amendment, the other side loses a valid defence. (v) In dealing with a prayer for amendment of pleadings, the court should avoid a hyper technical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs. (vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed. (vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation. (viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint. (ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision. (x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed."*

- In the case of **M/S. South Konkan Distilleries & Anr vs Prabhakar Gajanan Naik & Ors**[7]the Hon'ble Apex Court held that:

"17. Considering the facts of the case and the nature of amendment claimed and the principles laid down by this Court in L.J.Leach's case (supra) and other decisions of this Court, as referred to herein earlier, we are of the view that if a suit was filed on the amended claim, it was an admitted position that the said claim was barred by limitation, the question of allowing the amendment of the written statement and the counter claim, in the facts and circumstances of the case, could not arise at all. Accordingly, the courts below were fully justified in rejecting the application for amendment of the written statement and the counter claim.

19. Keeping the aforesaid findings made by us and also the findings arrived at by the courts below in the matter of exercise of discretion to reject the application for amendment of the written statement and the counter claim in mind, the delay and latches on the part of the appellants to apply for amendment of the written statement and the counter claim would be the relevant factor for rejecting the application for amendment of the pleadings. ***As noted herein earlier, there has been thirteen and a half years delay in filing the application for amendment of the pleadings. Furthermore, in the application for amendment, the appellants had not given any explanation whatsoever for such delay. Under these circumstances, we do not find any reason to interfere with the orders of the courts below****. In our view, in the facts and circumstances of the case, the courts below were perfectly justified in rejecting the prayer for amendment of the written statement and the counter claim.*

20. In view of our findings made hereinabove, that on the date of filing of the amendment petition, the claim as made by the appellants in their amendment petition was already barred, no purpose would be achieved by allowing the amendment which has already stood barred by the law of limitation."

AMENDMENT OF PLEADINGS AND THEORY OF RELATION BACK:

- **In Vishwambhar v. Laxminarayan**[8]the Hon'ble Supreme Court held that the application for amendment of pleadings is related back to the date of the application itself, not the date of filing the suit.

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[7]AIR 2009 SUPREME COURT 1177

"From the averments of the plaint it cannot be said that all the necessary averments for setting aside the sale deeds executed by Laxmibai were contained in the plaint and adding specific prayer for setting aside the sale deeds was a mere formality. As noted earlier, the basis of the suit as it stood before the amendment of the plaint was that the sale transactions made by Laxmibai as guardian of the minors were ab initio void and, therefore, liable to be ignored. By introducing the prayer for setting aside the sale deeds the basis of the suit was changed to one seeking setting aside the alienations of the property by the guardian. In such circumstance the suit for setting aside the transfers could be taken to have been filed on the date the amendment of the plaint was allowed and not earlier than that."

CONCLUSION:

The concept of limitation is introduced in the statutes to overcome the multiplicity of proceedings and filing of frivolous cases by the litigants and to protect the rights of the parties who are vigilant over their rights and hence the court of law has to follow the principles of limitation enshrined in the various statutes in order to achieve the purpose of fixing the limitation period to approach the courts of law.

The limitation with respect to the Special Acts is different from that of the Limitation Act as the Special Acts are enacted to serve a special purpose and thus the general principles of the Limitation Act do not apply, unless the Act itself provides for limitation period.

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[8]AIR 2001 SUPREME COURT 2607

LIMITATIONINCRIMINALCASESINRESPECTTOOFFENCESUNDERIPC/BNS AND OTHER SPECIAL LAWS

PurposeoftheLimitation:

a. *Interest republicae ut sit finis litium* – In the interest of society as awhole,there should be an end to litigation.

b. *Vigilantibus non dormientibus jura subveniunt* – Law will assist those who are vigilant with thier rights and not those who sleep there upon. Insimpler words, the law will not help those who sleep on thier rights.

(c) A general principle of criminal law is that a crime never dies. This is expressed in the *maxim nullum tempus qut locus occurritregi* meaning that the lapse of time is no bar to the Crown for the purpose of initiating proceedings against offenders. The maxim is a reflection of the principle of common law that a criminal offence is considered a wrong against the State and also the society as a whole, even though the same may have been committed against an individual.

(d) When the Code of Criminal Procedure, 1898 was in vogue the legal position was that a Court could not dismiss a complaint on the ground that it was belated. Dealing with a complaint under the Customs Act, 1962, a Constitution Bench of the Hon-ble Supreme Court in Asstt. Collector of Customs v. L.R. Melwani, reported in AIR 1970 SC 962, had observed as follows:

> "The question of delay in filing a complaint may be a circumstance to betakenintoconsiderationinarrivingatthefinalverdict.Butbyitself it affords no ground for dismissing the complaint. Hence we see

no substance in the contention that the prosecution should be quashed on the ground that there was delay in instituting the complaint."

Taking note of the aforesaid position, the Law Commission of India in its 42nd Report proposed the introduction of limitation for less serious offences. The following was the recommendation made by the Commission:

24.14.Recommendationtointroduceprincipleoflimitation:

We, therefore, recommend that the principle of limitation should be introduced for less serious offences under the Code. We suggest that, for the present, offences punishable with fine only or with imprisonment up to three years should be made subject to the law of limitation. The question of extending the law to graver offences may be taken up later on in the light of the experience actually gained.

(e) It is in the light of the aforesaid recommendation, Chapter XXXVI of the Code comprising Sections 467 to 473 Cr.P.C was introduced in the Code of Criminal Procedure, 1973. Chapter XXXVIII in the Corresponding Chapter in the Bharatiya Nyaya Suraksha Sanhita comprising Sections 513 to 519.

(f) Theperiodoflimitation,likearelayrace,hasastartandafinishpoint.

Sections467Cr.P.C/Sec.513BNSSstatesthatthe"periodoflimitation"isthe periodprescribedinSection468Cr.P.C/Sec.514BNSSfortakingcognizance of an offence. Clause (2) of Section 468 Cr.P.C / Sec.514 BNSS prescribes a graded period of limitation ranging from six months to three

years for offences ranging from punishments of fine upto punishment for a period not exceeding three years.

Section 468 (2) Cr.P.C / Sec.514 (2) BNSS:Bars taking of cognizance after lapse of the period of limitation.

Limitationperiod	Offencepunishablewith
6Months	Fine only
1Year	Lessthan1year
3Years	1-3years
No Limitation	Morethan3years

As per the explanation of Section 514 BNSS, the relevant date for the purpose of computing the period of limitation shall be the date of filing complaint U/Sec.223 BNSS (Sec.200 Cr.P.C) or the date of recording of information under Section 173 BNSS (Sec.154 Cr.P.C).

(e) When offences are to be tried together: Limitation Period shall be determined with reference to the offence which is punishable with more severe punishment (Sec.468(3) Cr.P.C / 514(3) BNSS)

(f) "TakingCognizanceisoftheoffenceandnottheoffender"

Ifduringthependencyofthecriminalproceedings,butafterthe expiry of the period of limitation, if the court is opinion that some other person is involved in the offence and decides to proceed against such person under section 319 Cr.P.C/sec.358 BNSS, limitation would not applybecauseinsec319(4)Cr.P.C/Sec.358(4)BNSSitissaidthatthe case is to proceed against such persons as if they had been accused

personswhenthecourttookcognizanceoftheoffenceuponwhichthe inquiry or trail was commenced.

(g) According to section 198(6) Cr.P.C/Sec.219(6)BNSS,a complaint againstsexualintercoursebyamanwithhisownwife(undertheageof 18 years) shall be made within **1year from the date commission of the offence.**

(h) Accordingtosection199(5)Cr.P.C/Sec.222BNSS,Sessioncourtshall take cognizance of offence u/s.199(2) /Sec.222(2) BNSS when the complaintinwritingwasfiledbythePublicProsecutorwithin **6months** from the date on which the alleged offence is said to have been committed.

Section469Cr.P.C/Sec.515BNSS:Commencementofperiodoflimitation:

Section 469 Cr.P.C / Sec.515 BNSS is crucial for reckoning the starting point of the period of limitation. Section 469(a) Cr.P.C / Sec.515(a) BNSS spells out the general rule that the limitation shall run from the date of the offence (excluding the first day under Clause (2) of Section 469 Cr.P.C / Sec.515 BNSS). Section 469 (b) and (c) Cr.P.C / Section 515 (b) and (c) are exceptionstothegeneralruleprovidingfordefermentofrunningoflimitationin caseswhere(a)thecommissionoftheoffenceisnotknownor(b)theoffender is not known.

In computing the said period, the day from which such period is to be computed shall be excluded (sec.469(2) Cr.P.C /Sec.515(2) BNSS).

Sections 470 Cr.P.C / Sec.516 BNSS and 471 Cr.P.C / Sec.517 BNSS provides for the exclusion of time in certain cases. Section 472 Cr.P.C / Sec.518 BNSS incorporates the well-known rule that in case of a continuing offence, a fresh period of limitation begins to run at every moment of the time during which the offence continues. Section 473 Cr.P.C / Sec.519 BNSS empowers the Court to condone the delay and take cognizance beyond the period prescribed in Section 468 Cr.PC / Sec.514 BNSS if it is satisfied thatthe delay has been properly explained or that it is necessary to do so in the interests of justice. This is broadly the scheme of Chapter XXXVI Cr.P.C / Chapter XXXVIII BNSS.

(g) Limitation for taking cognizance of any offence by the Magistrate/CourtuponreceivingacomplaintU/Sec.190(1)(a)Cr.P.C/Sec.210 (1)(a)BNSSorupon information received from any person other than a police officer underSection 190 (1) (c) Cr.P.C / Sec.210 (1) (c) BNSS :

- ***Krishna Pillai v T. A Rajendran reported in (1990 Supp SCC 121) athree-judge bench of the Hon'ble Supreme Court***

- While dealing with a case under Section 9 of the Child Marriage RestraintAct, 1929 which prescribed one year as the limitation for taking cognizance of an offence under theAct. In that case, a complaint had been filedwithinoneyearoftheoffencebutbythetimecognizancehadbeentaken the period of one year had expired. The Court quashed the prosecution and opined that filing of a complaint would not amount to taking of cognizance.

- ***BharathDamodarKale.v.StateofA.P*reportedin(2003)8SCC559.**

While dealing with a case under the Drugs and Cosmetics Act 1940 where a prosecution is commenced upon a complaint under Section 32 of the said Act, the Hon'ble Apex Court held that:

> "All these provisions indicate that the court taking cognizance can take cognizance of an offence the complaint of which is filed before it within the period of limitation prescribed and if need be after excluding such time which is legally excludable. This in our opinion clearly indicates that the limitation prescribed is not for taking cognizance within the period of limitation, but for taking cognizance of an offence in regard to which a complaint is filed or prosecution is initiated beyond the period of limitation prescribed under the Code.Apart from the statutory indication of this view of ours, we find support for this view from the fact that taking ofcognizance is an act of the court over which the prosecuting agency or the complainant has no control. Therefore, a complaint filed within the period of limitation under the Code cannot be made infructuous by an act of court."

- ***Japani Sahoo.v. ChandrasekharMohanti*reportedin(2007)7SCC 394.**

In this case, the offence had taken place on 02-02-1996 and the complaint was filed before the court of the Sub Divisional Magistrate on 05-02- 1996 for the offence under Section 294 and 323 IPC.The court ought to have takencognizancewithinoneyear.However,cognizancewastakenbythe court on 08-08-1997. While refering *Bharath Damodar Kale .v. State of A.P* reported in **(2003) 8 SCC 559**, the Hon'ble Apex Court held that as the

complaint was filed within two days, the subsequent delay in takingcognizance caused by the court couldnot be put against the complaintapplying the principle of *actus curiae neminemgravabit*.

There being conflict in the views taken in two-Judge E Bench decisions in Bharat Kale' and Japani Sahoo on the one hand, and a three-Judge Bench decisioninKrishnaPillai,ontheother,onthequestionwhetherforthepurpose of computing the period of limitation u/s 468 of the Code of Criminal Procedure, 1973 (CrPC), the relevant date would be the date of filing of the complaint or the date of institution of prosecution or whether the relevant date would be the date on which the Magistrate took cognizance of the offence, the mater was ultimately referred to the Constitution Bench.

***SarahMathew.v.InstituteofCardioVascularDiseases*reportedin (2014) 2 SCC 62.**

ThiscasearisesoutofaprivatecomplaintfiledU/Sec.190(1)(a)Cr.P.C and the Constitution Bench of the Hon'ble Apex Court held that to invoke Sec.468 Cr.P.C the relevant date in complaint cases is the date of filing complaint.

From the above decisions, it is manifestly clear that in the context of cases arising out of private complaints, the date for reckoning the cut-off is the date on which the complaint is filed in court. To invoke Sec.468 Cr.P.C the relevant date in complaint cases is the date of filing complaint in court.

Limitation for taking cognizance of any offence by the Magistrate/CourtuponapolicereportunderSection173(2)Cr.P.C/Sec.193BNSS(U/Sec.190 (1)(b)Cr.P.C/Sec.210(1)(b)BNSS:

Limitation in the context of a case instituted on a police report was considered by the Hon-ble Supreme Court in ***Arun Vyas v Anita Vyas reported in*** **(1999) 4 SCC 690**. The Court held as follows:

> "13.The essence of the offence in Section 498-A is cruelty as definedintheexplanationappendedtothatsection.Itisacontinuing offence and on each occasion on which the respondent was subjected to cruelty, she would have a new starting point of limitation. The last act of cruelty was committed against the respondent, within the meaning of the explanation, on 13-10-1988 when, on the allegation made by the respondent in the complaint to theAdditional Chief Judicial Magistrate, she was forced to leave the matrimonial home. Having regard to the provisions of Sections 469 and 472 the period of limitation commenced for the offences under Sections 406 and 498-Afrom 13-10-1988 and ended on 12-10-1991. But the charge-sheet was filed on 22-12-1995, therefore, it was clearly barred by limitation under Section 468(2)(c) CrPC."

This decision makes it clear that the relevant date for reckoning the cut- off is the date on which the final report / charge-sheet is filed and not the date onwhichtheFIRwasregistered.Theaforesaidconclusionwasreferredtoand affirmed by a three-judge bench in ***State of H.P. v. Tara Dutt,*** **(2000) 1 SCC 230**, and followed by another two-judge bench in ***Ramesh v. State of T.N., reportedin*****(2005)3SCC507**.Therefore,toinvokeSec.468Cr.P.Cthe relevant date in cases instituted on a police report is the date of filing final report / charge-sheet in court subject to the exclusion of time under Sections 470 Cr.P.C / Sec.516 BNSS and 471 Cr.P.C / Sec.517 BNSS.

(h) Now, a conflict existed between the above decision and the explanation given to Section 514 of BNSS.

ExplanationtoSection514BNSS:

For the purpose of computing the period of limitaton, the relevant date shall be the date of filing complaint under section 223 or the date of recording of information under section 173.

As per the law in ***Arun Vyas v Anita Vyas reported in*** **(1999) 4 SCC 690**, for the purpose of computing the period of limitaton in cases instituted on a police report, the relevant date is the date of filing final report / charge-sheet in court but not the date on which the FIR was registered. But as per the explanation to Section 514 BNSS, for the purpose of computing the period of limitaton in cases instituted on a police report, the relevant date shall be the date of recording of information (FIR) under section 173 BNSS.

(i) **R.Aghoramurthy, Registrar of Companies, Bombay –Vs-Bombay Dyeing and Manufacturing Company Limited, 1991-JT-S-432**, decided on the 7th March, 1991 was a prosecution for offences under Section 205 of the CompaniesAct, 1956. The principal question there was the date of knowledge of the offence of the complainant under Section 469(1)(b) of the Code. The RegistrarofCompaniesissuednoticetothecompanyandonreceiptofthereply sent a Report to the Department of CompanyAffairs, Govt. of India who ordered an Enquiry. Question was whether the date of knowledge would bethe date of receipt of the Report. The Supreme Court agreed with the concurrent findings of the two Courts below and held that limitation is to be counted from the date of knowledge of the complainant that is when

the notice was issued specially when the complaint did not approach the Court under Section 473 of the Code.

(j) *Vanka Radhamanohari (Smt) -vs- Vanka Venkata Reddy and Others,* **(1993) 3 SCC 4** decided on the 20th April 1993 was a case where the Magistrate took cognizance of the offences under Section 498-A and 494 of the Penal Code. The High Court quashed the criminal proceedings on the ground of the bar under Section 468 of the Code since Section 498- A I.P.C prescribespunishmentonlyuptothreeyearsimprisonment.TheHigh Courtdid not notice that for offence under Section 494 I.P.C punishable with imprisonment upto seven years no bar of limitation is applicable.The Supreme Court referred to SARWAN SINGH (Supra) and BHAGIRATH KANORIA (Supra) and held that the High Court should have considered the provisions of Section 473 of the Code, specially in a case of cruelty against women. The crux of the judgment is the highlighting of the difference between theprovisions of Section 5 of the LimitationAct, 1963 and those of Section 473 of the Code covering the same ground but with considerable difference in application. The Supreme Court applied Section 473 and condoned the delay. The order of the Magistrate was restored.

(k) ***State of Maharashtra -vs- Sharadchandra Vinayak Dongre and Others*,AIR1995S.C.231**decidedonthe7thOctober, 1994marksawatershedintheexpositionofthelawoflimitationincriminal cases. This is a Three Judge unaminous decision of the Supreme Court. The police alongwith the charge-sheet filed two applications, one for condonation of the delay and the other seeking permission for further investigation and filing of additional charge-sheet. The Chief Judicial Magistratekepttheapplicationforfurtherinvestigationpendingbutallowedthe application for condoning the delay and issued process against the

accused persons. In the High Court, moved by the accused for quashing under Section 482 of the Code, the two-fold challenge to the order of the Chief Judicial Magistrate was (1) that cognizance could not have been taken on an incomplete charge-sheet and (2) that the delay could not have been condoned withoutnoticetotheaffectedpartyandwithoutrecordinganyreason.TheHigh Court accepted both the contentions and quashed the proceeding. The State reached the Hon'ble Supreme Court via Article 136 of the Constitution. The Hon'ble Supreme Court disagreed with the High Court on the first contention by observing that the Magistrate's "power is not fettered by the label which the investigating agency chooses to give to the report submitted by it under Section 173(2) of Cr.P.C". For the purpose of this essay the more important of the two contentions is the second one and on it in para 5 of the Judgment the Three Judge Bench spoke thus :- "In our view, the High Court was perfectly justified in holding that delay, if any, for launching the prosecution, could not have been condoned without notice to the respondents and behind their back and without recording any reasons for condonation of the delay."

(l) ***Arun Vyas -vs- Anita Vyas*, (1999)4 SCC 690** decided on the 4th May 1999 is a decision where the Magistrate took cognizance of offences under Section 498-A and 406 of the Penal Code on a charge-sheet submitted on 22.12.1995.

(m) Onthedayfixedforframingofthecharge,however,theMagistrate discharged the accused husband on the ground of limitation as because the complaint specifically gave the date of occurrence to be 13.10.1988. The High Court set aside the order of discharge directed him to decide the case in accordance with law. The Supreme Court in so far as the offence under Section 406 is concerned upheld the order of discharge

passed by the Magistrate on the ground of bar of limitation in the absence of any explanation of the inordinate delay of about 4 years in filing the charge-sheet. But for the other offence that is one under section 498-A the Supreme Court followed VANKA RADHA MONOHARI (Supra) and remitted the matter to the trial court for consideration of "the question of limitation taking note of Section 473 Cr.P.C.". it was specifically held that any finding recorded by a Magistrate holding the complaint to be barred by limitation without considering the provisions of Section 473 of the Code will be a deficient and defective finding. The mandate for liberal construction of Section 473 of the Code in favour ofthe wife, a victim of cruelty was emphasized in this decision.

(n) LIMITATIONOFPROSECUTIONFOROFFENCESUNDERLOCA LOR SPECIAL LAWS:

It has already been indicated that Section 4 and 5 of the Code have to be applied in understanding any enactment creating a bar of prosecution by reason of limitation. Special laws in this regard may be of three categories. Some statutes like the copyrightAct, 1957 the Dowry ProhibitionAct 1961, the PatentAct, 1970 the Wild Life (Protection)Act, 1972 and the Environment and PollutionLawsetcsimplycreatetheoffenceandprescribethepunishmentand say nothing else. The provisions of Chapter XXXVI of the Code will determine the limitation for prosecution in such cases. In the second category will be statutes like the Indian Police Act 1861 the Trade Marks Act 1999, and the Geographical Indication of Goods (Registration and Protection) Act 1999.

In cases under those Acts limitation will be governed by the period prescribed there and not under the Code. In the third category will be statutes like the Negotiable Instruments Act 1881 where the special law

not only creates the offence prescribes the period of limitation but also prescribes special provision for extension of limitation. In such cases also the provisions of the Code will not apply. Though the Child Marriage Restraint Act, 1929 has been replaced bytheProhibitionofChildMarriageAct,2006witheffectfrom01.11.2007there may still be some statutes adopting the model in Section 198(6) of the Code.In such cases neither Chapter XXXVI of the Code nor decisions like *Bharat Damodar Kale (Supra) and Japani Shahoo* (Supra) will apply.

(o) <u>LimitationperiodforfilingAppealincriminalcases</u>:

In criminal cases, the limitation period for filing an appeal against a conviction or order of acquittal varies depending on the court and the specific circumstances, generally ranging from 30 to 90 days, with exceptions for certain cases like appeals against death sentence.

ChapterXXIXcomprisingSections372to394Cr.P.Cdealswithappeals incriminalcases.ChapterXXXIcomprisingSections413to435isthe corresponding chapter in the Bharatiya Nyaya Suraksha Sanhita which deals with criminal appeals.

(p) <u>CriminalAppeals–LimitationAct</u>:

The Limitation Act has no application to criminal proceedings, except to the extent where there are express provisions in the Schedule of the Limitation Act, such as-

- Art.114:AppealfromanorderofAcquittal–**90Days**

- Art.115:(a)AppealfromasentenceofdeathpassedbyCourtofSessionor by the High Court in exercise of its original criminal jurisdiction **– 30 Days**

(b) Appeal from any other sentence or any other order not being an order of acquittal – (i) to the High Court – **60 Days**

(ii)toanyotherCourt–**30Days.**

Conclusion:

The Limitation law is no assurance as to time of trial and its conclusion but only by when the criminal law can be set in motion. This is where the constitutional right to a speedy trial therefore comes into picture as an aid.The reason behind the time limits is to protect the accused from the burden of defending himself against charges of long completed act. This is primarily because,overaperiodoftime,witnessesuponwhomtheaccused(orthe victim) may have to rely either die or move away and records are lost especially if the occurrence of the event seemed insignificant at the time of happening, and hence the need of limitation period in criminal cases. Observing the long investigations and procedures that are required to be followed while dealing with criminal offences as well as fear in the minds of victims and their vested interests hinder the investigation and prosecution. A properbalanceisthereforesoughttobemaintainedunder Indianlawincluding by providing for a reasonable limitation period (distinct limitation periods for taking cognizance of various offences depending upon the gravity of those offences interlinked with the punishments), not applying limitation period to serious offences, making provisions for the commencement of the limitation period from the date of knowledge, exclusion of time in certain cases, making special provisions with respect to continuing offences by providing for a fresh limitation period at every moment of the time during which the offence continues and laying down a material provision concerning extension of the limitation period in certain cases. The law in India, it is

believed, is clearly in consonance with the concept of fairness of trial, as enshrined in Article 21 of the Constitution of India, as it aims to strike a balance between the interests of the complainant/state and the interests of the accused.

-THE END-

LAW OF LIMITATION

By:
P. RAHUL AMBEDKAR
PRINCIPAL CIVIL JUDGE (Jr.Div.), Dhone.

LIMITATION – SUITS, APPEAL SUITS AND APPLICATIONS

"Justice delayed is justice denied". The Limitation Act (hereinafter 'Act') is the corner stone of this very principle as it stipulates the time frames within which specific types of suits must instituted before the competent courts. The Act establishes time limits known as limitation periods for filing suits. Law of Limitation is based on two main latin maxims. Firstly, "interest republicae ut sit finis litium" which means in the interest of public, there must be an end to litigation and secondly, "vigilantibus non dormientibus jura subveniunt" which means law only helps those who are vigilant about their rights and not those who neglect them.

The Act prescribes different periods of limitation for filing of suits, appeals or applications. Section 3 of the Act provides that any suit, appeal, or application must be made within the limitation period specified in the Limitation Act. "If any suit, appeal or application is 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 as a defence or not. The provisions of Section 3 are mandatory, and 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".[1] Section 3 of the Limitation Act enjoins a court to dismiss any suit instituted, appeal preferred and application made, after the period of limitation prescribed therefore by the Schedule irrespective of the fact whether the opponent had set up the plea of limitation or not. It is the duty of the court not to proceed with the application if it is made beyond the period of limitation prescribed. The court had no choice and if in construing the necessary provision of the Limitation Act or in determining which provision of the

1 https://www.drishtijudiciary.com/to-the-point/ttp-limitation-act/bar-of-limitation-under-limitation-act

Limitation Act applies, the subordinate court comes to an erroneous decision, it is open to the court in revision to interfere with that conclusion as that conclusion led the court to assume or not to assume the jurisdiction to proceed with the determination of that matter.[2]

Limitation only bars remedy but does not extinguish the right:

The law of limitation only bars the remedy by way of the suit i.e., if the period of limitation expires, the party entitled to file a suit for the enforcement of a right is debarred from doing so. However, the original right on which the suit was to base is not barred. Thus, limitation only bars the judicial remedy, but it does not extinguish the right. There is one exception to the aforesaid rule contained in Section 27 of the Act. It provides that where a person's right to institute the suit for the possession of any property has become barred by limitation his right to the property itself shall be extinguished.[3]

Doctrine of Sufficient Cause:

Sufficient cause means there should be adequate reasons or reasonable ground for the court to believe the applicant was prevented from proceeding with the application in a Court of Law. Section 5 allows the extension of prescribed period in certain cases on sufficient cause being shown for the delay. Section 5 of the Act 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.[4]

COMPUTATION OF PERIOD OF LIMITATION:

Section 12 of the Act explains how to exclude certain time periods while calculating limitation period for legal proceedings. As per S.12(1), the day from which the period of limitation begins is not counted when calculating the time limit for filing a suit, appeal or application.

The limitation period starts from the date when the cause of action arises. The computation of the period follows these principles:[5]

2 https://jajharkhand.in/wp/wp-content/uploads/2019/04/limitation_book.pdf
3 https://www.drishtijudiciary.com/to-the-point/ttp-limitation-act/bar-of-limitation-under-limitation-act
4 https://www.drishtijudiciary.com/to-the-point/ttp-limitation-act/bar-of-limitation-under-limitation-act
5 https://factualcode.com/brief-note-on-computation-of-period-of-limitation/

1. **Exclusion of the First Day:** The day on which the cause of action arose is excluded from the computation.
2. **Court Holidays:** If the limitation period expires on a day when the court is closed, the suit or application can be filed on the next working day.

The starting point of period of limitation depends on the type of legal action:[6]

- **Contracts:** From the date of the breach.
- **Tort Cases:** From the date of the wrongful act.
- **Property Disputes:** From the date of dispossession or when the right to possession accrues.
- **Recovery of Debt:** From the date the debt becomes due.

The court may condone the delay in filing an appeal or application if sufficient cause is shown as per Sec.5 of the Act.

Exclusions in Limitation Period:

Time taken for essential procedures is excluded as per S. 12 of the Act. The following periods are excluded from the computation:[7]

- Time taken to obtain a certified copy of the judgment, decree, or order.
- Time during which the plaintiff was prevented from filing the suit due to fraud or force by the defendant.

"As per S. 17 of the Act, if fraud or concealment of material facts is involved, the limitation period begins from the date the fraud is discovered or could have been discovered with due diligence. As per S.14 of the Act, if a case is filed in a court that lacks jurisdiction or a wrong forum, the time spent in such proceedings is excluded. As per S. 6 of the Act, if a person is under a legal disability (e.g., minority, insanity, or idiocy) the limitation period begins after the disability ceases. S. 17 of the Act provides safeguards against fraud or mistakes. It allows litigants to compute the limitation period from the time fraud is discovered. As per S. 18 of the Act, if a person acknowledges a debt or liability in writing before the expiration of the limitation period, a fresh limitation period starts from the date of such acknowledgment. This provision ensures that genuine debts are not barred by limitation".[8]

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6 https://factualcode.com/brief-note-on-computation-of-period-of-limitation/
7 https://factualcode.com/brief-note-on-computation-of-period-of-limitation/
8 https://factualcode.com/brief-note-on-computation-of-period-of-limitation/

CONDITIONS AS TO TIME AND LIMITATION UUNDER DIFFERENT STATUTES

As per S. 29 of the Act, where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provision contained in S. 4 to 24 apply only insofar as , and to, the extent which, they are not expressly excluded by such special or local law. Nothing in this Act shall apply to any suit or other proceeding with respect to marriage and divorce under any law for tie being in force. S. 25 and 26 and the definition of "easement" in S. 2 shall not apply to cases arising in the territories to which the Indian Easements Act,1882 may for the time being extend. In case of Special Laws the limitation as provided under the special law shall have application and not the limitation as provided under the Limitation Act. Another important point that has been made is that the provisions of the limitation Act Sections 4 to 24 shall stand excluded only when the Special Act excludes its operation.[9]

In ***Sunil Krishna Ghosh v. Calcutta Improvement Trust*** reported in ***[AIR 2001 Cal 199],*** it was contended in the case that Article 55 of the Limitation Act will be applicable in the case since there was n o fixed time to execute the conveyance sought to be performed in the agreement and when there is no fixed time, the suit has to be brought within three years from the date of the refusal to perform the agreement. The Court held in this case that in this case the plaintiff had performed his part of the contract but the defendant had not and there was no stipulated date for the performance of the contract. The defendant had not in writing refused either to execute their conveyance or to perform their part. Thus there was a continuous breach on the part of the defendant to perform by not handing over the physical possession of the property. It is therefore a case where not only Art 55 of the Limitation Act but also Section 22 of the Limitation Act was applicable as this was a continuing cause of action because in each and every day, the breach was being committed by the defendant. Consequently, the suit was not held to be barred.[10]

9 https://jajharkhand.in/wp/wp-content/uploads/2019/04/limitation_book.pdf
10 As quoted in https://jajharkhand.in/wp/wp-content/uploads/2019/04/limitation_book.pdf

AMENDMENT OF PLEADINGS – THE ASPECT OF LIMITATION

Amending pleadings is crucial in the Indian legal system, especially in civil cases. Pleadings are formal written statements that parties use to present their case to the court, including facts, issues and legal arguments. Allowing amendments to these statements is essential for several reasons:[11]

- **Ensuring Justice:** Amendment of pleadings helps ensure that justice is served. It allows parties to correct errors or omissions in their defence, making their case presentation more effective. It also helps address new issues that may arise during the trial, ensuring that the real matters in dispute are properly addressed.
- **Resolving Disputes:** Amendments to pleadings help parties identify and resolve key issues in a dispute more effectively. This leads to more accurate and fair dispute resolution, saving time, reducing the need for additional evidence or hearings and promoting settlements between parties.
- **Avoiding Delays:** Allowing parties to amend their pleadings before the trial begins helps prevent delays. By addressing problems or omissions early on, the risk of delays due to introducing new evidence or arguments is reduced. This speeds up case resolution, lightens the burden on the justice system and improves efficiency.
- **Promoting Fairness:** Amending pleadings promotes fairness in the justice system. It prevents one party from gaining an unfair advantage over the other by allowing both sides an equal opportunity to present their case.

Amendment of pleadings when a suit is debarred by the Limitation Act is subject to certain considerations and principles as established by various court cases:[12]

"**L.J. Leach & Co. Ltd. v. Jardine Skinner & Co:** The Supreme Court has stated that if an application for amending pleadings is debarred by the Limitation Act, it can be a ground for rejecting the application. However, the court also has discretionary

11 https://lawbhoomi.com/amendments-of-pleadings-under-order-6-rule-17-of-cpc/
12 https://lawbhoomi.com/amendments-of-pleadings-under-order-6-rule-17-of-cpc/

power to allow the amendment if it deems it necessary to secure the ends of justice.

South Konkan Distilleries & Anr v. Prabhakar Gajanan Naik & Ors: It is a settled principle that the court can disallow an application for amendment if, on the date of filing the application, it is barred by limitation. Nevertheless, this does not mean the court cannot grant the application. The court retains discretionary power to allow the amendment if it believes it is necessary to serve the interests of justice.

Pankaja & Anr v. Yellappa (D) by LRs & Ors: There is no fixed principle that dictates whether the court can reject an application for amendment when it is barred by limitation. The court's decision depends on the specific factual background of the case. If the facts and circumstances demonstrate that the amendment is necessary to determine the cause of action and avoid further litigation, the court should allow the application.

Ragu Thilak D. John v. S. Rayappan: The issue of limitation in an application for amendment varies from case to case. In some instances, the issue of limitation becomes a matter of dispute in the suit itself. In such cases, the application for amendment may be allowed to help resolve the case.

Vishwambhar v. Laxminarayan: The application for amendment of pleadings is related back to the date of the application itself, not the date of filing the suit."

LIMITATION IN CRIMINAL CASES IN RESPECT OF OFFENCES UNDER IPC/BNS AND OTHER SPECIAL LAWS

The aspect of limitation in respect of offences under IPC/BNS is dealt under CrPC/BNSS. "The general rule prescribed in the maxim 'nullum tempus occurrit regi' which means lapse of time does not bar the right of the Crown, shows that in general, the rule of equity, i.e., 'vigilantibus et non dormientibus jura subveniunt', does not apply to the Crown. The prosecution in criminal matter is generally launched by the State, as a criminal offence is considered an injury caused not only to the person but also to the society. The period of limitation for criminal offences is necessary as to avoid filing of frivolous litigation as to secure the alleged accused from harassment and to safeguard the valuable time of the Judiciary. However, it is also significant to consider that a legitimate case is not rejected just based on the

technicality of limitation. Thus, there lies a provision which allows the judiciary to apply its judicial mind and decide whether the case holds any merit to qualify for condonation of delay."[13]

S. 468 of the CrPC prescribes the period of limitation for taking cognizance of offences punishable with imprisonment for less than three years and classified according to the quantum of sentence imposable in each category. No Court, shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation. The period of limitation shall be:

(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

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

The period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment. "Sections 470 and 471 of the CrPC provides for the exclusion of time in certain cases and of the date on which the Court is closed. Section 472 of the CrPC with respect to continuing offences, spells out the rule that a fresh limitation period shall begin to run at every moment of the time during which the offence continues. Section 473 of the CrPC lays down a material provision concerning extension of the limitation period in certain cases and even overriding the bar of limitation. In addition, where the legislature wanted to treat certain offences under the CrPC differently, it provided for limitation in the penal provision itself, for instance, Section 198(6) and 199(5) of the CrPc which provide for limitation concerning prosecution for offences against marriage and prosecution for defamation respectively."[14]

LIMITATION UNDER OTHER SPECIAL LAWS:

"As per Section 138 of the NI Act, where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the

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amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of the NI Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both. Further, the above provisions would be attracted provided that the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of it is not true to suggest that validity, whichever is earlier. The payee or the holder in due course of the cheque, as the case maybe, makes a demand for the payment of the said amount of money by givinga notice in writing, to the drawer of the cheque, within thirty days of thereceipt of information by him from the bank regarding the return of thecheque as unpaid; and the drawer of such cheque fails to make the paymentof the said amount of money to the payee or, as the case may be, to the holderin due course of the cheque, within fifteen days of the receipt of the said notice. Further, pursuant to sending notice to the drawer of cheque by the payee as per action contemplated in Section 138 (c) of the NI Act, as per Section 142 of the NI Act, the complaint is to be filed with the Metropolitan Magistrate or a Judicial Magistrate of First Class for taking cognizance of offence punishable under Section 138 of the NI Act within thirty days from the date of expiry of the notice period, within whose local jurisdiction, the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated."[15]

Under Section 42 of the Police Act, it is prescribed that all actions and prosecutions against any person, which may be lawfully brought for anything done or intended to be done under the provisions of the Police Act, or under the general police-powers shall be commenced within three months after the act complained of shall have been committed, and not otherwise; and notice in writing of such action end of the cause thereof shall be given to the defendant, or to the District Superintendent or an Assistant District Superintendent of the District in which the act was committed, one month at least before the commencement of the action.[16]

15 file:///home/user/Downloads/valeriolubello,+Journal+manager,+C21+-+India.pdf
16 file:///home/user/Downloads/valeriolubello,+Journal+manager,+C21+-+India.pdf

Section 106 of the Factories Act prescribes that the Court shall not take cognizance of any offence punishable under such Act until and unless the complaint is made within three months from the date on which alleged commission of the offence came to the notice/knowledge of an Inspector.[17]

The concept of limitation is usually a must in all branches of law. In India, clearly the principle of public policy has been followed while providing for statute of limitation for criminal offences, in order to safeguard the interests of its people. As noted, the cardinal principle of limitation relates to fixing or prescribing the time period for barring legal actions. Having said that, observing the long investigations and procedures that are required to be followed while dealing with criminal offences as well as fear in the minds of victims and their vested interests hinder the investigation and prosecution.[18]

CONCLUSION

The Limitation Act plays a critical role in shaping the Indian Judiciary System. By establishing time limits for filing lawsuits, it fosters a system that balances several important objectives: ensuring access to justice, promoting finality, and preserving evidence. The Act does not create new causes of action or rights but sets time limits for enforcing existing rights. By prescribing time limits for legal actions and providing provisions for extension and exclusions, the Act ensures that justice is not delayed indefinitely.

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LAW OFTHELIMITATIONACT

Presented by : **Smt. Sake Jyothi,**
Additional Civil Judge (Junior Division)
Dhone.

The word limitation in its literal term means a restriction or the rule or circumstances which are limited. The law of limitation has been prescribed as the time limit which is given for different suits & proceedings to the aggrieved person within which they can approach the court for redress or justice. The basic concept of limitation is relating to fixing or prescribing of the time period for barring legal actions. According to Section 2 (j) of the Limitation Act, 1963, '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.

The main object of the statute of the Limitation Act, 1963 is more over ofapreventivekindandnottoimposeastatutorybarafteracertainperiodoftimeanditgives a quietus to all the suit matters to enforce an existing right. The major purpose of the statuteof the Limitation Act, 1963 is not to destroy or infringe the rights of an aggrieved person buttoservepublicinabetterwayandtosavetime.Thisstatuteisbasicallybasedonpublicpolicy for fixing a life span for the legal remedy which may be taken and to seek remedy in time with the purpose of general welfare. The object of providing a legal remedy is to repair the damage which is caused by reason of legal injury.

IntheJudgmentof***B.B.&D.Mfg.Co.v.ESICorporation,*****AIR1972SC1935**itwasobserved by the Hon'ble Supreme Court that- *"The object of the Statutes of Limitations to compel a person to exercisehisrightsofactionwithinareasonabletimeasalsotodiscourageandsuppressstale,fakeorfraudulentclaims.Whilethisisso,thereareetwoaspectsoftheStatutesofLimitation — the one concerns with the extinguishment of the right if a claim or action is not commenced within a particular time and the other merely bars the claim without affecting the right which either remains merely as a moral obligation or can be availed of to furnish the consideration for afreshenforceableobligation.Whereastatuteprescribingthelimitationextinguishestheright if affectssubstantiverightwhilethatwhichpurelypertainstothecommencementofactionwithout touching the right is said to be procedural"*.

In ***Balakrishnanv. M.A. Krishnamurthy*** **(1998) 7 SCC 123**, it was held by the Supreme Court***"thattheLimitationActisbaseduponpublicpolicywhichisusedforfixingalifespan of a legal remedy for the purpose of general welfare. It has been pointed***

out that the Law of Limitation are not only meant to destroy the rights of the parties but are meant to look tothepartieswhodonotresorttothetacticsbutingeneraltoseekremedy.Itfixestheli fe span for legal injury suffered by the aggrieved person which has been enshrined in the maxim*'interestreipublicaeutsitfinislitium'****whichmeanstheLawofLimitationisforgen eral welfare and that the period is to be put into litigation and not meant to destroy the rights ofthepersonorpartieswhoareseekingremedy.Theideawithregardstothisisthatev ery legalremedymustbealiveforalegislativelyfixedperiodoftime".***

The Law of Limitation is an adjective Law. It is *lex fori*. Thus, it can be said that the rules oftheLawofLimitationaregenerallyconcernedwiththerulesofprocedureandwhichdonot create any rights in favour of any particular person nor do they define or create any cause of action. It has been simply prescribed that the remedy can be exercised only for a limited fixed period of time and not subsequently.

Therulesoflimitationarenotmeanttodestroytherightsoftheparties.Theyaremeantt o see that the plaintiff do not take dilatory tactics but seeks remedy within the period stipulated by the legislature. *The rules of limitation thus will only bar the remedy but does not extinguish theright*.Therightcontinuestoexisteventhroughremedyisbarredbylimitation.Therefore, a debtormaypaythetimebarreddebtandcannotclaimitbackonthepleathatitwasbarredby limitation.

The Limitation Act is applicable to the suits brought by the plaintiff; they do not apply to arightsetupbythedefendantindefence.Adefendantwillnotbeprecludedfromsettingup a right by way in defence, even if he could not have done so as plaintiff by way of substantive claim.Buttheprinciplethatlimitationordinarilydoesnotbarthedefenceisnotapplicable 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.

ThelawrelatingtoLawofLimitationinIndiaistheLimitationAct,1859andsubsequentl y LimitationAct,1963whichwasenactedon5thofOctober,1963andwhichcameintoforcefro m 1stofJanuary,1964forthepurposeofconsolidatingandamendingthelegalprinciplesrelati ng to limitation of suits and other legal proceedings.

TheSalientFeaturesoftheLimitation Act:

TheLimitationActcontains**32Sections(sections 28 and 32 are repealed)and137Articles**.Thearticleshavebeendivided into **10 parts**.

The**firstpart**isrelatingtoaccounts,thesecondpartisrelatingtocontracts,thethirdpar t isrelatingtodeclaration,thefourthpartisrelatingtodecreesandinstrument,thefifthpart is relating to immovable property, the sixth part is relating to movable property, the seventh part is relating to torts, the eighth part is relating to trusts and trust property, the ninth partis relating to miscellaneous matters and the last part is relating to suits for which there is no prescribed period.

Thereisno uniformpatternoflimitation forthe suits underwhichthe classificationshas beenattempted.

The limitation period is reduced from a period of 60 years to 30 years in the case of suit by the mortgagor for the redemption or recovery of possession of the immovable property mortgaged, or in case of a mortgages for the foreclosure or suits by or on the behalf of Central Government or any State Government including the State of Jammu and Kashmir.

Whereas a longer period of **12 years has been prescribed for different kinds of suits relating to immovable property, trusts and endowments, a period of 3 years has been prescribedforthesuitsrelatingtoaccounts,contractsanddeclarations,suitsrelati ngto decrees and instruments and as well as suits relating to movable property.**

A period varying from **1 to 3 years has been prescribed for suits relating to torts**and miscellaneous matters and for suits for which no period of limitation has been provided elsewhere in the Schedule to the Act.

ItistobetakenastheminimumperiodofsevendaysoftheActfortheappealagainstthe death sentence passed by the High Court or the Court of Session in the exercise of the original jurisdiction which has been raised to **30 days** from the date of sentence given.

One of the main salient feature of the Limitation Act, 1963 is that it has to avoid the illustrationonthesuggestiongivenbytheThirdReportoftheLawCommissionontheLimitati on Act of 1908 as the illustration which are given are most of the time unnecessary and are often misleading.

The Limitation Act, 1963 has a very wide range considerably to include almost all the Court proceedings. The definition of **‘application’** has been extended to include any petition, original or otherwise. The change in the language of Section 2 and Section 5 of the Limitation act, 1963 includes all the petition and also

application under special laws.

ThenewActhasbeenenlargedwiththedefinitionof‘application’,‘plaintiff’and‘defendant’ astonotonlyincludeapersonfromwhomtheapplicationisreceived,Plaintiffordefendantas the case may be derives his title but also a person whose estate is represented by an executor, administrator or other representatives.

Sections 86 and Section 87 of the Civil Procedure Code, requires the consent of the Central Government before suing foreign rulers, ambassadors and envoys. The Limitation Act, 1963 provides that when the time obtained for obtaining such consent shall be excluded for computing the period of limitation for filing such suits.

The Limitation Act, 1963 with its new law signifies that it does not make any racial or classdistinctionsincebothHinduandMuslimLawarenowavailableunderthelawoflimitation as per the existing statute book. In the matter of Syndicate Bank v. Prabha D. Naik, (AIR 2001 SC 1968) the Supreme Court has observed that the law of limitation under the Limitation Act, 1963 does not make any racial or class distinction while making or indulging any law to any particular perso

TheLimitationActcontains32Sections(Section 28 and 32 arerepealed)and 137Articles. **Scheme of the Articles is as follows:**

Articles1to113 **Suits**Articles114to 117

Appeals Articles 118 to 13

<u>Applications</u>. <u>Suits are divided into 10 classes</u>:

1. Suitsrelatingtoaccounts(Art.1to5)
2. SuitsrelatingtoContracts(Art.6to55)
3. Suitsrelatingtodeclarations(Art.56to58)
4. Suitsrelatingtodecreesandinstruments(Art.59to60)
5. Suitsrelatingtoimmovableproperty(Art.61to67)
6. Suitsrelatingtomovableproperty(Art.63to71)
7. Suitsrelatingtotort(Art.72to91)
8. Suitsrelatingtotrustsandtrustproperty(Art.92to96)
9. Suitsrelatingtomiscellaneousmatters(Art.97to112)
10. Suitsforwhichthereisnoprescribedperiod(Art.113)

LIMITATIONOFSUITS,APPEALSANDAPPLICATIONS (SECTIONS3TO11)

Section3

(1) SubjecttotheprovisionscontainedinSections4to24, everysuitinstituted,appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.

(2) ForthepurposeofthisAct-

- a suit is instituted ---

- inanordinarycourse,whentheplaintispresentedtotheproper officer;
- incaseofapauper,whentheapplicationforleavetosueasapauperismade;and
- in the case of a claim against a company which is being wound up by the court, when claimant first sends in his claim to the official liquidator;
- anyclaimbywayofsetofforcounterclaim,shallbetreatedasaseparatesuitandshallbe deemedtohavebeeninstituted--
- inthecaseofset-off,onthesamedateasthesuitinwhichthesetoffis pleaded
- incaseofcounter-claim,onthedateonwhichthecounterclaimismadeinthe court.

Section 3 of the Limitation Act enjoins a court to dismiss any suit instituted, appeal preferred and application made, after the period of limitation prescribed therefore by the Scheduleirrespectiveofthefactwhethertheopponenthadsetupthepleaoflimitationornot. It is the duty of the court not to proceed with the application if it is made beyond the periodof limitation prescribed. The court had no choice and if in construing the necessary provision of the Limitation Act or in determining which provision of the Limitation Act applies, the subordinatecourtcomestoanerroneousdecision,itisopentothecourtinrevisiontointerfer e withthatconclusionasthatconclusionledthecourttoassumeornottoassumethejurisdictio n to proceed with the determination of that matter.

Decree not a nullity- Even if it is true that it is the duty of the court to take note of the provisionsofS.3oftheLimitationActandtodismissasuitwhenitisfoundthatitisbarredby limitation, if the court without taking note of the said provisions decides a suit on merits, the decreeisnotanullity.Itismerelyanerroroflawwhichcanberectifiedinthemannerprovided

by the code of Civil Procedure. The decree or order cannot be held to be a nullity (***Ittyavira Mathai v.VarkeyVarkey,* AIR 1964 SC 907**)

Section3limitsthetimeafterwhichasuitorotherproceedingwouldbebarred.Theright 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. Cause of action is a fact or combination of facts that givesapersontherighttoseekjudicialredressorreliefagainstanother.Section3barsonlythe institutionofsuits,applicationandappeals,andtheperiodwithinwhichthesamehastobe filed.

Butsofarthedefenseisconcernedthereisnosuchlimitation.Therecanbenoperiodof limitationforactswhichthecourtsareboundto perform.

Section 2 (j) Prescribed Period- "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; *(Assam Urban Water Supply & Sewerage Board v/s Subash Projects & Mktg. Ltd., (2012) 2 SCC 624)*

TheLimitationAct***doesnotextinguisharightbutitonlybarstheremedy.***Inacase of ***Bombay Dyeing & Mfg. Co. Ltd. v. State of Bombay***, **AIR 1958 SC 328**, it was held by the SupremeCourtin*Para21,"Ithasbeenalreadymentionedthatwhenadebtbecomestime-barred, it does not become extinguished but only unenforceable in a court of law. Indeed, it is on that footingthattherecanbeastatutorytransferofthedebtsduetotheemployees,andthatishow the Board gets title to them. If then a debt subsists even after it is barred by limitation, the employer does not get, in law, a discharge there from. The modes in which an obligation under a contract becomes discharged are well-defined, and the bar of limitation is not one of them".*

The following passages in Anson's Law of Contract, 19th Edn. p. 383, 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 limitedinpointofduration.Butthoughtherightpossessesthispermanentcharacter,therem edies arising from its violation are withdrawn after a certain lapse of time; ***interest reipublicaeut sitfinislitium****.Theremediesarebarred,thoughtherightisnotextinguished.Andifthelawreq uires that a debtor should get a discharge before he can be compelled to pay, that requirement is not satisfiedifheismerelytoldthatinthenormalcourseheisnotlikelytobeexposedtoactionbyth e creditor"*

Itisnotopentothepartiestowaiveorcontractthemselvestheperiodoflimitation.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.

ShrimantShamraoSuryavanshiv.PralhadBhairobaSuryavanshi,(2002)3SCC676- It is, therefore, manifest that the Limitation Act does not extinguish a defence, but only bars the remedy. Since the period of limitation bars a suit for specific performance of a contract, if broughtaftertheperiodoflimitation,itisopentoadefendantinasuitforrecoveryofpossession broughtbyatransferortotakeapleaindefenceofpart-performanceofthecontracttoprotect his possession, though he may not be able to enforce that right through a suit or action.

Section4-Expiryofprescribedperiodwhencourtisclosed-- Wheretheprescribed 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 reopens.

Explanation- Acourtshallbedeemedtobeclosedonanydaywithinthemeaningof thissectionifduringanypartofitsnormalworkinghoursitremainsclosedonthatday

Section 4 has nothing to do with period of limitation. It does not add to the period of Limitation. It only extends the concession that is notwithstanding that the period of limitation expires on a day when the court is closed suit appeal or application may be filed on the day on which the court reopens.

Section 5- Extension of prescribed period in certain cases-- Any appeal or any applicationotherthananapplicationunderanyoftheprovisionsoforder21oftheCPC, may be admitted after the prescribed period, if the appellant or applicant satisfies the courtthathehadsufficientcausefornotpreferringtheappealormakingtheapplication within such period.

Explanation – The fact that appellant or the applicant was mislead by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be a sufficient cause within a meaning of the sub-section.

This Section applies to Criminal Appeal as well. Delay in filing Criminal Appeal should be excusedwhenwhereitwaserroneouslyfiledinanothercourt.CriminalProcedureCodeisnot a special law within the meaning of Section 29 but it is a general law relating to procedure.

<u>Appeal under Criminal Procedure Code</u> – The delay in filing appeal against acquittal can becondonedundersection5.Butsufficientcausemustbeestablishedtocondonethedelay

by the appellate court. (***Ajay Gupta v. Raju Rajendra Singh Yadav*** **2016(3) JBCJ 187 (SC))**

LimitationAct1963--Sections4and5--Limitation--Extensionofperiod--Section5 ofActwhichdealswithextensionofprescribedperiodincertaincases,appliesonlytoappeals orapplicationsandnottosuits.---NocourtofTribunalcanextendperiodoflimitationforfiling asuit---Evenifanycausebeyondcontrolofplaintiffisshownalso,onlyextensionispermitted under Section 4 of the Act, period coming under court holiday.

Application for setting aside ex-parte decree cannot be allowed without condoning the delay. In this case no application was filed for condonation of delay in filing a petition under Order 9 R 13 of CPC, whereas there was delay of two years in filing the application. (***Rajesh Kumar v. Smt. Indu Devi*** **2016(4)JBCJ (HC))**

State of West Bengal v. W.B. Judicial Service Association, 1990 (2) Cal. L.J. 73 - In this division bench judgement the court speaking through A.M. Bhattacharjee, J observed the following:

The doctrine of equality and rigid adherence to the said doctrine notwithstanding, the Governmentcanbeclassifiedasadistinctandseparategrouptowarrantdifferenttreatmentin the section 5 of the Limitation Act.

The court made reference to the decisions in *G. Ramegowda v. Special Land Acquisition Officer*(1988(2)SCC142)and*Collector,LandAcquisitionv.Katiji*(AIR1987SC1353)tostatethe following reasons for adopting a liberal approach towards the Government:

(1) IfappealsorotherproceedingsinitiatedbytheGovernmentarelost,nopersonisindividually affected; but what in the ultimate analysis suffers is public interest. The decisions of the Government are collective and institutional decisions and do not share the characteristics of decisions of private individuals.

(2) Government decisions are proverbially slow, encumbered, as they are, by a considerable degree of procedural red tape in the process of their making. On account of impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought tobesubjectedtoappeal)andtheinheritedbureaucraticmethodologyimbuedwithnote- making file-pushing and passing-on-the-buck ethos, delay on its part is less difficult to understand, though more difficult to approve.

(3) Implicit in the very nature of Governmental functioning is procedural delay incidental to thedecision-makingprocess.Itmightthereforebesomewhatunrealistictoexcludethese factors

which are peculiar to and characteristic of the functioning of the Government.

(4) While a private person can take instant decision, a "bureaucratic organ hesitates and debates,consultsandconsiders,speaksthroughpaper,moveshorizontallyandvertically till at least it gravitates towards a conclusion—unmindful of time and personality."

(5) A certain amount of *latitude* is, therefore, *not impermissible* and it is rightly said that those who bear the responsibility of the Government must have *"little play at the joints".* It would perhaps be *unfair* and *unrealistic* to put Government and private parties *on the same footing* in all respects in such matters.

Also,inaconcurrentopiniondeliveredbyS.K.Mookerjee,J,itwasemphasised that

"It is well settled that the duty of the appellant in case of a time barred appeal to explain thedelaysufficientlydoesnotrelatetotheperiodpriortothedateoflimitation."Andasheldin *Collector,LandAcquisitionv.Katiji*(AIR1987SC1353),"refusingtocondonedelaycanresultinameritoriousmatterbeingthrownoutattheverythresholdandcauseofjusticebeingdefeated.As against this, when delay is condoned, the highest that can happen is that cause would bedecided on merits after hearing the parties"

Condonationofdelayinfilingappealcanbedecidedonlyafterhearingboththeparties.

Order 22, Rule 9 (3) the consideration of condonation of delay under section 5 of the Limitation Act and for setting aside abetment under order 22 CPC are entirely different and the court always liberally considers the latter though in some cases the court may refuse to condone the delay in filing the appeal.

Acompetentcivilcourthaspowertopassaninterimorderofinjunctionpendinghearing of application under Section 5 of the Limitation Act.

Examination of witnesses not necessary-The application for condonation of the delay is not required to be considered on the basis of the evidence of witnesses. The application is to be decided on affidavits. Application for condonation of the delay under S.5 ought not to be dismissed by a non-speaking order.

***ManindraLandandBuildingCorporationv.BhutnathBanerjee,*(1964)3SCR495AIR 1964SC1336)**-Section5oftheLimitationActempowersthecourttoadmitanapplication,to whichitsprovisionsaremadeapplicable,evenwhenpresentedaftertheexpiryofthespecified periodoflimitationifitissatisfiedthattheapplicanthadsufficientcausefornotpresenting it within time. The court therefore had jurisdiction to determine whether there was sufficient causefortheappellantsnotmakingtheapplicationforthesettingasideoftheabatementofthe suit in time and, if so satisfied, to admit it.

***National Insurance company v. SmtRuniyaBinha,* 2008(3)JCR456(Jhr) -**

O41 R3A Requirement of filing condonation application along with the memo of appeal is mandatory.-- Court to grant condonation of delay in filing appeal only in exceptional cases.

***SpecialTehisldar,LandAcquisitionKeralav.K.V.Aiyusuma,*1996(10)SCC634**

Inthiscase,theGovernmentwasseekingcondonationofdelay.TheSupremeCourt heldthatwhileitistruethatsection5envisagesexplanationofthedelaytothesatisfaction of the court and there should not be any distinction made between the State and the citizen. Nevertheless adoption of strict standard of proof would lead to grave miscarriage of public justice.Also,itwouldresultinpublicmischiefbyskillfulmanagementofdelayintheprocesso f filing the appeal. Therefore, the approach of the court should be pragmatic but not pedantic.

***PundikJalamPatilv.ExecutiveEngineerJalgaonmediumproject,*2009(1)JLJR76SC**

In this case the High Court had allowed the application filed by the respondent under section5oftheLimitationAct,1963tocondonethedelayof1724daysinfilingappealsagains t the award passed by the Civil Judge in a land acquisition case.

TheSupremeCourthowever,heldthat:

The incorrect statement made in the application seeking condonation of delay itself is sufficient to reject the application without any further inquiry as to whether the averments madeintheapplicationrevealsufficientcausetocondonethedelay.Thatapartytakingafals e stand to get rid of the bar of limitation should not be encouraged to get any premium on the falsehood on his part by condoning delay.

Section 5 of the Limitation Act provides for extension of prescribed period of limitation in certain cases and confers jurisdiction upon the court to admit any application or any appeal after the prescribed period if it is satisfied that the appellant or applicant had sufficient cause for not preferring such appeal or application within the prescribed period.

The court referred to Ramlal and others v. Rewa Coalfields Ltd. [AIR 1962 SC 361] wherein it was said that, " even if the sufficient cause has been shown a party is not entitledtothecondonationofdelayinquestionasamatterofright.Theproofofasufficientca useis a condition precedent for the exercise of the discretionary jurisdiction vested in the court by section5.Thisaspectofthematternaturallyintroducestheconsiderationofallfactsanditisa t this stage the diligence of the party of its bona fides may fall for consideration."

Aswholeorder21c.p.c.relatingtoexecutionhasbeenspecificallyexcludedfromthe

purviewofthesection5oflimitationact.

SECTION6---LEGALDISABILITY-

(1) Whereapersonentitledtoinstituteasuitormakeanapplicationfortheexecution ofadecreeis,atthetimefromwhichtheprescribedperiodistobereckoned,amin or or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceases, as would otherwise have been allowed from the time specified therefore in the third column of the Schedule.

(2) Wheresuchperson is, atthetime from which theprescribedperiod ittobe reckoned, affected by two such disabilities, or where, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application withinthesameperiodafterbothdisabilitieshaveceased,aswouldotherwiseh ave been allowed from the time so specified.

(3) Where the disability continues up to the death of that person, his legal representative may institute the suit or make the application within the same period after the death, as would otherwise have been allowed from the time so specified.

(4) Where the legal representative referred to in sub-section (3) is, at the date of the death of the person whom he represents. affected by any such disability, the rules contained in sub-sections (1) and (2) shall apply.

(5) Whereapersonunderdisabilitydiesafterthedisabilityceasesbutwithintheperi od allowedtohimunderthissection,hislegalrepresentativemayinstitutethesuit or make the application within the same period after the death, as would otherwise have been available to that person had he not died.

***Explanation*-Forthepurposesofthissection'minor'includesachildinthe womb.**

This section will not grant indulgence to a minor entitled to prefer an appeal; it provides only for suits or applications for execution of decree. Section 6 does not cover a case of an application under O 21 R 90 CPC to set aside a sale held in execution of a decree. Nor does it applytoanapplicationforthereadmissionofanappealunderO41R10oftheCPC.Sections 6,7 and 8 from a group, they supplement each other and are not exclusive.

Section7--Disabilityofoneofseveralpersons—

Where one of several persons jointly entitled to institute a suit or make

an application for the execution of a decree is under any such disability, and a discharge canbegivenwithouttheconcurrenceofsuchperson,timewillrunagainstthemall;b ut when no such discharge can be given, time will not run as against any of them until one ofthembecomescapableofgivingsuchdischargewithouttheconcurrenceoftheot hers or until the disability has ceased.

Explanation I: This Section applies to a discharge from every kind of liability including a liability in respect of any immovable property.

ExplanationII:ForthepurposesofthissectionthemanagerofaHinduundivided familygovernedbytheMitaksharalawshallbedeemedtobecapableofgivingadischa rge, withouttheconcurrenceoftheothermembersofthefamilyonlyifheisinmanagem ent of the Joint family property.

Narayanv.Babasaheb,2016(2)JBCJ415(SC):(2016)6SCC725

Facts:AHindumanwhowastheoriginalowneroftheancestralpropertydiedleavinghi s twosons,onebeingminor,alongwithfourdaughtersandhiswidow.Asaledeedwasexecut ed by the widow (D2) in favor of one D1 on 20.1.1982 and on 28.11.1988 for the same property. In1989,suitisfiledbythesonsanddaughtersforrecoveryofpossessionandsettingasideth e saledeedexecutedbytheirmotherwhohasbeenarrayedD2andthepurchasermadeparty as D1.ThefirstappellatecourtconcludedthatArticle60oftheLimitationAct,isnotapplicableto the case as the D2 is not the guardian appointed by the Court.

Questionwhetherthesuitwasbarredbylimitation,beinghitby:

Article 60 which prescribes a limitation of 3 years after the ward attains majority to set aside transfer of property made by Guardian of a ward? **OR**

Article 109 which prescribes a limitation of 12 years when the suit is by a Hindu governed by Mitakshara Law to set aside alienation made by father of his ancestral property.

Held:Article60shallapplyandnotArticle109.

Reason:

AfterthedeathofPlaintiff'sfather,theirmotherD2becametheirnaturalguardian.Sim ply becauseshewasnotformallydeclaredaGuardianwillnotalterherlegalstatus.Butatthesa me time, section 8 (2)(a) of the Hindu Succession Act, 1956 requires the seller or

the purchaser to obtain the permission of District court for the sale. Therefore, the limitation to file the present suit is governed by Article 60 and the limitation is 3 years from the date of attaining majority.

When there are several plaintiffs, what is the reckoning date of limitation? A reading of Section 7 makes it clear that when one of several persons who are jointly entitled to instituteasuitormakeanapplicationfortheexecutionofthedecreeisunderanysuchdisability,anda dischargecanbegivenwithouttheconcurrenceofsuchperson,timewillrunagainstallofthem butwherenosuchdischargecanbegiven,timewillnotrunagainstallofthemuntiloneofthem becomes capable of giving discharge.

Further, as per Explanation II appended to section 7, the manager of a Hindu undivided familygovernedbyMitaksharaLawshallbedeemedtobecapableofgivingadischargewithout concurrenceofothermembersoffamilyonlyifheisinmanagementofthejointfamilyproperty. The three sisters though major on the date of institution of property, were not the manager or karta of the property. Therefore, explanation II will not be applicable.

Section 8-- Special exceptions--Nothing in section 6 or in section 7 applies to suits toenforcerightsofpre-emotion,orshallbedeemedtoextend,formorethanthreeyears fromthecessationofthedisabilityorthedeathofthepersonaffectedthereby,theperiod oflimitationforanysuitorapplication.

Thecombinedeffectofs.6,ands.8readwiththethirdcolumnoftheappropriateArticle of the Limitation Act would be that a person under disability may sue within the same period as would otherwise be allowed from the time specified therefore in the third column of the schedulebutthespeciallimitationasanexceptionhasbeenprovidedins.8layingdownthatthe extendedperiodaftercessationofdisabilitywouldnotbebeyondthreeyearsofthecessationof disability or the death of the disabled person.

***KolandavelGoukderv.Chinnapan,*AIR1965Mad541**

Facts: Some joint family property was sold by the father acting for himself and on behalf ofhisminorsonsin1940andthepurchasermadefurthersalein1942.Possessionpassedfrom fathertothealieneeon17.8.1942.Inthissuitfiledon9.1.1958bythesons(whohadbeenbor

n
in1928,1931andon13.8.1937)itwascontendedthattheperiodoflimitationi.e12years(as providedbyArticle126)shouldbecountedfromthedateoftheyoungestsonattainingmajority
orinthealternative,whenthefirstsonbecomesthemanageroftheproperty afterthedeathof hisfatherinApril,1948sothathebecamecapableofgivingdischargeonbehalfofhisbrothers also. In the light of this, the period will start running against them all only from April,1948.

Held: On a reading of Ss. 6, 7 and 8, it is clear that S. 8 imposes a limitation on the concession provided under Ss. 6 and 7 to a maximum of three years after cessation of the disability. Therefore, the period of three years would start running from the day of the eldest son attaining majority in 1946. Thus the suit is barred by limitation.

Section 8 is ancillary to and restrictive of the concession granted in Ss 6 and 7 and does not confer any substantial privilege. This section is in the nature of proviso to Ss 6 and 7.

Section 9 Continuous running of time - Where once time has begun to run no subsequent disability or inability to institute a suit or make an application stops it.

Provided that where letters of administration to the estate of a creditor have been grantedtohisdebtor,therunningoftheperiodoflimitationforasuittorecoverthedebt shall be suspended while the administration continues.

Limitation cannot run unless the cause of action has arisen. A cause of action normally accrues when there is in existence a person who can sue and another can be sued, and when allthefactshappenedwhicharematerialtobeprovedtoentitletheplaintifftosucceed.Where time has begun to run owing to the right to sue having accrued to a person not laboring under anylegaldisability,thesubsequentdisabilityofhimselforhissonorotherrepresentativeisnot a ground of exemption from the operation of the ordinary rule.

Section 10- Suits against trustees and their representatives- Notwithstanding anything contained in the foregoing provisions of this Act, no suit against a person in whom property has become vested if trust for any specific purpose, or against his legal representativesorassigns(notbeingassignsforvaluableconsideration),forthepurpose offollowinginhisortheirhandssuchproperty,ortheproceedsthereoforforanaccount of such property or proceeds, shall be barred by any length of time.

***Explanation* - For the purposes of this section any property comprised in a Hindu, Muslim or Buddhist religious or charitable endowment shall be deemed to be property vestedintrustforaspecificpurposeandthemanageroftheproperty shallbedeemed to be the trusted thereof.**

Section11-SuitsoncontractsenteredintooutsidetheterritoriestowhichtheAct extends–

(1) SuitsinstitutedintheterritoriestowhichthisActextendsoncontractsenteredi nto the State of Jammu and Kashmir or in a foreign country shall be rules of limitation contained in this Act.

(2) No rule of limitation in force in the State of Jammu and Kashmir or in a foreign country shall be a defense to a suit instituted in the said territories on a contract entered into in that State or in a foreign country unless -

a. therulehasextinguishedthecontract;and

b. the parties were domiciled in that State or in the foreign country during the period prescribed by such rule.

COMPUTATIONOFPERIODOFLIMITATION

Section12-.Exclusionoftimeinlegalproceedings–

(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 when an application is made for leave to appeal from a decree or order the time requisite for obtaining a copy of the judgment on which the decree or order is founded 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 copyofadecreeoranorder,anytimetakenbythecourttopreparethedecreeororder before an application for copy thereof is made shall not be excluded.**

Example: In a suit for specific performance of agreement the date of performance mentioned in the agreement will be the date for reckoning the period of limitation of three years and that date has to be excluded for computing the period of limitation for three years which is the period of limitation for filing such a suit.

A suit for recovery of loan has to be filed within three years of the date of granting the loan.Handnotereceiptwasdated5.9.1991andthesuitfiledon5thSeptember1994wouldbe within time because the date of hand note i.e. 5.9.1991 has to be excluded for computing the period of limitation.

The suit for recovery of money based on promissory note was filed on 16.04.2003. The note was executed on 12.04.2000. So, the suit has to be filed on 12.04.2003 as the date of execution of the promissory note has to be excluded in view of s. 12 of the Limitation Act. But from 12.04.2003 to 15.04.2003 there were general holidays. So, the suit filed on 16.04.2003 is not barred by limitation.

Timerequisiteforobtainingthecertifiedcopyofthejudgmentanddecreewillbeexcluded. The delay caused by the carelessness for negligence of the party in applying for a copy are in paying the money required for making the copy cannot be excluded from computation.

Time between judgment and signing of decree – Generally there is an interval of time betweenthedeliveryofthejudgmentandsigningofthedecree.Incomputingthetimerequisite forobtainingacopyofthedecreeoranorderanytimetakenbythecourttopreparethedecreeororderbeforeapplicationforcopythereofismadeshallnotbeexcluded.Theintervalbetween judgmentandsigningthedecreecannotbeexcludedasthetimerequisitewithoutregardtothe date of application for copies. In other words that it is only the time required if the application is made that can be excluded as the time requisite.

Section 13- Exclusion of time in cases where leave to sue or appeal as a pauper is applied for –

In computing the period of limitation prescribed for any suit or appeal in any case whereanapplicationforleavetosueorappealasapauperhasbeenmadeandrejected, thetimeduringwhichtheapplicanthasbeenprosecutingingoodfaithhisapplication for suchleaveshallbeexcluded,andthecourtmay,onpaymentofthecourt-feesprescribed for such suit or appeal, treat the suit or appeal as having the same force and effect as if the court-fees had been paid in the first instance.

14. Exclusionoftimeofproceedingbonafideincourtwithoutjurisdiction–

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of the appeal or revision, against the defendantshallbeexcluded,wheretheproceedingrelatestothesamemat ter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceedingis prosecutedingood faith inacountof first instanceorof appeal orrevision,againstthesamepartyforthesamereliefshallbeexcluded,wh ere such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of CivilProcedure,1908(5of1908),theprovisionsofsub-section(1)shallapply inrelationtoafreshsuitinstitutedonpermissiongrantedbythecourtunde r rule of that Order, where such permission is granted on the ground that the firstsuitmustfailbyreasonofadefectinthejurisdictionofthecourtofother cause of a like nature.

Explanation-Forthepurposeofthissection,-

a. inexcludingthetimeduringwhichaformercivilproceedingwaspending,t he day on which that proceeding was instituted and the day on which it ended shall both be counted;

b. aplaintifforanapplicantresistinganappealshallbedeemedtobeprosecuti ng a proceeding;

c. misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.

The policy of the section is to afford protection to a litigant against the bar of limitation whenheinstitutesaproceedingwhichbyreasonofsometechnicaldefectcannotbedecide don

meritsandisdismissed.But,whenthepartyseekingthebenefitofthissectionhasfailedtoget thereliefinearlierproceedingsnotbecauseofanydefectinjurisdictionorsomeothercause of like nature he cannot get the benefit of section.14. When the plaintiff has concurrent remedies and has availed one remedy and has become unsuccessful he cannot get the benefit of section 14wheninstitutingthesecondalternativeremedythoughsection14doesapplytoappeal,the principleunderlyingitcanbeinvokedinaidofsufficientcausecontemplatedbysection15.The benefit of this provision is not available in criminal proceeding. Execution proceeding is a civil proceeding within the meaning of S.14, the primary requirement for seeking exclusion u/s.14 is that the matter was prosecuted before a court suffering from defect in jurisdiction. Further it is necessary that the same plaintiff should be in both the suits it is not necessary that the plaintiffmusthavebeenprosecutingthepreviousproceedingasaplaintiff,itissufficientifas a defendanthewasurgingthesamecaseasheafterwordsprefersasaplaintiff.Itisalsonecessary that the defendant must be the same in both the proceeding. Due diligence in good faith needs tobeestablished.ThedefinitionofgoodfaithisgivenunderS.2(4)oftheLimitationAct,which requiresthethingtobedonewithduecareandattention.S.14willnothelpapartywhoisguilty of negligence lapse or in action. This Section also does not apply where the previous suit was abandonedorwithdrawnbytheplaintiffandthenafreshsuithasbeenfiledaftertheperiodof limitation.

There is a fundamental distinction between discretion to be used under Section 5 of the LimitationActandexclusionoftimeprovidedunderSection14oftheLimitationAct.Whereas the exclusion under Section 5 is discretionary, under S/14 it is mandatory. If the initial filingis due to carelessness the subsequent prosecution of the suit cannot be said in good faith. The benefit of this section can be availed only when there is initial want of jurisdiction. Where the plaintiff chooses to withdraw his suit under O 23 R 1 CPC he is not entitled to the benefit of Section 14 of the Limitation Act in a subsequent suit on the same cause of action. If a suit is withdrawnbytheplaintiffunderO23R1withpermissiontobringanothersuit,andafreshsuit is instituted, the plaintiff is bound by the limitation in the same manner as if the first suit had notbeeninstituted.This is so evenif the courtexpresses itopinionthatSection14 shallapply.

The policy of the Section is to afford protection against the bar of limitation to a man pursuinghisclaiminawrongforum.Thefollowingconditionmustbesatisfiedfortheapplicatio

n of this Section

- Boththepriorandsubsequentproceedingarecivilproceedingprosecutedbythesame party
- Thepriorproceedinghadbeenprosecutedwithduediligence
- Thefailureofthepriorproceedingwasonaccountofjurisdictionorsubjectsoflikenature
- Thepriorproceedingandthelaterproceedingshouldbeofthelike nature.
- ItappliesonlytoproceedingsbeforeCourt

***J.KumardasanNairv.IRICSohan*AIR2009SC1**

333 Fact:

FirstRespondentobtainedadecreeinasuitandthesaiddecreewasputinexecutionvide ExecutionPetitionNo.705of1977.Respondentno2to6aretheheirsandlegalrepresentative of Respondent no.1. The said execution petition was dismissed by an order dated 8.7.1996.

TheJudgmentDebtorsufferedanotherdecreepassedinoriginalsuitno.274/82regarding which Execution Petition No. 271 of 1986 was filed. A sale Certificate was issued in respect of suit property.

Respondent No 1 to 5 filed a second execution petition. Appellants were impleaded as Respondent 16-17. They raised objection interalia on ground of Limitation. The said objection petition was rejected.

Anappealwaspreferredwhichwasheldtobenotmaintainablebythe1stAppellateCourt by an order dated 5.10.2015. However, the merit of the case was also considered.

Aggrieved by the order Execution 2nd Appeal was preferred before the Hon'ble High Court. It was held that the impugned order was not correct in entering into merit of the case despite holding that the appeal was not maintainable.

ArevisionpetitionwasfiledalongwithapetitionunderSection5oftheLimitationActfor condonationofdelay.HoweverapplicationunderSection5waswithdrawnandanapplication under Section 14 was filed. High Court held that the said application was not maintainable in thefactsandcircumstanceofthecaseandtheexpression'causeoflikenature'hastoberead as ***ejusdem generis*** with expression 'defect of jurisdiction' and that so construed the expression 'other cause of like nature' must be interpreted so as to convey

something analogous to the preceding words 'from defect of jurisdiction'

ApexCourtallowedtheappealnegatingthereasoninggivenbytheHighCourtthatSection 14canbeallowedincasesofJurisdictionalerrorandnototherwise.

***ConsolidatedEngg.Enterprisesv.IrrigationDepartment*(2008)7SCC169**

Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in a courtwithoutjurisdiction.Onanalysisofthesaidsection,itbecomesevidentthatthefollowing conditions must be satisfied before Section 14 can be pressed into service:

(1) Boththepriorandsubsequentproceedingsarecivilproceedingsprosecutedbythesame party;

(2) Thepriorproceedinghadbeenprosecutedwithduediligenceandingood faith;

(3) Thefailureofthepriorproceedingwasduetodefectofjurisdictionorothercauseoflike nature

(4) The earlier proceeding and the latter proceeding must relate to the same matter in issue and;

(5) Boththeproceedingsareinacourt

. Section 14isintended toprovidereliefagainstthebaroflimitationincasesofmistakenremedyorselectionofawrong forum. On reading Section 14 of the Act it becomes clear that the legislature has enacted the saidsectiontoexemptacertainperiodcoveredbyabonafidelitigiousactivity.Uponthewords usedinthesection,itisnotpossibletosustaintheinterpretationthattheprincipleunderlying the said section, namely, that the bar of limitation should not affect a person honestly doinghis best to get his case tried on merits but failing because the court is unable to give him sucha trial, would not be applicable to an application filed under Section 34 of the Arbitration and ConciliationActof1996.Theprincipleisclearlyapplicablenotonlytoacaseinwhichalitigant bringshisapplicationinthecourt,thatis,acourthavingnojurisdictiontoentertainitbutalso where he brings the suit or the application in the wrong court in consequence of bona fide mistake or (sic of)law or defect of procedure. Having regard to the intention of the legislature this Court is of the firm opinion that the equity underlying Section 14 should be applied to its fullestextentandtimetakendiligentlypursuingaremedy,inawrongcourt,shouldbeexcluded

There must be no pretended mistake intentionally made with a view to delaying the proceeding or harassing the opposite party. In the light of these proceedings the question will

havetobeconsideredwhetherappellantprosecutedthematterinthecourtwithduediligenc e and good faith. The definition of “good faith” as found in S.2(4) of the Limitation Act would indicate that nothing shall be deemed to be in good faith which is not done with due care and caution.

BenefitunderSection14isnotavailableinaCriminalProceeding.

Thesecondsuitisnotacontinuationofthefirstsuitandthelimitationistobecomputed afreshwithrespecttothesecondsuit.Itisonlytheperiodinwhichtheplaintiffprosecutedthe suit bona-fide in another court is relevant and which can be excluded.

Section14providesforexclusionofperiod,whereasSection5providesforcon-donation of delay.

***Commissioner,M.P.HousingBoardandOrsv.M/SMohanLalandCompany,*20 16SCC Online SC 738 ---** It has been held in this case that filing of an application under Section 11 of the Arbitration and conciliation Act 1996, for an appointment of arbitrator is totally different than an objection to award under Section 34 of the 1996 Act as one is at the stage of initiation and another is at the stage of culmination. Thus, proceedings do not relate to “same matter in issue” and therefore Section 14 shall not apply.

Section15-Exclusionoftimeincertainother cases

(1) In computing the period of limitation for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of 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.

(2) In computing the period of limitation for any suit of which notice has been given, or for which the previous consent or sanction of the Government or any other authority is required, in accordance with the requirements of any law for the time beinginforce,theperiodofsuchnoticeor,asthecasemaybe,thetimerequiredf or obtaining such consent or sanction shall be excluded.

***Explanation* - In excluding the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be counted.**

(3) Incomputingtheperiodoflimitationforanysuitorapplicationforexecution of decree by any receiver of interim receiver appointed in proceedings for the

adjudicationofapersonasaninsolventorbyanyliquidatororprovisionalliquidator appointmentinproceedingsforthewindingupofacompany,theperiodbeginning with the date of institution of such proceeding and ending with the expiry of three monthsfromthedateofappointmentofsuchreceiverorliquidator,asthecase may be, shall be excluded.

(4) In computing the period of limitation for a suit for possession by a purchaser at a sale in execution of a decree, the time during which a proceeding to set aside the sale has been prosecuted shall be excluded.

(5) In computing the period of limitation for any suit the time during which the defendanthasbeenabsentfromIndiaandfromtheterritoriesoutsideIndiaunder the administration of the Central Government, shall be excluded.

In computing the period of limitation, **where a suit has been filed** or an application for stay has been made, the time during which there was a stay order of the against the **filing of suit or execution application** shall be excluded.

TwoconditionhavetobefulfilledinordertoobtainthebenefitofS.15(4), they are

Thesuitshouldbeoneforpossessionbythepurchaseratasaleinexecutionofthedecree, and

It shouldbeasuitandnotanapplicationifthistwoconditionsarefulfilledthenthetime duringwhichaproceedingforsettingasidethesaledeedbeenprosecutedshallbeexcluded

SECTION16-EFFECTOFDEATHONORBEFORETHEACCRUALOFRIGHT TOSUE

(1) Where a person who would, if he were living, have a right to institute a suit or make an application dies before the right accrues, or where a right to institute a suit or make an application accrues only on the death of a person, the period of limitation shallbecomputedfromthetimewhenthereisalegalrepresentativeofthedeceased capable of instituting such suit or making such application.

(2) Where a person against whom, if he were living, a right to institute a suit or makean application would have accrued dies before the right accrues, or where a right to institute a suit or make an application against any person accrues on the death of such person, the period of limitation shall be computed from the time when there isa legal representative of the deceased against whom the plaintiff may institute such suit or make such application.

*(3) **Nothing in sub-section (1) or sub-section (2) applies to suits to enforce rights of preemption or to suit for the possession of immovable property or of a hereditary office.***

Section16confinestorightsofactionaccruingafterdeath.Itmakesitapplicabletoright s of action accruing either simultaneous on death or thereafter of the person suing or sued. In order to attract the applicability of Section 16, it is necessary that the death must occur before therighttoinstituteasuitormakeanapplicationaccrues.Iftherighttoinstituteasuitormake anapplicationaccruesinthelifetimeofthedeceasedthelimitationshallbegintorunfromthe date of the accrual of cause of action and the provisions of Section 16 would not apply.

SECTION17--EFFECTOFFRAUDORMISTAKE

*(1) **Where,inthecaseofanysuitorapplicationforwhichaperiodoflimitationis prescribed by this Act,--***

*(a) **thesuitofapplicationisbaseduponthefraudofthedefendantorrespondentor hisagent;or***

*(b) **the knowledge of the right or title on which the suit or application is founded is concealed by the fraud of any such person as aforesaid; or***

*(c) **thesuitorapplicationisforrelieffromtheconsequencesofamistake;or***

*(d) **whereanydocumentnecessarytoestablishtherightoftheplaintifforappli cant has been fraudulently concealed from him;***

theperiodoflimitationshallnotbegintorununtilplaintifforapplicanthasdiscov ered thefraudorthemistakeorwithreasonablediligencecouldhavediscoveredthei t;or inthecaseofaconcealeddocument,applicantfirsthadthemeansofproducing the concealed document or compelling its production ;

Providedthatnothinginthissectionshallenableanysuittobeinstitutedorapplica tion to be made to recover or enforce any charge against or set aside any transaction affecting, any property which-

*i. **in thecaseoffraud,hasbeenpurchasedforvaluableconsiderationbyapers on who was not a party to the fraud and did not at the time of the purchase know, or have reason to believe, that any fraud had been committed, or***

ii. in the case of mistake, has been purchased for valuable consideration subsequently to the transaction in which the mistake was made, by a person whodidnotknow,orhavereasontobelieve,thatthemistakehadbeenmade,or

iii. in the case of a concealed document, has been purchased for valuable consideration by a person who was not a party to the concealment and, did not at the time of purchase know, or have reason to believe, that the document had been concealed.

(2) Where a judgment-debtor has, by fraud or force, prevented the execution of a decree or order within the period of limitation, the court may, on the application of the judgment-creditor made after the expiry of the said period extend the period for execution of the decree or order:

Providedthatsuchapplicationismadewithinoneyearfromthedateofthediscovery of the fraud or the cessation of force, as the case may be.

If the plaintiff claims exemption on the ground of fraud on the part of the defendant he must proof the fraud. In such a case it is for the plaintiff to give in the first instance clear proof ofthefraudallegedbyhim.Thecourtwillnotpresumeitfromthemereexistenceofsuspicious circumstances.

SECTION18-EFFECTOFACKNOWLEDGMENTINWRITING

(1) Wherebeforetheexpirationoftheprescribedperiodforasuitorapplicationinrespect or any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derived his title or liability, a freshperiodoflimitationshallbecomputedfromthetimewhentheacknowledgment was so signed.

(2) Where the writing containing thee acknowledgement is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act,1872 (1 of 1872), oral evidence of its contents shall not be received.

Explanation-Forthepurposesofthissection,-

a. an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performanceorenjoymenthasnotyetcomeorisaccompaniedbyrefusaltopay, deliver, perform or permit to enjoy, or is coupled with a claim

to set-off, or is addressed to a person other than a person entitled to the property or right;

b. theword"signed"meanssignedeitherpersonallyorbyanagentdulyAutho rized in this behalf ; and

c. anapplicationfortheexecutionofadecreeorordershallnotbedeemedtob ean application in respect of any property or right.

An unregistered document, registration of which is compulsory, can be used for the collateral purpose of proving acknowledgement of liability for the purpose of extending time under S.18 of the Limitation Act.

Application to Execution Proceedings – Section 18 does not apply to execution of decree. So, even in case of consent decree for specificperformance of contract, the execution has to be filed within 12 years of the date on which the decree becomes executable.

SECTION19- EFFECTOFPAYMENTONACCOUNTOFDEBTOROFINTERESTONLEGACY

Where payment on account of a debt or of interest on a legacy is made before the expirationoftheprescribedperiodbythepersonliabletopaythedebtorlegacyorby his agent duly Authorized in this behalf, a fresh period of limitation shall be computed from the time when payment was made:

Provided that, save in the case of payment of interest made before the 1st day of January,1928, an acknowledgment of the payment appears in the hand-writing of, or in a writing signed by the person making the payment.

Explanation-Forthepurposesofthissection,-

a. where mortgaged land is in the possession of the mortgagee, the receipt of the rent of produce of such land be deemed to be a payment;

b. "debt"doesnotincludemoneypayableunderadecreeororderofa court.

A payment saves limitation under this section if it is made by a person liable to pay it a purchaserofequityofredemptionisapersonliabletopaythemortgagethedebttherefore, if under a mortgage decree of sale of the mortgaged property to which he is a party through exempted from person liability he pays interest as such, such payment gives a fresh period of limitation for execution of the decree.

Apaymentbyoneofthetwojointdebtorswouldsavelimitationagainsttheotherdebtor

also.InordertoattractSection19,paymenthastobemadewithintheperiodoflimitationand notthattheacknowledgmentofsuchpaymenthastobemadewithintheperiodoflimitation. It will suffice if it is signed before the suit is commenced.

UnderSection19itisthepaymentwhichextendsthelimitationandsuchpaymenthast o be proved in a particular way, namely, a written or signed acknowledgment. That is the only mode of proof of such payment.

SECTION20-EFFECTOFACKNOWLEDGMENTORPAYMENTBYANOTHERPERSON

(1) Theexpression"agentdulyAuthorizedinthisbehalf"insections18and19shall inthe caseofapersonunderdisability,includehislawfulguardian,committeeorman ager or an agent duly Authorized by such guardian, committee or manager to sign the acknowledgment or make the payment.

(2) Nothing in the said sections renders one of several joint contractors, partners, executors or mortgagees chargeable by reason only of a written acknowledgment signed by, or of a payment made by, or by the agent of, any other or others of them.

(3) Forthepurposesofthesaidsections,-

a. an acknowledgment signed or a payment made in respect of any liability by, or bythedulyAuthorizedagentof,anylimitedownerofpropertywhoisgover ned byHinduLaw,shallbeavalidacknowledgmentorpayment,asthecasema ybe, against a reversionary succeeding to such liability; and

(b)wherealiabilityhasbeenincurredby,oronbehalfofaHinduundividedfamily assuch,anacknowledgmentorpaymentmadeby,orbythedulyAuthorize d agent or, the manager of the family for the time being shall be deemed to have been made on behalf of the whole family.

The word ‘chargeable’ in Section 20 means every kind of chargeability and includes liabilityastopropertyitisnotlimitedtopersonalliabilityonly.Section20oftheLimitationAct isexplanatoryofSections18and19oftheActanddoesnotconstituteanexceptioninthecas e of either of these sections.

Section 20 of the Limitation Act shows that for the purpose of Section 20, the payment made by a guardian must be held to be a payment by an agent duly authorized on his behalf.

SECTION21--

EFFECTOFSUBSTITUTINGORADDINGNEWPLAINTIFFORDEFENDANT

(1) Where after the institution of a suit, a new plaintiff or defendant is substituted or added,thesuitshall,asregardshim,bedeemedtohavebeeninstitutedwhenhe was made a party:

Providedthatwerethecourtissatisfiedthattheomissiontoincludeanewplaintiff ordefendantwasduetoamistakeingoodfaithitmaydirectthatthesuitasregards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.

(2) Nothinginsub-section(1)shallapplytoacasewhereapartyisaddedorsubstituted owing to assignment or devolution of any interest during the tendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.

If some of them institute a suit within time and the other plaintiffs are added after the periodoflimitation,theclaimoftheoriginalplaintiffs,wouldbebarred.OrderIRule10(2)CPC providesfortheadditionof(1)necessaryparties(2)properparties.Inaddingnecessaryparties Section21oftheLimitationActhastobetakenintoaccount,butinaddingproperpartySection 21 has no application.

Theprovisotosub-section(1)ofSection21clothesthecourtwiththedirectiontocondone the delay in filing the application for addition of parties after the period of limitation provided the same is made bona-fide and good cause is shown therefore.

SECTION22---CONTINUINGBREACHESANDTORTS

In the case of a continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during the breach or the tort, as the case may be, continues.

According to Section 22 of the Limitation Act, 1963 in the case of a continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be, continues. This section speaks about continuing breach of contract and not of successive breach of contract.

Section 22 of the Limitation Act relates to continuing breach of contract and also to continuing tort which this section provides for a suit for compensation for acts not actionable without special damage. The law of Limitation recognized that

liabilities for payments of damagesand/orcompensationmaycontinuetoaccruedaytodaynewlyinrespectofcontinuing breach of contracts and torts.

Section22referstoacontinuingwrongor tort. A continuing wrong creates a continuing source of injury and renders the doer of the act responsibleandliableforthecontinuanceofthesaidinjury.Ifthewrongfulactcausesaninjury whichiscomplete,thereisnocontinuingwrongeventhoughthedamageresultingfromtheact may continue. An infringement of a trade mark is a continuing wrong. In ***Bengal Waterproof Ltd. v. Bombay Waterproof Mfg. Co., AIR 1997 SC 1398***, it has been held that after filing the first suit based on the infringement of trade mark and passing off action till the date of suit, a secondsuitisfiledforcontinuousactsofinfringementoftrademarksubsequenttothefilingof the earlier suit is not barred.

SECTION23– SUITSFORCOMPENSATIONFORACTSNOTACTIONABLEWITHOUTSPECIAL DAMAGE

In the case of suit for compensation for an act which does not give rise to a cause of actionunlesssomespecificinjuryactuallyresultstherefrom,theperiodoflimitationshall be computed from the time when the injury results.

TheprovisionsofSection23areapplicableevenincasesofspecialorlocallaws,unless expresslybarredorexcludedinaccordancewithSection29oftheLimitationAct.

TheSection23oftheLimitationActisapplicabletosuitsbasedonbothtortsandcontracts. Itdealswithasuitforcompensationforanactwhichdoesnotgiverisetoacauseofaction.The expression ‘cause of action’ is not defined by the Limitation Act. However, it means every fact whichitwouldbenecessaryfortheplaintifftoproveiftraversedinordertosupporthisrightto the judgment of the court.

ToavailthebenefitofSection23oftheLimitationAct,itmustbeprovedthatsomespecific injuryhasoccurredtotheplaintiff.Theword‘specific’meansthatcanbespecifiedandtheword ‘injury’ includes a legal injuries.

SECTION24–COMPUTATIONOFTIMEMENTIONEDININSTRUMENT

AllinstrumentsshallforpurposesofthisAct,bedeemedtobemadewithreferenceto the Gregorian calendar

SECTION25-ACQUISITIONOFEASEMENTBYPRESCRIPTION

(1) Where the access and use of light or air to and for any building have been peaceable enjoyed there with 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 interruptionandfortwentyyears,therighttosuchaccessanduseoflightorair, way, watercourse, use of 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 claim to which such period relates is contested.

(3) Where 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 the section, unless wherethereisanactualdiscontinuanceofthepossessionorenjoymentbyreason of an obstruction by the act of some person other than the claimant and unless such obstructionissubmittedtooracquiescedinforoneyearaftertheclaimanthasnotice thereof and of the person making or authorizing the same to be made.

SECTION. 26-EXCLUSIONINFAVOROFREVERSIONARYOFSERVANT TENEMENT–

Whereanylandorwaterupon,overorfrom,whichanyeasementhasbeenenjoyedor derivedhasbeenheldunderorbyvirtueofanyinterestforlifeorintermsofyearsexceeding three years from the granting thereof the time of the enjoyment of such easement during thecontinuanceofsuchinterestortermshallbeexcludedinthecomputationoftheperiod oftwentyyearsincasetheclaimis,withinthreeyearsnextafterthedeterminationofsuch interest or term, resisted by the person entitled on such determination to the said land or water.

SECTION27-EXTINGUISHMENTOFRIGHTTOPROPERTY

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.

Itisan exception tothe generalprinciple that the lawsoflimitation only bar remedy and does not extinguish title. This is not only a law of limitation but is also a law of prescription. It onlyextinguishesthetitleofarightfulownerbutitdoesnotspecificallystatesastowheresuch right vests. But the title of the property cannot be left in the air. So on the extinguishment of the title of the rightful owner, such title to the property shall follow possession and person in possessionastrespasseristobetreatedtohaveacquiredtitlebyadversepossession.Theright extinguishedbySection27oftheLimitationActistherightwhichthelawfulownerhasand againstwhomaclaimofadversepossessionismade.

Therefore, for a suit for specific performance of an agreement, if a date is fixed then non- compliance with agreement on the date would give a cause of action to file a suit for specific performancewithinthreeyearsfromthedatesofixed.Butwherenosuchdateisfixedlimitation ofthreeyearswouldbeginwhenplaintiffhasnoticethedefendanthasrefusedperformance of agreement.

SECTION29–SAVINGS

1. ***NothinginthisActshallaffectSection25oftheIndianContractAct 1872.***
2. ***Whereanyspecialorlocallawprescribesforanysuit,appealorapplicationaperiod oflimitationdifferentfromtheperiodprescribedbythescheduleandforthepurpose ofdeterminganyperiodoflimitationprescribedforanysuit,appealorapplication by any special or local law, the provision contained in Sections 4 to 24 apply only insofaras,andto,theextentwhich,theyarenotexpresslyexcludedbysuchspecialor local law.***
3. ***Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law.***
4. ***Sections 25 and 26 and the definition of "easement" in section 2 shall not apply to cases arising in the territories to which the Indian Easements Act,1882 may for the time being extend***

In case of Special Laws the limitation as provided under the special law shall

have application and not the limitation as provided under the Limitation Act. Another important pointthathasbeenmadeisthattheprovisionsofthelimitationActSections4to24shallstand excluded only when the Special Act excludes its operation.

SunilKrishnaGhoshv.CalcuttaImprovementTrust[AIR2001Cal199]

It was contended in the case that Article 55 of the Limitation Act will be applicable in the case since there was no fixed time to execute the conveyance sought to be performed in the agreement and when there is no fixed time, the suit has to be brought within three years from the date of the refusal to perform the agreement.

The Court held in this case that in this case the plaintiff had performed his part of the contract but the defendant had not and there was no stipulated date for the performance of thecontract.Thedefendanthadnotinwritingrefusedeithertoexecutetheirconveyanceort o performtheirpart.Thustherewasacontinuousbreachonthepartofthedefendanttoperfor m bynothandingoverthephysicalpossessionoftheproperty.Itisthereforeacasewherenotonl y Art55oftheLimitationActbutalsoSection22oftheLimitationActwasapplicableasthiswas acontinuingcauseofactionbecauseineachandeveryday,thebreachwasbeingcommitte dby the defendant. Consequently, the suit was not held to be barred.

ARTICLE136OFTHESCHEDULEOFTHELIMITATIONACT

Article 136 of the Limitation Act 1963 provides for a 12 year for any limitation for the execution of any decree or order of court. The period of limitation to commence from the time whenthedecreeororderbecomesenforceableordecreeororderdirectsanypaymentofmo ney orthedeliveryofanypropertytobemadeatacertaindateoratrecurringperiods,whendefaul t in making payment or delivery in respect of which execution is sought takes place: provided an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation. The test to be applied for determining whether the decree was capable of immediate execution is whether the performance of condition was entirelydependentonthewillofthedecreeholder.Iftheexecutionwasnotwithinthepowerof thedecree-holderbutdependentonsomeextraneouscircumstancethentheperiodoflimitation shall not commence till the presence that external circumstance.

Accordingtothedoctrineofmerger,whenanappealisprescribedunderthestatute

and an appeal is preferred before a higher forum and a passes a decree, the decree of the trial court merges with the decree of the decree of the appellate court and even if subject to the modificationthatmaybemadeinappellatedecree,thedecreeoftheappellatecourtsupersedes thedecreeofthetrialcourt.Inotherwordsmergerofthedecreetakesplaceirrespectiveofthe fact whether appellate court affirms, modifies, or reverses the decree of the trial court.

Itwasheldthatonceadecreeissoughttobeenforcedforthepurposeofexecutionthereof irrespectiveofbeingoriginalorappellate,thedateofthedecreeoranysubsequentorderwould beconsideredtobethestartingperiodforlimitation.Inthiscase,thefinaldecreewasprepared in a partition suit by the trial court on 07.05 1968. After appeal, the High Court decided the second appeal on 18.04.85 and drew up a formal decree pursuant thereto on 30.10.86. Thus the decree of the High Court merged with that of the trial court. In view thereof the execution application filed on 26.03.97 was held not to be time barred because when an appellate forum is invoked and entertained, for all intent and purpose the suit continues.

Article 142 - In order that the article may be attracted the plaintiff must initially have been in possession of the property and should have been dispossessed by the defendant or someone through whom the defendant claims or alternatively, the plaintiff should have discontinued possession.Itwasnoone'scasethatthefirstrespondentwaseverinpossessionoftheproperty. As regards the second respondent's possession at one time of a part of the property, it was by reasonofatransferbytheadoptedson.Theclaimintheinstantcase,however,wasbysuccession, underadifferenttitlealtogether,andsoitmustbeheldthattheplaintiffs-respondents,asheirs of Raj Kaur, were never in possession of the land.

Article144-Article144wasapplicabletothesuit,butthesuitwasnotbarredbytime.Inasuit towhichArt144isattracted,theburdenisonthedefendanttoestablishthathewasinadverse possession for12 years before the date of suit, and for computation of that period, he can avail himself of the adverse possession of any person or persons through whom he claims but not the adverse possession of independent trespassers. The starting point of limitation in Article 144isthedatewhenthepossessionofthedefendantbecomesadversetotheplaintiff.Thegist of the definition of the word "defendant" in Section 2(4) of the Act is the existence of a jural relationship between the different persons referred to in the definition, and there can be no jural relationship between two independent trespassers.

SUITSONTHEBASISOFPOSSESSIONANDSUITSBASEDONPROPRIETARYTITLE.

UnderthepresentAct,allsuitsforpossessionofimmovablepropertyhavebeenbroughtunder twocategories:-

1. Suitsbasedonlyontherightofpreviouspossessionandnotonproprietarytitle.
2. Suitsbasedonproprietarytitle..

In the first case, Art.64 applies and in the other case, Art.65 applies. In the former, time begins to run from the date of dispossession of the plaintiff or the discontinuance of possession.Inthecaseofthelatter,timebeginstorunwhenthepossessionofthedefendant becomes adverse to the plaintiff. In the case of *Neelakanta Pillai vs. BharathiAmma1971 KLT SN. 54*, it was held that Article 142 applies to a suit for recovery of possession by a person who has been dispossessed, even on the strength of his prior possession.

SECTION6OFTHESPECIFICRELIEFACTAND ARTICLES64AND65OFTHELIMITATIONACT.

If the owner of the property is dispossessed by force by a trespasser, the owner can institute a suit for possession under Section 6 of the Specific Relief Act without proving title. Periodoflimitation:6months.(Sec.6(2)(a)).Evenaftertheperiodof6months,hecanbringa suit on title period of limitation is 12 years under Art. 65.

Evenifapersonisunlawful possession,hecanbringasuitagainstatrespasserincluding the ownerundersection6oftheSpecificReliefAct.(Onthegroundofhisdispossessionotherwise thaninduecourseoflaw).HecanbringsuchasuitagainstthetrueowneronlyunderSection6. He cannot do so under Article 64 or 65of the Limitation Act. What is saved under Section 6 (4) of the Specific Relief Act is only a suit based on title.

A person in unlawful possession can bring a suit against a trespasser who has no title to theproperty(i.e.nottheowner)bothundersection6andunderArticle64.Thatisasuitunder Article 64 and it is saved by section 6 (4) of the Specific Relief Act. Such suit is only one based on previous possession and dispossession and not on “title” within the meaning of Article 64 although it is a suit based on title within the meaning of Section 6 (4) of the Specific Relief Act. The word “Title” is used in Art. 64 and 65 in a restrictive sense as including only proprietary title as distinguished from possessory title, although the word title is wide enough to include bothproprietaryandpossessorytitles.ApersonwhohasnotavailedtheremedyunderSecti

on 6 can bring a suit on title after the expiry of six months. There is no bar. Such a suit can befiled by the true owner against a trespasser or by a previous trespasser against a subsequent trespasser but a suit is not maintainable against the true owner.

Where a trespasser is forcibly evicted by the true owner and the trespasser obtains a decree against the true owner under Section 6, the true owner can institute a suit on title and theArticlewhichappliesisArt.65.Supposeatrueownerisejectedbyatrespasser.Trueowner obtainsadecreeunderSection6andgetspossessioninexecutionofthedecree.Thereafter the trespassercannotinstituteasuitagainstthetrueownerforpossessionsincethetrespasser has no title as against the true owner.

HemajiWaghajiJatv.BhikhabhaiKhengarbhaiHarijan,2009(1)JLJ82(SC)

TheSupremeCourtobservedthatthelawofadversepossessionwhichoustsanowneron the basis of inaction within limitation is irrational, illogical and wholly disproportionate. The lawasitexistsisextremelyharshforthetrueownerandawindfallforadishonestpersonwho hadillegallytakenpossessionofthepropertyofthetrueowner.Thelawoughtnottobenefita personwhoclandestinelytakespossessionofthepropertyofthetrueownerincontravention of law.TheSupremeCourtrecommendedtheUnionGovernmenttoseriouslyconsidertheurgent need of fresh look regarding the law on adverse possession and make suitable changes in the laws related thereto.

Dharampal(dead)throughLRsv.PunjabWaqfBoard,2017(7)Supreme156

The Supreme Court followed its Judgement given in *Gurudwara Sahib v. Gram Panchayat Village Sirthala and Others* and held that a plea of adverse possession cannot be set up by the plaintifftoclaimownershipoverthesuitpropertybutsuchpleacanberaisedbythedefendant by way of defence in his written statement in answer to the plaintiff's claim. In the light of law laid down in the case of *Gurdwara Sahib* (supra), , the plea raised by the original appellant (DefendantNo.1)inhiscounter-claimfiledagainsttheplaintiffwhereinhesoughtadeclaration ofhisownershipoverthesuitlandonlyonthepleaof“adversepossession”washeldtobenot permissible, in the present case. It was held so because a counter-claim is treated as a plaint under Order 8 Rule 6A(4) of the CPC.

The Court also addressed the question of what "adverse possession" is and on whom the burden of proof lies and lastly, what should be the approach of the Courts while dealing with suchplea.TheCourtobservedthatinviewoftheseveralauthoritiesofthisCourt,whatcansaf

ely besaidisthatmerepossessionhoweverlongdoesnotnecessarilymeanthatitisadversetothe true owner. It means hostile possession which is expressly or impliedly in denial of the title of thetrueownerandinordertoconstituteadversepossessionthepossessionmustbeadequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The possessionmustbeopenandhostileenoughsothatitisknownbythepartiesinterestedinthe property. The plaintiff is bound to prove his title as also possession within twelve years and once the plaintiff proves his title, the burden shifts on the defendant to establish that he has perfected his title by adverse possession. Claim by adverse possession has two basic elements
i.e. the possession of the defendant should be adverse to the plaintiff and the defendant must continue to remain in possession for a period of twelve years thereafter.

Dulal Chandra Pramanik and Another v. State of Bihar (now Jharkhand, 2013(1) JCR 82(Jhr)

Where eviction proceeding have been initiated against the petitioner by the state well before the expiry of the limitation period of 30 years , the petitioner or their predecessors could not have claim title by adverse possession. Once a proceeding for eviction was initiated then in such a situation, if time is consumed in getting the possession, the party in possession cannot claim benefit because ofhis possession during eviction proceedings nor he can be said to be in “peaceful possession” for acquiring hostile title. The Hon’ble High Court reiterated theobservationsmadebytheHon’bleSupremeCourtin***R.HanumaiahandAnotherv.Secretaryto GovernmentofKarnataka,RevenueDepartmentandOthers,2010(5)SCC203***,wherein the Apex Court had made clear distinction between the claim of adverse possessionover a private property and Government property and had observed that Any loss of Government propertyis ultimately the loss to the community. Courts owe a duty to be vigilant to ensure that public property is not converted into private property by unscrupulous elements.

According to the Court many civil courts deal with suits for declaration of title and injunction against the Government in a casual manner, ignoring or overlooking the special features relating to government properties. Instances of such suits against the Government being routinely decreed, either ex parte or for want of proper contest, merely acting upon the oral assertions of plaintiffs or stray revenue entries are common. Whether the Government contests the suit or not, before suit for declaration of title against a Government is decreed,the Plaintiff should establish, either his title by producing the title deeds which satisfactorily trace title for a minimum period of thirty years prior to the date of the suit (except where title

isclaimedwithreferencetoagrantortransferbytheGovernmentorastatutorydevelopment authority) or by establishing adverse possession possession for a period of more than thirty years.

COMPUTATIONOFPERIODOFLIMITATION

Section12-24ofLimitationAct,1963providesforcomputationoftheperiodof limitation. They either exclude time of reckoning the period of limitation or postpone starting point of limitation. **Sections 12-15** of the Limitation Act provide for the exclusion of time in computing the period of limitation prescribed by law.

Thoseprovisions,*interalia*,excludethefollowingperiods:

1. Thedayonwhichtheperiodoflimitationistobe reckoned.
2. Thedayonwhichthejudgment/order/awardispronounced.
3. Thetimespentinobtainingthecopyof decree/order/award/sentence.
4. Thetimespentinprosecutinganapplicationtosueasanindigentperson.
5. Thetimespentinproceedingstakenbonafide(ingoodfaith)incourthavingnojurisdiction.
6. Thetimeduringwhichstayorinjunctionoperated.
7. Thetimespentingivingnoticeorforobtainingconsentorsanctionrequiredby law.
8. Thetimeduringwhichtherewasreceiverorliquidator.
9. Thetimeduringwhichproceedingstosetasidesalewerepending(inasuitforpossession).
10. Thetimeduringwhichthedefendanthadbeenoutof India.

Sections16-23oftheLimitationAct,1963provideforpostponementoflimitation.For the application of the law of limitation, there must be a completed cause of action. In other words,theremustbeapersonwhocansue,apersonwhocanbesued,andacauseofactiono n whichasuit,appealorapplicationcanbefiled.Moreover,suchpersonshouldbeinaposition to institute such proceeding without any hindrance, obstruction or impediment.

1. The period of limitation will not start running till there is a person who can sue or who canbesued.Inthefollowingcases,thereisapostponementoflimitation,i.e.theperiod of limitation will not start running.
2. Incaseoffraudormistake,theperiodoflimitationwillnotstartrunningtillsuchfraudor mistake is discovered.
3. In case of right or liability, a fresh period of limitation will start running from the

date of acknowledgement in writing of such right or liability by the party.

4. In case of debt, payment will provide afresh period of limitation from the time of such payment.Where after the institution of a suit, a new plaintiff or defendant is added or substituted, thesuitshallbedeemedtobeinstitutedagainsthimwhenhewasmadeaparty.Butifthe courtissatisfiedthatsuchomissionwasduetobonafidemistake,thesuitshallbedeem ed to have been instituted on an earlier date.

5. In case of continuing breach of contract or tort a fresh period of limitation begins to run every moment till breach or tort continues.

6. Inasuitforcompensationforanactnotactionablewithoutspecialdamage,theperiodo f limitation will be computed from the time the injury result.

LIMITATION IN CRIMINAL CASES FOR TAKING COGNIZANCE OF CERTAIN OFFENCES :

467.Definitions.-

For the purposes of this Chapter, unless the context otherwise requires, "period of limitation means the period specified in section 468 for taking cognizance of an offence."

2) The period of limitation commences from the date of commission of offence, if the date is not known, from the day the commission of offence came to the knowledge of the aggrieved person or police officer as the case may be, where the offender is not know, the day on which the identity of the offender is known to the person aggrieved or to the police officer who is investigating into the offence.

3) In continuing offence, the perios of limitation will begin at every commission of the offence.

4) Exclusion of time in computing limitation :

The time taken in prosecuting another prosecution on same facts with diligence in another court is to be excluded. The period occupied by an order of injunction,stay order or any staying the institution of prosecution is to be excluded

The period of notice for prosecution, or obtaining of sanction or consent if required by law, is to be excluded

The period during which the court is closed to be eexcluded.

Section 468 – Bar to taking cognizance after lapse of the period of limitation

1. Except as otherwise provided elsewhere in this Code, no Court, shall take cognizance of an offence of the category specified in Sub-Section (2), after the

expiry of the period of limitation.

2. The period of limitation shall be-
    1. six months, if the offence is punishable with fine only;
    2. one year, if the offence is punishable with imprisonment for a term not exceeding one year;
    3. three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.
3. For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

section 469 : Commencement of the period of limitation

1. The period of limitation, in relation to an offence, shall commence,
    1. on the date of the offence; or
    2. where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or
    3. where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.
2. In computing the said period, the day from which such period is to be computed shall be excluded.

Section 470 – Exclusion of time in certain cases

In computing the period of limitation, the time during which any person has been prosecuting with due diligence another prosecution, whether in a Court of first instance or in a Court of appeal or revision, against the offender, shall be excluded:

Provided that no such exclusion shall be made unless the prosecution relates to the same facts and is prosecuted in good faith in a Court which from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

1. Where the institution of the prosecution in respect of an offence has been stayed by an injunction or order, then, in computing the period of limitation, the period 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.
2.
3. Where notice of prosecution for an offence has been given, or where, under any law for the time being in force, the previous consent or sanction of the Government or any other authority is required for the institution of any prosecution for an offence, than, in computing the period of limitation, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.

Explanation – In computing the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be excluded.

1. In computing the period of limitation, the time during which the offender:
    1. has been absent from the India or from any territory outside India which is under the administration of the Central Government, or

    2. has avoided arrest by absconding or concealing himself, shall be excluded.

SECTION 471 : Exclusion of date on which Court is closed

Where the period of limitation expires on a day when the Court is closed, the Court may take cognizance on the day on which the Court reopens. **Explanation** – A Court shall be deemed to be closed on any day within the meaning of this section, if, during its normal working hours, it remains closed on that day.

Section 472 – Continuing offence :

In the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues.

Section 473 – Extension of period of limitation in certain cases

Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may make cognizance of an offence after the expiry of the period of limitations, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interest of justice.

PAPER PRESENTATION ON

LAW OF LIMITATION

BY

G.ARCHANA

PRINCIPAL CIVIL JUDGE (JUNIOR DIVISION), ADONI

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INTRODUCTION

The law of limitation is based on two Latin maxims. Firstly, "*interest republicae ut sit finis litium*" which means it is in the public interest to have an end to litigation, and secondly, "*vigilantibus non dormientibus jura subveniunt*," which means the law helps those who are vigilant about their rights, not those who neglect them. If a suit is filed after the expiry of limitation, it will be considered barred by the limitation period.

The basic concept of limitation relates to prescribing of time period for barring legal actions. According to Section 2 (j) of the Limitation Act, 1963, '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. The Limitation Act contains 32 Sections and 137 Articles. Articles 1 to 113 deals with Suits, Articles 114 to 117 deals with Appeals and Articles 118 to 137 deals with Applications. Suits are divided into ten 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)
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9. Suits relating to miscellaneous matters (Art. 97 to 112)
10. Suits for which there is no prescribed period (Art. 113)

LIMITATION- SUITS, APPEAL SUITS AND APPLICATIONS

Section 3 to 11 of the Limitation Act deal with limitation with respect to Suits, Appeals and Applications. Section 3 of the Limitation Act enjoins a court to dismiss any suit instituted, appeal preferred and application made, after the period of limitation prescribed therefore by the Schedule irrespective of the fact whether the opponent had set up the plea of limitation or not, but it is subject to provisions under Section 4 to 24 of the Act. It is the duty of the court not to proceed with the application if it is made beyond the period of limitation prescribed.

According to Section 3(2) of the Limitation Act, a Suit is instituted

- in an ordinary course, when the plaint is presented to the proper officer;
- in case of a pauper, when the application for leave to sue as a pauper is made;

- in the case of a claim against a company which is being wound up by the court, when claimant first sends in his claim to the official liquidator;
- any claim by way of set off or 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 date as the suit in which the set off is pleaded;
- in case of counter-claim, on the date on which the counter claim is made in the court.

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 nullity, held so in the case of ***Ittyavira Mathai v. VarkeyVarkey, AIR 1964 SC 907.***

The Limitation Act does not extinguish a right but it only bars the remedy. The Hon'ble Supreme Court held in the case of ***Bombay Dyeing & Mfg. Co. Ltd. v. State of Bombay***, **AIR 1958 SC 328**, in *Para 21 that, "It has been already mentioned that when a debt becomes time-barred, it does not become extinguished but only unenforceable in a court of law. Indeed, it is on that footing that there can be a statutory transfer of the debts due to the employees, and that is how the Board gets title to them. If then a debt subsists even after it is barred by limitation, the employer does not get, in law, a discharge there from. The modes in which an obligation under a contract becomes discharged are well-defined, and the bar of limitation is not one of them".*

According to Section 4 of the Act, 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 reopens.

Section 5 of the Act deals with 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 CPC, may be admitted after the prescribed period, if the appellant or 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 appellant or the applicant was mislead by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be a sufficient cause within a meaning of the sub-section.

Section 5 of the Act which deals with extension of prescribed period in certain cases, applies only to appeals or applications and not to suits. No court or Tribunal can extend period of limitation for filing a suit. Even if any cause beyond control of plaintiff is shown, only extension is permitted under Section 4 of the Act. And as held in *Collector, Land Acquisition*

v. Katiji (AIR 1987 SC 1353), "refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that cause would be decided on merits after hearing the parties"

Condonation of delay in filing appeal can be decided only after hearing both the parties. A competent civil court has power to pass an interim order of injunction pending hearing of application under Section 5 of the Limitation Act.

Examination of witnesses not necessary-The application for condonation of the delay is not required to be considered on the basis of the evidence of witnesses. The application is to be decided on affidavits. Application for condonation of the delay under Section 5 ought not to be dismissed by a non-speaking order.

***Manindra Land and Building Corporation v. Bhutnath Banerjee,* (1964) 3 SCR 495**, Section 5 of the Limitation Act empowers the court to admit an application, to which its provisions are made applicable, even when presented after the expiry of the specified period of limitation if it is satisfied that the applicant had sufficient cause for not presenting it within time. The court therefore had jurisdiction to determine whether there was sufficient cause for the appellants not making the application for the setting aside of the abatement of the suit in time and, if so satisfied, to admit it.

***National Insurance company v. SmtRuniyaBinha,* 2008(3)JCR456,** Requirement of filing condonation application along with the memo of appeal is mandatory. Court to grant condonation of delay in filing appeal only in exceptional cases.

In this case, the Government was seeking condonation of delay. The Supreme Court held that while it is true that section 5 envisages explanation of the delay to the satisfaction of the court and there should not be any distinction made between the State and the citizen. Nevertheless adoption of strict standard of proof would lead to grave miscarriage of public justice. Also, it would result in public mischief by skilful management of delay in the process of filing the appeal. Therefore, the approach of the court should be pragmatic but not pedantic.

In this case the High Court had allowed the application filed by the respondent under section 5 of the Limitation Act, 1963 to condone the delay of 1724 days in filing appeals against the award passed by the Civil Judge in a land acquisition case.

***Special Tehisldar, Land Acquisition Kerala v. K.V. Aiyusuma,* 1996(10) SCC 634**

***PundikJalamPatil v. Executive Engineer Jalgaon medium project,* 2009(1) JLJR 76 SC**

The Supreme Court however, held that:

The incorrect statement made in the application seeking condonation of delay itself is sufficient to reject the application without any further inquiry as to whether the averments made in the application reveal sufficient cause to condone the delay. That a party taking a false stand to get rid of the bar of limitation should not be encouraged to get any premium on the falsehood on his part by condoning delay.

Section 5 of the Limitation Act provides for extension of prescribed period of limitation in certain cases and confers jurisdiction upon the court to admit any application or any appeal after the prescribed period if it.

SUFFICIENT CAUSE:-

Sufficient cause means there should be adequate reasons for the court to believe that the applicant was prevented from proceeding with the application in court.

In ***State (NCT of Delhi) vs. Ahmed Jaan (2008),*** it was stated that the term "sufficient cause" should be interpreted liberally. In ***Balwant Singh (Dead) vs. Jagdish Singh & Ors.(2010),*** the Honourable Supreme Court ruled that the applicant must show sufficient cause for the delay in prosecuting the proceeding. In this case, there was a delay of 778 days in filing an application to bring legal representatives on record, so it was not allowed by the Court. Thus, the court dismissed the suit because of a lack of sufficient cause.

In ***Ornate Traders Private Limited vs. The Income Tax Officer (2008),*** the Bombay High Court ruled that if there is a valid reason and the application for condonation of delay is made in good faith, the court would usually condone the delay. However, if the delay is not explained and there is also negligence and carelessness, the court would normally reject the application.

In ***H.H. Brij Indar Singh vs. Lala Kanshi Ram (1917),*** the Bombay High Court observed that the true guide for the Court while exercising jurisdiction under Section 5 is whether the litigant acted with sensible and reasonable diligence in prosecuting the appeal.

Whether an applicant has given a sufficient cause or not depends on the court's discretion and the specific circumstances of each case. For example, a court can condone the delay for medical reasons.

In the ***Collector Land Acquisition, Anantnag & Others vs. Mst. Katiji & Others (1987) case***, the State of Jammu and Kashmir filed an appeal against a decision to increase compensation for land acquisition. The appeal for condonation of delay was dismissed by the High Court as time-barred because it was four days late. Later, the appeal was made to the Supreme Court.

The Supreme Court allowed the appeal and ruled that the term 'sufficient cause' under Section 5 is enough to allow the court to do substantial justice. The order of the High Court was set aside by the Supreme Court.

The Supreme Court also established certain principles while deciding case:

- A person who files an appeal late does not gain any advantage from the delay.
- The reasons for the delay must be explained in a realistic manner.
- Delaying a case does not help the person filing it; in fact, it can put their case at chance of dismissal.
- The judiciary is respected not for its power to legalise injustice on technical grounds but for its ability to remove injustice.

LEGAL DISABILITY:-

Section 6 of the Act deals with situations where a person who has the right to file a suit or apply for the execution of a decree is under a legal disability. Legal disabilities include being a minor under 18 years old, insane, or an idiot. Accordingly, Section 6 includes:

- If a person who is a minor, mentally ill, or mentally disabled has the right to file a suit or enforce a decree, the time period for taking action starts only after their disability ends. Accordingly, they get the same amount of time to act as if their disability never existed. Their legal rights are protected until they are able to act on them.
- If a person has two disabilities at the start of the time period or acquires a second disability before the first one ends, they can still file the suit or application. They are allowed to do so within the same time period after both disabilities have ended, just as they would have at the original start time mentioned in the schedule.
- If the person remains disabled until their death, their legal representative can start the lawsuit or make the application within the same time period after the death as the person would have had from the original start time listed in the Schedule.
- If the legal representative is also affected by a disability at the time of the person's death, the rules from Section 6(1) and Section 6(2) apply to them as well.
- If a person dies after their disability ends but within the time allowed by this section, their legal representative can still file the lawsuit or application. The representative has the same amount of time after the person's death as the person would have had if they had not died.
- For this Section, a minor also includes a child in the womb.

DISABILITY OF ONE OF SEVERAL PERSONS:-

Section 7 states that if several people together have the right to file a suit or apply for the execution of a decree and one of them is under a disability like being a minor, insane, or an idiot, discharge happens in the following ways:

- If other people can settle the matter without needing the disabled person's agreement, the time limit for taking action applies to everyone.
- If the matter cannot be settled without the disabled person's agreement, the time limit does not apply to anyone until one of them can settle it without the disabled person's agreement or until the disability ends.
- In a Hindu undivided family under Mitakshara law, the family manager, known as the "Karta," can make decisions on his own only if he is responsible for the family's shared property.

SPECIAL EXCEPTIONS:-

Section 8 states that Sections 6 and 7, which provide extensions of time for filing suits due to legal disability, include: Rights of pre emption. The rules mentioned under Sections 6 and 7 do not apply to cases aimed at enforcing rights of pre-emption.

The extension of time provided by Sections 6 and 7 cannot exceed three years from the end of the disability or the death of the disabled person. This means that even with the extensions allowed, one can not extend the filing period beyond three years after the disability ends or the person dies.

CONTINUOUS RUNNING OF TIME:-

As per Section 9 of the Act, once the limitation period starts, it keeps going and does not pause, even if something happens that might make it hard to file the suit. However, there's an exception, if a debtor is given control over the creditor's estate through letters of administration, the time limit to file a suit to recover the debt is paused until this administration period is over.

Suits against trustees and their representatives.

As per Section 10, if someone is holding property in trust for a specific purpose, like a trustee, there is no deadline for when a person can sue them to recover that property or its proceeds. No matter how much time has passed, a person can always take legal action to get the property back or to hold the trustee accountable for how they used it. The usual time limits that apply to most other legal actions do not apply here.

For this section, any property involved in a Hindu, Muslim, or Buddhist religious or charitable endowment is considered property held in trust for a specific purpose. The manager of this property is regarded as the trustee.

SUITS ON CONTRACTS ENTERED INTO OUTSIDE THE TERRITORIES TO WHICH THE ACT EXTENDS:-

Section 11 of the Limitation Act, 1963, states that if someone files a suit in India based on a contract made in Jammu and Kashmir before it was fully integrated into India or in a foreign country, the rules of limitation for filing that suit will follow the rules of this Act.

The time limits that apply in Jammu and Kashmir or in a foreign country cannot be used as a defence in Indian courts, except in two cases:

- If the law in that place has completely ended the contract.
- If both parties involved were domiciled in that nation during the time when the rule applied.

COMPUTATION OF PERIOD OF LIMITATION

EXCLUSION OF TIME:-

Section 12 of the Limitation Act explains how to exclude certain time periods when calculating the limitation period for legal proceedings. It includes the following provisions:

- As per Section 12(1), the day from which the period of limitation begins is excluded when calculating the time limit for filing a suit, appeal, or application.
- As per Section 12(2), the day on which the judgment is pronounced is excluded when calculating the period of limitation for an appeal, application for leave to appeal, revision, or review of a judgment. The time required to obtain a copy of the decree, sentence, or order being appealed, revised, or reviewed is excluded from the limitation period.
- As per Section 12(3), if appealing from or seeking to revise or review a decree or order, the time needed to obtain a copy of the judgment is also excluded.
- As per Section 12(4), the time required to obtain a copy of an award is excluded when calculating the period of limitation for an application to set aside the award.
- Any time taken by the court to prepare the decree or order before a copy is requested is not excluded from the limitation period. Only the time after the copy is requested is excluded.

EXCLUSION OF TIME WHEN LEAVE TO SUE OR APPEAL AS A PAUPER IS APPLIED FOR:-

As per Section 13 of the Limitation Act, when someone wants to sue or appeal but cannot pay the court fees and asks for permission to do so as a pauper, the time spent on that application

is excluded while calculating the limitation period. If the application is rejected, the court can still treat the suit or appeal as valid if the person pays the necessary court fees later.

EXCLUSION OF TIME WHEN PROCEEDING IN A COURT WITHOUT JURISDICTION:-

According to Section 14 of the Limitation Act, if a party is proceeding in good faith in a court that lacks jurisdiction, the time spent in that court should be excluded when calculating the limitation period for another civil proceeding.

- As per Section 14(1), when calculating the time limit for filing a suit, one can exclude the period during which one was diligently pursuing another civil case against the same defendant. This rule applies if the other case relates to the same issue and was being prosecuted in good faith. However, the court was unable to entertain it due to a lack of jurisdiction or a similar issue.
- As per Section 14(2), when calculating the time limit for filing an application, one can exclude the period during which one was diligently pursuing another civil case against the same party for the same relief. This applies if the other case was prosecuted in good faith, but the court was unable to entertain it due to a lack of jurisdiction or a similar issue.
- As per Section 14(3), even if specifically Rule 2 of Order XXXIII of CPC says otherwise, the provisions of Section 14(1) will apply to a new suit filed with court permission under Rule 1 of that Order. This is relevant when the first suit failed due to a lack of jurisdiction or a similar issue.

When excluding the time under this Section, of the previous civil proceeding, count both the day it started and the day it ended. A plaintiff or applicant fighting an appeal is considered to be prosecuting a proceeding. Misjoinder of parties or causes of action is considered similar to a jurisdiction defect.

EXCLUSION OF TIME IN CERTAIN OTHER CASES:-

Under Section 15 of the Limitation Act, certain periods of time must be excluded when calculating the limitation period for legal proceedings.

- As per Section 15(1) for any suit or application for executing a decree, if the institution or execution has been stayed by an injunction or order, the time during which the injunction or order was in effect, as well as the days it was issued and withdrawn, are excluded.
- As per Section 15(2) for a suit that requires prior notice or consent/sanction from the government or any other authority, the time taken for giving the notice or obtaining the

consent/sanction is excluded. The days on which the application for consent or sanction was made and the day the order was received are both counted.

- As per Section 15(3) for application for execution of a decree by a receiver, interim receiver, liquidator, or provisional liquidator appointed in insolvency or company winding-up proceedings, the time from the start of the proceeding until three months after the appointment of the receiver or liquidator is excluded.
- As per Section 15(4) for a suit for possession by a purchaser at a sale in execution of a decree, the time during which a proceeding to set aside the sale was ongoing is excluded.
- As per Section 15(5) the time during which the defendant was absent from India and from any territories under the Central Government's administration is excluded.

Sections 16 to 24 of the Act deals with the concept of Postponement of limitation. It means extending the period of limitation within which a legal action can be initiated.

EFFECT OF DEATH ON OR BEFORE THE ACCRUAL OF THE RIGHT TO SUE:-

Section 16 of the Act deals with the concept of effect of death on or before the accrual of the right to sue.

- Under Section 16(1), if an individual who has the right to initiate a suit or make an application dies before this right arises, the time limit starts when a legal representative becomes available to start the suit or make the application. Similarly, if the right to begin a suit or make an application only arises upon the death of an individual, the time limit begins when there is a legal representative capable of initiating the suit or application.
- Under Section 16(2), if the person against whom a suit or application would have been made dies before the right to do so arises, the time limit for taking action starts when their legal representative is available. Similarly, if the right to sue or file an application only arises upon someone's death, the time limit begins when their legal representative can be sued or have the application filed against them.
- Under Section 16(3), Sections 16(1) and 16(2) do not apply to suits to enforce rights of pre-emption or to suits for the possession of immovable property or a hereditary office.

Section 17 contains provisions for the effect of fraud or mistake. If a suit or application is based on fraud, mistake, or concealment caused by fraud, the limitation period will not begin until the plaintiff or applicant discovers the fraud, concealment, or mistake. Under Section 17(1), the general rule is that for any lawsuit or application where a time limit is set by this Act, the countdown for this time limit does not start until certain conditions are met.

- If the suit or application is based on the defendant's fraud, the time limit starts only after the fraud is discovered.

- If the defendant's fraud hides the right or title on which the suit or application is based, the time limit starts when the hidden right or title is discovered.
- If the suit or application is to correct a mistake, the time limit starts when the mistake is discovered.
- If a necessary document has been fraudulently hidden, the time limit starts when the document is discovered or when there is the ability to produce it or force its production. This rule does not apply in certain cases involving property:
- If the property was bought for a fair price by someone who was not involved in the fraud and didn't know about it at the time of purchase, the suit or application can't be used to recover or enforce any charge against the property.
- If the property was bought for a fair price by someone who did not know about the mistake at the time of purchase, the lawsuit or application cannot be used to recover or enforce any charge against the property. If the property was bought for a fair price by someone who was not involved in hiding the document and did not know about it at the time of purchase, the lawsuit or application cannot be used to recover or enforce any charge against the property.
- Under Section 17(2), if a judgement-debtor has prevented the execution of a decree or order by fraud or force within the time limit, the court may extend the time for execution of the decree or order upon the application of the judgment-creditor. This application must be made within one year from the date of discovering the fraud or the end of the force, whichever applies.

EFFECT OF ACKNOWLEDGEMENT IN WRITING:-

As per Section 18 of the Act, if there is an acknowledgement of liability concerning any property or right, a new limitation period will start from the date the acknowledgement was signed.

Under Section 18(1), if a person acknowledges in writing that they owe something like property or a right before the time limit for filing a suit expires, this acknowledgment must be signed by that person or someone who has the authority to do so on their behalf. Once this acknowledgment is made, the time limit for filing a suit starts over from the date the acknowledgment was signed.

Under Section 18(2), if the written acknowledgement does not have a date, oral evidence can be provided to establish when it was signed. However, according to the Indian Evidence Act of 1872, oral evidence of the contents of the acknowledgement is not allowed.

An acknowledgement can still be valid even if it does not specify the exact nature of the property or right. It remains valid even if it states that the time for payment, delivery, performance, or enjoyment has not yet come. It is also valid if it is accompanied by a refusal to pay, deliver, perform, or permit enjoyment. Additionally, it remains valid if it includes a claim to set-off or is addressed to someone other than the person entitled to the property or right.

The term "signed" means signed either personally or by an agent who is duly authorised. An application for executing a decree or order is not considered an application concerning any property or right.

In the case of Laxmi Pat Surana vs. Union Bank of India & Another (2021), the Supreme Court of India interpreted Section 18 of the Limitation Act, 1963, specifically regarding its applicability to insolvency proceedings under the Insolvency and Bankruptcy Code, 2016 (IBC). Section 18 of the Limitation Act states that when there is an acknowledgement of a debt in writing, signed by the debtor, a new period of limitation starts from the date of that acknowledgement. The Supreme Court held that this provision also applies to applications for initiating insolvency proceedings under Section 7 of the IBC. Accordingly, if a debtor acknowledges their debt in writing, the time limit for the creditor to file an insolvency application can be extended from the date of that acknowledgement. In this particular case, the Court noted that the limitation period for a default that occurred in 2012 would have expired in 2015 unless the debt was acknowledged in writing before that time. However, the applicant failed to provide any evidence of such acknowledgement by the respondent before the limitation period lapsed. Thus, the Court rejected the appeal and emphasised the necessity of a clear, written acknowledgement of debt to extend the limitation period under Section 18.

EFFECT OF PAYMENT ON ACCOUNT OF DEBT OR INTEREST ON LEGACY:-

Under Section 19, where payment is made on account of a debt or of interest on a legacy, a fresh period of limitation will be computed when payment is made. Accordingly, if a payment is made towards a debt or interest on a legacy before the time limit expires by the person who owes the debt or legacy or their duly authorised agent, a new time limit starts from when the payment was made. For payments of interest made after January 1, 1928, there must be a written acknowledgment of the payment, either in the handwriting of or signed by the person making the payment.

If mortgaged land is in the possession of the mortgagee, receiving rent or produce from the land is considered a payment. The term "debt" does not include money owed under a court decree or order.

EFFECT OF ACKNOWLEDGMENT OR PAYMENT BY ANOTHER PERSON:-

Section 20 states that when a person is under a disability, the term "agent duly authorised" includes the lawful guardian, committee, manager, or an agent who has been duly authorised by such guardian, committee, or manager.

Under Section 20(1), the term "agent duly authorised on this behalf" in Sections 18 and 19 includes, for someone under a disability, their lawful guardian, committee or manager, or an agent authorised by such guardian, committee, or manager to sign the acknowledgement or make the payment.

Under Section 20(2), Sections 18 and 19 do not make one of several joint contractors, partners, executors, or mortgagees responsible just because another one of them, or their agent, has signed a written acknowledgement or made a payment.

Under Section 20(3), for Sections 18 and 19, an acknowledgment signed or a payment made by any limited owner of property governed by Hindu law, or their authorised agent, is valid against a reversioner, the person who inherits the property succeeding to the liability. If a liability is incurred by or on behalf of a Hindu undivided family, an acknowledgment or payment made by the current manager of the family, or their authorised agent, is considered to be made on behalf of the whole family.

EFFECTS OF SUBSTITUTING OR ADDING A NEW PLAINTIFF OR DEFENDANT

Section 21 addresses the effect of adding or substituting a new plaintiff or defendant after a suit has already been filed. According to Section 21(1), when a new plaintiff or defendant is added to a suit after it has started, the lawsuit is considered to have been started for them from the date they were added as a party. However, if the court is convinced that the new plaintiff or defendant was left out due to an honest mistake, it can decide that the suit should be considered as having started for them on an earlier date.

Under Section 21(2) if a new plaintiff or defendant is added to a suit because of a mistake made in good faith and the court accepts this explanation, the suit will be treated as if it was filed on the original date when the suit was first started. That means this rule does not apply when a party is added or substituted because of the transfer or inheritance of an interest during the ongoing lawsuit, or when a plaintiff is made a defendant or a defendant is made a plaintiff. In the case of Ramalingam Chettiar vs. P.K. Pattabiraman and Another (2001), the Supreme Court explained that Section 21 addresses two key situations:

- Firstly, it provides that if a new plaintiff or defendant is added or substituted in a suit after its initial filing, the limitation period for that new party starts with their inclusion in the suit.

- Secondly, the provision in this section allows for a different approach if the court is satisfied that a party was omitted due to a genuine mistake. In such cases, the court can order that the suit, for the newly added or substituted party, be considered to have been instituted at an earlier date.

The Court also held that, however, this requires the court to make a specific order reflecting that the suit is deemed to have been instituted from the original date. Simply adding or substituting a party is not sufficient; a formal order is necessary to adjust the limitation period accordingly. Without this order, the limitation period for the new party starts from the date they were added or substituted.

CONTINUING BREACHES AND TORTS:-

Under 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.

SUITS FOR COMPENSATION FOR ACTS NOT ACTIONABLE WITHOUT SPECIAL DAMAGE:-

Under Section 23, in the case of suits for compensation for acts not actionable without a special damage limitation period, the period will start from the time when the injury occurs.

In the case of Balakrishna Savalram Pujari Waghmare vs. Shree Dhyaneshwar Maharaj Sansthan and others (1959), the Honourable Supreme Court of India explained what amounts to "continuing wrong" under Section 23 of the Limitation Act, 1908. The Court said that a continuing wrong happens when an act keeps causing harm over time and makes the person who did the act responsible for the ongoing harm. This means that if the wrongful act continues to hurt someone, it is a continuing wrong. The Court also made it clear that if a wrongful act causes a one-time injury, it is not a continuing wrong, even if the harm from that injury lasts a long time. For an act to be a continuing wrong, the act itself must keep causing new injuries over time.

COMPUTATION OF TIME MENTIONED IN INSTRUMENTS:-

Under Section 24 for the purposes of this Act, all legal instruments are considered to be made with reference to the Gregorian calendar.

CONDITIONS AS TO TIME AND LIMITATION UNDER DIFFERENT STATUTES

CONSUMER PROTECTION ACT

A complaint filed under the Consumer Protection Act, 2019 before a District Forum, the State Consumer Commission, or the National Consumer Commission will not be admitted unless it is filed within two years from the date on which the cause of action arose (section 69 (1), Consumer Protection Act).

A complaint filed outside of the two-year limitation period may be entertained upon a showing of sufficient cause for not filing within the limitation period, provided the court records its reasons for condoning the delay (section 69(2), Consumer Protection Act).

Specific timelines are prescribed for filing of appeals from the District Forum to the State Consumer Commission and from the State Consumer Commission to the National Consumer Commission.

COMMERCIAL COURTS ACT

This statute provides for constitution of commercial courts in India for adjudicating commercial disputes of specified value. It provides for mandatory pre-institution mediation before institution of a suit not praying for urgent interim relief. Section 12A (1), Commercial Courts Act, 2015. The period during which parties were engaged in pre-institution mediation is specifically excluded while calculating limitation under the Limitation Act (section 12A (3), Commercial Courts Act). The statute further provides for strict timelines for filing appeals from an order of the Commercial Court to the Commercial Appellate Division or the High Court.

INSOLVENCY AND BANKRUPTCY CODE

The Insolvency and Bankruptcy Code consolidates the laws relating to reorganisation and corporate insolvency resolution of corporate persons, partnership firms, and individuals in a time bound manner. To compute the period of limitation specified for a suit or application, the period of moratorium (at the time of which all proceedings against the corporate debtor remains suspended) is specifically excluded. (Section 14, Insolvency and Bankruptcy Court.)

There are additional strict timelines for filing appeals from an order of the Adjudicating Authority to the National Company Law Appellate Tribunal.

LIMITATION AND ARBITRATION

Section 43 Of The Arbitration And Conciliation Act, 1996 (Arbitration Act) stipulates that the Limitation Act is applicable to arbitration proceedings in the same manner as it applies to court proceedings. The date from which the right to sue accrues may vary from case to case and

typically depends upon the agreement between the parties containing the arbitration clause. Unless otherwise agreed between the parties, the date on which the arbitration is deemed to have commenced is the date on which a request for the dispute to be referred to arbitration is received by the opposing party. (Sections 21 and 43(2), Arbitration Act.) If a court sets aside an arbitral award, the period between the commencement of the arbitration and the date of the court's order is not be included in the computation of the time prescribed by the Limitation Act for filing fresh arbitral proceedings (Section 43(4), Arbitration Act).

DIFFERENT RELIEFS WITH DIFFERENT PERIOD OF LIMITATION

The Schedule to the Limitation Act codifies limitation periods for different kinds of legal proceedings, based on the description of the matter, period of limitation, and time from which the period begins to run. It provides limitation periods for:

• Suits relating to accounts, contracts, declarations, decrees and instruments, movable property:-The limitation period is three years.

• Suits relating to immovable property:- The limitation period is 12 or 30 years;

Suits for which there is no prescribed period have a limitation period of three years (Article 113, Limitation Act). Applications for which no period of limitation is provided elsewhere in the division have a limitation of three years (Article 137, Limitation Act).

AMENDMENT OF PLEADINGS – LIMITATION ASPECT

Order VI, Rule 17 of CPC provides for amendment of pleadings.

> '*The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be necessary for the purpose of determining the real questions in controversy between the parties:*
>
> *Provided that no application for amendment shall be allowed after the trial has commenced unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.'*

The basic object of the rule is that the Courts should try the merits of the cases that come before them and should consequently allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other party.

For allowing an application under Order VI, rule 17, the Court has to see the two main points before it:

(a) whether the amendment is necessary for the determination of real question in controversy; and

(b) can the amendment be allowed without injustice to the other side.

Generally, in following cases, leave to amend will be refused by the Court.

(i) Where amendment is not necessary for the purpose of determining the real question in controversy between the parties.

(ii) If it introduces a totally different, new and inconsistent case or changes the fundamental character of the suit or defence.

(iii) Where the effect of proposed amendment is to take away from the other side a legal right accrued in his favour.

(iv) Where the application for amendment is not made in good faith.

Amendment application under Order VI, rule 17 is not governed by any law of limitation. Leave to amend may be granted before, or at, or after the trial, in first appeal, or in second appeal, or in revision, or in the Supreme Court or even in execution proceedings, provided the decree is legal, lawful and enforceable, and not otherwise.

But proviso to this provision as inserted in 2002, now restricts the power of the court and declares clearly that the Court should not allow such amendments after the commencement of the trial unless it comes to an conclusion that inspite of due diligence, the matter could not have been raised by the party before the commencement of the trial.

On the basis of different judgments following principles should be kept in mind while dealing with application for amendment of pleading:

(i) all amendments should be allowed which are necessary for determination of the real controversy in the suit;

(ii) the proposed amendment should not alter and be a substitute of cause-of-action on the basis of which original lis was raised;

(iii) inconsistent and contradictory allegations in negation to admitted position of facts or mutually destructive allegations of facts would not he incorporated by means of amendment;

(iv) proposed amendment should not cause prejudice to other side zvhich cannot be compensated by means of costs;

(v) amendment of claim or relief barred by time should not be allowed;

(vi) no amendment should be allowed which amounts to or results to defeating a legal right to the opposite party on account of lapse of time;

(vii) no party should suffer on account of technicalities of law and the amendment should be allowed to minimize the litigation between the parties;

(viii) the delay in finding the petition for amendment of the pleadings should be properly compensated by costs;

(ix) error or mistake which if not fraudulent should not be made ground for rejecting the application for amendment of pleading.

Amendment cannot be claimed as a mailer of right and under all circumstances. The circumstances may differ from case to case and it would depend upon the facts of each individual case keeping in view the object that the courts are to do substantial justice and not to punish a party on technical grounds.

L.J. Leach & Co. Ltd. v. Jardine Skinner & Co: The Supreme Court has stated that if an application for amending pleadings is debarred by the Limitation Act, it can be a ground for rejecting the application. However, the court also has discretionary power to allow the amendment if it deems it necessary to secure the ends of justice.

South Konkan Distilleries & Anr v. Prabhakar Gajanan Naik & Ors: It is a settled principle that the court can disallow an application for amendment if, on the date of filing the application, it is barred by limitation. Nevertheless, this does not mean the court cannot grant the application. The court retains discretionary power to allow the amendment if it believes it is necessary to serve the interests of justice.

Pankaja & Anr v. Yellappa (D) by LRs & Ors*:* There is no fixed principle that dictates whether the court can reject an application for amendment when it is barred by limitation. The court's decision depends on the specific factual background of the case. If the facts and circumstances demonstrate that the amendment is necessary to determine the cause of action and avoid further litigation, the court should allow the application.

Ragu Thilak D. John v. S. Rayappan: The issue of limitation in an application for amendment varies from case to case. In some instances, the issue of limitation becomes a matter of dispute in the suit itself. In such cases, the application for amendment may be allowed to help resolve the case.

Vishwambhar v. Laxminarayan: The application for amendment of pleadings is related back to the date of the application itself, not the date of filing the suit.

Failure to Amend within Prescribed Time

According to Order VI, Rule 18 of the Civil Procedure Code:

If a party obtains an order for leave to amend but fails to amend within the time specified in the order, or if no specific time is provided, within fourteen days from the date of the order, they will not be allowed to amend after this prescribed time unless the court extends the time.

In other words, if a party does not act promptly to make the amendments within the specified or default timeframe, they may lose the opportunity to amend their pleadings unless the court decides to grant an extension. This rule helps ensure the orderly progression of legal proceedings.

Applicability of Law of Limitation to Amendments to Pleadings:- The CPC governs the procedure for filing civil proceedings in India. If a party wants to amend the pleadings filed by it in a suit, it may file an application under Order VI, Rule 17 of the CPC before the court in which the proceedings are pending. The application may be filed at any stage of the proceedings and allowed by the court at any stage of the proceedings. The court at its discretion may allow or disallow the application after examining whether the amendments being made are: Necessary for the purpose of determining the real questions in controversy between the parties. In cases where trial has already commenced, whether despite acting with due diligence, the party could not have filed the application before the commencement of such trial. Courts, as a rule, decline to allow amendments if a fresh suit on the amended claim would be barred by limitation on the date of the application and when the pleadings itself reveal that the claim raised is time-barred ***(Ashok Kumar Kalra v. Wing Cdr. Surendra Agnihotri and Ors., 2 SCC 394 (2020); South Konkan Distilleries and Anr. v. Prabhakar Gajanan Naik and Ors.,14 SCC 632 (2008).***

LIMITATION IN CRIMINAL CASES IN RESPECT OF OFFENCES UNDER IPC/BNS AND OTHER SPECIAL LAWS

Chapter XXXVII of the Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS) deals with the provisions relating to limitation for taking cognizance of certain Offences.

- It imposes certain restrictions on the power of the magistrate.
- Sections 513 to 519 of BNSS deal with the provisions related to limitation for taking cognizance of certain offences.

Section 5 of the Limitation Act applies to Criminal Appeal as well. Delay in filing Criminal Appeal should be excused when where it was erroneously filed in another court. Criminal Procedure Code is not a special law within the meaning of Section 29 but it is a general law relating to procedure.

Appeal under Criminal Procedure Code – The delay in filing appeal against acquittal can be condoned under section 5. But sufficient cause must be established to condone the delay by the appellate court. (***Ajay Gupta v. Raju Rajendra Singh Yadav*** **2016(3) JBCJ 187 (SC)**

Provisions for Limitation for Taking Cognizance of Certain Offences:-

- Definition (Section 513): It states that 'period of limitation' means the period specified under Section 514 of BNSS for taking cognizance
- Bar to taking Cognizance after Lapse of Period of Limitation (Section 514):

  Sub section (1) states that no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

  Sub section (2) states that the period of limitation shall be:

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

  Sub section (3) states that the offences which shall be tried together the period of limitation shall be decided based on the offence which has the most severe punishment. This section is further accompanied with an explanation that for the purpose of computing the period of limitation, the relevant date shall be the date of filing complaint under section 223 or the date of recording of information under section 173 of BNSS.

- **Commencement of Period of Limitation (Section 515):**

  Sub section (1) states that the period of limitation for an offender shall commence:

    - On the date of the offence.
    - Where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier.
    - Where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

  Sub section (2) states that the day on which the period is to be computed shall be excluded for computing the period.

- **Exclusion of Time in Certain Cases (Section 516):**

  Sub section (1) states that to compute the period of limitation the time during which any person has been prosecuting with due diligence another prosecution, whether in a

Court of first instance or in a Court of appeal or revision, against the offender, shall be excluded.

Sub section (2) states that where the institution of the prosecution in respect of an offence has been stayed by an injunction or order, then, in computing the period of limitation, the period 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.

Sub section (3) states that Where notice of prosecution for an offence has been given, or where, under any law for the time being in force, the previous consent or sanction of the Government or any other authority is required for the institution of any prosecution for an offence, then, in computing the period of limitation, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded. This has further explanation as in computing the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be excluded.

Sub section (4) states that for computing the period of limitation the time during which the offender:

- Has been absent from India or from any territory outside India which is under the administration of the Central Government or
- Has avoided arrest by absconding or concealing himself,
- Shall be excluded.

- **Exclusion of Date on which Court is Closed (Section 517):**

  This section states that where the period of limitation expires on a day when the Court is closed, the Court may take cognizance on the day on which the Court reopens.

  A further explanation is given as a Court shall be deemed to be closed on any day within the meaning of this section, if, during its normal working hours, it remains closed on that day

- **Continuing Offence (Section 518):**

  This section states that a fresh period of limitation shall begin at every moment during which the offence continues.

- **Extension of Period of Limitation in Certain cases (Section 519):**

  Any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.

PAPER ON

LAW OF LIMITATION

BY

SAI SUBHASH

Ist Additional Civil Judge (Junior Division),

Adoni

LAW OF LIMITATION

Session 1:

a. Limitation- Suits, Appeal Suits and application.

b. Computation of period of limitation.

Session 2 and 3:

a. Conditions as to time and limitation under different statutes

b. Different reliefs with different period of limitation

c. Amendment of pleadings- the aspect of limitation

Session 4:

limitation in criminal cases in respect of offences under IPC/BNS and other Special Laws.

INTRODUCTION

the law of limitation renders a guarantee to the litigant, because after the lapse of a specified time period prescribed by the law, the public prosecutor will no longer be able to prosecute the offender for the prescribed offence. Statutes of Limitation do not create new obligations but only provide for a period within which proceedings must be brought**.**

The law of limitation is based on two Latin maxims. Firstly, "*interest republicae ut sit finis litium*" which means it is in the public interest to have an end to litigation, and secondly, "*vigilantibus non dormientibus jura subveniunt*," which means the law helps those who are vigilant about their rights, not those who neglect them. If a suit is filed after the expiry of limitation, it will be considered barred by the limitation period.

The basic concept of limitation relates to prescribing of time period for barring legal actions.

LIMITATION OF SUITS, APPEALS AND APPLICATIONS:

Section 3 to 11 of the Limitation Act deal with limitation with respect to Suits, Appeals and Applications. Section 3 of the Limitation Act enjoins a court to dismiss any suit instituted, appeal preferred and application made,

after the period of limitation prescribed therefore by the Schedule irrespective of the fact whether the opponent had set up the plea of limitation or not, but it is subject to provisions under Section 4 to 24 of Act. It is the duty of the court not to proceed with the application if it is made beyond the period of limitation prescribed.

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 treated as nullity. (AIR 1964 SC 907 Ittyavira Mathai v varkey varkey.)

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.

Cause of action is a fact or combination of facts that gives a person the right to seek judicial redress or relief against another.

Section 3 bars only the institution of suits, application and appeals, and the period within which the same has to be filed. But so far the defense is concerned there is no such limitation. There can be no period of limitation for acts which the courts are bound to perform.

Section 2 (j) Prescribed Period- “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 thee provisions of this act.

Section 4 of Limitation Act: Expiry of prescribed period when the 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 reopens.

Section 5- Extension of prescribed period in certain cases--
Any appeal or any application other than an application under any of the provisions of order 21 of the CPC, may be admitted after the prescribed period, if the appellant or 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 appellant or the applicant was mislead by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be a sufficient cause within a meaning of the sub-section.
This Section applies to Criminal Appeal as well. Delay in filing Criminal Appeal should be excused when where it was erroneously filed in another

court. Criminal Procedure Code is not a special law within the meaning of Section 29 but it is a general law relating to procedure.

Appeal under Criminal Procedure Code – The delay in filing appeal against acquittal can be condoned under section 5. But sufficient cause must be established to condone the delay by the appellate court. (Ajay Gupta v. Raju Rajendra Singh Yadav 2016(3) JBCJ 187 (SC))

Section 5 of the Act which deals with extension of prescribed period in certain cases, applies only to appeals or applications and not to suits. No court or Tribunal can extend period of limitation for filing a suit. Even if any cause beyond control of plaintiff is shown, only extension is permitted under Section 4 of the Act. And as held in *Collector, Land Acquisition v. Katiji* (AIR 1987 SC 1353), "refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that cause would be decided on merits after hearing the parties"

Section 6- legal disability

1) Where a person entitled to institute a suit or make an application for the execution of a decree is, at the time from which the prescribed period is to be reckoned, a minor or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased,

as would otherwise have been allowed from the time specified therefor in the third column of the Schedule.

(2) Where such person is, at the time from which the prescribed period is to be reckoned, affected by two such disabilities, or where, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period after both disabilities have ceased, as would otherwise have been allowed from the time so specified.

(3) Where the disability continues up to the death of that person, his legal representative may institute the suit or make the application within the same period after the death, as would otherwise have been allowed from the time so specified.

(4) Where the legal representative referred to in sub-section (3) is, at the date of the death of the person whom he represents, affected by any such disability, the rules contained in sub-sections (1) and (2) shall apply.

(5) Where a person under disability dies after the disability ceases but within the period allowed to him under this section, his legal representative may institute the suit or make the application within the same period after the death, as would otherwise have been available to that person had he not died.

Explanation. For the purposes of this section, "minor" includes a child in the womb.

Section 7 disability of one of several persons

Where one of several persons jointly entitled to institute a suit or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, time will run against them all; but, where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased.

Explanation I.—This section applies to a discharge from every kind of liability, including a liability in respect of any immovable property.

Explanation II.—For the purposes of this section, the Manager of a Hindu undivided family governed by the Mitakshara law shall be deemed to be capable of giving a discharge without the concurrence of the other members of the family only if he is in management of the joint family property.

Section 8 Special Exceptions:

Nothing in section 6 or in section 7 applies to suits to enforce rights of pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period of limitation for any suit or application.

Continuous running of time.

Where once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops 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 the debt shall be suspended while the administration continues.

COMPUTATION OF PERIOD OF LIMITATION

EXCLUSION OF TIME:-

Section 12 of the Limitation Act explains how to exclude certain time periods when calculating the limitation period for legal proceedings. It includes the following provisions:

- As per Section 12(1), the day from which the period of limitation begins is excluded when calculating the time limit for filing a suit, appeal, or application.
- As per Section 12(2), the day on which the judgment is pronounced is excluded when calculating the period of limitation for an appeal, application for leave to appeal, revision, or review of a judgment. The time required to obtain a copy of the decree, sentence, or order being appealed, revised, or reviewed is excluded from the limitation period.

- As per Section 12(3), if appealing from or seeking to revise or review a decree or order, the time needed to obtain a copy of the judgment is also excluded.
- As per Section 12(4), the time required to obtain a copy of an award is excluded when calculating the period of limitation for an application to set aside the award.
- Any time taken by the court to prepare the decree or order before a copy is requested is not excluded from the limitation period. Only the time after the copy is requested is excluded.

EXCLUSION OF TIME WHEN LEAVE TO SUE OR APPEAL AS A PAUPER IS APPLIED FOR:-

As per Section 13 of the Limitation Act, when someone wants to sue or appeal but cannot pay the court fees and asks for permission to do so as a pauper, the time spent on that application is excluded while calculating the limitation period. If the application is rejected, the court can still treat the suit or appeal as valid if the person pays the necessary court fees later.

EXCLUSION OF TIME WHEN PROCEEDING IN A COURT WITHOUT JURISDICTION:-

According to Section 14 of the Limitation Act, if a party is proceeding in good faith in a court that lacks jurisdiction, the time spent in that court should be excluded when calculating the limitation period for another civil proceeding.

- As per Section 14(1), when calculating the time limit for filing a suit, one can exclude the period during which one was diligently pursuing another civil case against the same defendant. This rule applies if the

other case relates to the same issue and was being prosecuted in good faith. However, the court was unable to entertain it due to a lack of jurisdiction or a similar issue.

- As per Section 14(2), when calculating the time limit for filing an application, one can exclude the period during which one was diligently pursuing another civil case against the same party for the same relief. This applies if the other case was prosecuted in good faith, but the court was unable to entertain it due to a lack of jurisdiction or a similar issue.
- As per Section 14(3), even if specifically Rule 2 of Order XXXIII of CPC says otherwise, the provisions of Section 14(1) will apply to a new suit filed with court permission under Rule 1 of that Order. This is relevant when the first suit failed due to a lack of jurisdiction or a similar issue.

When excluding the time under this Section, of the previous civil proceeding, count both the day it started and the day it ended. A plaintiff or applicant fighting an appeal is considered to be prosecuting a proceeding. Misjoinder of parties or causes of action is considered similar to a jurisdiction defect.

EXCLUSION OF TIME IN CERTAIN OTHER CASES:-

Under Section 15 of the Limitation Act, certain periods of time must be excluded when calculating the limitation period for legal proceedings.

- As per Section 15(1) for any suit or application for executing a decree, if the institution or execution has been stayed by an injunction or order,

the time during which the injunction or order was in effect, as well as the days it was issued and withdrawn, are excluded.

- As per Section 15(2) for a suit that requires prior notice or consent/sanction from the government or any other authority, the time taken for giving the notice or obtaining the consent/sanction is excluded. The days on which the application for consent or sanction was made and the day the order was received are both counted.
- As per Section 15(3) for application for execution of a decree by a receiver, interim receiver, liquidator, or provisional liquidator appointed in insolvency or company winding-up proceedings, the time from the start of the proceeding until three months after the appointment of the receiver or liquidator is excluded.
- As per Section 15(4) for a suit for possession by a purchaser at a sale in execution of a decree, the time during which a proceeding to set aside the sale was ongoing is excluded.
- As per Section 15(5) the time during which the defendant was absent from India and from any territories under the Central Government's administration is excluded.

Sections 16 to 24 of the Act deals with the concept of Postponement of limitation. It means extending the period of limitation within which a legal action can be initiated.

EFFECT OF DEATH ON OR BEFORE THE ACCRUAL OF THE RIGHT TO SUE:-

Section 16 of the Act deals with the concept of effect of death on or before the accrual of the right to sue.

- Under Section 16(1), if an individual who has the right to initiate a suit or make an application dies before this right arises, the time limit starts when a legal representative becomes available to start the suit or make the application. Similarly, if the right to begin a suit or make an application only arises upon the death of an individual, the time limit begins when there is a legal representative capable of initiating the suit or application.
- Under Section 16(2), if the person against whom a suit or application would have been made dies before the right to do so arises, the time limit for taking action starts when their legal representative is available. Similarly, if the right to sue or file an application only arises upon someone's death, the time limit begins when their legal representative can be sued or have the application filed against them.
- Under Section 16(3), Sections 16(1) and 16(2) do not apply to suits to enforce rights of pre-emption or to suits for the possession of immovable property or a hereditary office.

Section 17 contains provisions for the effect of fraud or mistake. If a suit or application is based on fraud, mistake, or concealment caused by fraud, the limitation period will not begin until the plaintiff or applicant discovers the fraud, concealment, or mistake. Under Section 17(1), the general rule is that for any lawsuit or application where a time limit is set by this Act, the countdown for this time limit does not start until certain conditions are met.

- If the suit or application is based on the defendant's fraud, the time limit starts only after the fraud is discovered.
- If the defendant's fraud hides the right or title on which the suit or application is based, the time limit starts when the hidden right or title is discovered.
- If the suit or application is to correct a mistake, the time limit starts when the mistake is discovered.
- If a necessary document has been fraudulently hidden, the time limit starts when the document is discovered or when there is the ability to produce it or force its production. This rule does not apply in certain cases involving property:
- If the property was bought for a fair price by someone who was not involved in the fraud and didn't know about it at the time of purchase, the suit or application can't be used to recover or enforce any charge against the property.
- If the property was bought for a fair price by someone who did not know about the mistake at the time of purchase, the lawsuit or application cannot be used to recover or enforce any charge against the property. If the property was bought for a fair price by someone who was not involved in hiding the document and did not know about it at the time of purchase, the lawsuit or application cannot be used to recover or enforce any charge against the property.
- Under Section 17(2), if a judgement-debtor has prevented the execution of a decree or order by fraud or force within the time limit, the court may extend the time for execution of the decree or order

upon the application of the judgment-creditor. This application must be made within one year from the date of discovering the fraud or the end of the force, whichever applies.

EFFECT OF ACKNOWLEDGEMENT IN WRITING:-

As per Section 18 of the Act, if there is an acknowledgement of liability concerning any property or right, a new limitation period will start from the date the acknowledgement was signed.

Under Section 18(1), if a person acknowledges in writing that they owe something like property or a right before the time limit for filing a suit expires, this acknowledgment must be signed by that person or someone who has the authority to do so on their behalf. Once this acknowledgment is made, the time limit for filing a suit starts over from the date the acknowledgment was signed.

Under Section 18(2), if the written acknowledgement does not have a date, oral evidence can be provided to establish when it was signed. However, according to the Indian Evidence Act of 1872, oral evidence of the contents of the acknowledgement is not allowed.

An acknowledgement can still be valid even if it does not specify the exact nature of the property or right. It remains valid even if it states that the time for payment, delivery, performance, or enjoyment has not yet come. It is also valid if it is accompanied by a refusal to pay, deliver, perform, or permit enjoyment. Additionally, it remains valid if it includes a claim to set-off or is addressed to someone other than the person entitled to the property or right.

The term "signed" means signed either personally or by an agent who is duly authorised. An application for executing a decree or order is not considered an application concerning any property or right.

In the case of Laxmi Pat Surana vs. Union Bank of India & Another (2021), the Supreme Court of India interpreted Section 18 of the Limitation Act, 1963, specifically regarding its applicability to insolvency proceedings under the Insolvency and Bankruptcy Code, 2016 (IBC). Section 18 of the Limitation Act states that when there is an acknowledgement of a debt in writing, signed by the debtor, a new period of limitation starts from the date of that acknowledgement. The Supreme Court held that this provision also applies to applications for initiating insolvency proceedings under Section 7 of the IBC. Accordingly, if a debtor acknowledges their debt in writing, the time limit for the creditor to file an insolvency application can be extended from the date of that acknowledgement. In this particular case, the Court noted that the limitation period for a default that occurred in 2012 would have expired in 2015 unless the debt was acknowledged in writing before that time. However, the applicant failed to provide any evidence of such acknowledgement by the respondent before the limitation period lapsed. Thus, the Court rejected the appeal and emphasised the necessity of a clear, written acknowledgement of debt to extend the limitation period under Section 18.

EFFECT OF PAYMENT ON ACCOUNT OF DEBT OR INTEREST ON LEGACY:-

Under Section 19, where payment is made on account of a debt or of interest on a legacy, a fresh period of limitation will be computed when payment is made. Accordingly, if a payment is made towards a debt or interest on a legacy before the time limit expires by the person who owes the debt or legacy or their duly authorised agent, a new time limit starts from when the payment was made. For payments of interest made after January 1, 1928, there must be a written acknowledgment of the payment, either in the handwriting of or signed by the person making the payment. For this section:

* If mortgaged land is in the possession of the mortgagee, receiving rent or produce from the land is considered a payment.
* The term "debt" does not include money owed under a court decree or order.

Effect of acknowledgment or payment by another person

Section 20 states that when a person is under a disability, the term "agent duly authorised" includes the lawful guardian, committee, manager, or an agent who has been duly authorised by such guardian, committee, or manager. It contains the following subsections:

* Under Section 20(1), the term "agent duly authorised on this behalf" in Sections 18 and 19 includes, for someone under a disability, their lawful guardian, committee or manager, or an agent authorised by such guardian, committee, or manager to sign the acknowledgement or make the payment.

* Under Section 20(2), Sections 18 and 19 do not make one of several joint contractors, partners, executors, or mortgagees responsible just because another one of them, or their agent, has signed a written acknowledgement or made a payment.

* Under Section 20(3), for Sections 18 and 19, an acknowledgment signed or a payment made by any limited owner of property governed by Hindu law, or their authorised agent, is valid against a reversioner, the person who inherits the property succeeding to the liability. If a liability is incurred by or on behalf of a Hindu undivided family, an acknowledgment or payment made by the current manager of the family, or their authorised agent, is considered to be made on behalf of the whole family.

Effects of substituting or adding a new plaintiff or defendant

Section 21 addresses the effect of adding or substituting a new plaintiff or defendant after a lawsuit has already been filed. Accordingly, it includes:

* Section 21(1), when a new plaintiff or defendant is added to a lawsuit after it has started, the lawsuit is considered to have been started for them from the date they were added as a party. However, if the court is convinced that the new plaintiff or defendant was left out due to an honest mistake, it can decide that the lawsuit should be considered as having started for them on an earlier date.

* Under Section 21(2) if a new plaintiff or defendant is added to a lawsuit because of a mistake made in good faith and the court accepts this explanation, the suit will be treated as if it was filed on the original date when the lawsuit was first started. That means this rule does not apply when a party is added or substituted because of the transfer or inheritance

of an interest during the ongoing lawsuit, or when a plaintiff is made a defendant or a defendant is made a plaintiff.

In the case of Ramalingam Chettiar vs. P.K. Pattabiraman and Another (2001) the Supreme Court explained that Section 21 addresses two key situations:

* Firstly, it provides that if a new plaintiff or defendant is added or substituted in a suit after its initial filing, the limitation period for that new party starts with their inclusion in the suit.

* Secondly, the provision in this section allows for a different approach if the court is satisfied that a party was omitted due to a genuine mistake. In such cases, the court can order that the suit, for the newly added or substituted party, be considered to have been instituted at an earlier date.

The Court also held that, however, this requires the court to make a specific order reflecting that the suit is deemed to have been instituted from the original date. Simply adding or substituting a party is not sufficient; a formal order is necessary to adjust the limitation period accordingly. Without this order, the limitation period for the new party starts from the date they were added or substituted.

Continuing breaches and torts

Under 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.

Suits for compensation for acts not actionable without special damage

Under Section 23, in the case of suits for compensation for acts not actionable without a special damage limitation period, the period will start from the time when the injury occurs.

In the case of Balakrishna Savalram Pujari Waghmare vs. Shree Dhyaneshwar Maharaj Sansthan and others (1959), the Honourable Supreme Court of India explained what amounts to "continuing wrong" under Section 23 of the Limitation Act, 1908. The Court said that a continuing wrong happens when an act keeps causing harm over time and makes the person who did the act responsible for the ongoing harm. This means that if the wrongful act continues to hurt someone, it is a continuing wrong. The Court also made it clear that if a wrongful act causes a one-time injury, it is not a continuing wrong, even if the harm from that injury lasts a long time. For an act to be a continuing wrong, the act itself must keep causing new injuries over time.

Computation of time mentioned in instruments

Under Section 24 for the purposes of this Act, all legal instruments are considered to be made with reference to the Gregorian calendar.

CONDITIONS AS TO TIME AND LIMITATION UNDER DIFFERENT STATUTES:-

Consumer Protection Act.

A complaint filed under the Consumer Protection Act, 2019 (Consumer Protection Act) before a District Forum, the State Consumer Commission, or the National Consumer Commission will not be admitted unless it is filed within two years from the date on which the cause of action arose (section 69 (1), Consumer Protection Act). A complaint filed outside of the two-year limitation period may be entertained upon a showing of sufficient cause for not filing within the limitation period, provided the court records its reasons for condoning the delay (section 69(2), Consumer Protection Act). Specific timelines are prescribed for filing of appeals from the District Forum to the State Consumer Commission and from the State Consumer Commission to the National Consumer Commission. 5 • Commercial Courts Act. This statute provides for constitution of commercial courts in India for adjudicating commercial disputes of specified value. It provides for mandatory pre-institution mediation before institution of a suit not praying for urgent interim relief. (Section 12A (1), Commercial Courts Act, 2015 (Commercial Courts Act).) The period during which parties were engaged in pre-institution mediation is specifically excluded while calculating limitation under the Limitation Act (section 12A (3), Commercial Courts Act). The statute further provides for strict timelines for filing appeals from an order of the Commercial Court to the Commercial Appellate Division or the High Court. • Insolvency and Bankruptcy Code. The Insolvency and Bankruptcy Code consolidates the

laws relating to reorganisation and corporate insolvency resolution of corporate persons, partnership firms, and individuals in a time bound manner. To compute the period of limitation specified for a suit or application, the period of moratorium (at the time of which all proceedings against the corporate debtor remains suspended) is specifically excluded. (Section 14, Insolvency and Bankruptcy Court.) There are additional strict timelines for filing appeals from an order of the Adjudicating Authority to the National Company Law Appellate Tribunal. Limitation and Arbitration Section 43 of the Arbitration and Conciliation Act, 1996 (Arbitration Act) stipulates that the Limitation Act is applicable to arbitration proceedings in the same manner as it applies to court proceedings. The date from which the right to sue accrues may vary from case to case and typically depends upon the agreement between the parties containing the arbitration clause. Unless otherwise agreed between the parties, the date on which the arbitration is deemed to have commenced is the date on which a request for the dispute to be referred to arbitration is received by the opposing party. (Sections 21 and 43(2), Arbitration Act.) If a court sets aside an arbitral award, the period between the commencement of the arbitration and the date of the court's order is not be included in the computation of the time prescribed by the Limitation Act for filing fresh arbitral proceedings (Section 43(4), Arbitration Act).

DIFFERENT RELIEFS WITH DIFFERENT PERIOD OF LIMITATION

The Schedule to the Limitation Act codifies limitation periods for different kinds of legal proceedings, based on the description of the matter, period of limitation, and time from which the period begins to run. It provides limitation periods for: • Suits relating to: • accounts. The limitation period is three years; • contracts. The limitation period is three years; • declarations. The limitation period is three years; • decrees and instruments. The limitation period is three years; • immovable property. The limitation period is 12 or 30 years; • movable property. The limitation period is three years; • tort. The limitation period is one, two, or three years; • trusts and trust property. The limitation period is 1, 3, 12, or 30 years. • Appeals. The limitation period is 30, 60, or 90 days. • Applications. The limitation period is 10, 30, 60, or 90 days or 1, 3, or 12 years. Suits for which there is no prescribed period have a limitation period of three years (Article 113, Limitation Act). Applications for which no period of limitation is provided elsewhere in the division have a limitation of three years (Article 137, Limitation Act).

AMENDMENT OF PLEADINGS – LIMITATION ASPECT

Order VI, Rule 17 of CPC provides for amendment of pleadings.

> '*The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be necessary for the purpose of determining the real questions in controversy between the parties:*
>
> *Provided that no application for amendment shall be allowed after the trial has commenced unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.'*

The basic object of the rule is that the Courts should try the merits of the cases that come before them and should consequently allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other party.

For allowing an application under Order VI, rule 17, the Court has to see the two main points before it:

(a) whether the amendment is necessary for the determination of real question in controversy; and

(b) can the amendment be allowed without injustice to the other side.

Generally, in following cases, leave to amend will be refused by the Court.

(i) Where amendment is not necessary for the purpose of determining the real question in controversy between the parties.

(ii) If it introduces a totally different, new and inconsistent case or changes the fundamental character of the suit or defence.

(iii) Where the effect of proposed amendment is to take away from the other side a legal right accrued in his favour.

(iv) Where the application for amendment is not made in good faith.

Amendment application under Order VI, rule 17 is not governed by any law of limitation. Leave to amend may be granted before, or at, or after the trial, in first appeal, or in second appeal, or in revision, or in the Supreme Court or even in execution proceedings, provided the decree is legal, lawful and enforceable, and not otherwise.

But proviso to this provision as inserted in 2002, now restricts the power of the court and declares clearly that the Court should not allow such amendments after the commencement of the trial unless it comes to an conclusion that inspite of due diligence, the matter could not have been raised by the party before the commencement of the trial.

On the basis of different judgments following principles should be kept in mind while dealing with application for amendment of pleading:

(i) all amendments should be allowed which are necessary for determination of the real controversy in the suit;

(ii) the proposed amendment should not alter and be a substitute of cause-of-action on the basis of which original lis was raised;

(iii) inconsistent and contradictory allegations in negation to admitted position of facts or mutually destructive allegations of facts would not he incorporated by means of amendment;

(iv) proposed amendment should not cause prejudice to other side zvhich cannot be compensated by means of costs;

(v) amendment of claim or relief barred by time should not be allowed;

(vi) no amendment should be allowed which amounts to or results to defeating a legal right to the opposite party on account of lapse of time;

(vii) no party should suffer on account of technicalities of law and the amendment should be allowed to minimize the litigation between the parties;

(viii) the delay in finding the petition for amendment of the pleadings should be properly compensated by costs;

(ix) error or mistake which if not fraudulent should not be made ground for rejecting the application for amendment of pleading.

Amendment cannot be claimed as a mailer of right and under all circumstances. The circumstances may differ from case to case and it would depend upon the facts of each individual case keeping in view the object that the courts are to do substantial justice and not to punish a party on technical grounds.

L.J. Leach & Co. Ltd. v. Jardine Skinner & Co: The Supreme Court has stated that if an application for amending pleadings is debarred by the Limitation Act, it can be a ground for rejecting the application. However, the court also has discretionary power to allow the amendment if it deems it necessary to secure the ends of justice.

South Konkan Distilleries & Anr v. Prabhakar Gajanan Naik & Ors: It is a settled principle that the court can disallow an application for

amendment if, on the date of filing the application, it is barred by limitation. Nevertheless, this does not mean the court cannot grant the application. The court retains discretionary power to allow the amendment if it believes it is necessary to serve the interests of justice.

Pankaja & Anr v. Yellappa (D) by LRs & Ors: There is no fixed principle that dictates whether the court can reject an application for amendment when it is barred by limitation. The court's decision depends on the specific factual background of the case. If the facts and circumstances demonstrate that the amendment is necessary to determine the cause of action and avoid further litigation, the court should allow the application.

Ragu Thilak D. John v. S. Rayappan: The issue of limitation in an application for amendment varies from case to case. In some instances, the issue of limitation becomes a matter of dispute in the suit itself. In such cases, the application for amendment may be allowed to help resolve the case.

Vishwambhar v. Laxminarayan: The application for amendment of pleadings is related back to the date of the application itself, not the date of filing the suit.

Failure to Amend within Prescribed Time

According to Order VI, Rule 18 of the Civil Procedure Code:

If a party obtains an order for leave to amend but fails to amend within the time specified in the order, or if no specific time is provided, within

fourteen days from the date of the order, they will not be allowed to amend after this prescribed time unless the court extends the time.

In other words, if a party does not act promptly to make the amendments within the specified or default timeframe, they may lose the opportunity to amend their pleadings unless the court decides to grant an extension. This rule helps ensure the orderly progression of legal proceedings.

Applicability of Law of Limitation to Amendments to Pleadings

The CPC governs the procedure for filing civil proceedings in India. If a party wants to amend the pleadings filed by it in a suit, it may file an application under Order 6, Rule 17 of the CPC before the court in which the proceedings are pending. The application may be filed at any stage of the proceedings and allowed by the court at any stage of the proceedings. The court at its discretion may allow or disallow the application after examining whether the amendments being made are: • Necessary for the purpose of determining the real questions in controversy between the parties. • In cases where trial has already commenced, whether despite acting with due diligence, the party could not have filed the application before the commencement of such trial. Courts, as a rule, decline to allow amendments if a fresh suit on the amended claim would be barred by limitation on the date of the application and when the pleadings itself reveal that the claim raised is time-barred (Ashok Kumar Kalra v. Wing Cdr. Surendra Agnihotri and Ors., 2 SCC 394 (2020); South Konkan Distilleries and Anr. v. Prabhakar Gajanan Naik and Ors.,14 SCC 632 (2008)).

LIMITATION IN CRIMINAL CASES IN RESPECT OF OFFENCES UNDER IPC/BNS AND OTHER SPECIAL LAWS.

Various provisions under Indian law applicable to limitation in criminal prosecution

a) Certain provisions of the limitation act applicable to criminal appeals / revisions / petitions. The object of the Limitation Act is that the court shall not entertain any application, except in the cases where there exist provisions for condonation of delay, on exclusion of time for computing the period of limitation or to allow a party to initiate a proceeding after the period prescribed under the Limitation Act is over. Such a provision has been made with a view to ensuring that one party to the lis does not suffer because of delay and laches on the part of others.

As per the Limitation Act, the following Sections and Articles of the schedule of the Limitation Act apply to criminal prosecution:
“Section 2 – Definitions
(j) “Period of Limitation” means the period of limitation prescribed to any suit, appeal or application by the Schedule, and “prescribed period means the period of limitation computed in accordance with the provisions of the Act”

“Section 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.”

Provisions of the CrPC applicable to criminal prosecution

Relevant provisions pertaining to the limitation provided for criminal prosecution is prescribed in Chapter XXXVI - Limitation for Taking Cognizance of Certain Offences of the CrPC, which are prescribed in Sections 467 to 473 of the CrPC. The details of which are as under:

(I) Section 467 of the CrPC defines period of limitation for taking cognizance of offence.

(II) Section 468 of the CrPC prescribes the period of limitation for taking cognizance of offences punishable with imprisonment for less than three years and classified according to the quantum of sentence imposable in each category .

Except as otherwise provided elsewhere in this Code, no Court, shall take cognizance of an offence of the category specified in Sub-Section (2), after the expiry of the period of limitation.

1. The period of limitation shall be-
    1. six months, if the offence is punishable with fine only;
    2. one year, if the offence is punishable with imprisonment for a term not exceeding one year;
    3. three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

2. For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

(III) Section 469 of the CrPC then spells out the point of commencement of the limitation period in the three categories specified in the earlier Section .

(IV) Section 472 of the CrPC with respect to continuing offences, spells out the rule that a fresh limitation period shall begin to run at every moment of the time during which the offence continues.

(V)Section 473 of the CrPC lays down a material provision concerning extension of the limitation period in certain cases and even overriding the bar of limitation.

Provisions of other Indian special statutes governing limitation in criminal prosecution.

Limitation period prescribed under the Negotiable Instruments Act, 1881 ("NI Act")

As per Section 138 of the NI Act, where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of the NI Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both. Further, the above provisions
would be attracted provided that:
(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;
The payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a

notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice. Further, pursuant to sending notice to the drawer of cheque by the payee as per action contemplated in Section 138 (c) of the NI Act, as per Section 142 of the NI Act, the complaint is to be filed with the Metropolitan Magistrate or a Judicial Magistrate of First Class for taking cognizance of offence punishable under Section 138 of the NI Act within thirty days from the date of expiry of the notice period, within whose local jurisdiction, the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated.

Notable judicial precedents on limitation period for taking cognizance of criminal offences/related matters

a) Bar to taking cognizance after lapse of the period of limitation.

Some of the observations of the Hon’ble Supreme Court and State High Courts on interpretation of Section 468 CrPC are as under:

The Hon’ble Supreme Court of India in Bharat Damodar Kale v. State of Andhra Pradesh (2003) 8 SCC 559 ,laid down the law that the provisions of Chapter XXXVI of the CrPC clearly indicate that the relevant date is

not the date of taking cognizance by a Magistrate but the date of filing of complaint or initiating criminal proceedings.

This Judgment is followed in another two-Judges Bench decision in Japani Sahoo v. Chandra Sekhar Mohanty AIR 2007 SC 2762.

In Sarah Mathew v. Institute of Cardio Vascular Diseases (2014) 2 SCC 62., a Five-Judge Constitution Bench of the Hon'ble Supreme Court held that the bar of limitation continued in section 468 of the CrPC applies, if the complaint is filed beyond limitation and not if cognizance is taken by the Court beyond limitation.

The Court observed that taking the date of cognizance as material date would bring in uncertainty and would mean denying justice to diligent complaint for the fault of the Court. Since taking cognizance is an act of the Magistrate and it may be delayed because of various reasons such as delayed due to systemic reasons or it may be delayed due to the Magistrate's personal reasons; and law cannot be expected to put the burden on the complaint to explain something for which he is not responsible;

The Hon'ble Supreme Court, while dealing with the case where offences under Sections 420, 467, 471 and 474 of the Indian Penal Code ("IPC"), were the subject matter of a complaint on which the Magistrate took cognizance and issued process, held that in case the criminal proceedings are instituted after the expiry of limitation period, such proceedings will be governed under section 468 CrPC.

PAPER PRESENTATION SUBMITTED ON LIMITATION FOR THE

FIRST WORKSHOP OF THE YEAR 2025

THAT IS TO BE HELD ON 26-4-2025

By
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II Addl. Junior Civil Judge, Adoni
Kurnool District.

Session 1

(a) Limitation of suits, appeal suits and applications :-

The Law of limitation prescribes a time period within which a right can be enforced in Courts.The time period for various suits has been provided under the schedule of the Act which contains 137 Articles. The Act contains 32 Sections which deal with Limitation of suits, appeals and applications, Computation of Period of Limitation and Acquisition of Ownership by possession. The main purpose of this Act is to prevent litigation from being dragged for a long time and to quickly dispose of cases which leads to effective and easy litigation and disposal of cases.

The law of limitation is based upon two legal 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.

Vigilantibus non dormientibus Jura subveniunt

Which means the law will assist only those who are vigilant with their rights an not those who sleep upon it.

The general rule relating to law of limitation is that, “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.It provides that where a person’s right to institute the suit for the possession of any property has become barred by limitation his right to the property itself shall be extinguished.

In ***Ravindra Kaur Grewal Vs. Manjeet Kaur, AIR 2019 SUPREME COURT 3827***

The Honorable Supreme Court held that

> *"57. The adverse possession requires all the three classic requirements to coexist at the same time, namely, necvi i.e. adequate in continuity, necclam i.e., adequate in publicity and necprecario i.e. adverse to a competitor, in denial of title and his knowledge. Visible, notorious and peaceful so that if the owner does not take care to know notorious facts, knowledge is attributed to him on the basis that but for due diligence he would have known it. Adverse possession cannot be decreed on a title which is not pleaded. Animus possidendi under hostile colour of title is required."*

Section 2(j) of the Act.- Period of limitation refers to the time period which is prescribed for any suit, appeal or application by the Schedule of the Limitation Act, 1963.The prescribed period is the period of limitation computed in accordance with the provisions of this Act.

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.

This provisions empowers a court to dismiss any suit instituted, appeal preferred and application made, after the expiry of period of limitation eventhough the defendant/Respondent had not raised the plea of limitation. It is the duty cast upon the court not to proceed with the application if it is made beyond the period of limitation prescribed. The courts are bound by the provisions of Limitation Act and if the subordinate court comes to an erroneous decision with regard to limitation, it is open to the court in revision to interfere with that conclusion as that conclusion led the court to assume or not to assume the jurisdiction to proceed with the determination of that matter.

Section 4 of the Act prescribes that 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 reopens.

Section 5 of the Act is based on the concept of Doctrine of Sufficient Cause i.e. Extension of prescribed period in certain cases. This provision is applicable only to Appeals and Applications. This provision prescribes that if the appellant or the

applicant satisfies the court that he had a sufficient cause for not preferring the appeal or making the application within such period, then such application or appeal may be admitted even after the prescribed time upon its satisfaction. *Sufficient cause* must be a cause which is beyond the control of the party invoking the aid of the section. A cause for delay which a party, could have avoided but the exercise of due care and attention cannot be a sufficient cause.

Section 6, 7 and 8 of the Act are based on the concept of Legal disability.It refers to certain conditions or situations that prevent a person from initiating legal action or filing suits within the standard limitation period. The Limitation Act prescribes specific time limits for various legal actions, and legal disability provisions are included to protect the rights of individuals who, due to their vulnerable circumstances, are unable to act within the specified time frame. The disabled individual or their legal representative must invoke the relevant provisions and provide evidence of the disability to avail of the extension of time. Once the disability ceases to exist, the normal limitation period starts running from that point onwards, ensuring a reasonable balance between the interests of the parties involved.

New India Assurance Co. Ltd. vs Gopu 2025 INSC 511:- The exemption under Section 6, based on a disability, is confined to suits and applications for execution of a decree- It will not apply in the case of an appeal - Legal disabilities specified in Section 6 creates an exemption and enables the period of limitation to run from the date on which the disability has ceased, only in the case of a suit or an application for the execution of a decree.

Section 9 of the Act prescribes that. “Where once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it”

b. Computation of period of Limitation

Section 12 of Limitation Act deals with Exclusion of time in legal proceedings.

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 and 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 and 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.

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.

But 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.

State of Uttar Pradesh v. Maharaj Narain, *AIR 1968 SC 960*

It was held that the expression 'time requisite' cannot be understood as the time necessary for obtaining the copy of the order.

Section 13 of Limitation Act deals with Exclusion of time in cases where leave to sue or appeal as a pauper is applied for

In computing the period of limitation prescribed for any suit or appeal in any case where an application for leave to sue or appeal as a pauper has been made and rejected, the time during which the applicant has been prosecuting in good faith his application for such leave shall be excluded, and the court may, on payment of the

court fees prescribed for such suit or appeal, treat the suit or appeal as having the same force and effect as if the court fees had been paid in the first instance.

Section 14 of Limitation Act deals with Exclusion of time of proceeding bona fide in court without jurisdiction.

In computing the period of limitation for any suit or application, the time during which the plaintiff/Applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

Section 15 of Limitation Act prescribes the Exclusion of time in certain other cases.—

In computing the period of limitation of any suit or application for the execution of a decree, the institution or execution of which has been stayed by 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.

In a case where the previous consent or sanction of the Government or any other authority is required, the period of such notice or the time required for obtaining such consent or sanction shall be excluded.

In computing the period of limitation for any suit or application for execution of a decree by any receiver or interim receiver appointed in proceedings for the adjudication of a person as an insolvent or by any liquidator or provisional liquidator appointed in proceedings for the winding up of a company, the period beginning with the date of institution of such proceeding and ending with the expiry of three months from the date of appointment of such receiver or liquidator shall be excluded.

In computing the period of limitation for a suit for possession by a purchaser at a sale in execution of a decree, the time during which a proceeding to set aside the sale has been prosecuted shall be excluded.

In computing the period of limitation for any suit the time during which the defendant has been absent from India, shall be excluded.

Section 16 of Limitation Act prescribes the Effect of death on or before the accrual of the right to sue.—

Where any party to the suit or application dies before the right to sue accrues for or against him or where such right accrues for or against any person upon the death of any person, 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 or capable of being sued

The aforesaid provisions do not apply to suits to enforce rights of pre-emption or to suits for the possession of immovable property or of a hereditary office.

Section 17 of the Act prescribes Effect of fraud or mistake:

Where, in the case of any suit or application for which a period of limitation is prescribed by this Act,the suit or application is based upon the fraud of the defendant or respondent or his agent; or the knowledge of the right or title on which a suit or application is founded is concealed by the fraud of any such person as aforesaid; it is for relief from the consequences of a mistake; or where any document necessary to establish the right of the plaintiff or applicant has been fraudulently concealed from him,the period of limitation shall not begin to run until plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production

Where a judgment-debtor has, by fraud or force, prevented the execution of a decree or order within the period of limitation, the court may, on the application of the judgment-creditor made after the expiry of the said period extend the period for execution of the decree or order: Provided that such application is made within one year from the date of the discovery of the fraud or the cessation of force, as the case may be.

Section 17 emphasizes that when a right is accrued on the basis of fraud or mistake, the limitation period shall be computed from the date of knowledge of such fraud or mistake but not from the date of such fraudulent act or mistaken act.

Section 18 prescribes the Effect of acknowledgment in writing.

i. Acknowledgment results into renewal of limitation by admitting the liability
ii. Payment of money is not the criteria but mere acknowledgment itself gives new limitation.
iii. It must be written and signed.
iv. Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed. But oral evidence as to contents cannot be taken.

Section 19 prescribes the Effect of payment on account of debt or of interest on legacy

i. By making payment for some part of the amount, the limitation is renewed.
ii. “debt” does not include money payable under a decree or order of a court.

Section 20 prescribes the Effect of acknowledgment or payment by another person.—

i. The expression "agent duly authorised in this behalf" in sections 18 and 19 shall, in the case of a person under disability, include his lawful guardian, committee or manager or an agent duly authorised by such guardian, committee or manager to sign the acknowledgment or make the payment.

i. An acknowledgment signed or a payment made in respect of any liability by or by the duly authorised agent of, any limited owner of property who

ii. is governed by Hindu law, shall be a valid acknowledgment or payment, as the case may be, against a reversioner succeeding to such liability;

iii. Where a liability has been incurred by or on behalf of a Hindu undivided family as such, an acknowledgment or payment made by, or by the duly authorised agent of, the manager of the family for the time being shall be deemed to have been made on behalf of the whole family.

Section 21 of the Act prescribes the Effect of substituting or adding new plaintiff or defendant.—

i. Where after the institution of a suit, a new plaintiff or, defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party unless the court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith and directs that such plaintiff or defendant shall be deemed to have been instituted on any earlier date.

ii. The rule is not applicable when a party is added owing to assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.

Section 22 prescribes that in the case of a continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be, continues.

According to section 23, In the case of a suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results therefrom, the period of limitation shall be computed from the time when the injury results.

According to section 24, All instruments shall for the purposes of this Act be deemed to be made with reference to the Gregorian calendar.

Session 2 & 3

(a) Conditions as to time and limitation under different statutes

Limitation law is considered to be the principle law in the legal arena. Which essentially presribes the time frames as to within which the legal actions must be initiated. The law of limitation essentially ensures that the disputes are resolved as soon as possible and ensures that no sort of a stale claim can burden the judiciary. The term "limitation," in its literal sense, refers to a constraint, rule, or set of circumstances that impose restrictions. The time frame for approaching a court or a tribunal is recognized under civil, criminal, revenue, arbitration, and various other laws. It is based on the maxim that **“ vigilantibus non dormientibus jura subveniunt”** law helps those who are vigilant of their rights and not those who sleep over them.The main object to limit any legal action is to give effect to the maxim ***‘interest reipublicaeut sit finis litium’,*** which means that in the interest of the State, that there should be a limit to litigation and also to prevent any kind of disturbance or deprivation of what may have been acquired in equity and justice or by way of long enjoyment. The period of limitation defined under section 2(j) **period of limitation** prescribed for a suit etc. and the Schedule appended to the said Act containing 137 Articles gives the description of the suits, period of limitation and the time from which the period begins to run for the purpose of limitation.

The extent of application of Limitation Act: The Act establishes specific periods of limitation for various types of suits, appeals, and

applications. If a suit, appeal, or application is filed after the prescribed period, it is liable to be dismissed (Section 3). The scope and sphere of the definition is not limited to the period of limitation prescribed by the schedule to that of the Act, but the limitation Act will also be applicable to other special and local Acts also. Unless the special/local law does not expressly exclude the applicability of limitation Act. **Applicability of provisions of Limitation Act to that of the special Act-** The provisions of the Limitation Act, 1963 apply only to proceeding in "Courts" and not to appeals or applications before bodies other than courts such as quasi-judicial Tribunals or executive authorities, notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on courts under the Code of Civil or Criminal Procedure.

Which law prevails in case of conflict regarding period limitation is prescribed in any special or Local Law with Limitation Act ?

In cases where there is a conflict between the period of limitation prescribed in a Special or Local Law and the Limitation Act, 1963, Section 29(2) of the Limitation Act becomes relevant. According to Section 29(2), if any special or local law prescribes a different period of limitation for any suit, appeal, or application than what is provided in the Limitation Act, the provisions of the Limitation Act apply only to the extent that they are not expressly excluded by such special or local law.

Different special enactments provide for different limitation periods, however I am going to illustrate few below for the purpose of discussion :-

(a) **Negotiable Instruments Act, 1881:**

Time limit for issuing notice under Section 138 (Dishonour of Cheque): Complaints after the receipt of information from the bank regarding the return of the cheque as unpaid, he must makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, within 30 days. For the purpose of filing compliant under Act as per Section 142 is one month from the date of the cause of action arises under clause (c) of the proviso to section 138.

(b) **Specific Relief Act:**

The limitation period for filing a suit under Section 6 of the Specific Relief Act is **six months from the date of dispossession**. The limitation period for filing a suit for specific performance under the Specific Relief Act, 1963, is governed by Article 54 of the Limitation Act, 1963, which is three years from the date fixed for performance, or if no date is fixed, from the date the plaintiff had notice of the refusal to perform.

(c) **Motor Vehicle Act, 1988:**

Section 166(3) Claims for compensation must be made within six months from the date of accident.

(d) **Domestic violence Act, 2005:**

Section 29- Appeal has to prefer to the Court of Session within **thirty days** from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later.

(e) **Civil Procedure Code (CPC), 1908:**

- For the purpose of filing Written Statement (Order VIII Rule 1) time prescribed is 30 days (max 90 days) from the date of summons service.
- The prescribed period for bringing the legal heirs on record is **90 days** from the date of death of the party involved (Article 120).
- likewise there are certain limitation period prescribed for the execution proceedings as well.

The main approach which the court of law to adopt while dealing with section 5 of limitation act , 1963, has been indicated by the Hon'ble Supreme court in ***Shakuntala Devi Jain v. Kuntal Kumari*** AIR 1969 SC 575] whereby the honourable court had reiterated the following classic statement from **Krishna vs. Chathappan**[1890 ILR 13 Mad 269] :

> "... Section 5 gives the courts a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words `sufficient cause' receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the appellant."

The objective of the law of limitation is to prevent the outdated, fictitious, or fraudulent claims while require a person to exercise his rights to action within the prescribed time. It is a settled principle that law does not help those who sleep over their rights. Though limitation periods differ across statutes, the overarching principle remains: **Justice delayed is justice denied**. Courts must navigate the fine line between

strict adherence to limitation rules and equitable considerations, ensuring that genuine claims are not dismissed due to technicalities.

(b) <u>Different releifs with different period of Limitation</u>

In legal terms, "relief" refers to the formal remedy that a party seeks from the court to address a specific grievance or to enforce a legal right.

Relief types can vary widely—ranging from monetary compensation, specific performance of a contract, rescission, injunctive relief, to declarations of rights. The nature of the relief sought often determines the limitation period applicable under the Limitation Act, ensuring that lawsuits are initiated in a timely manner and that stale claims are avoided. Likewise the cause of action is also important to connect with the period of limitation. The cause of action effectively determines the starting point for calculating the limitation period. It must be distinct and identifiable. For instance, a breach of contract creates a separate cause of action for damages, while a failure to perform might create a cause of action for specific performance. Additionally, Order II Rule 2 of the Civil Procedure Code mandates that all claims resulting from a single cause of action be included in one suit, aiming to prevent multiple litigation for the same underlying issue.

Order II Rule 2 of CPC provides that the suit should include the whole claim and as per this provision every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish and portion of his claim in order to bring the suit within the jurisdiction of any Court.

Order II Rule 2(2) CPC provides for relinquishment of part of claim. Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

Order II Rule 2(3) CPC provides for omission to sue for one of several reliefs. A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation: For the purposes of this rule an obligation and collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.

Based upon the relief sought the limitation is provided accordingly under the statue :-

1. Specific Performance of Contract:

Prescribed limitation is **3 years** as per Article 54 and the time will computed from the date when the contract becomes enforceable or when performance is refused.

Article	Description of suit	Period of Limitation	Time from which period begins to run
Article 54	For specific performance of a contract	3 years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

2. **Rescission of Contract:**

Prescribed limitation is **3 years** as per Article 59 and the time will computed from the date when the contract becomes voidable, typically tied to the date of discovering facts justifying the rescission.

Article	Description of suit	Period of Limitation	Time from which period begins to run
Article 59	To cancel or set aside an instrument or decree or for the rescission of a contract	3 years	When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first becomes known to him.

3. **Recovery of Debt:**

Prescribed limitation is 3 years as per Article 35 and the time will computed from the date of the bill or note.

Article	Description of suit	Period of Limitation	Time from which period begins to run
Article 35	On a bill of exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue.	3 years	The date of the bill or note.

4. **Compensation for Breach of Contract:**

Prescribed limitation is **3 years** as per Article 55 and the time will computed from the date when the contract is broken or where there are successive breaches when the breach occurs or where the breach is continuing when it ceases.

Article	Description of suit	Period of Limitation	Time from which period begins to run
Article 55	For compensation for the breach of any contract, express or implied not herein specially provided for.	3 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.

5. **Easement Rights**

Prescribed limitation is **2 years** as per section 25 of the act and the time will computed from the date when the easement is interrupted.

Section	Period of Limitation	Time from which period begins to run
Section 25	2 years	When the easement is interrupted

6. Declaration:

The prescribed limitation is **3 years** as per Article 58 and the time will computed from the date when the right to sue first accrues.

Article	Description of suit	Period of Limitation	Time from which period begins to run
Article 58	To obtain any other declaration	3 years	When the right to sue first accrues.

7. **Recovery of possession based on previous possession:**

The prescribed limitation is **12 years** as per Article 64, and the time will computed from the date when the property possession is becomes adverse.

Article	Description of suit	Period of Limitation	Time from which period begins to run
Article 64	For possession of	12 years	The date of

	immovable property based on previous possession and not on title, when the plaintiff while in possession of the property has been dispossessed.		dispossession.

8. **Recovery of possession based on title:**

The prescribed limitation is **12 years** as per Article 65, and the time will computed from the date when the property possession is becomes adverse, Subject to suits filed by a remainder man, a reversioner (other than a landlord) or a devisee, a purchaser at a sale in execution of a decree etc.,

Article	Description of suit	Period of Limitation	Time from which period begins to run
Article 65	For possession of immovable property or any interest therein based on title	12 years	When the possession of the defendant becomes adverse to the plaintiff.

9. **Right of Pre-emption:**

Prescribed limitation is **1 year** as per Article 97 and the time will computed from the date when purchaser takes physical possession or the instrument of sale is registered.

Article	Description of suit	Period of Limitation	Time from which period begins to run
Article 97	To enforce a right of pre-emption whether the right is founded on law or general usage or non special contract.	1 year	When the purchaser takes under the sale sought to be impeached, physical possession of the whole or part of the property sold, or, where the subject matter of the sale does not admit of physical possession of the whole or part of the property, when the instrument of sale is registered.

10. <u>Defamation:</u>

Prescribed limitation is **1 year** as per Article 75 & 76 and the time will computed from the date when the defamation is made or published.

Article	Description of suit	Period of Limitation	Time from which period begins to run
Articles 75 & 76	For compensation for libel For compensation for slander	1 year	When the libel is published When the words are spoken or, if the words are not actionable in themselves, when the special damage complained of results.

11. **<u>Injunction:</u>**

Prescribed limitation is **3 years** as per **Article 58** and the time will computed from the date when the right to seek an injunction accrues.

Article	Description of suit	Period of Limitation	Time from which period begins to run
Article 58	To obtain any other declaration	3 years	When the right to sue first accrues.

The list is not complete , however above are some of the illustrations as to how the act provides various limitation periods for various reliefs sought for.

<u>(c) Amendment of pleadings – aspect of Limitation</u>

The amendment of pleadings are governed by Order VI Rule 17 of the CPC, which grants courts the discretion to permit amendments at any stage of the proceedings, provided they are necessary for determining the real questions in controversy. However, this discretion is not absolute —amendments must not prejudice the opposing party or circumvent the

law of limitation, which bars stale claims. A Pleading is a formal document in which a party to a legal proceeding (esp. a civil lawsuit) sets forth or responds to allegations, claims, denials or defenses. It forms an important part in the resolution of dispute between parties as it contains fact which forms the basis on which the rights and liabilities of the party to the suit are ascertained.

Factors to be considered for amendment of plaint

Factors to be taken into consideration while dealing with the applications for amendments are given by the Hon'ble Apex court in ***Revajeetu Builders and Developers Vs. Narayanaswamy*** *and sons and others*- 2009 SCC 10 84

"63. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

(1) Whether the amendment sought is imperative for proper effective adjudication of the case;

(2) Whether the application for amendment is bona fide or mala fide;

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) refusing amendment would in fact lead to injustice or lead to multiplies litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) As a general rule, the court should decline amendments, if a fresh suit on the maddened claims would be barred by limitation on the date of application;

Order 6 Rule 17 Proviso says

"Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that

in spite of due diligence, the party could not have raised the matter before the commencement of trial unless the court finds the party could not have raised the matter earlier despite due diligence:"

Two Judge Bench of the Hon'ble Supreme Court decided in ***Baldev Singh and Others Vs Manohar Singh and another*** **- (2006) 6 SCC 498, AIR 2006 S.C. 2832**.

> "That apart the commencement of the trial as used in proviso to order 6 rule 17 in the Code of Civil Procedure must be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments ……."

The Hon'ble Apex court in ***Ajendra Prasadji N. Pandey v. Swami Keshav Prakesh Dasji N.***-(2006) 12 SCC 1, 2006(13) SCALE 525and AIR 2007 S.C. 806 In Para 57 of the decision, it was observed as follows:, , (2006)12 SCC 1

> "54. It is submitted that the date of settlement of issue is the date of commencement of trial. [Kailash Vs Nankhu & Ors.]. Either treating the date of settlement of issues as date of commencement of trial or treating the filing of affidavit which is treated as examination-in-chief as date of commencement of trial, the matter will fall under the proviso to Order 6 Rule 17 CPC. The defendant has, therefore, to prove that in spite of due diligence, he could not have raised the matter before the commencement of trial……"

What is the time frame that is provided after leave granted.?

In terms of **Order 6 Rule 18 of the Code of Civil Procedure**, such amendments are required to be carried out in the pleadings by a party which has obtained leave to amend his pleadings within the time granted therefore and if no time was specified then within fourteen days from the date of passing of the order. The consequence of failure to amend the pleadings within the period specified therein as **laid down in** Order 6 Rule 18 of the Code is that the party shall not be permitted to amend its pleadings thereafter unless the time is extended by the court.

As per Rule 28 of A.P. Civil rules of practice An application for amendment made under Order I, Rule 103, Order VI, Rule 17, or Order XXII of the Code, shall also contain a prayer for all consequential amendments. The Presiding Officer shall reject the application if it is not in accordance with the law or these rules. Provided that verbal corrections may at any time be made in pleadings with permission of the Court.

Conclusion:

The amendment of pleadings under Order VI Rule 17, when viewed through the lens of limitation, reveals a judicial endeavor to harmonize procedural adaptability with legal certainty. Courts wield discretionary power to permit amendments, guided by a liberal ethos to achieve justice, yet tempered by the need to protect rights accrued through time.

Session 4

LIMITATION IN CRIMINAL CASES IN RESPECT OF OFFENCES UNDER BNS and OTHER SPECIAL LAWS.

The limitation Act,1963 governs with the period of limitation relating to civil law whereas the limitation for criminal cases is dealt in Cr.P.C/BNSS.

It was earlier contained in chapter XXXVI in provisions 467 to 473 of CRPC. It is now dealt under chapter XXXVIII in provisions 513 to 519 of BNSS.

Few key limitation aspects in BNSS are

i. The period of limitation shall be six months, if the offence is punishable with fine only.

ii. The period of limitation shall be one year, if the offence is punishable with imprisonment for a term not exceeding one year.

iii. The period of limitation shall be three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

iv. When two or more offences are to be tried together, the offence with highest punishment shall be taken into consideration for Limitation.(514 BNSS).

v. The period commences from the date of commission of offence.

vi. If the date of commission of offence was not known to any person, then it shall commence from the date of knowledge of the commission to the aggrieved person or the Police officer.

vii. The time during which any person has been prosecuting with due diligence another prosecution, whether in a Court of first instance or in a Court of appeal or revision, against the offender, shall be excluded

viii. When institiuion of a criminal case has been stayed by any court, then such period shall be excluded

ix. Where the previous consent or sanction of the Government or any other authority is required for the institution of any prosecution for an offence, then, in computing the period of limitation, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded. (516 BNSS)

x. Where the period of limitation expires on a day when the Court is closed, the Court may take cognizance on the day on which the Court reopens.(517 BNSS)

xi. In the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues.(S. 518 BNSS)

xii. Any Court may take cognizance of an offence after the expiry of the period of limitation, if the court is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice. The discretion is with the court in such circumstances.(S 519 BNSS).

xiii. If at all special law does not provide any specific limitation, the limitation provisions contained in BNSS shall be made applicable.

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1st DISTRICT LEVEL WORKSHOP, KURNOOL
(26th APRIL., 2025)
ON
"LAW ON LIMITATION"

Topic:

Section 5 of The Limitation Act, 1963

Prepared By:

Sri M.Eswar Venkata Prasad, Civil Judge (Junior Division), Allagadda.

This Article on section 5 of the Indian Limitation Act is divided into following five chapters:

1. Introduction
2. Doctrine of Sufficient Cause
3. Practical Application of Section 5 – Challenges and Issues in Condonation of Delay
4. Judicial approach
5. Conclusion

Chapter 1. Introduction:

The limitation Act 1963 is a central legislation which mentions limitation periods for various suits, appeals, and applications across different legal areas, including civil, criminal, and tax laws. Section 3 of the Act mandates that if an action is not brought within the specified period, it must be dismissed, unless an extension is granted under the provisions of the Act, particularly Section 5. section 5 of the limitation act is based on the principles of justice, equity, and good conscience. This section provides a safeguard against the harsh consequences of the limitation bar, allowing courts to extend the limitation period in cases where the party has been unable to file within the prescribed time due to a "sufficient cause."
The provision reads:

Section 5. Extension of prescribed period in certain cases.

Any appeal or 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 applicant satisfies the court that he had sufficient cause for not preferring the appeal or application within such period.

At the core of Section 5 is the phrase **"sufficient cause."** This gives the courts wide discretion to determine whether the delay in filing an appeal or application should be condoned. The provision empowers the judiciary to take into account various factors, including but not limited to the mental, physical, or financial incapacity of the party, the absence of legal advice, natural calamities, or other unforeseen circumstances.

The application of Section 5 is crucial because it serves to avoid the miscarriage of justice. It recognizes that not all delays in litigation are deliberate or caused by negligence. Thus, it seeks to allow those who are genuinely hindered by unavoidable circumstances the opportunity to have their case heard.

Chapter 2: Doctrine of Sufficient Cause

At the heart of Section 5 lies the term **"sufficient cause."** The provision allows the courts to condone delays in filing appeals or applications, provided the appellant or applicant shows that the delay was due to a "sufficient cause." This term, however, is not defined in the Act, and its meaning has evolved through judicial interpretation.

Over the years, Indian courts have provided several interpretations of what constitutes "sufficient cause." Generally, the courts have adopted a liberal and flexible approach to the term, recognizing that **no two cases are identical**, and each delay may have unique circumstances that justify an extension.

Some key factors that have been recognized as "sufficient cause" include:

1. **Illness**:
   A party may be unable to file an appeal or application due to physical or mental illness. The court may condone the delay if medical evidence or records substantiate the claim of illness.
2. **Ignorance of Law**:

   While ignorance of the law is generally not considered an excuse for delay, in some cases where the party has no access to legal advice or is not aware of the procedural requirements, the court may allow an extension.
3. **Natural Calamities**:

   Delays caused by natural disasters, such as floods, earthquakes, or other unforeseen events, may be considered as sufficient cause, especially if the disaster made it impossible for the party to take timely action.
4. **Financial Hardship**:

   In cases where financial constraints prevented the party from filing an appeal on time, courts have sometimes accepted the delay, particularly where the financial difficulty was beyond the control of the party.
5. **Misinformation or Inadequate Legal Counsel**:

   Courts may condone delays where the appellant or applicant was misinformed about the limitation period or failed to seek legal assistance in time due to lack of knowledge.
6. **Delay in Receiving Court Orders or Documents**:

   In some cases, a party may not have been aware of a decision or order within the prescribed time, particularly if there was a delay in receiving a

copy of the judgment or an order. Courts may condone such delays if reasonable efforts to obtain the order were made.

The key principle in interpreting "sufficient cause" is **flexibility**. Courts look for genuine reasons for delay, particularly when the delay is not attributed to negligence or deliberate indifference.

Judicial Discretion and the Scope of Section 5

Section 5 grants the courts **discretion** in extending the limitation period. While the section does not require the court to automatically condone any delay, it allows the judge to determine whether the delay is justifiable based on the circumstances of the case.

Judicial Discretion refers to the power of judges to make decisions based on their assessment of the facts, principles of justice, and equity, rather than following rigid rules. In the context of Section 5, the courts have significant discretion in determining whether the delay is excusable and whether the interests of justice would be served by admitting the appeal or application despite the delay.

The court's discretion is guided by principles of fairness and justice. It must not be exercised arbitrarily but must consider the specific facts of the case, such as:

1. The length of the delay: A short delay may be more likely to be condoned than a lengthy delay, unless there are strong reasons to justify the extended period.
2. The reasons for the delay: Courts carefully examine whether the reasons provided are reasonable and convincing.
3. The conduct of the party seeking the extension: The party must show that the delay was not due to negligence or willful indifference.

While Section 5 provides flexibility, courts also exercise caution to prevent the misuse of this provision. There is a fine line between allowing genuine claims to proceed and ensuring that the limitation framework is not undermined. The principle of **"justice must not be denied due to a technicality"** is balanced by the need for **certainty** and **finality** in legal matters.

CHAPTER 3:
Practical Application of Section 5 – Challenges and Issues in Condonation of Delay:

Common Challenges in the Condonation of Delay

1. **Vague or Insufficient Explanation of Delay**

One of the most common challenges faced by litigants is the inability to provide a **clear and convincing explanation** for the delay. Merely stating that the party was busy or preoccupied with other matters, without providing sufficient evidence or reasoning, generally fails to meet the threshold for "sufficient cause."

Practical Implication: Courts often look for **concrete evidence** (such as medical records, travel documents, or correspondence) that substantiate the party's claims. Litigants who fail to provide such documentation face an uphill battle in convincing the court that the delay was justifiable.

2. **Delays Due to Negligence or Lack of Diligence**

Courts are less likely to condone delays caused by **gross negligence**, willful ignorance of the law, or **lack of diligence**. Delays arising from the failure to **seek legal advice** promptly or **inadequate follow-up** often lead to the dismissal of the application for condonation.

Practical Implication: Courts expect litigants to show a reasonable degree of **due diligence** and care. A party that did not make an effort to file the appeal on time, without a convincing explanation for this inaction, is unlikely to have its delay condoned.

3. Excessive Delay in Filing the Application

Delays that extend beyond a reasonable period may not be excused, even if there is a genuine reason. For instance, a delay of several months or years may raise doubts about the **urgency** or **importance** of the matter. While Section 5 gives discretion to the courts to extend the time, **excessive delay** without justifiable cause may be considered unreasonable.

Practical Implication: The longer the delay, the higher the burden on the applicant to show compelling reasons for the delay. Courts are more likely to reject requests for condonation if the delay is disproportionately long and without sufficient cause.

4. Lack of Proper Legal Representation or Misinformation

While **ignorance of the law** is generally not considered a valid excuse for delay, courts have shown some leniency in cases where the delay occurred due to **lack of proper legal advice** or **misinformation**. In such cases, courts may condone the delay if the applicant can show that they were **misled or uninformed** about the limitation period.

Practical Implication: While courts have occasionally accepted ignorance or misinformation as a sufficient cause for delay, the standard for condonation in such cases is high. **Genuine miscommunication** and **lack of knowledge** about procedural matters must be demonstrated convincingly to have the delay excused.

5. Unavoidable External Factors – Illness, Natural Calamities, etc.

External factors such as severe illness, **natural disasters**, or **unforeseen events** are often accepted as **genuine causes** for delays. In such cases, the courts recognize that these factors are beyond the control of the litigant. However, the applicant must demonstrate that the delay was directly caused by these events and not by personal negligence.

Practical Implication: Litigants claiming delays due to illness or external events must provide adequate proof, such as medical records or reports, and show that the event genuinely impeded the filing of the appeal or application within the prescribed time.

Potential for Misuse and Abuse of Section 5:

The discretionary power granted to the courts under Section 5 to condone delays can be prone to misuse. Some litigants may attempt to **exploit the provision** by filing false or exaggerated reasons for the delay in the hope of receiving an extension. Additionally, the **lack of stringent procedural checks** can sometimes result in delays being condoned when they should not be.

- **Case Illustration**: In some cases, courts have dismissed applications for condoning delays where the applicant was found to have **deliberately delayed** the filing of the appeal to gain an advantage or because the initial application had no real merit.
- **Practical Implication**: While Section 5 is designed to ensure that justice is not denied due to minor delays, it also requires vigilance on the part of the courts to ensure that **fraudulent or baseless claims** are not accepted. Courts must verify claims of delay carefully, ensuring that only **genuine reasons** for delay are accepted.

The Role of the Court in Balancing Justice and Finality

Courts are tasked with balancing the **interests of justice** with the **need for finality** in legal proceedings. While Section 5 allows for the extension of time, courts must be cautious not to undermine the purpose of limitation periods, which are designed to bring certainty, prevent stale claims, and encourage prompt action. Courts must exercise caution to ensure that they do not **compromise the finality** of judgments by condoning delays where there is no legitimate reason. This requires a careful evaluation of the facts in each case, and a mindful approach to preserving the **integrity of the limitation framework**.

Chapter 4: Judicial approach:

Case law 1:

Collector, Land Acquisition v. Mst. Katiji (1987): The Supreme Court laid **following principles** that are supposed to be kept in mind while granting condonation of delay:

a) Ordinarily a litigant does not stand to benefit by lodging an appeal, late.
b) Refusing to condone delay can result in a **meritorious matter** being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
c)"Every day's delay **must be explained"** does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay?
d)The doctrine must be applied in a rational common sense pragmatic manner.
e)When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have **vested right in injustice** being done because of a non-deliberate delay.
f)There is **no presumption** that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.
g)It must be grasped that the judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.
This landmark case reinforced the view that courts should adopt a liberal approach while considering applications for the condonation of delay. It held that the concept of sufficient cause should be construed in a way that upholds the fundamental principle of justice. The court noted that procedural delay should not be allowed to thwart the cause of justice.
Case law 2:

Mohd. Abaad Ali & Anr. v. Directorate of Revenue Prosecution Intelligence (2024):

This case deals with applicability of Section 5 to condone delay in filing criminal appeals against acquittal under Section 378 CrPC. Section 5 of the Limitation Act can be invoked to condone the delay in filing criminal appeals against acquittal, as there are no exclusionary provisions in Section 378 CrPC.

Case law 3:

F. Liansanga v. Union of India (2022): The Scope of Section 5 concerning suits is discussed in this case law. A **Division Bench of the Hon'ble Supreme Court of India comprising of Justice Indira Banerjee and Justice J.K. Maheshwari passed a Judgment dated 02-03-2022 in the case of** F. Liansanga & Anr. v. Union of India & Ors. Special Leave Petition (Civil) Nos. 32875-32876 of 2018 **and held that power to condone the delay under Section 5 of the Limitation**

Act, 1963, does not apply to Suits. it is applicable only to appeals and applications.

Case law 4:

N. Balakrishnan v. M. Krishnamurthy (1998):

1. **Principles of Condonation of Delay:**
   - Section 5 of the Limitation Act allows courts to condone delays if "sufficient cause" is shown.
   - The length of the delay is not as important as the acceptability of the explanation. A delay of even a short duration may be unconscionable if no satisfactory explanation is provided, while a longer delay can be condoned if justified.
   - Condonation is a matter of judicial discretion, and superior courts should not interfere with the exercise of such discretion unless it is arbitrary, perverse, or untenable.
2. **Evaluation of the Appellant's Conduct:**
   - The Court in N. Balakrishnan versus M. Krishnamurthy rejected the High Court's characterisation of the appellant as "utterly negligent." It acknowledged that while the appellant could have been more vigilant, his actions were consistent with those of an ordinary litigant who relies on legal counsel.
   - The Court emphasised that mistakes or lapses by counsel should not irreparably harm the litigant if no malafide intent is evident.
3. **Role of Rules of Limitation:**
   - The purpose of limitation laws is to ensure timely resolution of disputes, not to extinguish genuine rights.
   - Refusing to condone the delay in this case would unjustly deny the appellant an opportunity to seek redress, contrary to the principle of substantial justice.
4. **Compensation to Respondent:**
   - Recognising the respondent's expenses and inconvenience, the Court directed the appellant to pay **Rs. 10,000** to the respondent as compensation.
   - The Supreme Court in N. Balakrishnan v M. Krishnamurthy allowed the appeals, restoring the trial court's order condoning the delay. The Court emphasised the need for a liberal approach in cases where delays are attributable to circumstances beyond the litigant's control.

N. Balakrishnan v. M. Krishnamurthy reaffirms the principle that procedural rules, including limitation laws, should not be applied rigidly to defeat substantive

justice. It highlights the importance of balancing the rights of both parties while ensuring fair access to legal remedies.

This case addresses the condonation of a 883-day delay in filing an application to set aside an ex-parte decree. The appellant blamed the delay on his advocate's negligence, which the trial court accepted and condoned. However, the High Court reversed this decision, citing the appellant's lack of diligence.

The Supreme Court in N. Balakrishnan vs M. Krishnamurthy reinstated the trial court's order, emphasizing that procedural rules, including limitation laws, should not override substantive justice. It held that reliance on counsel and subsequent lapses should not penalize litigants if there is no malafide intent. The Court acknowledged the respondent's inconvenience, awarding them compensation, while reiterating that courts must adopt a liberal interpretation of "sufficient cause" under Section 5 of the Limitation Act to advance justice.

The Supreme Court held that the expression "sufficient cause" should receive a liberal interpretation, and a party should not be penalized for procedural delays unless the delay is due to malafide or gross negligence. This case emphasized the court's duty to see that justice is not denied merely because of delays that do not reflect an intention to obstruct justice.

Case law 5:

Ramlal v. Rewa Coalfields Ltd. (1962):

In this case, the Court ruled that even though the limitation period had expired, if there is a valid reason for delay, the court may condone the delay. The delay was justified because the party had difficulty in securing the relevant documents necessary for the filing of the appeal.

Case law 6:

Pinjari Khasim v. Chanda Saheb (2023)

In this case the petitioner sought to restore a suit dismissed for non-prosecution in 2017. The application for restoration was filed in 2022, resulting in a delay of 339 days. The petitioner attributed the delay to health issues. The Andhra Pradesh High Court condoned the delay, emphasizing that litigation should not be terminated by default and that adjudication on merits is preferable. The court also imposed a cost of ₹1,500 on the petitioner, payable to the respondents, to balance the interests of both parties

Case Law 7:

Penugonda Varalakshmi v. Nallamala Lakshmi Tayaru (2013):

In this case the petitioner filed an application under Section 5 of the Limitation Act to condone a delay of 281 days in filing a petition under Order XXI Rule 89 of the Code of Civil Procedure to set aside an auction sale.The Andhra Pradesh High Court dismissed the civil revision petition, stating that Section 5 of the Limitation Act does not apply to petitions under Order XXI Rule 89, as they are governed by a specific limitation period

Chapter 5:

Conclusion:

While judicial discretion is a key feature of Section 5, it is exercised with caution, ensuring that delay is not condoned lightly, particularly in cases where it reflects negligence or lack of diligence. Section 5 thus acts as a safeguard against the harshness of limitation periods, ensuring that justice is not denied purely on procedural grounds. The practical application of Section 5 of the Limitation Act, 1963 is fraught with challenges, both for litigants and for the courts. While the provision provides an important safeguard against the rigid application of limitation periods, it also requires careful and thoughtful application to ensure that delays are not condoned without sufficient cause.

Litigants often struggle with providing adequate explanations for delays, especially when the reasons are either insufficiently detailed or caused by negligence. Courts, for their part, must ensure that they apply consistent standards while considering condonation applications, balancing the interests of justice with the need for finality in litigation. One of the significant criticisms of the current system is the time-consuming nature of condonation applications. Delays in the condonation process itself can further delay the resolution of the underlying case, thereby undermining the efficiency of the judicial system.

DISTRICT JUDICIARY,

KURNOOL

WORK SHOP-I YEAR 2025

TOPICS FOR PAPER PRESENTATION:

LAW ON LIMITATION: a)Limitation- Suits,Appeals,Applications

b) Computation of period of limitation

c)Conditions as to time and limitation under different statutes

d) Different reliefs with different period of limitation

e) Amendment of pleadings- the aspect of limitation

f) Limitation in criminal cases in respect of offences under IPC/BNS and other special laws

PAPER PRESENTATION

BY

S LAKSHMI KARRI

ADDITIONAL CIVIL JUDGE (JUNIOR DIVISION)

NANDYAL ,KURNOOL DISTRICT

LAW OF LIMITATION: A) LIMITATION -SUITS,APPEAL SUITS AND APPLICATION

B) COMPUTATION OF PERIOD OF LIMITATION

1. The Code of Civil Procedure confers a right to appeal but does not prescribe a period of limitation for filing an appeal. The Limitation Act 1963, however, provides the period for filing appeals. It states that appeals against a decree or order can be filed in a high court within 90 days and in any other court within 30 days from the date of the decree or order appealed against.

2. It is for general welfare that a period be put on litigation. Further, 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. The 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 indefinably. It is, therefore, provided that Courts of Law cannot be approached beyond a fixed period. The Limitation Act of 1963 provides the limit in civil matters.

3. 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 exploration of a time limit, is struck by the law of limitation. It’s meant to protect the long and established user and to indirectly punish persons who go into longer slumber over their rights.

4. The statutory law was established in stages. The very first Limitation Act was enacted for all the courts in India in 1859. And finally took the form of the Limitation Act in 1963.

5. A citizen is not expected to master the various provisions which provide for limitation in different matters but certain basic knowledge in this regard is necessary. For instance, Section 12 of the Limitation Act lays down certain guidelines regarding the computation of the limitation period. It says that 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.

6. Further, 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 shall be excluded. However, 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.

7. Section 14 of the Act, similarly, says that in computing the period of limitation, for any suit, the time during for which the plaintiff has been prosecuted in civil proceedings, whether in a court of first instance or of appeal or revision against the defendant shall be excluded where the proceedings relate to the same matter in a court which is unable to entertain it on account of defect of jurisdiction or other cause of a like nature.

WHAT DOES THE LIMITATION PERIOD MEAN? The law prescribes different periods within which a person who has a grievance should go to court. For example, if somebody has borrowed your money and not returned it, you should approach the court within three years from the date you lent the money. If you don't go to the court within that time, the courts will not be of help to recover your money. This is called the Limitation period. After the limitation period, you cannot enforce your rights in court. The LimitationAct of 1963 prescribes different limitation periods for different kinds of claims.

BAR OF LIMITATION • Subject to provisions of sections 4 to 24 of the Limitation Act 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.[section 3(1)]. • 'Period of Limitation' means the period of limitation prescribed for any suit, appeal or application by the schedule to the Act and 'prescribed period' means the period of limitation computed as per provisions of the Act.

[section 2(j)]. • PERIOD AS PRESCRIBED IN SCHEDULE TO THE ACT - The period has been prescribed in schedule to the Act. Generally, it is as follows:

(a) 3 years for a suit relating to accounts, contracts, declarations, decrees, suits relating to movable property, recovery of law suit under a contract etc.

(b) 12 years for suits relating to possession of immovable property and 30 years for mortgaged property.

(c) One year for suits relating to torts.

(d) 30 to 90 days in case of appeals under the Civil Procedure Code and Criminal Procedure Code. –

The period of filing an appeal and application can be extended if proper cause is shown [section 5].

If the court is closed on the last day, the suit can be filed on the next day when the court reopens. [section 4].

• CONTINUOUS RUNNING OF TIME - When once period of limitation starts running, it continues even if there is any subsequent disability or inability to institute a suit or make an application.[section 9].— However, at the time when a person is entitled to file a suit or make an application, if a person is disabled, the period of limitation will start after the disability is removed.[section 6(1)].

• A misjoinder of parties or of the cause of action shall be deemed to be a cause of a like nature mentioned above. Under section 15 of the act, the time during which an injunction or restraining order issued by a court remains in force is to be excluded when computing the period of limitation for any suit or application for the execution of a degree. In cases, where previous consent or sanction of the government or any other authority is required under

r the law, the time required for obtaining such consent or sanction shall be excluded. When a defendant has been absent from India, the time during which he has been absent can be excluded from the period of limitation.

• In case, the prescribed period for any suit, appeal or application expires when the court is closed, the suit, appeal or application may be instituted on the day when the court reopens, as provided under section 4 of the act. This is based on the principle "actus curia neminemgravabit", which means that an act of court shall not prejudice anyone. The court can condone the delay if satisfied that it causes were beyond the control of the plaintiff too.

CONDONATION OF DELAY IN CONTEXT OF APPEALS ORDER XLI, RULE 3A, CPC:

• Condonance may be made when an accuser has previously forgiven or condoned the act about which they are complaining. In some legal jurisdictions, and for certain behaviors, it may prevent the accuser from prevailing. • Rule 3-A has been inserted by the Amendment Act of 1976. It provides that when an appeal has been presented after the expiry of the period of limitation specified therefore, it shall be accompanied by an application that the applicant has sufficient cause for not preferring the appeal within the time. • Prior to the insertion of rule 3-A, the practice was to admit such an appeal subject to the opinion regarding limitation. This practice was disapproved by the privy—council, and it stressed the expediency of adopting a procedure for securing the final determination of the question as to limitation before admission of appeal. This rule is added to give effect to the recommendation of the privy council

• As observed by the Supreme Court in the state of M.P v. Prandeep Kumar, the object of the provision is two-fold: firstly, to inform the appellant that the delayed appeal will not be entertained unless it is accompanied by an application accompanying the delay, and second, to communicate to the respondent that it may not be necessary for him to get ready on merits as the court has to first deal with an application for condonation of delay as a condition precedent. The provision in the Howe directory is not mandatory. If the memorandum of appeal is filed without an accompanying application for condonation of delay, the consequence is not necessarily fatal. The defect is curable.

JUDICIAL ACTIONS: Raj Bahadur Singh & Another v. D.J. & Others: According to the learned judge the application 4-GA (format of an application used under order 9, rule 9 of the Civil Procedure Code, 1908) had been rejected on two grounds, firstly being barred by limitation and secondly being without any valid ground. Thus, the appeal filed by the respondents was fully maintainable. He further submitted that the learned District Judge vide order dated 11.2.2002 had admitted the appeal while overruling the preliminary objections, and the writ petition filed by the petitioners is not maintainable. In the present case the question is as to whether an appeal lies against an order passed by the trial Court wherein it had by a common order rejected both the applications under section 5 of the Limitation Act and order 9 Rule 13 C.P.C. on the ground that the application is barred by Limitation and no ground for condonation of delay has been made out, or a revision lies. If it is held that no appeal lies, then the order admitting the appeal is wholly without jurisdiction and in suchcircumstance a writ petition is maintainable.

LIMITATION OF SUITS, APPEALS and APPLICATIONS (sections 3 to 11): a SECTION 3 • Subject to the provisions contained in Sections 4 to 24, 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.

• For this Act- a suit is instituted- in an ordinary course when the plaint is presented to the proper officer,

a) in the case of a pauper, when the application for leave to sue as a pauper is made; and • in the case of a claim against a company which is being wound by the court, when the claimant first sends in his claim to the official liquidator,
b) • any claim by way of set-o or counterclaim, shall be treated as a separate suit and shall be deemed to have been instituted- -•in the case of set-o , on the same date as the suit in which the set o is pleaded b) in case of counter-claim, on the date on which the counter claim is made in the court. Section 3 of the Limitation Act enjoins a court to dismiss any suit instituted, appeal preferred, and application made after the period of limitation prescribed therefore by the Schedule irrespective of the fact whether the opponent had set up the plea of limitation or not. It is the duty of the court not to proceed with the appliance if it is made beyond the period of limitation prescribed.

in determining which of the limitation act applies, the subordinate court comes to an erroneous decision, it is open to the court in revision to interfere with that conclusion as that conclusion led the court to assume or not to assume the jurisdiction to proceed with the determination of that c) The court had no choice and if in construing the necessary provision of the Limitation Act or matter. 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 nullity (Ittyavira Mathaiv.VarkeyVarkey, AIR 1964 SC 907) 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 the purpose of the limitation depend on the date when the cause of action arose. A cause of action is a fact or combination of facts that gives a person the right to seek judicial redress or relief against another. Section 3 bars only the institution of suits, applications and appeals, and the period within which the same has to be filed. But so far, the defence is concerned there is no such limitation. There can be no period of limitation for acts which the courts are bound to perform. Section 2(j) Prescribed Period- "period of limitation" means the period of limitation prescribed for any suit, appeal or application

• ShrimantSham Rao Suryavanshi v.Pralhadbhairobasuryavanshi, 2002, 3 SCC 676- It is, therefore, manifest that the limitation act doesn't extinguish a defence 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 defence 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.

• SECTION 4: Expiry of the prescribed period when the 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 reopens.
• 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. Section 4 has nothing to do with the period of limitation. It does not add to the period of limitation. It only extends the concession that is not-withstanding that the period of limitation expires on a day when the court is closed suit appeal or application may be filed on the day on which the court reopens.

• SECTION 5: Section 5 of the Limitation Act,1963 allows for the condonation of delay in filing appeals or applications after the prescribed period of limitation, provided the appellant /applicant demonstrates a "sufficient cause" for the delay. This means that the court can accept a late filing if the applicant explains why they couldn't file within the time limit. The concept of "sufficient cause" is interpreted liberally by courts to ensure justice is served, even if there is a slight delay.

SUFFICIENT CAUSE: Sufficient cause means there should be adequate reasons or reasonable grounds for the court to believe the applicant was prevented from proceeding with the application in a court of law.

• Section 5 allows the extension of the prescribed period in certain cases on sufficient cause being shown for the delay • In the state of West Bengal vs Administrator (1972): a) The Supreme Court held that the extension of time is a matter of concession and cannot be claimed by the party as a matter of right. b) It is difficult and undesirable to precisely define the meaning of sufficient cause. It must be determined by the facts and circumstances of each case. However, a sufficient cause should fulfil the following essentials: i) It must be a cause which was beyond the control of the party invoking it ii) iii) iv) He must not be guilty of negligence. His diligence and care must be shown. His intention must be Bonafide.

ILLUSTRATIONS OF SUFFICIENT CAUSE FOR CONDONATION OF DELAY: i) The applicant was misled by any order, practice or judgement of the court in ascertaining or computing the prescribed period. ii) Serious illness of the applicant. Iii)Significant changes in the law. Iv)Applicant is disqualified under any law for the time being in force. Delay in procuring copies from the officials.

LATEST JUDGMENT: Pathapati Subba Reddy (Died) by L.R.s. and Ors. Vs. The Special Deputy Collector (2024): The Supreme Court held that, in case a party is found to be negligent, or for want of Bonafide on his part in the facts and circumstances of the case or found to have not acted diligently or remained inactive, there cannot be justified grounds to condone the delay.

LEGAL DISABILITY (SECTION 6) : • Where a person entitled to institute a suit or make an application for the execution of a decree is, at the time from which the prescribed period to be reckoned, a minor insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceases, as would otherwise have been allowed from the time specified therefore in the third column of the Schedule. • Where such person is, at the time from which the prescribed period is to be reckoned, affected by two such disabilities, or where, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period after both disabilities have ceased, as would otherwise have been allowed from the time so specified. • Where the disability continues up to the death of that person, his legal representative may institute the suit or make an application within the same period after the death, as would otherwise have been allowed from the time so specified.

• Where the legal representative referred to in sub-section (3) is, at the date of the death of the person whom he represents, affected by any such disability, the rules contained in subsections (1) and (2) shall apply. • Where a person under disability dies after the disability ceases but

within the period allowed to him under this section, his legal representative may institute the suit or make the application within the same period after the death, as would otherwise have been available to the person had he not died.

i) Explanation: For this section 'minor' includes a child in the womb. This section will not grant indulgence to a minor entitled to prefer an appeal; it provides only for suits or applications for execution of the decree.

Section 7: • Disability of one of several persons—-Where one of several persons jointly entitled to institute a suit or make an application for execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, time will run against them all; but when no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased. • • Explanation 1: This section applies to a discharge from every kind of liability including a liability in respect of any immovable property. • Explanation 2: For the purpose of this section the manager of a Hindu undivided family governedby the Mitakshara law shall be deemed to be capable of giving a discharge, without the concurrence of the other members of the family only if he is in management of the Joint family property.

• Narayan v. Babasaheb, 2016(2) JBCJ 415(SC): (2016)6 SCC 725 Facts: A Hindu man who was the original owner of the ancestral property died leaving his two sons, one being minor, along with 4 daughters and his widow. A sale deed was executed by the widow (D2) in favour of one D1 on 20.1.1982 and on 28.11.1988 for the same property. In 1989, suit is filed by the sons and daughters for recovery of possession and setting aside the sale deed executed by their mother who has been arrayed D2 and the purchaser made party as D1. The first appellate court concluded that Article 60 of the limitation act is not applicable to the case as D2 is not the guardian appointed by the court. Question whether the suit was barred by limitation, being hit by: Article 60 which prescribes a limitation of 3 years after the ward attains majority to set aside the transfer of property made by guardian of ward OR Article 109 which prescribes a limitation of 12 years when the suit is by a Hindu governed by Mitakshara law to set aside alienation made by father of his ancestral property

SECTION 8: • Special exceptions—Nothing in section 6 or 7 applies to suits to enforce rights of pre-emotion, or shall be deemed to extend, for more than 3 years from the cessation of disability or the death of the person affected thereby, the period of limitation for any suit or application. The combined effect of s.6, and s.8, read with the third column of the appropriate

article of the Limitation Act would be that a person under disability may sue within the same period as would otherwise be allowed from the time specified therefore in the third column of

the schedule but the special limitation as an exception has been provided in s.8, laying down that the extended period after cessation of disability would not be beyond 3 years of the cessation of the disability or the death of the disabled person.

• KolandavelGoukderv.Chinnapan, AIR 1965 Mad 541 Facts: Some joint family property was sold by the father acting for himself and on behalf of his minor sons in 1940 and the purchaser made further sale in 1942. Possession passed from father to the alienee on 17.8.1942. In this suit filed on 9.1.1958 by the sons it was contended that the period of limitation I.e., 12 years should be counted from the date of the youngest son attaining majority or in the alternative, when the first son becomes the manager of the property after the death of his father in April, 1948 so that he became capable of giving discharge on behalf of his brothers also. In the light of this, the period will start running against them all only from April,1948.

SECTION 9: Continuous running of time-Where once time has begun to run no subsequent disability or inability to institute a suit or make an application stops 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 the debt shall be suspended while the administration continues. Limitation cannot run unless the cause of action has arisen. A cause of action normally accrues when there is in existence a person who can sue and another can be sued, and when all the facts happened which are material to be proved to entitle the plaintiff to succeed. Where time has begun to run owing to the right to sue having accrued to a person not labouring under any legal disability, the subsequent disability of himself or his son or other representative is not a ground of exemption from the operation of the ordinary rule.

SECTION 10: • Suits against trustees and their representatives- Notwithstanding anything contained in the foregoing provisions of this Act, no suit against a person in whom property has become vested of trust for any specific purpose, or against his legal representatives or assigns, to follow in his or their hands such property, or the proceeds thereof or for an account of such property or proceeds, shall be barred by any length of time.

• Explanation: For this section, any property comprised in a Hindu, Muslim or Buddhist religious or charitable endowment shall be deemed to be property vested in trust for a specific purpose, and the manager of the property shall be deemed to be the trusted thereof.

SECTION 11: Suits on contracts entered into outside the territories to which the Act extends: (1). Suits instituted in the territories to which this Act extends on contracts entered into the state of Jammu and Kashmir or in a foreign country shall be rules of limitation contained in this Act. (2). No rule of limitation in force in the state of Jammu and Kashmir or in a foreign country shall be a defence to a suit instituted in the said territories on a contract entered into in the state or in a

foreign country unless a. The rule has extinguished the contract; and b. The parties were domiciled in that state or in a foreign country during the period prescribed.

COMPUTATION OF PERIOD OF LIMITATION

SECTION 12: EXCLUSION OF TIME IN LEGAL PROCEEDINGS: 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.

• In computing the period of limitation for an appeal or application for leave to appeal or for revision or for review of a judgement, the day on which the judgement complained 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 or where an application is made for leave to appeal from a decree or order, the time requisite for obtaining copy of the judgment.

• In computing the period of limitation for an application to set aside an award, the time requisite for obtaining a copy of the awards shall be excluded.

Case laws:(1). State of Maharashtra vs v.M.R. Apte AIR 1988 SC 1305: Principle: Time taken to obtain a certified copy must be excluded, even if the application for the copy was made a few days delay. • Kailash v. Nanhku (2005) 4 SCC 1: Explained section 12(2) in detail and emphasized that time taken for preparing the certified copy is to be excluded whether or not it is due to appellant's delay. • Union of India v. Pramod Gupta (2005) 12 SCC 1: Explained section 12(2) in detail and emphasized that time taken for preparing the certified copy is to be excluded whether it is due to appellant's delay.

SECTION 13: EXCLUSION OF TIME IN CASES WHERE LEAVE TO SUE OR APPEAL AS A PAUPER IS APPLIED FOR: • If a person applies for permission to sue or appeal as a pauper and the application is rejected or allowed but the suit or appeal is eventually filed, then the time spent during the pendency of that application is excluded from the limitation period for filing the suit or appeal. • The application to sue or appeal as a pauper must be bona fide. • The time for filing the paper application to the decision on it is excluded. • Applies only when the suit or appeal is filed afterwards, either with court fees or without.

• Case laws: (1). Ganesh Prasad v. Lakshmi Narayan AIR 1985 MP 191: When an application to appeal as a pauper is rejected and the appeal is then filed with court fees, the time taken in pauper proceedings must be excluded under section 13. It ensures that litigants are not penalized for seeking pauper status in good faith.

2). Jugal Kishore v. Dhanno Devi AIR 1973 All 158: If the application to sue as a pauper is accepted, the suit is deemed to be filed on the date of pauper application. No limitation issue arises.

(3). Chandrika Prasad v. Beni Prasad AIR 1952 All 716: Reinforced that the benefit of section 13 is available even if the application is ultimately rejected, provided the actual suit/appeal is filed promptly after.

SECTION 14: EXCLUSION OF TIME OF PROCEEDINGS BONAFIDE IN COURT WITHOUT JURISDICTION: If a litigant prosecuted civil proceedings in good faith in a court that lacked jurisdiction, then the time spent in that proceeding is excluded from the limitation period for filing a fresh case in a competent court. • Previous proceedings must have been diligently and in good faith prosecuted. • It must relate to the same matter in issue. • The earlier court must have been unable to entertain the case due to a defect of jurisdiction or similar cause. • The current case must be filed in a competent court.

• Case laws: (1). Roshanlal v. R.B. Mohan Singh Oberoi AIR 1960 SC 940: Even if the earlier case was withdrawn or dismissed due to lack of jurisdiction, the time spent is excluded if the litigant acted in good faith and with due diligence.

(2). Union of India v. West Coast Paper Mills (2004) 2 SCC 747: Section 14 applies even when the earlier proceedings were before a wrong forum, provided that the party was acting in good faith. (3). Zila SahkariKendriya Bank v. Sharma Construction Co. (2004) 2 SCC 385: Explained good faith under section 14. A litigant must genuinely believe the court had jurisdiction and must have prosecuted the matter diligently.

SECTION 15: EXCLUDES OF TIME IN CERTAIN OTHER CASES: Allows for exclusion of time from the limitation period when legal proceedings are stayed by an injunction or order, the institution or execution of a suit or application is legally restricted, A notice or sanction is required before the institution. • Section 15(1): If a suit or execution proceeding is stayed by injunction or order the period during which the stay was in effect is excluded from limitation. • Section 15(2): If a law requires notice before suing, the notice period is excluded. • Section 15(3) to Section 15(5): Cover situations like; Leave to sue a minor's estate, Trusts or charitable endowments, and Proceedings requiring previous consent/ sanction of government.

• Case laws: (1). M/s. Lakshmiratan Engineering Works v. Asst. commissioner (Sales tax) AIR 1968 SC 488: When a stay order prevents a party from initiating proceedings, the time during which the stay was operative is excluded from limitation under section 15(1). (2). India House v. Kishan N. Lalwani (2003) 9 SCC 393: The court held that pendency of a restraint order or injunction will suspend the limitation, even if it turns out the party could have acted despite it if they acted bona fide. (3). Union of India v. Tarachand Gupta and Bros AIR 1971 SC 1558: Section

15(2) applies where mandatory notice is required, e.g., Section 80 CPC. The period of notice is not counted in a limitation.

SECTION 16: EFFECT OF DEATH ON OR BEFORE THE ACCRUAL OF THE RIGHT TO SUE: • Section 16 deals with how death affects the start of the limitation period when

(1). The person who has the right to sue dies before the right accrues, or

(2). The person against whom the right lies dies before the right accrues. • Section 16(1): If a person who would have had the right to sue dies before the right accrues, the limitation period begins when there is a legal representative capable of suing. • Section 16(2): If a person against whom the right to sue exists dies before the right accrues, limitation begins when there is the legal representative of the deceased who could be sued.

• Section 16(3): This section does not apply to suits to enforce rights of pre-emption, or for possession of immovable property. • Case laws: (1). Shiv Dayal v. Sant Ram AIR 1951 All 791: If the plaintiff dies before the right to sue accrues, limitation starts only when a legal representative becomes capable of suing. (2). T. Kaliamurthi v. Five Gori ThaikalWakf (2008) 9 SCC 306: Section 16(3) was discussed—it bars the application of section 16 to suits for possession of immovable property, reaffirming that limitation still runs even if death occurs.

SECTION 17: EFFECT OF FRAUD OR MISTAKE: When a suit or application is based on fraud or mistake the limitation period doesn't begin until the fraud is discovered or the mistake is known or could have been discovered with reasonable diligence. • The fraud/ mistake must directly relate to the cause of action. • Plaintiff must prove they were kept from knowledge despite reasonable diligence. • Once discovered, the limitation starts running.

• Case laws: (1). P.S. Sadasivaswamy v. State of Tamil Nadu (1975) 1 SCC 152: Limitation does not automatically extend merely because a person alleges fraud there must be a clear proof of it and that it prevented earlier action.

(2). Ramesh B Desai v. Bipin Vadilal Mehta (2006) 5 SCC 638: Section 17 is applicable only when the plaintiff could not have discovered the fraud/ mistake despite reasonable diligence.

(3). Raja Harish Chandra Raj Singh v. Dy. Land Acquisition O icer AIR 1961 SC 1500: Limitation start when the party first becomes aware of the cause of action—-used as a guiding principle even before Section 17 was codified.

SECTION 18: EFFECT OF ACKNOWLEDGEMENT IN WRITING: If, before the expiration of the prescribed limitation period, a person acknowledges liability in writing and signs it, a fresh limit period begins from the date of acknowledgement. • Acknowledgement must be in writing. • It must be signed by the party against whom the right is claimed. • It must be made before the original limitation period expires. • It need not contain a promise to pay but must admit the existence of a legal relationship. • It must relate to existing liability.

• Case laws: (1). Shapoor Freedom Mazda v. Durga Prasad ChamariaAIR 1961 SC 1236: Acknowledgement under section 18 must be conscious and voluntary and should show a clear admission of liability.

(2). Sampuran Singh v. Niranjan Kaur (1999) 2 SCC 679: A mere reference to a past debt is not enough. There must be a clear admission of the subsisting liability. (3). Food Corporation of India v. Assam State Coop. Marketing (2004) 12 SCC 360: An acknowledgement in a balance sheet or a statement of account can extend limitation if it meets the conditions under Section 18.

SECTION 19: EFFECT OF PAYMENT ON ACCOUNT OF DEBT OR ON INTEREST OF LEGACY: If any part payment of a debt or interest on a legacy is made before the expiration of the limitation period and it is acknowledged in writing by the debt, a fresh limitation period starts from the date of that payment. • Payment must be paid within the original limitation period. • It must be a part payment of a debt or interest of legacy. • The payment must be acknowledged in writing. • The acknowledgement must be signed by the person making the payment or their agent. • Case laws: (1). Seth Talakchand v. Moolchand AIR 1925 Nag 218: Part payment restarts limitation only when accompanied by a written acknowledgement, not just oral payment.

(2). Sant Lal Mahton v. Kamla Prasad AIR 1951 SC 477: Payment by a third party can extend limitation only if authorized by the debtor.

During the COVID-19 period (specifically between March 15, 2020, and February 28, 2022), the limitation period for legal actions was extended. Regardless of the original limitation period, all persons were given a new 90-day period from March 1, 2022, to file their cases. The Indian government extended the limitation period for various legal actions to address the challenges caused by the COVID-19 pandemic. The extension applied to the period between March 15, 2020, and February 28, 2022, according to the Supreme Court of India ruling.

CONCLUSION: The computation of the Limitation period under the Limitation Act of 1963 is guided by the combination of general principles and specific exceptions provided across Sections 12 to 24. These provisions aim to balance the interests of both parties— ensuring timely assertion of rights while also protecting those who may have been prevented from acting due to valid reasons such as fraud, mistake or legal restrictions.

A) CONDITIONS AS TO TIME AND LIMITATION UNDER DIFFERENT STATUTES
B) DIFFERENT RELIEFS WITH DIFFERENT PERIOD OF LIMITATION
C) AMENDMENT OF PLEADINGS -THE ASPECT OF LIMITATION

INTRODUCTION: The conditions as to time and limitation under different statutes refer to the specific time limits within which legal actions must be initiated ,and how those time frames vary depending on the type of law or statute in question .Limitation periods ,which define the time frame for legal actions, are prescribed by various statutes, not just the limitation Act ,1963. While the limitation Act provides general rules, specific laws, like those relating to land and taxes, can have theirown limitation provisions, forinstance, the Code of Criminal Procedurealso includes limitation periods for taking cognizance of certain offences.

LAW OF LIMITATION: In essence, the law of limitation aims to strike a balance between protecting the rights of individuals and ensuring that legal disputes are resolved efficiently and without undue delay. The legal maxims associated with the law of limitation are primarily focused on the principle of interest republicaeut sit finislitium, which means "it is in the public interest that there be an end to litigation '.' Another key maxim is vigilantibus non dormientibus jura subveniunt, meaning " the law helps those who are vigilant , not those who sleep on their rights, "which encourages parties to pursue their legal claims promptly.

THE LIMITATION ACT ,1963

The Limitation Act ,1963 sets the general framework for limitation of suits and other proceedings. It does not apply to all actions; it's primarily focused on civil matters, except where specifically provided. Section 3 of the Limitation Act states that any suit, appeal, or application must be made within the prescribed period.

BAR OF LIMITATION AND ITS EXCEPTION: The limitation act is applicable to suits brought by the plaintiff, it does not apply to a right set up by the defendant in defence. Section 3 (1) of the Limitation Act, 1963 provides that any suit, appeal or application if made beyond the prescribed period of limitation.Section 3 (2)(a)(i) provides that a suit is instituted in an ordinary case where the plaint is presented to the proper officer and not when it is accepted. The mere presentation of the plaint is sufficient to constitute the institution of a suit under the section and registration of the plaint is not necessary for this purpose. The presentation must be valid, i.e. made by a duly authorized person and in a manner and under the conditions which make it valid under the law. The provisions of Section 3 of the Limitation Act are subject to the principle that where a question of limitation has beenexpressly adjudicated upon and there is no appeal against it, the decision is binding on the parties and on the appellate court. The general rule is that the court shall dismiss a suit instituted after the period of limitation as prescribed under Section 3 of the

Act, however, Section 4 to 24 provide certain exceptions to this general rule i.e. Expiry of the prescribed period when the court is closed – Section 4 of the Act states that, when the prescribed period expires on a day when the court is closed, the application may be made or suit filed on the day when the Court reopens. The general principle of law being, when a party is prevented from doing a thing in court on a particular day, by the act of the court itself, as for instance, on account of the closing of the court, and not by any act of his own, he is entitled to do it at the first subsequent opportunity Angadi v.Hiranmayya, [AIR 1972 SC 239]. This rule applies to suits, appeals or applications, civil or criminal. Extension of prescribed period in certain cases i.e. sufficient cause' Section 5 of the Act enables a Court to admit an appeal or an application after the expiry of the prescribed period on sufficient cause has not been defined in the Act but it has been held that it must mean a cause which is beyond the control of the party invoking the aid of this section. The extension of time under this section is the discretion of thecourt

Computation of Limitation Section 12 to 24 deals with the computation of period of limitation and some primary issues that have been dealt with are listed below

Section 12 speaks about the exclusion of time for the purpose of computing the period of limitation. There need not to be any prayer or application by party for doing so as the Section confers a substantive right upon a party lying down specific rules for computing the period of limitation for any suit, appeal, an application for revision, an application for leave to appeal, an application to set aside an award or any other application

Section 13 provides that if the application for leave to sue or leave to appeal as a pauper is rejected, then the time during which the applicant has been prosecuting in good faith for this application should be excluded. The essential for exclusion of time under this Section is that the applicant should be prosecuted in good faith.

Section 14 of the Act containing general principles of justice, equity and good conscience provides for exclusion of time or proceedings Bonafide in Court without jurisdiction. Conditions for the application of this Section are – due diligence and good faith, proceedings between same parties, same matter in issue, defect of jurisdiction.

Section 15 provides, certain condition under which a person is entitled in law to get exclusion of time from the period of limitation; where the plaintiff is under the statutory obligation to give a notice before he can institute a suit; computing period of limitation for any suit or application for execution of a decree where any receiver in insolvency or liquidator in winding up is appointed; computing period of limitation for a suit for possession by purchase at a sale in execution decree and; when the defendant is absent from India.

Section 16 deals with the effect of death on or before the accrual of the right to sue for which the cause of action must not arise before the person dies.Section 17 deals with the effect of fraud or mistake wherein the limitation shall be computed from the time when the fraud became known to the person defrauded i.e. the party should not be penalized for failing to adopt legal proceedings when the facts or material necessary for him to do so have beenwillfully concealed from him Pallav Seth v. Custodian and others, [AIR 2001 SC 2763].

Extinguishment of Right to Property Section 27 of the Act lays down that after the expiry of the period prescribed for instituting a suit for possession of any property the person who should have instituted such a suit but has failed to do so, shall cease to have any right to the property. After the expiry of its period the remedy is barred and also the title is extinct. This section is confined to suits for possession only. This section of the Act is not merely procedural but substantive and applies to persons who are out of possession and seek to recover possession but notto the case where a person is still in possession of the property

CODE OF CIVIL PROCEDURE:

• Order 8 Rule 1 Written Statement— "The Defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence: Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons. Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.

• Article 120 of The Limitation Act, 1963- Under the Code of Civil Procedure, 1908 (5 of 1908) to have the legal representative of a deceased plaintiff or appellant, or of a deceased defendant or respondent, made a party- Ninety days. The date of death of the plaintiff, appellant, defendant or respondent as the case may be.

CONDONATION OF DELAY IN FILING APPEALS(ORDER 41 RULE 3-A):

• Condonance may be made when an accuser has previously forgiven or condoned the act about which they are complaining. In some legal jurisdictions, and for certain behaviors, it may prevent the accuser from prevailing. •In ORDER 41 Rule 3-A has been inserted by the Amendment Act of 1976. It provides that when an appeal has been presented after the expiry

of the period of limitation specified therefore, it shall be accompanied by an application that the applicant has sufficient cause for not preferring the appeal within the time. • Prior to the insertion of rule 3-A, the practice was to admit such an appeal subject to the opinion regarding limitation. This practice was disapproved by the privy—council, and it stressed the expediency of adopting a procedure for securing the final determination of the question as to limitation before admission of appeal. This rule is added to give effect to the recommendation of the privy council.

• As observed by the Supreme Court in the state o • As observed by the Supreme Court in the state of M.P v. Prandeep Kumar, the object of the provision is two-fold: firstly, to inform the appellant that the delayed appeal will not be entertained unless it is accompanied by an application accompanying the delay, and second, to communicate to the respondent that it may not be necessary for him to get ready on merits as the court has to first deal with an application for condonation of delay as a condition precedent. The provision in the Howe directory is not mandatory. If the memorandum of appeal is filed without an accompanying application for condonation of delay, the consequence is not necessarily fatal. The defect is curable.

Article 120 of The Limitation Act, 1963- Under the Code of Civil Procedure, 1908 (5 of 1908) to have the legal representative of a deceased plaintiff or appellant, or of a deceased defendant or respondent, made a party- Ninety days. The date of death of the plaintiff, appellant, defendant or respondent as the case may be.

• Order 21 rule 92(2): Where such application is made and allowed, and where, in the case of an application under rule 89, the deposit required by that rule is made within thirty days from the date of sale, or in cases where the amount deposited under rule 89 is found to be deficient owing to any clerical or arithmetical mistake on the part of the depositor and such deficiency has been made good within such time as may be fixed by the Court, the Court shall make an order setting aside the sale: Provided that no order shall be made unless notice of the application has been given to all persons affected thereby. • Order 21 Rule 85: Time for payment in full of purchase-money. The full amount of purchase-money payable shall be paid by the purchaser into Court before the Court closes on the fifteenth day from the sale of the property: Provided that, in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any set-off to which he may be entitled under rule 72.

CONSUMER PROTECTION ACT ,2019.

Section 69: Limitation Period.

[*]**69.** (1) The District Commission, the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen.

(2) Notwithstanding anything contained in sub-section (1), a complaint may be entertained after the period specified in sub-section (1), if the complainant satisfies the District Commission, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period:

Provided that no such complaint shall be entertained unless the District Commission or the State Commission or the National Commission, as the case may be, records its reasons for condoning such delay.

ARBITRATION AND CONCILIATION ACT,1996

The Supreme Court has provided a time limit of three years to approach the Court to initiate the arbitration. Moreover, the judgment in the Nortel Network case answers many questions that were left unanswered, and it also gives clarity to the application of the Limitation Act to the Arbitration Act. Interestingly, the court, in this case, has opined that the period of three years is unduly long for filing an application under Section 11 when the right to reply accrues. In the absence of any specific time frame for filing an application under Section 11, the purpose of the Arbitration & Conciliation Act, 1996 gets defeated, which is the speedy and efficacious resolution of the disputes. Further, Section 29-A of the Act 1996 provides a total time frame of eighteen months for the completion of the arbitral proceedings and passing an award. Section 11 of the Act, 1996 also provides that an endeavor shall be made to dispose of the petition within a period of 30 days from the service of notice on the opposite party thus, the three years for applying goes against the ethos of the Arbitration & Conciliation Act, 1996. Time has the utmost importance in cases concerning Arbitration. Thus, a time limit of three years to resurrect a dispute seems too long. This deficiency has also been pointed out by the Hon'ble Supreme Court in the case of Bharat Sanchar Nigam Limited vs. Nortel Networks Pvt Ltd. Furthermore, the concept of "breaking point" adds to the ambiguity of the section

- The limitation period for a reference of a dispute to arbitration or to appoint an arbitrator under Section 11 of Act, 1996 is three years from the date on which the cause of action or the claim which is required to be arbitrated first arise.
- The challenge to the award can only be made within limitation period of three months from the date of receipt of the award.
- The Limitation Act, 1963 applies to arbitrations, as it applies to proceedings in court.

COMPANIES ACT 2013: The Limitation Act 1963 applies to the Companies Act 2013 as per sec 433 of Companies Act

THE CHIT FUNDS ACT ,1982

60. Limitation.—

(1)Where an order refusing to wind up a chit has been made under this Act, the chit shall be deemed to have been under suspension from the date of presentation of the application to the date of such order in respect of non-prized subscribers; and, notwithstanding anything contained in the chit agreement, no non-prized subscriber who was not a defaulter on the date of the presentation of the petition for winding-up, shall be deemed to be a defaulter on the date of such order

.(2)Where an order refusing to wind up a chit has been made under this Act, in computing a period of limitation prescribed for any suit or other legal proceedings (other than a suit or application in respect of which the leave of the Court has been obtained) which might have been brought or instituted, but for the presentation of the application for the winding-up of the chit, the period from the date of the presentation of the application to the date of the order refusing to wind up a chit shall be excluded.

(3)Nothing contained in this Chapter shall affect the rights of a subscriber to proceed against the foreman personally for the balance, if any, of the amount due to him after the declaration of the final dividend in the proceedings for the winding up of the chit and in computing the period of limitation prescribed for any such proceedings, the period from the date of the presentation of the application for the winding-up of the chit to the date of the declaration of the final dividend shall be excluded.

SPECIFIC RELIEF ACT ,1963

Specific performance is a crucial remedy in contract law, ensuring that parties fulfil their obligations as agreed rather than just compensating the aggrieved party with damages. In India, the enforcement of specific performance is governed by the **Specific Relief Act, 1963 (SRA)** and subject to the limitation period provided under the **Limitation Act, 1963**.

The Limitation Act sets a time frame within which legal actions must be initiated. For specific performance of a contract, **Article 54 of the Limitation Act, 1963**, prescribes a limitation period of **three years**. This article examines the limitation period for filing a suit for specific performance, the starting point for calculation, judicial interpretations, and exceptions where applicable

DIFFERENT RELIEFS WITH DIFFERENT PERIOD OF LIMITATION

Different legal reliefs, likedeclarations, suits for possession, or appeals, have varying limitation periods under the limitation Act,1963. For instance, a suit for a declaration has a three-year limitation period, while a suit for possession of immovable property has a twelve years period. Appeals and applications also have different limitation periods, ranging from 30 to 90 days or even 1 to 12 years

*Declarations: Suits for obtaining any declaration have a limitation period of three years from when the right to sue accrues, as per Article 58 of the Limitation Act,1963.

*Recovery of possession: Suits for possession of immovable property based on title have a limitation period of twelve years from when the defendant's possession becomes adverse, as per Article 65 of the Act.

* Suits for which no specific period is prescribed: Suits for which no period of limitation is prescribed elsewhere in the schedule to the Act have a limitation period of three years ,as per Article 113 of the Limitation Act,1963.

*Ancillary Reliefs: Ancillary reliefs are dependent on the primary relief and may become unenforceable if the primary relief is time barred.

Nikhila Divyang Mehta &anr vs Hitesh P Sanghvi &ors

Hon'ble Supreme Court held that If primary relief is time barred, Ancillary reliefs also become unenforceable.

AMENDMENT OF PLEADINGS- THE ASPECT OF LIMITATION

"Order 6 Rule 17 Amendment of pleadings.—The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties: Provided that no application

for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

Rule 28 of Civil Rules of Practice states the procedure for Amendment in pleadings: An application for amendment made under Order1 Rule 103, Order 6 Rule 17, or Order 22 of the Code, shall also contain a prayer for all consequential amendments. The Presiding Officer shall reject the application if it is not in accordance with the law or these rules: Provided that verbal corrections may at any time be made in pleadings with permission of the Court.

Clarification on Limitation Periods and Amendment of Pleadings at Appellate Stage: Supreme Court's Judgment in *MALLAVVA v. KALSAMMANAVARA KALAMMA* (2024 INSC 1021)

The Supreme Court of India, in its judgment dated December 20, 2024, in the case of *MALLAVVA v. KALSAMMANAVARA KALAMMA* (2024 INSC 1021), addressed critical issues concerning the applicability of limitation periods under the Limitation Act, 1963, and the permissibility of amending pleadings at the appellate stage in civil suits. The case revolved around a property dispute where the original plaintiffs sought a declaration of title and possession against the original defendants.

The key issues before the Court were:

- Whether the suit for possession, amended at the first appellate stage to include a prayer for possession, was barred by limitation under the Limitation Act, 1963.
- Whether Article 58 or Article 65 of the Limitation Act applied to the suit in question.
- The permissibility and effect of amending pleadings at the appellate stage.
- The parties involved were:
- **Appellants (Original Defendants):** Mallavva and another.
- **Respondents (Original Plaintiffs):** Legal heirs of Late KalsammanavaraKalamma.
- **Summary of the Judgment**
- The Supreme Court dismissed the appeal filed by the original defendants, affirming the decisions of the First Appellate Court and the High Court of Karnataka. The Court held that:
- The suit was governed by Article 65 of the Limitation Act, which provides a limitation period of 12 years for suits for possession of immovable property based on title.

- The amendment of the plaint at the appellate stage to include the prayer for possession was permissible under the Civil Procedure Code (CPC), and the doctrine of relation back generally applies to such amendments.
- The suit was not barred by limitation, as the defendants had not established that they were in adverse possession of the property for the requisite period.

The Court emphasized that in suits for possession based on title, once the plaintiff establishes title, the burden shifts to the defendant to prove adverse possession. The defendants had failed to plead or prove adverse possession.

Doctrine of Relation Back

The doctrine of relation back is a legal principle that, when an amendment to a pleading (such as a plaint or written statement) is allowed, the amendment is treated as if it had been included from the date of the original filing. This means that the amended claims relate back to the date of the original suit, preventing issues of limitation from arising due to the timing of the amendment. However, courts have discretion to limit the applicability of this doctrine if necessary to prevent injustice.

The Supreme Court's judgment in *MALLAVVA v. KALSAMMANAVARA KALAMMA* (2024 INSC 1021) provides crucial clarity on the application of limitation periods under the Limitation Act, 1963, and the permissibility of amending pleadings at the appellate stage in civil suits. The key takeaways from the judgment are:

- In suits for possession based on title, Article 65 applies, granting a twelve-year limitation period from when the defendant's possession becomes adverse to the plaintiff.
- Amendments to pleadings at the appellate stage are permissible to serve the ends of justice, and such amendments generally relate back to the date of the original suit.
- The burden of proof for adverse possession rests on the defendant, who must plead and prove the necessary elements to establish such a claim.

CONCLUSION The Act specifies time periods for various types of claims, such as three years for contracts and torts and twelve years for property disputes. The limitation period typically begins when the cause of action arises, though specific rules apply in different contexts. The Act allows for extensions and exceptions in cases of disability or

exceptional circumstances, ensuring fairness. Claims not filed within the prescribed time frame are generally barred, protecting defendants from indefinite liability. The Limitation Act aims to balance the need for timely justice with equitable considerations, ensuring that legal proceedings are conducted efficiently and fairly.

LIMITATION IN CRIMINAL CASES IN RESPECT OF OFFENCES UNDER IPC/BNS AND OTHER SPECIAL LAWS

INTRODUCTION: Law of Limitation has been enunciated in the legal maxim “interest republicaeut sit finislitium”which means that it is for the general welfare to put a limit to litigation .The legislative strives to balance public interest by providing provisions for limitation on one hand and at the same time ,it does not unreasonably restrict the right of a party to initiate proceedings.

This part provides for a detailed analysis of the law of limitation for criminal offences India .

of the CRPC was introduced to provide for limitation period for launching criminal prosecution with respect to offences not punishable with imprisonment for a term exceeding three years. ChapterXXXVIThe Chapter comprises of sections 467 to 473 and came into force on April 1, 1974.The rationale behind the inclusion of period of limitation in the CRPC to ensure that criminal prosecution system convicts and punishes the accused /offender quickly.

In addition to the applicable provisions for criminal proceedings as prescribed in the Limitation Act and the CRPC, there are various special statutes like the Police Act 1861,the Trade Marks Act,1999,the Geographical Indication of goods (Registration and Protection Act)1999,the Negotiable Instruments Act,1881,Factories Act,1948 and the Army Act,1950,wherein the Limitation period is governed by the period prescribed in such special statute and not as prescribed under the CRPC

APPLICATION OF LIMITATION TO CRIMINAL PROCEEDINGS : It is interesting to note that the Supreme Court has ruled that the language of Section 468(3) makes it imperative that the limitation period for taking cognizance in Section 468 is in respect of the offence charged and not in respect of offence finally proved.

It is pertinent to note that the **Limitation Act, 1963 does not apply to criminal proceedings except for appeals or revisions for which express provision is made in Articles 114, 115, 131 and 132 thereof**.

(A) Art.114: Appeal from an order of Acquittal – 90 Days (B) Art.115: (a) Appeal from a sentence of death passed by Court of Session or by the High Court in exercise of its original criminal jurisdiction – 30 Days (b) Appeal from any other sentence or any other order not being an order of acquittal – (i) to the High Court – 60 Days (ii) to any other Court – 30 Days.

(B) After conducting extensive study of criminal laws of various countries, **the Law Commission of India** appears to have **realized that providing provision of limitation**

for prosecution of criminal offences of certain type in general law would, in fact, be good for the criminal justice system.

The reasons to justify limitation period

The Law Commission noted that the reasons to justify introduction of provisions prescribing limitation in general law for criminal cases are similar to those which justify such provisions in civil law such as **likelihood of evidence being curtailed, failing memories of witnesses and disappearance of witnesses**. Such a provision, in the opinion of the Law Commission, will **quicken diligence, prevent oppression and in the general public interest would bring an end to litigation**. The Law Commission also felt that the court would be **relieved of the burden of adjudicating inconsequential claims.**

Paragraph 24.3 is material. It reads thus:

"24.3 – In civil cases, the law of limitation in almost all countries where the rule of law prevails, Jurists have given several convincing reasons to justify the provision of such a law; some of those which are equally applicable to criminal prosecutions may be referred to here:-

(1) The defendant ought not to be called on to resist a claim when "evidence has been lost, memories have faded, and witnesses have disappeared."

(2) The law of limitation is also a means of suppressing fraud, and perjury, and quickening diligence and preventing oppression.

(3) It is in the general public interest that there should be an end to litigation. The statute of limitation is a statute of repose.

(4) A party who is insensible to the value of civil remedies and who does not assert his own claim with promptitude has little or no right to require the aid of the state in enforcing it.

(5) The court should be relieved of the burden of adjudicating inconsequential or tenuous claims."

The **Law Commission stated its case for extending limitation to original prosecutions as under**:

"24.11 – It seems to us that there is a strong case for having a period of limitation for offences which are not very serious. For such offences, considerations of fairness to the accused and the need for ensuring freedom from prosecution after a lapse of time should outweigh other considerations. Moreover, after the expiry of a certain period the

sense of social retribution loses its edge and the punishment does not serve the purpose of social retribution.

The deterrent effect of punishment which is one of the most important objectives of penal law is very much impaired if the punishment is not inflicted promptly and if it is inflicted at a time when it has been wiped off the memory of the offender and of other persons who had knowledge of the crime.

Paragraphs 24.13, 24.14, 24.20, 24.22, 24.23, 24.24, 24.25, and 24.26 could also be advantageously quoted.

"**24.13** – At present no court can throw out a complaint solely on the ground of delay, because, as pointed out by the Supreme Court, "the question of delay in filing a complaint may be a circumstance to be taken into consideration in arriving at the final verdict, but by itself, it affords no grounds for dismissing the complaint".

It is true that unconscionable delay is a good ground for entertaining grave doubts about the truth of the complainant's story unless he can explain it to the satisfaction of the court. But it would be illegal for a court to dismiss a complaint merely because there was inordinate delay.

24.14. – We, therefore, **recommend** that the **principle of limitation should be introduced for less serious offences** under the Code. We suggest that, for the present, **offences punishable with fine only or with imprisonment upto three years should be made subject to the law of limitation**. The question of extending the law to graver offences may be taken up later on in the light of the experience actually gained.

24.20. – The question whether prosecution commences on the date on which the court takes cognizance of the offence or only on the date on which process is issued against the accused, has been settled by the Supreme Court with reference to Section 15 of the Merchandise Marks Act, 1889. Where the complaint was filed within one year of the discovery of offence, it cannot be thrown out merely because process was not issued within one year of such discovery.

The complainant is required by section 15 of the Act to "commence prosecution" within this period, which means that if the complaint is presented within one year of such discovery, the requirements of section 15 are satisfied.

The period of limitation is intended to operate against complainant and to ensure diligence on his part in prosecuting his rights, and not against the Court. It will defeat the object to the enactment deprive traders of the protection which the law intended to give them, to hold that unless process is issued on their complaint within one year of the discovery of the offence, it should be thrown out.

24.22 – **Secondly,** as in civil cases, in computing the period of limitation for taking cognizance of offence, the time during which any person has been prosecuting with the due diligence another prosecution whether in a court of first instance or in a court of appeal or revision, against the offender, should be excluded, where the prosecution relates to the same facts and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

24.23 – Thirdly, in the case of a continuing offence, a fresh period of limitation should begin to run at every moment of the time during which the offence continues; and we recommend the insertion of a provision to that effect.

24.24 – Impediments to the institution of a prosecution have also to be provided for. Such impediments could be

(a) legal, or

(b) due to conduct of the accused, or

(c) due to the court being closed on the last day.

As regards legal impediments, two aspects may be considered,

First, the time for which institution of prosecution is stayed under a legal provision, and S***econdly,*** prosecutions for which previous sanction is required, or notice has to be given, under legal provision. Both are appropriate cases for a special provision for extending the period of limitation.

We recommend that, where the institution of the prosecution in respect of an offence has been stayed by an injunction or order, than, in computing the period of limitation for taking cognizance of that offence, 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.

24.25 – We also recommend that where notice of prosecution for an offence has been given, or where for prosecution for an offence the previous consent or sanction of the Government or any other authority is required, in accordance with the requirements of any law for the time being in force, then in computing the period of limitation for taking cognizance of the offence, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction, shall be excluded.

24.26 – As illustrations of impediments caused by the conduct of the accused, we may refer to his being out of India, and his absconding or concealing himself. Running of the period of limitation should be excluded in both cases

BASIC RULE REGARDING LIMITATION:

The **bar of limitation** under the section 468 of the Code of Criminal Procedure, it must be clearly understood, **is imposed not on the filing of the complaint but on taking cognizance thereof by the Court**. Sub-section (1) of section 468 provides that a court shall not take cognizance of an offence after the expiry of limitation. In section 468, limitation is prescribed for the three classes of offences only-

- Offences punishable with fine only;
- The offences punishable with imprisonment of one year;
- And the offence punishable with imprisonment of three years.

The cognizance can be taken within, six months from the date of commencement specified, if the offence is punishable with fine only; within one year if the offence is punishable with imprisonment of one year and within three years if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years

The bar of limitation is an absolute bar. It goes to the root of jurisdiction of the Court. A court of law cannot take cognizance of an offence, if it is barred by limitation. Delay in filing a complaint petition therefore has to be condoned if the delay is not condoned, the court will have no jurisdiction to take cognizance. Similarly, unless it is held that a sanction was not required to be obtained, the court's jurisdiction will be barred.

Mere filing of complaint, submitting a police report within the period of limitation is not enough. The Court should take cognizance of the offence within the period of limitation. The cognizance is illegal as it was no taken within the period of limitation].

The basic rule mentioned above is subject to the other provisions relating to limitation contained elsewhere in the Code. For instance, different periods of limitation have been prescribed for certain offences by Section 198(6) or Section 199(5) and those will not be affected by the basic mentioned above.

Section 468 as it stands today might cause some hardship and injustice to a diligent complainant under certain circumstances. The complainant might have lodged the complaint well in time, but the magistrate receiving the same, instead of taking cognizance of the offence mentioned therein, might send it to the police under Section 156(3) for investigation into the case; and by the time the police report back after the investigation, the period of limitation might have expired or there might be other reasons (for which complainant is not responsible) for not taking cognizance of the offence might get time-barred. Probably, section 473 which gives the discretion to court to extend the period of limitation, may, to an extent, be useful to remove the injustice and hardship caused to the complainant in such situations.

It is interesting to note that the Supreme Court has ruled that the language of Section 468(3) makes it imperative that the limitation period for taking cognizance in Sec 468 is in respect of the offence charged and not in respect of offence finally provedWhere the court takes cognizance of a major offence against an accused person, but finds him guilty of a minor offence, it is open to the accused to plead that conviction for major offence is bad if the complaint or *challan* is filed against him beyond the power of the court to exercise its discretion under Section 473 .

Section 468 imposes a bar on taking cognizance of an offence after the expiry of the period of limitation. **Here 'taking cognizance' is of offence and not offender**. Therefore, if during the pendency of the criminal proceedings, but after the expiry of the period of limitation, the court decides to proceed against some other person as accused person in accordance with the provisions of Section 319, the bar of limitation will not apply in respect of such additional accused persons because even according to the Section 319(4), the case is to proceed against such persons as if they had been accused persons when the court took cognizance of the offence upon which the inquiry or trial was commenced. Moreover, Section 468 starts with "Except as otherwise provided elsewhere in this Code" and Section 319 is one such exception. Therefore, the bar of limitation will not apply to a case where the magistrate proceeds against a person under Section 319.

The operation of basic rule has been excluded in respect of certain economic offences by a special law, namely, the Economic Offences (Inapplicability of Limitation) Act, 1974. Section 2 of the Act provides that nothing contained in Sections 467-473 of the Code shall apply to-

1. Any offence punishable under any of the enactments specified in the Schedule, or
2. Any other offence, which under the provisions of the Code, may be tried along with such offence.

In addition to the above-mentioned Act, there might be State enactments excluding the operation of the periods of limitation as prescribed by the Code, in certain cases. Also, Supreme Court has excluded the operation of limitation in respect of offence under Section 498 A of IPC observing-

"When Section 498 A of the IPC is brought to use in the case cruelty on women, the law of limitation is not that rigid so as to nonsuit the aggrieved wife. A fair dose of liberalities is warranted, so that the law as an instrument comes in aid of the aggrieved due to gender inequalities".

It has been decided that if there is a conflict between the periods of limitation prescribed in the code and a local law, having regard to Section 4(2) of the Code, the limitation prescribed by local law shall be applicable.

COMMENCEMENT OF THE PERIOD OF LIMITATION:

The provisions relating to the commencement of the period of limitation are contained in Sections 469 and 472]. **Section 469 fixes the date from which the period of limitation in relation to an offender shall commence**. As a general rule, the period of limitation begins to run from the date of the commission of the offence and to this general rule, two exceptions are provided by this section. One is where the aggrieved party or police was not aware of the commission of the offence and the second is where the identity of the offender was not known. In computing the limitations, the first day shall be excluded.

The exact purpose of clauses (a) (b) and (c) of Section 469 (1) providing three alternatives dates for the commencement of the period of limitation is not easy to understand. The sub-section does not give any specific direction, like "whichever is later" or "whichever is earlier", for choosing one of the dates. If the choice is to be given to the accused, he will invariably choose clause (a), as that would be most advantageous to him in any case; and in that event clauses (b) and (c) will become superfluous. On the other hand, if the choice is of prosecution, it would always choose clause (c) as that would give longest time to prosecution and in that case, clauses (a) and (b) become redundant. In course of time, these problems will come up before the courts for solution.

The term '**person aggrieved**' has not been defined in the Code. The question whether the term 'person aggrieved by the offence' should be interpreted in a limited and restricted sense meaning one who is personally and directly affected by an offence or should be given wider meaning including any member of the public or even an officer who is charged with the duty of enforcing the prohibitory regulations under statute. It has been held by the Madras High Court that the term 'person aggrieved by an offence' should be given limited meaning *i.e.* one who is personally and directly affected by the offence and not any member of public or even an officer who is charged with the duty of enforcing the prohibitory regulations under statute.

According to **sec. 472**, in case of a continuing offence, a fresh period of limitation shall begin to run every moment of the time during which the offence continues. If the offence is continuing one and continuous at the moment of taking cognizance thereof, then, in view of Section 472, the cognizance will be within limitation irrespective of when the offence came to be committed for the first time or when it first came to the knowledge of the person aggrieved or when the complaint was lodged.

A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arise out of failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On

every occasion that such disobedience or non-compliance occurs and re-occurs, there is the offence committed]. It has been opined that it is not the continuing liability for punishment but the liability for continuing punishment which makes an offence a continuing offence.

Continuing offence means an offence that continues from a moment to moment without interruption or break. It is an offence that must continue without requiring any act on the part of the offender to keep it in existence. It is an offence which would come to an end only when the accused does an act to terminate it.

Where the breach of statutory duty was an offence then as long as such breach continues, the offence has to be treated to be continues, the offence has to be treated to be continuing. In *Bhagirat Kanoria* v. *State of M.P.* the Supreme Court held that non-payment of the employer's contribution to the Provident Fund before the due date, is a continuing offence and therefore, the period of limitation prescribed in sec. 468 cannot have any application. Also, it was held in *Balram Singh* v. *Sukhwant Kaur* that the entrustment of stridhan and the refusal to return it despite repeated requests and persuasions amounts to the offence of criminal breach of trust and is a continuing offence until the return of property to the wife.

Moreover, it was also observed that offences for violation of the provisions of Sections 159 and 220 of the Companies Act are continuing in nature and until and unless the legal requirements contained in the above provisions of the Companies Act are compiled with the persons in charge of the company are liable to be prosecuted. Fresh period of limitation starts on each day until the requirements of the provisions are complied with.

Further, the **offence of kidnapping** for ransom was held to be not abrogated upon the death of victim. There was continuation of ransom calls by the accused even after the death. The offence becomes a continuing offence. The date of last ransom call constitutes the date of offence. By then the accused had attained the age of 18 years. The Juvenile Justice Act ceased to be applicable

Exclusion of time in certain cases:

The provisions relating to exclusion of time in computing the period of limitation are contained in Sections 470 and 471. The **principle behind this section 470** is the protection against the bar of limitation person honestly doing his best to get his case tried on merits but failing through, the Court being unable to give him such a trial and this principle is applicable not only to cases the person files his case in the wrong Court, but also where he files his case in his case in the right Court but is nevertheless, prevented from getting a trial on merits by something which, though not a defect in jurisdiction is analogous to that defect.

Section 470 (1) provides in reckoning the period of limitation, the time spent in prosecuting another prosecution whether in Court of first instance or appeal or revision shall be excluded provided-

1. The first prosecution was prosecuted with due diligence;
2. It was against the same accused;
3. The prosecution relates to the same fact;
4. The prosecution was in good faith;
5. And the Court in which the prior case was prosecuted from the defect of the jurisdiction or other case of like nature was unable to entertain it

It was held in the case of *S.M. Vikal* v. *A.L. Chopra,* the time under this section can be extended when the complainant himself was prosecuting another prosecution. If he himself was prosecuted, the section does not apply.

The question whether or not due care and attention was exercised has to be determined with the reference to the facts of each case. The standard of proof required to adjudge this point cannot be higher than what is laid down in section 3 of the Indian Evidence Act. The real question material for the purpose of section 470 is not whether the complainant was dishonest or that his acts or omissions in this connection were *malafide* and on the other hand, the question is whether given due care and attention, the complaint could have discovered the mistake earlier.

In order that the section 470(1) may apply, it is essential that the Court in which the prior case was prosecuted must have been unable to entertain it due to the defect of jurisdiction or other cause of the like natures. In excluding the time during which former prosecution was pending the day on which that prosecution was instituted and the day on which ended shall both be counted towards the period to be excluded.

Section 470(2) in effect says that in computing the period of limitation where the institution of prosecution has been stayed by an order of injunction or by an order staying the institution of the prosecution. The sub-section (2) requires an order or an injunction which stays the institution of prosecution. If an express order or injunction is produced by a party that clearly meets the requirements of section 470(2) whether the requirements of the sub-section would be satisfied by the production of an order or injunction which is by necessary implications stays the institution of the prosecution is open to argument.

Section 470(3) says that where notice of prosecution for an offence has to be given in computing the period of limitation the period of such notice shall be excluded and where in any

law the previous consent or sanction of Government or any other authority is required for the prosecution of a person then in computing the period of limitation the time required for consent or sanction including the date on which the application was made and the date of receipt of the order shall be excluded.

It has application only to instances in which notice of prosecution for an offence has been given in accordance with the requirements of any enactment for the time being in force. The law nowhere says to person that when he is under no disability but erroneously imagines himself to be under a disability he will obtain any relaxation of the ordinary law of limitation.

Under sub-section (3) where sanction for institution of a prosecution is necessary, the period for obtaining sanction has to be excluded in computing the period of limitation. For instance, for an offence under section 4 of the Dowry Prohibition Act, 1961 the previous sanction of the State Government or of such officer of the State Government as may be specified as essential. Therefore, the time spent in obtaining the sanction is to be excluded.

Section 470(4) provides that the period during which the offender is absent from India or any territory outside India which is under the administration of the Central Government or has avoided arrest by absconding or concealing himself shall be excluded from the period of limitation under section 470(4). The burden of proof is upon the person who seeks extension to prove both that the offender has been absent from India and from territories under the administration of Government of India.

Section 471 provides that when on the last date of the limitation the Court is closed the cognizance may be taken on the day when the Court reopens. Under the explanation to the section a Court shall be deemed to be closed if during any part of its normal working hours it remains closed on that day. The question whether in any particular case the Court is closed is one of fact which must depend upon the practice which prevails in particular Court.

Extension of period of limitation in certain cases:

Section 473 provides that notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence after the expiry of facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.

The words 'this chapter' refer to the Chapter 36 of the Code containing sections 467-473. The section begins with non-obstante clause and if section 468 is read with this section, it would be obvious that while section 468 prohibits the court from taking cognizance of an offence beyond the prescribed period of limitation, section 473 enables the Court to take cognizance after the expiry of the period of limitation in case the court is satisfied that the delay has been properly explained or it is necessary to do so in the interest of justice.

The **discretion given to the Court in this connection by section 473 is very wide** though it has to be exercised judicially after considering the facts and circumstances of the case. There cannot be any hard and fast rule as to what constitutes sufficient cause to 'properly explain' the delay occasioned or what is 'necessary in the interest of justice'. It must be determined by a referenceto the facts and circumstances of the case, and it is impossible to encase judicial discretion of the straitjacket.

It has been held that the provisions of section 473 should be liberally construed so as to advance substantial justice when no negligence or inaction or want of *Bonafide* is imputable to the prosecutor, but cannot be construed too liberally because the Government is the prosecutor or prosecution is upon the police report.

It should also be remembered that the salutary purpose of the law of limitation should not be allowed to be circumvented by taking recourse to the magic words of 'interests of justice' unless there is manifestation of compelling and justifiable reasons. Also, when an application is filed by the complainant for the extension of the period of limitation, the principles of natural justice demand that the accused persons must be heard before passing as order on the application as such an order is bound to affect a valuable right which accrues to the accused.

LIMITATION IN CRIMINAL CASES UNDER THE INDIAN PENAL CODE

In India ,the limitation Act ,1963 does not apply directly to criminal case, but certain criminal offences under the Indian Penal Code(IPC)are governed by specific limitation periods. These periods determine the timeframe within which a criminal prosecution can be initialed .Some crimes are subject to limitation, whileothers ,particularly serious ones, are not subject to any limitation

1. No Limitation for Serious Offences

   Certain serious crimes are not subject to any limitation. This means a criminal case can be initiated at any time after the crime has been committed, regardless of how much time has passed.

   Examples of serious offences with no limitation:

   . Murder(section 302,IPC/103(1)BNS)

   . Rape(section 376, IPC/64 BNS)

   . Terroristactivities(section 121,IPC)

   . Treason(section 121A,IPC)

   . Kidnapping for ransom(section 364A,IPC)

These offences are so severe that allowing a limitation period would be unjust and against public policy, so the law allows prosecution regardless of time

2.Offences with Limitation Period(Time bound)

Certain crimes,however,are governed by a limitation period, and prosecution cannot be initiated once that period has expired.

Limitation Periods for Different Offences:

.Criminal breach of trust(sec405, IPC)- 3years

.Defamation(section499,IPC)-1year

.Theft(section 378,IPC)-3years

.Forgery(section 463,IPC)-3years

.Criminal misappropriation of property(section 403,IPC)-3years

.Criminalconspiracy(section 120B,IPC)-3 years

3.Limitation Periods for Specific Offences

.Rape: Under Section376 of IPC, no limitation is specified for prosecuting rape, so a complaint can be filed at any time.However,the special provisions of the Criminal Law(Amendment) Act ,2013 may apply to certain cases.

.Kidnapping and Abduction(Sections 359-374,IPC)

These offences are generally not subject to any limitation.

4.Summary Trials and Offences Punishable with Less Than 3Years of Imprisonment

For summary trails or offences punishable by less than 3 years of imprisonment, prosecution must generally be initiated within 6 months from the date of the offence .These typically involve minor offences or those that do not carry long sentences, such as

.PublicNuisance(Section 290,IPC)

.Simplehurt(Section 323,IPC)

5.Special Limitation Periods for Certain Offences

Some crimes have their own special rules or limitation periods under separate statutes, such as:. Negligent driving causing death (Section 304A,IPC): Limitation of 3 years as per the relevant statute (MOTOR VEHICLES ACT).

PROVISIONS OF OTHER INDIAN SPECIAL STATUTES GOVERNING LIMITATION IN CRIMINAL PROSECUTION: (i) Limitation period prescribed under the Negotiable Instruments Act, 1881 ("NI Act") As per Section 138 of the NI Act, where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of the NI Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both. Further, the above provisions would be attracted provided that: (a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier; The payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice. Further, pursuant to sending notice to the drawer of cheque by the payee as per action contemplated in Section 138 (c) of the NI Act, as per Section 142 of the NI Act, the complaint is to be filed with the Metropolitan Magistrate or a Judicial Magistrate of First Class for taking cognizance of offence punishable under Section 138 of the NI Act within thirty days from the date of expiry of the notice period, within whose local jurisdiction, the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated.

(ii) Limitation period prescribed under the Police Act, 1861 ("the Police Act") Under Section 42 of the Police Act, it is prescribed that all actions and prosecutions against any person, which may be lawfully brought for anything done or intended to be done under the provisions of the

Police Act, or under the general police-powers shall be commenced within three months after the act complained of shall have been committed, and not otherwise; and notice in writing of such action end of the cause thereof shall be given to the defendant, or to the District Superintendent or an Assistant District Superintendent of the District in which the act was committed, one month at least before the commencement of the action.

(iii) Limitation period prescribed under the Army Act, 1950 ("Army Act") As per Section 122 of the Army Act, the period of limitation for trial is prescribed and it provides that no trial by Court- martial of any person subject to the Army Act for committing any offence shall be commenced after the expiry of a period of three years and such period shall commence: a) on the date of the offence; or b) where the commission of the offence was not known to the person aggrieved by the offence or to the authority competent to initiate action, the first day on which such offence comes to the knowledge of such person or authority, whichever is earlier; or c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the authority competent to initiate action, whichever is earlier.

(iv) Limitation period prescribed under the Factories Act, 1948 ("Factories Act") Section 106 of the Factories Act prescribes that the Court shall not take cognizance of any offence punishable under such Act until and unless the complaint is made within three months from the date on which alleged commission of the offence came to the notice/knowledge of an Inspector.

LANDMARK JUDGMENTS:

.Nirmal Kant Roy vs State of West Bengal(1998):

The Supreme Court in this case held that Section 468 of the Code of Criminal Procedure,1973(CrPc) shall not be applicable to an offence under section 7(1)(A)(ii) of Essential Commodities Act,1955.

.State of Rajasthan vs Sanjay Kumar(1998):

In this case the court held that the limitation period will not commence from the date when the sample was taken but from the date when the report of public analysts was received in case of adulteration.

.SarahMathew vs Institute of Cardio VascularDiseases,(2014) 2 SCC62

A Five Judge Constitution Bench of the Hon'ble Supreme Court comprising of judges Mr .Justice P.Sathashivam,Mr.JusticeB.S.Chauhan,Ms.Justice Ranjana Prakash Desai,Mr.Justice Ranjan Gogoi and Mr.JusticeS.A.Bobde held that the bar of limitation continued in sec 468 of the CrPC applies ,if the complaint is filed beyond limitation and not if cognizance is taken by the court beyond limitation . The Court observed that taking the date of cognizance as materialdate would bring

in uncertainty and would mean denying justice to diligent complaint for the fault of the court .Since taking cognizance is an act of the magistrate and it may be delayed because of the variousreasons or it may be delayed due to the Magistrate's personalwhich he is not responsible

.Bharat Damodar Kale vs State of Andhra Pradesh,(2003)8SCC559: AIR 2003 SC 4560 :2003 CrLJ 4543

Mr .JusticeS.Hegdeand Mr .Justice B. P. Singh of the Hon'ble Supreme Court of India laid down the law that the provisions of Chapter XXXVI of the CrPC clearly indicate that relevant date is not the date of taking cognizance by a Magistrate but the date of filing of complaint or initiating criminal proceedings.

Arun Vyas v Anita Vyas reported in (1999) 4 SCC 690, for the purpose of computing the period of limitation in cases instituted on a police report, the relevant date is the date of filing final report / charge-sheet in court but not the date on which the FIR was registered. But as per the explanation to Section 514 BNSS, for the purpose of computing the period of limitation in cases instituted on a police report, the relevant date shall be the date of recording of information (FIR) under section 173 BNSS.

Kamatchi vs LakshmiNarayanan. Supreme Court.13-04-2022.CrA 627 OF 2022

Supreme Court clarify that the Limitation period u/s 468 CrPC not applicable to application u/s 12 Domestic Violence Act.

Can an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 be dismissed solely on the grounds of limitation? The Supreme Court of India recently addressed this crucial question, clarifying that the limitation period for such applications does not begin from the date of the alleged domestic violence incident. The Court held that the relevant date for calculating limitation is the date of the breach of an order passed under the Act, not the date of the initial incident of domestic violence. This judgment was delivered by a two-judge bench comprising of Justice Uday Umesh Lalit and Justice Pamidighantam Sri Narasimha

CONCLUSION:Evidence and witnesses are main elements in a case to pronounce justice ,but in our country there are lots of incidents that occur when the evidence or witnesses are tampered with and destroyed .Therefore, it is necessary to file complaint within the prescribed time .The CrPC /BNSS provides the procedure for the limitation period under 467 to 473 CrPC. These sections deal with different provisions of the limitation period for taking cognizance of the offence.

DISTRICT JUDICIARY

KURNOOL

WORKSHOP-I

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TOPIC FOR PAPER PRESENTATION:

LAW ON LIMITATION

By

P.HEMA

CIVIL JUDGE (JUNIOR DIVISION)
CUM- JMFC, YEMMIGANUR.

INTRODUCTION:

I. Limitation in civil cases:

- The law of limitation has its roots from the latin maxims:

a. ***Interest ReipublicaeUt Sit Finis Litium*** which means that in the interest of the state as a whole there should be a limit to litigation.

b. ***Vigilantibus Non Dormientibus Jura Subveniunt*** which means the law aids the vigilant, not those who sleep over their rights.

The history of the law of limitation in India is initially the Supreme courts of India, constituted by the Royal charter followed the common law, as there was no law of limitation until the year 1841 when a draft was prepared for the first time and redrafted again in 1842. In the year 1859, an Act was enacted, which was repealed by the Act IX of 1871 which was also repealed by the Act XV of 1877. The Act IX of 1908 replaced the Act XV of 1877, and underwent several amendments. Upon the recommendations in the3rd report of the Law Commission on the Limitation Act, 1908, The Limitation Act XXXVI of 1963 wasenacted in Indiawhich is in force.

Without fixing the period of limitation to avail the right of the litigant it would be difficult to the courts to render justice for the loss suffered as with efflux of time the value of loss diminishes and at certain stage it may be such that no remedy could replace the loss of the litigant. Hence, in order to protect the rights of vigilant litigants and also to restrict the frivolous litigations the law of limitation has to be enforced strictly as the statute provides. The Latin maxim which applies to this context is “Dura lexsedlex” meaning the ‘law is hard but it is law’. Which relates to the harshness of courts required with respect to the limitation period to avail the remedy prescribed by the statute in which the relief is claimed and when the language of the statute is unambiguous then the courts are to give the strict meaning to the words in the statute and enforce rigorously. The purpose of Limitation Act is not to destroy the rights but it is founded on public policy fixing life span for the legal remedy for the general welfare and to redress the loss suffered by the litigant who is diligent and does not sleep over his rights.

II. Limitation in criminal cases:

- ***Nullum tempus out locus occurritregi*** *which means lapse of time is no bar to Crown in proceeding against offenders.*

The concept of Limitation in criminal cases has very minimal scope as the general rule of the criminal law is that "law never dies". The Limitation Act does not apply to criminal proceedings unless the statute prescribes for the limitation such as under Articles 114, 115,131 and 132 of the Act which provide for period within which an appeal or revision can be filed. In criminal law an offence committed is treated as offence against the state and the society, andhence, the State assumes the responsibility in place of the victim to prosecute the offender. Therefore,even when the crime has been committed against the individual the State has no power to not take prosecution against the offender on the ground that delay has been caused in approaching the court of law.

1. LIMITATION – SUITS, APPEAL SUITS AND APPLICATIONS

A. LIMITATION ACT:

The preamble of the Limitation Act, 1963 reads as "An Act to consolidate and amend the law for **the limitation of suits and other proceedings and for purposes connected therewith**." The aim and object of enacting the Limitation Act is to fix a time period with respect to suits, appeals and applications and all other aspects connected to filing of suits, appeals and applications in the court of law.

i. Section 2 (b): "application" includes a petition.

The statement of objects and reasons of the Limitation Act, 1963, declares as follows: "A new definition of application is being inserted so as to include a petition, original or otherwise. The object is to provide a period of limitation for original applications and petitions under special laws as there is no such provision now."[1]

ii. Section 2(j) of the Act defines "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.

[1] *Justice P.S.Narayanas'sLaw of Limitation (8th Edition 2021)*

It is clear that the Limitation Act, 1963, prescribes certain period for filing of suits, appeals and applications only,within which the litigant can avail the remedy provided under various statutes to which the Limitation Act applies.

iii. Sec. 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.

As per the plain reading of the above section the court are restricted to entertain the suits, appeals and applications which are filed before it after the expiry of the statutory period provided by the Act.

- A question arose before the apex court whether the limitation applies to the plea of the defence taken by defendant in a suit. This was clarified by the Hon'ble apex court in the case of **ShrimantShamraoSuryavanshi v/s PrahladBhairobaSuryavanshi**[2]. The appellants herein were the defendants in the suit brought by the plaintiff/respondents for recovery of the suit property and for mesne profitand it was held that:

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

Therefore, the law of limitation does not apply for pleading the defence in a suit and only applies to **filing of the suit** by the plaintiff to seek remedy from courts and whensuch a suit is barred by limitation, it cannot beentertained by the court of law unless the sufficient cause is explained for such delay.

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[2] *(2002) 3 SCC 676*

- **In the case of State of Orissa and Anr v/s MamataMohanty**[3] the Hon'ble apex court ruled that the courts are duty bound to dismiss the suit or appeal which is barred by law, even if the defence is not raised. Further, the **Limitation Act does not apply to Writ Jurisdiction** but the courts may refuse the petitions when the delay is not explained by the petitioner. The Hon'ble Court held that:

"32. In the very first appeal, the respondent filed Writ Petition on 11.11.2005 claiming relief under the Notification dated 6.10.1989 w.e.f. 1.1.1986 without furnishing any explanation for such inordinate delay and on laches on her part. ***Section 3 of the Limitation Act 1963, makes it obligatory on the part of the court to dismiss the Suit or appeal if made after the prescribed period even though the limitation is not set up as a defence and there is no plea to raise the issue of limitation even at appellate stage*** *because in some of the cases it may go to the root of the matter.*

33. ***Needless to say that Limitation Act 1963 does not apply in writ jurisdiction.*** *However, the doctrine of limitation being based on public policy, the principles enshrined therein are applicable and writ petitions are dismissed at initial stage on the ground of delay and laches. In a case like at hand, getting a particular pay scale may give rise to a recurring cause of action. In such an eventuality, the petition may be dismissed on the ground of delay and laches and the court may refuse to grant relief for the initial period in case of an unexplained and inordinate delay."*

iv. 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.

The expiry of the prescribed period of limitation makes not only the remedy barred but also the title extension in favour of the possessor.

In the case of **Sudish Prasad v/s Babul**[4]the court explained about the concept of custodial egis. The property that was held under the guardianship was being used against the interest of the minor and any such property, i.e., instituting a compromise suit whereby keeping inview future events extinguishes the rights of possession of the same as the property is termed "custodialegis".

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[3] *(2011) 3 SCC 436*
[4] *2013 (9) SCC 181*

v. Sec. 29: SAVINGS -

(1) Nothing in this Act shall affect section 25 of the Indian Contract Act, 1872 (9 of 1872).

(2) **Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.**

(3) Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law.

(4) Sections 25 and 26 and the definition of "easement" in section 2 shall not apply to cases arising in the territories to which the Indian Easements Act, 1882 (5 of 1882), may for the time being extend.

The provisions of the Limitation Act apply to Special Acts also. Period of limitation prescribed in Schedule to Limitation Act would apply in case the Special Act does not prescribe a period of limitation.[5]

B. ARBITRATION AND CONCILIATION ACT

In the case of **Union of India and Ors v/s Bimal Kumar Kar**[6] the Hon'bleHigh Court of Guwahati while dealing with the aspect of application of Limitation Act to the applications filed under Arbitration and Conciliation Act, held that: *"13. It is therefore, clear that the legal position has changed after the commencement of the new Limitation Act and the provisions of the Limitation Act will be attracted to an application under the Special Act, such as the Arbitration Act. The matter is no longer in dispute about Article 137 applying to any applications.* ***An applicationunder section 20 of Act is also an application****within the meaning of Section 2(b) of the Limitation Act, 1963 and the applicant therein is a petitioner within the meaning of Section 2(a) (i) of the Limitation Act.* ***The being the position, Article***

[5] *Ravi Venkatravanamma v/s Sri VenugopalaSwamy Temple, Thotlavalluru, Rep. by its Executive Officer and Anr (2006 (5) ALT 829.*

[6] *AIR 1973 Guwahati 100*

137, which is a residuary Article, will apply to an application under section 20 of the Arbitration Act and the period will be three years from the time the right to apply accrues."

C.LIMITATION AND APPEALS

a. AP LAND REFORMS (CEILING ON AGRICULTURAL HOLDINGS) ACT, 1973:

There is no provision in the Andhra Pradesh Land Reforms (ceiling on Agricultural Holdings) Act, 1973 which expressly excludes the application of Sec. 4 to 24 of Limitation Act to proceedings under the Act and hence these provisions including Sec. 5 of the Limitation Act applies to an appeal filed under Sec. 20 (3) of the AP Land Reforms (Ceiling On Agricultural Holdings) Act, 1973.

b. ARTICLE 122 OF THE LIMITATION ACT- To restore a suit or appeal or application for review or revision dismissed for default of appearance or for want of prosecution or for failure to pay costs of service of process or to furnish security for costs, the limitation period is 30 days from the date of dismissal.

c. ARBITRATION ACT: Sec 34 (3) of the Arbitration and Conciliation Act provides for the limitation period to seek set aside of the Arbitral Award as not later than 3 months from the date of Arbitral Award.

(3) An application for setting aside may **not be made after three months** have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

2. COMPUTATION OF PERIOD OF LIMITATION

A. LIMITATION ACT

i.i.Sec. 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.

i.ii. Sec. 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.

i.iii. Sec 14. EXCLUSION OF TIME OF PROCEEDING BONA FIDE IN COURT WITHOUT JURISDICTION.

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall

be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation-For the purposes of this section

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.

i.iv. Sec. 15. EXCLUSION OF TIME IN CERTAIN OTHER CASES:

(1) In computing the period of limitation of any suit or application for the execution of a decree, the institution or execution of which has been stayed by 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.

(2) In computing the period of limitation for any suit of which notice has been given, or for which the previous consent or sanction of the Government or any other authority is required, in accordance with the requirements of any law for the time being in force, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.

Explanation-In excluding the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be counted.

(3) In computing the period of limitation for any suit or application for execution of a decree by any receiver or interim receiver appointed in proceedings for the adjudication of a person

as an insolvent or by any liquidator or provisional liquidator appointed in proceedings for the winding up of a company, the period beginning with the date of institution of such proceeding and ending with the expiry of three months from the date of appointment of such receiver or liquidator, as the case may be, shall be excluded.

(4) In computing the period of limitation for a suit for possession by a purchaser at a sale in execution of a decree, the time during which a proceeding to set aside the sale has been prosecuted shall be excluded.

(5) In computing the period of limitation for any suit the time during which the defendant has been absent from India and from the territories outside India under the administration of the Central Government, shall be excluded.

i.v.Sec. 16-EFFECT OF DEATH ON OR BEFORE THE ACCRUAL OF THE RIGHT TO SUE.

(1) Where a person who would, if he were living, have a right to institute a suit or make an application dies before the right accrues, or where a right to institute a suit or make an application accrues only on the death of a person, 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.

(2) Where a person against whom, if he were living, a right to institute a suit or make an application would have accrued dies before the right accrues, or where a right to institute a suit or make an application against any person accrues on the death of such person, the period of limitation shall be computed from the time when there is a legal representative of the deceased against whom the plaintiff may institute such suit or make such application.

(3) Nothing in sub-section (1) or sub-section (2) applies to suits to enforce rights of pre-emption or to suits for the possession of immovable property or of a hereditary office.

Article 120 of the Limitation Act provides 90 days as the period within which the legal representatives of the deceased party has to be brought on record.

i.vi. Sec. 18-EFFECT OF ACKNOWLEDGMENT IN WRITING.

(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or

by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

Explanation.—For the purposes of this section

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right, (b) the word "signed" means signed either personally or by an agent duly authorised in this behalf, and (c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.

U/s 18 of the Limitation Act deals with an acknowledgment of a debt, giving a fresh starting of limitation whereas Sec. 25 of the Indian Contract Act contemplates a fresh promise altogether.

i.vii. Sec. 19-EFFECT OF PAYMENT ON ACCOUNT OF DEBT OR OF INTEREST ON LEGACY.

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 authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made: Provided that, save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.

Explanation.—for the purposes of this section

(a) Where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment;

(b) "debt" does not include money payable under a decree or order of a court.

i.vii. Sec. 21-EFFECT OF SUBSTITUTING OR ADDING NEW PLAINTIFF OR DEFENDANT

(1) Where after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party: Provided that where the court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.

(2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.

3. CONDITIONS AS TO TIME AND LIMITATION UNDER DIFFERENT STATUTES:

A. PERIOD OF LIMITATION UNDER CODE OF CIVIL PROCEDURE:

- **Order 8 Rule 1Written Statement**—

"The Defendant **shall, within thirty daysfrom the date of service of summons on him, present a written statement of his defence**: Provided that where the defendant fails to file the written statement within the said period of thirty days, **he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons**.

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.

- **Order 22 rule 2** Procedure where one of several plaintiffs or defendants dies and right to sue survives: Where there are more plaintiffs or defendants than one, and any of them dies,

and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to the effect to be made on the record,. and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

The above Provision is to be read with Article 120 of the Limitation Act, 1963- Under the Code of Civil Procedure, 1908 (5 of 1908) to have the legal representative of a deceased plaintiff or appellant, or of a deceased defendant or respondent, made a party the **limitationperiod is 90 days from the date of death of the plaintiff, appellant, defendant or respondent as the case may be.**

- **Order 23 rule 1A -** When transposition of defendants as plaintiffs may be permitted.—Where a suit is withdrawn or abandoned by a plaintiff under rule 1, and a defendant applies to be transposed as a plaintiff under rule 10 of Order I the Court shall, in considering such application, have due regard to the question whether the applicant has a substantial question to be decided as against any of the other defendants.

2. Limitation law not affected by first suit.—**In any fresh suit instituted on permission granted under the last preceding rule, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted.**

- **Order 22 Rule 9(2)** of CPC - The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee or the receiver in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal; and if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

Article 120of the Limitation Act applies and within 90 days from the date of death of the plaintiff, appellant, defendant or respondent as the case may be, the legal representatives are to be added as parties to the proceedings.

- **Order 21 rule 92(2)**:Where such application is made and allowed, and where, in the case of an application under rule 89, the deposit required by that rule is made within thirty days from the date of sale, or in cases where the amount deposited under rule 89 is found to be deficient owing to any clerical or arithmetical mistake on the part of the depositor and

such deficiency has been made good within such time as may be fixed by the Court, the Court shall make an order setting aside the sale.

Provided that no order shall be made unless notice of the application has been given to all persons affectedthereby.

- **Order 21 Rule 85:Time for payment in full of purchase-money.**

The full amount of purchase-money payable shall be paid by the purchaser into Court before the Court closes on the **fifteenth day from the sale of the property**:Provided that, in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any set-off to which he may be entitled under rule 72.

B. LIMITATION ACT, 1963:

The Schedule annexed to the Limitation Act lays down limitation period to various provisions of law and few are extracted herewith:

- Article 32 states that a claim on a bill of exchange payable at sight, or after sight but not at a fixed time is 3 years from the date when the bill is presented.
- Article 42, a claim by a surety against the principal debtor can be applied within 3 years from the date when the surety pays the credit.
- A claim for Mense profit under Article 51 for the profits of immovable property belonging to the plaintiff which have been wrongfully received by the defendant can be made within 3 years when the profits are received.
- Article 54 specifies that a suit for Specific Performance of a contract can be made within 3 years from the date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.
- Article 59 states suit to cancel or set aside an instrument or decree or for the rescission of a contract can be filed within 3 years from the day When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.
- Article 67 claim by a landlord to recover possession from a tenant should be within 12 years from the date when the tenancy is terminated.

- Article 73-For compensation for false imprisonment claim to be made within 1 year from the date when the imprisonment ends.
- Article 74-claim forcompensation for a malicious prosecution should be within 1 year from the date ends when the plaintiff is acquitted or the prosecution is otherwise terminated.
- Article 100-claim to alter or set aside any decision or order of a civil court in any proceeding other than a suit or any act or order of an officer of Government in his official capacity should be within 1 year from the date of final decree.
- **Article 109 claim by a Hindu governed by Mitakshara law to set aside his father's alienation of ancestral property, should be filed within twelve years from the date when the alienee takes possession of the property.**
- Article 113- Any **suit** for which no period of limitation is provided elsewhere in this Schedule, three years when the right to sue accrues.
- Article 122- To restore a suit or appeal or application for review or revision dismissed for default of appearance or for want of prosecution or for failure to pay costs of service of process or to furnish security for costs should be claimed within 30 days from the date of dismissal.
- Article 123- To set aside a decree passed ex parte or to re-hear an appeal decreed or heard ex parte claim should be made within 30 days from the date of the decree or where the summons or notice was not duly served, when the applicant had knowledge of the decree.
- Article 137- Any other **application** for which no period of limitation is provided elsewhere in this division-3 years from the date when the right to apply accrues.
- **Sec. 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.

- **Sec. 30- PROVISION FOR SUITS, etc**., for which the prescribed period is shorter than the period prescribed by the Indian Limitation Act, 1908. —

Notwithstanding anything contained in this Act

(a) Any suit for which the period of limitation is shorter than the period of limitation prescribed by the Indian Limitation Act, 1908 (9 of 1908), may be instituted within a period of seven years next after the commencement of this Act or within the period prescribed for such suit by the Indian Limitation Act, 1908 (9 of 1908), whichever period expires earlier.

Provided that if in respect of any such suit, the said period of seven years expires earlier than period of limitation prescribed therefore under the Indian Limitation Act, 1908 (9 of 1908) and the said period of seven years together with so much of the period of limitation in respect of such suit under the Indian Limitation Act, 1908 (9 of 1908), as has already expired before the commencement of this Act is shorter than the period prescribed for such suit under this Act, then, the suit may be instituted within the period of limitation prescribed therefore under this Act;

(b) Any appeal or application for which the period of limitation is shorter than the period of limitation prescribed by the Indian Limitation Act, 1908 (9 of 1908), may be preferred or made within a period of ninety days next after the commencement of this Act or within the period prescribed for such appeal or application by the Indian Limitation Act, 1908, whichever period expires earlier.

C. SPECIFIC RELIEF ACT, 1963:

The occupant of the land who has been dispossessed from such land without following the due process of law then such an occupier can file a suit under Sec. 6 of the Specific Relief Act, 1963, only when such occupant is not the owner of the property.

i. **Sec. 6(2)(a)** of the Act lays down the period of 6 months limitation within which a suit under Sec. 6 of SRA "shall" be filed and makes it clear that no such person or anyone through him can claim for recovery of possession after expiry of 6 months starting from the day of the dispossession.

"Section 6 of Specific Relief Act, 1963 –

Suit by person dispossessed of immovable property.—

(1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.

(2) No suit under this section shall be brought—

ii. **Article 64 of the Limitation Act** mentions that suit 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 the **claim can be made within 12 years from the date of such dispossession.**

(a) After the expiry of six months from the date of dispossession; or

(b) Against the Government.

(3) No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

(4) Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof."

iii. Sec. 21- POWER TO AWARD COMPENSATION IN CERTAIN CASES

The bare reading of the section 21(5) says that the plaintiff can claim compensation in his plaint claiming Specific Performance of a contract and even if he fails to do so the **court shall at any stage of proceedings allow the plaintiff to amend the plaint by imposing such terms which the court feels just for allowing to include such claim for compensation.**

"21. Power to award compensation in certain cases.—

(1)In a suit for specific performance of a contract, the plaintiff may also claim compensation for its breach, either in addition to, or in substitution of, such performance.

(2)If, in any such suit, the court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him such compensation accordingly.

(3)If, in any such suit, the court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

(4)In determining the amount of any compensation awarded under this section, the court shall be guided by the principles specified in section 73 of the Indian Contract Act, 1872 (9 of 1872).

(5)No compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint: Provided that where the plaintiff has not claimed any such

compensation in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just, for including a claim for such compensation.

Explanation.—The circumstance that the contract has become incapable of specific performance does not preclude the court from exercising the jurisdiction conferred by this section.

In the case of Ragu Thilak D. John v. S. Rayappan[7] the Hon'ble apex court held that the issue of limitation in an application for amendment varies from case to case. In some instances, the issue of limitation becomes a matter of dispute in the suit itself. In such cases, the application for amendment may be allowed to help resolve the case.

iv. Limitation to file claim petitions: Relevant provisions are Section 47, Order XXXVIII Rules 8, 10 and 11, Order XXI Rules 58, 59 and 97 to 104 Code of Civil Procedure. Rule 246 of Civil Rules of Practice. Articles 128 and 129 of Limitation Act. Article 137 of the limitation Act states that the claim petition shall be filed within a period of 3 years.

IV. INSOLVENCY AND BANKRUPTCY ACT

- **238A. Limitation.** --The provisions of the Limitation Act, 1963 shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be.

Since the Limitation Act is applicable to applications filed under Sections 7 and 9 of IBC from the inception of IBC, Article 137 of the Limitation Act gets attracted. Article 137 of the Limitation Act provides the period of limitation in case of "any other application for which no period of limitation is provided elsewhere" as three years from the time when the right to apply accrues. "The right to sue", therefore, accrues when a default occurs.

If the default has occurred over three years prior to the date of filing of application under IBC, the application would be barred under Article 137 of the Limitation Act, except in

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[7] ***AIR 2001 SUPREME COURT 699***

those cases where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such application.

4. DIFFERENT RELIEFS WITH DIFFERENT PERIOD OF LIMITATIONS:

A. INHERANT POWERS OF THE COURT UNDER CPC:

i. Section 148: Enlargement of Time-

Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, not exceeding thirty days in total, even though the period originally fixed or granted may have expired.

ii. Order 7 rule 6- Grounds of exemption from limitation law-

Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaint shall show the ground upon which exemption from such law is claimed: Provided that the Court may permit the plaintiff to claim exemption from the law of limitation on any ground not set out in the plaint, if such ground is not inconsistent with the grounds set out in the plaint.

iii.Order 22 Rule 4 (4)- The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.

(5) Where— **(a) the plaintiff was ignorant of the death of a defendant, and could not, for that reason, make an application for the substitution of the legal representative of the defendant under this rule within the period specified in the Limitation Act, 1963 (36 of 1963), and the suit has, in consequence, abated**, and

(b) the plaintiff applies after the expiry of the period specified therefore in the Limitation Act, 1963 (36 of 1963), for setting aside the abatement and also for the admission of that application under section 5 of that Act on the ground that he had, by reason of such ignorance, **sufficient cause for not making the application with the period specified in the said Act, the Court shall, in considering the application under the said section 5, have due regard to the fact of such ignorance, if proved.**

Order 22 rule 4(4) to be read with Article 120of the Limitation Act, 1963which prescribes statutory period of 90 days to add legal representatives as parties to the suit and **Article 121 of the Limitation Act, 1963**- the Limitation period to apply for setting aside abatement is **60 days from the date of abatement.**

B. LIMITATION ACT,1963

i. SECTION 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 misled 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.

In the case of **State of West Bengal v/s Administrator**[8] the Hon'ble apex court while dealing with the aspect of Sec. 5 of the Limitation Act had interpreted what is the meaning of sufficient cause in order to condone the delay caused for filing of an appeal or application. The apex court held that:

*"From the above observations it is clear that the words "**sufficient cause**" should receive a liberal construction so, as to advance substantial justice when no negligence nor inaction nor is, imputable to a party."*

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Article 131 of the Act specifies the limitation period to prefer the revision under Sec 115 of CPC is 90 days from the date of order under challenge or from the date of knowledge of the order by the revision petitioner. Section 5 of the Limitation Act is applicable to the civil revisions and if the delay is explained with the sufficient cause then the same can be condoned.

In the case of L.J. Leach & Co. Ltd. v. Jardine Skinner & Co.[9], the Hon'ble Supreme Court has stated that if an application for amending pleadings is debarred by the Limitation Act, it can be a ground for rejecting the application. However, the court also has discretionary power to allow the amendment if it deems it necessary to secure the ends of justice.

In South Konkan Distilleries &Anr v. PrabhakarGajananNaik&Ors[10], the Hon'ble apex court ruled that - It is a settled principle that the court can disallow an application for amendment if, on the date of filing the application, it is barred by limitation. Nevertheless, this does not mean the court cannot grant the application. The court retains discretionary power to allow the amendment if it believes it is necessary to serve the interests of justice.

C. ELECTION PETITIONS:

In Bhakti Bh. MondalvsKhagendra K. Bandopadhya And Ors[11] the Hon'ble Calcutta High Court interpreted whether the Law of Limitation applies to the Election Petitions like that of an application. The Hon'ble Court held that:

"18. This section lays down that an election petition is to be tried as nearly as may be in accordance with the procedure applicable to trial of suits under the Code. The Court, in other words, has to follow as far as possible the rules of procedure applicable to suits. It is not incumbent upon the Court to follow all the rules. The proviso to Sub-section (1) quoted above shows that the Court in its discretion may refuse to examine witnesses but this is not strictly speaking, permissible under the Code. Moreover, when a suit is decided in favour of the plaintiff, a decree is passed. But no decree is passed on an election petition. The Court under Section 98 makes "an order" either dismissing the petition or declaring the election to

9 1957 AIR 357
10 AIR 2009 SUPREME COURT 1177
11AIR 1968 CALCUTTA 69

be void or declaring that any other candidate has been duly elected. These provisions also show that an election petition is not a suit. An election petition, it seems to us, is an application, and there should be no bar to applying the provisions of Section 5 of the Limitation Act to such an application."

5. AMENDMENT OF PLEADINGS- THE ASPECT OF LIMITATION:

Definition of Amendment of Pleadings:

Any paper filed in the court of law becomes the record of the court in which it is filed and to meet the ends of justice, change in the facts and circumstances of a case must be informed to the court through filing a petition to amend the plaint as per the requirements of the new facts or change in the old facts, subject to limitation period.

The proviso to Order VI Rule 17 of the Code of Civil Procedure (CPC) is that an amendment shall not be allowed after the commencement of trial, unless the Court concludes that the party could not have raised the matter before the commencement of trial, despite due diligence.

- "Order 6 Rule 17 Amendment of pleadings.—The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties: Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."
- **Rule 28 of Civil Rules of Practice** states the procedure for Amendment in pleadings:

An application for amendment made under Order1 Rule 10, Order 6 Rule 17, or Order 22 of the Code, shall also contain a prayer for all consequential amendments. The Presiding Officer shall reject the application if it is not in accordance with the law or these rules: Provided that verbal corrections may at any time be made in pleadings with permission of the Court.

For example, in a suit for partition, if any one of the plaintiffs or the defendants dies during the pendency of the suit, then the plaintiff has a remedy to file the petition under Order 1 Rule 10 of the Code of Civil Procedure within 90 days of such death, the limitation counting from the day on which the information of such death came to the notice of the plaintiff, to seek the permission of the court to allow the plaintiff to bring on record the legal representatives of such deceased party to the suit for representing on behalf of the deceased party for the better adjudication of the suit. If the court permits the amendment then the plaintiff has to carry the amendment in the plaint and also in the IA's, if any, within the time granted by the court and has to also file a net copy after carrying out the amendment.

- **Question: can the amendment of plaint allowed when the cause of action for amendment arises after the institution of suit or trial?**

Amendment of plaint is not a matter of right, but is matter of wide powers of the court provided by the statue itself under Sec. 148 and 151 of CPC. court has discretion to allow or dismiss the amendment petition filed even after commencement of trial but such discretion is to be acted upon very consciously after the examination of various factors such as whether the petition is barred by limitation, what is the extent of negligence of party and whether it is matter of inadvertence, whether such amendment changes the nature of the suit, whether any prejudice is caused to the respondents by such amendment, etc.

For example-Plaintiff files a suit for recovery of possession of property but later amends to include additional reliefs.

In Mohinder Kumar V/s Roop Rani Mehta[12] the apex court has held that *"if an amendment application, within the meaning of the provisions of Order VI Rule 17 CPC if filed after commencement of trial, it has to be shown that in spite of due diligence such amendment could not have been sought earlier, for preventing frivolous applications, which is filed to delay the trial".*

[12] ***(2018) 2 SCC 132***

The plaint can be amended only with the permission of the court and after hearing both parties. The Petition filed U/O 6 rule 17 of CPC can be filed to amend both the written statement as well as the plaint and are subject to limitation period.

If the amendment is allowed then the amendment in the plaint has to be carried out within the time prescribed by the court or within 14 days of order, when the court has not set the time to amend the plaint. If the petitioner fails to amend the plaint within time prescribed then the **court shall not allow petitioner to carry out the amendment of plaint at a later stage.**

- **Order 6 rule 18**-Failure to amend after Order-If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court."
- **Question - If the new reliefs are time-barred, can they be allowed?**

Answer- The Courts have to analyze whether the amendment is connected to the original claim or introduces a fresh cause of action. Amendments introducing new, time-barred claims are not permitted unless they relate back to the original claim.

- An amendment withdrawing the admission of fact cannot be allowed.
- The power under Order 6 Rule 17 of CPC cannot be exercised Suomotu.

➢ **In the case ofMuddadaApparao died and anr v/s M.Nagenderprasadrao**[13] the Hon'ble Supreme court ruled that:

"9. Before parting with the case, it is necessary to advert to one more aspect urged by the learned senior counsel for the revision petitioners. He would submit that without prejudice to the submission that Order VI Rule 18 of the Code has no application to the present context and assuming for a moment that the said provision is applicable still the said provision is only procedural in nature and hence, shall not come in the way of doing substantial justice. The Supreme Court in a number of decisions had held that rules of procedure are intended to be a handmaid to the administration of justice and a party cannot be refused just relief

[13] *1016 (5) ALD 14*

merely because of mistake, negligence, inadvertence or even infraction of the rules of procedure. That apart, it is cardinal principle of law that merely on the ground of technicalities, justice should not be thwarted at the threshold. In Bamungachi Rising Club v. Shayamal Kumar Ghosh , the Calcutta High Court having regard to the ratio in the decision of the Supreme Court in Jai Ram ManoharLal v. National Building Material Supply, Gurgaon [AIR 1969 SC 1267] held inter alia as follows:

'Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure.' In the case on hand, if the revision petitioners' application to implead them as plaintiffs 2 to 6 though is already allowed was to be dismissed for not carrying out the amendment within a time frame of 14 days, it would lead to denial of substantial justice at the threshold even without providing them an opportunity to have their cause decided on merits. Further, in the decision in ***Banwarilal v/s Balbir Singh*** *(2016 (1) 607) the Supreme Court held as follows:*

Provisions of Order XXII Code of Civil Procedure are not penal in nature. It is a rule of procedure and substantial rights of the parties cannot be defeated by pedantic approach by observing strict adherence to the procedural aspects of law."

- The 2 judge bench of the Hon'ble apex court comprising of Justice Anirudha Bose and Justice J.B Pardiwala in the case of **Life Insurance Corporation of India v. Sanjeev Builders Pvt. Ltd. and Anr[14].** has laid down guidelines to be followed by the civil courts with respect to applications filed under Order VI Rule 17 of the Code of Civil Procedure, 1908("CPC") for amendment of pleadings and how to deal with aspect of limitation in such applications.

The Supreme Court formulated the guidelines in an appeal against the judgment of Bombay High Court dated December 13, 2021 allowing amendment of pleadings in a suit for specific performance of a contract. The guidelines are as follows:

"70. Our final conclusions may be summed up thus:

Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond

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[14]2022 LiveLaw (SC) 729

its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and (ii) to avoid multiplicity of proceedings, provided (a) the amendment does not result in injustice to the other side, (b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and (c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless:

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed."

- **In the case of M/S. South Konkan Distilleries &AnrvsPrabhakarGajananNaik&Ors**[15]the Hon'ble Apex Court held that:

"17. Considering the facts of the case and the nature of amendment claimed and the principles laid down by this Court in L.J.Leach's case (supra) and other decisions of this Court, as referred to herein earlier, we are of the view that if a suit was filed on the amended claim, it was an admitted position that the said claim was barred by limitation, the question of allowing the amendment of the written statement and the counter claim, in the facts and circumstances of the case, could not arise at all. Accordingly, the courts below were fully justified in rejecting the application for amendment of the written statement and the counter claim.

19. Keeping the aforesaid findings made by us and also the findings arrived at by the courts below in the matter of exercise of discretion to reject the application for amendment of the written statement and the counter claim in mind, the delay and latches on the part of the appellants to apply for amendment of the written statement and the counter claim would be the relevant factor for rejecting the application for amendment of the pleadings. As noted herein earlier, there has been thirteen and a half years delay in filing the application for amendment of the pleadings. Further more, in the application for amendment, the appellants had not given any explanation whatsoever for such delay. Under these circumstances, we do not find any reason to interfere with the orders of the courts below. In our view, in the facts and circumstances of the case, the courts below were perfectly justified in rejecting the prayer for amendment of the written statement and the counter claim.

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[15] ***AIR 2009 SUPREME COURT 1177***

20. In view of our findings made hereinabove, that on the date of filing of the amendment petition, the claim as made by the appellants in their amendment petition was already barred, no purpose would be achieved by allowing the amendment which has already stood barred by the law of limitation."

A. Amendment of pleadings and theory of Relation back:

In Vishwambhar v. Laxminarayan[16]the Hon'ble Supreme Court held that the application for amendment of pleadings is related back to the date of the application itself, not the date of filing the suit.

"From the averments of the plaint it cannot be said that all the necessary averments for setting aside the sale deeds executed by Laxmibai were contained in the plaint and adding specific prayer for setting aside the sale deeds was a mere formality. As noted earlier, the basis of the suit as it stood before the amendment of the plaint was that the sale transactions made by Laxmibai as guardian of the minors were ab initio void and, therefore, liable to be ignored. By introducing the prayer for setting aside the sale deeds the basis of the suit was changed to one seeking setting aside the alienations of the property by the guardian. In such circumstance the suit for setting aside the transfers could be taken to have been filed on the date the amendment of the plaint was allowed and not earlier than that."

6. LIMITATION IN CRIMINAL CASES:

A. CODE OF CRIMINAL PROCEDURE,1973/BNSS,2024

The concept of prescribed period within which a complaint is to be filed in the court in criminal cases is provided under Chapter XXXVI of the Code of Criminal Procedure, 1973,comprising Sections 467 to 473 Cr.P.Cand Chapter XXXVIII in the corresponding Chapter in the BharatiyaNyayaSurakshaSanhita comprising Sections 513 to 519. Sec. 468 of the code of Criminal Procedure, 1973/Sec. 514 of BNSSprovides that the courts are restricted

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16 AIR 2001 SUPREME COURT 2607

to take cognizance of the complaint which is filed beyond the statutory period. Sec. 467Cr.P.C/513 BNSS Speaks about the period of limitation in criminal cases under the code.

- **Sec. 467Cr.P.C/513 BNSS:DEFINITION:**

For the purposes of this Chapter, unless the context otherwise, requires, period of limitation means the period specified in section 468 for taking cognizance of an offence.

- **Sec. 468Cr.P.C/514 BNSS**: **BAR TO TAKING COGNIZANCE AFTER LAPSE OF THE PERIOD OF LIMITATION:**(1) Except as otherwise provided elsewhere in this Code, no Court, shall take cognizance of an offence of the category specified in Sub-Section (2), after the expiry of the period of limitation.

(2)The period of limitation shall be-

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;**
c. **Three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.**

(3)For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

In the case of **A.Kaliyaperumal v/s The Superintendent of Police** [17] **the Hon'ble**Madras High Court hasrecently held that the reckoning date for calculating the limitation period under Section 469 of CrPC**would be from the date of filing of the final report and not the date of registration of FIR.**

As per the explanation of Section 514 BNSS, the relevant date for the purpose of computing the period of limitation shall be the date of filing complaint U/Sec.223 BNSS (Sec.200 Cr.P.C) or the date of recording of information under Section 173 BNSS (Sec.154 Cr.P.C).

- **Sec. 469 of the Code/515 of BNSS:COMMENCEMENT OF PERIOD OF LIMITATION:**

[17] ***LAWS (MAD)-2024-1-34***

(1)The period of limitation, in relation to an offence, shall commence:

(a) On the date of the offence; or

(b)where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or

(c)where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

(2) In computing the said period, the day from which such period is to be computed shall be excluded.

Section 470 of Cr.P.C/516 of BNSS and 471 of the Code/517 BNSS provide for the **exclusion of time** in certain cases.Section 472 Cr.P.C/518 BNSSprovides the rule that in case of a **continuing offence**, a fresh period of limitation begins to run at the time during which the offence continues.Section 473 Cr.P.C/519 BNSS empowers the **Court to condone the delay** and take cognizance even after the period prescribed in Section 468 Cr.P.C/514 BNSS, if the court is satisfied that the reason for the delay is properly explained or that it is necessary to do so in the interests of justice.

According to section 199(5) Cr.P.C/Sec.222 BNSS, Session court shall takecognizance of offence u/s.199(2) /Sec.222(2) BNSS when the complaint in writing was filed by the Public Prosecutor within 6 months from the date on which the alleged offence is said to have been committed.

In the case ofBharathDamodarKale v/sState of A.P[18], while dealing with Drugs and Cosmetics Act 1940 where a prosecution is commenced upon a complaint under section 32 of the Act, the Hon'ble apex court held that:

"All these provisions indicate that the court taking cognizance can take cognizance of an offence the complaint of which is filed before it within the period of limitation prescribed and if need be after excluding such time which is legally excludable. This in our opinion clearly indicates that the limitation prescribed is not for taking cognizance within the period of limitation, but for taking cognizance of an offence in regard to which a complaint is filed or

[18]**(2003) 8 SCC 559**

prosecution is initiated beyond the period of limitationprescribed under the code. Apart from the statutory indication of this view of ours, we find support for this view from the fact that taking of cognizance is an act of the court over which the prosecuting agency or the complainant has no control. Therefore, a complaint filed within the period of limitation under the code cannot be made infructuous by an act of court."

B. NEGOTIABLE INSTRUMENTS ACT

Whether the Limitation Act applies to the Negotiable Instruments Act was dealt by the Hon'ble Karnataka High Court in **C.Kalegouda v/s K.Sadashivappa**[19]. The Trial Court had dismissed the complaint on the ground of delay of 24 days in filing the complaint u/s 200 of Cr.P.C and hence the matters came before the Hon'ble High Court of Kerala where it was held that:

"11. The provisions of the Act fastened a criminal liability on a person, who issues a cheque knowing fully well that there is no money arranged in his account to meet the commitment in the cheque. The complainant who is entitled to recover the amount under the civil law, is also given a right to proceed against such a person under the criminal law. When a criminal liability is fastened in respect of civil liability under the provisions in Sections 138 to 142 of the Act, the same has to be construed strictly. It has to be noted in this context that the Legislature has used the word 'complaint' in Section 142 and in my considered view, it is not without purpose. Further it is to be noted that the word used therein is not a 'petition' or an 'application', but a 'complaint' and complaint alone. ***As Section 29(2) of the Limitation Act does not refer to a 'complaint', but it only refers to an 'application' or 'petition', therefore it appears to me that a criminal complaint cannot be termed as an 'application' or a 'petition' and that by no stretch of imagination, the complaint to a Criminal Court could be equated to that of an application or a petition. I am, therefore, clearly of the view that the provisions of Section 29(2) of the Limitation Act will not apply.If the complainant does not file a complaint under Section 142 of the Act within the time prescribed therein, the Court is precluded from taking the cognizance of an offence under Section 138 of the Act and that it has no jurisdiction to take cognizance of the offence by condoning the delay in filing the complaint."***

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[19] *1999 (4) Kar. LJ 526*

C. DOMESTIC VIOLENCE ACT

The Hon'ble apex court incase of***Kamatchi v/s Lakshminarayanan,***[20]**it was held that** **"**52. *In view of the above, we hold that for the purpose of computing the period of limitation,* ***the relevant date must be considered as the date of filing of complaint or initiating criminal proceedings and not the date of taking cognizance by a Magistrate or issuance of process by a court.We, therefore, overrule all decisions in which it has been held that the crucial date for computing the period of limitation is taking of cognizance by the Magistrate/court and not of filing of complaint or initiation of criminal proceedings.***

53. ***In the instant case, the complaint was filed within a period of three days from the date of alleged offence.*** *The complaint, therefore, must be held to be filed within the period of limitation even though cognizance was taken by the learned Magistrate after a period of one year. Since the criminal proceedings have been quashed by the High Court, the order deserves to be set aside and is accordingly set aside by directing the Magistrate to proceed with the case and pass an appropriate order in accordance with law, as expeditiously as possible."*

D. LIMITATION AND APPEAL

- Article 114 of the Limitation Act, 1963, specifies that period of limitation to fileappeal from an order of acquittal,

(a) Under sub-section (1) or subsection (2) of section 417 of the Code of Criminal Procedure, 1898 (5 of 1898) is 90 days from the date of the order appealed from.

(b) Under sub-section (3) of section 417 of that Code is 30 days from the date of grant of the Special Leave.

- Article 115 of the Limitation Act, 1963 mentions that under the Code of Criminal Procedure, 1898 (5 of 1898)

(a) from a sentence of death passed by a court of session or by a High Court in the exercise of its original criminal jurisdiction the appeal can be preferred within 30 days from the date of the sentence.

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[20]Crl.No. 627/2022 arising out of SLP Crl. No. 2514/2021

(b) from any other sentence or any order not being an order of acquittal the appeal is to be preferred:

(i) to the High Court within Sixty days from the date of the sentence or order.

(ii) to any other court within thirty days from the date of the sentence or order.

CONCLUSION:

The concept of limitation is introduced in the statutes to overcome the multiplicity of proceedings and filing of frivolous cases by the litigants and to protect the rights of the parties who are vigilant over their rights and hence the court of law has to follow the principles of limitation enshrined in the various statutes in order to achieve the purpose of fixing the limitation period to approach the courts of law.

The limitation with respect to the Special Acts is different from that of the Limitation Act as the Special Acts are enacted to serve a special purpose and thus the general principles of the Limitation Act do not apply, unless the Act itself provides for limitation period. However, the limitation period in criminal cases does not apply except in cases where the statute provides for, as the State has the responsibility to prosecute the accused in the crimes even though the offence is done against the litigant.