

## **The Limitation Act 1908**

**Zafar Iqbal Kalanauri**  
Advocate Supreme Court Pakistan

### **The background**

Statute of limitation prescribes periods during which certain actions can be brought, or certain rights can be enforced, through legal proceedings. After the period of time set out in the applicable statute has run out, no legal action can be brought. The bar created by such a statute is (subject to certain minor relaxations meant for special situations), mandatory, in the sense that hardship in individual cases does not constitute a ground for the court granting a relaxation.

### **The juristic rationale**

The juristic rationale justifying such bars rests on several factors. First, the law assists the **wakeful** and not the sleeping or the **indolent**. The maxim is – **lex vigilantibus, non dormientibus, subvenit**. Secondly, after the lapse of a certain period of time, the memory of witnesses may fade; evidence may get lost; and documents may become unavailable. The law has to take into account all these factors. It therefore discourages the filing of stale claims before the courts.

### **Suits and arbitration claims**

Pursuing this general approach, statute of limitation seeks to lay down periods within which suits may be instituted in court on various types of causes of action. And, since the considerations mentioned above are as much valid in regard to claims in arbitration, as in regard to claims in courts of law, the legal system extends the law of limitation to claims in arbitration also.

In Pakistan, statute prescribing the limitation periods within which suits and actions can be instituted is the Limitation Act, 1908. The scheme of the Act is such, that whilst the rules relating to computation of time and regulating the course and manner for providing relief are contained in the main body of the Act (comprising various “sections”), the specific limitation periods within which suits and actions are required to be instituted, are contained in the First Schedule to the Act (comprising several articles).

### **Periods of limitation**

The normal limitation period for suits and actions based on contractual causes of action is three years. Certain specific instances are mentioned below:

- (a) Article 113 prescribes the limitation period for the specific performance of a contract to be three years, from the date fixed for the performance of the contract, or where no such date is fixed, then, from the date when the plaintiff has notice that performance has been refused.
- (b) Article 114 prescribes the limitation period for the rescission of a contract to be three years, from the date on which the facts that entitle a plaintiff to rescind the contract first become known to him.
- (c) Article 115 prescribes the limitation period for compensation for the breach of a contract (express or implied), not in writing, which is not registered (and not provided for in any other article). In such a case, the suit for compensation can be brought within a period of three years from the date when the contract is broken, or (where there are successive breaches), from the date when the breach in respect of which the suit is instituted occurs, or (where the breach is continuing) when it ceases.
- (d) Article 116 prescribes the limitation period for compensation for breach of a contract in writing, which is registered to be six years. The period of limitation would begin to run from the same date as in the case of a suit brought on a similar contract not registered.

### **Relaxation or extension of the period of limitation**

Section 19 of the Limitation Act provides that where, prior to the expiry of the period of limitation prescribed for bringing an action under the Act, there is an acknowledgement of liability, made in writing and signed by the party against whom the claim is made, a fresh period of limitation will start from the date of such acknowledgement.

The limitation period for a suit is also subject to relaxation, if the defendant has been out of the country. Section 13 of the Act states that in computing the period of limitation, any time spent by the defendant outside of Pakistan shall be excluded.

The limitation period is subject to relaxation, in cases where the plaintiff is subject to a legal disability. Section 6 of the Act provides that where the plaintiff is under a legal disability, the limitation period will start to run from the date the “disability has ceased.” For the purposes of section 6, a minor, or an insane person, or an idiot, is a legally disabled person.

Under section 14 of the Act, in computing the period of limitation prescribed by the Act, the time spent by the plaintiff in prosecuting with due diligence another civil proceeding shall be excluded from computation of the limitation period. The proceedings of the other suit should have been founded on the same cause of action and prosecuted in good faith in a court, which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain the claim.

Section 18 of the Act provides that where a person who has a right to institute a suit has, by means of fraud, been kept from the knowledge of such right, the limitation period will commence when the fraud becomes known to him.

#### **Disabilities**

Section 6 of the Act provides that if at any time the right of action in respect of any of the causes referred to in sections 6 shall accrue, the person so entitled to sue shall be subject to any of the following disabilities, namely;

- (a) infancy,
- (b) idiocy,
- (c) unsoundness of mind,
- (d) lunacy, or
- (e) absence beyond the seas,

Then the several grounds of limitation provided in the said sections shall not whichever shall first happen. The disability therefore must exist at the time when the cause of action first accrues and subsequent disabilities are of no effect, and where a person suffering from one of the above mentioned disabilities dies, the period of limitation commences to run against him from the date of his death.

#### **Fraud and mistake**

Under section 18 prescription does not run in the case of concealed fraud or mistake until there is knowledge of the fraud or mistake or until the party defrauded or mistaken might by due diligence have come to know of it, as equitable principles of concealed fraud and mistake apply.

#### **Date of institution of the claim in arbitration**

Provisions of the Limitation Act, 1908 apply to arbitrations as they apply to civil courts, under section 37 of the Arbitration Act, 1940. Under section 37 (3) of the Arbitration Act, 1940, an arbitration shall be deemed to have commenced, when one party to the arbitration agreement serves on the other parties thereto, a notice, requiring the appointment of an arbitrator, or where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement, requiring that the differences be submitted to the person so named or designated.

#### **Other points of special interest**

Under article 178 of the First Schedule to the Limitation Act, 1908, an award under the Arbitration Act, 1940 must be filed within 90 days of the date of service of notice of filing of the award.

#### **Where court is closed when period expires**

Under section 4 of the Act Where the period of limitation prescribed 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 that the Court re-opens.

#### **Extension of period in certain case**

Under section 5 of the Act any appeal or application for [a revision or] a review of judgment or for leave to appeal or any other application to which this section may be made applicable [by or under any enactment] for the time being in force may be admitted after the period of limitation prescribed therefore, when 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 the appellant or applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period of limitation may be sufficient cause within the meaning of this section.

**Continuous running of time**

Under section 9 of the Act---Where once time has begun to run, no subsequent disability or inability to sue stops it: Provided that where letters or administration to the estate of a creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues.

**Acquisition of right to easements**

Under Section 26 of the Act (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 any 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.

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.

(2) Where the property over which a right is claimed under subsection (1) belongs to [the Government], that subsection shall be read as if for the words "twenty years" the words "**sixty 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.

**Exclusion in favour of reversioner of servient tenement**

Under section 27 of the Act--- Where any land or water upon, over or from which any easement has been enjoyed or derived has been held under or by virtue of the interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the period of twenty years in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land or water.