

POSITION OF PERSON'S SUFFERING FROM LEGAL DIABILITY AND THE LIMITATION ACT.

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CHAPTER-I

(Abstract, Introduction, Review of Literature, Research Problem, Problem Statement, Research Objectives, Research Methodology and Scope and Limitations of the study).

1.1) ABSTRACT.

The object of law of limitation is in accordance with the maxim, interest "reipublicae ut sit finis litium"¹ which means the interest of State requires that there should be an end to litigation. 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 party's own inaction, negligence or laches.² But there can be circumstances where due to his physical or mental disability he is unable to file the suit or make an application. In such cases the law must not be the same and special privileges and relaxation must be given to the persons undergoing legal disability. The Limitation Act mainly helps the defendants as it bars the filing of suit or making of application after the expiry of the limitation period. But in some cases Limitation Act even comes to the rescue of the plaintiff also and the same circumstances give keys to enumeration of section 6 and 7 in Limitation Act, 1963.³

This article is an attempt to critically analyse rules relating to the concept of legal disability. It also deals with the various components of this legal concept in depth, its relationship with other sections and sub-sections in the Limitation act, the relation this concept shares with other laws like that of Indian Majority Act of 1875, the Code of Civil Procedure 1908 etc., important and relevant case laws that have shaped and re-shaped this concept over the years, the

recommendations of the Law commission among others as well as a conclusion.

1.2) INTRODUCTION.

Background

"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 law of limitation is basically and prima facie, a rule of procedure, stating thereby the remedy can be exercised only within a limited period and not subsequently. It does not create any right or create causes of action. Similarly it should be read in a sense that limitation as distinguished from prescription merely bars remedy but does not destroy the right."³

Purpose

"Sec.3. of the Limitation Act lays down general rule of limitation and declares that every suit, appeal, or application filed after the period of limitation shall be dismissed. This general rule however is subject to certain exceptions. Special circumstances enumerated in Sec.4-24 enable proceedings to be instituted after the lapse of the period of limitation. Sec.6&7 provide that where a person or one of several persons is under legal disability (minor, insane or idiot), he may file a suit or an application within the same period after the disability (minority, insanity or idiocy) has ceased. Such disability must exist at the time from which the period of limitation is to be reckoned. But once the time has begun to run, subsequent disability will not stop. (Sec.9)."

Justification of Study

"The law of limitation gives a clarion call that court cannot assist those who are lethargic, apathetic or prone to sleeping over the matter.⁴ So, that being the position and specialty of law of limitation, the provisions of this act has to be construed strictly. Equitable considerations are out of place and the strict grammatical meaning of the word is the only

¹P Ramanatha

Aiyar's Concise Law Dictionary, page

674, Lexis Nexis Fifth Edition.

² *Rajindar Singh v. Santa*, AIR 1973 SC 2537.

³ *Kashiram v. Kundanlal*, AIR 1956 All 660 (DB).

⁴ *First National Bank v. Sant Lal*, AIR 1959 Punj 328

safe guide⁵. The limitation for institution of a legal action is a limitation on the availability of a legal remedy during a certain period of time. Different periods are prescribed for various remedies. The idea is that every legal action must be kept alive for a legislatively fixed period of time. The object of legal remedy is to repair a damage caused by reason of a legal injury suffered by the suitor⁶.”

1.3) LITERATURE REVIEW.

The literature review of this paper is based on books, Law Commission of India Reports, research papers and articles for both content and reference purposes. These are the basic foundation on which this paper has been based on. They are as follows:

1.3.1) BOOKS

1. **“Takwani, C.K., Civil Procedure Code with Limitation Act, 1963, Seventh Edition, 2013”** talks about the legal disability by highlighting the general rules of limitation and the special circumstances, this book was used for understanding the basic concept and the explanation of the provisions under Sec. 6, 9, 8 and 9 of the Limitation Act, 1963.
2. **“First Division- Suits by U N Mitra, Dr. H R Jhingta, Shakil Ahmed Khan and Suhaas R Joshi, Tagore Law Lectures U N Mitra's Law of Limitation and Prescription, (15th Ed),”** talks about the scope and applicability of the legally disabled persons in the Indian Civil Cases. This paper was used as a background of the Sec. 6 & 7 of the Limitation Act, 1963, and also to understand the periods of limitation for each instance.
3. **“Edward Meek's Everyman's Legal Guide: A Synopsis of Canada and many Subjects: (6th Edition), 1920.”** This book deals with the special evolution of various kinds of laws and a part of it deals with laws relating to persons suffering from legal disability in various countries. Here, it clearly and broadly talks about the origination of such laws in England and how the Britisher's implemented such laws in India, this was used in the introductory part of the paper.

1.3.2.) ARTICLES

1. **“Critically Analysing Rules Relating To Persons Suffering From Legal Disability by Saurabh Kumar, WBNUJS**

Publication,(2011)” talks rules regarding legal disability in both The Limitation Act and Code of Civil Procedure, 1908, this material was used in this paper.

2. **“Legal Disability And Its Effect On Civil Law by Mohit Sharma, Indian Bar Association,(2017)”** the paper deals with the legal disability section in Limitation Act and explains them with case laws, which has helped a lot to understand the relevancy of cases for this paper.
3. **“Law Commission of India, Eighty Ninth Report on The Limitation Act, 1963,”** provides the scheme, object, scope and interpretation about the Limitation Act; this paper used the particulars to explain the credibility and the reason for such separate rules of filing a suits and E.P.
4. **“M. Oliver, Discrimination, Disability and Social Policy in M. Brenton, C. Jones (Ed.) Year book of Social Policy 74ff (1984-1985),”** explains the different types of legal disability and on what grounds along with their extent in details, along with explanation as to such laws should be made or not for the benefit of the society. The paper looked only at the explanation provided of categories of persons suffering from legal disability.
5. **“Disability, Discrimination and Equality of Opportunities: A Comparative Analysis of the Legal Framework by Parmanand Singh, 45 JILI (2003) 173.”** Here, the author talks about the disability stigma with help of the social relations theory and the concept of ‘disability equality’. This paper borrowed from it the necessity of such laws and when further on to formulate suggestions for an easier and better civil proceeding system.
6. **“Len Barton Sociology, Disability Studies and Education: Some Observations in The Disability Reader Social Science Perspective 53-59(1998)”** talks about how the society should revolve around the disabled persons, it also highlights the legal requirements and need for provisions. The paper dealt with Indiana SC judgement as the hypothesis of this paper; Barnes v. A.H. Robins Co. Inc., where it highlighted that strict application of the Limitation Act seriously can lead to social injustice to the disadvantaged-legally disabled. This paper was used for reference purposes.

⁵ *The Ramanathapuram Market Committee, Virudhu nagar v. East India Corporation Ltd., Madurai*, AIR 1976 Mad 323

⁶ *Shaikh Layak v. State of A.P.*, (1981) 2 Andh. WR 64.

7. **“The Disappearing Rights of Plaintiff Under a Legal Disability by Roger L. Pardieck, Indiana Law Review 20 Ind. L. Rev(1987),”**has a critical study on the disability laws and highlights the types and scope of disability laws in brief which was used for reference and further researched on, in this paper.
8. **“Doing the Right Thing versus Disability Rights: A Response to Ellen Barton by Cynthia Lewiecki- Wilson, Miami University, Vol. 21, No. 4 (Fall 2001), pp. 870-881,”**this paper in details dealt with the legal standing of these disqualified persons under law, due to their incapacity, yet law providing them the position in such a manner that it provides them with sufficient advantages. This paper took notice of The Law Commission Report, which helped the researcher in this paper.
9. **“Advocacy for Mentally Developmentally Disabled Persons published in Mental Disability Law Reporter, Vol. 2, No. 6 (MAY-JUNE, 1978) by American Bar Association,”** it talks about the plight of the mentally challenged persons in general but also takes into consideration their legal rights like, filing suits etc., the paper helped the researcher to study in depth about the laws of legal disability especially, with regards to lunatics and idiots, and also their cassation effects.”

1.4) PROBLEM STATEMENT.

Every suit instituted, appeal preferred and application made to the court of law should be within a prescribed time period, for the interest of justice. In some cases, only with a specific number of people this rule does not apply as they are different from the rest due to their physical and mental disabilities, arising at that point of time. They need to have a separate standing so that their interests can be met by the law. The law looks into meeting the needs of the people equally and that uniformity is served. Therefore, these categories of people (minor, person of unsound mind and dead) have been given a special exception when it comes to this. These people can institute a suit, prefer an appeal or make an application for the same time period as a regular person, but after their disability comes to an end. The extension of time period is given till their disability ceases or is inoperative.

1.5) RESEARCH PROBLEM.

“The research questions for this paper would specifically be confined to the aspects below, in order to reach the purpose of the study:

1. Who are the kinds of persons suffering from legal disability?
2. Why is it necessary for them to enjoy special provision under the Limitation’s Act?
3. What rules apply in case of dead person and disability of one of several persons under Limitation Act, 1963?
4. Analysis of the Limitation Act along with the reasoning for such exceptions?”

1.6) RESEARCH OBJECTIVES.

“The objective of the study mainly aims to achieve the purpose of understanding the key issues and correctly highlighting it with adequate explanation. The idea is to place a decided path so as to attain a set goal. They are as follows:

1. To explain the different types of persons suffering from legal disability and on what grounds has both Code of Civil Procedure, 1908 and Limitation Act, 1963 made special provisions for them.
2. To analyse what rules regard to these people suffering from legal disability and whether every person, under each category of legal disability are treated equally or have differential treatment.
3. To reveal the importance and need for the privileges provided to persons suffering from legal disability individually or one of several persons when it comes to both filing of suit and execution proceedings.
4. To elucidate the procedure along with rules and regulations when it comes to filing of suit by a legally disabled person and how is that different from that when it comes to execution proceedings in the civil courts of law.
5. To elaborately deal and critically examine the position regarding legal representatives filing suit in case of dead persons and also to highlight whether there exists any exception to the general rules relating to persons suffering from legal disability.”

1.7)“RESEARCH METHODOLOGY.

The research design encompasses the methods for the collection, measurement and analysis of data related to the research objectives. The research method adopted for the approach of this paper is strictly concentrated to Doctrinal method of research. The researcher will be using a number of combinations of methodologies for this paper. The non-empirical

research being an exploratory design mainly concerned with the legal rules and process. The research design chosen for this study is restricted to secondary sources of data collection.”

“Descriptive research methodology shall be used while explaining kinds of persons suffering from legal disability together with the importance and credibility of such regulations. Analytical research methodology shall be applied in case critical analysis and drawing relevancy of the rules regarding filing of suit and execution proceedings regarding the different categories of legally disabled (minor, lunatic or idiot, unborn) along with exploring the paradigm of several person’s suffering with legal disability and the rules of legal representatives in case of dead persons, with the help of case laws. The use of Associational research methodology will assist to highlight the general principles and their exceptions in case of the privileges relating to this special category of people. At the end, the Comparative method of research coupled with conclusive research methodology will indicate the influence and reasoning behind provisions under the Code of Civil Procedure, 1908 and Limitation Act, 1963.”

1.8) SIGNIFICANCE OF STUDY.

“The significance of the study of this paper is that it is the primary independent on floor work to investigate and examine the topic with the help of a suitable hypothetical system. The crucially of this paper being, this area has been less explored in the legal regime in India. There exists an acute paucity of brief and comprehensive articles that deals with the aspect of persons legally disabled under civil laws highlight all the aspects of it (rules relating to dead persons, through their legal representatives and one of several persons is legally disabled). The prior literatures are humungous and deal with this concept in a concise part. This paper being precise yet deals with all the aspects and elements relating to this topic and critically examines the same with the help of case laws in India. It also aims at elucidating the legal reasoning for such provisions and the privileges to them. It not only deals with certain exceptions from the general rule in The Limitation Act but also highlights the Law Commission recommendations and provides suggestions.”

“This paper explores the reasoning behind such laws and provides a clear picture of the concepts with illustrations for better understanding of the readers. The idea is to deal exhaustively with the basic notion of legally disabled persons, wherefore it is written in a step-by-step method so that comprehension is clear. Therefore, Firstly it

aims to help the law students, graduates and practitioners as it will give a quick idea of the topic all at once without the necessity to look for wide variety of books covering small portions of it. Secondly, it is going to help the legal community as it explores the legal reasoning behind law making, for this topic. Thirdly, it might interest the group of legally aware individuals who want to more of this area, causing less confusion and even researchers who may further want to researchers on this topic. Fourthly, it helps the society and especially, the legal community considering its contribution in legal literature.”

1.9) SCOPE AND LIMITATION

“The scope of this paper is based on Doctrinal research; therefore information is mostly obtained from books, commentaries, law commission reports, case laws of Indian courts, research papers and articles. The purview also extends to elucidation of facts, concepts, illustrations, theories and case laws which throws light on the main object of the paper.”

“The extent of this paper is to mainly explore the legal perspectives as regards to persons suffering from legal disability under The Limitation Act, 1963 with the help of illustrations and examples. It will also provide explanation to each type of disability under the act, with the reasoning as to why are they given a different stand than the other ordinary persons. At the end, it draws a conclusion with the help of law commission reports and suggestions.”

“The limitations of this study are as follows:

1. The paper is only explanatory and aims at highlighting and explaining the categories of persons legally disabled under Limitation Act, 1963 and their privileges.
2. This paper does not provide extensive and exhaustive detailed explanation on all the topics that has been covered in this paper. The scope of the paper is limited to the mentioned areas and this paper does not stand as the only substantial information provided in the subject matters.
3. The case laws used in this paper are strictly restricted to their origination from the Indian Criminal Courts, at different point of times.
4. Not all relevant and important cases relevant to the topic have been taken into consideration. The researcher has dealt with only one case from each topic according to their relevance and her discretion.
5. This paper does not provide any contradiction to the judgements provided by the courts, while elucidating the case laws.

6. This paper only deals the area of study only with special and exclusive relevance only to The Limitation Act, 1963 and Code of Civil procedure, 1908.
7. This paper does not draw any connection, contradiction or comparison to any laws prevalent in any other country relating to category, rules or exceptions.”

CHAPTER –II

(Minor and the Limitation Act).

2.1 Who is a minor?

“The Majority Act of 1875 (Indian Majority Act, 1875 earlier)⁷ states that every person domiciled in India shall attain the age of majority on completion of 18 years and not before. Unless a particular personal law specifies otherwise, every person domiciled in India is deemed to have attained majority upon completion of 18 years of age. However, in the case of a minor for whose person or property, or both, a guardian has been appointed or declared by any court of justice before the age of 18 years, and in case of every minor the superintendence of whose property has been assumed by the Court of Wards, age of majority will be 21 years, not 18.”⁸

2.2 “Minors Legally Disabled- Need for care (Duty of the Court).

- 1) Protection of children’s rights, regarding involvement in involvement in civil judicial proceedings. State authorities must ensure the protection of children’s rights.⁹
- 2) The evolving capacity of children to progressively exercise their rights; and provides that respect for their best interests constitutes a primary consideration prevailing over any other possible interests.
- 3) The child’s best interest is an indefinite legal concept under Indian legislation, defined by the judiciary on a case-by-case basis.¹⁰
- 4) There are no binding rules on how judges must determine the best interests of children involved in civil judicial proceedings. Thus,

this determination is made through a subjective assessment based on the testimonies heard and the knowledge and experience obtained during the proceedings, bearing in mind the specific characteristics and context.¹¹

- 5) The following are some of the issues that judges may take into account when assessing the best interests of a child in a case:¹²

- The satisfaction of the child’s basic material and spiritual needs.
- The child’s wishes according to his/her maturity.
- The maintenance of the child’s material and spiritual status.
- The age and sex of the child.
- The possible physical and psychological effects that any changes may have on the child.
- An analysis of the child’s expectations for the future.

6) The special measures applying to children established in Indian civil laws are general and addressed to persons under 18 years old, with minor exceptions, therefore it is at the judge’s discretion to assess the maturity and capacity of a child to express his/her views.¹³ Additionally, there are no specific rules, guidelines or protocols that concretely specify the means to exercise this right effectively.¹⁴”

2.3 Need for protection of minors in civil proceedings.

1. Vulnerability.

The law presumes that minors are vulnerable due to the lack of protection of their interests in the legal sphere. Minors are taken to believe does not have the perfect knowledge and understanding of the implications that law brings upon them and therefore, they need to be given immunity and special status when it comes to filing a suit to enjoy their fruits in civil suits.¹⁵

2. ‘Best Interest Principle’.

Protection of minors is one of the most important principles as has been elucidated by law. Minors cannot take care of their own betterment and benefit; it is therefore the duty of law to see the best interest of the minor. The law also makes sure that the best is provided to the minors.

⁷ Puja Sanjesh, *Minor’s in Civil Proceedings*, LAW & RESOURCE JOURNAL, JAIN PUBLICATION, (22nd Mar. 2011, 6:05 PM)

⁸ Sushant Sharma, *Children’s in Judicial Proceedings*, CAMBRIDGE PRESS PUBLICATION, (15th Sep. 2015, 1:16 PM)

⁹ Pushkar Shekhar, *Minors in Trial: A Critical Study*, PENGUIN PUBLICATION, (21st Oct. 2014, 9:28AM)

¹⁰ Hobert Williams, *Study on Children’s Involvement in Judicial Proceedings*, ROUSEE PUBLICATION, (9th Apr. 2013, 11:40AM)

¹¹ Hobert Williams, *Study on Children’s Involvement in Judicial Proceedings*, EUROPA PUBLICATION, (10th Aug. 2016, 11:15A)

¹² Mohd. Umar, *Minor’s in Law- A Study*, LEGAL STUDY JOURNAL, POSTDESK BOOKHOUSE, (21st Mar. 2018, 4:05 PM)

¹³ *supra* note 7, at 13.

¹⁴ *Newton v. Edgerly* (1959) 1 WLR 1031.

¹⁵ *R. Leslie Ltd. v. Shiell* (1914) 3 K.B. 607.

3. Not able to take rational decisions.

The minors are below 18 years of age, are prone to get swayed and not take reasonable decisions for themselves. A minor can normally sue with the help of a legal guardian. It is the guardian who takes up steps for him, therefore at attaining majority he should be given the right to decide whether decisions taken during that time was beneficial to him or not.

4. No contractual capacity.

A minor can enter into a contract for receiving the benefits that is due to him and also for performances that suits his best interest, but a contract entered by a minor for fulfilling certain functions are not void-ab-initio, as a minor cannot understand its implications and he can be advantage of.

5. No liability.

A minor does not have a liability to perform the functions of a contract entered into by the guardian if it does not benefit him. After attaining he should be given the choice to proceed against it or not. He also has the right to challenge it in the court of law.

2.4 Why does minors have special provisions under the Limitation Act?

1. "As held in **Sudhakaran v State of Kerala**¹⁶, child needs special protection due to tender age the child must be a subject to certain traumas in court proceedings therefore, it is a need to have a comprehensive academic training, not only legal, but also in other disciplines such as child psychology."

2. "An Indian law recognises the right of children to be heard and to express views in civil judicial proceedings. No statutory limits for expressing views are set in the Indian legislation, but the judicial authority cannot deny a child's right to be heard through a reasoned opinion after attaining an age of majority was elucidated in the case of **State of M.P. v. Ahmadull**¹⁷."

3. "The law recognises children as holders of rights with a progressive ability to exercise them; this evolving capacity is not expressly defined or developed in the legislation on civil judicial proceedings is one of the most important principles when it comes to children as held in **Shera Wali Mohammed v. State of Maharashtra**¹⁸."

4. "The child's dignity, right to express his views. The right to dignity is recognised to all human beings, without making any differentiation on the

basis of age was recognised in **Dahyabhai Chhaganbhai Thakker v. State of Gujarat**¹⁹."

5. "Since civil court judges dealing with proceedings involving children lack this special training, they use specialist child psychologists or children's social workers to determine what is best for the child, **Elavarasan v State**²⁰."

Reasons for relaxation in Limitation Law.

1. They cannot be sued.
2. Under legal guardianship.
3. Protection of interest of the child.
4. Best opportunity to every person.
5. Procedural laws cannot limit the rights.
6. Minor can be easily manipulated and taken advantage of.

Minor for the purpose of Sec. 6 of the Limitations Act include unborn child in the womb of the mother. This has been done to create a leverage for the unborn child and his legal rights.

CHAPTER-III

(Unsound Mind – Insane or an Idiot and the Limitation Act).

3.1 Who is of an Unsound Mind?

Unsound "mind is a term that denotes lunacy and insanity. Under law, a person with an unsound mind is considered incompetent to go to trial. The term is used in statutes. Mental illness is a medical condition while unsoundness of mind is a legal finding."

The "Indian Contracts Act, 1872 is the only law in the country that defines a sound mind."

"According to the law, a person is of sound mind if at the time of making a contract, he is capable of understanding it and forming a rational judgment as to its effects upon his interests".²¹

Thus, "mental illness is neither necessary nor sufficient for a finding of unsound mind."

"Clause 5 of the Mental Health Care Act, 2017 says determination of a person's mental illness shall alone not imply or be taken to mean that the person is of unsound mind unless he has been declared as such by a competent court".²²

3.2 Categories of persons suffering from Unsoundness of Mind.

¹⁹1981 (7) SCC 110.

²⁰(1964) 7SCR 361.

²¹Gerber RJ. The Insanity Defense. Port

Washington, New York: Associated Faculty Press; 1984.

²²Asokan TV. Daniel McNaughton (1813-1865) Indian J Psychiatry. 2007;49:223-4

¹⁶2010 (10) SCC 582.

¹⁷AIR 1961 SC 998.

¹⁸(1973) 4 SCC 79.

A. "Lunatic

Lunatics are called as someone who has generally unusual or asocial behaviors. The persons who have breaks between their sanity and insanity, their brains do not perform in the correct state and no particular medical procedure can explain their health. They have abnormal and un-explained procedures. In the earlier period of time they were also known as the people who are 'moonstruck'."

B. "Unsound

Not performing in the correct state of mind. They cannot understand the complexities of the judicial procedure and completely unaware about their benefits and interests. This cannot be confused with medical insanity. The person should lack the reasonableness to tell part what has to be done or not."

C. "Insane

Insane is not a psychological or psychiatric term at all. Essentially insane is defined as the inability to know that one's actions are wrong and if it is known, the inability to control them in accordance with the law. A person who is insane is unable to tell the difference between right and wrong."

D. "Idiot

Idiot is a term used to describe someone who is intellectually challenged, or has poor intellectual abilities. It means an ignorant or unschooled person to those so defective that their mental development never exceeds that of a normal child of two years of age."

3.3 Why does people of unsound mind have special provision under the Limitation Act ?

1. "It was held in **T.N. Lakshmaiah v. State of Karnataka**²³ that the major criteria (mental illness requirement) mean the person must be suffering from mental illness during the commission of act. Minor criteria (loss of reasoning requirement) mean the person is:

- Incapable of knowing the nature of the act or
- Incapable of knowing his act is wrong or
- Incapable of knowing it is contrary to law."

2. "A court is concerned with legal insanity, and not with medical insanity. A person, with mental illness is called medical insanity, however "legal insanity" means, person having lost reasoning power. The term legal insanity also refers to the mental state of a person at the time of committing crime and nothing else. This is purely a legal concept and is unrelated to the various psychiatric diagnoses. This was held in **Surendra Mishra v. state of Jharkhand**.²⁴"

²³2002, 1 SCC 219.

²⁴2011, 11 SCC 495.

3. "**Ratan Lal v. State of Madhya Pradesh**²⁵ it was upheld that the mere fact that the accused is old and his brain is not functioning in the current state is no reasoning at all for claiming the immunity under disability. Only act that rendered his intellect weak and affected his emotions or indulges in certain unusual acts, or had fits of insanity at short intervals or that he was subject to epileptic fits and there was abnormal behaviour or the behaviour is queer are not sufficient to attract that he is of unsound mind."

Reasons for relaxation in Limitation Law.

- No clear understanding.
- Lack of coherent thinking.
- Separate standing from the rest of the public.
- Need for external- clinical help.
- Can be easily taken advantage of.
- Can be easily manipulated and coercion.
- Laws cannot violate the legitimate rights of the people.
- The person representing the person with an unsound mind may have hidden interests.
- The law should give adequate opportunity to a person to present his case, before the court for receiving the benefits that accrues to him.

Therefore, in the light of the above discussion it can be concluded that the Limitation's Act does not give any special benefit to the person suffering from unsound mind, it rather puts them him in the similar pedestal as an ordinary person by providing him adequate opportunity.

CHAPTER-IV

(Analysis of Minors, Unsound Mind Persons and Dead Persons in Limitations Act)

4.1 "Suits by or Against Minors and Persons of Unsound Mind

- Since a Minor is not capable of entering into a contract, even suit, which is instituted by him, will be filed in his name by his next Friend, i.e. any other person who has attained majority in some way.
- The person who file the suit to protect the interest of the minor, does not become a part of the proceedings. He is in the shoes of a person whose job is to represent the minor in this case.
- The court in order to prevent any kind of misrepresentation and fraudulent ways in the suit the person representing the minor has to provide a security.

²⁵1970 (3) SCC 533.

- The person who files the suit on behalf of the minor should be above 18 years of age, he should not be disabled under law himself, as in of unsound mind or minor.
- The person should not have any hidden agenda of deriving some benefit.
- The person can be a guardian who has been duly appointed by the court for the benefit of the minor.’
- The court may direct the costs incurred by such officer in his capacity as guardian to be borne by :
 - Any of / or all parties to the suit, or
 - Out of property of the minor, or
 - Out of Any fund in the court in which minor, is interested.
- Once the minor turns major he can proceed with such suit filed or opt out.
- In case he opts out, he can apply for an order to dismiss the suit.”

The same rules apply for the person of unsound mind, once he gains back his sense to understand what he is beneficial for him and the complications of the suit procedure.

4.2 Provisions for ‘DEAD’ in the Limitations Act.

Under Section 6 of the Limitation’s Act talks about the dead and how the time limit affects. The section talks about three situations in which this section applies in case of ‘Death’ of a person.

1. “The act prescribes that when the person has to file a suit and the person is considered to be dead, then his legal-representatives may institute the suit on his behalf or they can also make an application within the same time period as prescribed after the death of the person, as would otherwise have been allowed from the time which is deemed to have been given.”

2. “In case, the legal representatives as referred above and in Sec. 6(3)²⁶ at the death of the person is affected by any other disability as mentioned under Sec. 6 which could be unsoundness of mind etc., then he shall also be given the same time exception as has been mentioned in the section prior to this. Therefore, he can also claim a subsequent exception of time for his disability under the application of Section 6 of the Limitations Act.”

3. “When the person under disability dies after the disability ceases but within the period allowed to him under this section, his legal representatives may institute the suit or make the application within the same period after the death, as would

otherwise have been available to that person if had not died.²⁷”

4.3 The Purpose of the Limitation Act and Legal Disability.

The purpose of the Limitation Act is to protect the interest of the legitimate demands and needs of the persons protected under the law.

A. “THE OBJECT.

The object and utility of law of limitation has never been a matter of doubt or dispute. A law of limitation is a statute of repose, peace, and justice. It is a matter of repose because it extinguishes state demands and quiets title. It seeks to obtain peace and security by raising a presumption that a right is not exercised for a long time is non-existent. It is required to do justice in as much as it takes into consideration ground reality that the right of the parties should not be in a state of doubt, dispute or uncertainty.²⁸”

“It is founded on public policy with aim of securing peace, to suppress fraud and perjury, to quicken diligence and to prevent oppression.”²⁹

Statutes“on limitation are based on two well-known legal maxims:

(i) The interest of the State requires that there should be an end to litigation.

(ii) The law assists the vigilant and not the one who sleeps over his rights.³⁰”

There“are three cogent grounds in support of the law of limitations:

(i) long dormant claims have more cruelty than justice in them.

(ii) a defendant might have lost evidence to disapprove the stale claim; and

(iii) a person with good cause of action should pursue it with reasonable diligence.”

The limitations act does not cause any disruption to the normal procedure of the law, the main action of the limitation act to help the people with a legitimate cause.

B. “THE TIME LIMIT IN LIMITATIONS-EXCEPTIONS.

The Law of Limitation is simple, certain and rational. The period of limitation should neither be too long nor too short. It should be in consonance with the outlook and notion of laymen. Section 3 of the Limitation Act enacts that every

²⁷Section 6 of The Limitation Act, 1963.

²⁸Basawaraj v.Land Acquisition Officer, (2013) 14 SCC 81.

²⁹NavRattanmal v. State of Rajasthan, AIR 1961 SC 1704.

³⁰Trilok Chand Saini v. State of Rajasthan, AIR 1972 SC 1935.

²⁶Section 6(3) of The Limitation Act, 1963.

suit instituted, appeal preferred and application made after the prescribed shall be dismissed, although limitation has been set up a defence. A plea of limitation thus affects the jurisdiction of the court. A finding in favour of a party raising such plea ousts the jurisdiction of the court.³¹

“Section 6 of the Limitation Act provides that no limitation will apply to a case in which person seeing was disqualified at the time when the cause of action arose provided the suit is brought within 3 years of the time when the disqualification ceases. Section 6 gives minors and lunatics an extended period for filing a suit or application.”

“Limitation begins from the date of accrual of cause of action, but here, it does not run from the date of accrual of cause of action but from a subsequent date, when the disability ceases.”

Time period:

1. Minor- Till a minor turns major, after reaching the age of 18 years.
2. Person of Unsound Mind- Till the unsoundness ceases to exist.
3. Dead- Can be filed by a legal representative, with the normal time period after the persons death.

C. SCOPE.

- Applicable for execution of decrees.
- No other disability of a person should be allowed rather than the one in which are explicitly mentioned in Section.6.

D. “COOLING OFF PERIOD.

Therefore, this concept can be described as some kind of cooling off period wherein individuals or their legal representatives of any form cannot file suits because of any legally induced disability- either insanity, idiocy or minor age. Once this disability is over, only then can parties file suits or their legal representatives can. This legal concept can be termed as a kind of eligibility criteria that allows or disallows parties from contesting their legal claims. This area of law can termed to be strictly time bound and allows concessions only when there is existence of some extra-ordinary circumstances that justifies any corresponding extension.”

CHAPTER –V

(Conclusion and Suggestions.)

“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 party’s own inaction, negligence or laches.”³²

Every suit instituted, appeal preferred and application made to the court of law should be within a prescribed time period, for the interest of justice. In some case, only with a specific number of people this rule does not apply as they are different from the rest due to their physical and mental disabilities, arising at that point of time. They need to have a separate standing so that their interests can be meet by the law.”

The law looks into meeting the needs of the people equally and that uniformity is served. Therefore, these categories of people (minor, person of unsound mind and dead) have been given a special exception when it comes to this. These people can institute a suit, prefer an appeal or make an application for the same time period as a regular person, but after their disability comes to an end. The extension of time period is given till their disability ceases or is inoperative.

“SUGGESTIONS.

A few suggestions could be as follows:

- i) The court should look into the records of such disability with precision and scrutiny, as prove of such disability.
- ii) The disabled person or the legal persons should submit an application with the details with prove of age (minor), details medical history(lunatic) and death certificate (dead) along with an application under Sec. 6 to claim such benefit.
- iii) The court should also look into the implications for allowing such late claims and appeals by such persons.
- iv) As a matter of procedure the current state of the person availing such benefit under Section 6, should be made sure that he is at the moment, in a correct state of mind and body to eliminate any matters of coercion etc.

³¹Foreshore Coop. Housing Society Ltd. V. Praveen D. Desai, (2015) 6 SCC 412.

³²Rajindar Singh v. Santa, AIR 1973 SC 2537.