



# **JHARKHAND**

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**Judicial Services Exam**

**CIVIL JUDGE CADRE**

**High Court of Jharkhand**

**Law**

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**Volume - 2**



# JHARKHAND JUDICIARY SERVICES

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*Contract of Sale*

*Conditions & Warranties*

*Passing of Property*

*Transfer of Title*

*Performance of the Contract*

*Right of Unpaid Seller Against Goods*

*Limitation Act*

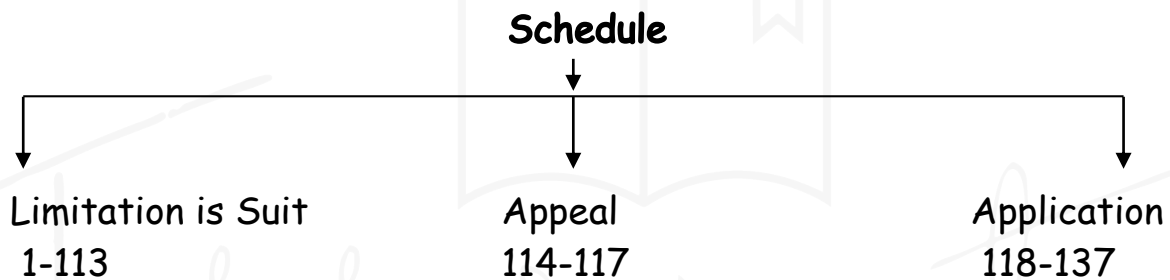
# Limitation Act, 1963

- \* Act no 36 of 1963
- \* Consent of President -> 5 Oct, 1963
- \* Came in force -> 1 Jan, 1964
- \* Before this limitation Act, 1908

It is divided into two parts:

- a. Section 1-32
- b. Articles/schedule 1-137

This Act applies on criminal as well as civil (Appeal & Application)



## Suit

1. Accounts 1-5 (3 years)
2. Contract 6-55 (3 years)
3. Declaration 56-58 (3 years)
4. Decree 59-60 (3 years)
5. Immovable Property 61-67 (Generally 12 years except 61, 63 where mortgage 30 years, 12 years 3 years)
6. Movable Property 68-71 (3 years)
7. Torts 72-81, 72-81 (1 years), 82-84 (2 years), 85-91 (3 years)
8. Matter Pertaining to Trust 92-96, 92, 94, 96 (12 years), 93, 95 (3 years)
9. Miscellaneous 97-112, 97-100 (1 years), 101-105 (3 years) 106-110 (12 years), 111-112 (30 years)
10. Where no period of limitation sec 113 (3 years)

## Appeal

Criminal	Civil
114-115	116-117
Sec 114: Wherever there is acquitted than appeal in 90 days. Wherever mater of special appeal = 30 days (old CrPC 417, new CrPC 378)	Sec 116: Appeal in HC → 90 days. Appeal to other Court → 30 days
Sec 115: Wherever there is conviction of death penalty = 30 days Wherever other matter <ul style="list-style-type: none"> <li>a. Appeal in HC → 60 days</li> <li>b. Appeal in other Court → 30 days (JM-SJ)</li> </ul>	Sec 117: From one HC to another (SB → DB) = 30 days

## Applications

Sec 118	Summary procedure	10 days
Sec 119	To set aside award in arbitration act	30 days
Sec 120	Application to legal representatives	90 days
Sec 121	To set aside abetment	60 days
Sec 123	To set aside ex parte order	30 days
Sec 124	Review	30 days
Sec 131	Revision (CR/CI)	90 days
Sec 132	Certificate to appeal in SC	60 days
Sec 136	Execution of decree	12 years
Sec 135	Mandatory injunction	3 years
Sec 134	Possession of purchase	1 year
Sec 137	Where there is no period of limitation	3 years

Limitation act is based on two Latin maxims

- a. Interest replica ut sit finis litym i.e. it is in the interest of state, that all suit come to an end.
  - b. Vigilantibus nor dormantibus jura subverient i.e. law help only those who are vigilant and not of those who sleep over their rights.
- \* It applies to courts but not on tribunals (they have here own procedure)
  - \* It comes in con-current list entry number 13.
  - \* It is a procedural law.
  - \* Partied neither can create nor end (refer sec 28 of ICA).
  - \* If made an agreement by which time period is increased or decreased such time period is void.
  - \* It applies to criminal law also.
  - \* L.S. Synthetics Ltd. Vs Fair Growth financial services Ltd.
  - \* It is a exhaustive law.(no need of other law)
  - \* It is lex-feri i.e. law of the forum.

Q. What do you understand by period of limitations and are there any exceptions? (sec 3-5)

Ans: **Section 3:**

- \* Wherever any suit appeal or application if presented after period of limitation, then it shall be dismissed.
- \* Although it is not pleaded/objected in defense.
- \* It is the duty of the court to see.
- \* This rule is absolute i.e. parties cannot change this time period.

In following circumstances matter shall be considered to be instituted:

a. General rule	When it is presented before proper officer
b. Wherever matter is of insolvent	When the applies person (proper or indigent)
c. Wherever matter is of company	When matter is before official liquidator.



d. Wherever matter is of set off (O VIII R6)	When suit is instituted.
e. Wherever matter of counter claim (O VIII R6 A-G)	From the date of counter claim
f. Wherever application by notice of motion in HC (with special permission)	When it is given to proper officer

**Sec 4:** Wherever period of limitations is expiring & if court is closed (Sunday) then period of limitation shall be extended till the period re-opens.

- \* If court closes before its regular time then it shall be considered closed.

**Sec 5:** Wherever there is any appeal or applications, other than following:

- \* Application under order XXI CPC (execution of decree)]
- \* If matter is of suit then sec 5 of limitation act not apply, whereas O7, R6 of CPC apply.
- \* Wherever application then it shall be admitted only when there was sufficient cause that application could not be on time.
- \* If any person was misled by any order, practice judgment rule of HC then it shall be considered sufficient clause.

### Sufficient clause

Following is also considered sufficient clause:

- (i) Person is out of reach of court.
- (ii) It is bonafide mistake not neglect (land acquisition officer Ananth Vs Kanti ji).
- (iii) Wherever there is delay then delay for everyday has to be explained.
- (iv) Illness & party of pleader is not a ground if information could be given.
- (v) Ignorance of law is not an excuse.
- (vi) Poverty is not a ground.

(vii) If person is detained then sufficient ground.

(viii) If person is in armed forces and can't obtain leave then sufficient ground.

On following also period of limitation not apply.

- a. Industrial dispute act [sec 33 (2)]
- b. Probate
- c. Succession
- d. Religious endowment & trust

State of WB Vs Administrator

It is not a right but discretion of court.

**Q. What do you understand by legal disability? (Sec 6-8)**

**Ans.**

**Sec 6:** Wherever any person at the time of instituting suit or application is minor, insane, idiot.

- \* Then period of limitation shall commence after cessation of disability.
- \* Wherever any person had two or more disabilities (minor + idiot) then after cessation of both the disabilities period of limitation shall begin.
- \* Wherever disabled person dies then legal representative shall be given time.
- \* Wherever legal representative is also disabled then above rule shall apply.
- \* If before death person's disability ceases & after death he dies then legal representative shall be given remaining time period.

**Sec 7:** Wherever along with disabled person there is other person then:

- a. Where liability can't be discharged without consent of disabled person time shall stop for all.
- b. Wherever discharge can be without disabled person then time shall run for all.

The above rule applies on both moveable as well as immovable property.

Wherever mistaken happens in joint family there Karta can take decision without consent of others.

**Sec 8:** Wherever above matter then not apply on following:

- a. Not apply on pre-emption (because it apply to property).
- b. At the cessation of disability not more than 3 years.

### Numerical (Practical)

It is the option of the person whether he takes the benefit v/s 6,7 or not.

- a. If no benefit taken -> refer schedule for time period
- b. If relief taken than -> sec 6+ sec 8

Eg. Period limitation v/s 136 -> 12 years

- a. Age of child 12 years

No benefit  $2+12=14$

Benefit  $(56+8)$

- b. If age of child is 16 years

No benefit shall be taken  $16+12=28$  years

**Q. Once period of limitation starts then subsequent disability can't stop it. Explain.**

**Ans.**

**Section 9:** This is the rule or English law, that once the period of limitation begins then subsequent disability can't stop because cause of action has arisen.

Once, cause of action has arisen then it can't be stated that person was disabled therefore he could not institute the case.

Difference between sec 6 & sec 9:

Section 6	Section 9
Disability is on the day of action.	Disability is after cause of action.

Elimonic Vs Morrison

SC held that period of limitation can be seen in two manner:

- a. Cause of action.
- b. Sound mind and majority.

\* **Raghu Veer vs Ram Chandar**

Wherever matter is of sale then that day shall be considered when willing officer gave permission.

The above rule has exceptions:

(i) **Sec 9 provision:** wherever there is letter of administration to the estate of creditor to the debtor then till the time of administrator period of limitation shall be suspended.

(ii) **Sec 12:** Wherever there is any suit, appeal or application then the date on which period of limitation it shall not be calculated.

Wherever matter of appeal, review application or revision then that day not included when judgment was pronounced.

\* same above rule apply to leave to appeal

\* same rule of award in arbitration & conciliation act.

(iii) **Section 13:** Wherever suit or appeal is done by indigent person (refer O33, O44).

Then that time period shall not be calculated when person bonafidely applied and later on filed suit with court fees.(It shall be considered as if court fees was paid at the first instance.)

(iv) **Section 14:** Wherever any person bonafidery sues and later on it is found that it was wrong jurisdiction.

Then such period shall not be calculated.

\* same rule shall apply for appeal & revision.

\* same rule in 23, R1&2 also.

(v) **Section 15:** wherever there is any suit or application which is stayed by injunction then that time period shall not be calculated.

wherever provisions consent or sanction is required then that time period shall not be calculated.

wherever matter is of possession then purchaser at the sale in execution of decree can exclude that time period when proceedings were done to set aside sale (O21, R89, 90, 81).

That time period shall not be excluded when defendant was absent from India.

(vi) **Section 16**: wherever there is a right to sue by against any person then:

- a. Before cause of action.
- b. Accrued on the death of person.

Then legal representative are capable to sue.

There are following exceptions:

- a. Right of pre-exemption (it is to property).
- b. Wherever matter is of possessions of immovable property.
- c. Hereditary property.

**Q. What is the effect of fraud & mistake?**

**Ans:**

**Section 17:** (refer ICA, for fraud & mistake)

- \* Wherever any suit or application which is based on fraud or mistake or any document which is fraudulently created or concealed.
- \* Then period of limitation shall not apply till by reasonable diligence fraud could not have been discovered.
- \* Wherever matter is of bonafide purchaser then he can sue if at the time of purchase he was unaware.
- \* Decree holder can also sue on the ground of fraud or mistake.
- \* Period of limitation up to 1 year from discovery of fraud or mistake.
- \* In Re. Marappa Gounder

these things are essential:

- a. There must be fraud.
- b. Plaintiff didn't know.
- c. Transition was bonafide and for consideration.

Wherever fraud is done then this shall also be seen whether party was in position of active confidence or not. (sometimes silence is also fraud)

Limitations	Easement by prescription sec 15 easement act
On expiry of period of limitation the remedy of person comes to an end and he can't go to court.	After expiry of time period person can obtain in right, generally 20 years if govt.: 30 years
It is procedural law	It is substantive law
Time period according to schedule	Possession shall be seen
It is a negative right because it ends the remedy and the rights also under some circumstances	It is a positive right.

Limitations	Latches
There is a time period	No time period
There is express provisions	Discretion of court
Against plaintiff	Against both the parties.

Limitation	Estoppels
Rule of law	Rule of evidence
Applies only on plaintiff	Applies on both the parties.

Period of limitation applies on second appeal also.

**Sec 10:**

Wherever any property which is vested in trust for a specific purpose the no suit shall lie on that person and neither suit shall be barred due to expiry of time.

Wherever Hindu, Muslim, Buddhist religious or charitable endorsement then:

- a. If any property is for specific purpose is vested.
- b. Manager shall be considered trustee.

**Section 11:** Wherever any suit at such place where act apply then although contract but period of limitation shall apply.

Agreement can be at following places:

- a. J&K
- b. Foreign countries

Law of limitation is lex fori i.e. law of court.

There are exceptions to this rule:

- a. If extinguished by contract (Para 20 of contract; law of India shall not apply)
- b. Both the parties were domiciled in that state during period of limitation.

**Q. What is the effect of acknowledgment & payment of money?**

**Ans.:** Acknowledgement

Payment

18

19

20



**Section 18:**

- \* Wherever in any suit or application before expiry of period of limitation any person who is in liability gives acknowledgment of such right or property.
- \* Signature shall be of that party or authorized person by whom liability or title is derived.
- \* Then its effect shall be fresh period of limitation has commenced from the day of acknowledge.
- \* Acknowledgment must be in writing.
- \* If no date is given then oral evidence be given (refer sec 91-92 of IEA).
- \* Statement is sufficient, even if it is with following then also no effect:
  - a. Date of return of payment.
  - b. Refuse to perform/deliver.
  - c. Statement of set-off.



- \* It excludes execution of decree.
- \* Signature of person or dully authorized agent.
- \* SI mazed Vs Durga Prasad
- \* LC mills Vs Alum corporation of India.
- \* There no fresh period of limitation but limitation period is extended.
- \* Maksud Khan Vs Lala Balwant Prasad
- \* Acknowledgement must be during period of limitation.

**Section 19:**

- \* Wherever payment on debt or interest on legacy.
- \* Then before period of limitation.
- \* Person or authorized agent.
- \* If makes payment
- \* Then fresh period
- \* Wherever payment is made than along with that there must be acknowledgment except where matte is before 1 Jan, 1928 where payment itself is sufficient.

Sec 18	Sec 19
On suit or application	On debt or legacy
Not apply on specific person	On that person who has right to payment
On acknowledgment	Payment & acknowledgment

Lakshmi Shettiar Vs A chettiar: the main difference is that sec 18 applies on all types of liability but sec 19 on only liability relating to money.

**Section 20:**

Followings persons are authorized to give acknowledgement:

- a. Wherever any person is in legal disability then legal guardian.
- b. Wherever matter is of trust or society then member or manager.
- c. Any person who is authorized by above (agent).
- d. Wherever HUF, there Karta

Wherever there are several partners, contractors, executioners, mortgagers then that person who is authorized. If not authorized then other shall not be liable.



**Q. Period of limitation ends neither the remedy nor the right. Is there any exception to this rule?**

**Ans.** The general rule is that delay defeats justice i.e. if a person comes after period of limitation then his remedy comes to an end but right remains i.e. by mistake or by extra judicial manner he obtains property, then he shall not return but set-off.

Person is stopped from going to court by period of limitation i.e. he shall execute by other manner.

It is based on two Latin maxims:

- a. Interest Pecunia Vt sit finis litum
- b. Vigilantibus nor dormantibus jura subvertent

The exception to this rule is **sec 27**. This is called the concept of adverse possession.

## Right

- \* Which extinguish right (negative rights). Eg. Sec 27
- \* In this right of possession of owner ends
- \* By which rights are acquired (positive). Eg. Sec 25, 26
- \* In this if a person for a long time enjoys then although that land has no owner then also right shall be acquired by prescription.

**Section 27:** As soon as period of limitation comes to an end then right of owner to sue for possession shall be extinguished. This is called adverse possession.

- \* Applies on moveable as well as immovable property.
- \* Immovable property- 12 years (refer 68, 69 in this Act)
- \* Moveable property – 3years.
- \* But for this there are few conditions:
  - a. Must be actual possession

- b. Must be continues
- c. Person should not have time
- d. Plaintiff must know about adverse possession.
- \* **SM Karim Vs BB Sakina-** there must be proof of adverse possession. Possession itself is not sufficient.

### Section 25:

- \* Wherever any person has used, light, air or other easement peacefully and without interruption.
- \* 20 years
- \* If matter of govt. 30 years
- \* Then this right shall become absolute and indefeasible.
- \* If any person had right to sue then he has to come to court within 2 years. (refer CrPC 145)
- \* That is when a person is dispossessed then he must come to court in 2 years.
- \* Without interruption means that interruption shall be considered which is for one year or more after.
- \* Wherever any, person has interrupted then it shall not be considered interruption except where owner give acquiescence for one year or more.

Section 26: Wherever any person the following time period shall not be calculated:

- a. Where he has obtained life interest or interest more than 3 years.
- b. Wherever he has possession with consent.

Wherever any person objects on above grounds then he has to come within 3 years of determination of rights.

Section 21: Wherever there is new plaintiff or defendant is joined, then period of limitation shall began from that date he has been the party (refer O, R10 CPC)

- \* If court is satisfied that it was bonafidely and by mistake then it can be from the date of institution of suit.

**Section 22:** Wherever matter is of continuing in nature the every moment is a fresh period of limitation.

**Section 23:** Wherever compensation is to be given regarding special damage (refer sec 73 of ICA ) then from that date on which special damage resulted.

**Section 24:** Calendar= Gregorian calendar (English calendar)

