



REFORMULATING LIMITATION LAW IN INDIA'S PRIVATE INTERNATIONAL LAW: JUDICIAL INNOVATION AND GLOBAL CONVERGENCE IN THE EXECUTION OF FOREIGN DECREES

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ABSTRACT

Classification of limitation rules has been a challenge for cross-border litigations. If the law of limitation is classified as procedural, the *lex fori* governs, whereas the *lex causae* is applied if it is classified as substantive. A procedural classification allows a plaintiff to forum shop the limitation period, resulting in uncertainty and unpredictability. There is a trend in contemporary private international law/conflict of law, in cross-border disputes, whereby legislative enactments and judicial positions are favouring the substantive characterisation of the cross-border limitations issues and therefore subjecting the issues as much as possible to the *lex causae* rather than leaving them to the *lex fori*. Many common law jurisdictions have made significant shifts in conflict thinking with reforms. However, India's enactment on the law of limitation as to be applied to the cross-border litigations remained in a limbo but judicial innovation has taken the lead to match the private international law trends. This article argues about how the Supreme Court of India's decision in *Bank of Baroda v. Kotak Mahindra Bank Ltd* decided in 2020, has marked the shift of judicial reasoning for the law of limitation to be substantive rather than procedural in Indian Jurisprudence.

KEYWORDS : Limitation, Indian Private International Law, Execution Petition, Section 44-A Civil Procedure Code

India's *Lex Fori*: The Limitation Act 1963

The nature of the judicial process necessitates that judges shall be guided, as legislatures are, by considerations of expediency and public policy. Statutes of limitation are founded on considerations of public policy enshrined in the maxim "*interest reipublicae ut sit finis litium*" i.e. it is for the general welfare that a period be part of litigation. The object of the law of limitation is preventive, not curative, as the intention of statutory provisions of the law of limitation is not to give a new statutory right but to impose a bar after the specific period authorising a litigant to enforce his existing right within the period of limitation. This contrasts with the law of prescription, which lays down the period after which the expiry of a substantive or primary right is, under certain circumstances acquired or extinguished. The law of limitation merely limits a judicial remedy, akin to imperfect prescription, the time after which a suit or other proceeding cannot be maintained in a court of justice. Rules of limitation are not meant to destroy the rights of parties, but they provide that parties do not resort to dilatory tactics and seek remedy promptly. A legal remedy cannot be kept alive for indefinite period of time legislatively, if it has been lost by a party's own inaction, negligence and laches. The statute of limitation is founded on public policy that an unlimited and perpetual threat of litigation leads to disorder and confusion and creates insecurity and uncertainty. Hence Limitation Act is a statute of repose.

The Limitation Act is a piece of adjectival law and not substantive law. It is applicable to all the proceedings which it governs from the date of its enactment except so far as its operation is expressly excluded. The law of limitation deals with three aspects: firstly, when does the limitation period start, secondly, how long is the limitation period and thirdly, the consequences of the expiry of the limitation period. Different types of cause of action vary in their limitation periods as a consequence of their classification/ categorisation.

In India, the Limitation Act, 1963 is an Act to consolidate the law for the limitation of suits and other proceedings and for purposes connected therewith. The present Limitation Act 1963, a self-contained and exhaustive code, was enacted to implement the third report of Law Commission of India dated 17 July 1956 to replace the Limitation Act 1908 which had been in force for more than 50 years and with much-awaited need for reform. The Law Commission of India was of the opinion that the law of limitation should be simple, certain and rational and that the periods of limitation should neither be too

long nor too short and should be in consonance with the outlook and notions of laymen and that the provisions of the law should be modernised in the light of judicial decision and should avoid possibility of conflicts between various articles and that the residuary article should not be allowed to confer any additional advantage to the litigants. The new enacted act had 32 sections and 137 articles. Article 1 to 113 deals with suits, 114 to 117 with appeals and 118 to 137 with applications. The Act implemented the suggestions that the classification should be according to subject matter and that a uniform period of limitation should be provided as far as possible. However, the starting point of limitation should be the date of accrual of the cause of action was not accepted as it will put litigants and plaintiff with the very difficult position to prove when the cause of action arises.

Characterisation/Classification of Law of Limitation in India Law is an important therapy in the disorder of social metabolism. Limitation depends on to some extent on the form and substances of the suit. Revision of the Limitation Act was taken up by the Law Commission of India, suo moto in view of the importance of the subject as branch of adjective law. In the Eighty-ninth Report of the Law Commission recommending certain amendments to the Limitation Act 1963, the Commission noted that "the present Act was enacted about 20 years ago. The Act is an enactment of general application and importance. During the last 20 years extensive developments have taken place both in law and in society. It is proper that those developments should be taken note of in a comprehensive manner."

In its report, the Law Commission of India, while noting that Section 11 of the Limitation Act 1963, is based on the principle well recognised in private international law in the Anglo-American Legal Systems and that rules of limitation are part of the *lex fori*, concluded that, "we see no reason to disturb the principle". The Law Commission, taking note of the developments for characterization of law of limitation to be substantive than procedural, a traditional rule of English Law, observed that, "we have been unable to persuade ourselves to accept the criticism made by Cheshire and others of the traditional English Rule—a rule which has been adopted in the American Restatement also".

The Commission opined that even on the grounds of policy also, a court ought not to be bound by the rules of limitation applicable under a foreign *lex causae*. The justification advanced by the Law Commission of India in support of this

proposition was that it is not always an easy task to ascertain foreign law, leading to a difficulty to prove an onerous burden on the Indian courts to ascertain the foreign law of limitation of 150 countries including paying for the fees and costs of foreign experts which would unnecessarily delay the disposal of cases will be a stupendous undertaking.

The interesting observation that the Law Commission made with respect to the private international law principle of law of limitation characterisation vis-à-vis arguing in context of section 11 of the Act was that the section has been held not to be exhaustive. Furthermore, it noted that the same principle applies to execution. Again, it stated that if a suit is for conversion, the same principle would apply. Thus, it is evident that the Law Commission of India unequivocally endorsed the view that, in the context of cross-border litigation, the Indian law of limitation should be governed by the *lex fori*. The Commission classified the law of limitation as procedural, thereby affirming that the rules of the forum state, i.e. Indian Law (the Limitation Act 1963), would apply for determining the applicable limitation period and computing its duration.

Shifting Characterisation Trends: Supreme Court of India, Law of Limitation and Execution of Foreign Decrees

The issue arose before the Apex Court, the Supreme Court of India, in *Bank of Baroda v. Kotak Mahindra Bank Ltd.*, for its legal consideration that "What is the limitation for filing an application for execution of a foreign decree of a reciprocating country in India?" The question arose in the background of the facts, when Bank of Baroda appealed against the decision of Karnataka High Court which held that the execution petition under Section 44-A of Civil Procedure Code ("CPC") should have been filed within 12 years of the passing of the foreign decree by the judgment holder as per the Indian limitation act, i.e. *lex fori*.

The Vysya Bank, the predecessor of the Kotak Mahindra Bank Ltd., issued a letter of credit for US \$1,794,258 for its customer M/s Aditya Steel Industries Ltd. in favour of M/s Granada Worldwide Investment Company, London. Bank of Baroda was the confirming bank to this letter of credit. Vysya Bank issued instructions to the London branch of the Bank of Baroda in 1992 to honour the letter of credit. Acting on this instruction the London branch of the Bank of Baroda, discounted the letter of credit for a sum of US \$1,742,376.41 and payment of this amount was made in 1992 to M/s Granada Worldwide Investment Company.

Bank of Baroda filed a suit against Vysya Bank for recovery of its dues in 1993 in London. The Court of Justice Queens Bench of London passed a decree on 20 February 1995 in favour of the Bank of Baroda against the Vyasa Bank for recovery of the amount of about 12,78,909.26 US \$ and cost of 1,80,867.15 pounds with interest at 8% per annum thereon. The decree was not challenged and became final. The Vyasa Bank failed to honour the decree and make payment due to the Bank of Baroda. After the judgment was pronounced, Vyasa Bank placed an interbank deposit of 1,40,000 US \$ with the Bank of Baroda and requested not to put up the judgment into execution. After lapse of eight years, in 2003, Vyasa Bank claimed the deposit back and filed an application for its recovery before the Debt Recovery Tribunal.

In 2009, the Bank of Baroda filed an execution petition almost 14 years after the decree passed by the London court for execution within Section 44-A read with Order 21 Rule 3 of the Code of Civil Procedure, 1908 ("CPC") for recovery of Rs 16,43,88,187.86. This execution petition was contested mainly on the ground that it had not been filed within the period of limitation. In 2013, the Additional City Civil and Sessions Judge, Bangalore dismissed the execution petition as time-barred, holding that the execution petition should have been filed within 12 years of the decree being passed by the London

court. Aggrieved, the Bank of Baroda approached the Karnataka High Court which vide judgment dated 13 November 2014 upheld the view of the trial court. The appeal was decided by the Bench of Justice Deepak Gupta and Aniruddha Bose.

Bank of Baroda argued that the Limitation Act does not prescribe any period of limitation for execution of a foreign decree passed in a reciprocating country and as a consequence of this legislative vacuum, the cause of action to file an execution petition arises only when a petition is filed under Section 44-A CPC and thus, the limitation for 12 years provided under Article 136 of the Limitation Act applies from that date and the decree is treated to be an Indian decree. Whereas Vyasa Bank (Kotak Mahindra Bank) argued before the court, that the law of limitation of England would apply, which is 6 years for execution of a decree, and hence no petition for execution of that decree could be filed after 20 February 2001. The alternative argument the Vyasa Bank advanced was that even if the Indian law of limitation were to apply, the limitation period for execution of a foreign decree would be determined as per Article 136 of the Act. Section 44-A CPC clearly provides that a decree passed in a reciprocating country should be treated as an Indian decree and, therefore, the same must be enforced within 12 years from the date of passing of the decree as provided by Article 136 of the Act.

The Anatomy of Legal Reasoning

The judicial reasoning to settle the matter, by Supreme Court was centered in logical hierarchy of three legal questions which in essence, examined whether Section 44-A of CPC which provides 'Execution of decrees passed by Courts in reciprocating territory' indicates the period of limitation for filing execution proceedings; Secondly, period of limitation i.e. what is the period of limitation for executing a decree passed by a foreign court (from a reciprocating country) in India? Thirdly, date of computation of limitation period, i.e. from which date the period of limitation will run in relation to a foreign decree (passed in a reciprocating country) sought to be executed in India?

The Supreme Court posited its legal conclusion that Section 44-A of CPC does not create a fresh period of limitation by extension of it being a deeming provision. The Court was of the view that Section 44-A of CPC, dealing with Execution Petitions of the decrees from reciprocating territory, is only an enabling provision which enables the District Court to execute the decree as if the decree had been passed by an Indian court, and it does not deal with the period of limitation. The Court concluded that Section 44-A of CPC does not lay down or indicate the period of limitation for filing such an execution petition.

While answering the first question that there is no limitation period provided in Section 44-A of CPC, for the second aspect, the Court examined if Article 136 i.e. 12 years, of the Indian Limitation Act will apply in case of any foreign decree regardless of the limitation period which may be prevalent in the country where the decree was passed i.e. the cause country. The court took a doctrinal position on whether the law of limitation as applicable in the cause country or the forum country would apply for Execution petitions and identifying the factual framework leading to conflict of laws situation of cause country and forum country, the court argued that though Indian courts have normally taken the view that law of limitation is a procedural law but the view worldwide appears to be that the limitation law of the cause country should be applied even in the forum country. The court observed that these are substantive rights and cannot be termed to be procedural and made a remark that "As India becomes a global player in the international business arena, it cannot be one of the few countries where the law of limitation is considered entirely procedural". The Court finally indicated

that if the law of a forum country is silent with regard to the limitation prescribed for execution of a foreign decree, then the limitation of the cause country would apply.

For the third question, the court held that the period of limitation would start running from the date the decree was passed in the foreign court of a reciprocating country i.e. Cause Country. And further the court noted, "However, if the decree-holder first takes steps-in-aid to execute the decree in the cause country, and the decree is not fully satisfied, then he can then file a petition for execution in India within a period of 3 years from the finalisation of the execution proceedings in the cause country." The second aspect of conclusion by the court is worth examining from classification perspective of law of limitation. The court notes that in a situation when a decree-holder takes steps-in-aid to execute the decree in the cause country which is partly satisfied then in such circumstances the right to apply under Section 44-A for Execution Petition will accrue only after the execution proceedings in the cause country are finalised and the application under Section 44-A CPC can be filed within 3 years of the finalisation of the execution proceedings in the cause country as prescribed by Article 137 of the Limitation Act. The decree-holder must approach the Indian court along with the certified copy of the decree and the requisite certificate within this period of 3 years. In this context, the court applies the limitation law of the *lex fori* (the forum) to determine the limitation period. The Indian judiciary, in this regard, adopts a *lex fori* approach by classifying the law of limitation as procedural in nature. It is interesting to underline that this partial procedural characterisation contrasts with the alternative view that the limitation period for execution petitions ought to be governed by the law of the cause country (*lex causae*).

CONCLUSION

The decision of the Supreme Court constitutes one of the few seminal judgments reflecting a doctrinal shift in the Indian jurisprudence on conflict of laws/ private international law, particularly in the context of cross-border litigation. Notably, the Court acknowledged a departure from the traditional common law position, wherein the law of limitation was historically classified as procedural. In contrast, jurisdictions following the civil law tradition have consistently treated the law of limitation as substantive in nature.

Importantly, the Supreme Court's observation that in recent years, almost all common law countries have either enacted new legislation or, through judicial pronouncements, moved away from treating limitation law as purely procedural is commendable. This recognition reflects an alignment of Indian private international law with contemporary global trends.

Such alignment is significant in view of the increasing cross-border interactions driven by globalisation. The proliferation of international commercial transactions, cultural exchanges in art, literature, and sports, and the exponential growth of online cross-border trade have heightened the potential for transnational disputes. In this context, the Supreme Court's ruling not only addresses an evolving legal reality but also contributes to the development of innovative legal reasoning in cross-border adjudication. The judgment thus marks a critical moment in the evolution of Indian private international law, with the potential to influence future doctrinal and legislative developments.

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