

# The Statute of Limitations (Murūr Al-Zamān) in Civil Law Cases: From the Perspective Afghan Civil Code

Muhammad Ibrahim Sekandary<sup>1</sup> and Said Rahman Nasiri<sup>2</sup>

<sup>1</sup>Dean and Lecturer of Law & Political Sciences Faculty, Rokhan Institute of Higher Education, Jalalabad, AFGHANISTAN.

<sup>2</sup>Lecturer of Law & Political Sciences Faculty, Rokhan Institute of Higher Education, Jalalabad, AFGHANISTAN.

<sup>1</sup>Corresponding Author: msekandary58@gmail.com



[www.ijrah.com](http://www.ijrah.com) || Vol. 4 No. 5 (2024): September Issue

Date of Submission: 18-08-2024

Date of Acceptance: 13-09-2024

Date of Publication: 27-09-2024

## ABSTRACT

The Statute of Limitations is a fundamental legal principle that governs the timeframes within which claims can be initiated. This research study examines the application and implications of the Statute of Limitations in the Afghan Civil Code. The aim of the study is to understand the role of the Statute of Limitations in the Afghan legal system and its impact on both claimants and defendants. Its significance lies in its dual role of promoting justice and ensuring legal certainty. By setting a time limit for bringing forth claims, it prevents indefinite disputes, encourages timely resolution, and upholds procedural efficiency. This balance helps protect defendants from stale claims and ensures that evidence remains relevant and reliable. Understanding the Statute of Limitations is essential for appreciating how legal systems manage the interplay between the right to seek redress and the need for timely and orderly legal proceedings. This work employs the doctrinal research methodology along with descriptive, explanatory, and analytical research approaches. It is worth mentioning that this research study is entirely based on library sources. Most of the sources are reputable and trustworthy textbooks, scholarly published and unpublished journal articles, law reports, and online websites related to the research area. The examination of the Statute of Limitations from the perspectives of the Afghan Civil Code establishes specific timeframes for filing claims, emphasizing legal certainty and procedural efficiency to prevent indefinite disputes and ensure timely resolutions.

**Keywords-** Statute of Limitations, Islamic Shariah, Afghan Civil Code, Civil law cases.

## I. INTRODUCTION

The statute of limitations, known in Islamic jurisprudence as **murūr al-zamān** (lapse of time), is a crucial legal concept that governs the period within which legal claims must be asserted in court. This principle is fundamental in ensuring the timely resolution of disputes and the maintenance of legal stability. It functions as both a procedural barrier and a mechanism to promote fairness and efficiency in the legal process. By establishing a timeframe within which claims must be pursued, the Statute of limitations helps to prevent the undue prolongation of legal disputes and mitigates the risk of evidence degradation and witness memory loss.

Islamic jurisprudence, with its rich historical and doctrinal diversity, presents various interpretations of how the passage of time impacts legal claims. Key figures within Islamic legal thought, such as Imam Sarakhsi and Ibn Rushd, offer distinct perspectives on whether and how the right to seek legal redress expires with time. Imam Sarakhsi, representing the Hanafi school of thought, emphasizes a specific time limit—33 years—beyond which claims are considered forfeited. This view underscores the procedural aspect of **murūr al-zamān**, which serves to prevent prolonged disputes. Conversely, other scholars like Ibn Rushd argue that the inherent validity of rights remains unaffected by the passage of time, challenging the notion of time-based expiration of claims.

The Afghan Civil Code, a modern legal framework, introduces its own approach to the statute of limitations, reflecting both traditional influences and contemporary legal practices. This code delineates specific time periods for various types of claims, such as property disputes, rent, and professional fees. Notably, the Afghan Civil Code differentiates between general claims and specialized categories, including a distinct approach for continuous, periodic, and renewable rights.

The code's provisions emphasize practical considerations, such as ensuring claims are pursued within prescribed periods to maintain legal certainty and protect property rights. Understanding these perspectives provides valuable insights into how different legal traditions approach the concept of time in the context of civil law. It highlights the intersection of historical jurisprudential principles with contemporary legal practices and offers a comprehensive view of how the statute of limitations functions within diverse legal frameworks.

## **II. INTRODUCTION TO THE STATUTE OF LIMITATIONS**

Linguistically, the Statute of limitations refers to a period of time that passes. (Cambridge Dictionary). In terms of terminological definition "muror Zaman" has various definitions which are as follows: 1. The Statute of limitations is the legal period within which a person can present their civil claim, lawsuit, or demand in court. If this period expires, the person loses the right to file their claim. (Rose, 2000). In other words, the Statute of limitations is a prohibition on hearing the lawsuit after it has been left for a known period, hearing the claim with the passage of time is a matter of preference, not speculation, because the right does not wane with the passage of time. (Atasi, 2000).

It is inferred from the above discussion that a civil claim, lawsuit, or demand must be filed in a specific period of time. Once this period expires, the individual loses the right to initiate their claim, as the court is prohibited from hearing cases that fall outside this timeframe. This prohibition is procedural rather than substantive, meaning that the validity of the right itself is not diminished by the passage of time, but the ability to have the claim heard in court is barred after the expiration of the statutory period.

## **III. PHILOSOPHY AND RATIONALE BEHIND THE STATUTE OF LIMITATIONS IN CIVIL LAW CASES**

The Statute of Limitations in civil law cases is rooted in both practical necessity and philosophical principles aimed at promoting fairness, legal certainty, and efficiency. Its primary influence lies in ensuring that

legal claims are brought within a reasonable time, protecting defendants from the perpetual threat of litigation and the deterioration of evidence over time. Philosophically, it balances the rights of plaintiffs to seek redress with the rights of defendants to have closure, encouraging timely resolution of disputes and discouraging fraudulent claims that may arise due to faded memories or lost evidence. Additionally, it provides predictability and stability within the legal system, allowing individuals and businesses to plan their affairs with confidence. While statutes of limitations vary between jurisdictions and types of claims, they ultimately serve as a crucial mechanism to maintain fairness and efficiency in the judicial process. (Singh, 1990).

The rationale behind why civil cases are not heard and claims are not pursued by official authorities once the lapse of time has expired, is as follows: when a person witnesses the occupation of their property by another individual and does not take action to prevent it or report it to the judicial authorities, their claim may no longer be heard after a certain period of time. This is because failing to stop the occupation or to assert one's rights implies a waiver of the right to contest the possession, as the individual has not taken steps to protect or reclaim their property. (Shafayi, 1966).

Imam Sarakhsi, from the Hanafi school of thought, asserts that a right can be extinguished by the passage of time, meaning that a claim will not be heard if it is not presented within 33 years. According to this view, if a person does not file their claim within this period (33 years) without a valid excuse, it is considered that they have forfeited their right. The rationale behind this is that if an individual has the opportunity to present their claim to a judge but chooses not to do so, it implies that they are not genuinely entitled to the claim. Essentially, their inaction is interpreted as a lack of legitimate interest or right. Conversely, Ibn Najeem and some other Hanafi scholars argue that the right itself does not expire with lapse of time. Some Hanafi scholars suggest that, after the passage of time, a judge may still hear the claim if ordered to do so by the ruler or caliph. The fact that the judge does not hear the case after that specific period is for the purpose of preventing fraud. Efforts have been made by certain Hanafi scholars to reconcile these differing viewpoints, so they say that, according to Sarakhsi's point of view, the right does not truly lapse but rather, the expiration of time serves as a procedural barrier to hearing the claim. (Niazi, 2017).

Maliki scholars also have differing views on this issue. Some believe that a right or debt remains valid indefinitely, but if the owner of the right does not seek redress through the courts within a 20-year period, they forfeit their right to claim it. Other Maliki scholars argue that if a person fails to assert their rights and appears in court within a 30-year period, they lose their right to make a claim thereafter. Ibn Rushd, however, asserts that a right or debt never expires regardless of the passage of

time. He argues that the mere silence or failure to pursue a claim does not negate the existence of the right, meaning that a right remains intact despite the passage of time. (Niazi, 2017).

The preferred view is that a right does not expire due to the passage of time, as the owner of the right may experience reluctance or hesitation in claiming their right due to the economic or social status of the debtor. The debtor might exploit this hesitation to delay fulfilling their obligation. If the owner of the right becomes aware of this situation, they can still claim their right even after a significant amount of time has passed. Therefore, Ibn Rushd's opinion, which holds that a right never expires, is considered more favorable and persuasive in this context. This perspective is also supported by some Hanafi scholars, who agree that civil rights do not lapse with the passage of time.

#### IV. THE TYPES OF STATUTE OF LIMITATION AND ITS DURATION IN CIVIL CASES

This section explores the different types of statute of limitations and also examine the duration of the statute of limitations in civil cases from the perspectives of Afghanistan's Civil Code and Al-Majallah Al Ahkam Al Adliyyah.

#### V. TYPES OF STATUTE OF LIMITATION

In civil matters, the statute of limitations is divided into various categories such as, general Statute of limitations, acquisitive Prescription, extinctive prescription, special statutes of limitations, suspensive prescription, and interruptive prescription.

1. **General Statute of Limitations:** The standard time limit within which a person must file a civil lawsuit. This period varies depending on the type of civil claim, such as contract disputes or personal injury claims. (Niazi, 2017).
2. **Acquisitive Prescription:** Allows a person to gain ownership of property or rights after possessing them for a specified period, provided there is no legal challenge to the possession during this time. (Atasi, 2000).
3. **Extinctive Prescription:** Refers to the time limit after which a person can no longer enforce a legal claim or right. This type of statute of limitations prevents the claim from being heard if the period has expired. (Atasi, 2000).
4. **Special Statutes of Limitations:** These are specific time limits set for particular types of claims or disputes, such as those related to certain contractual breaches or specific kinds of property disputes. (Shafayi, 1966).

6. **Suspensive Prescription:** Sometimes, the running of the statute of limitations can be suspended under certain conditions, such as the claimant being a minor or legally incapacitated. The period may resume once the condition is resolved. (Atasi, 2000).
7. **Interruptive Prescription:** In some legal systems, the statute of limitations can be interrupted or reset under specific circumstances, such as when a claim is formally filed or when the debtor acknowledges the debt. (Atasi, 2000).

#### VI. DURATION OF THE STATUTE OF LIMITATIONS IN CIVIL LAW CASES

In civil cases, the statute of limitations is the legal period during which a person can file a claim in court. This period is set by law for different types of cases, such as contracts, property disputes, and personal injuries. The purpose of the statute of limitations is to ensure legal stability and justice, and to prevent the deterioration of evidence and the weakening of people's memories. Once this period expires, the right to file the claim is lost, and the court will not hear the case. This period may be extended in certain circumstances, such as with reasonable obstacles, but it is essential to comply with the time limits for legal action. The length of this period varies by Civil laws in different countries.

Article 965 of the Afghan Civil code clarifies that "1. Rights shall not extinguish due to lapse of time. 2. Claim of rights, on any basis, against disclaiming person shall not be heard after lapse of fifteen years, subject to observation of its special provisions and the following exceptions." (Afghan Civil code, 1976). According to this law, if a person possesses a property for 15 years and during this time no objection is made against the person who has taken possession, the person who originally owned the property cannot file a claim after the 15-year period. This is based on the principle of the Statute of limitations. However, if the original owner presents a valid excuse to the court, this situation may create a different outcome. (Afghan Civil code, 1976).

The statute of limitations for claims related to rent, monthly salary, and state taxes has been set by the law at 5 years. After this 5-year period, claims will not be heard. This is explicitly stated in Article 966 of the Afghan Civil Code, "if continuous, periodic and renewable rights, such as rent of accommodations, lease of lands and salaries, which are not claimed within five years without any legal excuse, they shall not be heard. But the time limit for crops for which possessor with bad faith or endowment supervisor is liable shall be fifteen years." (Afghan civil code, 1976).

The statute of limitations for claims related to the fees of doctors, teachers, defense attorneys, and engineers has been set at one year. If a claim is not made within this one-year period, it falls under the statute of limitations and will not be heard after one year has

passed. This is explicitly stated in Article 967 of the Afghan Civil Code: "Claims of the following rights shall not be heard after lapse of one year: 1. Rights of physicians, professors, architects and attorneys deriving from their jobs and, in general, rights of any person who has freelance job such as pharmacists, dealers, commissioners and experts. 2. Rights of merchants and craftsmen regarding imported commodities and products transferred to other persons who do not commerce with them. 3. Rights of owners of hotels and restaurants regarding the per night rent, cost of foods and other expenses. 4. Rights of laborer, servant and hiring regarding the daily or non-daily wages." (Afghan Civil code, 1976).

Claims that fall under the statute of limitations are those that have not been pursued without a valid legal excuse. This is explicitly stated in Article 975 of the Afghan Civil code, "1. The designated period of dismissal of case shall be stopped due to legal excuse, intellectual impediments and an impediment that makes the creditor's claim of his right impossible. 2. The period that is lapsed due to the excuse shall not be calculated." (Afghan Civil Code, 1976).

It is worth mentioning that the statute of limitations is calculated in days, not in hours. This is specified in Article 972 of the Afghan Civil code, "Period of statute of limitations shall be calculated on the basis of day, not hour. The first day shall not be counted and with the expiration of the last day, the period shall be considered completed." (Afghan Civil Code, 1976).

## VII. CONCLUSION

The statute of limitations under the Afghan Civil Code serves as a fundamental mechanism for ensuring legal certainty and efficiency in civil law cases. By defining specific time limits for filing claims—ranging from one year for certain professional fees to fifteen years for property disputes—the Afghan Civil Code provides a structured approach to managing legal claims and preventing the indefinite pursuit of old disputes. This system reflects a balance between upholding the rights of claimants and maintaining the stability of legal and social transactions. Understanding these time limits is crucial for both practitioners and claimants to navigate the legal landscape effectively and to ensure that justice is administered within an appropriate timeframe.

## RECOMMENDATIONS

1. The Afghan media should hold public education campaigns to raise awareness of the importance of the Statute of Limitations (Murūr al-Zamān) and the specific time limits for filing civil claims. Legal literacy programs can help citizens, particularly in rural areas, understand their legal responsibilities and avoid forfeiting their rights due to ignorance of limitation periods.
2. The Afghan Civil Code had better be amended to incorporate provisions that allow courts to extend or waive the statute of limitations in cases where exceptional circumstances exist, such as fraud, concealment, or the plaintiff's inability to file a claim due to serious hardship. Judicial discretion in such cases can prevent unjust outcomes.
3. Judges should receive regular training on the interpretation and application of the Statute of limitations (Murūr al-Zamān), particularly in complex or borderline cases. This training should include a focus on balancing justice with legal certainty, ensuring that the statute is applied consistently and fairly across different regions and courts.
4. The legal system should adopt digital case management systems that automatically track the statute of limitations for civil claims. This would help both legal professionals and plaintiffs monitor time limits and ensure that claims are filed within the legally prescribed periods, reducing the risk of missed deadlines.

## REFERENCES

- [1] Atasi, Muhammad Khalid. (1975), "Sharh Majalla al-Ahkam," Kabul: Publications of the Judiciary, Ministry of Justice.
- [2] Ahmad Matin Daftari. (1958), "A'in-e Dadrasiye Madani" (Civil Procedure Law), Pidar Publications, Tehran.
- [3] Mohsen, Shafayi. (1975), "Islam wa Qanun-e Murur-e Zaman" (Islam and the Statute of Limitations), Vol. 2, Naqsh-e Jahan Publications, Tehran.
- [4] Mohammad Mustafa Niazi (2017), "Translated by, Mohammad Karim Adeeb, 'The Islamic Judicial System', Muslim Publishing Society, Jalalabad.
- [5] The Civil code of Afghanistan. (1355 AH). Official Gazette. Serial number 353. Volume 2.
- [6] Cambridge University Press. (n.d.). *Cambridge dictionary*. Retrieved from <https://dictionary.cambridge.org/>.