

12th May, 2020

LIMITATION ACT, 1963 IN TIMES OF COVID-19

A. Concept and applicability of limitation in litigation-layman language:

1. Law mandates institution of or filing of certain proceedings/pleadings within specific prescribed time period as per Limitation Act, 1963 (for short “**the said Act**”) and/or under the Special Statue, if it provides the same.
2. The proceedings/pleadings not instituted or filed within the prescribed time period are said to be barred by Limitation.
3. Such fixing of time period, as enunciated in the 89th Report of the Law Commission of India, is based on the concept of justice and convenience, wherein an individual should not live under the threat of a possible action for an indeterminate time period or have to defend a stale cause of action.

B. Statutory Provisions and concept of limitation:

1. Relevant provisions from the said Act:
 - a. Section 2(j) –
 - Defines period of limitation for any suit, appeal or application. The specific period is stated in the Schedule.
 - ‘prescribed period’ means the period of limitation computed in accordance with the provisions of the said Act.
 - b. Section 3 –
 - Every suit so instituted, appeal preferred and application so made after the prescribed limitation period, shall be dismissed even though limitation has not been taken as a defense subject to sections 4 to 24 of the said Act.
 - c. Section 4:
 - In situation when the Court is closed on the day the period of limitation expires.
 - In such cases, the suit, appeal or application may be preferred or made on the day when the court re-opens.

d. Section 5:

- Provides for extension of limitation period in cases of appeal or applications upon sufficient cause shown by the Party.

e. Section 9:

- Once limitation period commences, it runs continuously.
- No subsequent disability or inability to institute a suit or making of application stops it.

2. The power of condonation of delay as envisaged in Section 5 of the said Act is not available in cases where legislations themselves have laid down a time schedule[Hukumdev Narain Yadav v. Lalit Narain Mishra [(1974) 2 SCC 133] In such instance, the special law shall prevail over the said Act. For example, Section 34 of the Arbitration and Conciliation Act, 1996 (as amended) which prescribes a maximum of 120 days for setting aside of Arbitral award.

3. Some specific laws lay down subjective applicability of the said Act. In such cases, applicability of the said Act will depend upon interpretation by the Judiciary. For example, the applicability of Section 14 of the said Act in cases of appeals under Section 61 (2) of Insolvency and Bankruptcy Code, 2016 (as amended) as enunciated by the National Company Law Appellate Tribunal (for short “**NCLAT**”) in Radhika Mehra v. Vaayu Infrastructure LLP & Ors.[105 (IBC) 74/2020].

C. COVID-19 and Courts & Tribunals of the Land

1. Pursuant to COVID-19 being declared as a pandemic by World Health Organization and the corresponding nation-wide lockdown being implemented by the Government of India, movement of people have been restricted/ hampered.
2. In line with the Government measures, suo moto support has been extended by the Judiciary prior to the



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- implementation of such lockdown, thereby, protecting the rights of litigants from being diminished by the said Act and other specific laws while the nation continues to suffer from COVID-19.
3. While advanced network connectivity has enabled urgent matters to be taken up by video conferencing, protection of rights of several other litigants have been secured by the Hon'ble Supreme Court by its Order dated 23.03.2020 passed in Re: Cognizance for extension of Limitation [2020 SCC OnLine 343].
 4. The issue of limitation that would have opened a flood-gate of litigations post upliftment of lockdown, however, stands taken care of by the Hon'ble Supreme Court by its Order wherein the period of limitation prescribed under the said Act or any special statute whether condonable or not automatically stands extended with effect from 15.03.2020 until further Orders passed in the proceeding, that is, the clock of limitation stops on 15.03.2020 and commences only when the Hon'ble Supreme Court tickles it again post the lockdown period, thereby, giving sufficient time and opportunity to the litigant to make up for the loss in time.
 5. The intention of such pause in calculation of limitation period is to enable litigants from losing out on a remedy that may have accrued to them as a right under different statutory legal provisions due to the nation-wide lockdown creating impediment in filing of proceedings.
 6. This creates an exception to Section 9 of the said Act as the Order intends to create a pause on and from 15.03.2020 till further Orders to the continuously running limitation period.
 7. It is to be noted that such powers have been envisaged to the Hon'ble Supreme Court under Article 142 read with 141 of the Constitution of India for dispensing complete justice.
 8. Had the Courts been treated as closed within the meaning of Section 4 of the said Act, the same would mean that the litigants would have to compulsorily file proceedings/pleadings as soon as the Court reopens in case their period of limitation expires within the lockdown period.
 9. Such approach was initially taken by the Hon'ble Delhi High Court in its Notification bearing no. 373/Estt/E-I/DHC dated 23.04.2020. Further, the same would have restricted the application of the Order to only pleadings as mentioned in Section 4 of the said Act.
 10. The Hon'ble Court has passed a further Order on 6.05.2020 in Re: Cognizance for extension of Limitation wherein it has specifically paused all period of limitations as mentioned in the Arbitration and Conciliation Act, 1996 (as amended) and under Section 138 of the Negotiable Instruments Act, 1881 with effect from 15.03.2020 till further Orders passed in the instant matter.

11. The Order further states that *"In case the limitation has expired after 15.03.2020, then the period from 15.03.2020 till the date on which the lockdown is lifted in the jurisdictional area where the dispute lies or where the cause of action arises shall be extended for a period of 15 days after the lifting of lockdown"*
12. The Order dated 23.03.2020 of the Hon'ble Supreme Court have been given practical implementation to by various High Courts and Tribunals and one such aspect is the decision to extend subsisting interim orders, expiry of which would need filing of fresh applications for their extension or hearing of the matter.

D. COVID-19 and the approach of Complete Justice

1. Extension of limitation by the Hon'ble Supreme Court has come to the assistance of litigants in obviating difficulties that will arise due to the nation-wide lockdown.
2. The abrupt stoppage of movement and public utility service caused by the unprecedented COVID 19 has brought the Hon'ble Supreme Court to use its plenary powers to provide "complete justice" by stopping the limitation clock.