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COVID-19 : IS THE INDIAN JUDICIARY BATTLE READY?

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The World Health Organisation has declared COVID-19 to be a pandemic. All spheres of life have been affected alike and the judicial system is no exception to this. There are various challenges that are being faced by Courts, lawyers and litigants alike which are unprecedented in nature. It would be useful to look at some of the issues that the system is grappling with and what is being done to deal with them in a manner that balances the litigants' interests while taking precautions against the pandemic.

Limitation

One interesting question that has arisen is the effect of coronavirus on the period of limitation and whether the Courts would be inclined on treating COVID-19 as a cause sufficient to cease the period of limitation. This has been answered by the Hon'ble Supreme Court vide its [order](#) dated 23 March 2020 in the affirmative (to some extent).

The Limitation Act, 1963 ("Act")

The Act provides for the period of limitation for institution of various suits, applications, petitions etc. in India. Section 2(j) defines "period of limitation" as the period of limitation prescribed by the Schedule to the Act for any suit, appeal or application, and "prescribed period" means the period of limitation computed in accordance with the provisions of the Act. Section 3 of the Act provides that every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence. Section 4 provides that if the prescribed period expires on a day the Court is closed, filing may be completed when the Court reopens and Section 5 grants the power to the Courts to condone the delay in filing beyond the prescribed time period.

Exceptions to condonation of delay under the Act

The power to condone the delay as granted by Section 5 of the Act is not available under certain legislations. For instance:

- (i) Commercial Courts, Commercial Divisions and Commercial Appellate Division of High Courts Act, 2015 - Proviso to Order VIII Rule 1 of the Code of Civil Procedure, 1908 provides for a maximum period of 120 days for filing of written statement from date of service of summons, which period is not extendable by the Court while Section 13 provides for 60 days for preferring an appeal from the date of judgement or Order of a Commercial Court.

- (ii) **Arbitration and Conciliation Act, 1996 ("Arbitration Act")** - Section 34 prescribes a maximum period of 120 days for preferring an application seeking setting aside of the arbitral award. The Arbitration Act further provides for strict timelines to be adhered to in Order to achieve timely and expeditious adjudication of the disputes. For example, the latest amendment to the Arbitration Act mandates the pleadings to be completed within a period of 6 months, the proceedings to be completed and award be rendered within a total period of 18 months extendable by 6 months.
- (iii) **Insolvency and Bankruptcy Code, 2016 ("IBC")** - The IBC provides for appeals to the appellate tribunal under Section 61 as well as the Supreme Court under Section 62, both of which have mandatory and strict timelines of 45 days and 60 days, respectively.
- (iv) **Consumer Protection Act, 1986 ("Consumer Act")** - Section 24A of the Consumer Act provides for a maximum period of 2 years for filing of a complaint before the relevant consumer commission. The Consumer Act provides for various other timelines for completion of pleadings, service of summons and passing of the judgement by the commissions.

There is a plethora of precedent which has upheld the legislative intent of non-application of Section 5 of the Act and adherence to the strict timelines prescribed by the special legislations.

While the issue of limitation could have become extremely contentious and had the potential of opening multiple litigations in various Courts/Tribunals, the Hon'ble Supreme Court has once again come to the rescue. While exercising its powers under Article 141 and 142 of the Constitution vide its [order](#) dated 23 March 2020 In Re : Cognizance For Extension Of Limitation being Suo Moto Writ Petition (Civil) No. 3 of 2020, the Hon'ble Supreme Court has brought respite to litigants and lawyers by extending the period of limitation under all general and special laws, irrespective of the same being condonable or not, for proceedings pending before all Courts and Tribunals in the country with effect from 15 March 2020 till further orders.

While the Hon'ble Supreme Court has issued a blanket order, there is no practical certainty on how it would be applied.

Various high courts are essentially rendering the interpretation to the period of limitation in accordance with Section 4 of the Act, which is reproduced as under:

"4. Expiry of prescribed period when court is closed.—Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court re-opens.

Explanation.—A court shall be deemed to be closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day."

Various issues arise, in this light, with respect to the period of limitation, which are -

- i. How would the period of limitation be treated where the limitation period is expiring anytime between 15 March 2020 and the date on which the benefit is lifted? This has been answered and taken care of by the Supreme Court through its order dated 23 March 2020.
- ii. Whether the days when the Court remains shut on account of the coronavirus pandemic would be excluded from computation for limitation?

- For instance, Courts are deemed closed from 15 March 2020 till 30 March 2020. The limitation period is due to expire on 1 April 2020. Then as per a strict interpretation of Section 4 of the Limitation Act- there is no addition of 15 days after 30 March 2020 and the filing would have to be on 1 April 2020. Would the benefit given by the Supreme Court Order be extended to grant additional time in such a scenario since litigants and lawyers would have found it difficult to work at this time and may not be able to file on 1 April, 2020?
 - In the same example, if the benefit is lifted on 20 March 2020 then how would the Courts deal with it? While the litigant has 10 days from 20 March 2020 to 30 March 2020, in effect it was deprived of 5 days due to lockdown which may have been crucial for him.
- iii. Another restriction arising out of the interpretation of Section 4 of the Act is that it does not cover certain proceedings like filing of written statements. That is to say, Section 4 of the Act pertains only to matters listed therein and does not extend to special and procedural timelines as illustrated. As such there is no clarity on the fate of such timelines and whether the benefit would be extended to them or not.

Therefore, although the Hon'ble Supreme Court has come to the rescue and issued directions with regard to limitation which is expiring during the period, the above mentioned issues are still contentious and there is a possibility that it may be interpreted in a way where litigant is not able to truly benefit.

Practical Hurdles

There are various practical issues being faced by lawyers and litigants in meeting the strict timelines of filing under various legislations and also approaching for redressal of grievances, such as:

- overcrowding of Courts,
- effecting mandatory service/ receiving service,
- physical interactions required for execution of documents/instruments and signing and attestation of affidavits,
- for litigants based overseas in countries under lockdown, it would not be possible to execute documents, get them apostilled and dispatch them to or from India, which would inevitably affect the period of limitation and filing may not be possible within the prescribed period,
- meaning of "urgent" hearings when one party deems it urgent and the other does not,
- lawyers/Court clerks are required to go to the Court for ascertaining next date of hearing or an adjournment in the matters deemed as non-urgent, though in some cases it has been directed that mentioning be done through email or telephony.

Directives from Courts

In view of the above, there have been several directives from the various Courts and tribunals. Some of the updates/ circulars are listed below:

- (i) Supreme Court – The Hon'ble Supreme Court took suo motu cognizance of the threat and has been issuing several directions on dealing with Court procedures

and on 22 March 2020 issued a [Directive](#) that a bench of two judges will hear extremely urgent cases through video conference for the week commencing 23 March 2020. Subsequently, vide [Circular](#) dated 23 March 2020 has issued **detailed directions** and Hon'ble Supreme Court is **attempting no physical presence of lawyers in the Court premises and hearing to be done by virtual Courts only.**

- (ii) High Court of Delhi – As per the [Circular](#), the functioning of the High Court is limited to listing and hearing of urgent matters only. The registry and filings counters will remain operational and limitation period shall continue to run in the usual course. The High Court also issued an [Advisory](#) to the District Courts to be operational only for limited purposes. However, vide [office Order](#) dated 23 March 2020 the High Court ordered lockdown and suspension of work, including in its subordinate Courts, till 4 April 2020 and stated that the same shall be **treated as "closure" as per Section 4 of the Act, thereby ceasing limitation period from 23 March 2020 to 4 April 2020.**
- (iii) High Court of Judicature at Bombay - As per the latest [Circular](#), the functioning of the High Court is limited to listing and hearing of urgent matters only. The registry remains operational and filings continue in their usual course. Benches will sit only on limited days as per [Notification](#) dated 23 March 2020.
- (iv) High Court of Judicature at Allahabad – A [Notification](#) has been issued directing certain measures to be taken for prevention of spreading of COVID-19. In furtherance of the same, an [Order](#) was passed whereby it was directed that only urgent matters would be taken up by the High Court.
- (v) High Court at Calcutta – As per the [Circular](#), the functioning of the High Court is limited to listing and hearing of urgent matters only, while it is business as usual for the registry and filing continues in normal course. The High Court reviewed and extended the same vide its subsequent [Notification](#). However, due a resolution passed by the Bar Council of West Bengal against attending Court, no work is being carried out. The High Court vide [Order](#) dated 24 March 2020 in WP No. 5323 (w) of 2020 extended all interim orders subsisting on 16 April, 2020 (actually it should read 16 March, 2020) till 30 April 2020 or until further orders of the High Court in this regard.
- (vi) High Court of Karnataka – vide [Memorandum](#) dated 20 March 2020, it was directed that all benches of the High Court would take up and hear matters stated to be urgent by the members of the Bar. The High Court vide [Notification](#) dated 21 March 2020 created virtual Courts at the principal bench in Bengaluru which would hear cases listed before all benches. The functioning of the [High Court](#) and [Trial Courts](#) has also been restricted by Notification dated 21 March 2020.
- (vii) High Court of Punjab and Haryana – the High Court issued a [Notice](#) dated 16 March 2020 whereby it enlisted the manner in which cases would be taken up till further Orders and only those matters which are urgent in nature will be taken up for the time being.
- (viii) High Court of Judicature at Madras – a comprehensive [Circular](#) was issued wherein apart from directing that only urgent and fresh matters be taken up for hearing by the Court, other preventive steps for prevention from COVID-19 were suggested.
- (ix) High Court for the State of Telangana – through a [Circular](#) dated 16 March 2020 it was notified that the Court shall be presiding only on select days to hear

urgent matters. The Registry of the High Court remains operations and filings continue as usual.

- (x) National Company Law Appellate Tribunal -listing and hearing of urgent matters only, while the registry continues to function as usual. The same is reflected in the daily [cause list](#) for each day being published by the Tribunal on its [website](#). In the latest attempt by the Tribunal, it has come out with [preventive measures](#) to contain the spread of COVID-19, which include hearing of urgent matters only till 1 April 2020, extension of interim Orders and closing down of filing counter. The Tribunal vide [Direction](#) dated 24 March 2020 extended the limitation for filing appeals with effect from 15 March 2020 in consonance with the Supreme Court Order.
- (xi) National Company Law Tribunal - listing and hearing of urgent matters only. However, as per the latest [Circular](#) dated 19 March 2020, all registries of the various benches of NCLT have been directed to remain closed till 27 March 2020, however it is clarified that limitation would not cease to operate. Vide [Notice](#) dated 22 March 2020 it has been decided to close sitting of all benches of NCLT with effect from 23 March 2020 till 31 March 2020 while taking up urgent matters through notifying the registry of the urgency via an email, however, no decision has been made with respect to pausing the period of limitation.

Comment:

While the issue of limitation has been dealt with to a large extent, not all Courts have extended the benefit of extension of interim orders as done by the High Court at Calcutta and the National Company Law Appellate Tribunal. In several cases, interim orders are only till the next date of hearing and unless specifically extended, they can be deemed to have lapsed. The said issue of extension of interim orders/reliefs is a practical concern which may need clarity. Representations are being made by the Bar Associations to their respective High Courts for this and we have to wait to see what transpires in this regard. We anticipate more issues may come up if the situation does not improve.

Due to continuously evolving situation, the Indian Judiciary is suggesting and implementing innovative measures to ensure that access to justice remains as unimpeded as is possible in the circumstances.

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