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With this thought, we hereby present to you

# **DELAY AND JUSTICE: A CRITICAL STUDY OF THE CONDONATION PROVISION IN INDIAN PROCEDURAL LAW**

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## **ABSTRACT**

The statute which administers the time limit within which legal actions should be initiated is governed by the Limitation Act, 1963. However, due to the hardships faced by several litigants, the relief of condonation of delay is provided in specific circumstances under the provision of section 5 of the Act, 1963. In order to curb the frequent dismissals of meritorious cases due to procedural lapses, the provision under section 5 serves as a protection against the stringent procedural rigidity. This article not only delves upon the legal framework of condonation of delay but also includes its origin, jurisprudential essence and the role of judicial approach for the interpretation of the provision. The article also inculcates the evolution of jurisprudence by shedding light upon the role of judicial discretion in determination of the sufficient cause. Thus, this article embarks the significance of the provision of condonation of delay as an essential element in order to maintain a crucial balance between the procedural regulation and systematic justice.

**Keywords:** Limitation Act, 1963; Condonation of Delay; Section 5; Judicial Discretion; Natural Justice, Sufficient Cause, Period of Limitation, Prescribed Period.

## **INTRODUCTION**

For legal certainty and for putting an end to indefinite litigation the principle of limitation is introduced. It is in the interest of justice that the legal remedies are sought within the reasonable time period. The principle of limitation is based on the maxim, “Vigilantibus non dormientibus jura subvenient” i.e. law does not support a person who sleeps over his rights. The Limitation Act provides specific timelines for suits, appeals and applications to be moved before a court as after a certain period of time elapses the cause of action becomes stale, with the passage of time the evidences may get lost or destroyed, the freshness of memory of the violation of civil legal right in relation to the victim or witness may get affected, there is a possibility of



manipulation of evidences, the opposite party will have to live under an apprehension that a suit, appeal or application may be moved against him. This will cause undue anxiety and will affect his mental health, it is a matter of sound public policy that legal relations should be brought to a certainty.

The law of limitation aims to promote finality and put an end to litigation by imposing period of limitations for filing of suits, appeals or applications. However, the strict enforcement of these limitation period can result in unfairness, specifically in the case where a party fails to institute a suit, prefer an appeal or make an application within the prescribed period due to circumstances which are beyond their control. This concern is duly addressed under section 5 of the Limitation Act, which grants courts a discretionary power to condone the delay caused in preferring an appeal or making an application, provided that the delay caused should be supported by a “sufficient cause”.

### **Transition from Limitation Act, 1908 to Limitation Act, 1963**

The transition of Limitation Act of 1908 to the Limitation Act of 1963 paved a way for a major reformation in the Indian legal system. The Third Report of Law Commission of India recognized several drawbacks in the 1908 Act while recommending several provisional amendments catering to the needs of the current social and legal system by simplifying various ambiguous provisions along with inducing the disintegrated amendments in one statute.

While the new Act retained the core framework of the 1908 Act, it also brought about several significant updates, such as:

1. **Standardisation of Limitation Periods:** Time limits for filing various types of suits, appeals, and applications were reorganised for better consistency and fairness.
2. **Provision for Delay Condonation:** New guidelines were added to allow courts to condone delays under certain justified situations.
3. **Clarification regarding Legal Disability:** Under the provision of section 6 of the Act, 1963 clarifies the concept of legal disability in accordance with minority and mental incapacity.
4. **Broader concept for interpreting “Sufficient Cause”:** The provision of Section 5 provides an exception to the general rule as stated under section 3 giving a broader ambit for late admission of appeals or application under valid circumstances.



Although it maintained continuity with earlier legislation, the 1963 Act represented a more progressive and adaptable legal approach. The redefined Section 5 played a key role in empowering the judiciary to take a more practical and equitable view in cases involving procedural delays. This shift reflected the growing emphasis on ensuring substantive justice in the evolving legal environment of post-independence India.

## **CONSTITUTIONAL AND JURISPRUDENTIAL ESSENCE OF LIMITATION ACT**

Every law derives its validity from the Constitution of India which is the grundnorm and parent law, and no law can violate the fundamental constitutional principles i.e. reasonableness, non-arbitrariness, fairness, justice, equity and good conscience. The entire Limitation Act is based upon the essential principles of the constitution and it promotes and protects the natural justice and creates a balance between the interests of two individuals and also between the individuals and society.

In jurisprudence of welfare nations where the rule of law is supreme, it is an important principle that litigation should be reduced. It cannot be allowed that legal relations are left uncertain and effective remedy for violation of rights is not provided. However, this remedy should be pleaded for in a reasonable time as provided by the Limitation Act. The quantum of period of limitation is matter of public policy and legislative wisdom.

### **BAR OF LIMITATION**

The general rule has been laid down in Section of the Limitation Act wherein if any suit is instituted after the prescribed period has expired, it has to be mandatorily dismissed since it violates the basic principle 'interest reipublicae ut sit finis litium'. Section 3 is a declaratory and prohibitory provision which declares the general rule and at the same time prohibits the party from instituting a suit, making an application or preferring an appeal beyond the period of limitation fixed by the Limitation Act. This general rule however, is subject to exceptions contained from section 4 to 11 and the exclusions contained from section 12 to 24 as laid down under section 3(1).

Section 3 is the only provision in Limitation Act which provides for the application for exception/exclusion as deviation from general rule that any proceeding after the period of

limitation have to be dismissed. However, section uses the term 'prescribed period' which implies that the prescribed period calculated after the application of section 4 to 24 may be extendable by a subsequent application for exception or exclusion. The term 'shall be dismissed' implies that it is mandatory for the court to dismiss the proceeding beyond the prescribed period and no discretion is possible.

Section 3 uses the phrase 'although limitation has not been set up as a defence', this implies that it is not necessary that a party should raise an objection of limitation. Rather, section 3 clearly declares that even if the party has not raised the objection for limitation, the court can dismiss the suit, appeal or application if it is satisfied on its own that bar of limitation applies. Though it is a matter of practice and according to natural justice, the Plaintiff, Appellant or Applicant is given an opportunity of being heard. Generally, the burden of proof lies upon the Defendant/Respondent to raise an objection of limitation and prove it. But the court can dismiss the proceeding even without such objection.

The Limitation Act does not anywhere declare that a substantive legal right of a party is barred. Rather, it merely declares that after the expiry of the prescribed period, the suit, appeal or application shall be barred. Thus, Limitation Act bars the relief or remedy but not the right. However, an exception lies from section 25-27. Nevertheless, when the remedy is barred, no relief can be obtained and right also becomes infructuous. Additionally, the reason why section 3 uses the term 'Prescribed Period' is that even the right to file a proceeding within the prescribed period is also a legal right.

## **SECTION 5: CONDONATION OF DELAY**

Section 5 of the Limitation Act, 1963 is an exception to the general rule mentioned in section 3 of the Act, as under section 5 the courts are granted with a discretionary power to admit any appeal or application except for the applications made under Order XXI of the Code of Civil Procedure, 1908. However, to avail this remedy the applicant must prove that there was a 'sufficient cause' for delay in filing of appeal or application. Section 5 aims to provide flexibility in the legal system and also to provide substantive justice by minimizing the rigidity in the procedural formalities. The phrase 'sufficient cause' is nowhere defined in the Act which leaves its interpretation open to judicial discretion, which must be exercised according to the facts and circumstances of each and every case. Over the period of time the courts underscored

that the phrase 'sufficient cause' should be interpreted liberally so that the cause of justice is served, especially in cases where strict adherence to timelines may lead to denial of a fair hearing.

One of the basic elements of the Section 5 is that it only applies to appeals and applications, clearly excluding institution of suits. It means that if a suit is filed after the expiry of the prescribed period, then condonation for such delay is not possible under this section. The reason for excluding suits is that institution of a suit represents the initiation of substantive litigation and not merely a procedural step as it is in the case of appeals or applications, also the period of limitation for making an application or preferring an appeal is generally shorter as compared to period of limitation for instituting a suit. Moreover, Section 5 is also not applicable to applications made under Order XXI of the Code of Civil Procedure, 1908 which deals with the execution proceedings. This exclusion is made to prevent the undetermined continuation of matters that have already reached the execution stage, where expediency is necessary for enforcing judgments.

The burden of proof entirely lies upon the applicant who is seeking condonation. The applicant must prove the sufficiency of the cause to the judicial standards of satisfaction and he must prove it through convincing reasons and often supported by documentary evidence or affidavits. The burden of proof is strict but the court itself will take a comparatively liberal approach. Closely related to the burden of proof is the requirement of bona fide conduct. It is not enough to state a cause; the courts also assess the applicant's overall conduct to determine whether the delay was a result of negligence, inaction, or malafide intent. A person who is not vigilant over his rights and then files a vague petition is not likely to succeed. On the other hand, a person who is vigilant over his rights and also shows consistent efforts to pursue the matter, even if wrongly or slowly, may be granted relief in the interest of justice.

For condonation of delay under section 5 of the limitation act, 1963 a discretionary power has been given to the court. This judicial discretion must be exercised judiciously and not arbitrarily. While the section 5 of the Act empowers the courts to admit the appeals preferred or applications made after the expiration of the prescribed period, it does not create an obligation on the courts to do so in every case. Courts are expected to balance the interests of both the parties—on the one hand, acknowledging the genuine hardships of the applicant, and on the other hand, ensuring that the respondent is not unfairly prejudiced due to the delay as



the interest of the opposite party also has to be examined and if the court finds that such interest will adversely and irreparably be affected then despite the sufficient cause the court may decline to condone the delay.

Section 5 of the Limitation Act, 1963 uses the phrase “within such period”, this implies that the approach of the court here is not to consider this period as the entire prescribe period, rather the court will only look at the last day of prescribed period as the party has the right to prefer an appeal or make the application even on the last day of such period and therefore the court shall examine the cause for not preferring an appeal or making an application on the last day of the prescribed period and any period thereafter. In the case of *Ramlal v. Rewa Coalfields* the hon’ble supreme court held that the earlier period in the course of the prescribed period does not matter for section 5. The court cannot ask the applicant or appellant to give an explanation for his negligence during that period. Rather, the court is only concerned with last date or day of the prescribed period and the period of delay thereafter. The party has right to prefer an appeal or make an application even on last day of prescribed period and he has no duty to file it before that. At the last day, if the party had a sufficient cause, only then section 5 stands attracted. Hereto, the court will be more rigid about the last day of prescribed period as compared to the period thereafter.

Thus, the provision is designed to protect genuine litigants from being shut out by technicalities, while still preserving the integrity of limitation laws.

### **Sufficient Cause under Section 5 of the Limitation Act, 1963**

The phrase “sufficient cause” is the cornerstone of Section 5 of the Limitation Act, 1963, which empowers the courts to admit appeals or applications which are filed after the expiration of the prescribed period. However, the phrase ‘sufficient cause’ is nowhere defined in the Act which leaves its interpretation open to judicial discretion, which must be exercised according to the facts and circumstances of each and every case. Over the period of time the courts underscored that the phrase ‘sufficient cause’ should be interpreted liberally so that the cause of justice is served, especially in cases where strict adherence to timelines may lead to denial of a fair hearing, while also safeguarding against misuse by negligent litigants.

In the landmark case of *Collector, Land Acquisition, Anantnag v. Mst. Katiji*, the Supreme Court laid down six broad principles guiding the interpretation of "sufficient cause." The Court

emphasized that the court will not be hyper technical in examining the delay and it will operate under an assumption that the party will not deliberately cause the delay as the party knows in the case of delay, it will lose its rights. The tilt of the court is always towards the assumption that the party has not caused a deliberate delay. The court is also aware that if it is liberal in matters of condonation, at the most the appeal or application will be heard on merits. This is not improper and the court is morally liberal in such matters. The court will be slightly rigid about the cause of delay on the last day of the prescribed period and for the period after that the court will not be hyper technical. It will not examine the cause of delay for every day and every minute. Rather, it will take a pragmatic approach and examine as to what a reasonable person would have done in those circumstances.

In the case of N. Balakrishnan v. M. Krishnamurthy the hon'ble supreme court held that the negligence of party is not a sufficient cause. However, if the party was not negligent and lawyer was negligent, then it will be sufficient cause for condonation of delay.

Thus, the phrase "sufficient cause" lays down flexible interpretation by allowing the courts to decide based upon the facts and circumstances of each case. Several points to be taken into consideration are the conduct of the applicant, nature of the cause of action, length and extension of the delay and lastly the impact upon the parties. In essence, the motive of the provision is to maintain the balance between legal provisions and the basic principle of equity to ascertain that neither justice is denied under any form of technicalities nor delayed by any means.

## CONCLUSION

The balance between the need for legal certainty and systematic justice is maintained with the enforcement of doctrine of condonation of delay under section 5 of the Limitation Act, 1963. The law of limitation plays a vital role in putting an end to litigation by imposing limitation period on filing of appeal and applications and it also protect the litigants from the burden of defending themselves from stale claims. However, strict application of such limitation periods can cause grave injustice to the party which failed to file their appeal or application within the period of limitation due to the circumstances beyond their control. Recognizing this, the section 5 of the Act, grants the courts a discretionary power to consider appeals or applications filed beyond the prescribed period where the sufficient cause for such delay is shown.

Thus, to conclude, the justice is provided not only by abiding by the laws and regulation but also by following the basic principle of natural justice and equity. Therefore, in order to ascertain equity alongside preventing misuse of the provision, it is required by the courts to adopt a structured framework for the purpose of interpreting ‘sufficient cause’ to ensure that relief is granted only under genuine circumstances while neglecting frivolous conducts.

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