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# Extension of Limitation Period due to Covid

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## ABSTRACT

*Ever since the world is gripped in the clutches of the Covid-19 Pandemic, there have been global and local consequences. Countries all over the world had to come to terms with new challenges in their day transactions at all levels. Commerce, Trade, and Industry too did not remain absolved from its effects. Businesses all of a sudden came to a standstill with the pan country directives of absolute restriction in movement of the people, except the essential services professionals and they too had a very restrictive movement and precautions. Many business transactions came to an abrupt stand-still due to the absence of manpower. They were unable to carry out their part of the transaction due, thereby invoking frustration of the contract entered into. It is in this back-drop one has to consider how within how long a time was one allowed to perform their end of the contract.*

## I. INTRODUCTION

Ever since the world is gripped in the clutches of the Covid-19 Pandemic, there have been global and local consequences. Countries all over the world had to come to terms with new challenges in their day transactions at all levels. Commerce, Trade, and Industry too did not remain absolved from its effects. Businesses all of a sudden came to a standstill with the pan country directives of absolute restriction in movement of the people, except the essential services professionals and they too had a very restrictive movement and precautions. Many business transactions came to an abrupt stand-still due to the absence of manpower. They were unable to carry out their part of the transaction due, thereby invoking frustration of the contract entered into. It is in this back-drop one has to consider how within how long a time was one allowed to perform their end of the contract. There was a recourse taken to the Force-Majeure clause in a contract when one can claim immunity from being sued due to non-performance of the contract. This clause had not defined covid-19 in particular but has a description of epidemic and pandemic and therefore businesses claimed such immunity. It also came upon the highest courts of the country in India to consider such non-performance to be not liable

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for breach of a contract. A directive to that extent was also made to ensure that due attempt and diligence had to be made to perform the contract as far as possible to claim such immunity. The use of Force-Majeure had consequences in the insurance industry as well.

### **(A) Background**

In consequence of such a scenario as described above, there were many companies and businesses which had suffered and wanted legal recourse, There was a prevalence of several civil suits and remedies such as specific performance, injunctions, damages, costs applied on the defaulting businesses. While initiating suit, replying to an application, or taking any action there is a period within which one has to act, this period in lay-mans terms is called the limitation period. It is statutorily defined in most instances, but in the absence of a law, one can also consider a reasonable period according to the tenets of the prevalent customs of the land.

### **(B) Definition**

Let's attempt to define the law on limitation in India and the various law in consideration such as contract law and laws on Covid.

### **(C) Limitation Law**

Currently, the limitation Act of 1963 applied to all the courts in the jurisdiction of India, As per the preamble it quotes “An Act to consolidate and amend the law for the limitation of suits and other proceedings and purposes connected therewith.” Here the most important part is the understanding of the period of limitation in the initiation of suits which is nothing but the legal action by the aggrieved person and the proceedings are nothing but the parts of the process before, during, and after such legal action. <sup>1</sup> Sec 2(j) of the limitation act of 1963 is defined as the period of limitation prescribed for any petitions, suits, appeals, applications or all other proceedings by the <sup>2</sup>Schedule, and “prescribed period” means the period of limitation computed following the provisions of this Act;

The thing to consider is that a schedule or a table at the end of the act provides various periods within which one has to act barring which one would lose the power to take legal action unless one has reasons which the court allows. These are exceptions based on genuine reasons, or days not to be included in the computation of the period of limitation. <sup>3</sup> Various sections such as 4, 12, 14 exclude certain days, such as the closure of court due to any reason, the time on which judgment was made, or time taken to receive the copy of any kind by the aggrieved from the court, (but there is no limitation to the judges within which they have to make such judgments or copies as it is the discretion of the court based on various practical

considerations, and its rules made by them ) if the aggrieved person makes the mistake of jurisdiction or any other.

#### **(D) Contract Law**

<sup>4</sup>The Indian Contract Act of 1872 by way of its sec 2 defines it, in simple terms whenever parties to a contract agree to do or not to do an act and such agreement is enforceable by law and such persons are competent, there is consensus in the same sense and at the same time by way of the meeting of the mind.

#### **(E) Covid Law**

<sup>5</sup>The Epidemic Diseases Act, 1897 was the precursor to the current covid -19 guidelines passed by the government of India in the absence of a direct law for the Covid-19 pandemic as it was unplanned for everyone to formulate a law around it. However, <sup>6</sup>the Disaster Management Act 2005 was invoked to formulate the makeshift laws and guidelines as the legal basis of the DM Act, is Entry 23, Concurrent List of the Constitution “Social security and social insurance”. Entry 29, Concurrent List “Prevention of the extension from one State to another of infectious or contagious diseases or pests affecting men, animals or plants,” can also be used for specific lawmaking. This gives <sup>7</sup>constitutional backing to the "Disaster Management Act of 2005" So the various rules passed under the Disaster Management act 2005, have it as the underlying act.

According to the short title of the Disaster Management Act 2005, it provides the effective management of disasters and for matters connected therewith or incidental to it. The Act calls for the establishment of the National Disaster Management Authority with the Prime Minister of India as chairperson. The NDMA may have no more than nine members including a Vice-Chairperson. It frames policies and guidelines for disaster management. To implement its policies it also forms National Executive Committee, which can form further sub-committees to implement its plans. The appointment of experts and officials is a part of it. Similarly at the State, District ad Local levels there are State, District, Local Disaster Management "Authorities", with their members respectively. They can also appoint State & District Executive Committees, which can create further sub-committees to help them at local levels.

## **II. ANALYSIS**

### **(A) Limitation Period in covid**

As the covid-19 pandemic was handled in the absence of express legislation on Covid-19 per se, and as the nationwide law was the need of the day the Disaster Management Act, 2005 was

used. It has wider power of federal intervention than the epidemics act of 1987 with no limitation of the period for the extension of such enforcement. This can be read by section 49. Allocation of funds by Ministries and Departments.—(1) Every Ministry or Department of the Government of India shall make provisions, in its annual budget, for funds to carry out the activities and programs set out in its disaster management plan. This indicates that the act can be invoked indefinitely considering there already is a provision for budgeting and they are made annually. This brings a different set of the question beyond the scope of this article, as to can a disaster be considered a permanent event with no close or end date to it.

The Supreme court passed an order on its own for extending the limitation period.

Usually as described above in the definition for limitation period the time is given in the schedule. For ex. 30 days, 60 days, 90 days, 180 days to 1 year, and so on from the time of the cause of action. As proceedings are an ongoing process across the courts in India, even before the Pandemic was declared some proceedings had their limitation period.

### **(B) Extension of Limitation Period**

In this article we are just considering the limitation of the period for filing of petitions, suits, appeals, applications the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders (including periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay and termination of proceedings). proceedings in the higher courts of India.

a) Therefore when <sup>8</sup> the first order was made by the supreme court on 23rd March 2020 ( effective retrospectively from 15th March 2020, )those proceedings were already running. The period from 15th March 2020 up until 14th March 2021 was considered as a fresh limitation period other than the original limitation period before the pandemic whether they could be condoned(pardoned) or not. This order applied to all the general laws and special laws in India and the supreme court used its plenary powers under Article 142 read with Article 141 to pass such a suo-moto order of extension of the limitation period. Article 142 allows that even if there is no legislation to implement its order as the president may by order prescribe. The SC notice passed on 23rd March 2020 ( effective retrospectively from 15th March 2020, )was to continue until further notice.

b) <sup>9</sup>The second order dated 8th March 2021 was made by the supreme court to end the extension of the limitation period given by the 23rd March order to end by the prospective date of 14th March 2021.

**Let me explain with TABLE I & II**

**TABLE I**

<i>S No.</i>	<i>Original Limitation period</i>	<i>Balance by the start date.</i>	<i>SC 1<sup>st</sup> order date</i>	<i>Start date (retrospective)</i>	<i>End Date(Prospective date) as per SC 2<sup>nd</sup> order</i>	<i>SC 2<sup>nd</sup> Order date</i>
<i>Example 1</i>	<i>30 days</i>	<i>13 days</i>	<i>23<sup>rd</sup> Mar 20</i>	<i>15<sup>th</sup> Mar 20</i>	<i>14<sup>th</sup> Mar 21</i>	<i>8<sup>th</sup> Mar 21</i>
<i>Example 2</i>	<i>60 days</i>	<i>24 days</i>	<i>23<sup>rd</sup> Mar 20</i>	<i>15<sup>th</sup> Mar 20</i>	<i>14<sup>th</sup> Mar 21</i>	<i>8<sup>th</sup> Mar 21</i>
<i>Example 3</i>	<i>90 days</i>	<i>72days</i>	<i>23<sup>rd</sup> Mar 20</i>	<i>15<sup>th</sup> Mar 20</i>	<i>14<sup>th</sup> Mar 21</i>	<i>8<sup>th</sup> Mar 21</i>
<i>Example 4</i>	<i>180days</i>	<i>129 days</i>	<i>23<sup>rd</sup> Mar 20</i>	<i>15<sup>th</sup> Mar 20</i>	<i>14<sup>th</sup> Mar 21</i>	<i>8<sup>th</sup> Mar 21</i>
<i>Example 5</i>	<i>2 years</i>	<i>382days</i>	<i>23<sup>rd</sup> Mar 20</i>	<i>15<sup>th</sup> Mar 20</i>	<i>14<sup>th</sup> Mar 21</i>	<i>8<sup>th</sup> Mar 21</i>

TABLE II

SNo.	Limitation days(90 days) by default will be granted starting 15th Mar 21 if <u>anyone or both conditions</u> are met:-.	Limitation days (>90 days) by default will be granted starting 15th Mar 21 if <u>anyone, both or all conditions</u> are met:-.	Explanation
Example 1 above	yes, 90 days will be granted from 15th March	N/a	1)13 days were balanced at the start
	<p>(i) if balance days were calculated to continue and <u>fall within the start and end dates of SC 1ST order &amp; 2nd order(dt 15th Mar 20 &amp;14thMar 21) both dates inclusive ie,15th Mar 20 &amp; 14th Mar 21 and</u></p> <p>(ii) the original balance days were <u>less than or equal to 90 days</u></p>	<p>(i) if balance days were calculated to continue and <u>fall within the start and end dates of SC 1ST order &amp; 2nd order(dt 15th Mar 20 &amp;14thMar 21) both dates inclusive ie,15th Mar 20 &amp; 14th Mar 21 and</u></p> <p>(ii)if balance days were calculated to continue and <u>fall outside the start and end dates of SC 1ST order &amp; 2nd order(dt 15th Mar 20 &amp;14thMar 21) both dates inclusive ie,15th Mar 20 &amp; 14th Mar 21 and</u></p> <p>(iii) the original balance days <u>were more than 90 days</u></p>	

	<p>2021 flat. (both conditions given above are fulfilled )</p>		<p>date and if allowed to continue would have fallen been between 15th Mar 20 &amp; 14th Mar 21.</p> <p>2)The original balance period was less than or equal to 90 days, i.e in the given example is 13 days &lt; 90 days</p> <p>Note:-The balance of 13 days would not be added and computed separately and included within the 90 days granted by the SC 2nd order dated 8th Mar 21. (this is explained by the non-obstante clause in the 2nd order of the supreme court clearly)</p> <p><u>Both conditions (i) &amp;(ii)in column 2 Row 1 are met.</u></p>
<p>Example 2 above</p>	<p>yes, 90 days will be granted from 15th March 2021 flat. (both conditions given above</p>	<p>N/a</p>	<p>1)24 days were balanced at the start date and if allowed to continue would have</p>



	<i>are fulfilled )</i>		<p><i>fallen been between 15th Mar 20 &amp; 14th Mar 21.</i></p> <p><i>2)The original balance period was less than or equal to 90 days, i.e in the given example is 24 days &lt; 90 days</i></p> <p><i>Note:-The balance of 24 days would not be added and computed separately and included within the 90 days granted by the SC 2nd order dated 8th Mar 21. (this is explained by the non-obstante clause in the 2nd order of the supreme court clearly)</i></p> <p><u><i>Both conditions (i) &amp;(ii) in column 2 Row 1 are met.</i></u></p>
<i>Example 3 above</i>	<i>yes, 90 days will be granted from 15th March 2021 flat. (both conditions given above are fulfilled )</i>	<i>N/a</i>	<i>1)72 days were balanced at the start date and if allowed to continue would have fallen been between 15th Mar 20 &amp; 14th Mar 21.</i>

			<p>2)The original balance period was less than or equal to 90 days, i.e in the given example is 72 days &lt; 90 days</p> <p>Note:-The balance of 72 days would not be added and computed separately and added with 90 days granted by the SC 2nd order dated 8th Mar 21. (this is explained by the non-obstante clause in the 2nd order of the supreme court clearly)</p> <p><u>Both conditions (i) &amp;(ii)in column 2 Row 1 are met.</u></p>
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<p><i>Example 4 above</i></p>	<p><i>No</i></p>	<p><i>Yes, The balance of 129 days only would be flatly granted from the 15th Mar 2021.</i></p>	<p><i>1)129 days were balance at the start date and if allowed to continue would have <u>fallen within</u> 15th Mar 20 &amp; 14th Mar 21.</i></p> <p><i>2)The original balance period <u>were more than 90 days</u>, i.e in the given example is</i></p> <p><i>129 days &gt; 90 days</i></p> <p><i>Note:-The balance of 129 days would not be added and computed separately and added with 90 days granted by the SC 2nd order dated 8th Mar 21. (this is explained by the non-obstante clause in the 2nd order of the supreme court clearly)</i></p> <p><i><u>Conditions (i) &amp;(iii)in column 2 Row 2 are met.</u></i></p> <p><i>It falls within the excluded limitation period and balance days are more than 90.</i></p>
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<p><i>Example 5 above</i></p>	<p><i>No</i></p>	<p><i>Yes, The balance of 382 days only would be flatly granted from the 15th Mar 2021.</i></p>	<p><i>1)382 days were balance at the start date and if allowed to continue <u>would fall outside 15th Mar 20 &amp; 14th Mar 21.</u></i></p> <p><i>2)The original balance period <u>were more than 90 days</u>, i.e in the given example is</i></p> <p><i>382days &gt; 90 days</i></p> <p><i>Note:-The balance of 382 days would not be added and computed separately and added with 90 days granted by the SC 2nd order dated 8th Mar 21. (this is explained by the non-obstante clause in the 2nd order of the supreme court clearly)<u>§</u></i></p> <p><i><u>Conditions (ii) &amp;(iii)in column 2 Row 2 are met.</u></i></p> <p><i>It falls outside excluded limitation period and balance days are more than 90</i></p>
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c) <sup>10</sup> The third order dated 27th April 2021 was made by the supreme court to restore the order dated 23rd March 2020 and in continuation of the order dated 8th March 2021 (The first order was to begin limitation period, the second order was to end the limitation period and the third was to restore the continuation as the second wave of covid led to rising in covid-19 cases. Therefore the original 1st order stood shall stand extended till further orders even beyond 14th March 2021 in the second order.

d) <sup>11</sup> On 23 rd September 2021 a fourth order was passed by the supreme court such that the 2nd order dated 08.03.2021 is restored to end the extension provided in the limitation periods .as the situation is near normal. The second order was conditional as can be shown from tables I & II above As the said order dated 08.03.2021 was only a one-time measure, the supreme court has not further modified the conditions contained in the order dated 08.03.2021. This means everything remains as it was, except that the dates from 15th March to 3rd Oct 2021, would be extended limitation period outside of the original limitation period. Therefore the new period to exclude the original limitation period would be between the start date 15th Mar 20 and the end date would be 3rd October 2021. The above table as per the latest extension will be accordingly changed and shown below with examples as follows:-

**TABLE I**

<i>S No.</i>	<i>Original Limitation period</i>	<i>Balance by the start date.</i>	<i>SC 1<sup>st</sup> order date</i>	<i>Start date (retrospective)</i>	<i>End Date(Prospective date) as per SC4th order</i>	<i>SC 4<sup>th</sup> Order date</i>
<i>Example 1</i>	<i>30 days</i>	<i>13 days</i>	<i>23<sup>rd</sup> Mar 20</i>	<i>15<sup>th</sup> Mar 20</i>	<i>2<sup>rd</sup> Oct 21</i>	<i>23<sup>rd</sup> Sept 21</i>
<i>Example 2</i>	<i>60 days</i>	<i>24 days</i>	<i>23<sup>rd</sup> Mar 20</i>	<i>15<sup>th</sup> Mar 20</i>	<i>2<sup>rd</sup> Oct 21</i>	<i>23<sup>rd</sup> Sept 21</i>
<i>Example 3</i>	<i>90 days</i>	<i>72days</i>	<i>23<sup>rd</sup> Mar 20</i>	<i>15<sup>th</sup> Mar 20</i>	<i>2<sup>rd</sup> Oct 21</i>	<i>23<sup>rd</sup> Sept 21</i>

<i>Example 4</i>	<i>180days</i>	<i>129 days</i>	<i>23<sup>rd</sup> Mar 20</i>	<i>15<sup>th</sup> Mar 20</i>	<i>2<sup>rd</sup> Oct 21</i>	<i>23<sup>rd</sup> Sept 21</i>
<i>Example 5</i>	<i>2 years</i>	<i>382days</i>	<i>23<sup>rd</sup> Mar 20</i>	<i>15<sup>th</sup> Mar 20</i>	<i>2<sup>rd</sup> Oct 21</i>	<i>23<sup>rd</sup> Sept 21</i>

**TABLE II**

<i>SNo</i>	<i>Limitation days(90 days) by default will be granted starting 15th Mar 21 if two conditions are met:-</i>	<i>Limitation days (&gt;90 days) by default will be granted starting 15th Mar 21 if <u>anyone or both conditions</u> are met:-.</i>	<i>Explanation</i>
	<p><i>(i) if balance days were calculated to continue and fall within the start and end dates of SC 1ST order &amp;4th order(dt 15th Mar 20 &amp;2nd Oct 21) both dates inclusive ie,15th Mar 20 &amp; 2ndOct 21 and</i></p> <p><i>(ii) the original balance days were <u>less than or equal to</u> <u>90 days</u></i></p>	<p><i>(i) if balance days were calculated to continue and fall within the start and end dates of SC 1ST order &amp;4th order(dt 15th Mar 20 &amp; 2nd Oct 21) both dates inclusive ie,15th Mar 20 &amp; 2ndOct 21 and</i></p> <p><i>ii)if balance days were calculated to continue and <u>fall outside</u> the start and end dates of SC 1ST order &amp; 4th order(dt 15th Mar 20 2nd Oct 21) both dates inclusive ie,15th</i></p>	

		<p><i>Mar 20 &amp; 2ndOct 21 and</i></p> <p><i>(ii) the original balance days were <u>more than 90 days</u></i></p>	
<p><i>Example 1 above</i></p>	<p><i>yes 90 days will be granted from 3rdOct 21 flat (both conditions given above are fulfilled )</i></p>	<p><i>N/a</i></p>	<p><i>1)13 days were balance at the start date and if allowed to continue would have fallen been between 15th Mar 20 &amp; 2ndOct 21</i></p> <p><i>2)The original balance period was less than or equal to 90 days, i.e in the given example is 13 days &lt; 90 days</i></p> <p><i>Note:-The balance 13 days would not be added and computed separately and included within the 90 days granted by the SC 2nd &amp; 4th order dated 8th Mar 21 &amp; 23rd Sept 21 (this is explained by the non-obstante clause in the 2nd &amp; 4th order of</i></p>

			<p><i>supreme court clearly)</i></p> <p><u><i>Both conditions (i) &amp;(ii)in column 2 Row 1 are met.</i></u></p>
<p><i>Example 2 above</i></p>	<p><i>yes 90 days will be granted from 3rdOct 21 flat (both conditions given above are fulfilled )</i></p>	<p><i>N/a</i></p>	<p><i>1)24 days were balance at the start date and if allowed to continue would have fallen been between 15th Mar 20 &amp; 2ndOct 21</i></p> <p><i>2)The original balance period was less than or equal to 90 days, i.e in the given example is 24 days &lt; 90 days</i></p> <p><i>Note:-The balance 24 days would not be added and computed separately and included within the 90 days granted by the SC 2nd &amp; 4th order dated 8th Mar 21 &amp; 23rd Sept 21 (this is explained by the non-obstante clause in the 2nd &amp; 4th order of</i></p>



			<p><i>supreme court clearly)</i></p> <p><u><i>Both conditions (i) &amp;(ii)in column 2 Row 1 are met.</i></u></p>
<p><i>Example 3 above</i></p>	<p><i>yes 90 days will be granted from 3rdOct 21 flat (both conditions given above are fulfilled )</i></p>	<p><i>N/a</i></p>	<p><i>1)72 days were balance at the start date and if allowed to continue would have fallen been between 15th Mar 20 &amp; 2ndOct 21</i></p> <p><i>2)The original balance period was less than or equal to 90 days, i.e in the given example is 72 days &lt; 90 days</i></p> <p><i>Note:-The balance of 72 days would not be added and computed separately and added with 90 days granted by the SC 2nd &amp; 4th order dated 8th Mar 21 &amp; 23rd Sept 21 (this is explained by the non-obstante clause in the 2nd &amp; 4th order of supreme court</i></p>

			<p>clearly)</p> <p><u>Both conditions (i) &amp;(ii) in column 2 Row 1 are met.</u></p>
<p>Example 4 above</p>	<p>No</p>	<p>Yes, The balance of 129 days only would be flatly granted from the 3rd Oct 21.</p>	<p>1) 129 days were balance at the start date and if allowed to continue would have fallen been between 15th Mar 20 &amp; 2nd Oct 21</p> <p>2) The original balance period were more than 90 days, i.e in the given example is</p> <p>129 days &gt; 90 days</p> <p>Note: the balance of 129 days <u>fulfills both conditions</u></p> <p>condition (i) balance days were calculated to continue, it would fall within the start and end dates of SC 1ST order &amp; 4th order (dt 15th Mar 20 &amp; 2nd Oct 21) both dates inclusive ie, 15th</p>

			<p><i>Mar 20 &amp; 2ndOct 21 and</i></p> <p><u><i>Conditions (i) &amp;(iii)in column 2 Row 2 are met.</i></u></p> <p><i>It falls within the excluded limitation period and balance days are more than 90.</i></p>
<i>Example 5 above</i>	<i>No</i>	<i>Yes, The balance of 382 days only would be flatly granted from the 3rdOct 21.</i>	<p><i>1)382 days were balance at the start date and if allowed to continue would have <u>not fallen</u> between 15th mar 20 &amp; 2ndOct 21</i></p> <p><i>2)The original balance period were more than <u>90 days</u>, i.e in the given example is</i></p> <p><i>382days &gt; 90 days</i></p> <p><i>Note:-The balance of 382 days would not be added and computed separately and added with 90 days granted by the SC 2nd order dated 8th Mar 21. (this</i></p>

			<p><i>is explained by the non-obstante clause in the 2nd order of the supreme court clearly)</i></p> <p><u>Conditions (ii) &amp;(iii)in column 2 Row 2 are met.</u></p> <p><i>It falls outside excluded limitation period and balance days are more than 90.</i></p>
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### III. CONSEQUENCES OF EXTENSION

There could be several consequences due to the constant extensions of the limitation period some positive some negative. A positive consequence is the control of the spread of the covid-19 virus and reduction of inconvenience to those who have to travel in the absence of transportation. Also, some immediate orders could cause inconvenience to certain people such as receiving warrants, going to jail, or having their properties confiscated, or any such adverse order if the limitation period is lifted. Thus the effects are felt on both sides of the judicial balance.

One such example is given in this <sup>12</sup> economic times article dated Sept 23rd, 2021 such that The poll panel, in its plea, wanted an extension for the limitation period filing election petitions relating to the assembly polls of Assam, Kerala, Delhi, Puducherry, Tamil Nadu, and West Bengal. This is because currently there is no limitation period so if the petition is filed these EVMs and VVPAT will have to be preserved as evidence and therefore could not be re-used in the upcoming polls. The supreme court is cautious as an extension on the limitation period was already given earlier any additional grant may attract litigations on this in the future.

#### **IV. CONCLUSION**

Thus we see that any extension given during Covid has its repercussion on both sides of the law and it does not give an automatic waiver to further litigation even as per the terms of the agreement. The benefit of force-majeure, limitation period is subject to proper due diligence and procedure of law and cannot be indefinitely extracted.

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