

Report on Extension of the Period of Limitation for Filing of Appeals Against Decrees and Orders Involving Government-Owned Lands

This is reference under section 6 (Ena) of the Law Commission Act, 1996, for considering whether the existing period of limitation provided for filing appeals against decrees and orders involving lands owned by the Government can be extended.

In the reference sent to the Commission under memo. No. 805 আইন- ১৩-সভা- ৩০/২০০২ dated 19-12-2002 of the Ministry of Law, Justice and Parliamentary Affairs, Legislative Drafting Wing, it has been stated that in many cases the Government cannot prepare appeals within the period of limitation provided under the existing laws and as such, sought the opinion of the Commission as to whether provision can be made extending the existing period of limitation for filing appeals by, or on behalf of, the Government.

The existing provisions relating to limitation regarding appeals is in the Second Division of the First Schedule of the Limitation Act, 1908 and Articles 151, 152 and 156 thereof are relevant for our present purpose.

Article 151 of the Limitation Act, 1908, provides a period of twenty days for filing an appeal from the date of the decree or order of the High Court Division in the exercise of its original jurisdiction.

Article 152 of the same Act provides a period of thirty days from the date of the decree or order for preferring an appeal to the Court of a District Judge under the Code of Civil Procedure, 1908.

Article 156 of the said Act provides a period of ninety days from the date of the decree or order for preferring an appeal to the High Court Division under the Code of Civil Procedure, 1908, except the appeals falling under Articles 151 and 153.

It may be noted that in the scheme of the Limitation Act, 1908, no classification has been made as to appeals for prescribing the period of limitation and for the purpose of appeals, decrees and orders passed in all categories of suits and cases have been treated alike providing for the same limitation. We feel that this scheme need not be disturbed, because, any disturbance thereof is likely to create confusion and complication without any positive benefit.

The question as to whether the period of limitation should be extended, and to what extent, where the Government is the appellant is a question of policy. There is no constitutional or legal difficulty therein. If the Government takes a policy decision for extending the existing period of limitation where the Government is the appellant, it can be done without offending the constitution or any other law. Amendment of the relevant Articles of the Second Division of the First Schedule of the Limitation Act, 1908, particularly, Articles 151, 152 and 156 (and insertion of some new Articles, if and wherever necessary), will serve the purpose.

In conclusion, it may be stated that while taking the policy decision, the Government may consider whether an extension of the existing period of limitation of appeals by, or on behalf of, the Government is likely to encourage indolence on the part of the officials dealing with litigations in which the Government would like to prefer appeals. In a particular case of reasonable delay, the Government can always, as it usually does, take recourse to section 5 of the Limitation Act.

(Justice A.K.M. Sadeque)
Member
Law Commission

(Justice Naimuddin Ahmed)
Member
Law Commission

(Justice A.T.M. Afzal)
Chairman
Law Commission